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REFLECTION ON PARTNERSHIP LAW IN NIGERIA

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1. SOURCES OF PARTNERSHIP LAW

Prior to 1958 the only law in Nigeria regulating Partnership law in Nigeria is the English Partnership Act of1890 which is a statute of General Application in Nigeria [1]. In 1958, the old Western Region of Nigeria now comprising, Lagos Oyo, Ondo, Ogun , Osun, Edo and Delta States enacted their partnership law 1958 [2]. Lagos state also re-enacted the western region partnership Act Law of 1958 [3]. The 1958 Law was a re-enactment of the partnership Act of 1890 (U.K), and S. 46 of the English Partnership Act of 1907 (U.K), In Nigeria today, the Partnership Act of 1890 applies to the rest of Nigeria apart from the states of old Western Region and Lagos state. In this paper, we shall use the partnership law of Lagos state cap. 139. As the basis of our discussion, and where, there is disparity we shall identify the difference in the laws.

The second source is the rule of Equity and Common law applicable to partnership in so far as they are not inconsistent with express provisions of the Partnership Act or any other law. S46 of the 1890 Act provides that,

"*The rules of equity and of common law applicable to partnership shall continue to be in force except so far as they are inconsistent with the express provisions of this Act*"

2 DEFINITION:

S1 of the Law defines partnership as "the relationship which subsists between persons carrying on business in common with a view to making profit".

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1 Ozodo V Okoniazo {1960} 2 NGLR 29
2 CAP. 86 of Western Region, Nigeria
3 L.S.L.N.16 of 1972 commencement date 1958 cap. 139

The essential components of partnership therefore are:-

1. There must be a business
2. There must be more than one person managing or interested in the management of the business.
3. There must be profit motive and sharing of profits , though not necessarily equally.
4. There must be a necessity for an agreement to enter into partnership by the partners[4]

James J.L. describes partnership thus "An ordinary Partnership is a partnership composed of definite individuals bound together by contract between themselves to continue combines for some joint object, either during pleasure or during a limited time, and is essentially composed of the persons originally entering into the contract with one another".

The law also tried to draw a distinction between companies registered under the companies and Allied Matters Act [5] and incorporated companies generally and partnership, by declaring that all such incorporated companies are not partnership within the meaning of the law. It follows, that the partnership law will cease to apply as soon as a partnership is incorporated under the Companies and Allied Matters Act. 1990 , the latter Law regulates the affairs of the business and not the partnership Law[6],

FORMATION OF PARTNERSHIP

From the definition, it is clear that a partnership is formed when two or more persons form a business relationship; profit motive is the main essence of the relationship. A partnership may be created either orally or in writing and in the latter case it may be by Deed. The Law also prescribes guiding rules for ascertaining the existence of a partnership [7] . The profit motive and agreement to share profits is essential aspect of partnership thus in the case of Evarist Ugoji v T. Uzoukwu [8], the Supreme Court of Nigeria held that an ordinary joint purchasing venture without an agreement to share profits, could not amount to partnership. However, in all cases, the overriding consideration in any partner-

4 James J.L. in Smith V Anderson (1880) 5. ch.D 247 of 273
5 cap. 59 of the laws of the federation 1990
6 S.3(2) (a) (b)
7 S.2 of 1890 Act, S4 cap 86, 54 cap. 139
8 (1972) ECSCL259, (1972) ALL N.L.R. 292

ship is the agreement between the parties [9]. Upon formation, the partnership is referred to as a "firm". A firm means persons who have entered into partnership with one another, and the firm name refers to the name under which the business of the firm is carried on[10].
The maximum number of persons that can successfully enter into partnership is 20.[11]

As regards capacity, the rules relating to contract also applies. As regards infant for instance, the rule in Steinberg v Scalahead [12] applies, where a minor has paid money under a void or voidable contract, he cannot recover it unless there has been a total failure of consideration.

A partnership must not be formed for illegal purposes [13]. Neither must it be formed contrary to law e.g carrying on business with more than the stipulated number [14].

REGISTRATION

All partnerships must be registered under the law, and in fact it is illegal for anyone to operate or pretend to operate as a firm without the registration.

A firm must be registered under **PART B BUSINESS NAMES** registration of the Companies and Allied Matters Act. 1990 [15]. Registration is done by filling the requisite forms and state the names of all partners in the firm, the general nature of the business, full postal address of the principal place of business and the corporate name of the firm. [16]. The partners must also submit their passport photographs to the registrar of Business Names, who upon due processing issues the certificate of registration. The firm may use name of the partners, or add other names to specify the name of nature of its business. Partnership can be brought about by agreement the agreement must be expressed in writing, oral or implied or inferred from conduct of the partners.

In practice it is much more convenient and proper to form a partnership by proper partnership agreement for the following reason: (1) for purposes of income Tax [17]

9 Uredi S.A v Dada Jacob O. (1988)All N.L.R. 214 see also S33 cap 139
10 S. 2 of cap 139
11 S. 19(3) Companies and Allied Matters Act 1990 see also, Akinloye V A.I.T. 1961) WNLR 215
12 (1933) 1 ch. 452
13 Thwaotes V Coulthwaites (18966) 1 ch. 296
14 see S. 656 of Companies and Allied Matters Act 1990]
15 S. 657 CAMA 1990
16 S. 19(3) Companies and Allied Matters Act 1990
17 S.6 Income Tax Management Act. 1961

(2) A formal definition of rights and duties of partners is also necessary, because it is only where there is no such agreement that partnership Act applies[18]. An express and exhaustive agreement can therefore vary or modify the partnership Act.

IDENTIFICATION OF PARTNERSHIP

S4 of cap. 139 described situations where the existence of a partnership can be determined. Taking part in profit sharing may be evidence that a person is a partner, but it
is not a conclusive evidence of existence of partnership[19]. In the case of Cox V Hickman [20]. A trader entered into an agreement with his creditors whereby he agreed to carry on his business under their supervisions and to pay the debt by giving them a share of the profit. It was held by the House of Lords in England that this agreement does not constitute the creditors as partners. It will be so only if the debtor carries on the business for and on behalf of the creditors the receipt by a person of a share of profit is prima-facie evidence that he is a partner, but not conclusive evidence.

It was held it the case of Bakiley v Consolidate Bank[21] that participation in profits although strong evidence, is not conclusive evidence of a partnership. The question of partnership must be decided by the intention of the parties to be ascertained from the contents of the written instruments if any and the conduct of the parties.

EFFECT OF REGISTRATION

Upon due registration the partnership is regarded as a firm. A firm is not a separate legal entity, and so the liability of partnership is unlimited, though the partners can be sued in the firm name. [22] Jibowu C.J explain the position of the law thus',

> "It is a matter of legal history that Partners in a firm which had no legal entity had to sue jointly in their own names and to avoid this lengthy process partners were allowed by the rule to sue in their firm's name.

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18 Mellowe & March & W. Company v Court of Wale (1872) L.R. 4 PC 419
19 S.33 CAP 139
20 (1860) 3.H.L. CASES 268
21 (1888) 38ch. 238
22 Jibowu C.J. in Makanjuola v Olupitan (1958) WNLR 165

Hence the rule is described as a rule of convenience. But this rule of convenience still makes it compulsory for the court to order the firm to disclose the names of all partners if asked for by other party to the suit, in order to show who and who are the members of the firm. [23]

RIGHTS AND DUTIES OF PARTNERSHIP INTERSE

No matter the nature of the partnership, every partner is expected to act in utmost good faith to other partners the doctrine of Uberrinai fide applies.

As stated above, when there is partnership agreement there will be no problem in resolving disputes, as the rights and duties will be resolved by reference to the articles. When the terms of the partnership agreement is silent or there is no express agreement at all, the rights and duties of partners will be regulated by the partnership laws

1. The partners have the right to vary or modify by the consent of all the partners the partnership agreement, and such consent may be either expressed on inferred from a course of dealing[24]

2. All properties purchased with partnership funds unless contrary intention is proved belongs to the partnership, and all partnership properties must be held and applied by the partners. Strictly and exclusively for the purposes of the partnership and in accordance with the partnership agreement.[25]

3. All partners are entitled to share equally in the capital and profit of the business and must contribute equally towards the losses, whether of capital or otherwise sustained by the firm. [26]

4. Every partner has the right to have the firm run according to the article. So far as the running of the business is concerned majority rule applies. No partner can be excluded from the partnership by the decision of the majority in the absence of any authority to do so in agreement[27].

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23 at 166
24 S.20 cap 139
25 S. 21 and 22 cap 139
26 S.25 (a) see also Halaby & Casslation Eliot & Co. V Halaby (1951) WACA 18
27 S. 26, Ozulu V Okuwsa (1961) ENLR 69

5. No new partner can be introduced without the consent of all the partners , so each partner has the right to prevent or admit another member.

6. Every Partner has the right to have the books kept at the head office and the right to have it examined by himself or through his agent whenever he wishes to do so [28].

7. Ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change may be made in the matter of the business without the consent of all existing partners[29]. Majority cannot expel any partner unless the power to do so has been expressly conferred on them by agreement.[30]

8. Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representative[31].

9. Every partner owes a duty to account to the firm for any benefit derived by, him without the consent of the other partners from any transaction concerning the partnership property, name or business connection [32]

10. No partner has the right to engage in any business in competition with the partnership business.[33]

However, al the above may be varied, modified and or excluded entirely by agreement, or unanimous consent of the partners, and consent to vary may be implied from the course of dealing between them.

LIABILITY BY HOLDING OUT.

Generally speaking partners alone are liable for acts of the firm. However, a person will be liable though not a partner "if by word spoken or written or by conduct represent himself or knowingly allow himself to be represented as partner of the firm. He is liable to third parties who relied on such representation to give credit to the partnership.

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28 S. 24 (1)
29 S. 24 (L)
30 S.26
31 S.26
32 S.29
33 S.30(D)

S.15 states," every one who by words spoken or written or by conduct represents himself or who knowingly suffers himself to be represented as a partner in a particular firm is liable as a partner to anyone who has on the faith of any such representation given credit to the firm whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation or suffering it to be made.

Provided that where after a partner's death the partnership business is continued in the old firms name the continued use of that name or of the deceased partner's name as part thereof shall not of itself make his executors, administrators estate or effects liable for any partnership debts contracted after his death[34].

The third party dealing with the firm must in order to succeed against the "held out" partner have relied on the representation, merely transacting business with a firm using a letterhead with the name of a retired partner is not in itself holding out of such retired partner.[35] He must have held himself out or suffer himself to be held out, holding out without the knowledge of the person being held out will not come within the ambit of the section. In the case of Matyn V Gray [36], defendant was introduced to a third party as a partner in the firm, but in the actual sense he was not but he did not deny the introduction. He was held liable for the debt of the firm.

A partner being a partner who acts as manager of the business with be liable to third parties by holding out [37]. Liability arises only if representation is acted upon by third party and the third party alters his position by so doing

THE RELATIONSHIP OF PARTNER AND OUTSIDERS : NATURE OF LIABILITY.

In all cases every partner is an agent of the firm and his other partners for the purpose of business of the partnership and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member bind the firm and his partners unless the partner

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34 See also S.14 1890 Act
35. Cabinet company Ltd V Ingram & Christmas (1949) 1All ER 1033
36 (1863) 14 giggins 824
37 Bevan v The National Bank Ltd (1906) 25 TLR 25

so acting has in fact no authority to act for the firm in the particular matter and the person with whom he is dealing either knows that he has no authority or does not know or believe him to be a partner. [38]

Though it is generally accepted that partners are general agents of their firm, it should be noted that the agency is restricted to only acts necessary for carrying in the usual way business of the kind carried on by the firm. The partner use the funds of the partnership to invest in business that has nothing to do with the usual business of the firm and later turn round to say he was acting as agent for the firm, neither can a Partner take credit in the name of the partnership for goods not connected to the business of the firm and expect the partnership to take responsibility in this case the creditor may sue him personally and recover from the partner whatever credit he has incurred [39]. To bind the firm, he must at least have apparent authority or held out by the firm to have authority to contract on behalf of the firm in the particular matter. The third party must also not be fixed with knowledge of lack of authority to contract on behalf of the partnership.

The partners may also enter into contracts or agreements on behalf of their firm. In the firms name or in any other manner showing an intention to bind the firm by any person thereto authorized, is binding on the firm[40]. However, the purpose of the agreement or contract must be apparently connected to the firm's ordinary course of business, otherwise the firm is not bound by such contract or agreement, and the partner who entered into such a transaction must be held personally liable to the contract or agreement.[41] section 9 re-emphasized the common law position of the law that it has been agreed between the partners that any restrictions shall be placed on the power of any one or more of them to bind the firm no act done in contravention of the agreement is binding on the firm with respect to persons having notice of the agreement. In the case of African Continental Bank Ltd v Babayemi and Ogunlende.[42]

The two defendants trading under the name and style of mercury builders were sued by the plaintiff Bank for the payment of the sum of $5,135.162.9d. being the balance owing by them in respect of bank overdraft the defendants denied liability but filed different defenses. The first defendant alone applied to the

38 S6 cap 139
39 African Continental Bank Ltd. V Babayemi and Ogunlende (1969) II N.L.R. 703/ S.8
40 S.7
41 S.8
42 (1969) all N.L.R. 703

plaintiff Bank to open a current account in the name of the firm. He signed as the only person whose signature was to be recognized it was contended on behalf of the 2nd defendant that because the opening of the firm's account was done without her authority and also because the 1st defendant was the only one operating the Bank account she was not liable. The court held [43]

1. One of the most important of the implied powers of a partner is that of borrowing money at the credit of the firm, however, this power only exists where the business is of such a kind that it cannot be carried on in the usual way without such a power.

2. A firm carrying on business as Building and Civil Engineering Contractors is not a trading firm for the purposes of the rule that each member of a trading firm has implied authority to borrow money on the credit of the firm for partnership purposes.

3. The firm in this case not being a trading partnership it became necessary to look for actual authority or ratification of the 2nd defendant to bind the firm. The opening of the account and its operating, including the overdrawing have not been proved to be known to the 2nd defendant. Consequently, the 1st defendant cannot bind the firm with the repayment of the overdraft as claimed and judgment would be entered for the plaintiff against the 1st defendant only.

It is important therefore to designate the business whether it is a trading business or not, if it is a trading business, then the partners have the apparent authority to bind their firm. A trading business has been defined as one which consists of buying and selling goods.[44]
In the English case of Levy V Pye [45], it was held that if a bill of exchange or promissory note be drawn, accepted or endorsed by one of two persons who are partners in a business which is not a trade, e.g. atternies, in the name of the firm, and the partner who did not herite the names of the firm denies the drawing acceptance or endorsement respectively, the plaintiff must give evidence of the authority of the other partner to draw, accept or endorse in the name of the firm; but in the case of a commercial firm, this is not necessary as a general authority[46].

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43 per Dosumu J High Court of Lagos State
44 Higgins v Beanuhamp (1914) 3KB 1192 at 1195 per Lush J.
45 174 E.R. 586
46 See also Bank of Australia v Breilliat 13 E.R. 642

The authority to pledge the credit of the firm even if is for the purpose of the partnership business, where the partnership business is not a trading business, must be given by the other partners before pledging the credit of the firm. However, where this was not done, it could be ratified by the partnership, the only problem here is that the ratification could be withdrawn by the partnership in which case the partner who pledge the credit of the partnership will be held personally liable. In the English case of Yates V Delton[47] where, two partners carried on business together as brokers, under an agreement that they were to get orders on commission and divide the expenses. One of them travelled for orders and having incurred expenses drew a bill for the first time, in the partnerships name, to raise funds to execute the order. The other accepted it but before it was issued counter manded the authority to negotiate and it was negotiated without his knowledge it was held that the mere partnership did not render him liable upon it

The authors of Lindley on partnership[48] explains the position of the law on Borrowing money by partners, "One of the most important of the implied power of a partner a that of borrowing money at the credit of the firm.....At the time, the implied power of borrowing money like every other implied power of a partner, only exists where the business is of such a kind that it cannot be carried on in the usual way without such a power. If money is borrowed by one partner for the declared purpose of increasing the partnership capital or of raising the whole or part of the capital agreed to be subscribed in order to start the firm or If the business is such as is customarily carried on ready – money principles e.g. mining, solicitors or cinematograph theater proprietors, the firm will not be bound unless some actual authority or ratification can be proved"

It is necessary therefore to ascertain the nature of the business of the firm before deciding whether a partner has an implied authority to bind the firm or actual authority or ratification has to be proved.

NATURE OF LIABILITY

Section 10 of the Law declares ".....every partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while he is a partner and after his death his estate is also severally liable in a due course of administration for such debts and obligations so far as they remain unsatisfied, subject to the prior payment of his separate debts". In claims in

47 (1858) 28.L. EX. 69
48 12TH edition, pg 177

contract the liability is joint, i.e, the partners are jointly liable for debts, credits or breach of contract contracted by the firm or authorized by them or ratified, by the firm where this was done by a partner on behalf of the firm for the partnership business.[49]

Liability for torts, frauds and breach of trust the liability is both joint and several. Section 11, state,".....whereby any wrongful act or omission of any partner acting in the ordinary course of the business of the firm, or with the authority of this co-partners, was or injury is caused to any person not being a partner in the firm, or any penalty is incurred, the firm is liable therefore to the acting or omitting to act."

The plaintiff must prove that the act or omission he is complaining about was done in the ordinary course of business of the firm or with the authority of the firm, if there is no authority for the partners action or otherwise not done in the ordinary course of the business of the firm, the partner will beheld personally liable.
Section 13 finally declares the position of the law under common law, that "every partner is liable jointly with his co-partners, and also severally for everything for which the firm, while he is a partner therein". "becomes liable"

In the case of Bohsali & Co Ltd V Arikpo [50], the Supreme Court held that liability for debts is joint and not several. In the English case of Kendall V Hamilton [51] A creditors sued a member of a firm and got judgment, but was unable to levy sufficient execution to satisfy his debt. He subsequently discovered that there was a wealthy partner and commenced an action against him. It was however held that the debt was joint and not several one, and that as he had already recovered judgment against some of the members of the firm the plaintiff could not commence fresh proceedings against a sleeping partner; it being settled that a judgment against some of several joint co-contractors is a bar to any further action against the others. The essential point is that there is no requirement to sue all the partners, but if the plaintiff sues one or more but not all and obtains judgment then he cannot subsequently proceed against the others[52].

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49 Re Wvexham Molds (1899)1ch. 205
50 (1966) all N.L.R 153
51 (1878 – 78) 4 App. Cas 504
52 Boshsali & Co. Ltd V Arikpo supra. P. 156

Generally, speaking every partner is liable for the debt of the firm. A third party has a choise to sue any or all the partners; he may lay execution on firm property and those of members. If he sue each partner separately, he can only enforce judgment against that one only and once judgment is pronounced against that one he cannot get judgment against others because the liability of partners are joint, it is already merged in that single judgments[53].

There are two exceptions to the rule above.

1. Dealings with partnership where there is a deceased partner, in the case of joint liability, the estate of the deceased is severally liable.

2. Doctrine of merger does not apply where third party has separate cause of action even on the same matter, if he proceed against one and the judgment is not satisfied, he can proceed against the other provided he has a separate action to pursue [54].

As noted above, in cases of tort fraud, breach of trust or any penalty, liability of partner is joint and several [55] to render any partner who is not a party to the wrong liable, it must be proved that the wrong doers acted on the authority of the other partners and in ordinary practice, not only acted on the authority but must act in the course of the partnership business, in which case, the firm will be liable to the extent of the liability of the defaulting partner. In the English case of Hamlyn V Houston a partner (defendant) in [56] a firm wrote a clerk in another firm to disclose information relating to the firm, in the process the other firm suffered as a result and sued defendant it was held that the defendant firm was liable as the wrongdoing partner acted in the ordinary course of business to obtain information about a competitor [57]. If the wrong is appropriation of property or where the property was received by the wrong doer acting within the scope of authority, the firm will be held liable.[58]

RETIRING PARTNERS

Generally speaking, a member who has retired is not liable for liabilities incurred by the firm after his retirement. But he will be liable to third parties who are not aware of his retirement from the firm[59]. In fact the law imputes lack of

53 See Lindley on partnership (12th Ed) p. 236 at see
54 Wegg Prosser V Evans (1895) 1QB 108
55 S.11 cap 139, S. 12 of (1890) Act
56 (1902) 87 LR 500
57 see also S11
58 Cox V Hickamn (1860) 8H.L. 304 Mercantile Credit Co. Ltd v Garrod (1962) 3 All E.R P. 1103, Re Briggs & Co (1906) 95 L.T 61, British Homes Assurnace Corporation Ltd v Paterson (1902) L.T 82, Rhodes V Moules (1894) L.T. 599
59 Re Cabinet (1949) 1 Al E.R. 100

knowledge of any change to third parties[60] dealing with the firm, even through he does not have anything to do with the firm. The way out is for the retiring partner to give actual notice to regular customers of the firm, Section 37 (2) states:

> "An advertisement in the gazette of the state in which a firm has it's principal place of business and in any newspaper circulating in that state shall be notice as to persons who have not dealings with the firm before the date of the dissolution or change so advertised."

It must be noted that a partner cannot escape liability for debts incurred by the partnership prior to his retirement.[61] . In order to escape and be fully discharged the retiring partner must enter into agreement with the members of the newly constituted firm and the creditors, this agreement may either be express (written) or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted. [62]

INCOMING PARTNER

An incoming partner admitted into an existing firm does not thereby become liable to the creditors of the firm for anything done before he became a partner[63] in all cases existing partners have the right to reject introduction of new partners and unless and until all partners agree to the admission of new members, no new member can join the firm.

DISSOLUTION OF PARTNERSHIP

If the partnership is at will the partnership can be dissolved at anytime at the will of any of the partners. Where the partnership was brought about by Deed, notice must be given in writing to the others, in which case verbal notice is not sufficient.

A partnership can be dissolved under the following circumstance,

a. If entered into for a fixed term, by the expiration of that term,
b. If entered into for a single venture or undertaking, by the termination of that venture or undertaking.
c. If entered into for an undefined time, by any partner giving notice to the other or others of his intention to dissolve.

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61 S. 18(2)
62 S. 18(3)
63 S.18 (1)

In the last instance, the partnership is dissolved as from the date mentioned in the notice as the date of dissolution , or if no date is so mentioned, as from the date of the communcation of the notice [64]

d. Every partnership is automatically dissolved upon the death of a partner

e In the event of bankruptcy of any partner the partnership shall stand dissolve.[65]

f. Where any partner mortgaged or otherwise charge his interest or share in the partner ship business, the partnership shall at the option of the other partners be dissolved.

g. A partnership is in every case dissolved y the occurrence of any event which makes it unlawful for the business of the firm to be carried on or far the member of the firm to carry it on in partnership[66].

h. Partnership business may be dissolved by order of court upon the application of any partner, that the partnership be in the following circumstances:-

i. When any partner is adjudged a lunatic or declared to be permanently of unsound mind. The application in this respect may be brought by the next friend, or person having title to intervene or by any other partner. [67]

ii. When any partner becomes in any way permanently in capable of performing his part of the partnership agreement.[68]

iii. When a partner has been found guilty of acts on conduct calculated to affect prejudicially the carrying on of the business [69].

iv. When a partner, other than the partner suing, willfully or persistently commits a breach of the partnership agreement or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with him [70].

64 S33 cap 139, S. 26 and S.32 of 1890 Act
65 S.34. Cap 139
66 S. 35 cap 139, Akinlose V A.I.T , supra
67 S.36(a)
68 S.36 (b)
69 S.36 (c)
70 S.36 (d)

v. When the business of the partnership could only be carried on at a loss[71]

vi. When the court is of the opinion that it is just and equitable to dissolve the partnership.

In case , where a partnership is dissolved by death of a partner, the court has a discretion to order the continuation of the firm by allowing the surviving members to continue the partnership business[72]

On the dissolution of a partnership, the partnership, property must first be applied in payment of the debts and liabilities of the firm, and the balance must be applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm[73].

ACTION BY AND AGAINST PARTNERSHIP

The firm may institute action in its name against third parties,
The firm on the other hand may be sued in the name of the firm. However the plaintiff may joint the partners as defendants personally where the liability is joint and several. In some cases, the plaintiff may opt to sue one or more of the partners without joining the other partners as co-defendants to the suit.

New joiner will not defeat a claim and it is wrong to strike out a claim solely on the view that all the partners ought to have been sued[74].

Where partners are sued as partners, in the name of their firm, the writ shall be served either upon any one or more of the partners or at the principal place, within the jurisdiction of the business of the partnership[75] and where persons are sued as partners in the name of their firm, they must appear in their own names and subsequently the matter will be allowed to proceed in the name of the firm.

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71 S.36

72 Ikwuewsi V Cole 19 N.L.R 87, Farshood V Cham (1953) NLR 106

73 S 40 cap 139

74 Bohali & Co Ltd V Arikpo (1966) All N.L.R 153

75 Order 14r.37 High Court of Lagos State Civil Procedure Rules (1994)

CONCLUSION

The above had been an attempt to take a closer look a the partnership law in Nigeria, highlight the salient and important areas of the law and simplify the technicalities involved. It is note worthy that there is scarcity of reported cases in this area of the law, mainly due to the simple reason that most partners do not bother to go to court, and where they do the matters rarely reach the Supreme Courts, and since majority of cases in the High Courts are not reported , and so lost to use by researchers and development of the law, thouigh, the larger part of the law of partnership and in fact the partnership laws are simple adoption to at the common law rules and doctrines of equity. It is now obvious that we can now refer to Nigeria law of partnership.