

In The Supreme Court of Nigeria
On Friday, the 11th day of February 2005
Suit No SC.293/2000

Before Their Lordships

Sylvester Umaru Onu	.....	Justice, Supreme Court
Akintola Olufemi Ejiwunmi	.....	Justice, Supreme Court
Niki Tobi	.....	Justice, Supreme Court
Dennis Onyejife Edozie	.....	Justice, Supreme Court
Sunday Akinola Akintan	.....	Justice, Supreme Court

Between

Felix Onuorah Appellant

And

Kaduna Refining & Petrochemical Company Ltd Respondent

Judgement of the Court

Delivered by
Sunday Akinola Akintan. J.S.C.

The appellant, as plaintiff, commenced this action at the Federal High Court, Kaduna as suit No FRC/KD/CS/7/96 against the respondent, as defendant. His claim was for:

- (a) An order of court declaring the purported price increase/review of the 18 litre empty tins by the defendant from ~~₦25~~ to ~~₦40~~ with effect from 10/5/93 as not affecting the plaintiff who paid for his own empty tins much earlier than the commencement date of the price increase/review.
- (b) An order of specific performance directing the defendant to issue/supply the plaintiff the remaining 17,012 pieces of the 18 litres empty tins not later than 30 days from the date of judgment.
- (c) ~~₦~~1,000,000 general damages from the defendant to the plaintiff for the breach of the arrangement/agreement between him and the defendant.

The parties filed their respective pleadings and the trial took place before O. J. Okeke, J. The learned trial Judge delivered his reserved judgment on 1/8/97 in which he granted the declaration sought by the plaintiff in the first leg of his claim and the claim for specific performance sought in the second leg. The claim for damages sought in the third leg of the claim was, however, refused. ~~₦~~1,000 was awarded as costs.

The defendant was dissatisfied with the judgment and it filed an appeal at the Court of Appeal, Kaduna Division. A ground of appeal challenging the jurisdiction of the trial court was raised with leave of the Court of Appeal. The parties filed their briefs of argument in the lower court and the issue of jurisdiction of the trial court was the main issue canvassed before the Court of Appeal. The court, in its judgment delivered on 5/6/2000 in Suit No CA/K/215/97 (Coram R. D. Mohammed, Omege & Obadina, JJCA) allowed the appeal on the ground that the trial court lacked jurisdiction to entertain the claim. The judgment and orders of the trial Federal High Court, Kaduna were set aside and an order striking out the plaintiff's claim was substituted in their place.

The plaintiff was not satisfied with the decision of the Court of Appeal. The present appeal was therefore, filed against the said decision. Seven grounds of appeal were filed against the judgment. The parties filed their respective briefs of argument in this court. The appellant filed an appellant's brief and a reply brief. The appellant formulated the following four issues as arising for determination in the appeal in the amended appellant's brief

1. Whether the court below was right in the instant matter in requiring the appellant to prove that the respondent is a subsidiary of Nigerian National Petroleum Corporation (NNPC).
2. Is the respondent a distinct and separate legal entity from the Nigerian National Corporation?

3. Is the respondent an agent of NNPC and the Federal Government of Nigeria?
4. Was the court below right when it held that the Federal High Court, Kaduna had no jurisdiction to hear and determine the appellant's claim?

The respondent also adopted the above issues in the respondent's brief.

The main contention of the appellant, as canvassed in the amended appellant's brief on issues 1 and 2 is that the respondent was a subsidiary of the NNPC and as such the Federal High Court had jurisdiction to entertain the claim. Reference is made to the statement of claim filed by the appellant where it was pleaded that the respondent was a subsidiary of the NNPC. It is then submitted, that since that averment was not denied by the respondent in its statement of defence, it was therefore not necessary for the appellant to lead evidence in proof of the admitted averment. It is further submitted that the question that the respondent had separate identity of its own did not arise. This is because, apart from the admission in the pleadings that it is a subsidiary of the NNPC, the same fact is shown on the receipts issued in favour of the appellant in respect of the transaction that led to the dispute between the parties which clearly describe the respondent as a subsidiary of NNPC. It is therefore, submitted that the respondent does not exist independently from NNPC and the Federal Government of Nigeria and cannot therefore be said to be a separate entity, as held by the lower court.

In the appellant's third and fourth issues, reference is made to the provisions of sections 5 and 6 of the NNPC Act by which the NNPC is permitted by law to act through the respondent in the discharge of the duties conferred on it by the NNPC Act. Reference is also made to the facts of the case as presented at the trial court, particularly to the fact that the appellant entered into a purchase contract for which payments were made and receipts were also issued. The respondent was clearly described on the receipts as a subsidiary of NNPC. All these are said to show that the respondent is in fact an out-let and an agent of the NNPC. It is submitted that NNPC is an organ of the Federal Government and that the respondent, being an outlet for the discharge of the duties of an organ of the Federal Government (NNPC), is therefore also an agent of the Federal Government of Nigeria. The decision in *Opuo v NNPC (2001) 14 NWLR (Pt. 734) 552 at 569 E-G* is cited in support of this submission.

It is submitted in reply in the respondent's brief that it is the plaintiff's claim that determines the jurisdiction of a court under Nigerian law. Reference is therefore, made to the plaintiff's claim in the instant case. It is then argued that the three claims of the plaintiff are based on simple contract. A number of decided cases are cited in support of this contention, among which are *Mustapha v Governor of Lagos State (1987) 2 NWLR (Pt 58) 539 at 568*; *Tukur v Government of Gongola State (1989) 4 NWLR (Pt. 117) 517 at 549*; and *Western Steel Works v Iron & Steel Workers (1987) 1 NWLR (Pt. 49) 284*. It is therefore, argued that since the appellant's claims were based on simple contract, only a court which is empowered to entertain suits relating to contracts can entertain the appellant's suit.

On the contention of the respondent that the trial Federal High Court lacked jurisdiction to entertain the claim, reference is made to section 230(l)(q), (r) and (s) of the 1979 Constitution as amended by Decree No. 107 of 1993 which sets out the jurisdiction of the Federal High Court. The section provides as follows:

Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly or a Decree, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters arising from ...

- (q) the administration or the management and control of the Federal Government or any of its agencies;
- (r) subject to the provisions of this Constitution, the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies; and
- (s) any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies.

Provided that nothing in the provisions of paragraphs (q), (r) and (s) of this subsection shall prevent a person from seeking redress against the Federal Government or any of its agencies in an action for damages, injunction or specific performance where the action is based on any enactment, law or equity.

It is submitted that the above provisions do not confer jurisdiction on the court to entertain the appellant's claim which was purely a claim for breach of contract. It is further submitted that it is the State High Court that is conferred with unlimited jurisdiction to hear and determine any civil proceedings under the 1979 Constitution as

amended by Decree No 107 of 1993 (and now by section 251 of the 1999 Constitution). On the other hand, the Federal High Court is said to be a court of limited jurisdiction which cannot exercise jurisdiction over any cause or matter outside that conferred on it by section 7(1) of the Federal High Court Act (Cap. 134, Laws of the Federation of Nigeria, 1990) and as enhanced by section 230 of the 1979 Constitution as amended by Decree No 107 of 1993.

The contention of the appellant that the respondent, being a subsidiary of NNPC, was covered by the provisions of the aforementioned law which conferred jurisdiction on the Federal High Court is said to be totally erroneous. It is submitted that the respondent, as a limited liability company, incorporated under the Companies Act, is a body corporate distinct from its shareholders. The respondent could therefore, not be said to be an agency of the Federal Government.

The facts of this case are not in dispute. The appellant entered into a contract to purchase specified number of empty tins from the respondent at an agreed amount and payment of the agreed sum was made. But before delivery was made to the appellant, the respondent had increased the price. The appellant was duly informed of the new price and was requested to pay the difference between what he had paid and the new unit price. The appellant refused, insisting that the respondent was bound to deliver to him the quantity he had ordered at the price agreed by the parties. This was the cause of action the appellant wanted to enforce by going to court.

The main question to be resolved in this appeal is whether the Federal High Court had jurisdiction to entertain the appellant's claim. It is settled law that jurisdiction of a court is determined by the plaintiff's claim as endorsed in the writ of summons and statement of claim: See *Tukur v Government of Gongola State* (1989) 4 NWLR (Pt. 117) 517; *Orthopaedic Hospitals Management Board v. Garba* (2002) 14 NWLR (Pt.788) 538 at 563. Thus, in this case, the appellant's claim, already set out above, is the one that should be the focus of attention in determining whether the trial court had jurisdiction to entertain the suit. It is clearly not the rules of court that vest jurisdiction in the court but rather the statute creating the court. Thus, in the instant case, in determining the jurisdiction of the Federal High Court and the State High Court, it is the relevant provisions of the 1979 Constitution of the Federal Republic, as amended by Decree No 107 of 1993 that would be applicable since the appellant's action was commenced and in fact judgment was delivered before the 1999 Constitution came into force. Section 230(1)(q), (r) and (s) of Decree No 107 of 1993 which extended the jurisdiction of the Federal High Court also sets out a proviso after subsection (s). It is that:

nothing in the provisions of paragraphs (q), (r), and (s) of this subsection shall prevent a person from seeking redress against the Federal Government or any of its agencies in an action for damages, injunction or specific performance where the action is based on any enactment, law or equity."

A close examination of the additional jurisdiction conferred on the Federal High Court in the section and by the 1979 Constitution clearly shows that the court was not conferred with jurisdiction to entertain claims founded on contract as in the instant case. In other words, section 230(1) provides a limitation to the general and all embracing jurisdiction of the State High Court because the items listed under the said section 230(1) can only be determined exclusively by the Federal High Court. All other items not included in the list would therefore, still be within the jurisdiction of the State High Court. In the instant case, since disputes founded on contracts are not among those included in the additional jurisdiction conferred on the Federal High Court, that court therefore, had no jurisdiction to entertain the appellant's claim. The lower court therefore, acted rightly in its decision that the Federal High Court lacked jurisdiction to entertain the claim: See *Seven-up Bottling Co. Ltd v Abiola & Sons Bottling Co Ltd* (2001) 13 NWLR (Pt.: 730) 469; and *Trade Bank Plc v Benilux (Nig.) Ltd.* (2003) 9 NWLR (Pt. 825) 416 at 430 & 431.

The question whether the respondent is a subsidiary or agent of the NNPC or not has no role when a consideration of the jurisdiction of the court is being made. This is because, as already stated above, the determining factor is the claim before the court, which in this case, is one founded on breach of contract.

In the result, there is totally no merit in the appeal. I accordingly, dismiss it with ₦10,000 cost in favour of the respondent.

Judgement delivered by
Sylvester Umaru Onu. JSC

Having had the advantage of reading the Judgment of my learned brother, Akintan, JSC just delivered, I am of the view that the appeal lacks merit. Accordingly, I dismiss the appeal and make the same order as to costs as contained in the leading judgment.

Judgement delivered by
Akintola Olufemi Ejiwunmi. JSC

Having read in advance the judgment just delivered by my learned brother, Akintan, JSC, in respect of this appeal, I share the views he expressed in the said judgment in dismissing the appeal. The appeal is also dismissed by me for the reasons given in the said judgment and I award costs in the sum of ₦10,000.00 to the respondent.

Judgement delivered by
Niki Tobi. JSC

This appeal once more brings into the fore the jurisdictional struggle between the Federal High Court and the High Court of a State. The more the courts interpret the issue, the more cases come before the courts. And they will continue to come before the courts as long as lawyers disagree as to the real purport of the constitutional provisions in respect of the two courts.

The appellant as plaintiff filed an action at the Federal High Court, Kaduna. He claimed three reliefs as follows:

- (a) An order of court declaring the purported price increase/review of the 18 litre empty tins by the defendant from ₦25 to ₦40 with effect from 10/5/93 as not affecting the plaintiff who paid for his own empty tins much earlier than the commencement date of the price increase/review.
- (b) An order of specific performance directing the defendant to issue/supply the plaintiff the remaining 17,012 pieces of the 18 litres empty tins not later than 30 days from the date of judgment.
- (c) ₦1,000,000 general damages from the defendant to the plaintiff for the breach of the arrangement/agreement between him and the defendant.

The learned trial judge granted all the three reliefs. In other words, he gave judgment to the appellant. The decision was reversed by the Court of Appeal. That court held that the Federal High Court, Kaduna had no jurisdiction to hear and determine the matter. Delivering the leading judgment of the court, Omage, JCA, said at page 116 of the record:

I have read with diligence the provision of Decree No 107 of 1992, Decree No 60 of 1991 which both created and widened the jurisdiction of the Federal High Court. I can find nowhere therein where provisions are made for the jurisdiction of the Federal High Court in a matter for specific performance or for a claim of damages made between two parties, neither of which is a Government agent or functionary of the Federal Government. Neither the plaintiff nor the defendant in the court below is an agent or a functionary of the Federal Government or any Government in Nigeria for that matter. The Federal High Court in Kaduna or any Federal High Court in Nigeria would appear not to possess any jurisdiction to preside and determine such a claim as the plaintiff had in the court below.

Dissatisfied, the appellant has come to us. The only issue for determination, as correctly formulated by counsel for the appellant, is whether the Court of Appeal was right

when it held that the Federal High Court, Kaduna had no jurisdiction to hear and determine the appellant's claim?

Learned counsel for the appellant submitted that the respondent is a subsidiary of the Nigerian National Petroleum Corporation and that the Nigerian National Petroleum Corporation is in turn an organ of the Federal Government. He cited *Bello v Attorney-General, Oyo State* (1986) 5 NWLR (Pt.45) 828 at 876; *Danfulani v Shekari* (1996) 2 NWLR (Pt.433) 723; *NIDB v Fembo* (1997) 2 NWLR (Pt.489) 543; *NNPC v Okwor* (1998) 7 NWLR (Pt.559) 637 at 659; *Ogunlade v Adeleye* (1992) 8 NWLR (Pt.260) 409 at 420; *Ojukwu v Onwudiwe* (1984) 1 SCNLR 247, (1984) SC 15; and *Olugbode v Sangodeyi* (1996) 4 NWLR (Pt.444) 500 at 516. The crux of the argument of learned counsel for the respondent is that in view of the fact that the appellant's claims are based on simple contract, only the High Court of a State has jurisdiction to hear the matter. He cited quite a number of authorities.

The law is elementary that in the determination of whether a court has jurisdiction in a matter or not, the court will examine or consider the claims or reliefs. This is because only the claims or reliefs donate jurisdiction to the court.

Let me therefore, quickly examine the claims. They are three. They all zero on breach of contract and I am in grave difficulty to hold that the Federal High Court is conferred with jurisdiction to hear matter of simple contractual relationship between parties. It is my humble view, that the jurisdiction of the Federal High Court does not admit matters of simple contracts between parties and I venture to say such matters are clearly outside the provisions of the enabling Decrees interpreted by the Court of Appeal.

In the circumstances, the Court of Appeal rightly allowed the appeal and I, like my learned brother, Akintan, JSC, dismiss the appeal as lacking merit. I award ₦10,000.00 costs in favour of the respondent.

Judgement delivered by
Dennis Onyejife Edozie. JSC

I had a preview of the leading judgment prepared and just delivered by my learned brother, Akintan, JSC, and I am in agreement with the opinion expressed therein.

The appeal raises once more a jurisdictional issue as to whether the Federal High Court, Kaduna or the Kaduna State High Court was vested with the jurisdiction to entertain the plaintiff/appellant's case. This in turn, depended on the nature of the plaintiff/appellant's claim as disclosed in the relevant writ of summons and the statement of claim, for it is settled law that in order to determine the claim before the court and consequently whether or not the court has jurisdiction to entertain the action, it is necessary to have recourse to the writ of summons and the statement of claim: See *Mustapha v Governor of Lagos State (1987) 2 NWLR (Pt.58) 539*. Though it is sometimes necessary for the court to hear some evidence first for the purpose of determining the issue of jurisdiction, where however the determination is based on the pleadings, the law is that it is determined on the plaintiff's pleading, that is, his statement of claim and not on the defendant's statement of defence: *Izenkwe v Nnadozie (1953) 14 W.A.C.A. 361 at 363; Adeyemi & 4 Ors v Opeyori (1976) 9-10 SC 31, Attorney-General of Kwara State and Ors v Raimi Olawale (1993) 1 NWLR (Pt.272) 645 at 663*.

In the instant case, the plaintiff/appellant's claim filed on 25th October, 1996 in the Federal High Court, Kaduna as endorsed both in the writ of summons and the statement of claim was for the following reliefs:

- (a) An order of court declaring the purported price increase/review of the 18 litre empty tins by the defendant from ₦25 to ₦40 with effect from 10/5/93 as not affecting the plaintiff who paid for his own empty tins much earlier than the commencement date of the price increase/review.
- (b) An order of specific performance directing the defendant to issue/supply the plaintiff the remaining 17,012 pieces of the 18 litres empty tins not later than 30 days from the date of judgment.
- (c) ₦1,000,000 general damages from the defendant to the plaintiff for the breach of the arrangement/agreement between him and the defendant.

As can be seen from the above, the claim is for a declaration, specific performance and damages, all based on a breach of contract between the parties. A careful perusal of sub-section 230(1) of the 1979 Constitution as amended by Decree No 107 of 1993 which set out matters under the exclusive jurisdiction of the Federal High Court show clearly that action for the breach of contract, simpliciter, such as the plaintiff/appellant's claim is not included in the sub-section rather, it falls within the residual jurisdiction of the State High Court pursuant to section 230(1) of the 1979 Constitution which was the law in force when the cause of action arose: See *7-Up Bottling Co. v Abiola & Sons (2001) 13 NWLR (Pt.730) 469 at 508, Trade Bank Plc v Benilux (Nig.) Ltd. (2003) 9 NWLR (Pt.825) 416 at 430*. By sub-section 230(1)(q) of the 1979 Constitution as amended, now section 251(1)(p) of the 1999 Constitution, the Federal High Court is vested with exclusive jurisdiction, inter alia, on matters pertaining to the administration or the management and control of the Federal Government or any of its agencies. The plaintiff/appellant's claim does not fall within the ambit of this sub-section and therefore all the submissions of counsel with respect to whether the defendant/respondent is a subsidiary or an agent of N.N.P.C are irrelevant. It is, therefore, my view that the court below was right in holding that the Federal High Court lacked the jurisdiction to entertain the plaintiff/appellant's case.

In the light of the foregoing and the detailed analysis in the leading judgment, I, also, dismiss the appeal with costs as assessed in the said judgment.

Counsel

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with him

Ikenna Uzokwelu, Esq

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Other Citations

1. (2005) 6 NWLR (Pt.921) 393
2. (2005) 2 S.C (Pt II) 1