

SUPREME COURT OF NIGERIA

10TH DECEMBER, 2004. SC. 218/2000

**CORAM:- I. L. KUTIGI, A. I. KATSINA-ALU, U. A. KALGO,
I. C. PATS-ACHOLONU, G. A. OGUNTADE, JJSC**

JOHN EBHODAGHE	APPELLANT
AND		
MR. MIKE OKOYE	RESPONDENT

JURISDICTION - Courts - Jurisdiction as a central issue - Must generally be determined first when raised (H1)

CONTEMPT OF COURT - Publication - That needed further investigation - As to whether contemptuous - Does not make issue of contempt central at that stage (H2)

COURTS - Jurisdiction - Contempt of court issue - That arose while issue of jurisdiction was being considered - Was rightly handled first as both issues were separate (H3)

COURTS - Judicial precedents - Miscarriage of justice - Failure of lower court to consider relevant authority - Would not ipso facto constitute a miscarriage of justice (H4)

FACTS

The appellant was at the material time (1998) the Managing Director of Nigeria Deposit Insurance Corporation (NDIC). Matters related to the death of one Clement Udemezue who was detained under the Failed Banks Decree led to the respondent (who was late Udemezue's solicitor) writing the A-G Lagos State to prosecute appellant for murder. The A-G refused to respond. Respondent applied to Lagos High Court for an order of mandamus to force the A-G to prosecute the appellant. The court ruled that it has no powers to do so and dismissed the application. Appellant's letter to the A-G was published in different daily newspapers.

Considering the publications to be libellous, appellant filed a libel suit against respondent before the Abuja High Court. Respondent filed a notice of preliminary objection challenging the jurisdiction of Abuja High Court to entertain the libel suit.

On the date the motion on preliminary objection was to be moved, plaintiff's counsel called the court's attention to a fresh newspaper publication from the defendant that was contemptuous of the court. The court then summoned the editor and the two lawyers involved to show cause why they should not be committed for contempt of court. It adjourned the issue of jurisdiction pending the contempt question. Respondent appealed to the Court of Appeal, which allowed the appeal and ordered that the issue of jurisdiction be determined first by the trial court. Being dissatisfied, appellant has now appealed to the Supreme Court.

ISSUES FOR DETERMINATION

- 1. Was the Court of Appeal right when it held in effect that a court faced with an act of contempt in facie curiae and also an issue of jurisdiction is bound to deal first with the issue of jurisdiction?*
- 2. Did the failure of the Court of Appeal to make a determinative ruling on issues regarding the correctness and applicability of an authority cited and relied upon by the appellant occasion a miscarriage of justice?*

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

Jurisdiction as a central issue

1. It is not in dispute that both learned counsel for the parties agree with the general principle that jurisdiction is a central issue to any case before any court and once it is challenged, the court concerned is duty bound to determine whether it has jurisdiction first before proceeding to entertain the case. This is, because any act, orders or proceedings made by a court without jurisdiction is a nullity and remains so for all purposes. (p. 2397 F)

CONTEMPT OF COURT - Publication

2. The record on that date in question merely showed that the court ordered summonses to be issued to the persons concerned with the publications to show cause and the matter was adjourned. There was no suggestion at that

stage that the alleged publication portrayed the proceedings of the court in bad light. In fact, at that stage the learned trial Judge did not find anything contemptuous; all he did therefore was to order an investigation so as to find out whether there was contempt of court or not. So there was nothing at that stage to intimidate the court or bring its proceedings into disrepute. There was therefore no proof, in my respectful view, to the effect that contempt of court at that stage was central issue or becomes the focus of proceedings in that court. In fact the trial court merely ordered for investigation into the alleged publication to see if it amounts to contempt. (p. 2400 D)

Jurisdiction - Contempt of court issue

3. There is no doubt in my mind that the challenge to the jurisdiction of the court in this case goes to the substantive issue before the court, that is publication of offensive falsehood against the appellant in various Newspapers in Nigeria which the appellant alleged had injured his credit, and reputation. However, in the proceedings of 12th April, 1999, the trial Judge was only dealing with “*the publication which expressively show that the ruling on 11/12/98 was never given*”. This was a different matter altogether, and had nothing to do with the substantive case of libel. It is very clear therefore that the challenge to jurisdiction in the substantive case, has virtually nothing to do with the alleged contempt. The contempt case is *sui generis*¹ and can be taken on its own and the challenge to jurisdiction which is already before the court can also be taken separately. And adjourning then to another date by the learned trial Judge was not in my view, giving priority to either of them. Therefore in the circumstances of this case, the learned trial Judge was not bound to deal with the issue of jurisdiction first. This means that the procedure adopted by the learned trial Judge was not wrong although it would involve some delay which the case has already suffered as a result of this appeal. I answer issue 1 in the negative? (p. 2400 G)

Judicial precedents - Miscarriage of justice

4. Suffice is however to say that failure to consider any relevant authority

by a court would not ipso facto constitute any miscarriage of justice, in my view, since the situation may be corrected if necessary, on appeal. (p. 2401 E)

B NOTABLE POINTS OF INTEREST

KUTIGIJSC

1. Jurisdiction and Contempt issues - Which to handle first should depend on the circumstances

C While it is correct to say that issue of jurisdiction (which may be raised at any stage of the trial and appeal) should be taken up and dealt with expeditiously before proceeding further in a case, I think cases of this nature involving contempt of court, should largely be left to the discretion of the court before which the contempt is committed. Circumstances would clearly D differ from one contempt to another contempt.

In certain situations the court would be required to react swiftly and promptly in order to protect its own dignity and to avoid damage being caused by unnecessary delays. I think the trial court in this case was right E for opting to deal with contempt issue first, before proceeding to take the motion challenging its jurisdiction.

It was not therefore proper for the Court of Appeal, which was not master of the contempt situation, to have reversed the trial court by directing it to first of all hear the motion on jurisdiction before proceeding to deal F with contempt issue. I do not think there should be any hard and fast rules under these circumstances. The circumstances themselves as they occur will dictate which way the judge will go because he controls the proceedings and is the master of the situation. (p. 2401 H) G

KATSINA-ALUJSC

2. Offence of Contempt is in a separate class

H The offence of contempt of court is in a class by itself. Put simply, it is sui generis. It is ex-trinsic to the substantive libel suit. Now at the stage the attention of the learned trial Judge was drawn to the alleged offence of contempt of his court, and he consequently made up his mind to dispose of that first, two distinct and separate matters were before him. The learned

trial Judge, was perfectly right when he chose to first deal with the issue of the contempt of his court. The issue of jurisdiction of the court with regard to the libel suit would be taken, when that suit comes on for hearing. (p. 2404 E)

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PATS-ACHOLONU JSC

3. It is essential to consider issue of contempt before that of jurisdiction

While it is a settled law that when an issue of jurisdiction is raised by a party the court ought generally to take it first, where however due to a combination of factors an act which would impinge on the majesty of a court and likely to bring the court to odium and disrespect, is done, it is I dare say, not just desirable but essential for the court to first look into the matter of contempt before proceeding on the issue of jurisdiction. For the Court of Appeal to view the situation in this case as purely based on the recognized settled law that once an issue of jurisdiction is raised it must be taken first, shows with greatest respect that it missed the essence of the matter. In other words, at all times it is the duty of the court to guard jealously its powers and should give first consideration to the proceedings in contempt of its court even when the court is faced with the question of its competence to adjudicate on a matter from which the contempt issue arises. (p. 2405 D)

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OGUNTADE JSC

4. Court – Extrinsic orders made without jurisdiction can stand

However, the statement that a court cannot make a valid order in a case in which it has no Jurisdiction is not an abstract one to be invoked mechanically. When an order is being challenged on the ground that it was made by a court without jurisdiction it is still necessary to consider the nature or purpose sought to be achieved by the order being challenged and whether there is jurisdiction under the general law to make the order under attack. There are orders, which are intrinsic to the substantive suit such that a decision that a court has no jurisdiction necessarily and without further ado impairs such orders. On the other hand there may be orders which are

extrinsic to the substantive suit with the result that no matter what view one takes of the jurisdiction of the court to hear the substantive suit, the orders remain valid and binding. (p. 2410 F)

B *5. Effect of extrinsic or intrinsic contempt orders*

The court below in my view failed to draw a distinction between orders which are intrinsic and woven up with the substantive suit and orders which are extrinsic to the substantive suit. In the former, where the court is found to have no jurisdiction, the orders made by the court are nullities. It

C Is only in such a case that objection as to the court's jurisdiction ought to be determined first. In the latter into which category this appeal on hand falls, the order of the trial court to investigate the complaint of contempt is extrinsic to the substantive suit. The order from this perspective has nothing to do
D with whether or not the trial court has jurisdiction to hear the substantive suit. The jurisdiction to punish for contempt derives from the Constitution of Nigeria and is completely independent of the jurisdiction to hear the substantive suit in this case.

E The offence contempt of court is sui generis. See *Boyo v. The State* (1970) 1 All NLR 318. It stands on its own and can be punished as such except when it flows from an intrinsic order in the substantive suit and the court is held not to have jurisdiction in the suit. (p. 2411 H)

F **REPRESENTATION**

Mr. Uche Nwokedi, (with him, Mr. C. Chuks-Nnadi), for the Appellant.
Respondent absent and unrepresented.

G **CASES REFERRED TO**

Ndaeyo v. Ogunnaya (1997) 1 S.C. 11

Oscroft. Banebo (1967) 2 All ER 557

African Newspapers of Nigeria Ltd, v. Federal Republic of Nigeria (1985) 2

H NWLR (Pt. 6) 137 at 161

Boyo v. The State (1970) 1 All NLR 318

Anambra State v. Anah (1995) 8 NWLR (Pt. 412) 213

Owoniboy Technical Services Ltd. v. John Holt Ltd. (1991) 6 NWLR (Pt.

199) 550

Adegoke v. Adibi (1992) 5 NWLR (Pt 242) 410 at 420

Onyema v. Oputa (1987) 3 NWLR (Pt. 60) 259 at 293

Madukolu v. Nkemdilim (1962) 2 SCNL 34 1

Barclays Bank of Nigeria Ltd. v. CBN (1976) 1 All NLR 401

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STATUTES REFERRED TO

1999 Constitution of Federal Republic of Nigeria s. 6(6)(a)

1990 Criminal Code Act Cap. 77 Laws of the Federation of Nigeria s. 133 C

LEAD JUDGMENT BY KALGO JSC

The only substantive issue to be determined in this appeal is this: when a court is faced with contempt ex facie curiae and a challenge to its jurisdiction, which of them is the court bound to deal with first? D

Before considering this issue, let me set out or recall briefly, the facts giving rise to this appeal.

The appellant was at the material time, the Managing Director of Nigeria Deposit Insurance Corporation (NDIC) a Federal Government Corporation involved with the implementation of the provisions of the Failed Bank (Recovery of Debts) and Financial Malpractices in Banks Decree No. 18 of 1994 as amended. One Clement Udemezue, a Manager of African Continental Bank Nassarawa-Eggon Branch, was arrested and detained F under the Decree and while in detention, the said Udemezue died in a hospital in Jos. Thereafter, precisely on 30th June, 1998, the respondent who was counsel to the deceased Manager, wrote to the Lagos State Attorney-General requesting him to prosecute the appellant for the murder of the deceased whose medical care while in prison custody, according to the respondent, was carelessly taken by the police and the appellant. The Attorney-General refused to respond and the respondent applied to the Lagos G High Court for an order of mandamus to force the Attorney-General to prosecute the appellant for murder of Udemezue (deceased). The High H Court heard the application and ruled in August 1998 that it has no powers to do so and dismissed the application.

The letter which the appellant wrote to the Attorney-General Lagos

State somehow got into the hands of many news media in Nigeria who published it in their different daily papers. The appellant read these publications and found that the materials contained therein constituted libel on his person. He then instituted a libel action against the respondent in the High Court Abuja on 14th December, 1998.

On the 13th January, 1999 the respondent filed a notice of preliminary objection challenging the jurisdiction of the Abuja High Court to entertain the libel action. On the 12th April, 1999 when the notice of preliminary objection was moved the learned trial Judge recorded on p. 92 of the record of appeal thus:-

*“Plaintiff absent
Defendant in court
Emeka Ngige for the plaintiff
Defendant/Applicant appear in person
Applicant Counsel - We have a preliminary objection dated
13/1/99. We seek to move same.
Plaintiff counsel - We have a publication here from the defendant.
Therefore it should be dealt with first.*

Court: My attention has been drawn to the publication which expressively show that the ruling on 11/12/98 was never given. Hence the editor, and the 2 lawyers involved should be summoned to show cause why they should not be committed for contempt of this court. The case is to be adjourned pending them.

Applicant counsel: We have an objection on jurisdiction. The issue should be dealt with 1st. See Okorodudu v. NDLEA.

Court: The court order stands. The case is adjourned to 4/5/99”
The respondent was not happy with this ruling and he appealed to the Court of Appeal. The Court of Appeal found merit in the appeal. It allowed it and “ordered the respondent to go back to the trial court and move his applications filed on 13/1/99”, which according to the Court of Appeal should have been heard first by the trial court.

Dissatisfied with this order, the appellant filed this appeal on two grounds and in his brief raised the following issues:-

1. Was the Court of Appeal right when it held in effect that a court

faced with an act of contempt in facie curiae and also an issue of jurisdiction is bound to deal first with the issue of jurisdiction?

2. Did the failure of the Court of Appeal to make a determinative ruling on issues regarding the correctness and applicability of an authority cited and relied upon by the appellant occasion a miscarriage of justice? B
The respondent also filed a brief in reply in which he formulated 2 issues thus:-

“1. Whether in the circumstances of this case, the Court of Appeal was right in setting aside the decision of the trial court refusing to entertain first, the preliminary objection challenging the jurisdiction before going into another issue raised before the court impromptu?” C

2. Did the failure of the Court of Appeal to make a determinative ruling on issues regarding the correctness and applicability of an authority cited and relied upon by the applicant occasion a miscarriage of justice?” D

The parties' brief after filing, were also exchanged between them, and at the hearing counsel for both parties adopted and relied upon their respective briefs.

Looking at the 2 issues raised by each counsel in his brief, it appears E to me very clearly that the issues are in effect the same in all respects. I am also satisfied that those issues properly arose from the grounds of appeal in the appellant's notice of appeal. I shall therefore consider the appellant's issues as set out in his brief.

As I stated at the beginning of this judgment, the main issue here is F issue I which deals with the issue of contempt of court and jurisdiction of the court - which one first.

It is not in dispute that both learned counsel for the parties agree with the general principle that jurisdiction is a central issue to any case before any court and once it is challenged, the court concerned is duty bound to determine whether it has jurisdiction first before proceeding to entertain the case. See Ndaeyo v. Ogunnaya (1997) 1 S.C. 11; Oscroft. Banebo (1967) 2 All ER 557. This is, because H any act, orders or proceedings made by a court without jurisdiction is a nullity and remains so for all purposes. See Funduk Engineering v. Mc Arthur (1995) 4 NWLR (Pt. 392) 640 at 651; Alao v. C.O.P. (1987) 4

NWLR (Pt. 64) 199; *Alhaji Rufai v. Alhaji Olugbeja* (1986) 5 NWLR (Pt. 40) 162. It is also trite law that jurisdiction can be raised at any time even on appeal. See *African Newspapers of Nigeria Ltd, v. Federal Republic of Nigeria* (1985) 2 NWLR (Pt. 6) 137 at 161; *National Bank of Nigeria Ltd v. Shagaya & Anor.* (1977) 5 S.C. 181 at 186; *Onyeama & Ors. v. Oputa & Anor* (1987) 3 NWLR (Pt. 60) 259 and 293.

It is common ground that the issue of contempt of court had arisen in the course of the proceedings before the trial court. This arose on 12th April, 1999, when the trial court's attention was drawn to the publication affecting the ruling of the court given on 11th December, 1998. Prior to this, precisely on the 13th January 1999, the respondent has filed an application in the trial court challenging the jurisdiction of the court to entertain the substantive case.

There is no doubt that, in the first place, the challenge to the jurisdiction of the court was the first in time. In the second place the contempt alleged by the court was not one in the face of the court but one which must be investigated or inquired into before any action is taken and that is why the court ordered that *"the editor and the 2 lawyers involved should be summoned in show cause why they should not be committed for contempt."*

I wish to repeat here the proceedings of the trial court on the 12th of April 1999. It reads:-

"Applicant counsel: We have preliminary objection dated 13/1/99. We seek to move same.

Plaintiff counsel: We have a publication here from the defendant. Therefore it should be dealt with first.

Court: My attention has been drawn to the publication which expressly show that the ruling on 11/12/98 was never given. Hence the editor, and the 2 lawyers involved should be summoned to show cause why they should not be committed for contempt of this court.

The case is to be adjourned pending then.

Applicant counsel: We have an objection on jurisdiction. The issue should be dealt with 1st. See Okorodudu v. NDLEA.

Court: The court order stands. The case is adjourned to 4/ 5/99."
(Underlining mine)

The notice of preliminary objection which was filed by the respondent and which has nothing to do with the issue of contempt of court was on 4 grounds to wit: -

“1. That this Honourable Court lacks jurisdiction to entertain the plaintiff’s claim as presently constituted.

2. That the defendant, a Legal Practitioner acting in his cause and/or in the cause of another has absolute immunity from the action as presently constituted, hence the action against the defendant cannot be maintained in law.

3. That this suit as presently constituted is an abuse of the proceedings before the Court of Appeal Lagos Division in Appeal No. CA/L/457/98 between Mike Okoye v. Attorney-General of Lagos State.

4. That the cause of action did not arise within the Federal Capital Territory, Abuja, therefore this Honourable Court lacks jurisdiction to entertain the suit as presently constituted.”

The preliminary objection on the above grounds is clearly challenging the jurisdiction of the trial court; but the question to ask here is, for what reason or reasons did the learned trial Judge refuse to hear and determine the challenge to his jurisdiction before treating the contempt issue. As I said earlier in this judgment, the challenge to the jurisdiction came first. The contempt issue in fact arose in the cause of moving the preliminary objection on the jurisdiction, and the contempt here by its nature is not one in the face of the court. Investigation must be conducted by it or carried out before any action could be taken on it by the trial court. It may turn out to be one which must be tried by another court not the trial court itself. Furthermore, from the proceedings of 12th of April, 1999, when the trial Judge refused to proceed with the jurisdiction issue, the learned counsel for the applicant (now respondent) has taken the trouble to remind the court that the issue of jurisdiction should be taken first and cited a case in support (without reference details) but still the court ignored him and insisted on postponing the hearing to another date pending the contempt investigations.

The learned counsel for the appellant in his brief submitted that in all the legal authorities cited by the Court of Appeal on challenge to jurisdiction of a court, in none of them was the issue of contempt raised as a central

issue or becomes the focus of the proceedings in court. These authorities can therefore be distinguished as they are not on all fours with the instant case. He further argued that an act of contempt goes to the root of a judicial system and the power of the court to deal with it summarily is by statute, intended to protect the integrity, dignity and authority of the court of law and enables the court to administer justice effectively and without any intimidation. He cited in support the case of Mobil v. Assan (1995) 8 NWLR (Pt. 412) 125 at 143. He then stated on page 10 of his brief that -

“In the present case, the facts show that once the publication was brought to the attention of the court, the court felt compelled to construe or determine whether its very publication portrayed the proceedings before it in bad light or whether it was done with a view to fetter or intimidate or otherwise bring into disrepute the proceedings in court.”

With respect to the learned counsel for the appellant the above quoted words did not at all support what happened in the trial court. **The record on that date in question merely showed that the court ordered summonses to be issued to the persons concerned with the publications to show cause and the matter was adjourned. There was no suggestion at that stage that the alleged publication portrayed the proceedings of the court in bad light. In fact, at that stage the learned trial Judge did not find anything contemptuous; all he did therefore was to order an investigation so as to find out whether there was contempt of court or not. So there was nothing at that stage to intimidate the court or bring its proceedings into disrepute. There was therefore no proof, in my respectful view, to the effect that contempt of court at that stage was central issue or becomes the focus of proceedings in that court. In fact the trial court merely ordered for investigation into the alleged publication to see if it amounts to contempt.**

There is no doubt in my mind that the challenge to the jurisdiction of the court in this case goes to the substantive issue before the court, that is publication of offensive falsehood against the appellant in various Newspapers in Nigeria which the appellant alleged had injured his credit, and reputation. However, in the proceedings of 12th April, 1999, the trial Judge was only dealing with “the publica-

tion which expressively show that the ruling on 11/12/98 was never given".
 This was a different matter altogether, and had nothing to do with the substantive case of libel. It is very clear therefore that the challenge to jurisdiction in the substantive case, has virtually nothing to do with the alleged contempt. The contempt case is sui generis¹ B and can be taken on its own and the challenge to jurisdiction which is already before the court can also be taken separately. And adjourning then to another date by the learned trial Judge was not in my view, giving priority to either of them. Therefore in the circumstances of this case, the learned trial Judge was not bound to deal with the issue C of jurisdiction first. This means that the procedure adopted by the learned trial Judge was not wrong although it would involve some delay which the case has already suffered as a result of this appeal. I answer issue 1 in the negative? D

Having resolved issue 1 in favour of the appellant, I do not find it necessary to consider issue 2 which deals with the failure of the Court of Appeal to act on the legal authority cited to it and relied upon by the appellant in his submissions to it before judgment. It appears to me to be an academic E exercise, since in any case, it would not affect the decision in this case one way or the other. **Suffice is however to say that failure to consider any relevant authority by a court would not ipso facto constitute any miscarriage of justice, in my view, since the situation may be F corrected if necessary, on appeal.**

In the result, I find that the Court of Appeal was wrong in allowing the appeal to it and setting aside the orders of the trial court. I therefore find merit in this appeal, which I allow and accordingly set aside the judgment of the Court of Appeal and restore the ruling of the High Court. I order that the case be remitted to the trial High Court for continuation. I make no order as G to costs.

KUTIGI JSC

I read before now the judgment just delivered by my learned brother Kalgo, JSC. While it is correct to say that issue of jurisdiction (which may

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be raised at any stage of the trial and appeal) should be taken up and dealt with expeditiously before proceeding further in a case, I think cases of this nature involving contempt of court, should largely be left to the discretion of the court before which the contempt is committed. Circumstances would clearly differ from one contempt to another contempt.

In certain situations the court would be required to react swiftly and promptly in order to protect its own dignity and to avoid damage being caused by unnecessary delays. I think the trial court in this case was right for opting to deal with contempt issue first, before proceeding to take the motion challenging its jurisdiction.

It was not therefore proper for the Court of Appeal, which was not master of the contempt situation, to have reversed the trial court by directing it to first of all hear the motion on jurisdiction before proceeding to deal with contempt issue. I do not think there should be any hard and fast rules under these circumstances. The circumstances themselves as they occur will dictate which way the judge will go because he controls the proceedings and is the master of the situation.

The appeal therefore succeeds and it is hereby allowed. The judgment of the Court of Appeal is set aside while the ruling of the trial High Court is restored. The case is remitted to the High Court, Abuja for continuation. I endorse the order for costs.

KATSINA-ALU JSC

I have had the privilege of reading in draft the judgment of my learned brother Kalgo, JSC., in this appeal. I agree with it. I would however, add some observations of my own.

The appellant brought an action for libel against the respondent. On 13th January, 1999, the respondent filed a notice of preliminary objection challenging the jurisdiction of the Abuja High Court to entertain the suit. The matter came on 12th April, 1999. The proceedings for that day reads as follows:

*“Plaintiff absent.
Defendant in court.*

Emeka Ngige for the plaintiff.

Defendant/Applicant appear in person.

Applicant counsel - We have a preliminary objection dated 13/1/99. We seek to move same.

*Plaintiff counsel - We have a publication here from the defendant. B
Therefore it should be dealt with first.*

Court - My attention has been drawn to the publication which expressively show that the ruling on 11/12/98 was never given. Hence the editor, and the 2 lawyers involved should be summoned to show cause why they should not be committed for contempt of this court. The case is to be adjourned pending them. C

Applicant counsel - We have an objection on jurisdiction. The issues should be dealt with 1st (sic) See Okorodudu v. NDLEA

*Court - The court order stands. The case is adjourned to 4/5/99.” D
The defendant was dissatisfied and shortly after the adjournment, he appealed to the Court of Appeal. The Court of Appeal first set out the law with respect to the jurisdiction of the court. That court per Umaru Abdullahi, PCA., said: E*

“It is indeed settled law that issue of jurisdiction is a fundamental matter which can be raised at any stage of the proceedings even up to the final determination or an appeal by the highest court of the land. See Gov. Anambra State v. Anah (1995) 8 NWLR (Pt. 412) 213; Owoniboys Technical Services Ltd, v. John Holt Ltd. (1991) 6 NWLR (Pt. 199) 550; Adegoke v. Adibi (1992) 5 NWLR (Pt 242) 410 at 420. Onyema v. Oputa (1987) 3 NWLR (Pt. 60) 259 at 293. F

It is also settled law that, whenever the court is faced with an objection to its jurisdiction, it has a duty to settle that issue one way or the other before it proceeds to hear the case. The reason being that jurisdiction is a radical and crucial question of competence. See A.G Lagos State v. Dosunmu (1989) 3 NWLR (Pt. 111) 552 at 566; Fumudoh v. Aboro (1991) 9 NWLR (Pt. 214) 210; Madukolu v. Nkemdilim (1962) 2 SCNL 341. G H

It is again well settled principle of law that once the jurisdiction of the court is challenged, it has to be decided first. The court whose jurisdiction is challenged shall first of all assume jurisdiction to decide whether it

has or lacks jurisdiction. See *Briggs v. Bob-Manuel* (1995) 1 NWLR (Pt. 409) 559; *Osadebay v. A.G. Bendel State* (1991) 1 NWLR (Pt. 169) 525; *Barclays Bank of Nigeria Ltd, v. CBN* (1976) 1 All NLR 401.”

In applying the law to the facts of the case, Umaru Abdullahi, PCA., continued thus:

“It is clear to me that what the learned trial Judge did went against all the grains of the settled legal principles set out above. A more judicious approach would have persuaded the learned trial Judge to listen to the application challenging his jurisdiction filed as far back as 13/1/99. Since the learned trial Judge did not do that, I cannot find my way in supporting the method he followed.”

Consequently, he allowed the appeal and remitted the case to the trial High Court for the defendant to move his application challenging the jurisdiction of the trial court filed on 13/1/99.

I think the Court of Appeal was in grave error. The application challenging the jurisdiction of the trial High Court was with respect to the libel suit. It is important to point out here that the learned trial Judge whose jurisdiction had been challenged, did not leave the resolution of that challenge and proceed to entertain the substantive libel suit.

The offence of contempt of court is in a class by itself. Put simply, it is ^{sui generis}¹. It is ex-trinsic to the substantive libel suit. Now at the stage the attention of the learned trial Judge was drawn to the alleged offence of contempt of his court, and he consequently made up his mind to dispose of that first, two distinct and separate matters were before him. The learned trial Judge, was perfectly right when he chose to first deal with the issue of the contempt of his court. The issue of jurisdiction of the court with regard to the libel suit would be taken, when that suit comes on for hearing. In the light of this it can be seen clearly that the decision of the Court of Appeal was flawed.

It is for the above reasons and the fuller reasons given by my learned brother Kalgo, JSC., that I too allow this appeal and set aside the decision of the Court of Appeal. I abide by the orders made in the leading judgment.

PATS-ACHOLONU JSC

I have read in draft the judgment of my learned and noble Lord, Kalgo, JSC., and I agree with him. The circumstances of this case show that it would have been considered remiss on the part of the learned trial Judge to start chasing the shadow, and not dwell on the substance of the case. Regardless of the merit of the ease being canvassed before the trial court, a contempt matter arising thereupon is an unexpected question which is regarded as a very important issue in the sense that it generally goes to a suspected infraction of the respect, honour and, dignity, any attributes which inhere to the court in order to protect itself from uncouth or recalcitrant persons. Proceedings in relation to contempt matters are essentially to preserve the dignity and majesty of the court whether of not the court then seised with the main ease has the competence to adjudicate on the matter.

While it is a settled law that when an issue of jurisdiction is raised by a party the court ought generally to take it first, where however due to a combination of factors an act which would impinge on the majesty of a court and likely to bring the court to odium and disrespect, is done, it is I dare say, not just desirable but essential for the court to first look into the matter of contempt before proceeding on the issue of jurisdiction. For the Court of Appeal to view the situation in this case as purely based on the recognized settled law that once an issue of jurisdiction is raised it must be taken first, shows with greatest respect that it missed the essence of the matter. In other words, at all times it is the duty of the court to guard jealously its powers and should give first consideration to the proceedings in contempt of its court even when the court is faced with the question of its competence to adjudicate on a matter from which the contempt issue arises.

Contempt proceedings are criminal in nature and should therefore ordinarily in the content of our jurisprudence be first dealt with either by the court trying the case when the alleged contempt took place or by another court. It cannot be over emphasized that the purpose of taking contempt cases first is to demonstrate to the public that the court being the creature of the constitution to decide cases between all manners of litigants, vide Section 6(6) of the Constitution, should protect its dignity and would neither allow the ubiquitous legislature nor the overbearing Executive, and not even

a citizen to brazenly do an act that would diminish the powers duly invested by the Constitution and the common law, in the administration of justice. Thus in the celebrated case of *R. v. Almon* (1765) Wilm 243 Wilmot, J., said;

B *“The power which courts in West Minster Hall have of vindicating their own authority is coeval with their first foundation and institution, it is a necessary incident to every court of justice whether of record or not to fine and imprison for contempt to the court acted on the face of it.”*

C Therefore paramountcy ought generally be given by way of priority of proceedings to contempt matters where the issues of contempt and jurisdiction to adjudicate collide, for forensic analysis. This contemporaneous dominion over proceedings in the court vest it with the exercise of primacy of hearing contempt matters. As pointed out in *Parashuram Detaram Shamdasani v. King Emperor* (1945) AC 264 at 268 all criminal contempt’s of the offending act must constitute an interference with the administration of Justice. In ‘a persuasive American case of *Passmore Williamson* (1855) 26 Pa 9, 67 Am Dec. 374, which involved an application for a writ of
D habeas corpus by one who was held in custody under a commitment by the District court of the United States for a contempt of that court In refusing to obey its writ of habeas corpus commanding him to produce the bodies of certain coloured persons claimed as slaves under a law of Virginia, the court
E said:
F *“The proposition that a court is powerless to punish for disorderly conduct or disobedience of its process in a case, which it ought ultimately to dismiss for want of jurisdiction, is not only unsupported by judicial authority, but we think it is new even as an argument at the bar.... There are*

G *some proceedings in which the want of jurisdiction would be seen at the first blush; but there are others in which the court must inquire into all the facts before it can possibly know whether it has jurisdiction or not. Anyone who obstructs or baffles a judicial investigation for that purpose is unquestionably guilty of a crime for which he may and ought to be tried, convicted, and punished. Suppose a local action to be brought in the wrong county; this is a defence to the action, but a defence which must be made out like any other. While it is pending, neither a party, nor an officer, nor any other*

person can safely insult the court, or resist its order. The court may not have power to decide upon the merits of the case; but it has undoubted power to try whether the wrong was done within its jurisdiction or not'

I wholeheartedly adopt this reasoning as mine and state unequivocally that in a situation such as in this case, the court seised with the main case B can exercise power to try for contempt first notwithstanding that the issue of jurisdiction is yet to be determined. It will be preposterous and asinine for a person to seek to purge himself of contempt by stating that the court has no jurisdiction in a particular suit, where the court is one of general jurisdiction and the suit is one within the scope of the court's general jurisdiction. C In *United States v. United Mine Workers of America* the Supreme Court of the United States held inter-alia as follows:-

"We regard this argument as sound. It has been held, it is true, that orders made by a court having no jurisdiction to make them may be disregarded without liability to process for contempt. In re Sawyer. 124 U.S. D 200, 8 S.C. 482, 31 L. Ed. 402; Ex parte Fisk, 113 U.S. 713, 5 S.Ct. 724, 28 L. Ed. 1117; Ex parte Rowland, 104 U.S. 604, 26 L. Ed 861. But even if the Circuit Court has no jurisdiction to entertain Johnson's petition, and if this E court has no jurisdiction of the appeal, this court, and this court alone, could decide that such was the law. It and it alone necessarily had jurisdiction to decide whether the case was properly before it. On that question, at least, it was its duty to permit argument, and to take the time required for F such consideration as it might need, See Mansfield, Coldwater & Lake Michigan Ry Co. v. Swan, 111 U.S. 379, 4 S.Ct. 510, (514), 28 L. Ed 462, 465. Until its Judgment declining jurisdiction should be announced, it had G authority, from the necessity of the case, to make orders to preserve the existing conditions and the subject of the petition, just as the State court was bound to refrain from further proceedings until the same time. Rev. Stat. 766, act of March 3, 1893, c. 226, 27 Stat. 751 (28 U.S. C.A. 465). The tact that the petitioner was entitled to argue his case shows what needs no proof H that the law contemplates the possibility of a decision either way, and therefore must provide for it. "203 U.S. 573, 27 S.Ct. 166, 51 L. Ed. 319, 8 Ann. Cas. 265. If this court did not have jurisdiction to hear the appeal in the Shipp case, its order would have to be vacated. But it was ruled that only the

*court itself could determine that question of law. Until it was found that the court had no jurisdiction, “*** it had authority, from the necessity of the case, to make orders to preserve the existing conditions and the subject of the petition ***” “..... An injunction duly issuing out of a court of general*
B *jurisdiction with equity powers, upon pleadings properly invoking its action, and served upon persons made parties therein and within the jurisdiction, must be obeyed by them, however erroneous the action of the court may be, even if the error be in the assumption of the validity of a seeming, but*
C *void law going to the merits of the case. It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished.”*

D The above decision conforms to my idea of the law in this sort of matter.

In the event, I allow the appeal and set aside the orders of the Court of Appeal. I abide by all the consequential orders made therein.

E _____

OGUNTADE JSC

The facts culminating in this appeal are simple and touch upon a
F matter of procedure. The issue revolves around the question - How fundamental in extent is the matter of jurisdiction in litigation? Or more directly, does the fact that a court has no jurisdiction to hear a cause bar the same court from invoking its jurisdiction to punish for contempt?

The appellant, as plaintiff at the High Court, Federal Capital Territory
G Abuja claimed against the respondent, a legal practitioner, as the defendant, the sum of One Hundred Million Naira damages for false and malicious publication. The appellant has also sought for an injunctive relief. The parties filed and exchanged pleadings after which the respondent filed a notice
H of preliminary objection, wherein he contended that as he was acting as a legal practitioner when the cause of action arose, he had immunity from the suit.

The matter came before Kuserki, J., on 12/4/99. The record of the

court for that day reads:

“Applicant counsel - We have a preliminary objection dated 13/1/99. We seek to move same.

Plaintiff counsel - We have a publication here from the defendant. Therefore it should be dealt with first.

Court - My attention has been drawn to. the publication which expressly (sic) show that the ruling on 11/12/98 was never given. Hence the editor, and the 2 lawyers involved should be summoned to show cause why they should not be committed for contempt of this court.

The case is to be adjourned pending then.

Applicant counsel - We have an objection on jurisdiction. The issue should be dealt with 1st. See Okorodudu v. NDLEA.

Court - The court order stands.

The case is adjourned to 4/5/99.”

The respondent (i.e. the defendant before the trial court) was dissatisfied with the ruling of Kusherki, J; and he brought an appeal against it. The pith of the appeal was that as he had raised a preliminary objection to the jurisdiction of the court, the trial Judge was in error not to have heard the objection and ruled thereupon before proceeding to investigate the complaint made by the appellant’s counsel bordering on a misrepresentation of court proceedings. The Court of Appeal sitting at Abuja allowed the appeal and that court per Umaru Abdulahi, PCA., in its judgment at page 267 of the record; of proceedings reasoned thus:

“It is indeed settled law that issue of jurisdiction is a fundamental matter which can be raised at any stage of the proceedings even up to the final determination of an appeal by the highest court of the land. See Gov. Anarnbra State v. Anah (1995) 8 NWLR (Pt. 412) 213; Qwoniboy Technical Services Ltd, v. John Holt Ltd. (1991) 6 NWLR (Pt. 199) 550; Adegoke v. Adibi (1992) 5 NWLR (Pt. 242) 410 at 420; Onyema v. Oputa (1987) 3 NWLR (Pt. 60) 259 at 293.

It is also settled law that, whenever the court is faced with an objection to its jurisdiction, it has a duty to settle that issue one way or the other before it proceeds to hear the case. The reason being that jurisdiction is a radical and crucial question of competence. See A.G. Lagos State v. Dosunmu

2410 Ebhodaghe v. Okoye (2004) 12 KLR Oguntade JSC
(1989) 3 NWLR (Pt. Ill) 552 at 566; *Fumudoh v. Aboro* (1991) 9 NWLR
(Pt. 214) 210; *Madukolu v. Nkemdilim* (1962) 2 SCNL 34 1 .

It is again well settled principle of law that once the jurisdiction of the court is challenged, it has to be decided first. The court whose jurisdiction is challenged shall first of all assume jurisdiction to decide whether it has or lacks jurisdiction. See Briggs v. Bob-Manuel (1995) 7 NWLR (Pt. 409) 559; Osadebay v. A.G. Bendel State (1991) 1 NWLR (Pt. 169) 525; Barclays Bank of Nigeria Ltd. v. CBN (1976) 1 All NLR 401.”

The appellant was dissatisfied with the judgment of the court below and has brought this appeal against it. Two issues which have been set out in the lead judgment have been identified as arising for determination in the appeal.

My learned brother Kalgo, JSC., has in the lead judgment discussed the facts leading to this appeal and his views on the questions of law arising therefrom. I agree with him. I however intend to make a few remarks of my own in order to emphasize some aspects of the matter.

There is no doubt that the question of jurisdiction is the cornerstone of all litigations. Various expressions have been used to describe it like fundamental, important, threshold, radical, crucial, etc. What all these expressions boil down to is that a court without jurisdiction to hear a case cannot make valid orders on matters arising in the suit. In simple language, jurisdiction is the power or authority, which a court possesses to adjudicate over a particular matter or dispute. It is now axiomatic to say that orders made by a court in a matter in which it has no jurisdiction are nullities.

However, the statement that a court cannot make a valid order in a case in which it has no Jurisdiction is not an abstract one to be invoked mechanically. When an order is being challenged on the ground that it was made by a court without jurisdiction it is still necessary to consider the nature or purpose sought to be achieved by the order being challenged and whether there is jurisdiction under the general law to make the order under attack. There are orders, which are intrinsic to the substantive suit such that a decision that a court has no jurisdiction necessarily and without further ado impairs such orders. On the other hand there may be orders which are extrinsic to the substantive suit with the result that no matter

what view one takes of the jurisdiction of the court to hear the substantive suit, the orders remain valid and binding.

Bearing this in mind, I now consider the order made by the trial court which is being challenged in this case. It was successfully argued before the court below that the trial court ought to have first taken a decision on the issue of jurisdiction raised before it before making the order to investigate the complaint made that some gentlemen including two lawyers misrepresented the proceedings of the court. Was the trial Judge wrong to have decided to investigate the complaint before considering the issue of Jurisdiction? I think not. C

The trial Judge in making the order was merely exercising the inherent jurisdiction which a superior court of record possesses to ensure that the proceedings of his court are not abused or brought into disrepute. Section 6(6)(a) of the Constitution of the Federal Republic of Nigeria specifically preserves the inherent jurisdiction of a court of law further Section 133 of the Criminal Code Act Cap. 77 Laws of the Federation 1990 gives wide powers to punish for various types of contempt of court. An article or publication in a newspaper which scandalizes or is calculated to bring the court into disrepute amounts to contempt. See *R. v. Thomas Horatius Jackson* 6 NLR 49-55. It is relevant to say here that, all the trial court did, was to have attempted to investigate the complaint. No one had as yet been cited for any contempt of court . F

I think it would amount to whittling down the authority and dignity of a court if it were to be the practice that a court of law would not possess the power to discipline anyone that brought it into disrepute. Such was never the law. When this appeal was being argued, I asked counsel the question: Suppose a litigant from the well of the court threw a missile at the Justices Sitting and it were afterwards to be found that the justices have no jurisdiction in the case, would the culprit go scot-free? G

With respect to the court below, I think it made a fundamental error in arriving at the conclusion that in the peculiar facts of this case, the issue of jurisdiction had to be determined first. The court below in my view failed to draw a distinction between orders which are intrinsic and woven up with the substantive suit and orders which are extrinsic to the substan- H

tive suit. In the former, where the court is found to have no jurisdiction, the orders made by the court are nullities. It Is only in such a case that objection as to the court’s jurisdiction ought to be determined first. In the latter into which category this appeal on hand falls, the order of the trial court to
B investigate the complaint of contempt is extrinsic to the substantive suit. The order from this perspective has nothing to do with whether or not the trial court has jurisdiction to hear the substantive suit. The jurisdiction to punish for contempt derives from the Constitution of Nigeria and is completely independent of the jurisdiction to hear the substantive suit in this
C case.

 The offence contempt of court is *sui generis*. See *Boyo v. The State* (1970) 1 All NLR 318. It stands on its own and can be punished as such except when it flows from an intrinsic order in the substantive suit and the
D court is held not to have jurisdiction in the suit.

 For the above and more elaborate reasons set out in the lead judgment by my learned brother, Kalgo, JSC., I would also allow this appeal. The judgment of the Court of Appeal is set aside and the ruling of the High
E Court Federal Capital Territory given on 4/5/99 is restored. The matter; is to be continued before the High Court, Federal Capital Territory. I make no order as to costs.

F

1 Of its own class and kind; peculiar

G

H