

**SUPREME COURT OF NIGERIA**  
10TH OF DECEMBER. 2004 SC. 286/2002  
**CORAM:- I. L. KUTIGI, A. I. KATSINA-ALU, U. A. KALGO,**  
**A. O. EJIWUNMI, I. C. PATS-ACHOLONU, JJSC**

SOCIETE BANCAIRE (NIGERIA) LIMITED ..... APPELLANT  
AND

MARGARIDA SALVADO DE LLUCH ..... RESPONDENT

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TORTS - Banking - Negligence - Duty of care - Arises when there is a foreseeable injury - That can be avoided (H1)

BANKING - Jurisdiction - Negligence - Duty of care claim - Is still a matter pertaining to banking (H2)

COURTS - Jurisdiction - Banking - Absence of bank/customer relationship in this case - Confers jurisdiction only on the Federal High Court under s. 251 (1) (d) 1999 constitution (H3)

**FACTS**

The plaintiff/respondent entered into a business relationship with one Francis Philips by which the later promised to secure a contract for the respondent worth \$55 million for construction of the Central Bank of Nigeria between 1992/94. Respondent claimed that she was induced to part with the total sum of \$500,000 which was later paid into the defendant/appellant bank. Nothing was further heard from the said Francis Philips. Respondent lately realized that she had been made to part with her money under false pretence. The money was paid into the joint account of Anthony Jiwueze and Francis Philips with the appellant. Respondent averred that the appellant was negligent in opening an account for Anthony Jiwueze and Francis Philips without observing the laid down standard care in the opening and operation of an account, and the bank was not prudent in readily allowing the fraud-stars to open an account.

At the High Court of Lagos where the matter came up, appellant

raised a preliminary objection on the ground that the State High Court has no jurisdiction. This is based on the fact that the subject of the action though a banking matter is not one of Bank and customer relationship. The High Court dismissed the suit for lack of jurisdiction. Respondent's appeal to the Court of Appeal succeeded as it held that the State High Court was competent to handle the matter. Being dissatisfied, appellant has now appealed to the Supreme Court.

**ISSUE FOR DETERMINATION**

Whether the Court of Appeal was right in holding that the High Court of Lagos State has jurisdiction over this action being an action which raises an issue of negligence in the ordinary course of banking practice and business only and not relating to any matter of fiscal measure or revenue of the Federal Government.

**HELD** (Unanimously allowing the appeal per **PATS-ACHOLONU JSC**)  
***TORTS - Banking - Negligence***

1. From the analysis of the respondent's argument in her brief as she strives to make out an issue of negligence it is to be implied that the appellant owes a duty of care or to be assumed to owe a duty of care to the respondent. When does a duty of care arise? Actually a duty of care has its origin on the concept of foreseeability. This principle was first enunciated in *Heaven v. Pender* (1883) 11 QBD 503 at 509, where Brett, MR., said;

*"Whenever one person is by circumstances placed in such a position with regard to another that everyone of ordinary sense who did think would at once recognize that if he did not use ordinary care and skill in his own conduct with regard to those circumstances he would cause danger or injury to the person or property of the other; a duty arises to use ordinary care and skill to avoid such danger."* (p. 2459 C)

***Negligence - Duty of care claim***

2. Even if a duty of care arises due to some form of affinity in banking matters between the combatants as being espoused by the respondent in this case would that oust the jurisdiction of an appropriate court so statutory designated? As the respondent based her action on the tort of negligence,

which imports there was a duty of care and the respondent has said that she is not a customer which indeed she is not, I find it highly irresistible not to express the view that the nature of the relationship subsisting between the parties touches inferentially or circumstantially on a matter relating to and therefore connected to and pertaining to banking. I say this because it is a fact not denied that the fraudsters lodged the money in the appellant's bank thereby making the appellant in exercise of its banking operations the holder of the respondent's money though without her consent but nevertheless in possession of it. The money is in the bank's possession in its capacity as a bank in the context of its being a repository of money normally lodged or paid in there, and in this case, the money said to belong to the respondent who is not a customer. It is in the exercise of their duties as a bank that they became repository of the respondent's money. (p. 2463 C)

***Absence of bank/customer relationship in this case***

3. The respondent had lampooned the appellant for not exercising an accepted high standard in opening account for the two men. Holding therefore as I do that the matter to my mind touches on the issue of banking generally but certainly not a bank-customer relationship, it is difficult not to conclude that this case ought to have been brought squarely before the Federal High Court as it is obvious it falls within the intendment of the primary law as reflected in Section 251 (1) (d) of the Constitution but not including the portion with the proviso. That being the case, it is my view that this matter should be or ought to be brought squarely before the Federal High Court, which ought to exercise jurisdiction on this case. The appeal therefore succeeds. (p. 2463 H)

**NOTABLE POINTS OF INTEREST**

**PATS-ACHOLONU JSC**

***1. Banking - Definition of - Not easy at common law***

In the present case under consideration the fraudsters paid the loot into the appellant's bank but in their names, they became customers to the bank. How then shall we describe the relationship between the respondent whose "stolen money" was lodged in the appellants. Could such state of affair

arising out of the spurious transaction between the two scoundrels and the respondent and tangentially affecting the appellant give rise to an act on the part of the appellant that can be described as “*connecting with and pertaining to the bank*”. The expression “*connecting with or pertaining to banking*” when examined synthetically imports transaction on matters that are related to or show affinity or intertwine or have semblance or have interrelationship with banking. What then is banking?

“Black’s Law Dictionary defines the word banking as follows;

C “*The business of banking, as defined by law and custom, consists in the issue of notes payable on demand intended to circulate as money when the banks are banks of issue; in receiving deposits payable on demand; in discounting commercial paper; making loans of money on collateral security; buying and selling bills of exchange; negotiating loans, and dealing*  
D *in negotiable securities issued by the government, State and national, and municipal and other corporations.*”

At common law there does not appear to be any definition of banking although Diplock, LJ., had held in the case of Dominion Trust Ltd, v. E Kirkwood (1966) 1 All ER 968 at 986-7 as follows;

‘I am inclined to agree with the Master of the Rolls and the author of the current edition of Paget on Banking (6th Edn, 1961) P. 8, that to constitute the business of banking today the banker must also undertake to pay F cheques drawn upon himself (the Banker) by his customers in favour of third parties up to the amount standing to their credit in their “*current accounts*” and to collect cheques for his customers and credit the proceeds to their current account.’

G In the same case Lord Denning, MR., had said at 979.

“*...It must be remembered that a recital of usual characteristics is not equivalent to a definition. The usual characteristics are not the sole characteristics. There are other characteristics which 30 to make a banker. In particular stability, soundness and probity.... Like many other beings, a banker*  
H *is easier to recognize than to define. In case of doubt it is, I think, permissible to look at the reputation of the firm amongst ordinary intelligent commercial men*”.

What the learned jurist was saying is that you cannot easily compart-

mentalize the term banking. In other words, it defies positive and readily identifiable definition.

On the other hand the term banking business has been defined in Section 61 of Banks and Other Financial Institutions Decree No. 25 of 1991 as follows:

*“Banking Business” means the business of receiving deposits on current account, savings account or other similar account, paying or collecting cheques, drawn by or paid in by customers/provision of finance or such other business as the Governor may, by order published in the Gazette, designate as banking business”.* (p. 2461 G)

*2. Banking parting away with money in issue - Is tainted with dishonesty*

I cannot however fail to comment at the manner the respondent in this matter readily parted with the sum of money being claimed. Would she do the same thing in Germany where she hails from? The consideration for parting with the money is tainted with dirt, corruption and blatant dishonesty. I can't help saying that she had hoped to reap an unconscionable, unimaginable profit, id est, reaping where she did not sow. It is the likes of her that watered and manured the revolting and nauseating advance fee fraud which now thrives in the mentality and culture of our society. It is a hideous culture hitherto unknown which having been introduced and allowed to flower in the minds of louts inebriated with making fast money by dishonest means has become a malignant cancer that has given this country a bad name and for which the society is fighting hard to destroy and obliterate. It would seem that the respondent and the fraudsters had all the disease of greed and cupidity in their body mechanism. (p. 2464 B)

**REPRESENTATION**

Paul Usoro, SAN., (with him, Jibola Adams and (Miss) Ofonrnbuk Akpabio), for the Appellant.

Chief M. O. Ayorinde, (with him, K. F. Elelu), for the Respondent.

**CASES REFERRED TO**

Donoghue v. Stevenson (1932) A C 562 at 581

**2456** Societe Bancaire v. Margarida S.D.L. (2004) 12 KLR Pats-Acholonu JSC

Heaven v. Pender (1883) 11 QBD 503 at 509

N. D. I. C. v. Okem Ent. Ltd. (2004) 10 NWLR at 880 p.107

Dominion Trust Ltd. v. Kirkwood (1966) 1 All ER 968 at 986-7

Trade Bank Plc. v. Banilux Ltd. (2003) 5 S.C. 1; (2003) 9 WLR at 826

B pg. 416

Dorset Yatch Co. Ltd. v. Home Office (1970) AC 1004 at 1052

Bronik Motors Ltd v. Wema Bank Ltd. (1993) NSCC 226

Le Lievre v. Gould (1893) 1 QB 491, at 497

C Jammal Steel Structures Ltd. v. African Continental Bank Ltd. (1973)  
NSCC 619

**STATUTES REFERRED TO**

Constitution of Nigeria 1999 s. 251 (1)(d)

D Banks and Other Financial Institutions Decree No. 25 of 1991 s. 61

**LEAD JUDGMENT BY PATS-ACHOLONU JSC**

E The respondent (the plaintiff) entered into a business relationship  
with one Francis Philips whereby the latter promised to secure a contract  
for the respondent worth \$55m for the construction of the Central Bank of  
Nigeria between, 1992/94. The plaintiff/respondent claimed that she was  
F induced to part with the total sum of \$500,000 which was later paid into the  
appellant's bank.

The respondent heard nothing else from the said Francis Philips and  
to her greatest chagrin and shock she realized too late that she had been  
made to part with her money under false pretences as it turned out. The  
G money was paid into the joint account of Anthony Jiwueze and Francis  
Philips in the appellant's bank. The respondent averred that the appellants  
were negligent in opening an account for Mr. Phillips and Jiwueze without  
keeping to or observing the laid down standard of care and procedure in the  
H opening and operation of an account, and that the bank did not behave in a  
manner expected to be followed by a prudent bank by so readily allowing  
Mr. Philips and Jiwueze to open an account.

At the High Court the appellant raised a preliminary objection to the

fact that the State High Court has no jurisdiction stating that the subject matter of the action is a banking matter but not being one of Bank and customer relationship. The High Court per Akinsanya, J., after listening to the arguments of both counsel, dismissed the suit for lack of jurisdiction, whereupon the appellant appealed to the Court of Appeal. The appellate B court found merit in the appeal and allowed it and set aside the ruling of Akinsanya, J., holding that the State High Court is competent to adjudicate on the claims on this matter.

The defendant as the appellant in this case appealed to this court and C formed two issues which are as follows:

I. Is it correct, as held by the Court of Appeal, that “*the High Court of Lagos State still has jurisdiction*” under Section 251(1)(d) of the 1999 Constitution “*to entertain any claims connected with bank and banking except such claims were connected with fiscal measures or revenue of the D Federal Government of Nigeria*”? (Emphasis ours)

II. Does this appeal fall within the sole proviso in Section 251(1)(d) of the 1999 Constitution, in which circumstance the Lagos State High Court would be seised of jurisdiction? E

The respondent on the other hand argued that the case being one of negligence simpliciter and having nothing to do with banking matters in stricto sensu ought not to come within the proviso of Section 251(1)(d) of the 1999 Constitution being no more than a simple case of tort, and therefore, as she contended, is within the jurisdiction of the State High Court. F The respondent company formulated only one issue which is:-

Whether the Court of Appeal was right in holding that the High Court of Lagos State has jurisdiction over this action being an action which raises an issue of negligence in the ordinary course of banking practice and business only and not relating to any matter of fiscal measure or revenue of the Federal Government. G

To my mind the issues framed by the appellant collapse into one issue as set out by the respondent. H

The appellant’s counsel has written a 31 page brief on this very simple matter in which he exhaustively discussed fiscal measures and policies and revenue of the Federal Government in relation to the history of

vesting of powers in the Federal High Court. He further discussed very much at length such cases as Jammal Steel Structures Ltd, v. African Continental Bank Ltd. (1973) NSCC 619 and also Bronik Motors Ltd, v. Wema Bank Ltd. (1993) NSCC 226.

B Obviously when this brief was written the judgment of this court on N.D.I.C. v. Okem Ent. Ltd. (2004) 10 NWLR at 880 P. 107 had not been given , otherwise the appellant’s brief which is in a form of treatise and which is very verbose, would not have been so written. It is instructive that the Supreme Court exhaustively discussed the two cases of Jammal Steel Structures and Bronik Motors cases in N.D.I.C. v. Okem Ent. Ltd, (supra).  
C Now the issue then is this, should the action be commenced in the High Court in this sort of case. For us to understand the nuances of the matter in controversy, let me go back to Section 251(1) (d) of the Constitution which  
D states as follows:

*“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, the Federal High Court shall have and exercise  
E jurisdiction to the exclusion of any other court in civil causes and matters -  
Connected with or pertaining to banking, banks, other financial institutions, including any action between one bank and another; any action by or against the Central Bank of Nigeria arising from banking, foreign  
F exchange, coinage, legal tender, bills of exchange, letters of credit, promissory notes and other fiscal measures: Provided that this paragraph shall not apply to any dispute between an individual customer and his bank in respect of transactions between the individual customer and the bank.”*

G It is agreed by both sides that the respondent was not a customer of the appellant. If that is so what then was the respondent in relation to the bank. The appellant argued that the lodging of the money falsely or fraudulently removed from the respondent and paid into the account of the alleged fraudsters in the appellant’s bank, could only be a civil cause or  
H matter connected with or pertaining to banking. The respondent replicando argued with gusto and unction that there is no way the criminal lodgment of the money in the appellant’s bank could be described as something connected with or pertaining to banking. I believe that the expression “con-



nected with or pertaining to” involves or imports the state of affairs where the matter in issue involves a transaction which is peculiar to a banking operation and can only be carried on by the bank or a financial institution. It equally connotes the operational duties of a bank in respect of or in relation to its functions within the limits of its licence. The appellant’s case can be said to be that the lodgment of the money by Philips and Jiwueze in the account in the appellant’s bank has situated the bank in relation to the respondent a state of responsibility of now holding and being a repository of the respondent’s money. The respondent argued contrariwise that the complaint of the respondent is nothing more than a simple case of negligence.

**From the analysis of the respondent’s argument in her brief as she strives to make out an issue of negligence it is to be implied that the appellant owes a duty of care or to be assumed to owe a duty of care to the respondent. When does a duty of care arise? Actually a duty of care has its origin on the concept of foreseeability. This principle was first enunciated in Heaven v. Pender (1883) 11 QBD 503 at 509, where Brett, MR., said;**

*“Whenever one person is by circumstances placed in such a position with regard to another that everyone of ordinary sense who did think would at once recognize that if he did not use ordinary care and skill in his own conduct with regard to those circumstances he would cause danger or injury to the person or property of the other, a duty arises to use ordinary care and skill to avoid such danger.”*

In Donoghue v. Stevenson (1932) A C 562 at 581 in approving the judgment of the court in Heaven v. Pender (Supra) and Le Lievre v Gould (1893) 1 QB 491, at 497, Lord Atkin said; *“The rule that you are to love your neighbour becomes in law, you must not injure your neighbour; and the lawyer’s question, who is my neighbour? receives a restricted reply. You must take reasonable care to avoid acts or omission which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law is my neighbour? The answer seems to be - persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or*

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*omissions which are called in question.”*

What are those precautionary measures the respondent said the appellant ought to have taken that he did not take. I suppose that would feature in the main trial of the case.

B Indeed aside from such cases as *Dorset Yatch Co. Ltd, v. Home*  
Office (1970) AC 1004 at 1052 where Lord Pearson said that it would be  
unhelpful to consider the question as to the existence of a duty of care in  
isolation from the various elements and variables that circumscribe the duty  
of care, and perhaps the other earlier case of *Grant v. Australian Knitting*  
C (1936) AC 85 at 103, it is important to fully appreciate and understand the  
nuances that shall be considered in our understanding of the duty of care. In  
*Dorset Yatch Co. Ltd, (supra)* case Lord Wright said;

*“All that is necessary as a step to establish the tort of actionable*  
D *negligence is to define the precise relationship from which the duty to take*  
*care is deduced. It is however essential in English Law that the duty of care*  
*should be established. The mere fact that a man is injured by other’s act*  
*gives itself no cause of action; if the act is deliberate, the party injured will*  
E *have to claim in law even though the injury is intentional, so long as the*  
*other party is merely exercising a legal right. If the act involves lack of*  
*due care, again no case of actionable negligence will arise unless the duty*  
*to be careful exists.”*

F I do not intend to discuss the issue of negligence at this stage as that  
would be agitated later in the High Court presumably.

Section 25 1(1)(d) in its tenor and intendment embraces all possible  
conceivable matters touching on banking whether on issue of tort or con-  
tract but not being a point on bank and customer relationship. I have decided  
G to make a small forage as much as reasonably possible in quest to under-  
stand the case made out by the respondent that her action was based purely  
on negligence and that being the case, it would be wrong to pigeon hole the  
case within the framework of Section 251(1)(d) of the Constitution. I shall  
H pause here and would not proceed further in my analysis of the point in  
negligence.

It is hardly worth repeating that a matter which involves some ele-  
ments of banking as expounded and expatiated above by way of decided

cases is wide in its context that any attempt to remove it from the orbit of banking operations would be indulging in legal semantics or even polemics. Among the facts averred by the respondent in her statement of claim are that the appellant failed in their duty to inquire into the background of Philips and Jiwueze who lodged the money in his bank. Which is why her case was built on negligence. The respondent drew the attention of the court to the case of Trade Bank Plc. v. Banilux Ltd. (2003) 5 S.C. 1 (2003) 9 WLR at 826 pg. 416.1 shall now make a comparative critical examination of this case and the case on appeal.

In Banilux Nig. Ltd. case, this company had a transaction with the firm of Messrs. Accountable Finance and Investment Co., as a result of which the latter issued a cheque in favour of the respondent marked “*not negotiable*” and to be drawn at the appellants which is a bank. The appellant, Trade Bank, paid the money to a stranger instead of the right person, whereupon the respondent issued a writ. The only issue formulated in that case was whether the High Court of Lagos State is vested with the jurisdiction to hear and determine the case. The leading judgment in that case in the Supreme Court did not touch on the issue as to which court ought to be vested with jurisdiction of the case. The court merely said:

“I have no doubt that the respondent in the case in hand can sue the appellant in conversion for the proceeds of the cheque which the appellant paid to a stranger who is not the payee of the cheque. The respondent’s case is simply a tort of conversion and action.... can lie by the plaintiff at any State High Court.

There was no exhaustive discussion on the import of the expression “*connected with or pertaining to banking*” as obviously that point was not assiduously canvassed before the court. In the first place, in Trade Bank Plc. v. Banilux Ltd. (supra) case the payee of the cheque was the respondent so, there was obviously a duty of care. In the present case under consideration the fraudsters paid the loot into the appellant’s bank but in their names, they became customers to the bank. How then shall we describe the relationship between the respondent whose “*stolen money*” was lodged in the appellants. Could such state of affair arising out of the spurious transaction between the two scoundrels and the respondent and tangentially af-

fecting the appellant give rise to an act on the part of the appellant that can be described as “*connecting with and pertaining to the bank*”. The expression “*connecting with or pertaining to banking*” when examined synthetically imports transaction on matters that are related to or show affinity or inter-  
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E cheques drawn upon himself (the Banker) by his customers in favour of third parties up to the amount standing to their credit in their “*current ac-  
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H sible to look at the reputation of the firm amongst ordinary intelligent commercial men*”.

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identifiable definition.

On the other hand the term banking business has been defined in Section 61 of Banks and Other Financial Institutions Decree No. 25 of 1991 as follows:

*“Banking Business” means the business of receiving deposits on current account, savings account or other similar account, paying or collecting cheques, drawn by or paid in by customers/provision of finance or such other business as the Governor may, by order published in the Gazette, designate as banking business”.*

If an action is brought against any person on negligence it presupposes that the action is brought on the ground that the defendant has breached a duty of care he owes to the proponent. **Even if a duty of care arises due to some form of affinity in banking matters between the combatants as being espoused by the respondent in this case would that oust the jurisdiction of an appropriate court so statutory designated? As the respondent based her action on the tort of negligence, which imports there was a duty of care and the respondent has said that she is not a customer which indeed she is not, I find it highly irresistible not to express the view that the nature of the relationship subsisting between the parties touches inferentially or circumstantially on a matter relating to and therefore connected to and pertaining to banking. I say this because it is a fact not denied that the fraudsters lodged the money in the appellant’s bank thereby making the appellant in exercise of its banking operations the holder of the respondent’s money though without her consent but nevertheless in possession of it. The money is in the bank’s possession in its capacity as a bank in the context of its being a repository of money normally lodged or paid in there, and in this case, the money said to belong to the respondent who is not a customer. It is in the exercise of their duties as a bank that they became repository of the respondent’s money.**

**The respondent had lampooned the appellant for not exercising an accepted high standard in opening account for the two men. Holding therefore as I do that the matter to my mind touches on the issue**

**of banking generally but certainly not a bank-customer relationship, it is difficult not to conclude that this case ought to have been brought squarely before the Federal High Court as it is obvious it falls within the intendment of the primary law as reflected in Section 251 (1) (d) of the Constitution but not including the portion with the proviso. That being the case, it is my view that this matter should be or ought to be brought squarely before the Federal High Court, which ought to exercise jurisdiction on this case. The appeal therefore succeeds.**

I cannot however fail to comment at the manner the respondent in this matter readily parted with the sum of money being claimed. Would she do the same thing in Germany where she hails from? The consideration for parting with the money is tainted with dirt, corruption and blatant dishonesty. I can't help saying that she had hoped to reap an unconscionable, unimaginable profit, id est, reaping where she did not sow. It is the likes of her that watered and manured the revolting and nauseating advance fee fraud which now thrives in the mentality and culture of our society. It is a hideous culture hitherto unknown which having been introduced and allowed to flower in the minds of louts inebriated with making fast money by dishonest means has become a malignant cancer that has given this country a bad name and for which the society is fighting hard to destroy and obliterate. It would seem that the respondent and the fraudsters had all the disease of greed and cupidity in their body mechanism.

In the final analysis, the appeal succeeds and it is allowed. I set aside the judgment of the court below and affirm the ruling of the High Court. I strike out the main suit erroneously filed in the State High Court. I shall make no order as to costs having regard to the nature of this case.

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### KUTIGIJSC

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Pats-Acholonu, JSC. I agree with his reasoning and conclusions. The facts show that the matter is clearly one of banking even though not strictly of "*bank/customer*" type. The proviso to Section 251(1)(d) of the Constitution under which both the Federal High Court and State High

Courts exercise concurrent jurisdiction therefore will not apply (see N.D.I.C. v. Okem Enterprises Ltd. (2004) 10 NWLR (Pt. 850) 107). It is therefore my view that the Federal High Court has exclusive jurisdiction in this matter as provided under Section 251(l)(d) (the proviso excluded).

The appeal therefore succeeds and is allowed. The judgment of the Court of Appeal is set aside while the ruling of the High Court is restored. I also make no order as to costs.

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### **KATSINA-ALU JSC**

I have had the advantage of reading in draft the judgment of my learned brother, Pats-Acholonu, JSC., in this appeal. For the reasons he has given, I also allow the appeal.

The evidence before the court clearly shows that the respondent is not a customer of the appellant bank. There was clearly therefore no banker customer relationship which would have conferred the State High Court with jurisdiction under the proviso to Section 251(l)(d) of the 1999 Constitution: See N.D.I.C. v. Okem Enterprises Ltd. (2004) 10 NWLR (Pt. 850)107.

As I have already indicated I also allow the appeal and set aside the decision of the Court of Appeal. I abide by the consequential orders.

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### **KALGO JSC**

I have had a preview of the judgment just delivered by my learned brother, Pats-Acholonu, JSC., in this appeal. I agree with him entirely that there is merit in the appeal and it ought to be allowed. This appeal is on an interlocutory issue. The substantive matter has not gone to trial yet. The facts giving rise to this appeal have been comprehensively set out in the leading judgment of my Lord, Pats-Acholonu, JSC., and I am not adding anything more to it.

The main issue to be determined by this court is whether the High Court of Lagos State or the Federal High Court has jurisdiction to entertain the action of the respondent.

The main contention was whether the action involved “*banking business*” as defined in Section 61 of Banks and Other Financial Institution Decree No. 25 of 1991 and whether it bordered on negligence simpliciter of the appellant bank. The contention of the appellant was that although the action involves banking matters, it does not touch on banker customer relationship and so the proviso to Section 251(1)(d) of the 1999 Constitution did not apply. Therefore, counsel further argued, that “*banking business*” as defined by Section 61 of the Banks and Other Financial Institutions Decree 1991 did apply to this case even though the action was based on negligence.

For the respondent it was submitted that since the action was based on negligence only, it has nothing to do with banking matters and therefore, the provision to Section 251(1)(d) of the 1999 Constitution did not apply and the Lagos State High Court has jurisdiction to entertain the case.

It is not in dispute that respondent is not a customer of the appellant and therefore the proviso to Section 251 (1)(d) did not apply. But the whole transaction giving rise to the case as disclosed by the statement of claim, has revealed some banking transaction or business, and in my respectful view, the matter is one “*connected with or pertaining to banking.*” In the case of N.D.I.C. v. Okem Enterprises Ltd. (2004) 10 NWLR (Pt. 850) 107, this court held that the Federal High Court has exclusive jurisdiction to entertain all civil causes and matters under Section 251(1) of 1999 Constitution and that in respect of the proviso to paragraph (d) thereof, it has concurrent jurisdiction with the State High Courts. Therefore since this case does not come under the said proviso, but has some connection with banking transaction or business, it is my view that the Federal High Court should have the exclusive jurisdiction to entertain it under paragraph (d) of subsection (1) of Section 251 of the 1999 Constitution. I therefore find merit in this appeal.’

For what I have said above, and the more reasons given in the leading judgment of my learned brother, Pats-Acholonu, JSC., this appeal succeeds and is hereby allowed. I set aside the decision of the Court of Appeal and restore that of the trial High Court. I abide by the consequential orders made in the leading judgment including the order as to costs.



**EJIWUNMI JSC**

I have had the privilege of reading before now the judgment just delivered by my learned brother, Pats-Acholonu, JSC., and I am in full accord with his reasoning that led him to the conclusion that the appeal is B meritorious.

For the reasons given in the said judgment, I will also uphold the appeal and the consequential orders made.

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