IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS
THIS 15TH DAY OF OCTOBER, 2026
BEFORE
HON. JUSTICE MUSA KAKAKI

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E. O. ANAGBOGU (Mrs)
PRINCIPAL EXECUTIVE OFFICER
FEDERAL HIGH COURT
IKOYI, LAGOS

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SUIT NO.: FHC/L/CS/2389/25

BETWEEN:

ALLAN & OGUNKEYE (LEGAL PRACTITIONERS) ... PLAINTIFF/APPLICANT

AND

1. THE HONOURABLE MINISTER OF INDUSTRY, TRADE AND INVESTMENT
2. THE REGISTRAR OF PATENTS & DESIGNS
3. THE ATTORNEY-GENERAL OF THE FEDERATION & HONOURABLE MINISTER OF JUSTICE

DEFENDANTS/RESPONDENTS

JUDGMENT

The Plaintiff in this suit filed Originating Summons dated the ... brought pursuant to Order 3 Rule 6 of the Federal High Court (Civil Procedure) Rules 2019, Section 26 of the Patents and Designs Act, 1970 and under the Inherent Jurisdiction of the Honourable Court.

The Plaintiff submitted to the Court for determination the following questions:

1. **Whether, upon a community reading of the Patents and Designs Act, 1971, Utility Models are now registrable as an Intellectual Property right in Nigeria?**

2. **If the above is in the negative, whether the Registrar of Patents and Designs has acted ultra vires the powers conferred on him under the Patents and Designs Act, 1971, by registering and issuing Certificates of Registration in respect of Utility Models in Nigeria.**

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3. **Consequently, whether all such registrations and Certificates of Registration issued in respect thereof are deemed null and void and of no effect whatsoever.**

4. **Whether a Bill yet to be passed by the National Assembly and assented to by the President of the Federal Republic of Nigeria can become a Law.**

The Plaintiff also submitted that where the Honourable Court finds that the answers to the above questions are in the negative, it prays the Court for the following reliefs:

a) A DECLARATION that Utility Models are not registrable in Nigeria, there being no legal backing or any legislative enactment in respect of same.

b) A DECLARATION that the 2nd Defendant/Respondent, in the exercise of the powers conferred on him under the Patents and Designs Act, 1971, has acted ultra vires by registering and issuing Certificates of Registration in respect of Utility Models, without any legal basis.

c) A DECLARATION that all registrations and subsequent issuance of Certificates of Registration regarding Utility Models by the 2nd Defendant/Respondent are null and void and of no effect whatsoever.

d) An ORDER restraining the 2nd Defendant/Respondent from further registration and issuance of Certificates of Registration regarding Utility Models in Nigeria until a law in respect of same has been duly passed by the relevant body, being the National Assembly.

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In support of the Originating Summons, the Plaintiff filed an 18 paragraph affidavit deposed to by Olawumi Salami, a legal practitioner in the firm of the Plaintiff. The Plaintiff also attached Exhibits WO1, WO2 and WO3 to the affidavit in support of the originating summons. Filed by the Plaintiff alongside the originating summons is the Plaintiff's written address dated the 21st day of November, 2025.

The 3rd Defendant in response to the Plaintiff's originating summons filed a 6 paragraph counter affidavit deposed to by Felicia Des Bordes, a litigation clerk in the office of the 3rd Defendant together with a written address in opposition to the Plaintiff's originating summons.

The 1st and 2nd Defendants, despite being served with the Plaintiff's originating summons did not file a response to same.

SUBMISSIONS OF COUNSEL

In respect of the 1st question for determination; "***whether upon a community reading of the Patents and Designs Act, 1971, Utility Models are now registrable as an intellectual property right in Nigeria?***"

Counsel submitted that the four principal legally recognised Intellectual Property rights in Nigeria are as follows:

a. Trademark;
b. Copyright;
c. Patent and Designs; and
d. Plant Variety Protection.

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Counsel further listed their respective governing laws as below:

- The Trade Marks Act, Cap. T13, Laws of the Federation of Nigeria (LFN), 2004 governs trademark registration in Nigeria.
- The Copyright Act, 2022 governs copyright in Nigeria.
- The Patents and Designs Act, 1970 governs patents and industrial designs in Nigeria.
- The Plant Variety Protection Act, 2021 and the Plant Variety Protection Regulation, 2024 regulate Plant Breeders' Rights in Nigeria.

Counsel submitted that flowing from the above, Utility Models are not recognized Intellectual Property rights in Nigeria due to the absence of specific legislation governing them and that Nigerian laws currently recognize the main categories of Intellectual Property rights listed above.

Counsel conceded that there may be some similarities between a Patent and a Utility Model but that however, these similarities notwithstanding, it is unlawful for the 2nd Defendant to assume the role of Registrar of Utility Models, which position was neither created nor provided for under any existing law in Nigeria.

Counsel posited that since the office of the 2nd Defendant was created by the Patents and Designs Act, the 2nd Defendant lacks the power to make himself the Registrar of Utility Models when no such position exists under the enabling law. Counsel referred to the provisions of Section 28(1) of the Patents and Designs Act and submitted that the provisions of Section 28(1) cannot be extended or expanded by the 2nd Defendant to include Utility Models unilaterally. That doing so without recourse to the lawmakers for amendment of the enabling law is tantamount to illegality.

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Counsel to the Plaintiff further submitted that before addressing a specific issue, laws typically establish general principles and frameworks and without these, laws might fall short in effective governance. He stated that a law must also put in place a framework for effective administration of the law and the frameworks aim to create predictability and also serve as a foundation for legal decisions and interpretations, guiding how laws are applied.

Counsel submitted that the Patents and Designs Act, 1970 has provided elaborately the general principles and framework for the administration of the Patent and Design regime in Nigeria, and that the law provides for the definition, registration process, renewal and general administration of the Patent process.

Counsel also submitted that the law did not anywhere make reference to Utility Models and the explicit mention of Patents and Designs in that law implies the exclusion of Utility Models. And that under the Patents and Designs Act, 1971, Utility Models are not registrable as an Intellectual Property right in Nigeria.

On questions/issues 2 & 3;

"If the above is in the negative, whether the Registrar of Patents and Designs has acted ultra vires the powers conferred on him under the Patents and Designs Act, 1971, by registering and issuing certificates of registration in respect of utility models in Nigeria; and consequently, whether all such registrations and certificates of registration issued in respect thereof are deemed null and void and of no effect whatsoever."

In arguing questions 2 & 3 together, counsel submitted that the Patents and Designs Act, 1971 does not give the 2nd Respondent the power to register and issue Certificates of Registration in respect of Utility Models, and therefore, any action purportedly taken ostensibly in exercise of a non-existent power is invalid and null ab initio.

Counsel submitted that the act of the 2nd Respondent in registering and issuing Certificates of Registration in respect of Utility Models in this case is ultra vires his powers.

Counsel further submitted that the Certificate of Registration granted dated 22nd day of September 2021, concerning the Utility Model application attached as Exhibit W03, and all similar certificates issued for Utility Model recognition in Nigeria, lack legal foundation and as such, the actions of the 1st Respondent are beyond his legal authority, i.e., ultra vires, and therefore null and void.

On question 4 for determination;

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"Whether a bill yet to be passed by the National Assembly and assented to by the President of the Federal Republic of Nigeria can become a law."

Counsel submitted that a pertinent question arising is whether or not the pending Bill referred to in paragraph 12 of the accompanying Affidavit has become operational and thus could be relied upon by the 2nd Defendant.

Counsel further submitted that as stated in paragraph 12 of the supporting Affidavit, the Bill seeking to repeal the current Patents and Designs Act, Cap. P2, LFN 2004, and replace it with the Patents Act 2022, which makes provisions for the recognition of Utility Models in Nigeria, is yet to undergo the processes stipulated in the Constitution hence, it cannot be said to have become operational, having not been passed by the National Assembly and assented to by the President of the Federal Republic of Nigeria.

Counsel also contended that the implication, therefore, is that any reliance placed by the 2nd Defendant on the said Bill without it being passed by the National Assembly and assented to by the President, and where the President withholds his assent, having been passed by a two-thirds majority of the National Assembly, is null and void.

Counsel finally submitted that in the absence of any specific law recognizing Utility Models as an Intellectual Property right in Nigeria, the actions of the 2nd Defendant in accepting and issuing Certificates of Registration for Utility Models are therefore unconstitutional and lack legal backing.

Counsel to the 3rd Defendant on the other hand formulated two (2) issues for determination:

1. *"Whether the Plaintiff's Originating Processes dated the 21st day of November, 2025 disclose any reasonable cause of action against the 3rd Respondent."*

2. *"Whether the 3rd Respondent is a proper and/or necessary party to this suit."*

In arguing the first issue for determination:

"Whether the plaintiff's originating processes dated the 21st day of November, 2025 disclose any reasonable cause of action against the 3rd Respondent";

Counsel submitted that the action has not in any way disclosed any cause of action against the 3rd Respondent.

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Counsel submitted that a cause of action is the entire set of circumstances giving rise to an enforceable claim. That it is, in effect, the fact or combination of facts which gives rise to a right to sue, and it consists of two elements:

a. The wrongful act of the Respondents which gives the Applicant his cause of complaint; and

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b. The consequent damage.

counsel further submitted that a cause of action is the set of facts, distinct from the evidence averred in the Statement of Claim, which the Plaintiff must prove to support his right to the judgment of the Court and that a cause of action is, in general, defined as facts or situations arising from those facts from which there may emanate a right of action for which a remedy may be sought. Counsel relied on the authority of **WILLIAMS v. WILLIAMS (2008) 10 NWLR (Pt. 1095) 364 at 390.**

Counsel further submitted that the Plaintiff has not stated in his Originating Processes any act or function of the 3rd Respondent that warrants the presence of the 3rd Respondent in this suit and therefore, no consequential relief has been sought against the 3rd Respondent.

counsel also submitted that the Plaintiff has not sufficiently shown facts which give rise to a right of action for which remedies are claimed in the action against the 3rd Respondent.

On issue two:

"***Whether the 3rd respondent is a proper and/or necessary party***";

Counsel submitted that the position and role of the 3rd Respondent as the Chief Law Officer of the Federation cannot be overstated. Relying on the case of **A.G. ANAMBRA STATE v. A.G. FEDERATION (2007) ALL FWLR (Pt. 379) 1218 at 1249–1250**, counsel further submitted that the Office of the 3rd Respondent should not be abused, as a plethora of cases have provided for when the 3rd Respondent should be joined as a Defendant and also placed reliance on the case of **IGBOKWE v. KEHINDE (2008) 2 NWLR (Pt. 1072) 441 at 451.**

Counsel submitted that necessary parties are those who not only have an interest in the matter, but also those who, in their absence, the proceedings could not be fairly and effectually dealt with, and, it is therefore unnecessary to join a party to any proceeding where the complaint is not made against such a party.

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Counsel contended that the Plaintiff has no cause of action or claims against the 3rd Respondent whatsoever in this suit and that the acts complained of by the Plaintiff are against the 1st and 2nd Respondents, and there is nothing the 3rd Respondent can do to rectify the actions of the 1st and 2nd Respondents.

Counsel finally urged the Court to strike out the name of the 3rd Respondent, as the Plaintiff has not disclosed any cause of action against the 3rd Respondent, who is obviously not a relevant party to this suit.

RESOLUTION

In the originating summons procedure, it is the plaintiff that raises or formulates the questions/issues for determination and not the defendant. However, a defendant to an action begun by originating summons who has entered appearance to the summons and who alleges that he has any claim or is entitled to any relief or remedy against the plaintiff in respect of any matter may make a counter-claim and not formulate issues. See **ACHU v. C.S.C. CROSS RIVER STATE (2009) 3 NWLR (PT. 1129) 475.**

In the instant suit, the 3rd Defendant rather than answer the questions raised, formulated its own separate issues for determination. However, the present action has its own peculiarities in that the 3rd Defendant contends that the suit does not disclose a cause of action against the 3rd Defendant. I shall within the context of the case countenance with this. I shall answer together the questions raised/formulated by the Plaintiff and the 3rd Defendant.

The Patents and Designs Act, 1971 (the Act) provides for comprehensive provisions for the registration and proprietorship of patents and designs in Nigeria and other matters ancillary thereto.

Interestingly, the Act did not define what a "patent" is. Section 32 of the Act only defined "patent application" to mean an application for the grant of a patent; and "patentee" to mean a person to whom a patent has been granted.

Although the Act being the primary legislation governing patents in Nigeria did not provide a single, concise definition of "patent", its provisions collectively describe its nature and scope.

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Section 1 of the Act provides;

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"(1) Subject to this section, an invention is patentable --

(a) if it is new, results from inventive activity and is capable of industrial application; or

(b) if it constitutes an improvement upon a patented invention and also is new, results from inventive activity and is capable of industrial application.

(2) For the purposes of subsection (1) of this section-

(a) an invention is new if it does not form part of the state of the art,

(b) an invention results from inventive activity if it does not obviously follow from the state of the art, either as to the method, the application, the combination of methods, or the product which it concerns, or as to the industrial result it produces; and

(c) an invention is capable of industrial application if it can be manufactured or used in any kind of industry, including agriculture."

Therefore, an invention is patentable if it meets specific criteria enumerated in section 1 of the Act. An invention is thus patentable if:

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i. It is new.
ii. It results from inventive activity.
iii. It is capable of industrial application.

It therefore means under the Act, a "patent" refers to an exclusive right granted for an invention, which can be a product or a process, that provides a new way of doing something or offers a new technical solution to a problem. It is essentially a legal document issued to an inventor, granting them the sole right to exploit their invention for a specified period.

In as much as the Act did not define "patent", however, section 32 of the Act did define "design" to mean an industrial design.

A perusal of the Act did show that it provides in sections 12, 13 and 14 as hereunder:-

Section 12 provides;

"Any combination of lines or colours or both, and any three-dimensional form, whether or not associated with colours, is an industrial design, if it is intended by the creator to be used as a model or pattern to be multiplied by industrial process and is not intended solely to obtain a technical result."

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Section 13 provides;

"(1) Subject to this section, an industrial design is registrable if-

(a) it is new; and

(b) it is not contrary to public order or morality.

(2) Where application is made for the registration of an industrial design, the design shall be presumed to be new at the time of the application except in so far as the following provisions of this section provide otherwise.

(3) An industrial design is not new if, before the date of application for registration, it has been made available to the public anywhere and at any time by means of description, use or in any other way, unless it is shown to the satisfaction of the Registrar that the creator of the design could not have known that it had been made so available.

(4) An industrial design shall not be deemed to have been made available to the public solely by reason of the fact that within the period of six months preceding the filing of the application for registration the creator has exhibited it in an official or officially recognised exhibition.

(5) An industrial design is not new merely because it differs in minor or inessential ways from an earlier design or concerns a type of product other than the type with which an earlier design is concerned."

Section 14 of the Act provides;

"(1) Subject to this section, the right to registration of an industrial design shall be vested in the statutory creator, that is to say, the person who, whether or not he is the true creator, is the first to file, or validly to claim a foreign priority for, an application for registration of the design.

(2) The true creator shall be entitled to be named as such in the Register, and the entitlement in question shall not be modifiable by contract.

(3) If the essential elements of an application for the registration of an industrial design have been obtained by the purported applicant from the creation of another person without the consent of that other person both to the obtaining of those essential elements and to the filing of the application, all rights in the application and in any consequent registration shall be deemed to be transferred to that other person.

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(4) Where an industrial design is created in the course of employment or in the execution of a contract for the performance of specified work, the ownership of the design shall be vested in the employer or, as the case may be, in the person who commissioned the work: Provided that, where the creator is an employee, then, if his contract of employment does not require him to exercise any creative activity but he has in creating the design used data or means that his employment has put at his disposal-

(a) he shall be entitled to fair remuneration taking into account his salary and the importance of the design which he has created; and

(b) the entitlement in question is not modifiable by contract and may be enforced by civil proceedings."

I have taken the time and the liberty to read the entire Act. I did not find where it made provision for "Utility Model" or its registration. Perhaps I may have to have recourse to similar legislations whether such provision has or have been made.

By section 122(2)(a)&(b) of the Evidence Act, 2011, the Court is to take judicial notice of all legislations in force in Nigeria. I have taken note of the principal legislations covering and governing intellectual property and as rightly posited by counsel to the Plaintiff, they include;

1. The Trade Marks Act, Cap. T13, Laws of the Federation of Nigeria (LFN), 2004 which governs trademark registration in Nigeria.

2. The Copyright Act, 2022 which governs copyright in Nigeria.

3. The Patents and Designs Act which governs patents and industrial designs in Nigeria.

4. The Plant Variety Protection Act, 2021 and the Plant Variety Protection Regulation, 2024 which regulate Plant Breeders' Rights in Nigeria.

5. The Patents Rules, 1971

The above legislations chiefly or primarily govern the following intellectual property rights:-

a. Trademark;
b. Copyright;
c. Patent and Designs; and
d. Plant Variety Protection.

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I have perused the above laws. They do not make provision for and neither do they recognize "Utility Models" as Intellectual Property rights in Nigeria as there is no legislation governing them. Nigerian laws only currently recognize the main categories of Intellectual Property rights listed above.

The crux of this matter however is for the interpretation of the Patents and Designs Act (the Act). It clear from a perusal of the Act that it did not anywhere make reference to "Utility Models".

The law is very clear and very firm that the express mention of one thing in a statutory provision automatically excludes any other stipulation which would otherwise have been applied by implication. Where a provision of the Constitution or a statute mentions subjects, items or things to which it applies, it clearly intends that the subject, item, or thing not mentioned is excluded from its application. This interpretative approach is expressed in the Latin maxim, *"expressio unius est exclusio alterius"*. See **NIGERIAN AIR FORCE v. CHIA (2026) 2 NWLR (PT. 2028) 369(SC).** See also **ABALAKA v. MINISTER OF HEALTH (2025) 15 NWLR (Pt. 2009) 413(SC)** and **GOV., DELTA STATE v. EDUN (2024) 1 NWLR (PT. 1919) 267(SC).**

Therefore, the explicit mention of Patents and Designs in the Act implies the exclusion of "Utility Models" which no provision is made for neither is it mentioned in the Act.

I now make reference to the Plaintiff's affidavit in support of the originating summons. The deponent therein, Olawumi Salami, a Legal Practitioner made certain depositions in paragraphs 7 – 17 which are reproduced below seriatim:-

7. *"My Firm represents both local and foreign Intellectual Property rights owners in Nigeria and assists them in maintaining their Intellectual Property rights in Nigeria.*

8. *Sometime in September 2024, my Firm received an enquiry from one of its clients, seeking clarification on whether or not Utility Models are now registrable in Nigeria, given that my Firm had advised the client in the past that Utility Models were not registrable in Nigeria. At that time, my Firm also added that a Bill to recognise Utility Models as Intellectual Property in Nigeria was pending before the National Assembly.*

9. *Being experts in the field of Intellectual Property in Nigeria, my Firm is aware that Utility Models are currently not registrable in Nigeria, as the aforementioned Bill is yet to be passed by the National Assembly.My Firm therefore replied to the client in the*

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negative, stating that Utility Models are still not registrable in Nigeria.

10. *My Firm was, however, surprised when the client responded and forwarded a copy of a Certificate of Registration granted in respect of a Utility Model by the Registrar of Patents and Designs and signed by one Mrs. Stella, as the Registrar (now retired).*

11. *Upon receipt of the document from the client, my Firm wrote a letter dated 7th October 2024 to the 2nd Respondent, seeking explanations and the legal basis for the registration and issuance of a Certificate of Registration of a Utility Model when there is no law or any enabling legislative instrument recognising Utility Models as Intellectual Property in Nigeria.A copy of my Firm's letter is hereby attached and marked Exhibit WO1.*

12. *However, the 2nd Respondent failed to provide a response to my Firm's letter of 7th October 2024.*

13. *Although there is a Bill pending before the National Assembly which seeks to repeal the current Patents and Designs Act, Cap. P2, Laws of the Federation of Nigeria 2004, and replace it with the Patents Act 2022, which recognises Utility Models, that Bill is yet to be passed by the National Assembly and assented to by the President of the Federal Republic of Nigeria. A printout from the website of the National Assembly showing the pendency of the said Bill is hereby attached and marked Exhibit WO2.*

14. *The present situation is somewhat confusing, as my Firm is unable to properly guide its numerous clients on the current status of Utility Models in Nigeria, given the inexplicable silence of the 1st Respondent.*

15. *My Firm has been able to procure from the Patents Office a copy of a Certificate granted in respect of a Utility Model application in 2021 and signed by the then Registrar of Patents, Mrs. Stella Ezenduka. Same is hereby attached and marked Exhibit WO3.*

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16. *I am aware that the Patents Office is still accepting, registering, and issuing Certificates of Registration in respect of Utility Model applications.*

17. *It is on the above basis that my Firm has decided to approach this Honourable Court for direction and interpretation of the extant laws on this subject matter, including the determination of the various questions formulated in the accompanying Motion Paper."*

The above depositions of the Plaintiff were neither challenged nor controverted by any of the Defendants. The depositions in an affidavit, which are not challenged are deemed admitted. See **OBUMSELI v. UWAKWE (2019) 11 NWLR (PT. 1683) 205 P. 224 PARA B (SC).** In the instant case, the 1st and 2nd Defendants were faced with an affidavit, but they failed to file a counter-affidavit to controvert the facts therein. Although the 3rd Defendant filed a counter-affidavit, none of their depositions controverted the Plaintiff's depositions in the affidavit in support of the originating summons.

Nonetheless, the Plaintiff must succeed on the strength of its case where it seeks declaratory reliefs. It is required by law for them to do so. **ATUMA v. A.P.C. (2023) 16 NWLR (PT. 1910) 371 P. 404, PARAS. C – F (SC)** and **ANI V. OUT (2023) 8 NWLR (PT. 1886) 301 (SC).** I therefore proceed to further examine the Plaintiff's processes and the exhibits WO1, WO2 and WO3 attached.

I have earlier held that depositions in an affidavit not challenged are deemed admitted. It still holds true in favour of the Plaintiff as their depositions particularly paragraphs 7 – 17 were not disputed. The Exhibits WO1, WO2 and WO3 which they annexed to their affidavit in support of the originating summons were not discredited nor were they disputed.

Of particular note are Exhibits WO2 and WO3 which I have perused and read. The Exhibit WO3 is a copy of a Certificate granted in respect of a Utility Model application in 2021 and signed by the then Registrar of Patents, Mrs. Stella Ezenduka procured from the Patents Office. This was not disputed by the Defendants in particular the 1st and 2nd Defendants.

Before the Court is Exhibit WO2, a Bill pending before the National Assembly which seeks to repeal the current Patents and Designs Act, Cap. P2, Laws of the Federation of Nigeria 2004, and replace it with the Patents Act 2022, which recognizes Utility Models, but yet to be passed by the National Assembly and assented to by the President of the Federal Republic of Nigeria. This was also not disputed by the Defendants.

Section 28(1) of the Patents and Designs Act (the Act) provides;

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"There shall be a Registrar of Patents and Designs, who shall be appointed by the Federal Civil Service."

The provisions of section 28(1) of the Act are clear and unambiguous. Words used in legislation that are clear and unambiguous should be construed in their literal sense without any form of magical or unnecessary imputation. Where the words of a statute are clear, they must be given their ordinary meaning and not extended beyond their scope. See **KEYSTONE BANK LTD. v. EBUH (2026) 13 NWLR (Pt. 2058) 433 (SC)** and **BABA v. I.N.E.C. (2024) 14 NWLR (Pt. 1957) 155 (SC).**

The words in section 28(1) of the Act must therefore be accorded a liberally literal interpretation thereto; by giving the words their natural, ordinary and literal meaning, devoid of any embellishment. Therefore, since the section 28(1) of the Act did not mention or include "Utility Model", the section cannot be stretched or modified to include "Utility Model". The Act did not provide for it. In the construction of statutory provisions, where a statute mentions specific things or persons, the intention is that those not mentioned are not intended to be included. See **BUHARI v. YUSUF (2003) 14 NWLR (PT. 841) 446 (SC).**

This Court cannot and will not stretch section 28(1) of the Act to include "Utility Model".

It may be tempting to say perhaps the then Registrar of Patents and Designs issued Exhibit WO3, a registration for "Utility Model" in light of or pursuant to Exhibit WO2.

The Exhibit WO2 is a Bill pending before the National Assembly which seeks to repeal the current **Patents and Designs Act, Cap. P2, Laws of the Federation of Nigeria 2004**, and replace it with the **Patents Act 2022**, which recognises Utility Models.

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The Plaintiff averred in paragraph 13 of their affidavit in support of the originating summons that although there is a Bill pending before the National Assembly which seeks to repeal the current **Patents and Designs Act, Cap. P2, Laws of the Federation of Nigeria 2004**, and replace it with the **Patents Act 2022**, which recognises Utility Models, that Bill is yet to be passed by the National Assembly and assented to by the President of the Federal Republic of Nigeria. None of the Defendants controverted, challenged or disputed the deposition.

I have searched the compendium of the Laws of the Federation of Nigeria and Acts of the National Assembly and I did not find the Patents Act, 2022. The only existing law is the current **Patents and Designs Act, Cap. P2, Laws of the Federation of Nigeria 2004** which did not provide for "Utility Model".

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I shall also consider and determine the status of a Bill pending before the legislature. The Exhibit WO2 is clearly a Bill pending before the National Assembly which seeks to repeal the Patents and Designs Act, **Cap. P2, Laws of the Federation of Nigeria 2004**, and replace it with the **Patents Act 2022**, which recognises Utility Models. There is no record to show that the Bill has been passed by the National Assembly into law and assented to by the President of the Federal Republic of Nigeria.

With regard the position of a Bill pending before the National Assembly, the position of the law is straight forward; the legislative function of the National Assembly over a Bill is completed only upon assent to it by the President vide section 58(4) of the Federal Republic of Nigeria, 1999 (as amended). The Bill will not transform into a law unless it is assented to by the President. See **NATIONAL ASSEMBLY v. ACCORD (2021) 18 NWLR (PT. 1808) 193.**

Though the provisions of section 58(4) & (5) of the Constitution provide for how a Bill may transform into law, there is nothing before the Court to show or suggest that the conditions precedent in section 58(4) & (5) of the Constitution have been met. As it currently stands, Exhibit WO2 is not a law in existence and cannot supersede the Patents and Designs Act, Cap. P2, Laws of the Federation of Nigeria, 2004. A matter or an act predicated on a repealed or non-existing law is wrong and has no effect whatsoever. See **ABACHA v. A.-G., FED. (2021) 10 NWLR (PT. 1783) 129 (SC).**

Where Exhibit WO3, a Certificate granted in respect of a Utility Model application in 2021 was issued by the then Registrar of Patents and Designs pursuant to the Exhibit WO2, a non-existing law, it is null and void and of no effect whatsoever as there was no legislation in operation empowering the Registrar to issue certificate of Utility Model in that behalf. Something cannot be placed on nothing and is expected to stand; it will certainly collapse. See **MAIGARI v. MALLE (2019) 16 NWLR (PT. 1697) 69 P. 93 PARAS A – B.** In the instant case, there was even nothing to place on nothing.

It calls into question the conduct of public officials who are not guided by or refuse to be guided by the provisions of the law. The provisions of the law are meant to be strictly followed and applied and not left to the whims and caprices of public officers.

I have read the 3rd Defendant's counter-affidavit. The depositions therein have not been controverted by a further affidavit or further and better affidavit. Where depositions in a counter-affidavit not controverted by way of a further and better affidavit, the court is bound to accept the counter-affidavit as representing the true situation on ground. See **ZAKARI v. STATE (2008) 10 NWLR (PT. 1096) 468.** I would within this limited context take the counter-affidavit of the 3rd Defendant to be true same not having disputed.

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PRINCIPAL EXECUTIVE OFFICER
FEDERAL HIGH COURT
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I may therefore agree with the submissions of the 3rd Defendant that it is only a nominal party to the suit and that no cause of action was disclosed against it. That may be true to some extent but not entirely correct.

Among other questions raised for determination and reliefs and declarations sought by the Plaintiff are;

1. *"Whether, upon a community reading of the Patents and Designs Act, 1971, Utility Models are now registrable as an Intellectual Property right in Nigeria?*

2. *If the above is in the negative, whether the Registrar of Patents and Designs has acted ultra vires the powers conferred on him under the Patents and Designs Act, 1971, by registering and issuing Certificates of Registration in respect of Utility Models in Nigeria.*

3. *Consequently, whether all such registrations and Certificates of Registration issued in respect thereof are deemed null and void and of no effect whatsoever.*

4. *Whether a Bill yet to be passed by the National Assembly and assented to by the President of the Federal Republic of Nigeria can become a Law."*

Perhaps it might have been lost on the 3rd Defendant that the action seeks for the interpretation of the Patents and Designs Act and whether by the provisions of the Act, "Utility Models" are now registrable as intellectual property right in Nigeria; and whether a Bill yet to be passed by the National Assembly and assented to by the President of the Federal Republic of Nigeria can become a law. These are key legal and constitutional issues that require the inputs of the 3rd Respondent, the Attorney General of the Federation (AGF).

The role of the AGF goes beyond the 2nd and 3rd questions formulated by the Plaintiff and the functions and duties of the 1st and 2nd Defendants. The role of the AGF includes his analytical espousing and expounding of the law being the Chief Law Officer of the Federation. He has a bounden duty to guide public officials of the Federation in the application of the law and the statutory duties imposed on them.

The AGF also has a bounden and solemn duty in the exposition of the law and aiding the Court to arrive at the justice of a matter in which he is made a party as in the instant suit. The AGF has this high duty to perform.

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The argument of the 3rd Defendant that he is not a necessary or proper party, or that he is only a nominal party, or that no cause of action was disclosed against him is weakened by the decisions of the Supreme Court in **A.G., FED v. A.G., ABIA STATE (2024) 17 NWLR (Pt. 1966) 1 (SC)** and **A.-G., RIVERS STATE v. A.-G., AKWA IBOM STATE (2011) 8 NWLR (Pt. 1248) 31 (SC)** which are to the effect that the AGF can sue or be sued in his name to protect and defend the Constitution.

Given that the initial issues concern the *ultra vires* actions of a federal agency (Registrar of Patents and Designs) and the constitutionality of such actions, the Attorney-General of the Federation could and would be considered a proper party to defend the actions of a federal agency or to address constitutional questions related to federal powers.

While the 3rd Defendant argues that he cannot rectify or be responsible for the actions of the 1st and 2nd Defendants which I agree with, his role in defending the Federal Government's interests or the constitutionality of its agencies' actions might still make them a proper party in a suit challenging such actions. The AGF has a broader role in defending the Constitution and espousing the law. It is not a responsibility to be shirked. The AGF is therefore called upon to pick up the gauntlet.

In the final analysis, the Patents and Designs Act provides for two distinct registers:

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- Patents (Part I); and

- Industrial Designs (Part II).

There is no third category for Utility Models. The Act does not define or recognize a Utility Model regime.

The question 1 for determination; *"Whether, upon a community reading of the Patents and Designs Act, 1971, Utility Models are now registrable as an Intellectual Property right in Nigeria?"* is answered in the negative. Utility Models are not registrable as Intellectual Property right in Nigeria.

The question 2 for determination; *"If the above is in the negative, whether the Registrar of Patents and Designs has acted ultra vires the powers conferred on him under the Patents and Designs Act, 1971, by registering and issuing Certificates of Registration in respect of Utility Models in Nigeria."* is answered in the affirmative. The Registrar of Patents and Designs has acted ultra vires the powers conferred on him under the Patents and Designs Act, 1971.

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The question 3 for determination; *"Consequently, whether all such registrations and Certificates of Registration issued in respect thereof are deemed null and void and of no effect whatsoever."* is answered in the affirmative. All such registrations and Certificates of Registration issued in respect of "Utility Models" issued pursuant to a non-existing law and in violation of the provisions of the Patents and Designs Act, 1971 are null and void and of no effect whatsoever.

The question 4 for determination; *"Whether a Bill yet to be passed by the National Assembly and assented to by the President of the Federal Republic of Nigeria can become a Law."* is answered in the negative. A Bill yet to be passed by the National Assembly and assented to by the President of the Federal Republic of Nigeria cannot become a law.

The case of the Plaintiff succeeds and I issue the following pronouncement;

1. A **DECLARATION** that Utility Models are not registrable in Nigeria, there being no legal backing or any legislative enactment in respect of same.

2. A **DECLARATION** that the 2nd Defendant/Respondent, in the exercise of the powers conferred on him under the Patents and Designs Act, 1971, has acted ultra vires by registering and issuing Certificates of Registration in respect of Utility Models, without any legal basis.

3. A **DECLARATION** that all registrations and subsequent issuance of Certificates of Registration regarding Utility Models by the 2nd Defendant/Respondent are null and void and of no effect whatsoever.

4. An **ORDER** is hereby made restraining the 2nd Defendant/Respondent from further registration and issuance of Certificates of Registration regarding Utility Models in Nigeria until a law in respect of same has been duly passed by the relevant body, being the National Assembly.

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Sign..... Date 14/11/26
E. O. ANAGBOGU (Mrs)
PRINCIPAL EXECUTIVE OFFICER
FEDERAL HIGH COURT
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HON. JUSTICE MUSA KAKAKI
JUDGE
15/10/2026

FEDERAL HIGH COURT Cashier's Office Date LAGOS

Parties absent

Ayodele Osanyinbi for the Plaintiff

0815 3841 3330 Pls collect the sum of ₦5,000 for the CTC

14/11/26