

THE DECISION OF THE COURT OF APPEAL ON SECTIONS 839,842-843 OF CAMA 2020 AND THE CONSTITUTIONAL LIMITS OF POWER OVER INCORPORATED TRUSTEES

Corporate Affairs Commission v. Emmanuel Ekpenyong Esq. & Anor
(CA/ABJ/CV/737/2023) (Court of Appeal, Abuja Division, 17 September 2026)

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Introduction

On 17 September 2026, a unanimous panel of the Court of Appeal in Abuja affirmed the nullification of sections 839 and 842 to 848 of the Companies and Allied Matters Act 2020 (CAMA). These provisions had given the Corporate Affairs Commission (CAC) wide powers over Incorporated Trustees registered under Part F of the Act. They covered the suspension of trustees, the appointment of interim managers, the treatment of dormant bank accounts and a regime of periodic statements, records and returns. The Court also took a more measured course on section 851, which established the CAC's Administrative Proceedings Committee. It held that provision invalid only in part. The decision affects every church, mosque, NGO, foundation, charity and members' association registered as Incorporated Trustees. It is also easily misread. It does not hold that such bodies are beyond regulation and it does not strike down Part F as a whole. It holds that the particular machinery in the challenged sections could not survive the guarantees of freedom of thought, conscience and religion (section 38) and freedom of association (section 40) of the 1999 Constitution. The Court further held that the machinery was not saved by the limitation clause in section 45(1). The question for the sector is no longer whether the state may regulate voluntary associations. It is how far and through which institutions.

How the case reached the Court of Appeal

CAMA 2020 was signed into law in August 2020. Within weeks, on 31 August 2020, Mr Emmanuel Ekpenyong, a legal practitioner, filed an originating summons at the Federal High Court in Abuja (FHC/ABJ/CS/1076/2020) against the

National Assembly, the CAC and the Attorney-General of the Federation. He challenged sections 839, 842 to 848 and 851 as inconsistent with his freedom of thought, conscience and religion, his freedom of association and peaceful assembly and his right of access to court. Besides sections 38 and 40, he also invoked sections 4(8), 6(6)(b), 36(1) and 251(1)(e) of the Constitution. The controversy had already attracted public attention. The Christian Association of Nigeria had called for amendment of the Act and the CAC's public position was that it would not suspend trustees arbitrarily and that its actions remained open to judicial review.

On 18 April 2023, Omotosho J agreed with Mr Ekpenyong. He held that the powers conferred on the CAC under sections 839 and 842–848 were excessive and infringed the claimant's rights and he declared the provisions null and void. He found section 851 inconsistent with section 251(1)(e), which confers jurisdiction over corporate matters on the Federal High Court and struck it down entirely. He held that Mr Ekpenyong had standing, but he struck out the National Assembly as a party for want of a pre-action notice.

Two appeals followed. The CAC, led by Jibrin Okutepa SAN, challenged the nullification of the CAMA provisions. Among other grounds, it argued that the trial court erred in entertaining the claim as a fundamental rights action because Mr Ekpenyong lacked standing. Mr Ekpenyong separately appealed against the striking out of the National Assembly. On 17 September 2026, the Court of Appeal delivered judgment in both. The panel was Okorowo JCA (who delivered the lead judgment), Abba

Mohammed JCA and Eberechi Nyesom-Wike JCA. In the second appeal, the Court allowed Mr Ekpenyong's appeal and restored the National Assembly as a party. It held that the pre-action notice requirement in the Legislative Houses (Powers and Privileges) Act cannot cut down the right of immediate access to court that section 46(1) of the Constitution confers in fundamental rights proceedings. That ruling is a significant procedural precedent in its own right, but this article is concerned with the first appeal. The constitutional questions

Three constitutional provisions carry most of the weight. Section 38(1) guarantees freedom of thought, conscience and religion, including the freedom, "alone or in community with others", to manifest and propagate one's religion in worship, teaching, practice and observance. The communal limb is the important one here, because religion is typically practised through institutions. A statutory power to displace the persons who govern a religious body bears on the exercise of the right itself. Section 40 guarantees the right to assemble freely and to associate with others, including in associations formed to protect one's interests. It protects secular NGOs and foundations as much as religious bodies and the freedom to form an association has little value if the state may readily replace those who lead it.

Section 45(1) is the limitation clause. It allows a law to restrict these rights only where the law is reasonably justifiable in a democratic society for a recognised purpose, such as public safety, public order, public health or the protection of the rights of others. It places a burden on the state, which must show both a legitimate aim and means that are justifiable and a legitimate aim such as preventing fraud does not validate every mechanism adopted to pursue it. Section 46(1) supplies the procedural route, allowing a person who alleges a breach of the fundamental rights provisions to seek redress in the High Court. Section 1(3) provides that any law inconsistent with the Constitution is void to the extent of the inconsistency.

What the Court of Appeal decided

The Court affirmed Mr Ekpenyong's standing, but on a narrow basis, namely his personal interest and his membership of a registered religious association. It held that voluntary associations are generally entitled to manage their own internal affairs and that courts should intervene only where an association acts

contrary to its own constitution. It held that sections 839 and 842–848 infringed sections 38 and 40 and it rejected the argument that the restrictions could be justified under section 45(1), concluding that they were not reasonably justifiable. It accordingly affirmed the nullification of those sections.

On section 851, the Court declined to uphold the wholesale invalidation. It held the section unconstitutional only to the extent that it purported to empower the Administrative Proceedings Committee to determine justiciable disputes at first instance, to the exclusion of the Federal High Court and to impose penalties in the manner of a court. The Committee's remaining administrative and regulatory functions subsist, subject to the supervisory jurisdiction of the Federal High Court. The line the Court drew is institutional: an agency may administer and regulate, but the binding determination of rights and liabilities belongs to the courts.

The challenged provisions

The suspension power in section 839 was the centre of the controversy. Subsection (1) allows the CAC, "by order", to suspend trustees and appoint interim managers where it "reasonably believes" there has been misconduct or mismanagement, that intervention is necessary to protect or properly apply the association's property or to serve the public interest, or that the association is being run fraudulently. Subsection (7) allows the CAC, after an inquiry, to suspend or remove any trustee who was responsible for or privy to the misconduct and subsection (11) makes the exercise of these powers subject to ministerial approval. The section also contains a court-supervised limb. Subsection (2) provides for suspension by court order on the petition of the CAC or one-fifth of the members and subsection (6) lists extensive court powers, including suspending officers for up to twelve months, vesting property in an official custodian and appointing an interim manager as receiver. Mr Ekpenyong argued that these powers allowed the CAC to interfere with the leadership and affairs of religious associations. The Court is reported to have held that the section infringed sections 38 and 40 and was not saved by section 45(1) and it is nullified.

Sections 842 to 844 concern dormant bank accounts. Banks must notify the CAC of dormant accounts. If an association does not satisfy the CAC about its activities within fifteen days of a request,

the CAC may dissolve it "in accordance with section 850" and direct the bank to transfer the balance to other associations. Section 843 regulates the reactivation of such accounts and section 844 overrides bank secrecy for this purpose and defines dormancy as five years without qualifying transactions. Sections 845 to 848 impose the reporting regime: a bi-annual statement of affairs with daily penalties for default, a duty to keep accounting records (with CAC regulation-making power over forms, standards and the financial year), preservation of records for six years and an annual return with audited accounts. The Court is reported to have affirmed the nullification of all of them. On the reported holding, the practical consequence is that the CAC can no longer rely on these provisions to dissolve an association, redirect its funds or penalise defaults and regulations made under them may lose their statutory footing.

Implications for Incorporated Trustees

The practical effect is a shift in where protection lies. For trustees, security of tenure is considerably stronger, because removal can no longer be ordered by the CAC under section 839 and now turns on the association's own constitution and, where necessary, on proceedings in court. For associations generally, the Court's emphasis on internal affairs makes the governing document the primary line of protection. Provisions on appointment, tenure and removal of trustees, meetings, handling of funds, accounts and internal dispute resolution (the matters section 827 already requires a constitution to address) now do much of the work that the statute once did. That cuts both ways, because a poorly drafted constitution leaves members and the public with less protection than before.

On compliance, the position needs care. The statutory penalty regime in sections 845 to 848 is nullified as reported, but it would be a mistake to treat the judgment as a licence to stop keeping records. Section 827 still requires a constitution to provide for

accounts and their auditing and banks, donors and funders will continue to expect proper financial records. Compliance has moved from statutory compulsion to governance discipline and contractual expectation.

On protection against arbitrary intervention, the judgment is a significant gain. An association can no longer be displaced or dissolved on an agency's belief, without a hearing and with only a ministerial check. Associations that were subjected to action under the nullified sections can now look carefully at the basis and status of that action.

Looking ahead

The decision is not necessarily the end of the matter. It remains open to appeal to the Supreme Court, which would have the final word on how sections 38, 40 and 45(1) apply to the regulation of voluntary associations. The CAC's decision will be significant: an appeal would test whether the Supreme Court shares the Court of Appeal's view on proportionality and in particular on the reporting provisions, while the absence of one would leave the decision as the governing statement of the law. The National Assembly also has a choice. It may amend Part F to design a regime that gives the CAC meaningful oversight within constitutional limits, or it may leave the position as the Court has left it.

Everyone, alongside organisations should watch for two major developments in the coming months: any notice of appeal and any amendment bill. Until then, the best course for trustees and their advisers is to treat the judgment as a reason to strengthen internal governance rather than relax it. Autonomy and accountability are not rivals and the associations best placed to defend the first are those that can demonstrate the second.

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