



## Federal Republic Nigeria v. Dr. Anu Adepoju & MedContour:

### **Federal High Court Conviction sets Notable Precedent for Non-Compliance with FCCPC Regulatory Summons**

The Federal High Court has reinforced the regulatory jurisdiction of the Federal Competition and Consumer Protection Commission (FCCPC) with a new judgment convicting defendants for violating multiple sections of the Federal Competition and Consumer Protection Act, 2018 (FCCPA) including Sections 33(3)(a), 113(1)(a), 111(1)(a), 111(2), 33(b), 111(1)(d), 159 and 110. This judgment highlights the obligation of businesses to comply with investigative summons, disclosure requests and cooperate with the FCCPC's regulatory investigations.

The Judgment, delivered by Honourable Justice A.M. Liman in Charge No: FHC/L/CR/125C/2020, Federal Republic of Nigeria v. Dr. Anuoluwapo Oluwafunmilayo Adepoju & MedContour Services Ltd, is the first criminal conviction under the FCCPA, highlighting the evolving judicial trend on the interpretation of FCCPC's multi-sectoral competition and consumer protection jurisdiction. Slingstone LP is pleased to have provided regulator-side legal representation in this landmark case.

### **Case Details:**

The defendants, Dr. Anuoluwapo Oluwafunmilayo Adepoju and MedContour Services Limited, faced a 5-count charge. The charges included:

- Failing to appear before the FCCPC in compliance with a summons dated April 15, 2020, violating Sections 33(3)(a) and 113(1)(a) of the FCCPA,
- Refusing to produce required documents, violating Sections 111(1)(a) and 33(3)(b) of the FCCPA,
- Intentionally withholding documents needed for the investigation, violating Section 111(1)(d) of the FCCPA,
- Failure to comply with the FCCPC's Notice of Investigation, violating Section 159 of the FCCPA; and
- Obstructing the FCCPC's investigation, violating Section 110 of the FCCPA.

### **Background:**

The FCCPC initiated an investigation into consumer complaints about serious injuries from failed cosmetic surgeries performed by the defendants. The complaints alleged that the services were unsafe, with false guarantees and misleading statements. FCCPC issued a Notice of Commencement of Investigation and disclosed that the subject and scope of the inquiry is regarding Sections 123, 124 and 125 of the FCCPA which prohibit an undertaking or service provider in any industry from making misleading statements, issuing guarantees or statements about the efficacy of skills or probable outcomes of services that are untested or scientifically unproven.

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However, the Defendants declined to comply with the Notice of Commencement of Investigation (with the document requests) and the Summons to Investigative Hearing notified through business address postings and social media announcements.

The defendants argued that investigating complaints from failed elective surgeries fell outside the FCCPC's statutory scope, which they claimed was under the Medical and Dental Practitioners Act. They also challenged the validity of service of the regulatory summons by pasting on their business address and cited the COVID-19 lockdown as a just cause for not complying with the summons.

## The Key Findings:

In the Judgment, the Court identified the elements of the offence and considered whether there was a reasonable cause for disobeying the investigative summons, withholding documents required to be produced in the investigation and obstructing regulatory investigation. Importantly, the Court considered the validity of Defendants' contention against the regulatory powers of the FCCPC regarding a medical service. The Court made the following key findings:

- By virtue of Sections 1(c), 2, 3(1), 17 (a, e, h, l, m, s, t, x, z), 18 (b), 104 and 164 of the FCCPA 2018, FCCPA “applies to all undertakings and all commercial activities within or having effect within Nigeria” except as may be indicated otherwise. The expression “all undertakings and all commercial activities” is generic and includes health services so far as it relates to consumer protection. Consequently, the Court dismissed the Defendants' challenge to FCCPC's investigative powers. The Court affirmed that FCCPC's statutory powers to investigate alleged consumer rights violation regarding all goods and services is without exception and includes health services,
- The Defendants had sufficient notice or knowledge of the commencement of investigation against them and the notice to attend and produce documents required in the investigation but failed or refused to appear at the investigation or inquiry without sufficient cause.
- The Defendants' previous deposition in the civil action - Suit No: FHC/L/CS/ 540/2020: Dr. Anuoluwapo Olufunmilayo v. FCCPC & Anor (a civil action filed to challenge FCCPC's investigative powers and secure injunction against the investigation), contains their admission of knowledge of the investigation, the summons and the regulatory disclosures. Further, the Court found that the deposition made on 5th of May 2020 was before the registry of the Court during the same COVID-19 lockdown and held that the national COVID-19 lockdown did not afford sufficient cause for non-compliance with the regulatory summons and disclosure.
- All conducts that interfere with or prevent the conduct of investigative hearing under the FCCPA (including refusal to attend hearing or failure to cooperate with regulatory disclosure) amount to obstruction of investigation, a specific offence punishable under the FCCPA.

The court convicted Dr. Anuoluwapo Funmilayo Adepoju and MedContour Services Limited on all five counts. They were sentenced to one year of imprisonment for each count, to run concurrently if they default on paying the fines.

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## Concluding Remark

This judgment serves as a critical precedent which reaffirms FCCPC's extensive regulatory reach, covering all commercial activities, including health services. A Nigerian Court has also established the seriousness with which interference with investigative powers is treated by the Court, signifying that regulatory compliance is not optional.

More regulators may rigorously pursue enforcement and where necessary, actively seek judicial support as demonstrated in this 4-year long criminal prosecution of violation of the FCCPA.

Given the consistency demonstrated by the Commission in the recent past, this determined focus to explore judicial enforcement may represent how FCCPC typically addresses violation of competition and consumer protection principles across all sectors of the economy.

## Have a question?

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