



**MEGAWATTS NIGERIA LIMITED V. REGISTERED TRUSTEES OF
GBAGADA PHASE II RESIDENTS' ASSOCIATION
AND ITS POTENTIAL IMPACT UPON THE PAYMENT OF
RESIDENTIAL ASSOCIATION DUES AND LEVIES BY MEMBERS.**

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INTRODUCTION

It is a common practice in Nigeria, especially in Lagos, for developers of residential estates to compel purchasers in the completed estate, by virtue of their purchase, to become members of an 'estate association'. This association oversees the provision of shared services such as security, waste management, streetlights, etc.

in the estate. Developers see this as a convenient vehicle for dealing with such facility services issues on a group basis. The developers manage the residential estates and collect dues/levies in form of an annual service charge from members of the Estate's Residential Association.

In recent times, members of residential communities have adopted the same strategy by coming together to form similar associations with the aims of fostering peaceful coexistence, maintaining the community and protecting the collective interests of members of the association, in order to maintain real estate values within the community.

Membership of such associations is usually automatic upon becoming a resident of the community; while dues/levies/monthly or annual service charges are usually collected from the members in order to carry out developmental projects in the community.

However, this raises the question of whether residents are obligated to join these associations. A recent decision by the Federal High Court clarified this position.

THE POSITION OF THE COURTS

The Federal High Court sitting in Lagos recently delivered a judgment in the case of **Megawatts Nigeria Limited v. Registered Trustees of Gbagada Phase II Residents' Association (Suit No. FHC/L/CS/982/2020)** ("the Megawatts Case"), that persons who live in a residential estate cannot be compelled to join the membership of the residential associations.

Thus, compelling residents to be members of the estate association has been declared unconstitutional.

In the absence of membership, there is no basis for the association seeking to collect dues/levies from a resident. In essence, this means that membership of such associations and payment of dues/levies by residents of an estate is now voluntary.

Facts of the Megawatts Case

Sometime in January 2016, Megawatts Nigeria Ltd (“the Company”) moved its head office into Gbagada Phase II, Lagos. It was requested by the Gbagada Phase II Residents’ Association (the “Association”) which was established in 2008 to pay its estate dues from 2017 to 2020. Not comfortable with this demand, the Company instituted an action against the Association seeking, among other things, a declaration that it is not a member of the Association and cannot be compelled to join; and a declaration that compelling residents of Gbagada Phase II to be members of the Association is unconstitutional.

The Company argued that it is not a member of the Association. Also, that since it provides its own security, waste management system and other services allegedly provided by the Association, it is not bound to pay dues to the Association.

On the other hand, the Association argued that the Company, by having its office within the estate, is a member of the Association and is bound to pay requisite dues and levies, as same is used for the management of the estate.

Judgement

In its decision, Justice Oweibo, sitting at the Federal High Court, Lagos on Friday, 25th of September 2020, considered the provisions of Section 40 and 41 of the Constitution of the Federal Republic of Nigeria 1999 (as amended); and the Supreme Court decision in *Agbai & Ors v. Okogbue* (1991) LPELR-225 (SC) P 64 to hold as follows:

Where a person voluntarily becomes a member of an association, the member cannot complain against the custom of the association. However, where a person is presumably a member of an association by operation of an alleged custom, he cannot be compelled to abide by the customs of the association against his will, as that would be unconstitutional. Thus, the court declared that the act of the Association coercing the company into becoming its member is illegal and unconstitutional.

LIKELY ISSUES

This decision has various consequences on the real estate sector since the management of residential estates are usually coordinated through residential associations. The estate membership dues are usually used to provide services to the residents, including the provision of security, drainage, and waste management, et cetera, in addition to developmental projects within the estate. Therefore, the issues that may arise from this decision include the following:

- Extant members of residential associations may start withdrawing their memberships from the association; while new residents may decline membership of the association;
- Members may now refuse to fulfil their financial obligation towards the association; and levies that are due and unpaid may remain outstanding;
- Ongoing community developmental project may be abandoned when the association runs out of funds to complete them;

- Embarking on new projects within estates may be difficult, if not impossible;
- Management and maintenance of the estate facilities may come to a halt.

Those most affected by the consequence of this judgment may be the real estate developers, where in the absence of proper documentation, the properties/estates may likely suffer deterioration and loss of value.

Notwithstanding the foregoing, all hope is not lost; there are remedial actions that may be explored by developers so as to protect their interest and secure the value of their investment.

Should you require assistance in this regard, our Real Estate Team (lagos@aelex.com) is available to advise on the appropriate steps.



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