

# INTRODUCTION ALONE IS NOT ENOUGH: THE LIMITS OF AN ESTATE AGENT'S ENTITLEMENT TO COMMISSION UNDER NIGERIAN LAW

*A Case Commentary on Philip Kayode Olusegun Ojo v SDV Nigeria Limited & Anor  
(SC/716/2016)*

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## ABSTRACT

The Supreme Court of Nigeria's unanimous decision in *Philip Kayode Olusegun Ojo v SDV Nigeria Limited & Anor* (SC/716/2016),<sup>1</sup> delivered in September 2025, represents one of the most important pronouncements on the law of estate agency and commission entitlement in recent Nigerian legal history. The apex court affirmed the Court of Appeal's finding that a mere introduction of a property by an estate agent, absent a formal and enforceable agency agreement, is wholly insufficient to sustain a claim for professional commission. This article examines the facts, procedural history, and judicial reasoning in the case, situates the decision within the broader framework of Nigerian agency law and property practice, and draws out its practical and doctrinal implications for estate surveyors, property practitioners, corporate entities, and the Nigerian legal profession at large. The article argues that the decision, whilst doctrinally sound, equally exposes an urgent need for statutory regulation of the estate agency profession in Nigeria.

## 1. INTRODUCTION

Few areas of Nigerian commercial practice are as practically fraught, yet doctrinally underdeveloped, as estate agency. The relationship between a principal seeking to acquire property and the agent who facilitates that acquisition has historically been governed by a patchwork of common law principles, professional guidelines issued by the Nigerian Institute of Estate Surveyors and Valuers (NIESV), and informal market customs – often producing

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<sup>1</sup>Philip Kayode Olusegun Ojo v SDV Nigeria Limited & Anor (2025) SC/716/2016 (Supreme Court of Nigeria, judgment delivered September 2025).

uncertainty, dispute, and considerable financial loss. At the heart of most such disputes lies a deceptively simple question: at what point, and under what conditions, does an estate agent acquire a legally enforceable right to commission?

The Supreme Court's decision in *Philip Kayode Olusegun Ojo v SDV Nigeria Limited & Anor* answers that question with commendable clarity. The apex court held, in unanimous terms, that an agent cannot claim commission on agency merely by introducing a property to a prospective buyer. The introduction must be the effective cause of the transaction, and critically, there must exist a valid, enforceable agency agreement – oral or written, but cogent and provable – between the agent and the principal. Where these conditions are absent, no action in commission will lie, regardless of the professional standing of the claimant or the professional tariff ordinarily applicable to such services.<sup>2</sup>

This decision did not emerge in a legal vacuum. It built upon earlier Court of Appeal jurisprudence, including the important decision in *Nigeria Dynamic Ltd v Ibrahim*,<sup>3</sup> and resonates with long-established English authorities on the effective cause doctrine. It also engages ancillary questions of corporate law – specifically, whether a company's change of name affects its legal capacity to maintain litigation. This article proceeds by first outlining the foundational principles of the law of agency in Nigeria, before examining the facts, proceedings, and ratio of the case in detail. It then analyses the key legal propositions affirmed by the court, considers the doctrinal and practical implications of the decision, and makes recommendations for reform.

## 2. FOUNDATIONS OF THE LAW OF AGENCY IN NIGERIA

### 2.1 The Nature and Creation of Agency

Agency is a legal relationship in which one person, the agent, is authorised to act on behalf of another, the principal, with the intent and effect of altering the legal

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<sup>2</sup>Faruq Abbas, "How to Avoid Disputes Arising from the Services of an Estate Agent: A Review of the Court of Appeal's Decision in SDV Nig Ltd v PKO Ojo & Anor" (Legit.ng, 2018) <<https://www.legit.ng/editorial/opinion/1646507>> accessed 22 March 2026.

<sup>3</sup>*Nigeria Dynamic Ltd v Ibrahim* (2002) 8 NWLR (Pt 768) 63 (Court of Appeal).

relations between the principal and third parties.<sup>4</sup> In Nigerian law, this relationship derives its vitality from the law of contract – it is fundamentally consensual, requiring the assent of both parties to its creation.<sup>5</sup> As Lord Pearson observed in the House of Lords in *Garnac Grain Co Inc v HMF Faure & Fairclough Ltd*: "The relationship of principal and agent can only be established by the consent of the principal and the agent."<sup>6</sup> This principle is equally accepted in Nigerian courts as an accurate statement of the law applicable in Nigeria.

Agency may arise in five principal ways recognised under Nigerian law: express appointment, implied appointment, agency by ratification, agency by necessity, and agency by estoppel.<sup>7</sup> In the context of estate agency, the most commonly occurring forms are express and implied appointment. Express appointment occurs where the principal formally designates an agent and defines the scope of the agent's authority, whether orally or in writing. Implied appointment arises from the conduct of the parties such that the law will infer the existence of an agency relationship.<sup>8</sup>

## 2.2 Estate Agency in Nigeria: An Overview

Estate agency is a specialised form of commercial agency through which a professional, typically a registered estate surveyor and valuer, is engaged to facilitate the purchase, sale, or lease of real property on behalf of a client.<sup>9</sup> The profession is regulated – at least in formal terms – by the Nigerian Institute of Estate Surveyors and Valuers, which sets tariffs for professional fees including the commission payable upon successful completion of a transaction. In practice, however, the profession operates in an environment that is largely unregulated at the transactional level: the majority of individual agency arrangements are made informally, without written agreements, and often in circumstances of ambiguity regarding the scope of the agent's mandate, the agreed rate of commission, and

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<sup>4</sup>GN Scammell and CN Densham, *Law of Agency* (8th edn, Butterworths 1993) 1.

<sup>5</sup>FO Babafemi, *Law of Contract in Nigeria* (Obafemi Awolowo University Press 2006) 34.

<sup>6</sup>*Garnac Grain Co Inc v HMF Faure & Fairclough Ltd* [1968] AC 1130 (HL) 1137 (Lord Pearson).

<sup>7</sup>Bowstead and Reynolds on Agency (21st edn, Sweet & Maxwell 2017) para 1-001.

<sup>8</sup>*Debenham v Mellon* (1880) 6 App Cas 24 (HL).

<sup>9</sup>AA Adesanya and GN Elias, *Nigerian Land Law and Custom* (University of Lagos Press 2001) 145.

the conditions under which commission becomes payable.

The question of when an estate agent is entitled to commission has attracted significant judicial attention. The preponderant view in both Nigerian and English law – from which Nigerian courts have drawn considerably – is that an estate agent earns commission not merely upon introduction of a buyer or property, but upon the completion of the transaction which the agent's introduction effectively caused.<sup>10</sup> This is the essence of the "effective cause" doctrine, which will be examined in greater detail in the sections that follow.

### 3. FACTS AND PROCEDURAL HISTORY

#### 3.1 The Underlying Transaction

The appellant, Philip Kayode Olusegun Ojo, is a professional estate surveyor and valuer practising under the firm name P.K. Ojo & Co. He alleged that he sourced Plots 9, 10, and 11 of the Awodiora Industrial Estate, Kirikiri, Lagos – a property measuring approximately 20 acres – for purchase by the 1st respondent, SDV Nigeria Limited, through one Mr Adebola Adejobi, who he contended was an agent or managerial officer of SDV Nigeria.<sup>11</sup>

The property in question was owned by the 2nd respondent, SCOA Nigeria Limited. According to Ojo, he introduced the property to SDV Nigeria in the course of his professional business as an estate surveyor, facilitated initial inspections including a visit to the site by SDV's Managing Director, and played a material role in the early stages of negotiations between the parties. Despite this involvement, SDV Nigeria subsequently purchased the property directly from SCOA Nigeria without paying Ojo any professional commission. Ojo contended that such commission was due to him in accordance with the professional tariff prescribed by the Nigerian Institute of Estate Surveyors and Valuers.

#### 3.2 The Claims

Ojo commenced proceedings against both respondents before Justice Oluyinka Gbajabiamila of the Lagos State High Court by a writ of summons filed on 16

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<sup>10</sup>Hamer v Sharp (1874) LR 19 Eq 108; Foxtons Ltd v Bicknell [2008] EWCA Civ 419.

<sup>11</sup>Philip Kayode Olusegun Ojo v SDV Nigeria Limited & Anor (n 1) per Ogbuinya JSC (lead judgment).

October 2007 (Suit No: LD/1279/2007), and an amended statement of claim filed on 31 July 2009. He sought:

- (i) A declaration that he was entitled to agency commission from SDV Nigeria Limited, calculated at the NIESV professional rate, for having introduced the property to SDV Nigeria in the course of his business;
- (ii) The sum of US\$1,250,000.00 (or its naira equivalent of ₦161,250,000.00 at the prevailing exchange rate of ₦129 to the dollar), being agency commission in respect of the property purchased by SDV Nigeria from SCOA Nigeria;
- (iii) Interest at the rate of 21% per annum from the date of commencement of the action until final liquidation of the judgment sum; and
- (iv) The sum of ₦23,620,000 as special and general damages for SDV Nigeria's refusal to pay the commission.

The 1st respondent, SDV Nigeria Limited, filed a statement of defence denying all liability. It averred that no agency agreement had been entered into with Ojo and that there was no consensus capable of creating one. The 2nd respondent, SCOA Nigeria Limited, neither filed a defence nor entered appearance.<sup>12</sup>

### 3.3 The Trial Court Decision

On 24 December 2013, the Lagos High Court delivered judgment and granted Ojo's claim in part. The trial court appeared to accept that some form of agency relationship had arisen from the circumstances surrounding the property introduction and the attendant negotiations. This decision was met with dissatisfaction by the 1st respondent, which promptly appealed to the Court of Appeal.

### 3.4 The Court of Appeal Decision

In a unanimous decision delivered on 22 April 2016 (Appeal No: CA/L/444/2014), the Lagos Division of the Court of Appeal, per Nimpar JCA in the lead judgment, set aside the High Court's decision in its entirety. The Court of Appeal made three

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<sup>12</sup>PKO Ojo & Co v SDV Nigeria Ltd & Anor LD/1279/2007 (Lagos High Court, 24 December 2013, Gbajabiamila J).

fundamental findings:<sup>13</sup>

First, that no credible or direct agency relationship had been established between Ojo and SDV Nigeria. Agency cannot be created through a third party interposed between the agent and the principal; Ojo's dealings with Mr Adejobi, a managerial employee of SDV, were insufficient to bind the company in an agency relationship.<sup>14</sup>

Secondly, that the question of fees – an essential element of any agency arrangement – had not been resolved or agreed upon between the parties at any material time. Nimpar JCA specifically held that "the issue of fees is one important element which must be settled in an agency relationship. In estate agency, the important element is the commission to be paid."<sup>15</sup>

Thirdly, that Ojo had failed to demonstrate that his introduction of the property was the effective cause that brought about SDV Nigeria's ultimate purchase of the property from SCOA Nigeria.<sup>16</sup>

### 3.5 The Supreme Court Decision

Aggrieved by the Court of Appeal's decision, Ojo appealed to the Supreme Court of Nigeria (SC/716/2016). Before the apex court, he raised two principal contentions: first, that the Court of Appeal had erred in finding no agency relationship; and secondly, that SDV Nigeria Limited's change of corporate name had affected its legal status and capacity to sustain the appeal at the Court of Appeal – a point that, if accepted, would have invalidated the appellate court's ruling on procedural grounds.

The Supreme Court, in a lead judgment delivered by Ogbuinya JSC and unanimously concurred in by Garba, Jauro, Adumein, and Umar JJSC, dismissed the appeal in its entirety. On the corporate name issue, the court relied on section 31(6) of the Companies and Allied Matters Act and confirmed that a change of name does not affect a company's rights, obligations, or legal capacity in any

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<sup>13</sup>SDV Nigeria Ltd v PKO Ojo & Anor CA/L/444/2014 (Court of Appeal, Lagos Division, 22 April 2016) per Nimpar JCA (lead judgment).

<sup>14</sup>Ibid.

<sup>15</sup>Nimpar JCA in SDV Nigeria Ltd v PKO Ojo & Anor (n 17).

<sup>16</sup>Ibid; see also Nigeria Dynamic Ltd v Ibrahim (n 3) 86 per Mangaji JCA.

litigation already commenced.<sup>17</sup> On the substantive question, the court affirmed the Court of Appeal's findings in full. Ogbuinya JSC held that "the appellant did not establish any agency relationship with SDV Nigeria Ltd."<sup>18</sup> Umar JSC, in a particularly forceful concurring opinion, observed that SDV's refusal to reply to Ojo's letter of 25 July 2006 was itself a clear indication that the company was not disposed to engaging the appellant as its agent.<sup>19</sup> The court ordered each party to bear its own costs.

## 4. ANALYSIS OF THE LEGAL PRINCIPLES

### 4.1 The Requirement of a Valid Agency Agreement

The most fundamental principle affirmed by this decision is that agency, and with it the right to claim commission, does not arise from the mere fact that one person introduces a property or a buyer to another. An estate agent who has not been formally appointed – whether orally or in writing, but in a manner capable of clear proof – possesses no legal foundation upon which to rest a claim for professional fees.<sup>20</sup>

This principle has deep roots in the common law. In *Scheggia v Gradwell*, the English Court of Appeal held that an estate agent employed on commission terms is only entitled to his commission if and when the conditions upon which it is payable are fulfilled.<sup>21</sup> Upjohn LJ expressed the position thus: an agent must "do what he is employed to do" and commission is earned only upon performance of that specific obligation.<sup>22</sup> Nigerian courts have consistently applied this principle. The Court of Appeal in *Nigeria Dynamic Ltd v Ibrahim* explicitly held that mere discussion with officers of a company, without more, is insufficient to establish a contractual relationship conferring the right to

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<sup>17</sup>Companies and Allied Matters Act 2020 (Nigeria), s 31(6).

<sup>18</sup>Philip Kayode Olusegun Ojo v SDV Nigeria Limited & Anor (n 1) per Ogbuinya JSC.

<sup>19</sup>Philip Kayode Olusegun Ojo v SDV Nigeria Limited & Anor (n 1) per Umar JSC (concurring).

<sup>20</sup>OA Sanni, Introduction to Nigerian Law of Contract (2nd edn, MIJ Professional Publishers 2005) 89.

<sup>21</sup>*Scheggia v Gradwell* [1963] 1 WLR 1049 (CA).

<sup>22</sup>*Ibid*, 1054 (Upjohn LJ).

commission.<sup>23</sup>

In the *Ojo v SDV* case, Ojo's difficulty was multifaceted. He had not obtained a written letter of instruction from SDV Nigeria. He had not dealt directly with an officer of the company clothed with authority to create an agency arrangement on its behalf. The fact that SDV's Managing Director visited the property – even assuming this was facilitated by Ojo – did not translate into a binding acceptance of Ojo as the company's agent. A principal may inspect a property through the instrumentality of an introducer without thereby committing itself to treat that introducer as its appointed agent for the purpose of the transaction.

#### 4.2 The Effective Cause Doctrine

Even where an estate agent can establish a valid appointment, commission only becomes payable where the agent's introduction or services constitute the effective cause of the resulting transaction. This principle, frequently described as the "effective cause" or "efficient cause" doctrine, is one of the most litigated areas of estate agency law.<sup>24</sup>

The classical formulation of the principle is found in *Millar Son & Co v Radford*, where Collins MR held that a broker is entitled to commission only where "the introduction was the causa causans, not merely the causa sine qua non, of the sale".<sup>25</sup> The distinction is significant: it is not enough that the agent's introduction was a necessary antecedent of the sale; the introduction must be the operative, proximate, and direct cause of the transaction.<sup>26</sup>

In *Luxor (Eastbourne) Ltd v Cooper*, the House of Lords affirmed that an agent's entitlement to commission depends entirely upon the terms of the agency agreement and cannot be implied simply from the fact of introduction.<sup>27</sup> Viscount Simon LC observed that "the agent does not earn his commission unless and

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<sup>23</sup>*Nigeria Dynamic Ltd v Ibrahim* (n 3) 86 per Mangaji JCA.

<sup>24</sup>See generally Emeka Obilor, "The Effective Cause Doctrine in Nigerian Property Agency" (2020) 8 *Property Law Review* (Nigeria) 12.

<sup>25</sup>*Millar Son & Co v Radford* (1903) 19 TLR 575 (CA).

<sup>26</sup>*Ibid*, 576 (Collins MR).

<sup>26</sup>*Abraham v Mallon* [1956] 1 WLR 192 (CA).

<sup>27</sup>*Luxor (Eastbourne) Ltd v Cooper* [1941] AC 108 (HL).

until the event has happened upon which, under the agreement, it becomes payable."<sup>28</sup> This is the position in English law, and it is equally the position in Nigerian law as applied by the courts.

In the present case, the court found that Ojo had failed to establish that his introduction was the effective cause of SDV Nigeria's purchase. SDV Nigeria's counsel, Charles Candide-Johnson SAN, successfully argued that negotiations for the property had, in material part, commenced prior to or independently of Ojo's purported introduction. Where the vendor and purchaser have independently arrived at a transaction, an agent who introduced them at an earlier stage cannot automatically claim that introduction as the operative cause of the eventual sale.<sup>29</sup>

#### **4.3 Agency through Third Parties and the Problem of Corporate Authority**

A particularly instructive aspect of the decision is the court's reaffirmation that agency cannot be created through a third party interposed between the agent and principal. In corporate contexts, this presents a specific challenge: an agent who deals with an employee of a company must satisfy himself that the employee in question has actual authority – not merely apparent or ostensible authority – to create the agency relationship on behalf of the company.<sup>30</sup>

The Court of Appeal in *Nigeria Dynamic Ltd v Ibrahim* addressed this issue with precision. Mangaji JCA held: "In order to establish a legal relationship with a legal entity it takes more than a common discussion between a party and an officer of the company in order that it may be bound by its officer's representation." This principle applies with equal force to estate agency: an estate agent who receives instructions from or through a mid-level employee of a company, and who does not obtain formal confirmation from the company itself, proceeds at his professional peril.

In *Ojo v SDV*, Ojo's claim suffered considerably from this problem. His dealings were primarily with Mr Adebola Adejobi, described in the proceedings as a

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<sup>28</sup>Ibid, 124 (Viscount Simon LC).

<sup>29</sup>Ibid per Ogbuinya JSC.

<sup>30</sup>AA Adeyemi, "Agency Law and Practice in Nigeria: Emerging Trends" (2019) 12 Nigerian Journal of Law and Practice 45, 51.

managerial officer or representative of SDV. There was no evidence before the court that Mr Adejobi had been clothed by SDV Nigeria with authority to create an agency relationship on the company's behalf, or that SDV Nigeria had subsequently ratified or adopted any such arrangement. The silence of the company – specifically, its failure to respond to Ojo's letter of July 2006 – was treated by the Supreme Court, through Umar JSC's concurring opinion, as a clear and deliberate disengagement.<sup>31</sup>

#### 4.4 The Fee Element as a Fundamental Condition

The court also affirmed that the absence of any agreement on the quantum of commission, or the terms upon which it would become payable, is fatal to a claim for agency fees. This proposition was most sharply articulated by Nimpur JCA at the Court of Appeal stage: "The issue of fees is one important element which must be settled in agency relationship. In estate agency, the important element is the commission to be paid."

This reasoning is analytically sound. The NIESV tariff upon which Ojo sought to rely is a professional guideline, not a contractually binding term unless specifically incorporated into an agreement between the parties. An estate agent who proceeds to render services without first agreeing – or at minimum discussing and impliedly settling – the question of his remuneration cannot later impose a fee schedule upon a party who never expressly agreed to be bound by it.<sup>32</sup>

The principle may be contrasted with the position in *Alpha Trading Ltd v Dunshaw-Patten Ltd*, where the Court of Appeal held that where an agent acts under a valid agency arrangement and the amount of commission is not expressly stated, the court may imply a term that a reasonable commission be paid.<sup>33</sup> Templeman LJ was clear that "a reasonable remuneration will be implied where there is a contract but no express provision for payment."<sup>34</sup> The critical

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<sup>31</sup>Umar JSC in Philip Kayode Olusegun Ojo v SDV Nigeria Limited & Anor (n 1).

<sup>32</sup>Nigerian Institute of Estate Surveyors and Valuers Act Cap N72 Laws of the Federation of Nigeria 2004; see also Estate Surveyors and Valuers (Registration, etc) Act Cap E13 LFN 2004.

<sup>33</sup>*Alpha Trading Ltd v Dunshaw-Patten Ltd* [1981] QB 290 (CA).

<sup>34</sup>*Ibid*, 304 (Templeman LJ).

distinction, however, is that the implication of reasonable remuneration presupposes the existence of a valid contract of agency. In the absence of that foundational relationship, there is no basis for any implication.

## **5. CORPORATE LAW DIMENSIONS: COMPANY NAME CHANGE AND LEGAL CAPACITY**

The Supreme Court also disposed of Ojo's subsidiary argument that SDV Nigeria Limited's change of corporate name had destroyed its legal capacity to sustain and maintain the appeal at the Court of Appeal. This argument, whilst creative, was firmly rejected by reference to section 31(6) of the Companies and Allied Matters Act 2020 (CAMA), which provides that a change of name does not affect the rights or obligations of a company or any legal proceedings in which the company is already involved.<sup>35</sup>

Ogbuinya JSC, delivering the lead judgment, observed that the lower court's findings on this point were not in error: "the maintenance of legal capacity of a company after change of name" is a settled matter under Nigerian company law, and the Court of Appeal was correct to exercise jurisdiction over SDV Nigeria regardless of the name under which it was incorporated at the time.<sup>36</sup> The company's corporate identity – and with it, its standing in litigation – persists through any name change unless the company has been dissolved and struck off the register.

This aspect of the judgment, though secondary to the main agency question, is a useful reminder to practitioners engaged in corporate litigation: a change of company name, however significant it may appear commercially, is a matter of nomenclature only. It does not restart limitation periods, extinguish pending suits, or in any way diminish the legal personality of the entity as a juristic person under Nigerian law.

## **6. PRACTICAL IMPLICATIONS FOR ESTATE AGENTS AND PROPERTY PRACTITIONERS**

### **6.1 The Imperative of Written Agency Agreements**

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<sup>35</sup>Companies and Allied Matters Act 2020 (Nigeria), s 31(6).

<sup>36</sup>Philip Kayode Olusegun Ojo v SDV Nigeria Limited & Anor (n 1) per Ogbuinya JSC.

The most immediate practical lesson from *Ojo v SDV Nigeria* is the absolute necessity of a formal, written agency agreement. This agreement should, at minimum, identify the parties and confirm the appointment of the agent; define the scope of the agent's mandate; specify the commission or fee payable and the conditions upon which it becomes due; confirm the property or class of property in respect of which the agent is appointed; and provide for the duration of the appointment.<sup>37</sup>

Where the principal is a corporate entity, the agent must insist that the appointment letter be signed by an authorised officer of the company – ideally a director or company secretary – and not merely a general employee or intermediary. The agent should also retain copies of all correspondence, including records of property inspections arranged, negotiations facilitated, and communications exchanged with the principal. In the digital age, email trails can serve as powerful corroborating evidence of an implied or express agency arrangement.

## 6.2 The Effective Cause Must Be Actively Established

Estate agents must understand that their legal entitlement to commission does not crystallise at the moment of introduction. They must be able to demonstrate, with evidence, that their introduction was the operative cause of the transaction. An agent who introduces a property and then retreats, leaving the principal to independently negotiate and conclude the transaction, may find that the chain of causation has been broken – particularly where the vendor and purchaser can show that they would have arrived at the transaction through independent channels.<sup>38</sup>

Prudent practice requires the agent to remain actively involved in the transaction until its conclusion: attending or facilitating negotiations, corresponding with both vendor and purchaser, and ensuring that the agent's centrality to the transaction is adequately documented throughout.

## 6.3 Implications for Principals: Clarity of Intent

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<sup>37</sup>Abbas (n 2).

<sup>38</sup>AA Adeyemi (n 32) 53.

The decision equally has implications for principals, including corporate entities that receive unsolicited property introductions. The judgment makes clear that receipt of an introduction does not, of itself, create an obligation to pay commission. A principal wishing to investigate a property introduced to it whilst avoiding the creation of an agency relationship should respond explicitly and in writing to the introducer, making clear that no agency arrangement is being entered into.

Conversely, where a principal chooses to retain an estate agent, it must not deal directly with the vendor in a manner that bypasses the agent's role once that role has been accepted. To do so would be to deprive the agent of the very commission that the agent was engaged to earn – and whilst the *Ojo v SDV* case did not involve a confirmed agency arrangement, courts in appropriate cases have been prepared to find liability where a principal deliberately acts to circumvent an agent's commission after accepting the benefit of the introduction.<sup>39</sup> Denning LJ in *Boots v E Christopher & Co* affirmed that where the vendor was introduced by the agent to the ultimate purchaser, and the parties deliberately excluded the agent to deny commission, the agent could in appropriate circumstances recover.<sup>40</sup>

## 7. BROADER JURISPRUDENTIAL AND REFORM IMPLICATIONS

### 7.1 The Need for Statutory Regulation of Estate Agency in Nigeria

The decision in *Ojo v SDV Nigeria* throws into sharp relief the structural weakness of Nigeria's estate agency sector: the absence of comprehensive statutory regulation of the agency relationship and the conditions for commission entitlement. Whilst the NIESV Act and the Estate Surveyors and Valuers (Registration, etc) Act regulate professional qualification and licensing, they do not prescribe any mandatory terms for agency agreements, nor do they confer any statutory rights upon estate agents in the event that an agreed transaction is completed without their involvement.

In other jurisdictions, legislation has filled this gap. In England and Wales, the

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<sup>39</sup>*Boots v E Christopher & Co* [1952] 1 KB 89 (CA).

<sup>40</sup>*Ibid*, 95 (Denning LJ).

Estate Agents Act 1979 – and latterly the Consumer Protection from Unfair Trading Regulations 2008 – imposes obligations on estate agents to disclose their fees in advance and in specified form, and grants specific rights where those obligations are breached. In several Australian states, agents' commission entitlements are regulated by statute, with mandatory written agency agreements required as a precondition to any commission claim.

It is submitted that the Nigerian Law Reform Commission, which has acknowledged the need for modernisation of the law of agency,<sup>41</sup> should prioritise the introduction of legislation governing estate agency contracts. Such legislation should, at minimum, require that all estate agency agreements be in writing, signed by both parties and by an authorised officer where the principal is a corporate entity; specify the fee or the basis for its calculation; state the conditions upon which the fee becomes payable; and provide that no commission shall be recoverable in respect of any transaction unless a compliant written agreement was in place at the time of the introduction.

## 7.2 The Effective Cause Doctrine: Towards Greater Certainty

There is, in the current Nigerian case law, some imprecision in the formulation and application of the effective cause doctrine. The doctrine, as applied in *Ojo v SDV* and earlier authorities, requires the agent's introduction to be the operative, proximate cause of the transaction. Yet the precise threshold of causation is not always easy to determine – particularly in cases where the introduction initiates a series of events that eventually lead to a transaction, but where the purchaser independently negotiates and renegotiates terms before concluding.

The English Court of Appeal in *John McCann & Co v Pow* grappled with this difficulty and held that where the agent's introduction sets in motion a continuous chain of events culminating in the transaction, the effective cause requirement is satisfied even if negotiations are temporarily interrupted.<sup>42</sup> Nigerian courts would benefit from an explicit engagement with this nuance – particularly given the lengthy and multi-stage nature of many commercial property transactions in the Lagos market.

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<sup>41</sup> See Nigerian Law Reform Commission, Report on the Law of Agency (NLRC 2017) para 4.2.

<sup>42</sup> *John McCann & Co v Pow* [1974] 1 WLR 1643 (CA).

### 7.3 Gender and Access to Justice in the Property Agency Profession

A dimension of this case that has not yet attracted scholarly attention is its implications for access to justice and professional equity among estate agents and property practitioners. The prohibitive cost of litigating a commission dispute through three court levels – High Court, Court of Appeal, and Supreme Court – over a period of nearly two decades (2007 to 2025) is a sobering illustration of the structural disadvantages faced by individual practitioners, including women in the property profession, in protecting their rights. The financial attrition of protracted litigation frequently deters legitimate claimants and emboldens principals who are better resourced to resist valid commission claims.<sup>43</sup>

The enactment of a clear statutory framework, combined with the availability of low-cost arbitration mechanisms – ideally through the NIESV's professional dispute resolution facilities – would go a considerable way towards democratising access to remedy for estate agents whose commission entitlements are denied.

## 8. CONCLUSION

The Supreme Court's decision in *Philip Kayode Olusegun Ojo v SDV Nigeria Limited & Anor* is a landmark in Nigerian property law. The apex court has, with commendable clarity and consistency with established authority, confirmed the position that the mere introduction of a property to a prospective purchaser is insufficient, as a matter of law, to sustain a claim for professional commission. An estate agent who seeks to recover his fees must demonstrate three things: a valid agency agreement between himself and the principal; an express or ascertainable agreement on the commission payable; and that his introduction was the effective, operative cause of the transaction ultimately concluded.<sup>44</sup>

The decision also touches upon an important aspect of Nigerian corporate law – confirming that a company's change of name does not extinguish its legal identity, its obligations, or its standing in pending litigation, by virtue of section 31(6) of CAMA 2020.

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<sup>43</sup>EI Nwogugu, *Family Law in Nigeria* (3rd edn, HEBN Publishers 2014) 211.

<sup>44</sup>Abbas (n 2); OA Sanni (n 39) 92.

Beyond its immediate doctrinal significance, the decision is a call to action. It exposes the vulnerability of estate agents who operate informally, the risks borne by principals who fail to communicate their intentions clearly, and the broader inadequacy of Nigeria's current legal framework for regulating the estate agency relationship. The time is ripe for the National Assembly, advised by the Nigerian Law Reform Commission and drawing on the expertise of the NIESV, to enact comprehensive estate agency legislation that protects both agents and principals, promotes transparency in property transactions, and reduces the scope for the kind of prolonged and costly litigation that characterised this case.

For Nigerian property practitioners, the lesson is unambiguous: document everything, agree your fee before you act, establish your agency relationship with the entity itself – not merely with its employees – and ensure that your role as the effective cause of any transaction is actively maintained and carefully evidenced throughout the life of the deal.

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