

SUPREME COURT OF NIGERIA
FRIDAY 31ST JANUARY, 2003. SC. 77/1995
CORAM:- I. L. KUTIGI, U. MOHAMMED, U. A. KALGO,
A. O. EJIWUNMI, E. O. AYOOLA, JJSC

1. AFRO-CONTINENTAL (NIGERIA) LTD.
2. NOGA COMMODITIES (OVERSEAS) INC APPELLANTS
AND
CO-OPERATIVE ASSOCIATION OF
PROFESSIONALS INC. (BY THEIR
ATTORNEY PRINCE BEN AKABUEZE) RESPONDENT

COURTS - Fair hearing - Applications - Court must make a decision and pronounce on every application before it - And failure to do so - Is breach of Fair Hearing (H1)

COURTS - Jurisdiction - Objection to - When objection to jurisdiction is raised - The same ought to be resolved first (H2)

FAIR HEARING - Breach - Effect - Failure of trial judge to determine appellants' motion challenging jurisdiction of the court - Is fundamental breach which renders his ruling a nullity (H3)

FACTS

The dispute between the parties arose following a contract awarded to plaintiff/respondent by the Nigerian Presidential Task Force for the supply of rice. The contract was thereafter sub-contracted to appellants. Pursuant to an agreement, respondent issued to appellants a letter of credit for the sum of US\$7,356,000.00, out of which sum it was agreed that appellants would deduct, and pay over to respondent, the sum of US\$1,856,000.00 (as respondent's share of the transaction). This amount was to be paid to respondent's Attorney, Prince Ben Akabueze. Appellants did supply the rice as per terms but failed to pay the agreed sum. After several demands, appellants paid the sum of US\$150,000.00, leaving a balance of US\$1,706,000.00.

When no further payments was forthcoming, respondent instituted this action at the High Court of Imo State claiming the sum

of US\$1,706,000.00 with interests as general and special damages for breach of contract. The action was brought under the undefended list. Appellants raised preliminary objection challenging the jurisdiction of the court to entertain the action. The court refused to hear the application, but instead went ahead to give judgment to respondent. Aggrieved, appellants filed appeal at the Court of Appeal, Port Harcourt Division. The court dismissed the appeal. Not satisfied, appellants appealed to Supreme Court contending that they were not given fair hearing in the matter.

ISSUE FOR DETERMINATION

Whether the Motion on Notice claimed by the appellants to have been filed and the filing fees paid at the open registry on 12/12/89 was part of the Records of the Court and whether failure to hear the application in the said motion which concerns a challenge to the jurisdiction of the court amounted to denial of fair hearing within Section 33(1) of the 1979 Constitution.

HELD (Unanimously allowing the appeal per

MOHAMMED JSC)

Fair hearing - Applications

1. It is settled law and mandatory that a court must make a decision and pronounce on every application which is before it and failure to do so is a breach to fair hearing. The refusal of the judge to fix a date for the hearing of the application or to decline to hear an application duly filed in the Registry amounts to a deliberate refusal to hear the application. It is therefore a breach of fundamental right to fair hearing as enshrined in the Constitution. (p. 77 C)

Jurisdiction - Objection to

2. The motion which the learned trial Judge refused to hear has questioned his court's competency to hear the matter before him. When an objection to jurisdiction is raised it ought to be resolved first. (p. 77 D)

FAIR HEARING - Breach - Effect

3. All proceedings which followed such a breach will be a nullity. The ruling delivered by Ogoagwu, J., in which he granted the claim of the respondent after refusing to hear the motion is therefore a nullity.

I therefore agree with the submission of learned counsel for the appellants that, failure of the learned trial Judge to determine the motion filed by the appellants challenging the jurisdiction of his court is a fundamental breach. It had rendered the ruling which he subsequently delivered in favour of the respondent a nullity. The Court of Appeal was in error to affirm the said decision. This appeal is therefore allowed.
(p. 77 F)

REPRESENTATION

Prof. S. A. Adesanya, SAN, with M. A. Oguntola, for the Appellants
F. C. Dike, with I. Isiyaku, for the Respondent

CASES REFERRED TO

Okeke-Oba v. Okoye (1994) 8 NWLR (Pt. 364) 694
Barclays Bank of Nigeria v. CBN (1976) 1 All NLR 409
A-G Anambra State v. A-G Fed. (1993) 6 NWLR (Pt. 302) 692
A-G Lagos State v. Dosunmu (1989) 6 S.C. (Pt. II) 13
Nwosu v. Imo State Environmental Sanitation Authority (1990) 2 NWLR (Pt. 135) 688

LEAD JUDGMENT BY MOHAMMED JSC

This is an appeal from the judgment of the Port Harcourt Division of the Court of Appeal. In the judgment, the Court of Appeal upheld the decision of Owerri High Court, Imo State, in which it granted the claim of the respondent for the sum of \$1,706,000.00 (U.S. Dollars) with interest at 13% against the appellants. The High Court further awarded 10% interest per annum until the judgment sum shall have been settled.

The 1st appellant is a Nigerian Company based in Lagos and the 2nd appellant is an American Company operating from New York. The respondent who was the plaintiff at the High Court is an American Company based in Michigan. Another Company which

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and in some applications the appellants requested for transfer of the suit from Ugoagwu, J., to another judge.

Looking at the issues identified by the appellants it is clear that the appellants, without saying so, are alleging bias on the part of the learned trial Judge. It is pertinent therefore to give a brief narration of the proceedings before the learned trial Judge delivered his judgment in favour of the respondent. Learned counsel for the respondent, Mr. Dike, in the respondent's brief correctly narrated the facts of the proceedings from the beginning of the trial to the 13th of December, 1989. I will reproduce that narration for the clear understanding of what transpired before the learned Judge Ogu Ugoagwu, J., delivered his judgment. The proceedings were given in the following narrative.

"Two earlier suits were filed by the respondent before the one leading to this appeal.

(a) Suit No. HOW/242/87

Dated and filed on 31st August, 1 987, this suit was commenced by the issue of an ordinary Writ of Summons and was brought before OGU UGOAGWU J.

Appellants raised a preliminary objection vide a Motion on Notice filed on 16th November 1987 praying that the suit be struck out for lack of jurisdiction of the court and that leave was not; obtained to serve the Appellants out of jurisdiction. In a reserved ruling dated 14/1/88, the Motion was dismissed with N100.00 costs to the respondent. Appellants appealed but the respondent discontinued the substantive action. That action died without hearing the merit of the case.

(b) Suit No. HOW/163/88

Dated and filed on 4/5/88, this suit commenced by the issue of a Writ of Summons after the discontinuance of the first. It was placed on the Undefended List and again brought before OGU OGOAGWU, J.

The appellants filed a Motion on Notice objecting to the jurisdiction of the Court.

Before the Motion could be heard, learned Senior Advocate applied to the Chief Judge, vide a letter dated 8/7/88, that the case be transferred to another Judge because UGOAGWU, J., had earlier in the first case ruled against the appellants. Ukattah, J., before whom

the matter was transferred, declined jurisdiction and accordingly struck out this second suit on the ground that the Writ of Summons was void having been issued without prior leave of Court. Again the action was decided not on the merits.

(c) Suit No. HOW/261/89

B *As the respondent was entitled to do, he commenced the third suit. It was on the Undefended List and came before Ogoagwu, J. By 13/12/89 when the matter came up, the following 3 applications were before the Court.*

C *(i) Appellants' Motion dated 13/10/89 challenging the court's jurisdiction;*

(ii) Respondent's Motion dated 20/10/89 for the suit to be heard as an Undefended suit and for judgment; and

D *(iii) Appellants' Motion dated 12/12/89 for, inter alia, the transfer of the suit to another Judge."*

On the 13th December, 1989, the three applications were brought before Ogu Ogoagwu, J., for hearing. Mr. Kuku was the learned counsel representing the appellants. Mr. Kuku asked for adjournment to file further documents in support of the motion seeking for transfer of the suit to another Judge. Mr. Dike opposed the application and in a considered ruling the learned trial Judge refused the application for transfer. Mr. Kuku orally applied for stay of the ruling, Mr. Dike opposed the application. The learned Judge refused to grant a stay. Mr. Kuku thereafter asked for adjournment on the ground that he had filed a new motion supplanting the application dated 13/10/89. The new motion was filed on 12/12/89. Mr. Dike, in response, said that he had not been served with the new motion. The court also noted that the motion in question was not in its file.

F According to Mr. Adesanya, SAN, the learned trial Judge asked for evidence of filing the new motion and he was given a copy of the motion and the receipt for its filing. Mr. Ogu Ogoagwu, J., was not impressed and ordered the proceedings to continue.

H The learned Judge called upon Mr. Kuku to move the motion dated 13/10/89 challenging the jurisdiction of the court. Mr. Kuku replied, "*I am sorry I am not in a position to go on with the motion.*" Mr. Dike then urged the court to strike out the motion since Mr. Kuku was not ready to go on with the motion. The learned trial Judge ruled as follows:

“Mr. Kuku has refused to go on and argue the motion filed by the defendants/applicants on 13/10/89 attacking the jurisdiction of the court on the ground of two previous rulings by the court in this suit today. Since counsel does not want to go on with the motion when called upon by the court to do so after two rulings on the matter, the motion filed on 13/10/89 is hereby dismissed for non-prosecution with N100.00 costs to the plaintiff/respondent.” B

Thereafter the learned trial Judge proceeded to enter judgment for the respondent on the Undefended List. He concluded his short ruling as follows:

“This suit was instituted on 5/9/89.” C

In compliance with Order 23, rule 4 of the High Court (Civil Procedure) Rules, 1988, I do not call upon the plaintiff “to summon witnesses to prove his case formally.” In the absence of defence as required by the rules I hereby give judgment to the plaintiff as follows: D

(i) \$1,706,000.00 US Dollars being balance of money due and payable to the plaintiff’s Attorney, Prince A

Ben Akabueze as contained in paragraph 14, 15 and 18(1) of the particulars of claim. E

(ii) Interest on the said sum at the rate of 13% from 5/9/89 to today 13/12/89.”

(iii) Interest on (1) and (11) together at the rate of 10% per annum in accordance with Order 40 rule 7 of the High Court (Civil Procedure) Rules, 1988 until the judgment debt is satisfied. F

Claim for aggravated damages dismissed.”

Dissatisfied with the judgment of the High Court, the appellants filed an appeal to the Court of Appeal.

The Court of Appeal, in a considered judgment dismissed the appeal. It is against that decision that the appellants have finally come to this court. Learned counsel for the appellants identified 10 issues for the determination of this appeal. Mr. Dike, learned counsel for the respondent, formulated 5 issues from 13 grounds of appeal filed by the appellants’ counsel for the prosecution of this appeal. I do not intend to reproduce those issues because one issue which concerns the failure of the learned trial Judge to hear a motion filed on 12/12/89, may determine this appeal. Before I consider the issue concerning the motion filed on 12/12/89 I am not unmindful of what ap- G H

appears to be a preliminary objection raised in the respondent's brief on the validity of all the grounds of appeal (13 grounds) filed by the appellant. When this appeal was about to be heard on 16th October, 2002, learned counsel for the respondent withdrew the preliminary objection in the respondent's brief and it was struck out. This court
B adjourned the hearing of this appeal on the application of one of the counsel.

The only issue I want to consider from the issues identified is whether the Motion on Notice claimed by the appellants to have
C been filed and the filing fees paid at the open registry on 12/12/89 was part of the Records of the Court and whether failure to hear the application in the said motion which concerns a challenge to the jurisdiction of the court amounted to denial of fair hearing within Section 33(1) of the 1979 Constitution I have looked at pages 136 to
D 137 of the Record of this appeal where Mr. Adesanya, SAN, said that the motion had been copied. It is indeed correct that the motion was copied in the record of this appeal and it is also correct that the motion had been filed in the registry on 12/12/89. All the fees paid for the filing of the motion and the receipts given have been recorded. It
E is without any doubt that the learned trial Judge was aware of this motion. I have no reason to doubt the allegation made by appellants' counsel that a copy of the receipt was shown to the learned trial Judge in court. The relevant motion in question is reproduced as follows:-

F "MOTION ON NOTICE

BROUGHT UNDER S.99 SHERIFFS AND CIVIL PROCESS ACT CAP 189, 1958: ORDER 5 RULES 2 AND 10(A) & B OF THE IMO STATE HIGH COURT (CIVIL PROCEDURE) RULES 1988, S.
G 22(1), 22(2) HIGH COURT LAW CAP. 61. LAWS OF EASTERN NIGERIA 1963 APPLICABLE IN IMO STATE AND UNDER THE INHERENT JURISDICTION OF THIS HONOURABLE COURT

TAKE NOTICE that this Honourable Court will be moved on the ...day of... 1989 at the hour of 9.00 O'clock in the forenoon or
H so soon thereafter as Counsel for the Defendants/Applicants can be heard for:

- (i) An Order that the plaintiff's case be struck out because this Honourable Court lacks jurisdiction to entertain the plaintiff's claim.
- (ii) An Order setting aside the order of this Honourable Court

dated 25th August, 1989 which order granted the plaintiff/respondent leave to issue the Writ of Summons for service on the Defendants/Applicants out of the jurisdiction of this Court.

(iii) An Order setting aside the leave granted pursuant to the order referred to in (ii) supra.

(iv) An Order setting aside the Writ of Summons endorsed for service on the 1st and 2nd Defendants/Applicants respectively.

(v) An Order setting aside the purported issue and service of the Writ of Summons on the each of the defendants.

(vi) For such further or other order or orders as this Honourable Court may deem fit to make in the circumstances.”

It is settled law and mandatory that a court must make a decision and pronounce on every application which is before it and failure to do so is a breach to fair hearing. See also the case of Okeke-Oba v. Okoye (1994) 8 NWLR (Part 364) 694. ***The motion which the learned trial Judge refused to hear has questioned his court’s competency to hear the matter before him. When an objection to jurisdiction is raised it ought to be resolved first*** Nwosu v. Imo State Environmental Sanitary Authority (1990) 2 NWLR (Pt.135) 688. ***The refusal of the judge to fix a date for the hearing of the application or to decline to hear an application duly filed in the Registry amounts to a deliberate refusal to hear the application. It is therefore a breach of fundamental right to fair hearing as enshrined in the Constitution. All proceedings which followed such a breach will be a nullity. The ruling delivered by Ogoagwu, J., in which he granted the claim of the respondent after refusing to hear the motion is therefore a nullity.***

I therefore agree with the submission of learned counsel for the appellants that, failure of the learned trial Judge to determine the motion filed by the appellants challenging the jurisdiction of his court is a fundamental breach. It had rendered the ruling which he subsequently delivered in favour of the respondent a nullity. The Court of Appeal was in error to affirm the said decision. This appeal is therefore allowed. The ruling of the High Court and the judgment of the Court of Appeal are both set aside. The case is remitted back to the High Court of Imo State for the determination before another judge. The appellants are

entitled to the costs of this appeal which I assess at N10,000.00 in this court and N1,500 at the Court of Appeal.

KUTIGI JSC

B I read before now the judgment just delivered by my learned brother, Mohammed, JSC. I agree with him to allow the appeal and remit the case to the Imo State High Court for hearing by another judge. I endorse the order for costs.

KALGO JSC

I have read in advance the judgment just delivered by my learned brother, Mohammed, JSC, in this appeal. I entirely agree with his reasoning and conclusions. I find that there is merit in the appeal and I allow it accordingly.

There is no doubt that the motion filed by the appellants on 12th December, 1989, raised the issue of the jurisdiction of the trial court to entertain the case before it. There is also no doubt that the motion was not heard and determined on the merits by the trial Judge before he proceeded to give judgment summarily in favour of the respondent. His well settled that jurisdiction is the body and soul of every judicial proceedings before any court or tribunal and without it all subsequent proceedings are fruitless, futile and a nullity because the issue of jurisdiction is fundamental to the proper hearing of a cause. See *Madukolu v. Nkemdilim* (1969) 1 All NLR 587; *Matari v. Dangaladima* (1993) 3 NWLR (Pt. 281) 253. When a court's jurisdiction is challenged, the duty of the court is to settle that issue one way or another first before proceeding to hear the case on merits. (See *A-G Anambra State v. A-G Federation* (1993) 6 NWLR (Pt. 302) 692. *A-G Lagos State v. Dosunmu* (1989) 6 S.C. (Pt. II) 13, (1989) 3 NWLR (Pt. 111) 552). And the court has the jurisdiction to do so. See *Barclays Bank of Nigeria v. Central Bank of Nigeria* (1976) 1 All NLR 409 at 421.

In the course of argument in this court, learned counsel for the respondent conceded that the motion challenging the jurisdiction of the trial court was not heard and determined on merits by the trial court. He therefore had no objection to the issue being returned to

the trial court for determination.

In view of the above and the more reasons set out in the leading judgment of Mohammed, JSC., I also allow this appeal. I set aside the ruling of the trial court and the judgment of the Court of Appeal in this matter and remit the case back to Imo State High Court for hearing and determination by another judge of that court. B
I abide by the order of costs made in the leading judgment.

EJIWUNMI JSC

The judgment just read by my learned brother, Mohammed, JSC., was read by me before now, and for the reasons given in the said judgment, I also agree that the appeal is meritorious.

This appeal is mainly concerned with the manner in which the learned trial Judge dealt with the applications before it and before he delivered the judgment in favour of the respondent. For this reason, I do not need to refer to the main facts that led to the action. They have been fully set down in the lead judgment.

The record of proceedings shows that the respondent brought three suits against the appellants. In each of the said suits, the respondents claimed against the appellants jointly and severally for general and special damages as follows:-

“(i) The equivalent of \$1,856,000.00 less \$150,000.00 being value of N100,000.00 paid to the plaintiffs.....	\$1,706,000.00	F
(ii) Aggravated General damages...	200,000.00	
	\$1,906,000.00	

(iii) Interest at 13% up to date of judgment and thereafter 13 % until payment is made.”

The three suits as detailed in the lead judgment are as follows:- G

“(a) *Suit No. HOW/242/87*

Dated and filed on 31st August, 1987, this suit was commenced by the issue of an ordinary Writ of summons and was brought before OGU OGOAGWU, J.

Appellants raised a preliminary objection vide a Motion on Notice filed on 16th November, 1987, praying that the suit be struck out for lack of jurisdiction of the Court and that leave was not obtained to serve the Appellants out of jurisdiction. In a reserved ruling dated 14/1/88, the Motion was dismissed with N100.00 costs to the

respondent. Appellants appealed but the respondent discontinued the substantive action. That action died without hearing the merit of the case.

(b) Suit No. HOW/163/88

Dated and filed on 4/5/88, this suit was commenced by the issue of a Writ of Summons after the discontinuance of the first. It was placed on the Undefended List and again brought before OGU OGOAGWU, J.

The appellants filed a Motion on Notice objecting to the jurisdiction of the Court. Before the Motion could be heard, Learned Senior Advocate applied to the Chief Judge, vide a letter dated 8/7/88, that the case be transferred to another Judge because OGOAGWU, J., had earlier in the first case ruled against the appellants.

Ukattah, J., before whom the matter was transferred, declined jurisdiction and accordingly struck out this second suit on the ground that the Writ of Summons was void having been issued without prior leave of Court. Again the action was decided not on the merits.

(c) Suit No. HOW/261/89

As the respondent was entitled to do, he commenced the third suit. It was on the Undefended List and came before Ogoagwu, J. By 13/12/89 when the matter came up, the following 3 applications were before the Court.

(i) Appellant's Motion dated 13/10/89 challenging the court's jurisdiction;

(ii) Respondent's Motion dated 20/10/89 for the suit to be heard as an Undefended suit and for judgment; and

(iii) Appellant's Motion dated 12/12/89 for, inter alia, the transfer of the suit to another Judge."

It is manifest from the Records that on the 13th December, 1989, three applications in respect of this matter were brought before Ogu Ogoagwa, J., forbearing. In one of the applications dated 13/10/89, the appellants were there challenging the jurisdiction of the Court to hear the matter. The learned trial Judge refused to consider the merits of the motion challenging the jurisdiction of the Court to hear the suit but went on to determine the suit as an undefended suit. This was done in spite of the contention of the appellants' counsel that another motion dated 12/12/89 has been filed wherein ap-

pellants were seeking for the transfer of the suit from the Court presided over by Ogu Ogoagwu J.

From all the facts disclosed in the Record of Proceedings, it seems clear that the trial Judge was determined to award judgment in favour of the respondents, without as much allowing the appellants to present their case. I should have thought that the elementary principle of fair hearing in the judicial process should have occurred to the trial Judge. He remained oblivious to this principle and went on to determine the suit against the appellants. A court is obliged to do justice by procedures laid down by the Law and the Constitution. The moment a court ceases to do justice in accordance with the law and procedure laid down for it, it ceases to be a regular court to become a kangaroo court. I say no more. It is however hoped that our Courts would refrain from situation of the kind that occurred in the instance case. As it is, this matter which commenced in 1989, have to be sent back for fresh hearing when the dispute between the parties would have been finally settled by now. It follows that this appeal deserves to be allowed, and it is hereby allowed for the above reasons and the fuller reasons set down in the judgment of my brother, Mohammed, JSC. I also abide with the consequential orders made in the said judgment.

AYOOLA JSC

I have had the privilege of reading in advance the judgment just delivered by my learned brother, Mohammed, JSC. For the reasons given in the said judgment and with which I am in agreement, I too would allow the appeal and set aside the ruling of the High Court and the judgment of the Court of Appeal. I abide by the order of costs made in the leading judgment.