



Administration under CAMA 2020

Emerging Procedural Issues in Nigerian
Insolvency Practice – Part III



Part III

Common misconceptions and observations with the administration procedure in practice

Wrong mode of presenting Administration Applications and same not being treated as substantive proceedings

Administration Applications are substantive proceedings and ought to be treated as such. Although CAMA 2020 does not expressly prescribe the mode by which an administration application may be presented before a court, the Insolvency Regulations 2022 provide that an application for an administration order be headed “**Administration Application**”⁴¹ supported by an Affidavit and a Statement of the proposed administrator’s consent to act. In spite of the clear provisions of the Regulations, many applicants elect to approach the Court by way of an Originating Application, which is not the same as an Administration Application—a misconception likely attributed to the use of the term “application” by CAMA. As explained above, the procedure prescribed by the Regulations mirrors the procedure obtainable in England, which mandates an application for an administration order to be headed “Administration Application” as contained in Form Comp. 8 of the Bankruptcy and Insolvency Forms.⁴²

The question which then arises is whether the provisions of the Regulations create a new Originating Process – an Administration Application or whether an applicant may adopt an Originating Summons—which is the prescribed method of commencing actions under Company Proceedings Rules—with the mandatory requirement that the originating process be headed “Administration Application”. The former position is to be preferred as having a process titled both “Originating Summons” and “Administration Application” might occasion an absurdity which could not have been what was intended by the drafters of the legislation. For this reason, any application for an administration order brought by way of an Originating Application or any other originating process not being an Administration Application

⁴¹ R. 3.03 of the Insolvency Regulations.

⁴² R. 3.3 The Insolvency (England and Wales) Rules 2016. A specimen of the “Administration Application” in the Form Comp. 8 can be accessed here <https://www.gov.uk/government/publications/form-comp-8-rule-33-administration-application> (last visited on 7 September 2026).

ought to render the action incompetent, consequently robbing the Court of the jurisdiction to hear and determine the application.⁴³ A case may, however, be made that where there is substantial compliance with the Regulations, even when the proceedings are commenced via a traditional originating process, the Court may lawfully exercise its jurisdiction.

The Regulations further provide that the Administration Application must contain the name of the company, a statement outlining the statutory basis upon which the application is being presented, the details of the shareholding of the company⁴⁴ or that the company is limited by guarantee, the reason why the Applicant believes that the company is or is likely to become unable to pay its debts, the name of the proposed administrator, and the service address of the Applicant.⁴⁵ In addition, the affidavit in support of the Administration Application must contain the company's financial statements, details of any security known or believed to be held by the creditors of the company and whether such security entitles them to appoint a receiver or administrator, a statement that a receiver has been appointed where an appointment has been made, and details of any insolvency proceedings against the company.⁴⁶

Regulation 3.06(3)(f) further requires disclosure of any pending legal proceedings against the company, which is material information that enables the Court to assess the company's overall position and the feasibility of the proposed administration. All of these requirements underscore that administration orders should not be granted lightly and that Courts must thoroughly scrutinise administration applications before making the administration order, as the grant of an administration order not only restrains the affected parties and third parties (including secured creditors) from exercising their bonafide commercial and contractual rights but may also result in administration proceedings transitioning into dissolution without the commencement of winding up proceedings or the subsequent appointment of a liquidator.⁴⁷ It therefore follows that an application with such extensive and far-reaching implications is a substantive application which should not be susceptible to the "grab and go" approach of receivership.



⁴³ **Harry v. Menakaya** (2018) 9 NWLR (Pt.1623) 113 – the Supreme Court held that failure to follow the prescribed procedure for the commencement of an action, renders the action incompetent and deprives the Court of jurisdiction to adjudicate upon the action.

⁴⁴ This includes information on any issued and called-up capital, the number of shares into which the capital is divided, the nominal value of each share and the amount of capital paid up or treated as paid up.

⁴⁵ R. 3.03(2) of the Insolvency Regulations.

⁴⁶ R. 3.06(3) of the Insolvency Regulations.

⁴⁷ S. 522 of CAMA 2020.

Wrongful grant of “interim administration orders” without service of the application on relevant parties

On a proper reading of the provisions of CAMA and the Regulations, a court cannot make an administration order without service of the application on the company, the directors, and the creditors of the company.⁴⁸ This position should ordinarily go without saying because of the consequent effect of an administration order on these persons and entities: for the company, where the application is brought by a party other than a secured creditor who would have a contractual and statutory right to make such an appointment out of court, the powers of its directors are immediately curtailed with the assets vested in the administrator; for the secured creditors, on the other hand, their rights to enforce their contractual rights to security are suppressed by the appointment of the administrator, who is also granted an associated right to dispose of the assets in the course of the administration.

Regulation 3.08 of the Insolvency Regulations 2022 sets out a comprehensive list of persons on whom service must be effected: (a) any person who has appointed, or is entitled to appoint, an administrative receiver of the company; (b) any person who has appointed, or is entitled to appoint, an administrator of the company under a qualifying floating charge; (c) any holder of a qualifying floating charge; (d) any supervisor of a company voluntary arrangement in force for the company; and (e) any receiver or liquidator appointed. The breadth of this service requirement reflects the legislature’s intention to ensure that all parties whose rights may be affected have notice and an opportunity to be heard before the administration order is made. The rationale for mandatory service is grounded in the principles of natural justice—*audi alteram partem*—which require that no person’s rights be adversely affected without an opportunity to be heard. It is, however, often touted that CAMA empowers a court to appoint an administrator on an interim basis; not only is this position wrong, it negates the statutory service requirement under CAMA and the Insolvency Regulations. This wrong interpretation stems from a misunderstanding of the provisions of section 451(1)(d) of CAMA, as the court’s jurisdiction to make an interim order is limited to preservatory orders such as Mareva orders preventing the dissipation of the company’s assets and suspension of the powers of the directors, but not for the purpose of appointing an administrator. This position was extensively and decisively dealt with by the English Court in *SB Corporate Solutions Ltd v Cohen Andrew Prescott*,⁴⁹ where the Court held that the appointment of a supposed “interim administrator” was not within the context of administration proceedings and emphasised that notice of the administration application must be given.⁵⁰

Furthermore, the suggestion that a court may make an administration order appointing an administrator on an interim basis is at variance with the established principle of civil procedure under Nigerian jurisprudence, which prohibits a court from pronouncing on the issues in the substantive suit at an interlocutory stage.⁵¹ This principle ensures that a respondent is not deprived of his right to contest the substantive issues before the court has had the opportunity to consider the matter fully. Therefore, if a court were allowed to make an

R. 3.08 of the Insolvency Regulations.

(2011) EWHC B25 (Ch.) at 245.

⁴⁸ Similarly, in *Re Rowbotham Baxter Ltd* (1990) BEE 113 the Court emphasized the importance of the administration application before the Court can validly exercise jurisdiction of any such application.

⁵¹ *Buremoh v Akande* (2017) LPELR-41565(SC).

interim order appointing an administrator in the context of hearing an administration application, this would effectively leave the court with no orders to be made in the substantive suit, as it would have prejudged the substantive issue (making an administration order and appointing an administrator) at an interlocutory stage. The administration application may only be heard by the court when service of the application is effected as mandated by statute, particularly service on the holder of a qualifying floating charge, whom CAMA has vested with the right to appoint an administrator with respect to the company. Section 452(1)(a) of CAMA 2020 specifically provides that the holder of a qualifying floating charge may appoint an administrator of the company, and section 455 requires that where an administration application has been made, the holder of a qualifying floating charge who is entitled to appoint an administrator must be given at least two business days' notice before the application is heard. This notice period is not merely procedural; it is a substantive protection that enables the chargeholder to exercise its priority right to appoint an administrator of its own choosing, thereby preserving the commercial bargain originally struck between the parties when the charge was created. The policy justification is that the floating charge holder, having extended credit on the security of a charge that confers the right to appoint an administrator, should not be deprived of that bargained-for right by the court's appointment of a different administrator at the instance of another party. It is also important to highlight that the only express mention of the presentation of an ex parte application in the context of administration by CAMA 2020 is for the court's approval when an administrator has been appointed out of court, and the administration has a cross-border element.⁵²

Presentation and grant of administration applications that do not fulfil the conditions precedent under CAMA

A creditor approaching the Court for the appointment of an administrator must do more than show the Court that he is a creditor; he must demonstrate that the objectives of administration can be achieved if an administration order is granted. The creditor must show to the court in his application why he believes that at least one of the objectives of the administration may be achieved. As opposed to the suggestion that fulfilling the objectives of administration is a post-appointment issue, it is very much a condition precedent to appointment for an applicant presenting an administration application to show the prospect of achieving the administration objectives. The administrator must show to the Court that at least one of the objectives will be met by the grant of the administration application.



⁵² S. 443(2) of CAMA 2020.

Therefore, in considering an application under section 449 of CAMA, the court must also consider the provisions of section 444 of CAMA. It is not enough for the applicant to state that one of the purposes of administration under section 444 will be achieved by the administration order; the applicant must **satisfy the Court** that at least one of the purposes of administration under section 444(1) will be achieved by the grant of the administration order. In practical terms, this requires the applicant to provide evidence of a viable rescue plan, financial projections demonstrating the feasibility of achieving a better outcome for creditors than in a winding up, or a clear strategy for realising assets for distribution to secured or preferential creditors. The Court should scrutinise whether the proposed administrator has the requisite expertise and resources to implement the proposed strategy, and whether the application is being made in good faith for the purposes contemplated by the statute rather than as a tactical device to gain commercial advantage.

The language of section 449(b), which requires that the court must be satisfied that the administration order is likely to achieve the purpose of administration, suggests that the applicant must descend into particulars to show how and why he believes the objectives of the administration will be achieved. The word “likely” imports a standard higher than mere possibility but does not require certainty. In interpreting a similar provision under Schedule B1 of the English Insolvency Act 1986, the English Court in *Re High Street Rooftop Holdings Ltd*⁵³ held that on its application to appoint an administrator, the applicant must show that there is a real prospect of one of the statutory purposes of administration being achieved. The “real prospect” standard has been further elaborated in subsequent English cases to mean that there must be a genuine and realistic possibility, as opposed to a fanciful or merely theoretical one, that the administration will achieve its statutory purpose. Nigerian courts should adopt this standard when assessing administration applications, requiring applicants to demonstrate: (a) which of the three hierarchical objectives under section 444(1) they intend to pursue; (b) why they believe that objective has a real prospect of being achieved; and (c) what concrete steps the proposed administrator intends to take to achieve that objective. This approach ensures that the administration procedure is not misused as a tactical device but is reserved for cases where there is a genuine prospect of achieving the statutory rescue objectives.

Conclusion

The proper development of administration jurisprudence in Nigeria requires careful attention from the courts, legal practitioners, and insolvency practitioners. The early signs from the practice of administration proceedings suggest a risk that the procedure may be approached through the lens of receivership, notwithstanding that administration is a distinct statutory rescue mechanism with materially different objectives and consequences. If this approach is allowed to take root, the very objectives for which administration was introduced—business rescue, creditor protection, and maximisation of returns—may be undermined. The administration procedure under CAMA 2020 represents a significant modernisation of Nigerian insolvency law, aligning Nigeria with international best practices in corporate rescue.

If properly applied, administration has the potential to preserve viable businesses that might otherwise be liquidated, protect employment, maintain the productive capacity of the economy, and maximise recoveries for creditors by enabling the realisation of going concern value rather than break-up value.

CAMA 2020 and the Insolvency Regulations 2022 provide substantial guidance on the circumstances and procedure for obtaining an administration order. The responsibility therefore lies on practitioners to comply strictly with the statutory and regulatory requirements when presenting administration applications, particularly where the application has the potential to affect the rights of the company, its directors, and its secured and unsecured creditors. Courts must carefully scrutinise such applications and ensure that the statutory conditions for the making of an administration order have been satisfied before granting the relief sought. In particular, courts should require applicants to demonstrate: (a) that the company is or is likely to become unable to pay its debts within the meaning of section 572 of CAMA (whether on the cash flow test under section 572(1) or the balance sheet test under section 572(2)); (b) that at least one of the hierarchical statutory objectives under section 444(1) has a real prospect of being achieved, with specificity as to which objective is being pursued and how it will be achieved; (c) that the procedural requirements under the Insolvency Regulations 2022 have been complied with, including proper service on all affected parties under Regulation 3.08; and (d) that the application has been commenced by way of an Administration Application as prescribed by Regulation 3.03, and not by way of an Originating Summons or other traditional originating process.

Administration should not become a “grab and go” form of receivership. Its effectiveness as a corporate rescue mechanism depends, in part, on maintaining the distinction between the two procedures and ensuring that the safeguards prescribed by CAMA and the Regulations are observed from the commencement of the proceedings. The early development of Nigerian administration jurisprudence therefore presents an opportunity to establish a clear and principled approach that preserves the rescue objectives of administration while safeguarding the legitimate rights of creditors and other affected parties. The courts have a particularly important role to play in this regard: by insisting on strict compliance with the procedural requirements and requiring applicants to demonstrate a real prospect of achieving the statutory objectives, the courts can ensure that administration is used for its intended purpose rather than as a tactical device. As Nigerian courts, practitioners, and regulators gain experience with the administration procedure, it is hoped that a body of principled jurisprudence will emerge that reinforces the distinct character of administration as a rescue mechanism, provides clear guidance on the procedural requirements, and ensures its proper application in accordance with the legislative intent of CAMA 2020. Such jurisprudence will benefit not only the immediate parties to administration proceedings but also the Nigerian business community as a whole, by providing a reliable and predictable framework for corporate rescue that encourages investment and supports economic development.

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