

SUPREME COURT OF NIGERIA
16TH JULY, 2004. SC. 196/2000
CORAM:- I. L. KUTIGI, S. U. ONU, S. O. UWAIFO,
N. TOBI, I. C. PATS-ACHOLONU, JJSC

ALIDU ADAH APPELLANT
AND
NATIONAL YOUTH SERVICE CORPS RESPONDENT

ACTIONS - Jurisdiction - Courts - Cause of action - Law in force at the time the cause arose - Is the relevant law - While law conferring jurisdiction on the court - At point of filing the action - Is relevant in determining court's jurisdiction (H1)

COURTS - Jurisdiction - State High Court - Action against Federal Government agencies - Was to be filed before the Federal High Court - At the time plaintiff filed his claim (H2)

APPEALS - Issues - Courts - Consideration of all issues raised - Should be practised by lower appellate courts - Lest they be overruled on a singular jurisdiction issue (H3)

FACTS

The plaintiff/appellant was employed as a driver by the defendant/respondent in 1977, and he was based at the respondent's Makurdi Office. In the course of his official duty, he was involved in an accident in December, 1990. He was issued with a query and suspended from duty. On 28th June, 1991, appellant's employment was terminated. On 28th July, 1995, he instituted this action in the Benue State High Court, Makurdi. He claimed inter alia, that his suspension from duty was null and void, as the proper procedure was not terminated.

The trial court dismissed the suit holding that the proper procedure was followed. Appellant appealed to the Court of Appeal. The question of the State High Court's jurisdiction was canvassed, in view of

Decree 107 of 1993 which amended s. 230(1) of the 1979 Constitution. The lower court declared the trial court's proceedings and judgment null and void for want of jurisdiction. Being aggrieved, appellant has further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

“(i) Whether the Court of Appeal was right to hold as it did that the trial High Court lacked jurisdiction to have heard the claim of the appellant in view of Section 230 (1) of the 1979 Constitution as amended by Decree No. 107 of 1993, having regard to the date of the cause of action in this case.

“(ii) Was the Court of Appeal right when it did not consider other issues for determination submitted for adjudication, notwithstanding its view that the Benue State High Court lacked jurisdiction to have heard the case of the appellant.”

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

Jurisdiction - Courts - Cause of action

1. It ought to be understood that the law which supports a cause is not necessarily co-extensive with the law which confers jurisdiction on the court which entertains the suit founded on that cause of action. The relevant law applicable in respect of a cause of action is the law in force at the time the cause of action arose whereas the jurisdiction of the court to entertain an action is determined upon the state of the law conferring jurisdiction at the point in time the action was instituted and heard: see *Utih v. Onoyivwe* (1991) 1 NWLR (Pt. 166) 166 at 201 per Bello, CJN. The jurisdictions of courts in this country are conferred upon them by the Constitution or by statutes as may be permitted by the Constitution: see *Osadebey v. Attorney-General Bendel State* (1991) 1 NWLR (Pt. 169) 525. Thus, when a court is denied jurisdiction at the time a cause of action arose, it cannot assume jurisdiction when action is instituted later in respect of the subject-matter even if its jurisdiction to entertain similar matters is then restored: see *Uwaifo v. Attorney-General Bendel State* (supra). Similarly, when a court had jurisdiction over a subject-matter at the time of the cause of action but loses jurisdiction at the time action is instituted, it

cannot entertain such action. (p. 2254 B)

Jurisdiction - Action against Federal Government agencies

2. The Present action was field in the Benue State High Court at the time Decree No. 107 of 1993 had effectively denied every State High Court jurisdiction to entertain any suit coming within the provisions of Section 230 (1) of the 1979 Constitution as amended .

Although the Federal Government or its agencies may be sued in court for damages, injunction or specific performance under the said provision in paragraph(s) of subsection (1) of Section 230, the action will have to be commenced in the Federal High Court unless any other provision specifically provides that the action may be brought either in the Federal High Court or State High Court. I therefore answer issue (i) in the affirmative. (p. 2254 G / 2255 C)

Courts - Consideration of all issues raised

3. The court below, not being the final court had a duty to decide the merit of the case upon the issues canvassed before it, notwithstanding that it resolved the issue of jurisdiction to the effect that the Benue State High Court lacked jurisdiction. This is because if on appeal to this court it was reversed on that issue, it would prevent the necessity of remitting the appeal to it to resolve the other issues arising from the appeal as originally made to it. The court below was in error to have failed to resolve all the issues canvassed before it rather than confine itself only to the issue of jurisdiction. I answer issue (ii) in the negative.

However, notwithstanding that issue (ii) is resolved in favour of the appellant, issue (i) is decisive of this appeal. In view of that issue, I find no merit in this appeal. I accordingly dismiss it and affirm the decision of the court below. (p. 2255 E)

REPRESENTATION

Appellant absent. Not represented

Ahmed T. Ibrahim Esq., (with him, N. J. Uwaya Esq., H. A. Nwala Esq., and Miss Christiana Erekosima), for the Respondent.

CASES REFERRED TO

- Utih v. Onoyivwe (1991) 1 NWLR (Pt. 166) 166 at 201
Osadebey v. Attorney-General Bendel State (1991) 1 NWLR (Pt. 169) 525
B Ezeoke v. Nwagbo (1988) 1 NWLR (pt. 72) 616
Bayol v. Ahemba (1999) 7 S.C. (Pt. 1) 92; (1999) 7 SCNJ 223
Mustapha v. Governor of Lagos State (1987) 2 NWLR (Pt. 58) 539
Alao v. Akano (1988) 1 NWLR (Pt. 71) 431
C Uwaifo v. Attorney-General Bendel State (1982) 7 S. C. 124
Governor of Oyo State v. Falayan (1995) 9 SCNJ 50
Erhunmuse v. Ehanire (1998) 10 NWLR (Pt. 568) 53

STATUTES REFERRED TO

- D Decree No 107 of 1993
Constitution of Nigeria 1979 s. 230(1)

E **LEAD JUDGMENT BY UWAIFO JSC**

- The appellant was employed as a driver by the respondent in 1977. He was based in the respondents's office in Makurdi. In the course of his official duty in December, 1990, he was involved in an accident. He was
F issued with a query and suspended from duty. On 28th June, 1991, his employment was terminated. On 28th July, 1995, he instituted an action in the Benue State High Court, holden at Makurdi in which he claimed for (a) a declaration that his suspension from duty was null and void; (b) a declaration that the termination of his employment was null and void; (c) a
G declaration that he is still in the employment of the respondent; and (d) an order reinstating him as driver and for the payment of all his entitlements and allowances including the salary due him.

- The main thrust of the appellant's case was that the proper procedure was not followed before his employment was brought to an end. On
H 26th June, 1996, in a considered judgment, Puusu, J., dismissed the suit, holding that the proper procedure was observed. The appellant appealed to the Court of Appeal, Jos Division. In that court, the question of the

jurisdiction of the High Court of Benue State to entertain the suit was canvassed on the basis of the Constitution (Suspension and Modification) Decree No. 107 of 1993 which amended Section 230 (1) of the 1979 Constitution. In the leading judgment of Chukwuma-Eneh, JCA., with which Umoren and Magaji, JCA., concurred, the question was fully considered. B The learned Justice of Appeal ended his judgment thus:

“In the result, the proceedings and the judgment of the court below having been embarked upon without jurisdiction, I declare them null and void and they are hereby set aside. Accordingly, the suit is hereby struck out C with N2000.00 costs against the respondent.” (sic: appellant).

There is a further appeal to this court which the appellant has raised the following two issues:

“(i) Whether the Court of Appeal was right to hold as it did that the trial High Court lacked jurisdiction to have heard the claim of the appel- D lant in view of Section 230 (1) of the 1979 Constitution as amended by Decree No. 107 of 1993, having regard to the date of the cause of action in this case. (Ground 1 of the grounds of appeal).

(ii) Was the Court of Appeal right when it did not consider other E issues for determination submitted for adjudication, notwithstanding its view that the Benue State High Court lacked jurisdiction to have heard the case of the appellant (Ground 2 of the grounds of appeal).”

On issue (i), the appellant has made three concessions, namely (a) F that the respondent is a Federal Government Agency; (b) that what the appellant challenged before the trial court was an administrative decision of the respondent; (c) that at the time this action was filed in the High Court of Benue State, Decree No. 107 of 1993 which amended Section 230 (1) of the 1979 Constitution had been promulgated. But he has submitted that the G law applicable to a cause of action is the law prevailing at the time the cause of action arose, even if the said law had been repealed. He relies on *Uwaifo v. Attorney-General Bendel State* (1982) 7 S.C. 124; *Governor of Oyo State v. Falayan* (1995) 9 SCNJ 50 among others. He therefore argues H that since his cause of action arose in 1991, the Benue State High Court was seized of jurisdiction to entertain it from that time, and not the Federal High Court which acquired jurisdiction in 1993. The respondent argues, on the

other hand, that the jurisdiction of a court is the authority it has to entertain matters that are brought before it, citing *Erhunmuse v. Ehanire*. (1998) 10 NWLR (Pt. 568) 53; and that as at 1995 when the appellant brought his action, only the Federal High Court had jurisdiction to entertain it.

- B I think there is much merit in the contention of the respondent. The appellant appears to me to have misconceived the essence of a court's jurisdiction. **It ought to be understood that the law which supports a cause is not necessarily co-extensive with the law which confers jurisdiction on the court which entertains the suit founded on that cause of action.**
- C The relevant law applicable in respect of a cause of action is the law in force at the time the cause of action arose whereas the jurisdiction of the court to entertain an action is determined upon the state of the law conferring jurisdiction at the point
- D in time the action was instituted and heard: see *Utih v. Onoyiwwe* (1991) 1 NWLR (Pt. 166) 166 at 201 per Bello, CJN. The jurisdictions of courts in this country are conferred upon them by the Constitution or by statutes as may be permitted by the Constitution: see
- E *Osadebey v. Attorney-General Bendel State* (1991) 1 NWLR (Pt. 169) 525. Thus, when a court is denied jurisdiction at the time a cause of action arose, it cannot assume jurisdiction when action is instituted later in respect of the subject-matter even if its jurisdiction to
- F entertain similar matters is then restored: see *Uwaifo v. Attorney-General Bendel State* (supra). Similarly, when a court had jurisdiction over a subject-matter at the time of the cause of action but loses jurisdiction at the time action is instituted, it cannot entertain such
- G action: see *Mustapha v. Governor of Lagos State* (1987) 2 NWLR (Pt. 58) 539; *Alao v. Akano* (1988) 1 NWLR (Pt. 71) 431.

The Present action was field in the Benue State High Court at the time Decree No. 107 of 1993 had effectively denied every State High Court jurisdiction to entertain any suit coming within the provisions of Section 230 (1) of the 1979 Constitution as amended by it thus inter alia:

“230(1) Notwithstanding anything to the contrary 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-

(s) any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies:

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

Although the Federal Government or its agencies may be sued in court for damages, injunction or specific performance under the said provision in paragraph (s) of subsection (1) of Section 230, the action will have to be commenced in the Federal High Court unless any other provision specifically provides that the action may be brought either in the Federal High Court or State High Court. I therefore answer issue (i) in the affirmative.

As regards issue (ii), this can be answered briefly. **The court below, not being the final court had a duty to decide the merit of the case upon the issues canvassed before it, notwithstanding that it resolved the issue of jurisdiction to the effect that the Benue State High Court lacked jurisdiction. This is because if on appeal to this court it was reversed on that issue, it would prevent the necessity of remitting the appeal to it to resolve the other issues arising from the appeal as originally made to it: see Ezeoke v. Nwagbo (1988) 1 NWLR (pt. 72) 616; Bayol v. Ahemba (1999) 7 S.C. (Pt. 1) 92; (1999) 7 SCNJ 223. The court below was in error to have failed to resolve all the issues canvassed before it rather than confine itself only to the issue of jurisdiction. I answer issue (ii) in the negative.**

However, notwithstanding that issue (ii) is resolved in favour of the appellant, issue (i) is decisive of this appeal. In view of that issue, I find no merit in this appeal. I accordingly dismiss it and affirm the decision of the court below. I award the respondent N10,000.00 costs.

KUTIGI JSC

I read in advance the judgment just delivered by my learned brother, Uwaifo, JSC. I agree with him that the appeal has no merit. The Court of Appeal was right when it held that the trial High Court lacked jurisdiction to try the suit in view of the provision of Section 230 (1) of the 1979 Constitution as amended by Decree No. 107 of 1993 which came into force on 17/11/1993 even though the cause of action herein arose on 28/ 6/1991 when the plaintiff/appellant's appointment was terminated. The crucial date here as far as jurisdiction is concerned is 17/11/ 1993 when Decree 107 took effect and denied jurisdiction to the court and not 28/6/1991 when the cause of action arose even though the court had jurisdiction then. The appeal is accordingly dismissed. The judgment of the Court of Appeal striking out plaintiff's suit is confirmed. I endorse the order for costs.

ONU JSC

I have had the advantage of reading before now the judgment my learned brother, Uwaifo, JSC. I am in agreement with his reasoning and conclusion that the appeal is devoid of any merit.

I accordingly dismiss it and award N10,000.00 costs to the respondent.

TOBI JSC

I have read the judgment of my learned brother, Uwaifo, JSC., and I agree that this appeal has no merit. The principle of law that the jurisdiction of a court is determined by the law existing at the time the cause of action arose, cannot be invoked to vest jurisdiction in a court that lacks it. If a court lacks jurisdiction in a matter, no amount of law can vest jurisdiction in it.

Although the cause of action in this matter arose in 1990, the applicable law is not the 1979 Constitution because Decree No. 107 of 1993 repealed the jurisdiction conferred on the State High Court under Section

236 (1) of the 1979 Constitution.

All courts below the Supreme Court are bound to take all issues canvassed by the parties, even when such issues appear superfluous or spent. This is to enable the court exercising appellate jurisdiction to determine the issues, even if in the alternative. I think this court has the exclusive jurisdiction or should I say prerogative to do what the Court of Appeal did because it is the final bus stop of any litigation.

It is for the above reasons and the more comprehensive reasons given by my learned brother, Uwaifo, JSC., that I too dismiss the appeal and award N10,000.00 costs to the respondent.

PATS-ACHOLONU JSC

I have had the benefit of reading the draft judgment of my learned brother, Uwaifo, JSC., and I agree with him. The argument of the appellant that because the cause of action arose at the time when the State High Court where the action was later instituted had the jurisdiction, therefore, regardless of the fact that before the action was taken, that court like all State High Courts had been divested of the jurisdiction by reason of the amendment of Section 230 (1) of the 1979 Constitution by the Constitution (Suspension and Modification) Decree 107 of 1993, could still entertain the case, is rather skewed and puerile. If in the unlikely event or hypothetical situation of the State High Courts having been abolished by the Military Government, would the abolished courts have been resurrected because the appellant had instituted an action the cause of action which arose when that court was still in existence? The answer is of course in the negative. It is essential to differentiate the application of the law when the cause of action arose, and the jurisdiction exercisable by the court when the proponent of an action decides to institute an action.

In this case the appellant obviously erred.

This appeal lacks merit in its entirety and it is accordingly dismissed with costs to the respondent which I assess at N10,000.00.