

SUPREME COURT OF NIGERIA
FRIDAY 19TH APRIL, 2002. SC. 118/1997
CORAM:- I. L. KUTIGI, E. O. OGWUEGBU,
U. MOHAMMED, S. O. UWAIFO, A. O. EJIWUNMI, JJSC

FEDERAL MORTGAGE

BANK OF NIGERIA APPELLANT

AND

P. N. OLLOH RESPONDENT

BANKING - Federal Mortgage Bank - Status - The bank is mere business organization given functions to perform - As nothing in its Act suggests that it is an agency of the Federal Government (H1)

BANKING - Courts - Jurisdiction - By virtue of 1979 Constitution s. 230(1)(d) - That specially applied to appellant as a bank - State High Court has jurisdiction over the matter (H2)

STATUTES - Special provision - Overriding effect - General provision is not to be interpreted as to derogate from a special provision on a matter - Unless intention to do so is unambiguously declared (H3)

FACTS

Based on a mortgage deed made between the parties, plaintiff/respondent secured a loan from defendant's/appellant's Benin City branch. Respondent had used his house in Warri as collateral for the transaction. Upon his liquidation of the principal loan plus accrued interest, respondent requested that appellant should prepare a deed of release for him to have his property back unencumbered. Appellant failed to do so but merely handed back to respondent his document of title. The default necessitated the commencement of this action by respondent at the High Court of Delta State, Warri. He claimed damages and sought for an order directing appellant to release his property from encumbrance.

Appellant filed an application seeking to strike out the suit on the ground that it (appellant) is an agency of the Federal Government and thus cannot be sued in a State High Court by virtue of

section 230(1) paragraphs (q), (r) and (s) of the 1979 Constitution as amended by the Constitution (Suspension and Modification) Decree No. 107 of 1993. In its ruling, the court held that by section 230(1)(d) of the said Constitution, the dispute between the parties is mere bank-customer relationship. The court therefore held that the State High Court has jurisdiction to entertain the action. Appellant's application was thus dismissed. Dissatisfied, appellant appealed to the Court of Appeal, Benin City. The court dismissed the appeal and upheld the decision of the High Court. Appellant has come to Supreme Court on a further appeal.

ISSUE FOR DETERMINATION

Whether the court below correctly held that the State High Court had jurisdiction to entertain this action by virtue of the provisions of the said section 230(1)(d).

HELD (Unanimously dismissing the appeal per UWAIFO JSC)

Federal Mortgage Bank - Status

1. Learned counsel did not explain in what way the reading of the Federal Mortgage Bank of Nigeria Act along with either of the above provisions of section 277(1) of the 1979 Constitution puts it beyond any doubt that the appellant is an agency of the Federal Government as he canvassed in the appellant's brief of argument. There is nothing whatever in the Federal Mortgage Bank Act to suggest that the appellant is an agency of the Federal Government. It is no doubt true that the said Bank was created by an Act of the National Assembly and therefore at best considered the property of the Federal Government with the sole aim of providing financial assistance in the form of long-term facilities to

“Nigerian individuals desiring to acquire houses of their own and the granting of long-term credit facilities to mortgage institutions with a view to enabling those institutions to grant comparable facilities to Nigerian individuals” as per the preamble of the Act. The Bank is no more than a business establishment given functions to perform; but neither of those

functions nor the Bank itself, has any connection with the affairs or the running of the Federal Government. It seems to me the reason learned counsel for the appellant thought that the appellant was an agency of the Federal Government is that by virtue of section 277(1)(f) of the 1979 Constitution, public service of the Federation in any capacity includes staff of any statutory corporation established by an Act of the National Assembly, such as the appellant. The appellant cannot be regarded as a Federal Government agency simply because its staff are by definition under section 277(1) of the 1979 Constitution referred to as persons working in the public service of the Federation. That is not a criterion and it should in addition be said that that definition has a limited connotation which does not even make such staff Federal Government employees. (p. 2758 E)

BANKING - Courts - Jurisdiction

2. Learned counsel for the appellant has argued that paragraph (d) of section 230(1) contains general provision while paragraph (s) contains special provision. In that regard he contends that paragraph (s) applies to the appellant to deny a State High Court jurisdiction in this case rather than paragraph (d). I do not think that reasoning in regard to the nature of the provisions of paragraph (d) and paragraph (s) is correct. On the contrary, paragraph (d) is a special provision relating to banks while paragraph (s) is general to the Federal Government and its agencies.

The decision of this court in Federal Mortgage Bank of Nigeria v. Nigeria Deposit Insurance Corporation (supra) has established that a State High Court has jurisdiction to entertain a cause founded on a customer/bank relationship as in the present case. This appeal which is on that very issue fails and is accordingly dismissed. (pp. 2759 H/2761 E)

STATUTES - Special provision - Overriding effect

3. I have already made it clear that the appellant is a bank. Obviously paragraph (d) of section 230(1) specifically provides for banks and banking inter alia and is a special provi-

sion. Assuming therefore that the appellant is a Federal Government agency, it would be both a bank and a Federal Government agency. Paragraph (s) of section 230(1) is applicable to agencies generally. It follows, in my view, that paragraph (d) rather than paragraph (s) is applicable specially to the appellant. The law is that where there is a special provision in a statute, a later general provision in the same statute capable of covering the same subject matter is not to be interpreted as derogating from what has been specially provided for individually unless an intention to do so is unambiguously declared. To do otherwise is to indirectly use a general provision to alter the intention to provide specially by way of an exception for a subject-matter.

The Latin maxim is: *Generalis clausula non porrigitur ad ea quae antea special iter sunt comprehensa* (A general clause does not extend to those things which are before specially provided for.

It follows that the provision of section 230(1)(d) being specially made for banks and banking etc, must be read in the present case in relation to the appellant to the exclusion of any general provision which might also have covered the appellant, were it a Federal Government agency even though a bank. But as I have already explained, it is not such an agency. (p. 2760 B/2761 D)

NOTABLE POINT OF INTEREST

UWAIFO JSC

1. Definition of a bank

1. Even if the appellant were to be regarded as a Federal Government agency, it must still be recognised that it is a bank by definition: see *Federal Mortgage Bank of Nigeria v. Nigeria Deposit Insurance Corporation* (supra) where this court at page 361 observed: “The word ‘bank’ is not defined in the Constitution nor in the Interpretation Act. In its ordinary grammatical meaning, the word ‘bank’ means an organisation or place that provides financial service. Having regard to the provisions of the law setting up the plaintiff, particularly section 5(1)(a) and section 6(1)(a) & (b) of the Federal Mortgage

Bank of Nigeria Decree No. 82 of 1993, I think it is right to say that it falls within this ordinary meaning.”(p. 2759 F)

REPRESENTATION

Chief H. O. Ogbodu with S. A. Akhademe, Esq. and Marcel Eriofoloh, Esq., for the Appellant B
Dafe Akpedeye, Esq., for the Respondent

CASES REFERRED TO

Royal Petroleum Co. Ltd. v. FBN (1997) 6 NWLR (pt. 510) 584 C
NDIC v. Fed. Mortgage Bank of Nig. (1997) 2 NWLR (pt. 490) 735
D. Stephens Ind. Ltd. v. Bank of Credit & Commerce Intl’n. Nig. Ltd. (1999) 11 NWLR (pt. 625) 29
Okomu Oil Palm Co. Ltd. v. Iserhienrhien (2001) 6 NWLR (pt. 710)
The Vera Cruz (1884 - 1885) 10 AC 59 D
Blackpool Corp. v. Star Estate Co. Ltd. (1922) 1 AC 27

STATUTES REFERRED TO

Constitution of the Federal Republic of Nigeria 1979, ss. 230(1)(d)(q)(r)(s), 277(1)(f) E
Federal Mortgage Bank of Nigeria Act Cap. 138 LFN 1990

LEAD JUDGMENT BY UWAIFO JSC

The respondent got a loan from the appellant’s Benin City Branch in 1979 upon a mortgage deed in which he used his property at No.23 (now No.63) Okumagba Avenue, Warri as collateral. In September, 1992, he liquidated the principal loan together with accrued interest. He then asked that a deed of release be prepared in order for him to have his property back unencumbered. The appellant failed to do so but merely handed back to him his document of title. The respondent has alleged that he could not raise another loan to develop his country home because without the deed of release, the property remains apparently encumbered. On 16th March, 1994, the respondent filed a writ of summons in the High Court of Delta State at Warri against the appellant claiming damages of N5,000,000.00 and an order directing the appellant to release his property from encumbrance. Pleadings were exchanged.

Thereafter the appellant brought an application on 4 Novem-

ber, 1994 to have the suit struck out for incompetence on the basis that it was brought in the State High Court which lacked the jurisdiction to entertain the same. The ground for this was stated to be that the appellant bank was an agent of the Federal Government of Nigeria created by statute and could therefore not be sued in a State High Court. Reliance was placed on section 230(1) paragraphs (q), (r) and (s) of the 1979 Constitution as amended by the Constitution (Suspension and Modification) Decree No. 107 of 1993. The learned trial Judge (Bazunu, J) in a considered ruling given on 25 April, 1995, found no merit in the application and dismissed it. He based his decision on the fact that the dispute between the parties was that of a bank and its customer, and that by virtue of the proviso to section 230(1) (d) of the said Constitution, a State High Court has jurisdiction to entertain it. The appellant took the matter to the Court of Appeal, Benin Division. On 25 April, 1997, the court upheld the decision of the trial court and in addition held that the argument of appellant's counsel that the appellant bank was an agency of the Federal Government was untenable. The appeal was dismissed. The appellant has now further appealed to this court upon a sole issue, namely – whether the court below correctly held that the State High Court had jurisdiction to entertain this action by virtue of the provisions of the said section 230(1)(d).

In the argument canvassed by the appellant, it is conceded that the proviso to section 230(1)(d) saves the jurisdiction of a State High Court to entertain a dispute between a bank and its customer but that it is a general provision relating to banks. The argument goes further that the Federal Mortgage Bank of Nigeria Act (Cap. 138), Laws of the Federation, 1990, read along with section 277(1)(f) of the 1979 Constitution puts it beyond any doubt that the appellant is an agency of the Federal Government. That being so, according to the argument, the specific provision in paragraph(s) of section 230(1) which is applicable to the appellant takes away the State High Court's jurisdiction to entertain this matter.

The respondent on the other hand insists that the appellant being a bank and the respondent being its customer, the proviso to paragraph (d) of section 230(1) applies, that the suit has nothing to do with any Federal Government agency and that the appellant is not such an agency. It is argued further that the relationship between

a bank and its customer is purely contractual and that that does not touch on the vital interest of the Federal Government as to warrant conferring exclusive jurisdiction on the Federal High Court in respect thereof. The cases of *Royal Petroleum Co. Ltd. v. First Bank of Nigeria Ltd.* (1997) 6 NWLR (Pt. 510) 584; *Nigeria Deposit Insurance Corporation v. Federal Mortgage Bank of Nigeria* (1997) 2 NWLR (Pt. 490) 735, as confirmed sub nom *Federal Mortgage Bank of Nigeria v. Nigeria Deposit Insurance Corporation* (1999) 2 NWLR (Pt. 591) 333 by this court, and *D. Stephens Industries Ltd. v. Bank of Credit and Commerce International (Nig.) Ltd.* (1999) 11 NWLR (Pt. 625) 29 were cited and relied on. The argument canvassed by learned counsel for the appellant has introduced a dimension which ought to receive full consideration beyond the principle stated in *Federal Mortgage Bank of Nigeria v. Nigeria Deposit Insurance Corporation* (1999) 2 NWLR (Pt. 591) 333 or, at any rate, before the said principle is resorted to in this appeal. The argument draws attention to section 277(1)(f) of the 1979 Constitution then applicable, the said section 230(1)(d), (q), (r) & (s) and the Federal Mortgage Bank of Nigeria Act which, set up the appellant bank. It then goes on to say that the appellant is a Federal Government agency and that by virtue of section 230(1) (q), (r) & (s) it can only be sued in the Federal High Court on the ground that those paragraphs of that section make special provisions for Federal Government agencies and that any other provision such as section 230(1)(d) was a general provision and therefore inapplicable to the appellant. The provisions of section 230(1)(d), (q), (r) & (s) read:

“230(1) 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 -

(d) banking, banks, other financial institutions including any action between one bank and another, any, action by or against the Central Bank of Nigeria arising from Banking, foreign exchange, coinage, legal tender, bills of exchange; letter of credit promissory note and other fiscal measures.

Provided that this paragraph shall not apply to any dispute between an individual customer and his bank in respect of transac-

tions between the individual customer and the bank;

(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 effects 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 Federal Government or any of its agencies.”

As learned counsel for the appellant also referred to and relied, on section 277(1)(f) of the 1979 Constitution, I reproduce the relevant provision of s. 277(1), i.e. paras. (d) and (f), as follows:

“public service of the Federation’ means the service of, the Federation in any capacity in respect of the, Government of the Federation, and includes services as

(d) staff of any statutory corporation established by an Act of the National Assembly;

(f) staff of any company or enterprise, in which the Govt. of the Federation, or its agency owns controlling, shares or interest.”

Learned counsel did not explain in what way the reading of the Federal Mortgage Bank of Nigeria Act along with either of the above provisions of section 277(1) of the 1979 Constitution puts it beyond any doubt that the appellant is an agency of the Federal Government as he canvassed in the appellant’s brief of argument. There is nothing whatever in the Federal Mortgage Bank Act to suggest that the appellant is an agency of the Federal Government. It is no doubt true that the said Bank was created by an Act of the National Assembly and therefore at best considered the property of the Federal Government with the sole aim of providing financial assistance in the form of long-term facilities to

“Nigerian individuals desiring to acquire houses of their own and the granting of long-term credit facilities to mortgage institutions with a view to enabling those institutions to grant comparable facilities to Nigerian individuals” as per the preamble of the Act. The Bank is no more than a business establishment given functions to perform; but neither of those functions nor the Bank itself, has any connection with the af-

fairs or the running of the Federal Government. It seems to me the reason learned counsel for the appellant thought that the appellant was an agency of the Federal Government is that by virtue of section 277(1)(f) of the 1979 Constitution, public service of the Federation in any capacity includes staff of any statutory corporation established by an Act of the National Assembly, such as the appellant. The appellant cannot be regarded as a Federal Government agency simply because its staff are by definition under section 277(1) of the 1979 Constitution referred to as persons working in the public service of the Federation. That is not a criterion and it should in addition be said that that definition has a limited connotation which does not even make such staff Federal Government employees.

It has been decided by this court in Okomu Oil Palm Co. Ltd. v. Iserhienrhien (2001) 6 NWLR (Pt. 710) 660; (2001) FWLR (Pt. 45) 670; (2001) 85 LRCN 873, that the definition therein, read along with the Fifth Schedule to that Constitution, is essentially for the purpose of the Code of Conduct for public officers; that is to say, to specify by definition who is a public officer to whom the Code of Conduct applies. It does not imply that an establishment in which such public officers are employed is a Federal Government body or an agency of the Government as learned counsel for the appellant's contention would seem to suggest.

Even if the appellant were to be regarded as a Federal Government agency, it must still be recognised that it is a bank by definition: see Federal Mortgage Bank of Nigeria v. Nigeria Deposit Insurance Corporation (supra) where this court at page 361 observed: *"The word 'bank' is not defined in the Constitution nor in the Interpretation Act. In its ordinary grammatical meaning, the word 'bank' means an organisation or place that provides financial service. Having regard to the provisions of the law setting up the plaintiff, particularly section 5(1)(a) and section 6(1)(a) & (b) of the Federal Mortgage Bank of Nigeria Decree No. 82 of 1993, I think it is right to say that it falls within this ordinary meaning."*

Learned counsel for the appellant has argued that paragraph (d) of section 230(1) contains general provision while paragraph (s) contains special provision. In that regard he

contends that paragraph (s) applies to the appellant to deny a State High Court jurisdiction in this case rather than paragraph (d). I do not think that reasoning in regard to the nature of the provisions of paragraph (d) and paragraph (s) is correct. On the contrary, paragraph (d) is a special provision relating to banks while paragraph (s) is general to the Federal Government and its agencies.

I have already made it clear that the appellant is a bank. Obviously paragraph (d) of section 230(1) specifically provides for banks and banking inter alia and is a special provision. Assuming therefore that the appellant is a Federal Government agency, it would be both a bank and a Federal Government agency. Paragraph (s) of section 230(1) is applicable to agencies generally. It follows, in my view, that paragraph (d) rather than paragraph (s) is applicable specially to the appellant. The law is that where there is a special provision in a statute, a later general provision in the same statute capable of covering the same subject matter is not to be interpreted as derogating from what has been specially provided for individually unless an intention to do so is unambiguously declared. To do otherwise is to indirectly use a general provision to alter the intention to provide specially by way of an exception for a subject-matter. See *The Vera Cruz* (1884 - 1885) 10 App. Cas. 59 at p.68 per Earl of Selbourne L.c.; *Blackpool Corporation v. Star Estate Co. Ltd.* (1922) 1 AC 27 at p.34 per Viscount Haldane.

The Latin maxim is: *Generalis clausula non porrigitur ad ea quae antea special iter sunt comprehensa* (A general clause does not extend to those things which are before specially provided for).

In *Bamgboye v. Administrator-General* (1954) 14 WACA 616, Bairamian, J., explained the principle when he observed at p.619 as follows: *"It is an accepted canon of construction that where there are two provisions, one special and the other general, covering the same subject-matter, a case falling within the words of the special provision must be governed thereby and not by the terms of the general provision. The reason behind this rule is that the legislature in making the special provision is considering the particular case and expressing*

its will in regard to that case; hence the special provision forms an exception importing the negative; in other words the special case provided for in it is excepted and taken out of the general provision and its ambit; the general provision does not apply. In the words of Lord Selbourne L.C., in Seward v. 'Vera Cruz' (1884) 10 App. Cas. 59 at 68, 'Now if anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold the earlier and special legislation indirectly repealed, altered or derogated from merely by force of such general words, without any indication of a particular intention so to do...' The above rule of construction applies equally, of course, when the special and the general provisions are enacted in the same piece of legislation: See Dryden v. The Overseers of Putney (1876) 1 Exch.223 at 232."

It follows that the provision of section 230(1)(d) being specially made for banks and banking etc, must be read in the present case in relation to the appellant to the exclusion of any general provision which might also have covered the appellant, were it a Federal Government agency even though a bank. But as I have already explained, it is not such an agency.

The decision of this court in Federal Mortgage Bank of Nigeria v. Nigeria Deposit Insurance Corporation (supra) has established that a State High Court has jurisdiction to entertain a cause founded on a customer/bank relationship as in the present case. This appeal which is on that very issue fails and is accordingly dismissed.

The suit which was filed in March, 1994 will now have to go back to the High Court after some 8 years of its institution. It is ordered that the suit be remitted to the Delta State High Court to be heard on the merits. It will be in the interest of the administration of justice that it be given an expeditious hearing it now obviously deserves. I award N10,000.00 costs in favour of the respondent.

KUTIGI JSC

I read before now the judgment just rendered by my learned brother Uwaifo, JSC. I agree with his reasoning and conclusions. The

dispute between the parties herein is that of a bank and its customer, and by virtue of the proviso to section 230(1)(d) of the 1979 Constitution, a State High Court has jurisdiction to entertain the suit (see for example the case of Federal Mortgage Bank of Nigeria v. Nigeria Deposit Insurance Corporation (1999) 2 NWLR (Pt. 591) 333). The
B appeal is accordingly dismissed and the decisions of the lower courts are affirmed. I endorse the order for costs.

OGWUEGBU JSC

C I had read in draft, before now, the judgment just delivered by my learned brother Uwaifo, JSC, and I agree with him that this appeal should be, and is hereby dismissed as lacking in merit, with N10,000.00 costs to the respondent.

D

MOHAMMED JSC

I agree that the State High Court has jurisdiction to entertain the claim filed by the respondent against the appellant. The relation-
E ship between the appellant and the respondent is purely contractual and is not caught up by the provisions of s. 230(1), (d), (q), (r), and (s) of the Constitution (suspension and modification) Decree No. 107 of 1993. I therefore find no merit in this appeal and for the reason
F given by my learned brother, Uwaifo, JSC, in the lead judgment I hereby dismiss it. I award N10,000.00 in favour of the respondent.

EJIWUNMI JSC

G Having read before now the judgment of my learned brother, Uwaifo, JSC, I agree with him that the issue raised in this case is on all fours with the decision of this court in Federal Mortgage Bank of Nigeria v. Nigeria Deposit Insurance Corporation (1999) 2 NWLR (Pt. 591) 333, I will therefore for the reasons given in the said judg-
H ment also dismiss the appeal. It is also ordered that the suit be remitted to the Delta State High Court for trial on its merit as quickly as possible. I award costs in the sum of N10,000 in favour of the respondent. Appeal dismissed.