

# LEGAL CONSEQUENCES OF THE COMPANIES AND ALLIED MATTERS ACT, 2020 ON INCORPORATED TRUSTEES IN NIGERIA\*

## Abstract

*The Companies and Allied Matters Act, 2020 (CAMA) seems to have revolutionized the face of corporate practice in Nigeria in recent time. The sweeping reforms enshrined in the amended CAMA, 2020 will undoubtedly accelerate economic growth and rapidly promote the ease of doing business in Nigeria. In one breath, the remarkable reforms entrenched in the amended CAMA particularly with respect to incorporation, commencement operation of companies and business names have been widely applauded by Nigerians. On the other hand, religious bodies, associations and other 'Incorporated Trustees' have heavily condemned some provisions in this extant Act, especially Part F that deals with operations of incorporated trustees and in fact some associations have called for an outright amendment of section 839 of CAMA because of the enormous powers given to the Corporate Affairs Commission (Commission) to suspend, remove and install interim managers for any Incorporated Trustee found wanting. This work examines the legal implications of the novel provisions embedded in CAMA, 2020 as it relates to regulation of Incorporated Trustees in Nigeria. A brief review is also given to the United Kingdom Charities Act, 2011, which is the model for the controversial provisions. This paper concludes that while accountability of an association trustee is desirable and expedient, the Commission should operate within the purview of rule of law and eschew any tyrannical tendencies that will stifle legal operations of Nigerian associations incorporated in Nigeria.*

**Keywords:** Incorporated Trustees, Company law, Church, Association, Charity law

## 1. Introduction

August 7, 2020 was an auspicious day in the life of the Nigerian Companies and Allied Matters Act.<sup>1</sup> The new CAMA 2020 repealed the old CAMA<sup>2</sup> and in its stead, enacted novel provisions for the incorporation of companies, limited liability partnerships, limited partnerships, registration of business names as well as incorporation of trustees of associations, charitable bodies<sup>3</sup> which are generally referred to as 'Incorporated Trustees' in the legal parlance. The new CAMA was greeted with a lot of accolades by businessmen, legal experts and many top government officials. The rationale for this overwhelming encomium on CAMA 2020 is attributed to the expectation that this new Act will accelerate economic growth and radically advance the ease of doing business in

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See Andersen Tax, 'President Buhari Signs the CAMA Bill 2020 into Law Available at <https://andersentax.ng> accessed 29<sup>th</sup> August, 2020.

<sup>2</sup>Cap. C.2, LFN, 2004.

<sup>3</sup>CAMA 2020 Explanatory Memorandum; See also Part F of CAMA, 2020 for the incorporation of associations.

Nigeria. At the initial stage after President Muhammadu Buhari assented to the new CAMA 2020, most Nigerians were greatly impressed because of the innovative reforms enshrined in the new Act but as the months went by, there arose different shades of criticisms and backlash on some provisions relating to Incorporated Trustees under CAMA, 2020.<sup>4</sup> This work intends to examine the legal implications of these sweeping reforms on the continued existence of Incorporated Trustees in Nigeria.

This work is divided into six parts. Part I is a general introduction of the subject matter. Part II examines the operation of Incorporated Trustees under the CAMA, 2004. Part III explores the sweeping reforms introduced by the CAMA, 2020 in respect of Incorporated Trustees. Part IV x-rays the legal implications of the innovative reforms on Incorporated Trustees in Nigeria including religious bodies and associations. Part V compares the provisions in the United Kingdom Charities Act of 2011 and its influence on Part F of CAMA 2020. This part also deals with accountability of charity organizations in the UK. Part VI is a general conclusion and recommendation.

## **2. Operation of Incorporated Trustees under the CAMA, 2004**

It is important that a brief overview of the legal regime in the CAMA, 2004 be undertaken before delving into the sweeping reforms introduced by CAMA, 2020 especially as it concerns Incorporated Trustees now recognised under Part F.<sup>5</sup> Cultural associations, religious bodies, clubs, social associations, educational bodies, sporting association, charitable bodies (like NGOs), etc. could be registered as Incorporated trustee under Part C of the repealed CAMA.<sup>6</sup> The legal effect of registration by the Commission is the conferment of legal personality on such Incorporated Trustee.<sup>7</sup> In essence, the Certificate of Incorporation confers perpetual succession and bestows on such association, the power to sue and be sued in its corporate name.<sup>8</sup> It is of great importance that the appropriate Registered Trustee of an association be sued otherwise such action is fatal.<sup>9</sup> There were modalities for registration of Incorporated Trustees in the CAMA, 2004.<sup>10</sup> Infants, persons adjudged by the court to be of unsound mind, undischarged bankrupt and persons convicted of

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<sup>4</sup>See CAMA, 2020; S. 839 as to the power of the Commission to suspend trustees of an association.

<sup>5</sup>CAMA, 2004; S. 590(1).

<sup>6</sup>Ibid.

<sup>7</sup> Ibid; S. 590(2); See also *Okatta v. Regd. Trustees, O.S.C.* (2008) 13 NWLR (Pt 1105-632) where the court held that an incorporated association is a different legal entity from its directors or management; S. 590(1).

<sup>8</sup> T. Akinloye, 'Incapacitation of Incorporated Trustees and Governance of Churches and NGOs in Nigeria: A Commentary of *Omomobi v. Adeoye* [2018] 9(2) *The Gravitas Review of Business & Property Law*, 6.

<sup>9</sup> See the case of *Dairo v. The Registered Trustees of the Anglican Diocese of Lagos* (2017) LPELR 42573 (SC).

<sup>10</sup>CAMA, 2004; ss 591, 593, 594, 595.

offence bothering on fraud or dishonesty within five years of such proposed appointment are disqualified from appointment as trustee.<sup>11</sup>

The procedure for the formation of incorporated trustee under the CAMA, 2004, its mode of operation and statutory requirements that must be complied with are well articulated by a learned scholar.<sup>12</sup> It has been opined that orthodox churches are corporation under common law.<sup>13</sup> As such, it has been posited that such common law corporations which include the Anglican, Baptist, Roman Catholic churches are corporations already endowed with legal personality by force of custom and no one ‘bestows’ that status to the corporate body.<sup>14</sup> Hence, it has also been argued that it may not be compulsory or essential for common law institutions to statutorily register before being vested with juristic personality.<sup>15</sup> One of the obvious defects in CAMA, 2004 was the absence of accountability clauses for registered trustees. Besides, the sources of funds of associations were not monitored by the Commission. In addition, the sanctions for violations of provisions enshrined in the CAMA, 2004 seem rather mild.

### **3. Novel Reforms for Incorporated Trustees under the CAMA, 2020**

The inadequacy and lapses in the CAMA, 2004 led to a number of innovations in the amended CAMA, 2020. Some of these reforms are geared towards promoting the ease of doing businesses in Nigeria particularly for companies and business names. For incorporated trustees the new provisions seem to aim at promoting accountability, transparency and minimizing any form of corruption by trustees. Some of these novel provisions are critically discussed. One of the new provisions enshrined under the amended CAMA, 2020 empowers the Corporate Affairs Commission (referred to as ‘Commission’) with the duty of classifying the associations that intend to register under Part F.<sup>16</sup> In the classification of associations, such decision must comply with the aims and object of the association.<sup>17</sup> It is submitted this provision will reduce the multiplicity of associations with similar objects and it will bring about easy identification of association specialized in a given area of strength.

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<sup>11</sup> Ibid; S. 592(1).

<sup>12</sup> I.E. Ekwo, *Incorporated Trustees: Law and Practice in Nigeria* (Lexis Nexis, 2007).

<sup>13</sup> A. Emiola, *Corporation Law* (Emiola Publishers, 2005) 99-100.

<sup>14</sup> I.A. Akinloye, ‘Dairo v. Registered Trustees of the Anglican Diocese of Lagos (2017) LFELR – 42573 SC: An Evaluation of the St. Saviour’s Church (Miscellaneous) Act, 1991 and its Implication for the Legal Status of the Anglican Diocese of Lagos’ (2019) 8(1) *Oxford Journal of Law and Religion* 1-7.

<sup>15</sup> Ibid; See also, A. Emiola (n. 13).

<sup>16</sup> CAMA, 2020, S. 824.

<sup>17</sup> Ibid.

Quite interestingly, the amended CAMA, 2020 now permits two or more associations with similar aims and objects to merge under terms and conditions as Commission may prescribe by regulations.<sup>18</sup> It is assumed that the rationale for merger of association with similar aims and objects is to save a distressed association from total collapse. Although there could be a number of reasons for mergers,<sup>19</sup> I think the merger of associations under Part F is to protect a sinking association.

Another unique innovation enshrined in the CAMA, 2020 is the mandatory requirement that the trustees of an association shall submit a bi-annual statement of affairs of the association to the Commission.<sup>20</sup> It is submitted that this provision will promote accountability and probity of trustees in any association. For any default in complying with the submission of bi-annual statement of affairs, the trustees are liable to penal sanction.<sup>21</sup> There is a striking provision in the CAMA, 2020 that has generated backlash from the religious leaders in Nigeria. For the avoidance of doubt, Section 839 provides thus:

- (1)The Commission may be order suspend the trustees of an association and appoint an interim manager or managers to manage the affairs of an association where it reasonably believes that –
- (a) there is or has been any misconduct or mismanagement in the administration of the association;
  - (b) it is necessary or desirable for the purpose of –
    - (i) protecting the property of the association,
    - (ii) securing a proper application for the property of the association towards achieving the objects of the association, the purpose of the association of that property or of the property coming into the association.
    - (iii) public interest; or
  - (c) the affairs of the association are being run fraudulently.

The above section has been heavily criticized by Non-governmental Organisations in Nigeria and many religious leaders have also condemned this particular section. The legal consequences of this section and many other controversial provisions in the CAMA, 2020 shall be examined in great detail in Part V of this work. Another relatively new provision is the power given to the

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<sup>18</sup> See CAMA, 2004, S. 849.

<sup>19</sup> N. Dingba and others, Law and Practice of Mergers and Acquisition in Nigeria. Available at <<http://SSRN.com/abstract=2652362>> accessed 1<sup>st</sup> September, 2020.

<sup>20</sup> CAMA, 2020, S. 845(1).

<sup>21</sup> Ibid; S. 845(2).

Commission to direct the transfer of credits in dormant account of an association upon notice by the bank of such dormant account and upon the expiration of fifteen days notice by the Commission to the association to provide details of its activities.<sup>22</sup> Where the association fails to respond satisfactorily, the Commission can then exercise this power enshrined in the law.<sup>23</sup> Again, this section has also received serious backlash from NGOs in Nigeria.<sup>24</sup>

In my view, this section is aimed at curtailing any form of mismanagement of financial resources of an association and it is also targeted at ensuring that dormant monies belonging to an association are put to proper use. However, it seems this provision will whittle the powers and liberty of an association to save money in a bid to execute capital project of the association. This section also confers enormous power on the Commission although the Minister of Trade and Investment must approve the action taken by the Commission before such powers are exercised.<sup>25</sup> In the event that any association account ceases to be dormant, the bank which maintains the association's account must notify the Commission.<sup>26</sup> The Commission under the CAMA, 2020 does not condone secrecy or non-disclosure by bank as to the status of dormant account kept by an association.<sup>27</sup> This provision is directed at promoting accountability and transparency.

Furthermore, aside from the trustee's duty to submit bi-annual statement of affairs, there is also an obligation imposed by the Commission which requires the trustees of an association to ensure that accounting records and statement of accounts are properly kept.<sup>28</sup> These accounting records of the association must be preserved by the association for six years from the date on which they were made.<sup>29</sup> Once again, I am of the opinion that all these provisions discussed above, are enshrined to enhance the credibility, transparency and probity of associations incorporated in Nigeria. This is quite commendable as these novel provisions were not entrenched in CAMA, 2004. These

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<sup>22</sup> SERAP writes Buhari, wants controversial CAMA law revised reported in Premium Times, August 23, 2020 Press release Available at <https://www.premiumtimesng.com/news/more-news/4/03/5-serap-writes-buhari-wants-controversial-cama-law-reviewed.html> accessed 2nd September, 2020.

<sup>23</sup> CAMA, 2020; S. 842(1)(2)(3); See also Olaniwu and Ajayi, Companies and Allied Matters Act, 2020: Snapshot of the Amendments to the Act. Available at [www.olaniwunajayi.net](http://www.olaniwunajayi.net) accessed 2<sup>nd</sup> September, 2020.

<sup>24</sup> SERAP (n.22).

<sup>25</sup> CAMA, 2020, S. 842(6).

<sup>26</sup> Ibid; S.843(a)(b).

<sup>27</sup> CAMA, 2020, S. 844(1); See also, R. Islam "Banker's Reference and the Bank's Duty of Confidentiality under Common Law Reappraised" (2016) 4 *Jahangirnagar University Journal of Law*.

<sup>28</sup> Ibid; 2020, S. 846(1) (2) 8(3).

<sup>29</sup> Ibid; S. 847.

innovations could bring stability and promote efficiency in the operations of registered trustees in Nigeria.

#### **4. Legal Implications of Sweeping Reforms as it Relates to Incorporated Trustees under CAMA, 2020**

Some provisions of the CAMA, 2020 hold grave consequences for the continued existence of incorporated trustees in Nigeria. The sections implicated in restrictions of liberty of incorporated trustees are sections 839, 842, 843 and 844. Each section will be examined seriatim and the far reaching legal consequence of each section will also be considered. The section that has received the most severe backlash is section 839. One of the implications of section 839 of CAMA, 2020 is that it could generate or foist insecurity of tenure for the trustees of an association. This can be severe if the Commission in the exercise of its powers enshrined in the above section removes the General Overseer of a Church. This could lead to a decline or massive reduction in the population of the congregation. In order to reveal the startling impact of section 839 of CAMA, it is important to reproduce some parts of this section and appraise the far reaching consequences. The said section provides as follows:

- (1) The Commission may by order suspend the trustees of an association and appoint an interim manager or managers to manage the affairs of association where it reasonably believes that –
  - (a) there is or has been any misconduct or mismanagement in the administration of the association;
  - (b) it is necessary or desirable for the purpose of –
    - (i) protecting the property of the association,
    - (ii) securing a proper application for the property of the association towards achieving the objects of the association, the purposes of the association of that property or of the property coming to the association
    - (iii) public interest; or
  - (c) the affairs of the association are being run fraudulently.
- (2) The trustees shall be suspended by an order of Court upon the petition of the Commission or members consisting one-fifth of the association and the petitioners shall present all reasonable evidence or such evidence as requested by the Court in respect of the petition.

Admittedly, suspension of trustees of an association and the subsequent appointment of interim manager(s) must fall under any of grounds highlighted above and must be backed by an order of Court pursuant to petition from the Commission or members comprising one-fifth of the

association and such must be based on evidence that can be objectively proven.<sup>30</sup> It appears in my view that the procedure for suspending trustees of an association and appointing interim managers under section 839(1)(2) is in accordance with the cardinal principle of fair hearing as entrenched in the 1999 Constitution of Federal Republic of Nigeria (as amended).<sup>31</sup>

In spite of the foregoing, the above section will likely disrupt the security of tenure (office) of the trustees of any religious bodies or association. The age-long tradition in some Nigerian Churches is that the founder is always part of the trustees and may not be removed or suspended by the other trustees. Most time, the founder of a Church can name his successor during his lifetime or after the demise of the founder, a new leader is appointed by the Church.<sup>32</sup> It has been observed that there could be dispute if the founder of a Church does not appoint his successor before his demise.<sup>33</sup> Since section 839 promotes suspension of trustees and appointment of interim managers by the Commission, it then follows that the tenure of most trustees could be transient as they can be removed, replaced contrary, to the security of tenure or permanence in office which most trustees including General Overseer enjoyed before the enactment of the CAMA, 2020. In putting a fatal blow to trustees' security of tenure, the CAMA,2020 provides that:

Where, at any time after the Commission has made an enquiry into the affairs of the association, it is satisfied as to the matters mentioned in subsection (1), it may suspend or remove –

(a) any trustee who has been responsible for or privy to the misconduct or mismanagement or whose conduct contributed to or facilitated it.<sup>34</sup>

The above section gives the Commission wide power to suspend or remove any trustee without recourse to Court Order. This could make the Commission extremely powerful and could lead to abuse of power by removing or suspending trustees abruptly and arbitrarily.<sup>35</sup> This does not augur well for security of trustees' tenures. The Vice President, Prof. Yemi Osibanjo while commenting on CAMA, 2020 in respect of Incorporated Trustees, obviously observed that the problems that

<sup>30</sup> See CAMA, 2020, S. 839(1)(a)(b)(2).

<sup>31</sup> 1999 CFRN (as amended), S. 36.

<sup>32</sup> I.A. Akinloye, 'Human Flourishing, Church Leadership and Legal Disputes in Nigerian Churches' in M.C. Green (ed.) *Law, Religion and Human Flourishing in Africa* (African Sund Media, 2019) 25-41.

<sup>33</sup> *Owodunmi v. Registered Trustees of Celestial Church of Christ* (2000) 10NWLR (Pt. 675) 315; See also *Rev. Paul Emeka v. Rev. Chidi Okoroafor and Others* (2017) LPELR-41738 SC.

<sup>34</sup> See CAMA, 2020, S. 839 (7)(a).

<sup>35</sup> Y. Akinpelu, 'Osibanjo to Churches: Concerns about CAMA can be Resolved through Legislative amendment' reported in Premium Times, August 28, 2020 Available at <https://www.premiumtimesng.com/news/more-news/411228-osibanjo-to-churches-concerns-about-cama-can-be-resolved-legislative-amendmenthtml> accessed 29th August, 2020.

they (trustees, pastors) may have in ensuring that the processes are not abused in such a way as to compromise the entire organization.

Corollary to the foregoing consequence of section 839 of CAMA, 2020 is that it could breed room for “stranger” to pollute the doctrine and core values of an association. Since section 839 gives the Commission the power to suspend trustees and appoint interim manager(s) for the association, it is very much possible that a “misfit” or a “stranger” who is not grounded in the doctrinal teaching of a church or mosque could be appointed as interim manager(s)<sup>36</sup> of a religious body/association thereby causing distortions in core values or sound spiritual teaching of an association. The Vice President also acknowledged this fact when he said that:

The concern of the Churches is that it could lead to a situation where practically anybody could be appointed as a trustee to oversee the Church and a Church or a Mosque is a spiritual organization and if you do not share the same faith with the Church or Mosque, you may be the wrong person and if a wrong person is appointed, you may create more trouble for the organization.<sup>37</sup>

There is a high possibility that a wrong person could be appointed as interim manager(s) under section 839 because the word ‘Interim Manager(s)’ was not defined under CAMA, 2020.<sup>38</sup> Assuming the word ‘interim manager(s)’ connotes person of same faith or person who shares the same ideology as the association, then the problem could have been partly resolved.

Another repercussion of section 839 is that it can lead to instability, disintegration and total collapse of the association if not well managed. This consequence is possible because the CAMA, 2020 now empowers the Commission<sup>39</sup> to unilaterally remove trustee of association without recourse to any form of court order justifying such removal.<sup>40</sup> In Nigeria, there are many members of religious bodies who worship in churches because of the profound respect for the founder (General Overseer) who in most cases doubles as trustees. Members of such religious body could disintegrate if their founder is removed or suspended abruptly by the Commission. In extreme cases, the association may even collapse completely if the Commission removes the General Overseer of a Church without recourse to court order or fair hearing.

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<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> CAMA, 2020, S. 868.

<sup>39</sup> CAMA, 2020, s. 839(7).

<sup>40</sup> Ibid.



In vehement opposition to CAMA, 2020, the Social Economic Rights Accountability Project (SERAP) believes by seeking to suspend and remove trustees and appoint interim managers for associations, government seems to want to place itself in a position to politicize the mandates of such association and to undermine the ideas that the right to freedom of association and related rights are supposed to be protected in a democratic society.<sup>41</sup> SERAP frowns at the incursions posed by the provisions of CAMA, 2020 particularly those relating to Part F because it is assumed that these sections will adversely affect the rights and smooth running of the association.

In addition, SERAP also asserts that the government granting itself the powers to suspend and remove trustees of legally registered associations and to also take control of their bank accounts,<sup>42</sup> constitute an effective restraint on human rights. It is submitted that permitting the Commission to take control of bank accounts of association pursuant to sections 842, 843 and 844 of CAMA, 2020 would significantly impact on the rights of the association, its sustainability, operations and would adversely affect civil, cultural, economic, political and social rights in general. Granted that the primary reasons for introducing these novel provisions include curtailing fraud, mismanagement, corruption, money laundering by different associations, however, in a bid to forestall these societal ills, legal restrictions imposed should be stipulated within the confine of the law bearing in mind the fundamental rights of Nigerians as enshrined in the 1999 CFRN as amended).<sup>43</sup> In firm opposition to the application of CAMA, 2020, it was reported that SERAP had even served the Commission a pre-action notice<sup>44</sup> in preparation of instituting legal action should the Nigerian government persist and insist on enforcing the provisions of the new CAMA.<sup>45</sup>

There has also been a barrage of criticisms against CAMA, 2020 especially on section 839 relating to the power of the Commission to suspend, remove trustees of association and appoint interim manager(s) in place of the suspended trustee.<sup>46</sup> In my view, this section also usurps the internal powers of registered trustees. In the registration process, applicant seeking to incorporate a

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<sup>41</sup> SERAP writes Buhari wants controversial CAMA Law reviewed. Press Release on August 23, 2020 reported in the Premium Times. Available at <https://www.premiumtimesng.com/news/more-news/4103/5-serap-writes-buhari-wants-controversial-cama-law-reviewed.html> accessed 30<sup>th</sup> August, 2020.

<sup>42</sup> CAMA, 2020; ss. 842, 843 and 844 gives the Commission (CAC) the power to direct transfer of credits in dormant bank.

<sup>43</sup> 1999 CFRN (as amended); Chapter II and Chapter IV.

<sup>44</sup> CAMA, 2020.; s. 17(2).

<sup>45</sup> SERAP (n. 41).

<sup>46</sup> S. Oamen, Our Reservations against CAMA, by PFN reported by the Nations on August 28, 2020. Available at <https://www.google.com/amp/s/thenationsonlineng.net/our-reseration-against-cama-by-pfn/amp> accessed 29<sup>th</sup> August, 2020.

NGO or religious body is bound to file a constitution. The said constitution contains internal mechanism for removing or suspending trustees. I think this should suffice. Surprisingly, section 839(7) of CAMA, 2020 gives the Commission an overly broad and discretionary power to suspend and remove trustee singly based on an inquiry alone without recourse to any court order. This section calls for an amendment.

The Pentecostal Fellowship of Nigeria also contended that sections 839, 842, 844 of CAMA, 2020 among other provisions could leave the door open to abuse, denial of fair hearing, arbitrariness and dubious use of power by the Commission.<sup>47</sup> The fear entertained under section 839(1)(2)(3) may not be justified because this subsection provides for fair hearing before any order of court is obtained to suspend trustee.<sup>48</sup> One of the real snags in CAMA, 2020 is section which empowers the Commission upon enquiry into the affairs of the association to suspend or remove any trustee culpable of misconduct or mismanagement even with no recourse to the court.<sup>49</sup> This could make the Commission wield enormous powers in determining who survives as trustees and could also make trustees of association act, and live in fear of the overbearing power conferred on the Commission.

## **5. Relevance of United Kingdom's Charities Act, 2011 to the Administration of Incorporated Trustees under CAMA, 2020**

In respect of smooth administration and control of Incorporated Trustees in Nigeria, the United Kingdom's Charities Act, 2011, shares a lot of similarities with Part F of CAMA, 2020. However, there are also a number of differences between the two legislations. I shall discuss the relevance and similarities of the Charities Act, 2011 (CA 2011) in relation to some provisions enshrined in Part F of CAMA, 2020. This is in a bid to fill the gaps in the new CAMA. It is important to examine the definition of 'charities' under CA, 2011 and the spheres which the definition covers.

### *5.1 Conceptual Appraisal of 'Charity' under the United Kingdom Charities Act, 2011*

Under the above legislation, 'charities' means an institution which is established for charitable purposes only, and falls within the subject in the control of the High Court in the exercise of its jurisdiction with, respect to, charities.<sup>50</sup> The meaning of 'charitable purpose' is properly described

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<sup>47</sup> Ibid ; See also, CAMA CHAOS: CAN mulls legal actions, briefs top lawyers reported on August 23, 2020 in the Vanguard. Available at <https://www.google.com/amp/s/www.vanguardngr.com/2020/08/cama-chaos-can-mulls-legal-action-brief-top-lawyers/amp/> accessed 4<sup>th</sup> September, 2020.

<sup>48</sup> CAMA, 2020; s. 839(1)(2)(3) provides for an order issued by Court after hearing of the Commission's petition.

<sup>49</sup> Ibid; S. 839(7)(a).

<sup>50</sup> C.A, 2011, s. 1(1)(a)(b).

under the CA, 2011. For any charity to qualify for registration, it must fall within the coverage of “charitable purpose” under the CA, 2011.<sup>51</sup> A purpose falls within charitable purpose if it features or falls within any of the purposes described below:<sup>52</sup>

- (a) the prevention or relief of poverty;
- (b) the advancement of education;
- (c) the advancement of religion;
- (d) the advancement of health or the saving of lives;
- (e) the advancement of citizenship or community development;
- (f) the advancement of the arts, culture, heritage or science;
- (g) the advancement of amateur sport;
- (h) the advancement of human rights, conflict resolutions or reconciliation of the promotion of religious or racial harmony or equality and diversity;
- (i) the advancement of environmental protection or improvement;
- (j) the relief of those in need because of youth, age, ill-health, disability, financial hardship or other disadvantage;
- (k) the advancement of animal welfare;
- (l) the promotion of the efficiency of the armed forces of the crown or of the efficiency of the police, fire and rescue services or ambulance services.

In summary, all the entities, purposes, persons, bodies, groups, associations enshrined under Part F of CAMA, 2020 are almost synonymous with the term ‘charitable purpose’ under the CA, 2011. As such, the term “‘incorporated trustees’ in Nigeria can also be likened to the term ‘Charity’ under the United Kingdom’s Charity Act, 2011. Some salient provisions of the CA, 2011 deserves to be considered because they share a lot of similarities with the provisions enshrined in Part F of the CAMA, 2020.

### *5.2 Similarities between the UK Charities Act and CAMA, 2020*

The Charity Commissions (CC) in England is responsible for registering, encouraging and facilitating the better administration of Charities.<sup>53</sup> The CC is empowered to remove any institution

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<sup>51</sup> Ibid ; s. 2(1)(2).

<sup>52</sup> Ibid; s. 3(1).

<sup>53</sup> C.A. Ss. 15 and 16.

which it no longer considers as a charity and any charity that has ceased to exist.<sup>54</sup> In the same vein, the Corporate Affairs Commission (CAC) in Nigeria also has the statutory power to dissolve a corporate body under Part F<sup>55</sup> if the purpose for which it was formed had expired and it is unnecessary for it to continue to exist. This power is also exercisable by the Commission where all the aims and objects of the association have become illegal or otherwise contrary to public policy.<sup>56</sup> One of the similarities between both legislations is that under section 46 of the UK's CA, 2011, the Charity Commission (CC) in the United Kingdom has general power to institute inquiries with regard to charities or a particular charity or class of charities for any particular purposes.<sup>57</sup> Similarly, section 839(7) gives the Corporate Affairs Commission the power to conduct an enquiry into the affairs of the association. But it is not as elaborate and effective as the provisions enshrined in the UK's CA, 2011. In the United Kingdom, an inquiry may be conducted by the CC *suo moto* or it may appoint a person to conduct the inquiry and receive the report.<sup>58</sup> The CC is also empowered to request for relevant documents, execute search warrants and publish the results of inquiries.<sup>59</sup>

In the Inquiry Report of *Kingsway International Christian Centre*,<sup>60</sup> the Charity Commission among other conclusions observed that the conflicts of interest between the ex-trustee and the decision making trustees were not properly managed. It also noted that there was mismanagement in the administration of the charity. Therefore, the inquiry appointed interim manager pursuant to section 76(3)(g) of the Charities Act, 2011 so as to work alongside the existing trustees of the charity in the day to day running of the charity. The CC also gave a restitution order to minimize the loss of this charity.

In *Charity Commission v. Thrift Urban Housing Limited*,<sup>61</sup> the Charity Commission succeeded in winding up the charity in question. One of the main grounds relied upon to show that it was just and equitable to wind up Thrift included mismanagement of charity money, non-existent or

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<sup>54</sup> Ibid; S. 34

<sup>55</sup> CAMA, 2020, s. 850.

<sup>56</sup> Ibid; See also, *Bhadmus on Corporate Law Practice* ( Chenglo Limited, Enugu, 2009) 539.

<sup>57</sup> See the UK's CA, 2011; S. 46(1).

<sup>58</sup> Ibid; S. 46(3).

<sup>59</sup> Ibid; Ss. 47, 48, 49, 50 and 52.

<sup>60</sup> Registered Charity Number 1102114.

<sup>61</sup> [2019] EWHC 1403 (Ch).

missing records, and breaches of the Companies Act, 2006 including inconsistent information, failure to keep proper accounting records, confusion, aliases and forgery of signatures. In the case of *Charity Commission v. Raymond Wright and Susan Wright*,<sup>62</sup> the court made a finding of contempt of court against the respondents, Mr. and Mrs. Wright, trustees of Darren Foundation, for failure to comply with the Commission's direction made pursuant to section 47 of the Charities Act, 2011 to supply evidence and documentation to assist with the Commission's inquiry.

Furthermore, under section 839(1) of CAMA, 2020, the Corporate Affairs Commission has the power to suspend trustees and appoint of interim manager(s) in the event of mismanagement of an association. It is important to state that section 76(1) of the UK's Charities Act, 2011 is almost synonymous with the Nigerian corporate law. For the avoidance of doubt, it provides thus:

- .....where, at any time after it has instituted an inquiry under section 46 with respect to any Charity, the Commission is satisfied-
- (a) that there is or has been any misconduct or mismanagement in the administration of the charity, or
  - (b) that it is necessary or desirable to act for the purpose of-
    - (i) protecting the property of the charity, or
    - (ii) securing a proper application for the purposes of the charity of that property or of property coming to the charity

When the above situation arises, the Charity Commission may of its own motion do one or more of the following-<sup>63</sup>

- i. by order suspend any person who is a trustee, charity trustee, officer, agent or employee of the charity from office or employment pending consideration being given to the person's removal;
- ii. by order appoint such number of additional charity trustees as it considers necessary for the proper administration of the charity
- iii. by order appoint (pursuant to section 78) an interim manager, to act as receiver and manager in respect of the property and affairs of the charity.

It should be emphasized that the Charity Commission may still make some other far reaching orders in a bid to regulate the administration and operation of any charity. In *Samson Ochieng v. The Charity Commission for England and Wales*<sup>64</sup>, it was an appeal against a Commission order disqualifying Mr. Ochieng from being a charity trustee for a charity and management position, for a period of eight years in relation to any charity. The Commission disqualified Mr. Ochieng based

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<sup>62</sup> [2019] EWHC 3375 (Ch. D).

<sup>63</sup> See the UK's CA, 2011, s. 76(3).

<sup>64</sup> CA/2019/0017.

on the findings of mismanagement and or misconduct in the administration of a charity. The appellate Tribunal upheld the Commission's findings of mismanagement and or misconduct and further found that the period of disqualification to be reasonable and proportionate. As such, the appeal was dismissed.<sup>65</sup>

In addition, Section 843 of CAMA, 2020 places some restrictions on dormant accounts of an association. The Charity Commission (CC) in the UK is also empowered to give directions about dormant bank accounts of charities.<sup>66</sup> Some of the directions which the CC can order includes: the transfer of the amount standing to the credit of the charity to such other account as specified in the CC's direction,<sup>67</sup> freezing of the charity's account among others. In *ICRI Ltd v. Charity Commission*<sup>68</sup> the Commission ordered freezing of a bank account. The appeal was against the Commission's decision which objected to the discharge of an order requiring Barclays Bank Plc to part with the property which it held in two third party bank accounts; thereby protecting charity funds belonging to Enfield Island Village Trust (the Trust). The appeal was bought in the name of the third party ICRI Ltd which was connected to the Trust by virtue of having the same director. The appellate Tribunal dismissed the appeal and upheld the Commission's directive.

Aside from the similarities between both legislations especially in respect of the administration of charities, the UK's CA, 2011 differs in many aspects when compared with the CAMA, 2020 on the same subject matter. The UK's CA, 2011 is far broader in scope and it covers a number of different issues which Part F of CAMA, 2020 does not incorporate. Quite remarkably, the CC publishes annual reports of its investigations, achievement and its activities.<sup>69</sup> Moreover, the enforcement mechanism enshrined in the CA, 2011 is much more effective unlike what operates under the new CAMA, 2020. I am of the opinion that the Corporate Affairs Commission (CAC) has been very docile in enforcing the provisions of the CAMA, 2004. So it is really doubtful if the docility of the CAC will not affect the proper enforcement of the new CAMA, 2020.

### 5.3 Criticisms of the Charity Commission (CC)

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<sup>65</sup> See also *Phelps v. Charity Commission for England and Wales* CA/2019/0004.

<sup>66</sup> UK's CA, 2011; S. 107.

<sup>67</sup> Ibid; S. 107(2).

<sup>68</sup> CA/2018/0014.

<sup>69</sup> See for instance, Charity Commission 2012-13 *Report on Tackling Abuse and Mismanagement of Charity*; See also, Charity Commission *Annual Report 2019- 2020* (APS Group, UK, 2020) 1-47.

In spite of the remarkable feats of the CC,<sup>70</sup> there are a number of lapses observed in the CC's operations. The CC was heavily criticized by the National Audit Office in the UK sometime in 2013.<sup>71</sup> The manner in which the Commission handled some high profile cases also led to the publication of several critical reports on the work of the Charity Commission.<sup>72</sup> Most of the criticisms against the CC were centred on its poor compliance and enforcement as well as its perceived reluctance to use available powers and its seeming lack of focus on dealing with serious wrongdoing.<sup>73</sup> The criticism became very severe when it was apparent that the CC was unable to regulate tax evasion involving charities.<sup>74</sup> It was also observed that the CC was politicized and so could not act independently as it was subject to the dictate of the appointing political party.<sup>75</sup> The ineffectiveness of the CC was also due to a sudden decline in the Commission's budget and gross underfunding.

Hence, there was a need for a holistic reform and strict adherence to the tenets of charitable accountability.<sup>76</sup> So in a bid to resolve the problems that bedeviled the CC, the British Parliament enacted the Charities (Protection & Social Investment) Act, 2016. This Act introduced new powers which enabled the Commission to consider disqualifying an individual from holding the position of charity trustee where some fundamental requirements are not fulfilled. Accordingly in the *Cup Trust*,<sup>77</sup> the Commission made an order under section 181A of the Charities (Protection and Social Investment) Act 2016 to disqualify Mountstar (PTC) Limited (Mountstar) from being a charity trustee for a period of fifteen years. The decision was taken after the Commission found that Mountstar as trustee, was responsible for misconduct and/or mismanagement in the administration of the charity; that Mountstar, as trustee was unfit to be a charity trustee; and that it was desirable

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<sup>70</sup> See the Charity Commission Strategy for Dealing with Fraud, Financial Crime and Financial Abuse of the Charity Sector; See also The Charity Commission's Policy on Restitution and the Recovery of Charitable Funds Misappropriated or Lost to Charity in Breach of Trust, Policy Paper, 2013.

<sup>71</sup> The UK National Audit Office Report titled, *The Regulatory Effectiveness of the Charity Commission*: HC 813, 2013-14 Session 926 ( Crown Stationary, UK, 2013).

<sup>72</sup> D. Morris, 'The Charity Commission for England and Wales: A Fine Example or Another Fine Mess?' (2016) 91(3)*Chi. Kent L. Rev.* 965-990.

<sup>73</sup>*Ibid.*

<sup>74</sup> See the *Cup Trust* [2016] EWHC 876 (Ch) This was a former registered charity that the charity trustee used for tax avoidance; See also the House of Commons, Committee on Public Accounts: *Charity Commission: The Cup Trust and Tax Avoidance, Seventh Report of Session 2013-14* (The Stationery Office Ltd, London, 2013) 3-14.

<sup>75</sup> R. Mason, 'Charities Should Stick to Knitting and Keep Out of Politics, Says MP, reported in UK Guardian on 3<sup>rd</sup> September, 2014; See also, D. Morris, (n. 72).

<sup>76</sup> J. J. Fisherman, 'Charitable Accountability and Reform in the Nineteenth Century England: The Case of the Charity Commission' (2005) 80 (723) *Chi. Kent L. Rev.* 723.

<sup>77</sup> [2016] EWHC 876 (Ch).

to make the disqualification order in the public interest so as to protect public trust and restore confidence in charities.

## **6. Conclusion and Recommendations**

Ever since the enactment of the Charities (Protection and Social Investment) Act, 2016, the Charity Commission in the UK has been very effective. It is hoped that the innovations enshrined in the new CAMA, 2020 will also spur the Corporate Affairs Commission to efficiency and restore transparency as well as accountability of incorporated trustees registered in Nigeria. In this regard, the CAC has to be astute in regulating the operation and administration of incorporated trustees in Nigeria. While the CAC is commended for taking some bold steps<sup>78</sup>, however a lot of lessons can still be garnered from the way and manner the Charity Commission administers the charity legislations in England. For optimal efficiency of the CAC, it is recommended that:

A separate legislation should be specifically enacted for smooth operation and administration of incorporated trustees in Nigeria. The present position under CAMA, 2020 is that companies, limited partnership, business names and charities are all regulated under one single Act. This may not augur well for effective administration of incorporated trustees in Nigeria. A special Commission different from the CAC, should be set up to look into the proper administration of various charities in Nigeria. In this regard, the CAC should concentrate on the regulation of business entities under CAMA while a Special Charity Commission should be established to focus only on regulating the activities and operations of incorporated trustees in Nigeria. The reason adduced for the creation of a Special Charity Commission is because the CAC seems to be overwhelmed by the activities of the business entities thereby leaving little room for proper administration of incorporated trustees in Nigeria. I am of the opinion that establishing a Specialized Charity Commission in Nigeria will bring about efficiency in the incorporation, administration and regulation of incorporated trustees in Nigeria.

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<sup>78</sup> See the *Corporate Affairs Commission v. United Bank for Africa Plc and Ors*, (CA/L/443A/2014); [2016] NGCA 76 (30<sup>th</sup> March, 2016).