

**SUPREME COURT OF NIGERIA**  
FRIDAY 5TH JULY, 2002, SC. 60/1996  
**CORAM:- A. B. WALI, E. O. OGWUEGBU , A. I. IGUH,**  
**U. A. KALGO, S. O. UWAIFO, JJSC**

EMMA OKAFOR ..... APPELLANT  
AND  
JOHN NWOYE EZENWA ..... RESPONDENT

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JURISDICTION - Determination - Basis - Jurisdiction of Awka High Court over the suit - Shall be determined from oral or affidavit evidence available (H1)

COURTS - Jurisdiction - Proof - Burden of - Since respondent asserted that Awka High Court was proper venue for the suit - Burden is on him to prove same (H2)

CONTRACTS - Breach - Jurisdiction - Determination - By O.4 r.3 High Court Rules of Anambra State - Jurisdiction can be decided by where contract was made - Where it ought to have been performed - And where defendant resides (H3)

JURISDICTION - Proof - Unless respondent clearly shows that he resided within jurisdiction of Awka High Court - The case cannot be heard by the court (H4)

WORDS & PHRASES - Statutes - “Court” - Meaning - Court as used in s. 22 of High Court Law of Eastern Nigeria - Means the present High Court of Anambra State (H6)

AGENCY - Contract - Agent - Liability - Agent of a disclosed principal is not personally liable - On a contract he enters on behalf of the principal (H6)

***FACTS***

Both parties discussed the prospect of investing in Pace Dry-Cleaning Company located in Lagos. Defendant/appellant got plaintiff/respondent interested in bringing 30% equity shares in the com-

pany. Respondent paid the sum of N54,000.00 representing the 30% equity shares in ten installments. Thereafter, appellant wrote to inform respondent that the share capital of the company had been increased by N50,000.00 and asked for an additional N5,000.00 from respondent. Respondent refused to pay the additional money. Subsequently, appellant informed respondent that his (respondent's) share has been reduced from 30% to 10%. An alternative solution to the dispute was not satisfactory to respondent.

Hence, he filed this action at the High Court of Anambra State, Awka, claiming for the said N54, 000.00 with 5% interest rate per annum from date of judgment till judgment debt is liquidated. The court held in favour of respondent. Thereafter, appellant brought a motion seeking to set aside the judgment on the ground that he was not personally liable since the money was paid to a limited liability company. He also stated that the court lacked jurisdiction to entertain the suit since the contract was made in Lagos and was to be performed in Aba. He further stated that respondent was not even resident in Awka. The court refused the application. Hence, appellant appealed to the Court of Appeal, Enugu. The appeal was dismissed. Dissatisfied, appellant filed appeal at Supreme Court.

### ***ISSUES FOR DETERMINATION***

*“(a) Based on the pleadings of the parties can it be said that the appellant was resident at Awka?”*

*“(b) Whether the respondent adduced evidence at the trial in support of the averment that the appellant was resident at Awka.”*

*“(c) If the answers to the foregoing questions were in the negative whether the Awka High Court had jurisdiction to try the suit.”*

*“(d) Whether the respondent entered into the contract with the appellant personally or with a limited liability company called Pace Dry Cleaning and Laundry Services Limited.”*

**HELD** (Unanimously allowing the appeal per **UWAIFO JSC**)

*JURISDICTION - Determination - Basis*

**1. The first question arising from the issues is whether the appellant resides at Awka. It seems to me that this is a case in**

**which, in order to decide the jurisdiction of the High Court in Awka to entertain this suit, one is bound to look at the evidence available, oral or affidavit, to be able to resolve justly whether the appellant resides in Awka, and what is the proper venue for instituting this action.**

**In the present case, was it not necessary to prove by evidence, in the absence of admission, where the appellant resided at all material times in order to determine whether the court had jurisdiction to entertain the suit? I think it certainly was.**

(pp. 2405 D/2406 C)

*Jurisdiction - Proof - Burden of*

**2. The burden was on the plaintiff/respondent who asserted that the High Court Awka was the proper venue to show that he was right, for the law is that, generally, he who asserts the positive must prove it by virtue of the requirements of section 135 of the Evidence Act. (p. 2407 A)**

*CONTRACTS - Breach - Jurisdiction - Determination*

**3. Under Order 4, r.3 of the High Court Rules 1988 of Anambra State which is the relevant rule as to venue in case of breach of contract, it is provided that:**

***“All suits for the specific performance, or upon the breach of any contract, may be commenced and determined in the judicial division in which such contract was made or ought to have been performed or in which the defendant resides.”***

**By the above rule, the venue of an action could be decided upon three alternatives, namely: (a) Where the contract was made, (b) Where the contract ought to have been performed, (c) Where the defendant resides.**

**A plaintiff suing for breach of contract is entitled to take advantage of any of the alternatives and rely on it to choose the venue convenient to him. (p. 2407 G)**

*JURISDICTION - Proof*

**4. Unless it was clearly shown by the respondent that the respondent resided within the territorial jurisdiction of the High**

***Court, Awka, that is to say, that the Anambra State High Court has jurisdiction to entertain the alleged breach of contract, the case could not, upon the issue of venue joined in the pleadings, be heard in Awka Judicial Division.*** (p. 2410 A)

**B** *Statutes - "Court" - Meaning*

**5. As can be seen, the word 'court' used in section 22 means the High Court of Justice of Eastern Nigeria (now to be read in the present context as the High Court of Justice of Anambra State) by definition under section 2.** (p. 2410 G)

*Contracts - Agents - Liability*

**D 6. It must be remembered that this action was not brought against the appellant as defendant on the tort of deceit or misrepresentation. It is for money had and received by the appellant for the use of the respondent. But as the pleadings and evidence can be seen to have revealed, the money was received by the appellant on behalf of Pace Dry Cleaning and Laundry Services Ltd. to the knowledge of the respondent.**

**E The appellant cannot be personally sued in the circumstances. He was an agent and acted as such. The principal was at all material times disclosed. The law is that an agent of a disclosed principal is not ordinarily personally liable on a contract he enters on behalf of the said principal.** (p. 2412 E)

**NOTABLE POINT OF INTEREST**

**UWAIFO JSC**

**G 1. Anambra State High Court Rules 1988 O. 4 r. 3 & High Court Law of Eastern Nigeria 1963 s. 22 – Difference in provisions**

**H** The above provides substantially the same alternative conditions as in Order 4, r.3 of the Rules already reproduced. The difference, which ought to be pointed out, is that while the said Order 4, r.3 deals with geographical jurisdiction or Judicial Division within Anambra State Judiciary in the sense that it makes provisions regulating the institution and hearing of actions in the various Judicial Divisions of the High Court of the State, section 22 is concerned with territorial jurisdiction of the Anambra State High Court. (p. 2410 E)

**REPRESENTATION**

Chief Okwuchukwu Ugolo for the appellant  
F.N. Iguh Esq., for the respondent

**CASES REFERRED TO**

- Aburime v. The Secretary - Assemblies of God Mission (1952) 14 WACA 185
- Adeyemi v. Opeyori (1976) 9 & 10 SC 31
- Barclays Bank of Nig. v. Central Bank of Nig. (1976) 1 All NLR 409 C
- National Bank of Nigeria Ltd. v. Shoyoye (1977) 5 SC 81
- Western Steel Works Ltd. v. Iron & Steel Workers Union of Nigeria (1987) 1 NWLR (pt. 49) 284
- University Press Ltd. v. I. K. Martins Nig. Ltd. (2000) 4 NWLR (pt. 654) 584 D
- Abiodun v. Adehin (1962) 1 All NLR 550
- Ganiyu Tewogbade & Co. v. Arasi Akande & Co. (1968) N.M.L.R. 404
- Morohunfola v. Kwaratech (1990) 4 NWLR (pt. 145) 506
- Odukwe v. Ogunbiyi (1998) 8 NWLR (pt. 561) 339 E
- Onobruhere v. Esegine (1986) 1 NSCC Vol.17 343
- Ndaeyo v. Ogunnaya (1977) NSCC vol.11 5
- Khonam v. John (1939) 15 NLR 12
- Niger Progress Ltd. v. North East Line Corp. (1989) 3 NWLR (pt. 107) 68 F
- Union Bank of Nig. Ltd. v. Edet (1993) 4 NWLR (pt. 287) 288

**STATUTE & RULES REFERRED TO**

- High Court Law of Eastern Nigeria 1963, s. 22 G
- Anambra State High Court Rules 1988, O. 4 r. 3

**BOOK REFERRED TO**

- Chitty on Contracts 28<sup>th</sup> Ed Vol.2 para. 32-087 p. 53

**LEAD JUDGMENT BY UWAIFO JSC**

Sometime in 1983 in Lagos, the plaintiff and the defendant discussed the prospect of a company with which the defendant was involved in promoting. It was known as Pace Dry Cleaning and

Laundry Services Ltd. The defendant got the plaintiff interested in buying 30% equity shares in the said company. The plaintiff paid the sum of N54,000.00 representing the 30% equity in ten installments and was given a receipt each for eight of those installment payments as per exhibits 'G' to 'O'. In fact, as was pleaded, the company had before then been duly incorporated under the Companies Act 1968 and a Certificate of Incorporation No. RC 45931 issued.

Subsequently, in July, 1984, the defendant wrote to inform the plaintiff that the share capital of the company had been increased by N50,000.00 and asked for an additional N15,000.00 from the plaintiff. The plaintiff refused. What followed was that the defendant informed him in writing that his share had been reduced from 30% to 10%. When the plaintiff went to meet the defendant at Aba to protest to him, he was presented with the alternative of either the 10% share or a refund of his money. It would appear the plaintiff opted for a refund and that the defendant offered to do so by N2,000.00 monthly installments.

As this was unacceptable to the plaintiff, he filed a writ of summons on 12 July, 1985 at the High Court of Anambra State in Amawbia-Awka Judicial Division, holden at Awka against the defendant, and in paragraph 16(a) and (b) of the statement of claim, asked for -

(a) The sum of N54,000.00 being money payable by the defendant to the plaintiff as money had and received by the defendant for the use of the plaintiff

(b) Interest on the said sum at 5% per annum.

Both parties filed and exchanged pleadings, but the defendant did not testify although counsel for him cross-examined the plaintiff and the only witness he called whose evidence was concluded on 8 April, 1987, and the case was adjourned to 28 July for further hearing. On that day plaintiffs counsel, I. O. Chinwuba (Miss), informed the court that there were moves to have the matter settled out of court and "*some payments have been made since last adjournment.*" The matter was adjourned to 8 December, 1987 but both parties were absent, and Chinwuba (Miss) who appeared for the plaintiff asked for judgment. The court adjourned to 12 January, 1988 for address by plaintiff's counsel, which she did.

On 24 February, 1988, the learned trial judge (Uyanna, J.) in

a considered judgment concluded as follows:

*“Having considered the evidence in its totality I therefore hold that in law based on the facts proved by the plaintiff that plaintiff is entitled to judgment on paragraph 16(a) of his Statement of Claim. As regards paragraph 16(b) of the Statement of Claim there shall be judgment for plaintiff at five (5) per centum interest per annum on the said sum of N54,000.00 from the date of this judgment till the judgment debt is completely liquidated.”* B

The defendant then brought a motion filed on 14 December, 1988 seeking to set aside the judgment. The reasons for his absence from court as from 27 July, 1987 were that on that day as he was driving from Aba to attend court at Awka he was involved in a serious accident which led to his being hospitalized. He said further that he was not personally liable in the transaction with the plaintiff but that the money was paid to the company. Learned counsel for him also raised the issue of the jurisdiction of the High Court of Anambra State to entertain the matter. He argued that the contract was made in Lagos, it was to be performed in Aba and the defendant was not resident in Awka. On 7 November, 1989, the learned trial judge, in a considered ruling, refused to set aside the judgment. On the question of jurisdiction, he said: C D E

*“To my mind, to plead that a person who says he hails from a place does not ‘reside’ in that place when he is not a lawyer seems to be pursuing legalism too far. ‘To hail’ is a compendious word which may mean live in a place as well as being ‘a native of a place. I think the pleading clearly disclosed where the defendant applicant resides.”* F

The defendant appealed in separate appeals to the Court of Appeal, Enugu Division, against the judgment of 24 February, 1988 and the ruling of 7 November, 1989 by the trial court. Both appeals were consolidated. G

Two of the three issues raised for determination by the Court of Appeal were -

1. Whether the learned trial judge had jurisdiction to try the suit. H

2. Whether the learned trial judge was right in entering judgment against the defendant when the evidence adduced at the trial showed that the respondent made a contract with a limited liability company called Pace Dry Cleaning and Laundry Services Limited.

On issue 1, the court below examined the pleadings and evidence, and observed per Awogu JCA who read the leading judgment:

*"In the instant appeal, the evidence of the plaintiff was that the defendant 'hails from Umuogbu Village, Awka.' In the Statement of Defence, the Defendant agreed that he was a native of Awka, and hailed from Awka, but 'denies residing there ordinarily.' The Amended Statement of Claim states, however, that the 'Defendant resides at Umuogbu Village, Awka, and also resides and carries on business at Enugu.' It seems to me that the fact that the defendant admitted hailing from Awka, but not residing there 'Ordinarily', is an admission that he resides there also."*

On issue 2, the learned Justice of the Court of Appeal said:

*"In the instant appeal, Emman Okafor contracted with the Respondent, both as agent and principal (being the owner of the proposed company), and it is not open to him to repudiate liability for the contract. He appears to have accepted this position when he wrote exhibit D.*

*In any event, a promoter is liable in company law for pre-incorporation contracts, after incorporation such contracts must be ratified by the company before it can be binding on the company (see also sec.2 of the Companies and Allied Matters Decree, 1990).*

*Furthermore, if the defence is that the company was liable but was not joined in the suit, the defendant should have taken steps to make the company also party to the action."*

The appeal was dismissed with N750.00 costs.

The matter has now come to this court on a further appeal by the defendant (now referred to as the appellant), and the following issues for determination have been set down in the appellant's brief of argument:

*"(a) Based on the pleadings of the parties can it be said that the appellant was resident at Awka?*

*(b) Whether the respondent adduced evidence at the trial in support of the averment that the appellant was resident at Awka.*

*(c) If the answers to the foregoing questions were in the negative whether the Awka High Court had jurisdiction to try the suit.*

*(d) Whether the respondent entered into the contract with the appellant personally or with a limited liability company called Pace*

*Dry Cleaning and Laundry Services Limited.”*

Learned counsel for the appellant has argued that the court below misunderstood the pleadings and the evidence which led it to conclude that to allege that a person hails from a particular place was an admission that he resides there also. He submits that the only reason the action was brought in Awka is because the appellant was born there. He contends that from the state of the pleadings, it was disputed that the appellant was resident at Awka and that in order to resolve that, evidence must be led by the respondent. The plaintiff (now referred to as the respondent) has not, in my view, been able to meet these contentions in his brief of argument. The main submission canvassed on his behalf is that there is no distinction between “*hailing from*” and “*residing in*” a place and that the court below saw no distinction, and was right in that view.

***The first question arising from the issues is whether the appellant resides at Awka. It seems to me that this is a case in which, in order to decide the jurisdiction of the High Court in Awka to entertain this suit, one is bound to look at the evidence available, oral or affidavit, to be able to resolve justly whether the appellant resides in Awka, and what is the proper venue for instituting this action.*** See *Aburime v. The Secretary, Assembly of God Mission* (1952) 14 WACA 185 at 186; *Adeyemi v. Opeyori* (1976) 9 and 10 SC 31 at 51-52; *Barclays Bank of Nigeria v. Central Bank of Nigeria* (1976) 1 All NLR 409; (1976) A.N.L.R. 326; *National Bank of Nigeria Ltd. v. Shoyoye* (1977) 5 SC 81 at 193-194; *Western Steel Works Ltd. v. Iron & Steel Workers Union of Nigeria* (1987) 1 NWLR (pt.49) 284 at 305; *University Press Ltd. v. I. K. Martins (Nig.) Ltd.* (2000) 4 NWLR (pt.654) 584 at p.603. I shall specifically refer to *Barclays Bank of Nigeria Ltd. v. Central Bank of Nigeria* (1976) A.N.L.R. 326 (already cited above) to illustrate where the court may have to take evidence first in order to be able to decide the issue of jurisdiction. It appears to me germane to the circumstances of this case. In that case, the issue was the interpretation to be given to the effect of a particular provision of a certain Decree. The Barclays Bank and the Central Bank differed in their views, and it depended on which view, upon the facts, was correct in order to determine whether the court has jurisdiction to entertain the suit that was filed. This court observed at pages 336-337 as follows:

B “As for the second part [of the relevant section of the said Decree] which provides that the jurisdiction of the court is ousted in respect of any rights which are extinguished under the Decree, it is our view that this part can only be invoked if the court is satisfied from the evidence before it that such rights are extinguished. Moreover, before the court can be so satisfied, it must be proved by evidence that the rights of the customers concerned do not come within claims relating to banking obligations which the commercial bank concerned is obliged to honour by virtue of the provisions of the Decree.”

C **In the present case, was it not necessary to prove by evidence, in the absence of admission, where the appellant resided at all material times in order to determine whether the court had jurisdiction to entertain the suit? I think it certainly was.**

D The respondent in the statement of claim, paras. 1 and 2, pleaded thus:

E “1. The plaintiff is a native of Awka town, Awka Local Government Area, within jurisdiction. He is a businessman based in Lagos and carries on business under the registered name of Johnny Auto Supply Company.

F 2. The defendant is also a native of Awka town, Awka Local Government Area, within jurisdiction, and resides therein. He was a promoter of a proposed Company to be known as Pace Dry Cleaning and Laundry Services Limited.”

G The appellant denied residing in Awka although he admitted hailing from there. He averred in para. 2 of his statement of defence “that he hails from Awka but denies residing there ordinarily, and that he was “ordinarily resident and carrying on business in Lagos” and further “that as at this time of hearing of this case he is resident and carrying on business at Aba in Imo State.”

H In his replication to para. 2 of the statement of defence, the respondent maintained that the appellant resided in Awka, saying “that the defendant is a native of Umuogbu Village, Awka town, and resides in his late father’s compound in the said Umuogbu village, Awka town, to which compound he, as the eldest son succeeded to on the death of his father ..... and that the defendant is presently putting up a storey building in his said compound.”

It was necessary to adduce evidence in support of the averments that the appellant resided at all material times in Awka in order to establish jurisdiction in the High Court Awka to entertain the suit. This was important because the venue became a territorial jurisdictional issue. **The burden was on the plaintiff/respondent who asserted that the High Court Awka was the proper venue to show that he was right, for the law is that, generally, he who asserts the positive must prove it by virtue of the requirements of section 135 of the Evidence Act.** See *Abiodun v. Adehin* (1962) 1 All NLR 550; *Ganiyu Tewogbade & Co. v. Arasi Akande & Co.* (1968) N.M.L.R. 404; *Morohunfola v. Kwaratech* (1990) 4 NWLR (pt.145) 506; *Odukwe v. Ogunbiyi* (1998) 8 NWLR (pt.561) 339.

*"In his evidence at the trial, all that the respondent said in examination-in-chief to reflect the possible venue was: "I live in Coker village Lagos, No.81 Coker Road, Coker Village, Lagos. I am a dealer in motor spare parts. I carry on business under the business name of Johnny Auto Supply Company. I know Emmanuel Nweke Okafor. He hails from Umuogbu village, Awka."* He was then cross-examined and he said inter alia:

*"At the material time I was carrying on business in Lagos ..... He told me the name of the company was Pace Dry Cleaning and Laundry Services Ltd. At the material time he told me about this company we were both in Lagos. I did not ask the defendant about his business in respect of which I invested my money for 30% share... I made the first payment in Lagos towards the shares to the defendant; he received it in Lagos".... He told me that the industry was to be located in Enugu and Aba ..... I paid him all the money in Lagos."*

It is clear from the above that (a) the contract for the shares and payment therefore took place in Lagos and (b) the respondent was told that the business would be located in Enugu and Aba. It would appear those were the likely places the contract ought to have been performed.

**Under Order 4, r.3 of the High Court Rules 1988 of Anambra State which is the relevant rule as to venue in case of breach of contract, it is provided that:**

***"All suits for the specific performance, or upon the breach of any contract, may be commenced and determined in the judicial division in which such contract was made or***

***ought to have been performed or in which the defendant resides.”***

***By the above rule, the venue of an action could be decided upon three alternatives, namely: (a) Where the contract was made, (b) Where the contract ought to have been performed, (c) Where the defendant resides.*** See University Press Ltd. v. I. K. Martins (Nig.) Ltd. (2000) 4 NWLR (pt. 654) 584 at 598-599. ***A plaintiff suing for breach of contract is entitled to take advantage of any of the alternatives and rely on it to choose the venue convenient to him.*** See I. K. Martins (Nig.) Ltd. v. University Press Ltd. (1992) 1 NWLR (pt.217) 322 at 331.

In the present case, the contract was made in Lagos; it ought to have been performed either in Enugu or Aba, but most probably in Aba as it appeared from the evidence that the company set up an office in Aba. The respondent testified at the trial thus:

*“I said that subsequently I received a letter requiring that I pay N15,000 for additional increase of share capital. In his defendant’s 3<sup>rd</sup> letter to me he said I could no longer have 30% equity shares but 10%, exhibit ‘C’. As a result I went to Aba, to Pace Dry Cleaning and Laundry Services Limited, Aba. I do not know whether that was their head office. He took me inside an office.”*

The respondent did not bring his action in Lagos, Aba or Enugu. The only alternative left was where the appellant (as defendant) resides, assuming he is the proper defendant rather than the Pace Dry Cleaning and Laundry Services Limited itself. He pleaded that the appellant resides in Awka but issue was joined on this in the statement of defence. I gave a synopsis of the relevant averments earlier in this judgment. I now reproduce the said averments as contained in para. 2 of the statement of defence as follows:

*“2. The defendant admits paragraph 2 of the statement of claim only to the extent that he hails from Awka but denies residing there ordinarily. In further answer to paragraph 2 the defendant says that at the material time of the transaction between the plaintiff and PACE DRY CLEANING AND LAUNDRY SERVICES LIMITED the defendant was ordinarily resident and carrying on business in Lagos. The defendant further avers that as at this time of hearing of this case he is resident and carrying on business at Aba in Imo State.”*

The respondent failed to discharge the onus on him to prove

that the appellant resides in Awka. No iota of evidence was led by him in this regard, not even by mere mention. I have also recited the manner in which the lower court held that because the appellant admitted hailing from Awka, it was an admission that he resided there. With due respect to the court below, this is a clear case of a faux pas in the way of drawing inference, and I consider it most unsatisfactory. B As if that blunder was not enough, the court below further said per Awogu JCA:

*“The defendant did not give evidence at the trial nor did his counsel cross-examine the plaintiff as to the residence of the defendant, and his carrying on business at Enugu in Anambra State ..... C On the face of the pleading and evidence, there was nothing to suggest that the appellant did not reside or carry on business within jurisdiction.”*

I think, with profound respect to the learned Justice of the D court below, he seemed to have completely lost sight of the fact that issue having been joined on where the appellant resides, the onus was on the respondent to satisfy the court by evidence on that issue. What the learned Justice rested on was that since there was no evidence to suggest that the appellant did not reside in Awka, then he E resided there; or that it was for the counsel for the appellant to ask the respondent in cross-examination as to where the appellant resided and that this not having been done, the appellant failed to show he did not reside in Awka. In whatever way this is viewed, the F learned Justice shifted the burden of proof of that issue to the appellant. He was certainly in grave error. In *Onobruhere v. Esegine* (1986) 1 NSCC (Vol.17) 343, Oputa JSC at p.347 said:

*“A misdirection as to the onus of proof is thus a very serious matter which can affect the credibility of witnesses. It can also lead to G a miscarriage of justice.”*

The learned Justice then went further to say at p.349:

*“Once it is found that there had been misapprehension as to the onus of proof and a misdirection casting such onus on the wrong party, I think it will be reasonably fair to assume the likelihood of a H miscarriage of justice.”*

It was demonstrably obvious in the present case that there was a miscarriage of justice arising from a misdirection as to the onus of proof of residence.

***Unless it was clearly shown by the respondent that the respondent resided within the territorial jurisdiction of the High Court, Awka, that is to say, that the Anambra State High Court has jurisdiction to entertain the alleged breach of contract, the case could not, upon the issue of venue joined in the pleadings, be heard in Awka Judicial Division.***

Apart from Order 4, r.3 of Anambra State High Court Rules 1988, section 22 of the High Court Law, Eastern Nigeria, 1963 applicable in Anambra State provides as follows:

*“22.-(1) The court shall have jurisdiction to hear and determine any suit for specific performance or any suit founded upon a breach of contract if the contract was made within the jurisdiction of the court though the breach occurred elsewhere, or if the breach occurred within the jurisdiction though the contract was made elsewhere, or if the contract ought to have been performed within the jurisdiction or if the defendant or one of the defendants resides within the jurisdiction.*

*(2) The court shall have jurisdiction to hear and determine any civil cause or matter other than the one referred to in subsection (1) in which the defendant or one of the defendants resides or carries on business within the jurisdiction of the court.”*

The above provides substantially the same alternative conditions as in Order 4, r.3 of the Rules already reproduced. The difference, which ought to be pointed out, is that while the said Order 4, r.3 deals with geographical jurisdiction or Judicial Division within Anambra State Judiciary in the sense that it makes provisions regulating the institution and hearing of actions in the various Judicial Divisions of the High Court of the State, section 22 is concerned with territorial jurisdiction of the Anambra State High Court. ***As can be seen, the word ‘court’ used in section 22 means the High Court of Justice of Eastern Nigeria (now to be read in the present context as the High Court of Justice of Anambra State) by definition under section 2.***

In *Ndaeyo v. Ogunnaya* (1977) NSCC (vol.11) 5, the said section 22 came up for consideration. The issue was the jurisdiction of the Imo State High Court over a chattel stolen within jurisdiction but found in Cross River State in the possession of the defendant who was doing business both in Rivers State and Cross River State.

An action was brought in detinue in the High Court at Owerri in the East Central (now Imo) State. This court at page 10 per Idigbe JSC observed inter alia:

*“There is a distinction, however, between a judgment which a court is not competent to make and one which even if wrong in law or in fact, is within its competency. What occurred in these proceedings amounts to a total lack of jurisdiction for under the provisions of the Law establishing the trial court (i.e. section 22, particularly subsection 2 of the High Court Law aforesaid) the jurisdiction of the High Court of Imo State, so far as concerns the defendants in a civil cause or matter, is limited to such defendants as are resident and/or carry on business, within the Imo (formerly East Central) State. Where, therefore, a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing..... It follows therefore, that the trial court had no jurisdiction to entertain these proceedings and the judgment of that court is void and of no effect.”*

I have no difficulty, from what I have discussed and resolved above, in answering each of issues (a), (b) and (c) set out by the appellant for determination in the negative.

Issue (d) is whether the respondent entered into the contract with the appellant personally or with a limited liability company called Pace Dry Cleaning and Laundry Services Limited.

It seems to me I ought to begin by saying that the respondent would appear to have misled himself by alleging that the appellant was a promoter of a proposed company having regard to the way he pleaded in paras. 2, 3 and 5 of the statement of claim. The appellant carefully pleaded all through, and in particular para. 2 of his statement of defence, that the company had in fact been incorporated at the material time of the transaction in question. Para. 11 makes the averment that:

*“11. The said company was incorporated under the Companies Decree of 1968 as PACE DRY CLEANING AND LAUNDRY SERVICES LIMITED with Registration Certificate No. 45931 and Registered Office at 33 FAULKS ROAD ABA IMO STATE. The said registration Certificate shall be founded upon at the hearing of this suit.”*

In the further pleading (replication) filed by the respondent, none of the said averments as to incorporation, at the time of the

transaction in the sense that the respondent was aware of who he was dealing with or on whose behalf the deal was being done, was denied or put in issue. I think it ought to be taken that no issue was joined on that and that, naturally, the respondent dealt with an agent of a disclosed principal. He cannot in the circumstances be heard to assert to the contrary. Quite apart from the pleadings and the implications just drawn attention to, the documentary evidence acknowledged by the respondent shows that he made payments for the share purchased to the said company. Eight exhibits, namely G1, H, J, K, L, M, N and O were admitted as vouchers, each in respect of a particular installment payment. Across each exhibit which was in fact prepared by the respondent, as testified to by his Administrative Manager, Emmanuel Ekwunife (p.w.2), was boldly endorsed the name of the company. When further cross-examined the respondent said:

D “I have an Administrative Manager; big companies act through agents such as Managers, Managing Directors, and Directors. I now look at exhs B, C, E and in particular exh. ‘B’ Pace Dry Cleaning and Laundry Services Company Limited and signed below Managing Director ..... I paid him all the money in Lagos. I have sued the person who collected the money from me. You ask if I know that individual promote company, but it is the defendant I met who told me he was promoting company.”

**It must be remembered that this action was not brought against the appellant as defendant on the tort of deceit or misrepresentation. It is for money had and received by the appellant for the use of the respondent. But as the pleadings and evidence can be seen to have revealed, the money was received by the appellant on behalf of Pace Dry Cleaning and Laundry Services Ltd. to the knowledge of the respondent. The appellant cannot be personally sued in the circumstances. He was an agent and acted as such. The principal was at all material times disclosed. The law is that an agent of a disclosed principal is not ordinarily personally liable on a contract he enters on behalf of the said principal.** See *Khonam v. John* (1939) 15 NLR 12 at p.15; *Niger Progress Ltd. v. North East Line Corporation* (1989) 3 NWLR (pt.107) 68 at pp.83-84; *Union Bank of Nigeria Ltd. v. Edet* (1993) 4 NWLR (pt.287) 288. In *Chitty on Contracts*, 28<sup>th</sup> edition, Vol.2 (Specific Contracts), para.32-087,

page 53, it is said:

*“A very important exception to the rule that an agent is neither entitled to sue nor liable to be sued on a contract made by him in a representative capacity is to be found where an authorized agent makes the contract in his own name without disclosing the fact that he is acting on behalf of another. On such contracts he can sue and be sued in his own name because he is then to all appearances the real contracting party.”*

I have come to the conclusion that there is merit in this appeal. It is on the twin issues (1) that the High Court at Awka or indeed the Anambra State High Court has no territorial jurisdiction to entertain the suit and (2) that the appellant is not the proper defendant. In the circumstances, I allow the appeal, set aside the judgments of the two courts below together with the costs awarded and strike out the suit with N10,000.00 costs against the respondent in favour of the appellant.

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### **OGWUEGBU JSC**

I had a preview of the judgment just delivered by my learned brother Uwaifo, JSC and I agree with the reasoning and conclusions. I too would allow the appeal with N10,000.00 costs to the respondent.

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### **WALI JSC**

I have had the advantage of reading before now, the lead judgment of my learned brother Uwaifo, JSC with which I entirely agree and adopt same as mine.

For those reasons ably stated in the lead judgment, I also hereby allow the appeal, set aside the judgments of the two courts below and strike out the suit for want of jurisdiction. I adopt the order of costs made in the lead judgment.

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### **KALGO JSC**

I have had the privilege of reading in advance, the judgment just delivered by my learned brother Uwaifo JSC in this appeal. I am

in complete agreement with him that there is merit in the appeal and it ought to be allowed.

The main issue to be decided in this appeal is whether there was evidence at the trial to prove that the appellant was at that time of filing the action, resident in Awka or carrying on business there.

B Paragraph two of the plaintiff/respondent's statement of claim says:

*"The defendant is also a native of Awka town, Awka Local Government Area, within jurisdiction; and resides therein.*

C *He was a promoter of a proposed company to be known as Pace Dry Cleaning and Laundry Services Limited".*

And the defendant/appellant in paragraph 2 of this Statement of Defence states:-

D *"The defendant admits paragraph 2 of the Statement of Claim only to the extent that he hails from Awka but denies residing there ordinarily".* The Court of Appeal in its judgment had this to say:

E *"In the instant appeal, the evidence of the plaintiff was that the defendant "hails from Umuogbu Village, Awka". In the Statement of Defence, the defendant agreed that he was a native of Awka, but "denies residing there ordinarily"..... It seems to me that the fact that the defendant admitted hailing from Awka, but not residing there 'ordinarily' is an admission that he resides there also".*

F There is nothing on the record to show that the respondent called any evidence to prove that the appellant was ordinarily resident or carried on business at Awka at the material time. It is also crystal clear from the contents of paragraph 2 of his (appellant's) Statement of Defence above that he categorically denied residing in Awka. He however admitted that he "hails, from Awka", which words G the Court of Appeal interpreted to mean admission that he resides at Awka. With greatest respect to the Court of Appeal, I am of the view that the meaning of the words "hails from" was grossly misconstrued. In my judgment, these words only mean that the appellant is "a native of Awka" or born or brought up there and do not necessarily H mean that he is ordinarily resident there. Therefore the appellant is not caught by the provisions of Section 22 (2) of the High Court Law (Cap. 61 of Laws of Eastern Nigeria) 1963 applicable to Anambra State. Consequently, the High Court at Awka, has no territorial jurisdiction to entertain the suit between the appellant and the respon-

dent. I also agree, for the reasons given by my learned brother Uwaifo JSC which I adopt as mine, that the appellant is not the proper defendant in the action before the trial court.

In the circumstances, I allow the appeal, set aside the decisions of the trial court and the Court of Appeal and abide by the consequential orders made in the leading judgment including the orders as to costs.

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**IGUH JSC**

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Uwaifo, J.S.C, and I agree that there is merit in this appeal.

Having regard to the issues canvassed in this appeal, it is clear to me that the High Court of Justice, Anambra State had no territorial jurisdiction to entertain the suit as it was not established that the appellant at all material times was resident at Awka. The contract in issue between the parties was neither entered into at Awka nor was it intended by the parties that performance thereof would be within that jurisdiction. Additionally, its breach did not occur at Awka.

It is for the above and the more detailed reasons contained in the leading judgment that I am also of the opinion that the trial High Court did not have the territorial jurisdiction to entertain the suit. Accordingly this appeal succeeds and the judgments of both courts below together with the order for costs therein awarded are hereby set aside and the suit is struck out. I abide by the order for costs made in the leading judgment.

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