

**G. ELIAS**

***Mufutau Ajayi V. Securities And Exchange Commission (2023) LPELR-59729(SC):  
A Conclusive Pronouncement on the  
Exclusive Jurisdiction of the Investments  
and Securities Tribunal?***



## Introduction

The exclusive jurisdiction of the Investments and Securities Tribunal (the “**IST**” or “**Tribunal**”) has been subject to controversy. For some, the Federal High Court has exclusive jurisdiction over any action for a declaration or injunction affecting the validity of any executive or administrative action or decision over Federal Government agencies, which the Securities and Exchange Commission (“**SEC**”) is one (the 1999 Constitution of the Federal Republic of Nigeria (as amended) (the “**Constitution**”), s. 251(1)(r)). This view was further upheld by the Court of Appeal in *SEC v. Kasunmu* (2008) LPELR-4936(CA) and *Okeke v. SEC* (2018) LPELR-44461(SC). Others have argued that the effect of section 258 of the Investment and Securities Act, 2007 (as amended) (the “**ISA**”) is to confer exclusive jurisdiction on the Tribunal. The Court of Appeal has also decided some cases in line with this view. See *Ajayi v. SEC* (2007) LPELR-CA 2000 and *Nospecto Oil & Gas v. Olorunnimbe* (2021) LPELR-55630(SC).

Interestingly, the Supreme Court affirmed the decision of *Ajayi v. SEC* in *Mufutau Ajayi v. Securities and Exchange Commission* (2023) LPELR-59729(SC). In *Ajayi v. SEC*, the Supreme Court found that the proper forum with jurisdiction to hear and determine the case of the Appellant – regarding the denial of fair hearing at the Administrative Proceedings Committee established by the SEC was the Tribunal and not the Federal High Court. In this article, we considered the facts of *Ajayi v. SEC*, the *ratio* of the Supreme Court, and whether with this decision, the uncertainty surrounding the exclusive jurisdiction of the IST has now been resolved.

## Facts of *Ajayi v. SEC*

In 2000, the National Council on Privatization offered for sale on behalf of the Federal Government 86,400,000 ordinary shares of AP Plc (the “**Company**”) constituting 30% of the issued share capital of the Company (the “**Shares**”). In 2001, Sadiq Petroleum Limited, an investor that bought the Shares alleged that Mufutau Ajayi, (“**the Appellant**”), who was the alter ego and Finance and Accounts Manager of African Petroleum Plc, purportedly authorized the issuance of a Prospectus dated March 30, 2000, for offer of sale of the Shares at ₦28.50 per Share containing an untrue statement about the total indebtedness of the Company. The Prospectus contained false statements that the total indebtedness of the Company as of June 30, 1999, was ₦10,200,000,000 (Ten Billion, Two Hundred Million Naira) whereas subsequent revelations indicated that the Company’s indebtedness was over ₦22 billion (Twenty-two Billion Naira).

Being a capital market transaction and infraction under the ISA, the Appellant (alongside several other principal officers of the Company) was served with hearing notice to appear before the Administrative Proceedings Committee (APC) of the SEC (the “**Respondent**”) but the Appellant failed to appear.

The APC found that the Appellant had authorized the issue of the prospectus with an untrue statement, thus breaching sections 62(1), (2)(d) and 63 of the then Investment and Securities Act, 1999. The APC found that the Appellant’s role bordered on economic and financial crime and that there was enough evidence to refer his matter to the Economic and Financial Crimes Commission (“**EFCC**”) for criminal investigation and action. The Appellant was also reported to all professional bodies to which he belonged.

Upon notification of the decision of the Respondent *via* a letter dated April 19, 2004, the Appellant approached the Federal High Court for judicial review of the decision in (Suit No.: FHC/ABJ/CS/285/2004) – *Mufutau Ajayi v. SEC et al.* The Respondent raised an objection to the jurisdiction of the Federal High Court to hear and determine the case. The Honourable Court upheld the Respondent’s objection and held that the proper adjudicatory panel for the Appellant to take the matter to be the Investments and Securities Tribunal and not the Federal High Court. The Appellant, dissatisfied with the decision of the Federal High Court, appealed to the Court of Appeal. The Court

of Appeal affirmed the ruling of the Federal High Court in its judgment delivered on May 8, 2007. Dissatisfied with the judgment of the Court of Appeal, the Appellant further appealed to the Supreme Court.

### **Ratio Decidendi of the Supreme Court**

The Supreme Court's decision was based on a sole issue, "*whether the lower Court was right to affirm that the Federal High Court did not have the jurisdiction to entertain the Appellant's suit*".

The Supreme Court held:

- (a) *inter alia* that "...[b]ased on the foregoing, it implies that any grievance, whether on denial of fair hearing by the APC [Committee] as in the present case, rule of law, equity, facts or law, etc., should be instituted in the Investment and Securities Tribunal (IST). It is unequivocal that the proper forum with jurisdiction to hear and determine the case of the Appellant is the Tribunal and not the Federal High Court".

The Supreme Court's decision is to the effect that appeals from the Administrative Proceedings Committee shall lie to the Investment Securities Tribunal in compliance with s. 310 of the ISA and Rule 599 of the SEC Rules. That is to say, the Supreme Court has settled with finality that whenever a dispute is submitted to the APC, any appeal arising from the decision on such dispute should be to the Tribunal. To the extent that the Supreme Court did not make any pronouncement on the original jurisdiction of the IST, the uncertainty surrounding the exclusive original jurisdiction of the IST remains until expressly resolved by the Supreme Court.

### **Conclusion**

The Supreme Court's decision in *Ajayi v. SEC* in respect of the appellate jurisdiction of the IST in respect of appeals from the APC appeals is a welcome one. This will end forum shopping where parties dissatisfied with the decisions of the APC begin to choose between whether to appeal to the IST or to the Federal High Court.

This clarity needs to be replicated with respect to the exclusive jurisdiction of the IST. Our view is, rather than awaiting a judicial decision, there ought to be an amendment of s. 284 of the ISA to ensure there is no inconsistency with the exclusive jurisdiction of the Federal High Court. The perceived inconsistency has given rise to the conflicting decisions of the Court of Appeal on the original exclusive jurisdiction of the IST.

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