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A LAW ABOVE THE LAW?

UNMASKING SECTION 851 OF THE COMPANIES AND ALLIED MATTERS ACT 2020 AND ITS THREAT TO NIGERIA'S JUDICIAL SOVEREIGNTY

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In a seismic shift that reverberated through Nigeria's legal and corporate governance landscape, the enactment of **Section 851 of the Companies and Allied Matters Act (CAMA) 2020** signaled more than mere legislative reform—it unveiled a constitutional storm. Beneath its administrative sheen lies a legislative dagger pointed squarely at the heart of judicial independence and constitutional supremacy.

Section 851 of CAMA 2020, on its surface, offers a procedural mechanism for the issuance of administrative orders by a newly established body christened the **Administrative Proceedings Committee** (APC) against errant companies. But dig deeper, and one uncovers a clause that threatens to eclipse the judiciary's inherent authority. By granting the APC quasi-judicial powers and original adjudicatory jurisdiction traditionally reserved for the courts, this provision raises troubling questions: Has the legislature trespassed into the domain of the judiciary? Are we witnessing the quiet corrosion of constitutional balance under the guise of administrative convenience?

This paper interrogates these constitutional and jurisdictional tensions. It examines how **Section 851** flirts dangerously with unconstitutionality by circumventing due process and undermining the exclusive preserve of the courts. It scrutinizes the extent to which this section contravenes the **separation of powers** doctrine—a foundational pillar upon which Nigeria's democracy stands. More urgently, it asks: If administrative agencies can wield powers once held by judges, what remains of the judiciary's authority?

By way of necessary detour, the issue at the core of this article is **not** a mere reiteration of the **doctrine of exhaustion of administrative remedies.** That doctrine, long cemented in Nigeria's legal tradition, holds that an aggrieved party must first traverse the full spectrum of available administrative processes before seeking the refuge of the courts.[1] It is a similitude of alternative dispute resolution, pre-litigation. Their Law Lords at the Court of Appeal in *Koko & Ors v. Ulu & Ors*[2] described administrative remedies as procedural, not substantive ousters. They delay, rather than deny, access to the courts.

The jurisprudence behind this, echoed in *Kayili v. Yilbuk*[3] and reinforced by *Stanbic IBTC Bank v. Longterm Global Capital Ltd*[4], is simple: not every grievance deserves a front-row seat in the courtroom. Let the bureaucracy first resolve its mess. Let the burden on the judiciary lighten. Let some disputes, like small fires, burn out before the entire house is called upon to intervene.

1. Eguamwense v. Amaghizemwen / **(1993) LPELR-1049(SC)**
2. **(2021) LPELR-56567(CA)**
3. **(2015) 7 NWLR (Pt. 1457)26**
4. **(2021) LPELR-55610(CA)**

But make no mistake: **Section 851 of CAMA 2020** is **not** such a fire. It is an inferno, burning not on the surface of procedural convenience, but at the foundations of constitutional order.

Section **851 of CAMA 2020** is not just another nod to administrative due process. No, it is a veiled legislative challenge to the Nigerian judiciary. It purports to empower the **APC** of the Corporate Affairs Commission (CAC) with quasi-judicial powers: to hear disputes, impose penalties and resolve grievances arising from the operation of the Act itself, **as though it were a court of law.** No specific disputes, all disputes! Then, in **subsection (12)**, it adds that parties *may* appeal decisions to the Federal High Court (FHC).

But this raises a fundamental constitutional alarm: Can the National Assembly create an administrative body with **judicial trappings**, empower it to adjudicate disputes and then limit access to the courts to appeals alone?

If so, **what becomes of the judiciary's constitutional authority under Section 6(6)(b) of the 1999 Constitution?** What becomes of the **exclusive jurisdiction** of the FHC under **Section 251(1)(e) of the Constitution** and **Section 7(1)(c) of the Federal High Court Act 1990?** The answer is as clear as it is chilling: **those powers are eroded, diluted and unconstitutionally usurped.**

The only conclusion is that **Section 851 of CAMA 2020** is inconsistent with **Section 6(6)(b) and 251 of the Constitution** and are therefore void[5].

The Federal High Court has already ruled decisively on this. In the landmark case of *Emmanuel Ekpenyong v. National Assembly & 2 Ors*[6], **Section 851 of CAMA 2020** was **struck down**; declared **null and void,** for being in fundamental conflict with Sections **6(6)(b)**, **36(1)**, **38**, **40**, and **251(1)(e)** of the Constitution. The judiciary, in that moment, reaffirmed its sacred role as the **guardian of constitutional supremacy.**

In *FIRS v. TSKJ Construcoes Internacional Sociadade Unipersoal LDA*[7], the Tax Appeal Tribunal (TAT), another administrative creation, faced a similar legitimacy challenge. The trial court struck down its jurisdiction under the **Federal Inland Revenue Service (Establishment) Act 2007**. But the Court of Appeal reversed the ruling, holding that the TAT merely imposed a *condition precedent*, not a substitute, for judicial recourse.

Yet the analogy collapses when brought to **Section 851 of CAMA 2020**. Unlike the TAT, which is tethered to the narrow technicalities of tax assessments, the APC is empowered to resolve a **wide swath of disputes** under **CAMA 2020**. It does so with **penal powers**, not mere preliminary assessments. In that sense, it *acts* like a court without *being* one; **a constitutional masquerade.**

The *FIRS v TSKJ* decision joins queue with court decisions on exhaustion of administrative remedies and explains the initial detour in the preceding paragraphs. Now you understand why!

This is not the first time statutes have attempted to neuter the judiciary and failed. In *Mr.Adedayo Mumuni Shittu v. Asset Management Corporation of Nigeria (AMCON)*[8], **Section 34(6) of the AMCON (Amendment No. 2) Act** was struck down for barring courts from granting injunctions against AMCON[9]. In *Alhaji Abdulkadir Balarabe Musa & Ors. v. Independent National Electoral Commission & Anor*[10] **Guidelines No. 3(a), 3(c), 3(d)(iv), 3(e), 3(f), 3(g), 3(h), 5(b), 2(c), 2(d)** and **Sections 74(2)(g) and (h), 74(6), 77(b), 78(2)(b), 79(2)(c) of the Electoral Act, 2001** were declared void for expanding or shrinking the constitutional requirements for party registration, inconsistent with **Sections 222 and 223** of the **Constitution**[11].

In *Falohun v. Federal University of Technology Akure*[12], **Section 16(2) of the Federal University of Technology Act Cap. 143, LFN 2004** was invalidated for violating the right of access to court.

The FHC, Abuja Judicial Division, made a landmark decision, Per Justice James Omotosho in the case of **Joseph Bodunrin Daudu SAN v. Minister of Finance, Budget and National Planning & Ors.**[13], and declared provisions requiring taxpayers to pay 50% or full payment of disputed tax assessments before filing an appeal as unconstitutional, null, and void, emphasizing the constitutional right to fair hearing and access to justice.

These decisions form a **chorus of judicial resistance**; a legal anthem asserting that **no statute can rise above the Constitution,** as re-echoed in the landmark case of *Inakoju v Adeleke*[14].

The jurisprudential journey through the landscape of **Section 851 of CAMA 2020** reveals not just a conflict of jurisdiction but a deeper constitutional fault line.

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5. Section 1(3) of the Constitution
6. (2023) 5 CLRN page 116
7. (2017) LPELR – 42868 (CA)
8. CA**/L/1266/2019**
9. The Court relied on the pronouncement in **AMADI V. NNPC (2000) LPELR - 445 (SC)** to drive the point home that '**any statutory provision aimed at the protection of any class of persons from the exercise of the court of its constitutional jurisdiction is inconsistent with the provisions of Section 6(6)(b) of the Constitution.'**

10. (2002) 11 NWLR (PT. 778) 22

11. The Court, Per MUNTAKA-COOMASSIE, JCA at page 313, paras. G-H:
"We are operating a constitutional democracy. Therefore any law,Act or guidelines which were made outside the provisions of the Constitution cannot be allowed to stand and must be struck out as inoperative and I so hold. The learned Judge of the lower court started very well but, fortunately or unfortunately, he suddenly became afraid to create precedent. Learned erudite Judge could have seized the opportunity offered to declare all the offending guidelines as null and void. We do so here."

12. (1997) FNLR VOL. 2 @ pg 336
13. FHC/ABJ/CS/12/2022
14. **(2007) 4 NWLR (Pt. 1025) 423. See also A.G. Federation v. Abubakar (2007) 10 NWLR (Pt. 1041) 1; Attorney General of Bendel State v. Attorney General of the Federation (1981) 10 SC 1; Lakanmi & Anor v. Attorney General (Western Region) (1971) 1 UILR 201**

Having set out the judicial decisions chronologically—particularly *Ekpenyong v. National Assembly*, *FIRS v. TSKJ Construções* and *Shittu v. AMCON*—a recurring pattern emerges: the persistent tension between statutory innovation and constitutional supremacy.

Beyond the initial reasoning of the courts, further scrutiny of the powers purportedly conferred on the APC raises even more fundamental concerns. The APC, as currently constituted, appears to tread dangerously close to the domain of the judiciary. Questions abound: Can the APC issue quasi-judicial pronouncements such as **winding-up orders**, which would ordinarily invoke the judicial powers reserved under **Sections 570-709 of CAMA 2020**? Would such powers not involve the interpretation of substantive statutory provisions, which only courts—vested with judicial authority under **Section 6 of the Constitution**—can legitimately undertake?

Moreover, can the APC direct the CAC to investigate the affairs of a defaulting company pursuant to **Section 355(2)(g) of CAMA 2020?** Can it command the CAC to strike off a delinquent company from the corporate register, in line with **Section 692 of CAMA 2020**? Can it dabble into issues of company name disputes under **Section 852 of CAMA 2020**, especially where such disputes verge on trademark infringement and invoke the provisions of a distinct statutory regime like the **Trademarks Act**?

If the APC were to exercise these powers, it would not only be interrogating provisions of the **CAMA 2020,** but possibly encroaching on the domain of other laws—raising the spectre of jurisdictional overreach. Such functions are not merely administrative but are inherently judicial or quasi-judicial, requiring reasoned interpretation and application of complex legal norms. This blurring of roles represents a **metaphorical crossing of constitutional Rubicons**, transforming what was intended as a regulatory filter into a pseudo-judicial tribunal.

Worse still, the insidious implication of **Section 851(12) of CAMA 2020** lies in its quiet attempt to **downgrade the FHC** from a court of original jurisdiction to a mere appellate forum. By stating that *"parties dissatisfied with the APC may appeal to the Federal High Court,"* the provision arrogates **primary judicial power** to the APC, **in direct defiance** of **Section 251 of the Constitution**.

This is not how administrative remedies are structured. Across statutes—**FCCPC Act,**[15] **Pension Reform Act,**[16] **Obas and Chiefs Law of Lagos State,**[17] **Health Sector Reform**[18] **Law and others**—pre-court mechanisms serve as optional or procedural steps, never as substitutes for the judiciary's constitutionally enshrined role.

The courts remain the original arbiters, not the fallback option. The model invented under **Section 851 of CAMA 2020** represents a departure from established legal norms, as none of the comparable statutes transform the courts into a secondary tier of dispute resolution or diminish their primary constitutional role.

Yet, **Section 851 of CAMA 2020** breaks from this established legal architecture. It does not define the APC as a *condition precedent*. It does not limit its powers. It does not clarify its scope. Instead, it sets the stage for a **legislative overreach masquerading as reform**—a statutory innovation with the potential to **erode the levees of judicial authority**. Good intentions, perhaps; but without clear limits, **the APC becomes a constitutional trespasser**; and **Section 851 of CAMA 2020**, its legislative accomplice.

The implications of **Section 851 of CAMA 2020** are **not academic**. They are immediate, pressing and constitutionally perilous.

15. See **Section 146-154 of the FCCPC Act**
16. See **Section 107 of the Pension Reform Act 2014**
17. See **Section 24(3) of the Obas and Chiefs of Lagos State Law, Laws of Lagos State**
18. See **Section 62 of the Health Sector Reform law, laws of Lagos State 2015**

The FHC's ruling in *Ekpenyong*[19] may soon face appellate scrutiny, but unless overturned, it remains a powerful judicial pronouncement that administrative convenience cannot displace constitutional command.

Until legislative surgery is performed or until the Supreme Court issues the final word, the APC's jurisdiction remains constitutionally suspect and its powers under **Section 851** remain unenforceable**.** Legislative redrafting is imperative to clarify the limits of the APC's powers, the optional or mandatory nature of its proceedings and its relationship with judicial oversight.

In the final analysis, **no statutory convenience can be permitted to displace the entrenched right of access to courts**, nor can administrative expediency override the doctrine of separation of powers.[20]

The Constitution remains the **unshakeable fulcrum** upon which Nigeria's legal architecture balances—and to the extent that **Section 851** undermines this equilibrium, it must be re-examined and, if necessary, restructured or repealed beyond the decision in *Ekpenyong v. National Assembly*.

19. Restriction on the Powers of the Corporate Affairs Commission to Regulate Associations: **Emmanuel** *Ekpenyong V The National Assembly & 2 Ors (2023) 5 CLRN 116* by Damilola Oyewole, Associate, Africa Law Practice and Company

20. *In AG ABIA STATE & ORS v. AG FEDERATION* (2003) 12 NWLR (Pt. 833) 1, the Supreme Court held as follows: 'The principle behind the concept of Separation of Powers is that none of the three arms of government under the Constitution should encroach into the powers of the other. Each arm - the Executive, Legislative and Judicial - is separate, equal and of coordinate department and no arm can constitutionally take over the functions clearly assigned to the other. Thus the powers and functions constitutionally entrusted to each arm cannot be encroached upon by the other. The doctrine is to promote efficiency in governance by precluding the exercise of arbitrary power by all the arms and thus prevent friction.'