

**MEGAWATTS NIGERIA LIMITED V. REGISTERED TRUSTEES OF GBAGADA PHASE II RESIDENTS’ ASSOCIATION – A CASE REVIEW & THE POSSIBLE IMPLICATIONS ON ESTATE RESIDENTS.**

As a form of strategy for the co-ordination of monetary liability for shared utilities such as power, waste management, security etc. and overall maintenance of estate’s facility, it is not unusual for developers of residential estates and residential communities alike to make membership of estate associations mandatory for residents. As a matter of fact, residents by virtue of their living in the estates are viewed as inevitable members of the estates’ association, and are therefore liable to pay whatever dues, levies, charges or other fees imposed by the association.

Some of the widely acclaimed objectives of these associations is that the associations are put in place to ensure the protection of the overall interest of the members of its community, preservation and maintenance of the facilities in the residential community, and projects which will benefit the members of the community as a whole.

Therefore, and because whatever project the residents association embark on is for the benefit of the Estate and to be enjoyed by all the residents, the Residents Associations assume an obligatory nature translating into the imposition of estate charges on all its residents with sanctions for failure to pay. The situation endemic to Residential estates metamorphosed into a need for the Courts to interpret and

pronounce on membership of the association in the case of Megawatts Nigeria Limited v. Registered Trustees of Gbagada Phase II Residents Association.

**SUMMARY OF THE FACTS**

The suit was filed by Megawatts Nigeria Limited (Applicant) against the Registered Trustees of Gbagada Phase II Residents’ Association (Respondents). The Respondents had been sending notices requesting the Applicant to pay its estate dues from 2017 – 2020 holding the position that by virtue of the fact that the Applicant is resident within the estate, it is bound to pay the demanded sum.

The Applicant however, argued that since it provides for its own security and waste management and other services, it is not bound to pay the demanded estate dues, more so because the Applicant is not a member of the Respondent’s association.

The Respondent on the other hand argued that by having its office within the estate, the Applicant is a member of the association and bound to pay the demanded sum which is used for the maintenance of the estate. The Respondent further restricted the ingress of the Applicant and its Agents to the estate.

On the basis of the harassment, coercion and restriction of free movement of the Applicant’s, the Applicant instituted an action under the Enforcement of Fundamental Rights Procedure seeking amongst other things, the following reliefs:

* A declaration that it is not a member of the association and cannot be compelled to join;
* A declaration that compelling residents of Gbagada Phase II to be members of the association is unconstitutional;

The major issue before the Federal High Court, Lagos was whether a person, resident in an estate, can be compelled into membership of a resident association?

The court ruled in favour of Megawatts Nigeria Ltd and awarded cost against Gbagada Phase II Residents Association.

The court further declared that no one can be forced to be a member of a residential association, be it a company operating within the space of the residential estate or a person who is a resident in that estate.

**RATIO DECIDENDI**

In reaching its decision, the court, presided by Justice Oweibo, considered the provisions of Section 40 of the Constitution of the Federal Republic of Nigeria (as Amended) which states that:

 *“Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests…”*

The court also considered the Supreme Court’s decision in **Agbai & Ors. v. Okagbue (1991) LPELR-225 (SC)**, and held that where a person voluntarily becomes a member of an association, the person 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.

**POSSIBLE IMPLICATIONS OF THE DECISION**

There are a number of possible outcomes, positive or otherwise, that may emerge from the decision of the court in this case, especially on issues of maintenance of the estate’s facility, protection of lives and property of residents, and developmental projects as the dues and levies are meant for these purposes. Some of the envisaged consequences are as follows:

1. Due to the fact that mandating residents to be members of estate associations has been declared unconstitutional, it follows that the joining of such associations must be done voluntarily and that any member may freely disaffiliate from such an association. Thus, current members may not feel obliged to adhere to the regulations of the association anymore, and may actually withdraw their membership.
2. Consequently, dues and levies on residents for developmental and maintenance projects may still be mandatory for members of Residents Association including the enforcement of sanctions for failure to make payments under the rule that members are bound by the customs of such association.
3. Utility payments such as, waste management bills, will no longer be coordinated in groups, especially for residents who decide not to be members of the association. They will henceforth be individually responsible for their utility payments.
4. Ultimately, maintenance of the estate and developmental projects may come to a halt, which may further inhibit the appreciation of the value of the estate. This situation may however, be improved by the formation of a facility management body responsible for the long term maintenance of the estate and especially for shared facilities and services.

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