

SUPREME COURT OF NIGERIA
26TH FEBRUARY, 1993. SC. 267/1990
CORAM:- A. G. KARIBI-WHYTE, S. KAWU, S. M. A.
BELGORE, P. NNAEMEKA-AGU, U. OMO, JJSC

ALHAJI HASHIMU GARBA

MATARI & 5 ORS

..... APPELLANTS

AND

AHMADU DANGALADIMA & ANOR

..... RESPONDENTS

INTERPRETATION OF STATUTES - Dictates of rules of construction - when a provision is made subject to another - how construed.

JURISDICTION - Where raised - serves as a fundamental prerequisite for adjudication - decision reached without jurisdiction - whether of any effect.

JURISDICTION - Provisions of the Area Courts Edict - land dispute - jurisdiction raised for the first time at Court of Appeal - determination of the Area Court that has jurisdiction.

FACTS

The Plaintiffs/Respondents filed an action against the Defendants/Appellants in the Area Court Soba for the return of their father's farmland situate at Matari in the then Zaria Local Government Area. The land was alleged to have been given on loan to Appellants who paid tribute. The case was however tried in the Zaria City Area Court instead of the Soba Area Court. The trial Court granted the reliefs sought by the Plaintiffs.

Being dissatisfied, the Defendants/Appellants unsuccessfully appealed to the Upper Area Court Zaria, High Court Kaduna and the Court of Appeal Kaduna Division. At the court of appeal, the issue of lack of jurisdiction was for the first time raised in respect of the trial Court (Zaria City Area Court). In the construction of the provisions of the Area Court Edict and other relevant laws, the Court

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of Appeal erroneously held that because the warrant of the trial court was not in evidence, the presumption of regularity was in favour of jurisdiction. The Appellants further appealed to the Supreme Court.

HELD (unanimously allowing the appeal)

1. In the administration of justice, it is of utmost importance that where the issue of jurisdiction is raised, the issue should be disposed of since jurisdiction is a radical and fundamental prerequisite for adjudication. Where the court is shown to have no jurisdiction, the proceedings however well conducted are a nullity. (p.55 L. 27)

2. The decision of any court reached without jurisdiction is void ab initio and the decision is of no effect. (p.59 L. 15)

3. To arrive at a construction of the intention of a statute, the related section and the objectives of the law, ordinary rules of construction, and counsel, dictate the reading of related provisions of the statute together, as well as reading the statute as a whole. (P. 60 L. 28)

4. That every Area Court shall have jurisdiction and power to the extent set forth in the warrant establishing it, subject to the provisions of the Edict and of the criminal procedure Law in all civil and criminal cases in which the parties are subject to the jurisdiction of such Area Court. (p.61 L. 5)

5. By the rules of construction, the general provision of s. 18 made subject to the provision of the Edict cannot override the special provision of s. 19 relating to jurisdiction in land cases (p.61 L. 24)

6. It is a well settled rule of construction of statutes, that when a provision is made subject to another, that provision must be read in subordination to the provision it is made subject. (p.62 L. 2)

7. To hold that the jurisdiction of an Area Court can only be determined by production of the warrant establishing it is to subordinate the provisions of an enabling principal law to the provision it is made

subject. (p.63 L.8)

8. It is not necessary to resort to the warrant of the Area Court (as erroneously held by the Court of Appeal) for purposes of ascertaining its jurisdiction since the Area Courts (Jurisdiction) Notice, 1977, spelt out the jurisdiction of the Zaria City and Soba Area Courts to the whole world. (p.63 L. 17)

9. On the facts of this case, there was sufficient material for the Court of Appeal to determine the issue of jurisdiction raised. And the point of law raised being an issue of jurisdiction can be raised at any stage of the trial including on appeal (p.63 L. 34)

10. It is well settled proposition that one of the pre-requisites of a court in the exercise of its jurisdiction is that the subject matter of the action must be within its jurisdiction and there is no feature in the case which prevents the court from the exercise of jurisdiction. (p.64 L.18)

11. In this case, Zaria City Area Court no. 1 having jurisdiction only within the Zaria Local Government Area is not competent to adjudicate in respect of the land in dispute which is in Matari and under Soba Local Government Area. This is consistent with the provisions of s. 19 (3) of the Edict. (p.64 L. 28)

12. Since the trial court had no jurisdiction it follows that all proceedings resulting from the invalid exercise of jurisdiction is a nullity. (Macfoy v. U.A.C. Ltd. applied). (p.65 L. 6)

REPRESENTATION

J.B. Dawodu, Esq., Uche Agonmuoh (Miss) For the Appelants
Baba Amartey, Esq., Hadiza Amartey For the Respondents

CASES REFERRED TO

1. Adeigbe v. Kushimo - (1965) 1 All NLR 248
2. Madukolu v. Nkemdilim (1962) 1 All NLR 584
3. Agua Ltd v. Ondo State Sports Council (1988) 4 NWLR (Pt 9.) 624

4. Canadian Sugar refining Co. v. R. (1898) A.C. 735
5. Tukur v. Govt of Gongola State (1989) 4 NWLR 517
- 5 6. Clane Ltd v. Inland revenue Commissioner (1972) 2 All SA 513
7. Kashikwu farms v. A.G. Bendel State (1986) 1 NWLR (Pt 19)
695
- 10 8. Gfadora & ord. v. Gbadebo & ors (1978) 3 SC. 219
9. L S D P C v. Foreign finance Corporation (1967) 1 NWLR (Pt
50)413
- 15 10. U.A.C. Ltd v. Macfoy (1961) 3 All ER 1169
11. Mobil v. FBIR (1977) 3 SC. 53
12. University of Ibadan v. Ademolekun (1967) 1 All NLR 213
- 20 13. Nabham v. Nabham (1972) 1 All NLR 47
14. Ogunmade v. Fadairo (1972) 8 - 9 SC. 1
- 25 15. NRC v. Holloway (1965) NMLR 237
16. Macfoy v. U.A.C. Ltd (1961) 3 All ER 1172

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LEAD JUDGMENT BY KARIBI-WHYTE JSC

On the 13th February 1990, the Court of Appeal, Kaduna Division in an unanimous judgment read by Okay Achike, J.C.A. for which Uthman Mohammed, and Ogundere J.C.A. concurred, dismissed the appeal of the appellants against the judgment of the High Court, Kaduna in its appellate jurisdiction, this appeal is against the judgment of the Court of Appeal. It will be of considerable assistance in the elucidation of the real issue in this appeal to trace the genesis of this litigation even if very briefly from the court of trial.

One Mallam Maude, the predecessor of the respondents, brought an action as plaintiff against the six appellants, as defendants in the Area Court Soba, for the return of his father's farmland situate at Matari in the Soba District of the then Zaria Local Government Area. Mallam Maude claimed that the disputed land was entrusted to Sarkin Matari. He also alleged that the farms were given on loan to the appellants for which they paid tribute as consideration. Defendants were not sued in a representative capacity. They were sued individually, although the case was heard together. The case was however heard in the Zaria City Area Court, not in the Soba Area Court. The Zaria City Area Court granted the reliefs sought. Defendant dissatisfied appealed to the Upper Area Court, Zaria. On the 10th October, 1982, the Upper Area Court affirmed the judgment of the Zaria City Area Court. Still dissatisfied with the judgment of the Upper Area Court. Zaria, appellants appealed to the High Court, Kaduna. Again, the High Court of Kaduna, dismissed the appeal but varied the consequential orders made by the Court of first instance, Appellants were still dissatisfied. They appealed to the Court of Appeal, Kaduna Division. For the first time in the Court of Appeal, appellants raised the issue of the jurisdiction of the Zaria City Area Court to hear and determine the subject matter of the action, the Court of Appeal again dismissed the appeal. The six appellants have now appealed to this Court. Appellants have hitherto suffered a litany of unsuccessful appeals to appellate Courts. Appellants filed four identical grounds of appeal, which are as follows

" GROUNDS OF APPEAL "

1. ERROR IN LAW

The Court of Appeal erred in Law by its refusal to hold that the decisions of the Kaduna State High Court which affirmed the judgments of the appeal Upper Area Court Zaria and the Zaria City
 5 Area Court No. 1 were null and void when it was crystal clear that the Area Courts (Jurisdiction Notice) 1977 made pursuant to Section 3 of the Area Courts Law 1967 had ousted the jurisdiction of the said Zaria City Area Court No.1.

10 PARTICULARS OF ERROR

(i) *By holding that the production of the warrant establishing the Zaria City Area Court No.1 was a sine qua non to the success of the*
 15 *ground on jurisdiction the Court of Appeal was in error as this finding was not in consonance with the provisions of Section 3 of the Area Courts Law 1967.*

20 (ii) *The Court of Appeal failed to properly interpret the provisions of Section 3 and 18 of the Area Courts Law 1967.*

(iii) *The fact that the word 'warrant' is replicated in almost all the subsections of section 3 of the Area Courts Law does not exclude the*
 25 *overriding application of Section 3(6) of the Area Courts Law 1967 which is the only mode of notifying the whole world as to the jurisdiction of every Area Court in Kaduna State.*

30 (iv) *The Area Courts (Jurisdiction Notice) 1977 though a subsidiary legislation is not in conflict with Sections 3 and 18 of the Area Courts Law 1967 as held by Court of Appeal but is in perfect consonance with the said Sections 3 and 18 if read as a whole.*

35 (v) *Consequently the production of the warrant of the trial court had no place in law and was therefore not relevant or vital to the success of the ground of appeal.*

2. ERROR IN LAW

The Court of Appeal erred in Law when it failed to uphold learned appellants counsel's submissions that the proceedings of the Court of first instance were bedeviled with fundamental infractions of the appellants right to fair hearing and the whole proceeding were riddled with serious procedural errors which cumulatively led to a miscarriage of justice.

PARTICULARS OF ERROR

- (i) *The Court of Appeal failed to adequately treat the issue of the complaints of lack of fair hearing and instead glossed over same.*
- (ii) *The Court of Appeal particularly failed to consider the appellants complaint that they were not specifically called upon to cross-examine the respondents witnesses.*
- (iii) *The deceased respondent sued 12 defendants severally but proceeded with them in the course of the proceedings as if it was a representative or joint action and thereby failed to prove his case against each defendant.*
- (iv) *The Court of Appeal particularly erred in Law when it failed to invalidate the procedure adopted by the Court of first instance in requesting the appellants to present a joint defence when it was that courts duty to call upon each appellant and ask him clearly and distinctly who his witnesses are and what his defence is.*

3. ERROR IN LAW

The Court of Appeal erred in Law in holding that the principle of 'Hauzi' (long possession) was inapplicable to the instant appeal when it was evident from the record of proceedings that the appellant had spent upwards of 60 years on the land.

PARTICULARS OF ERROR

- (i) *The appellants had clear and undisturbed possessions of the land,*
- (ii) *Rent of Galla was not proved to exist between the appellant and the respondents,*

4. ERROR IN LAW

The Court of Appeal erred in Law in allowing the cross-appeal when the only valid ground which raised the issue of quic quid plantatur solo solo cedit had earlier been dismissed and declared irrelevant
5 *consequently there was nothing to allow in the cross-appeal.*

PARTICULARS OF ERROR

10 *(i) The 2nd ground in the notice of cross-appeal was not a proper ground of law and therefore could not have been adverted to.*

(ii) The Court of Appeal erred in Law in varying the Order of the High Court that the appellants could keep their houses when there
15 *was no specific ground of appeal against the finding.*

(iii) The rationes of the Court of Appeal that even at the Court of 1st instance the houses were never claimed and that the High Court erred in making an order relating to the houses were reached suo
20 *motu without the invitation of counsel and thereby invalid.*

(iv) Consequently, the Court of Appeal erred in allowing the cross-appeal."

25 Learned counsel to the parties filed and exchanged briefs of argument they adopted their briefs and relied on them in their oral argument before us. Learned counsel to the appellants formulated the following four issues for determination as arising from the grounds
30 of appeal, they are -

"ISSUES FOR DETERMINATION

35 *1. On the fundamental issue of jurisdiction, is it the warrant signed by the Chief Judge of a State establishing an Area Court or the Area Courts (Jurisdiction) Notice published by the Chief Judge that determines the jurisdiction of Area Courts and fixes the public with notice of the extent of such Area Courts.*

2. *Whether the trial Area Court No. 1 Zaria City possessed jurisdiction to hear and determine the dispute before it, in the light of the provisions of the Area Court (Jurisdiction) Notice 1977 published by the Chief Judge of Kaduna State in 1977.*

3. *Whether the Court of Appeal was correct in its conclusion that the appellants were afforded a fair hearing by the Court of first instance?*

4. *In particular, did the refusal to hear the appellants defence individually and the glaring lack of invitation to them to cross-examine the respondents witnesses not constitute a grievous assault on their right to fair hearing.*

5. *Whether the eventual order allowing the cross-appeal is correct in the light of the antecedents found by the court before dismissing the 2 grounds constituting cross appeal."*

Learned counsel to the respondents agreed with the above formulation of the issues, but has made observations on the issues which are inconsequential and do not affect the substance of the issues as formulated.

The scope of the grounds of appeal, range from the jurisdiction of Zaria City Area Court to hear and determine the subject matter of the action, to the issue of fair hearing in the trial of the action, long possession of the appellants of the land in dispute, to the application of the quic quid plantatur solo, solo cedit principle in customary law. But the issues for determination have been confined to the questions of the jurisdiction of the Zaria City Area Court, in issues 1 and 2; the issue of fair hearing in issues 3 and 4, and the Court of Appeal allowing the cross-appeal.

It is of the utmost importance, in the administration of justice that where the jurisdiction of the court is raised and is in issue, to dispose-of that issue. Jurisdiction is a radical and fundamental prerequisite for adjudication, See Adeigbe v. Kushimo (1965) 1 All NLR. 248. This is because if the court is shown to have no jurisdiction, the proceedings however well conducted are a nullity see Madukolu v. Nkemdilim (1962) 2 SCNLR 341, (1962) 1 All NLR 584. It will be an exercise in futility.

It is in this judgment convenient to consider together issues 1 and 2, which are founded on the question of the exercise of jurisdiction by Zaria City Area Court No. 1, in holding that the Zaria City Area Court No. 1 had the requisite jurisdiction to hear and determine the subject matter of the action, the Court of Appeal conceded the general rule
5 that provisions of the Area Court (Jurisdiction) Notice 1977 being a subsidiary legislation cannot override the provisions of the Area Courts Edict, which is the enabling law. However it held that by a combined reading of Sections 3 and 18 of the Area Courts Edict No. 1, the
10 jurisdiction of the Area Court is to be determined by the specifications contained in the warrant establishing the Court. The Court went on to hold that the jurisdiction of the trial Court is ascertainable by reference to its warrant. In the instant case, the warrant of the trial court not being in evidence in each of the three courts below, the
15 onus was on the appellants who are challenging the competence of the Zaria City Area Court No. 1, to rebut the presumption of regularity by showing that its jurisdiction was limited by the warrant.

Mr. Daudu, learned counsel to the appellants submitted that the court
20 below had before it all the material requisite for determination of the issue of jurisdiction raised. He pointed out that it is not disputed that the farmland, subject matter of the proceedings is situate in Matari, in the Soba district of the former Zaria Local Government Area. It was
25 also pointed out that the Court of Appeal admitted that ordinarily the Soba Area Court was competent to exercise jurisdiction in respect of this matter which was heard and determined by the Zaria City Area Court.

30 Learned Counsel then referred to the provisions of section 3(1) (2) (4) 6, 18, 19(3) of the Area Courts Law and Section 3(1) of the Area Court (Jurisdiction) Notice 1977, and submitted that the Area Court (Jurisdiction) Notice is the appropriate avenue for notifying the whole world of the jurisdiction of Area Courts within Kaduna State. It was
35 argued that the view of the court below that the fact that the word "warrant" appears in all the sub-sections of section 3 of the Area Courts Law, and that is determinant of the fact that the warrant establishing the court also determines its jurisdiction, ignores the proper legislative intendment of section 3(6) of the Area Courts Law.

Learned counsel then submitted that the whole of section 3 of the Area Courts Law has to be read. He cited and relied on Aqua Ltd v. Ondo State Sports Council (1988) 4 NWLR (Pt.91) 622 at p. 641, Odgers, Construction of Deeds and Statutes 5th Ed. p. 237. and Canadian Sugar Refining Co v. R (1998) AC. 735 at 741.

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Counsel also rejected the view of the court below that the dominance of the warrant was highlighted by section 18 of the Area Courts Law which is a substantive legislation and superior to the Notice which is a subsidiary legislation. It was submitted that section 18 did not tie the jurisdiction of the Area Courts to the contents of the warrant. The jurisdiction notice is not in conflict with the enabling section.

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Learned counsel then went on to construe the provisions of section 18. He submitted that a careful reading of section 3(1) of the Jurisdiction Notice discloses that the power of the Chief Judge to publish the notice is exercised under powers pursuant to section 18 of the Area Courts Law as the enabling law.

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It was submitted that the provisions of section 18 enables the Chief Judge to notify the whole world of the power and extent of the jurisdiction set forth in the warrant establishing the Area Court. The exercise of this power is made subject to the provisions of the Area Courts Edict, and of the Criminal Procedure Code Law. Learned counsel submitted that the expression "*subject to the provisions of this Edict*" is a limiting expression and accordingly any provision of the Area Courts Law dealing with the notification of the jurisdiction of an Area Court will subject section 18 to the interpretation that the provision of section 18 is not intended to affect it. He relied on Tukur v. Government of Gongola State (1989) 4 NWLR (Pt.117) 517 at p. 541 Clark Ltd. V. Inland Revenue Commissioner (1973) 2 All S.A 513 and Aqua Ltd. v. Ondo State Sports Council (1988) 4 NWLR (Pt.91) 622 at p. 641 as authority for the submissions.

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Learned counsel rejected, and I agree with him, the possibility of a conflict between the provisions of section 18 and 3(1) - (4) and sections 19 and 3(6) of the Edict. But submitted that assuming there was by the legislature subordinating the provisions of section 18 to the other relevant provisions of the Edict, has left sections 19 and 3(6) as the only index for ascertaining the jurisdiction of an Area

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In summing up his submission learned counsel pointed out that the warrant is an instrument for setting up an Area Court and exists as our administrative document between the Chief Judge and
5 the Court. The jurisdiction notice on its own serve as notice to the whole world. Finally relying on the well settled principles in *Madukolu v. Nkemdilim* (1962) 2 SCNLR (1962) 1 All NLR 587. *Adeigbe v. Kushimo & Ors.* (1965) NMLR 284 at p. 287-341, *Kasikwu Farms Ltd. v. Attorney -General of Bendel State* (1986) 1 NWLR (Pt.19)
10 695, at p. 703, it was submitted that the proceedings in the Zaria City Area Court No.1 are a nullity since that court has no jurisdiction to entertain the suit.

15 Learned counsel to the respondents who supported the judgment of the court below took a contrary view in his submission. He argued that since the issue of jurisdiction was first canvassed in the court below, the onus is on the appellant to show that the Court had all the material facts before it to enable it decide the issue. He relied
20 on *Fadiora & Ors v. Gbadebo & Ors* (1978) 3 S.C. 219 for the submission that the Court below should be satisfied that -

(a) it has before it all the facts bearing on the fresh issue raised as if it had been raised in the Court of trial; and

25 (b) no satisfactory explanation could have been given in the court below if it has been raised.

Learned counsel then went on to contend that section 18 of
30 the Area Courts Law has provided that" every Area Court shall have jurisdiction and powers to the extent set forth in the warrant establishing it and subject to the provisions of this Edict. It is therefore incumbent on the appellant challenging the jurisdiction of the Court to show that the warrant establishing the Court limits its jurisdiction to
35 a particular area. It was submitted that in the absence of the warrant establishing the Zaria City Area Court No. 1 before the Court, there was no material on which the Court could decide the issue.

Learned counsel submitted that the words of section 18 of

the Area Courts Edict are clear and unambiguous. It was further submitted that there was no conflict between sections 18 and 13 of the Edict. The expression "subject to" could not be invoked to curtail or limit the broad application of section 18, having regard to the intention of the legislation - *L.S.D.P.C. v. Foreign Finance Corporation* (1987) 1 NWLR (Pt.50) 413 was cited. 5

It was finally submitted that the Zaria City Area Court No.1 exercised jurisdiction within its competence.

I have considered it convenient to take the issue of jurisdiction first because if the submission is successful, the appeal could be determined in limine. In such a situation it will be absolutely unnecessary and a futile exercise to consider any of the other issues raised. 10

The issue of jurisdiction is without doubt, fundamental and decisive of the question of adjudication. It is well settled that the decision of any court reached without jurisdiction is void ab initio and the decision is of no effect see *U.A.C. Limited v. Macfoy* (1961) 3 All ER 1169. The contention of appellant in this appeal is based on the interpretation of the provisions of the Area Courts Edict 1967, and of the Area Court (Jurisdiction) Notice 1977. 15 20

The most important sections in the Area Courts Edict, 1967 for, the purpose of determining the jurisdiction of the Area Courts are sections 3(1) (2) (4) (6), 18, 19(3). For ease of reference I reproduce the sections immediately below. 25

Section 3(1). By warrant under his hand the Chief Judge may establish such Area Court as he shall think fit.

(2) Every Area Court shall exercise the jurisdiction conferred upon it by or under this Edict within such area and to such extent as may be specified by its warrant. 30

X X X X X X

(4) All warrants shall be operative and of effect from its date specified therein. 35

"(6). The Chief Judge shall cause the jurisdiction of each Area Court to be notified from time to time in the Kaduna State Gazette."
(18) Every Area Court shall have jurisdiction and power to the ex-

60 Matari v. Dangaladima (1993) 2 KLR Karibi-Whyte JSC
tent set forth in the warrant establishing it, and subject to the provi-
sions of this Edict, and of the Criminal Procedure Law in all civil and
criminal cases in which all the parties are subject to the jurisdiction of
such Area Court."

5 19(3) *Subject to the provisions of any written law all land causes shall*
be tried and determined by an Area Court having jurisdiction over
the area in which the land which is the subject matter of the dispute is
situated and to the extent of the jurisdiction and power of such court"

10 Paragraph 3(1) of the Area Court (Jurisdiction) Notice 1977
made by the Chief Judge by virtue of section 3 (6) of the Area Courts
Edict 1976 provides as follows:

15 *3(1) Every Area Court named in the first column of the sched-*
ule having its location at the place specified opposite to its name in
the second column of this schedule has in accordance with the provi-
sions of section 18 of the Edict, within the area specified opposite to
its name in the third column of the schedule, the jurisdiction of the
20 *grade specified opposite to its name in the fourth column of the sched-*
ule varied as specified opposite to its name in the fifth column of the
schedule and is constituted as specified opposite to its name in the
sixth column of the schedule.'

In according with this notice as far as applicable the Zaria City
Area Court No.1, and Soba Area Court are indicated as follows -

Name	Location	Area of Jurisdiction	Grade
25 Zaria Area Court	Zaria City	Zaria Town Council Area	1 No.1
Soba Area Court	Soba	Soba District	1

30 The ordinary rules of construction of statutes, not only coun-
sel, but also dictate the reading of the related provisions of the statute
together, and as well as reading the statute as a whole. This enables
arriving at a construction of the intention of the statute related sec-
tions and its objectives of the law matter. See *Mobil Oil (Nig.) Ltd. v.*
F.B.I.R. (1977) 3 S.C 97. See also *University of Ibadan v. Adamolekun*
(1967) 1 All N.L.R. 213.

35 Although by section 3(1) of the Area Courts Edict, the Chief

Judge is empowered to establish such Area Court as he shall think fit, the jurisdiction to be exercised by such Area Court is that conferred by or under the Edict -See section 3(2).

Section 18 of the Edict provides that every Area Court shall have jurisdiction and power to the extent set forth in the warrant establishing it. But this provision is subject to the provisions of the Edict and of the Criminal Procedure Law, in all civil and criminal cases in which all the parties are subject to the jurisdiction of such Area Court. 5

The construction of this provision which seems to me plain and unambiguous is that section 18, is subject to the other provisions of the Edict. It is neither necessary nor permissible to read meanings into the clear words- See Nabham v. Nabham (1967) 1 All NLR 47 and Ogunmade v. Fadaio (1972) 8-9 SC. 1 to land causes. 10

Section 19 of the Edict is a specific provision relating to land causes. It provides that "subject to any provision of any written law, all land causes shall be tried and determined by an Area Court having jurisdiction over the area in which the land which is the subject matter of the dispute is situated and to the extent of the jurisdiction and power of such Court. 15 20

"Section 18 is a general provision relating to the general JURISDICTION OF THE Court and power of the Area Court as set forth in its warrants. By the rules of construction generalia specialibus non derogant the general provision of section 18 made subject to the provision of the Edict cannot override the special provision of section 19 relating to jurisdiction in land causes. Furthermore section 18 makes the exercise of jurisdiction and power to the extent set forth in the warrant establishing the court, subject to all civil and criminal cases in which all the parties are subject to the jurisdiction of such Area Court." 25 30

The subject matter before the Zaria City Area Court No.1 is a land cause, and falls properly within the provisions of section 19.

This construction follows inevitably from the words of section 18 which makes the section subject to the provisions of the Edict. It is a well settled rule of the construction of statutes, that when a provision is made subject to another, that provision must be read subordinate to the provision it is made subject. See *Tukur v. Government of Gongola State* (1989) 4 NWLR (Pt.117) 517. Thus in the instant case section 18 shall be read subordinate to section 19 and any jurisdiction and power set forth in the warrant of the Area Court shall be read subject to all civil and criminal cases in which all the parties are subject to the jurisdiction of such Area Court.

Now by the Area Court (Jurisdiction) Notice 1977, the area of jurisdiction of the Zaria City Area Court No.1 is the Zaria Town Council Area, whereas the area of jurisdiction of Soba Area Court, is Soba District. In accordance with this notice, and consistent with section 19 of the Edict, where the land in dispute is in Matari, there is no doubt that the proper Court to exercise jurisdiction is the Soba Area Court.

The Chief Judge is only empowered to establish Area Court-Section 3(1). The jurisdiction of such Area Courts is prescribed by the Edict. See sections 18 and 19. The Chief Judge may only specify the area and extent of the jurisdiction. See section 3(2). It seems to me what is intended here is jurisdiction as to territory. Not jurisdiction as to subject matter. In any case the Chief Judge cannot specify a jurisdiction inconsistent with sections 18 and 19. See *N.R.C. V. Holloway* (1965) NMLR 237.

The Court of Appeal took the view that the jurisdiction of the trial Court was ascertainable by reference to its warrant. The Court below came to this conclusion by reading together the provisions of sections 3(2) and 18 of the Area Courts Edict. A combined reading of the two provisions it was held would demonstrate that the jurisdiction of an Area Court is determined by the specifications contained in the warrant establishing the Court. I do not think so. Let us now consider the provisions.

Section 3(2) merely states that every Area Court shall exercise the jurisdiction conferred on it by or under the Edict. There is no provision and it is not possible to construe the words to mean that enabling the Chief Judge to specify the jurisdiction and powers of the Area Court as conferred by the Edict. The Chief Judge is however

empowered to specify the area, and extent of the exercise of the jurisdiction conferred on the Area Court by the Edict. This he can do by notification from time to time in the Gazette. In my view, the jurisdiction of the Area Court is ascertainable from the Area Courts Edict. The area and extent of such jurisdiction is also ascertainable from the notification in the Gazette - see section 3(6)

I agree entirely with Mr. Daudu, learned counsel to the appellants, that to hold that the jurisdiction of an Area Court can only be determined by production of the warrant establishing it is to subordinate the provisions of an enabling law to the subsidiary law made thereunder. By this I mean, the warrant of the Area Court made under section 3(2) of the Edict, the enabling law, will now govern the section and sections 18 and 19 of the Edict, where the general and special jurisdiction of an Area Court have been prescribed. This is clearly not the law.

In the instant case the Area Court (Jurisdiction) Notice 1977 which spelt out the jurisdiction of the Zaria City Area Court and Soba Area Court, to the whole world as required by section 3(6) is consistent and not in conflict with section 19 of the Area Courts Edict. It is therefore not necessary to have resort to the warrant of the Court to ascertain its jurisdiction. The Court of Appeal was therefore in error when it held that because the warrant of the trial court was not in evidence, the presumption of regularity was in favour of jurisdiction. The Court below was clearly in error in the face of overwhelming evidence that the warrant of the trial court "is unquestionably the trump card and sledge hammer of the much needed coup de grace for the determination of the jurisdictional issue in this case." It went on to hold erroneously that because "the warrant of that court is not before us and it is trite law that we cannot be invited to speculate on the scope of the jurisdiction and power of the trial court." The presumption of regularity assumes the exercise of a valid jurisdiction and does not arise in the absence of jurisdiction.

I have already pointed out that on the facts of this case there was sufficient material before the court below to determine the issue of jurisdiction raised. The submission of learned counsel on the authority of *Fadiora & Ors. v. Gbadebo & Ors* (1978) 3 S.C. 219 is therefore misconceived. The point of law raised being an issue of jurisdiction can be raised at any stage of the trial including on appeal.

Appellant in this case is challenging the competence of the court to adjudicate because of the location of the land in dispute. It is common ground that the land in dispute is situate in Matari. Matari is in Soba District. There is also Area Court Grade 1 in Soba. The action was brought in Soba Area Court Grade 1. It was tried in the Zaria City Area Court No.1, which exercises jurisdiction over the Zaria Town Council Area. Learned counsel to the respondent has submitted to us that by virtue of section 18 of the Area Court Edict 1967 Zaria City Area Court No.1 is empowered to adjudicate on all matters arising from any part of the then Zaria Local Government, which includes the present Soba Local Government. It is important to observe the clear provisions of the Area Courts (Jurisdiction) Notice, 1977 which clearly spelt out the jurisdiction of the Soba Area Court. In view of this notice it is difficult to appreciate any merit in that sub-
mission.

It is well settled and decided cases are numerous in support of the proposition that one of the prerequisites of a court, in the exercise of its jurisdiction, is that the subject matter of the action must be within its jurisdiction, and there should be no feature in the case which prevents the court from the exercise of its jurisdiction See *Madukolu v. Nkemdilim* (1962) 2 SCNLR 341, (1962) 1 All NLR (Pt.4) 587.

Where the subject matter is not within the jurisdiction of the Court adjudicating, there is nothing to adjudicate, and the decision so reached in the absence of jurisdiction is a nullity. Similarly, all subsequent proceedings are a nullity.

In the instant case, Zaria City Area Court No.1 which has jurisdiction only within the Zaria Local Government Area, is not competent to adjudicate in respect of this land in dispute which is in Matari and under the Soba Local Government Area. This is consistent with section 19(3) which provides that

"all land causes shall be tried and determined by an Area Court having jurisdiction over the area in which the land which is the subject matter of the dispute is situated....."

I have no doubts in my mind that the trial Court, which is the Zaria City Area Court No. 1 lacked the requisite jurisdiction to

adjudicate on the subject matter of the action which is in respect of land situate in Matari, in Soba Local Government Area. Issue No.1 is therefore resolved in favour of the appellants.

Having held that the trial court had no jurisdiction, all proceedings resulting therefrom the invalid exercise of jurisdiction is a nullity See *Macfoy v. U.A.C. Ltd* (1961) 3 All ER 1172. 5

The appeal succeeds on this ground alone. It is therefore unnecessary to express any opinion in respect of the other issues canvassed.

I shall therefore allow the appeal. Appellant shall have costs of this appeal assessed as N100 in the High Court, N400 in the court below, and N1,000 in this Court. 10

KAWU JSC 15

I have had the preview of the lead judgment of my learned brother, Karibi-Whyte, J.S.C. which has just been delivered. For the reasons set out in the judgment, I agree that there is merit in the appeal and it should be allowed. I too will allow the appeal. I abide by all the orders made as to costs in the lead judgment. 20

BELGORE JSC

I have had the privilege of reading in advance the judgment of my learned brother, Karibi-Whyte, J.S.C., with which I am in complete agreement. I too will allow this appeal for the reasons ably advanced in the judgment and I adopt them as mine. I make the same order as to costs. 25

(Nnaemeka-Agu & Uche Omo, JJSC., Also agreed with the lead judgment of Karibi-Whyte, JSC.) 30