

**SUPREME COURT OF NIGERIA**  
18TH FEBRUARY, 2005. SC. 303/2000  
**CORAM:- A. O. EJIWUNMI, N. TOBI, D. MUSDAPHER, G. A.**  
**OGUNTADE, S.A. AKINTAN, JJSC**

C.G.G. (NIGERIA) LIMITED ..... APPELLANT  
AND  
CHIEFLAWRENCE OGU  
(For himself and as representing the  
Umu-Ogonim unit of Enyike family of ..... RESPONDENT  
Obor town in Ogba/Egbeme/Ndoni  
Local Government Area of Rivers State)

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ACTIONS - Nature of - Mining - Statement of claim - And relevant laws  
- Show the action here had to do with mining (H1)

ACTIONS - Mining - Jurisdiction - In matters pertaining to mines and  
minerals - Belongs to Federal High Court - Not State High Court (H2)

APPEALS - Jurisdiction - Remittance by Court of Appeal to trial court -  
To determine issue of jurisdiction - Is wrong (H3)

APPEALS - Jurisdiction - Issue of - Should be handled by appellate courts  
- That are empowered - To determine the real question in controversy  
(H4)

JURISDICTION - Issue of - Where determined by the Supreme Court -  
Proper order is to strike out the matter - Tried without jurisdiction (H5)

**FACTS**

Before the High Court Omoku Rivers State, the plaintiff/respondent filed an action against the defendant/appellant. Respondent claimed the sum of N3,120,000.00 as special and general damages for appellant's reckless acts in seismic survey operations, shooting of explosives that

damaged respondent's farmland, economic crops, fish ponds, etc. Appellant vide a motion in August, 1997, urged the court to strike out the action for want of jurisdiction as the claim arose from oil exploration activities. The trial court avoided the issue of jurisdiction but dismissed the motion based on a procedural issue relating to the High Court Rules of Rivers State.

The appellant appealed to the Court of Appeal which allowed the appeal. But it remitted the case to the trial court to determine the question of jurisdiction raised in the motion. Being dissatisfied with the remittance order of the lower court appellant has further appealed to the Supreme Court.

**ISSUES FOR DETERMINATION**

*“Whether the Court of Appeal ought not to have resolved the issue of jurisdiction and refrain from remitting same as a consequential relief.”*

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

***ACTIONS - Nature of - Mining***

1. Paragraphs 3, 4, 5, 10 and 13 of the Statement of Claim depose to seismic survey operations and seismic lines. Section 2 of the Explosives Regulations, Cap. 117, Laws of the Federation of Nigeria, 1990 defines explosives as including seismic explosives, on which the action is based. The same section defines mining as having *“the meaning assigned to it in the Minerals Act and shall include the use of explosives in works authorized under the Petroleum Act.”* Although there is no definition of mining in the Minerals Act as claimed by the definition in the Explosives Regulations of 1990, it is my view that the second arm of the definition of mining is vindicated by the definition of explosives in the same Regulations. By a community reading of the two definitions, I am of the view that the action arose out of mineral exploration activities and therefore had to do with mining. (p. 444 D)

***Jurisdiction - In matters pertaining to mines***

2. In *Barry v. Eric* (1998) 8 NWLR (Pt. 562) 404, it was held that by virtue of Section 7(1)(p) of the Federal High Court (Amendment) Decree No. 60

of 1991, the Federal High Court shall to the exclusion of any other court have original jurisdiction to try civil causes and matters connected with or pertaining to mines and minerals including oil fields, oil mining, geological surveys and natural gas. This provision was reinforced by the amendment of Section 230 of the 1979 Constitution by the Constitution (Suspension and Modification) Decree No. 107 of 1993 which stipulated in its Section 230(1) (o) that the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters arising from arms, ammunitions, explosives, mines and minerals including oil fields, mining, geological surveys and natural gas. By the operation of the Decree the jurisdiction of the State High Court is ousted. It lacks the legal power to entertain and hear the suit.

It is clear from the above that the State High Court had no jurisdiction to hear the matter, including the decision the court arrived at on the issue of procedure. (p. 445 A)

### ***Jurisdiction - Remittance by Court of Appeal***

3. When the matter went on appeal to the Court of Appeal, that court ordered that the matter be remitted to the High Court to decide on the issue of jurisdiction.

Was the Court of Appeal right in remitting the matter to the High Court? I think not. Jurisdiction is a matter of strict and hard law which can be taken by an appellate court. It is not a matter of fact which is within the purview of the trial Judge. Jurisdiction is a radical and crucial question of competence of the court, which both the trial court and the appellate court have equal right to take.

As it is the claim that has to be looked at or examined to ascertain whether or not a court is possessed with jurisdiction to hear or determine a matter before it, both trial and appellate courts have the jurisdiction to do so, for the fact that the claim is always before the two courts. (p. 445 F)

### ***APPEALS - Jurisdiction - Issue of***

4. In the circumstances, the Court of Appeal should have invoked its Section 16 jurisdiction to take the issue of jurisdiction in limine.

As the Court of Appeal was entitled to invoke its Section 16 jurisdiction to deal with the issue, this court is equally entitled to invoke its counterpart, Section 22 of the Supreme Court Act, Cap. 424, Laws of the Federation of Nigeria, 1990, now the Supreme Court Act, Cap. 515, Laws of the Federation of Nigeria, 2004. The section empowers the Supreme Court to make any order necessary for determining the real question in controversy in the appeal. The real question in controversy in this appeal, in my view, is whether the High Court of Rivers State has jurisdiction in the matter before it. (p. 446 B)

***Where jurisdiction is determined by the Supreme Court***

5. As I have come to the conclusion that it is the Federal High Court and not a State High Court that has jurisdiction in the matter, I am left with no alternative than to strike out the matter and I do so accordingly. After all, in an issue of jurisdiction, a court should not be influenced by sentiment to confer jurisdiction on a court which lacks it.

In sum, the appeal is allowed. I set aside the judgment of the Court of Appeal. I strike out the action in the High Court, Omoku, on the ground that the court lacks the jurisdiction to hear the matter. (p. 446 H)

**NOTABLE POINT OF INTEREST**

**AKINTAN.JSC**

***1. Remitting issue of Jurisdiction to trial court is wrong***

It is settled law that issue of jurisdiction can be raised at any stage. It can in fact be raised for the first time at the appellate court, including the Supreme Court. Similarly, jurisdiction of a court is determined by the plaintiff's claim as endorsed in the Writ of Summons and Statement of Claim. The Court of Appeal, in the instant case, had before it the appellant's motion together with the supporting affidavit in support of the appellant's contention that the trial High Court lacked the jurisdiction to entertain the claim. The plaintiff's claims as endorsed on the Writ of Summons and the Statement of Claim were also before it. In other words, all that the Court of Appeal needed in resolving the issue it decided to send back to the High Court for determination were before it. The court also has the power to

deal with the matter under Section 16 of the Court of Appeal Act (Cap. 75, Laws of the Federation 1990). The decision of the court to remit the matter back to the High Court is therefore totally erroneous. Since the Supreme Court also has the power to deal with the matter under Section 22 of the Supreme Court Act (Cap. 424 Laws of the Federation 1990), there is also no need to send the matter back to the lower court for determination. (p. 449 E)

### **REPRESENTATION**

D. O. Ezaga Esq., for the Appellant.

Dejo Laminanra Esq., for the Respondent.

### **CASES REFERRED TO**

Barry v. Eric (1998) 8 NWLR (Pt. 562) 404

Shell Petroleum Development Co. of Nigeria Ltd. v. Maxon (2001) 9 NWLR (Pt. 719) 541

Okulate v. Awosanya (2000) 1 S.C. 107; (2000) 2 NWLR (Pt.646) 530

Izenkwe v. Nnadozie (1953) 14 WACA 361

Adeyemi & Ors. v. Opeyori (1976) 9-10 S.C. (Reprint) 18; (1976) 9-10 S.C. 31

Pan Asian Co. Ltd. & Nikon (1982) 9 S.C (Reprint) 1; (1982) 9 S.C 1

Tukur v. Government of Gongola State (1989) 9 S.C 1; (1989) 4 NWLR (Pt.117) 517

Din v. Attorney-General of the Federation (1986) 1 NWLR (Pt.17) 471

Adeagbo v. Alhaji Yusuf (1993) 6 NWLR (Pt. 30) 623

Compagnie Genrrale De Geophysique (Nig.) Ltd. v. Assagbara (2001) 1 NWLR (Pt.693) 155

### **STATUTES & RULES REFERRED TO**

The Constitution of the Federal Republic of Nigeria 1999 s. 251

Federal High Court (Amendment) Decree No. 60 of 1991 s. 7(1)(p)

Explosives Regulations Cap. 117 Laws of the Federation of Nigeria 1990 s. 2

Supreme Court Act s. 22

Court of Appeal Act s. 16

Rivers State High Court (Civil Procedure) Rules 1987 O. 24 r. 2

**LEAD JUDGMENT BY TOBI JSC**

B The respondent was the plaintiff in the High Court. The appellant was the defendant. In an action filed at the Omoku High Court, Rivers State, the respondent claimed the sum of N3,120,000.00 as special and general damages as a result of alleged wrongful and reckless acts of the appellant in breaking and entering into the respondent's farmland by cutting several seismic lines resulting in wanton destruction of the respondent's cash/economic crops and trees, fish ponds, juju shrines and farm house.

D In a motion dated 14th August, 1997, the appellant urged the court to strike out the action for want of jurisdiction on the ground that "*the claim as disclosed in the writ of summons, Statement of Claim and the reply to the Statement of Defence arose from the shooting of explosives and other geological survey activities in the course of oil exploration activities in the oil field.*"

F The learned trial Judge did not take the issue of jurisdiction in his Ruling. He rather took a procedural matter outside the issue of jurisdiction. Although he came to the conclusion that "*the acts of the defendant that caused the plaintiff to launch this claim are acts which relate to geological survey activities*", he stopped there and dealt with whether the proviso to Order 24 rule 2 of the High Court Rules 1987 of Rivers State was complied with in the motion. The Judge came to the conclusion that the proviso was not complied with. He dismissed the motion for non-compliance.

G Not satisfied with the Ruling, the appellant went to the Court of Appeal. That court allowed the appeal and remitted the case to the trial Judge for him to determine the question of jurisdiction raised therein. The court said at page 81 of the Record:

H "*Issue of jurisdiction is fundamental to the hearing of any matter before a court of law. Once it is raised no matter the manner of raising it, it must be determined by the court before further proceedings can start. The trial court was utterly wrong in begging the issue. Accordingly, I allow*

*this appeal and set aside the ruling of the trial court delivered on the 4th of August, 1998. The case is remitted to the trial court for it to determine the question of jurisdiction raised in the application of the appellant before it.”*

Still not satisfied, the appellant has come to this court. Briefs were B filed and duly exchanged. The appellant also filed a reply brief. The appellant formulated the following single issue for the determination:

*“Whether the Court of Appeal ought not to have resolved the issue of jurisdiction and refrain from remitting same as a consequential relief.”* C

The respondent, on his part, formulated the following issue for determination:

*“Whether the court below was right in remitting this case to the trial court for it to determine the question of jurisdiction raised in the motion on notice dated 14/8/97 and filed on 7/10/97 by the appellant.”* D

Learned counsel for the appellant, Mr. D. O. Ezaga, submitted that since the High Court failed to consider the issue of whether or not it had jurisdiction to try the matter, the Court of Appeal should have cashed in on the opportunity to determine that issue. This is because the entire facts E in affidavit necessary for such determination were already placed before the Court of Appeal, counsel reasoned.

He argued that the issue of jurisdiction is purely one of law that does not require evidence since the Statement of Claim which determines the F issue was also before the court. In the circumstances, to remit the issue back to the High Court for determination will not only delay justice but may fail to bring the litigation to an end, learned counsel contended. He cited *Odiba v. Azege* (1998) 7 S.C. (Pt. I) 79; (1998) 9 NWLR (Pt. 566) 370 and *Osaso v. Ajayi* (2004) 14 NWLR (Pt. 894) 547 at 548. G

Learned counsel contended that the issue of jurisdiction could be raised at any time, even on appeal, for the first time. He urged the court to hold that the issue, which could be raised at any stage in any court ought to be determined once raised and not to be remitted to a lower court where H it was earlier raised. An issue can only be remitted for determination to a lower court where the higher court is handicapped in any form or where the law prescribes such, counsel argued. To remit the case to the High

Court is to shy away from duty in the circumstances, counsel maintained.

Having succeeded in the appeal, the consequential order therefrom ought to be the granting of the reliefs sought in the appeal, viz: (a) An order setting aside the decision of the High Court and (b) An order striking out the suit for want of jurisdiction, counsel submitted. He cited *Barry v. Eric* (1998) 8 NWLR (Pt. 562) 856 and Section 251 of the 1999 Constitution. Counsel conceded that the Court of Appeal granted the first relief.

It is the submission of counsel that the relief to be granted by the Court of Appeal upon its judgment ought to flow and have a bearing with that judgment. He cited *Akinbobola v. Plisson Fisko (Nig.) Ltd.* (1991) 1 NWLR (Pt. 167) 270 at 288. By failing to give effect to the order allowing the appeal, the Court of Appeal rendered its judgment contradictory and confusing and should not be allowed to stand, counsel argued. He urged the court to allow the appeal.

Dealing with the only issue formulated by him for determination, learned counsel for the respondent, Mr. Dejo Lamikanra, submitted that the Court of Appeal was perfectly right in remitting the case to the trial court for it to determine the question of jurisdiction raised by the appellant. He cited Section 16 of the Court of Appeal Act, Cap. 75, Laws of the Federation of Nigeria, 1990. His second argument is that although the appellant filed four grounds of appeal against the Ruling of the trial court, there was no ground of appeal complaining that the trial court lacked jurisdiction to hear and determine the case. As there was no ground of appeal before the Court of Appeal complaining that the High Court does not have jurisdiction to hear and determine the case, the Court of Appeal could not have proceeded to determine that issue because it lacked the jurisdiction to do so, learned counsel contended. He cited *Ebba v. Ogodo* (1984) 4 S.C. 84 at 112 and *Alhaji Bako v. Laniyan* (2002) 7 S.C. (Pt. I) 159; (2002) 13 NWLR (Pt. 783) 171.

The third argument of learned counsel is that the Court of Appeal is entitled to have the benefit of the opinion of the trial or lower court in the sense that the trial or lower court has first decided an issue, which is as crucial and fundamental as jurisdiction before being asked to determine it. He cited *Ajadi v. Okenihun* (1985) 1 NWLR (Pt.3) 484; *Alhaji Ajuwon*



v. Madam Adeoti (1990) 2 NWLR (Pt. 132) 271 at 296; Olanrewaju v. Governor of Oyo State (1992) 9 NWLR (Pt. 265) 335. He also called the attention of the court to the following authorities in the supplementary list of authorities: Strong and Co. Ltd. v. Woodfield (1905) KB 350 at 357; The Shell Petroleum Development Co. of Nig. Ltd. v. Maxon (2001) 9 NWLR (Pt. 719) 541 at 562, 563, 568 and 569; Alhaji Ndayako v. Jikantoro (2004) All FWLR (Pt. 216) 390 at 415; Section 2 of Decree No. 60 of 1991 and Section 251 of the Constitution of the Federal Republic of Nigeria, 1999. He urged the court to dismiss the appeal.

Learned counsel for the appellant, in his reply brief, submitted that the appeal was purely against the decision of the Court of Appeal in all its ramifications and never admitted of any issue directly from the High Court. He argued that the words “*trial Judges*” admit of no other interpretation other than judges which made up the Court of Appeal. Counsel contended that the case of Ogoyi v. Umagba (1995) 9 NWLR (Pt. 41) 283 at 293 does not support the interpretation and argument of the respondent.

On the argument of the respondent with regard to remitting the case back to the High Court, learned counsel submitted that Section 16 of the Court of Appeal Act presupposes a full trial which was concluded in the High Court and not where the High Court fails to do its duty, in which case, the Court of Appeal should make the necessary pronouncements or findings. He cited Odiba v. Azege (1998) 7 S.C. (Pt. I) 79; (1998) 9 NWLR (Pt. 566) 370.

Learned counsel argued that there was no need for the appellant to couch a ground of appeal at the Court of Appeal complaining that the trial court lacked jurisdiction. Having raised the issue at the High Court and same is not pronounced upon, the appellant rightly called upon the Court of Appeal to make the necessary pronouncement, counsel contended. He said that the cases of Chief Ebba v. Chief Ogodo (1984) 4 S.C. 84 at 112 and Olarewaju v. The Governor of Oyo State (1992) 9 NWLR (Pt. 265) 335 cited by counsel for the respondent are inapplicable. He further called the attention of the court to Ajade v. Okenihun (1985) 1 NWLR (Pt. 3) 484 and urged the court once again to allow the appeal.

Counsel for the respondent withdrew his preliminary objection and

this court accordingly struck it out. Let me take first the submission of learned counsel for the respondent that there was no complaint in the grounds of appeal that the High Court lacked jurisdiction to hear and determine the case. Learned counsel was kind enough to the appellant by referring to ground 2 which reads:

*“The learned trial Judge failed and/or refused to consider the issue of lack of jurisdiction by the defendant and the arguments advanced on same.*

**PARTICULARS OF ERROR**

*A court is bound to pronounce and make a finding on all issues raised in argument no matter how irrelevant.”*

In the light of the above, I do not really see the point made by learned counsel. Ground 2, in my humble view, clearly attacks the lack of jurisdiction of the High Court. In the circumstance, I hold that the submission is misconceived and I reject it.

**Paragraphs 3, 4, 5, 10 and 13 of the Statement of Claim depose to seismic survey operations and seismic lines. Section 2 of the Explosives Regulations, Cap. 117, Laws of the Federation of Nigeria, 1990 defines explosives as including seismic explosives, on which the action is based. The same section defines mining as having “the meaning assigned to it in the Minerals Act and shall include the use of explosives in works authorized under the Petroleum Act.” Although there is no definition of mining in the Minerals Act as claimed by the definition in the Explosives Regulations of 1990, it is my view that the second arm of the definition of mining is vindicated by the definition of explosives in the same Regulations. By a community reading of the two definitions, I am of the view that the action arose out of mineral exploration activities and therefore had to do with mining.**

In *Shell Petroleum Development Co. of Nigeria Ltd. v. Maxon* (2001) 9 NWLR (Pt. 719) 541, the court held that the relevant provisions of Decree No. 60 of 1991 and Decree No. 107 of 1993 (now Section 251 (1) (n) of the 1999 Constitution) put any civil cause and matters arising from or connected with or pertaining to mines and minerals, including oil

fields, oil mining, geological surveys and natural gas within the exclusive jurisdiction of the Federal High Court. A State High Court, the court held, has no jurisdiction when an action will involve such matters in any form or to any degree.

**In Barry v. Eric (1998) 8 NWLR (Pt. 562) 404**, it was held that by virtue of Section 7(1)(p) of the Federal High Court (Amendment) Decree No. 60 of 1991, the Federal High Court shall to the exclusion of any other court have original jurisdiction to try civil causes and matters connected with or pertaining to mines and minerals including oil fields, oil mining, geological surveys and natural gas. This provision was reinforced by the amendment of Section 230 of the 1979 Constitution by the Constitution (Suspension and Modification) Decree No. 107 of 1993 which stipulated in its Section 230(1) (o) that the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters arising from arms, ammunitions, explosives, mines and minerals including oil fields, mining, geological surveys and natural gas. By the operation of the Decree the jurisdiction of the State High Court is ousted. It lacks the legal power to entertain and hear the suit. See also *Compagnie Genrrale De Geophysique (Nig.) Ltd. v. Assagbara* (2001) 1 NWLR (Pt.693) 155.

It is clear from the above that the State High Court had no jurisdiction to hear the matter, including the decision the court arrived at on the issue of procedure. When the matter went on appeal to the Court of Appeal, that court ordered that the matter be remitted to the High Court to decide on the issue of jurisdiction.

Was the Court of Appeal right in remitting the matter to the High Court? I think not. Jurisdiction is a matter of strict and hard law which can be taken by an appellate court. It is not a matter of fact which is within the purview of the trial Judge. Jurisdiction is a radical and crucial question of competence of the court, which both the trial court and the appellate court have equal right to take.

As it is the claim that has to be looked at or examined to ascertain whether or not a court is possessed with jurisdiction to hear

or determine a matter before it, both trial and appellate courts have the jurisdiction to do so, for the fact that the claim is always before the two courts. See Okulate v. Awosanya (2000) 1 S.C. 107; (2000) 2 NWLR (Pt.646) 530; Izenkwe v. Nnadozie (1953) 14 WACA 361; Adeyemi & Ors. v. Opeyori (1976) 9-10 S.C. (Reprint) 18; (1976) 9-10 S.C. 31; Tukur v. Government of Gongola State (1989) 9 S.C. 1; (1989) 4 NWLR (Pt. 117) 517; Egbonu v. BRTC (1997) 12 NWLR (Pt. 531) 21; Maida v. Modu (2000) 4 NWLR (Pt. 651) 99.

**In the circumstances, the Court of Appeal should have invoked its Section 16 jurisdiction to take the issue of jurisdiction in limine.** See generally Nneji v. Chief Chukwu (1988) 3 NWLR (Pt. 81) 184; Adeagbo v. Alhaji Yusuf (1993) 6 NWLR (Pt. 30) 623; Chief Ejowhomu v. Edok-Eter Mandilas Limited (1986) 5 NWLR (Pt. 39); Igwechi v. Atu (1993) 6 NWLR (Pt. 300) 484; Jadesimi v. Okotie-Eboh (1986) 1 NWLR (Pt. 16) 264. Learned counsel for the respondent called the attention of the court to Section 16 to justify the decision of the Court of Appeal. With respect, Section 16 is clearly against his client, as the section vests in the Court of Appeal the jurisdiction of the trial court to “*make any order necessary for determining the real question in controversy in the appeal.*”

**As the Court of Appeal was entitled to invoke its Section 16 jurisdiction to deal with the issue, this court is equally entitled to invoke its counterpart, Section 22 of the Supreme Court Act, Cap. 424, Laws of the Federation of Nigeria, 1990, now the Supreme Court Act, Cap. 515, Laws of the Federation of Nigeria, 2004. The section empowers the Supreme Court to make any order necessary for determining the real question in controversy in the appeal.** See generally Adeleke v. Cole (1961) 1 All NLR 55; Ode v. The Diocese of Ibadan (1966) 1 All NLR 287; Obiyan v. Military Governor of Mid-West (1972) 1 All NLR 422; Chief Ajagunjeun v. Osho (1977) 5 S.C. 89; (1977) 5 S.C. (Reprint) 55. **The real question in controversy in this appeal, in my view, is whether the High Court of Rivers State has jurisdiction in the matter before it.**

**As I have come to the conclusion that it is the Federal High**

**Court and not a State High Court that has jurisdiction in the matter, I am left with no alternative than to strike out the matter and I do so accordingly.** See *Din v. Attorney-General of the Federation* (1986) 1 NWLR (Pt.17) 471; *Ojora v. Odunsi* (1959) 4 FSC 189; *Iwuaba v. Nwaosigwelem* (1989) 5 NWLR (Pt. 123) 623; *Dr. Onagoruwa v. Inspector-General of Police* (1991) 5 NWLR (Pt. 193) 593; *Okoye v. Nigerian Construction and Furniture Co. Ltd.* (1991) 6 NWLR (Pt. 199) 501. **After all, in an issue of jurisdiction, a court should not be influenced by sentiment to confer jurisdiction on a court which lacks it.**

**In sum, the appeal is allowed. I set aside the judgment of the Court of Appeal. I strike out the action in the High Court, Omoku, on the ground that the court lacks the jurisdiction to hear the matter.** I award N10,000.00 costs in favour of the appellant.

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#### EJIWUNMIJSC

I have had the opportunity of reading before now the judgment just delivered by my learned brother, Niki Tobi, JSC. In that judgment, the question raised was whether the court below was right to have sent the case to the trial court to decide the issue of jurisdiction. As this question was fully considered in the said judgment and as I fully agree with the reasons given for the conclusion reached that the court below fell into error in that regard, I do not need to say anything further on the point. Being also of the view that this court by virtue of Section 22 of the Supreme Court Act (Cap. 424) Laws of the Federation, 1990, there is absolutely no need to refer the matter to the lower court for determination.

I accordingly allow this appeal and I abide by consequential orders made in the leading judgment.

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#### MUSDAPHERJSC

I have had the honour to read before now, the judgment of my Lord, Niki Tobi, JSC., just delivered with which I entirely agree. For the same

reasons canvassed in the aforesaid judgment, which I adopt as mine, I allow the appeal and set aside the judgment and decision of the Court of Appeal. I strike out the claims of the plaintiff before the High Court, Omoku, on the ground that the court lacked the jurisdiction to adjudicate on the matter. I abide by the order for costs proposed in the aforesaid judgment.

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**OGUNTADEJSC**

C I have had the advantage of reading in draft a copy of the lead judgment by my learned brother Tobi JSC. He has succinctly and lucidly discussed the issues agitated in this appeal. I entirely agree with him that this appeal has merits. His views that the court below should have D considered and reached a decision as to the issue of jurisdiction raised before it accord with mine. Section 16 of the Court of Appeal Act vests the court below the necessary power to do so. It seems to me that by sending the matter back to the trial court to determine the issue of E jurisdiction, the court below was unwittingly creating a situation, which contributes to congestion in our courts.

I would also allow the appeal and make the order that the plaintiff/respondent's suit be struck out, it being a suit that ought to have been initiated at the Federal High Court rather than the State High Court where F it was initiated. I would also award N10,000.00 costs in the favour of the appellant.

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**AKINTANJSC**

G This action was instituted by the present respondent as plaintiff at the Omoku High Court, Rivers State. His claim was for a total sum of N3,120,000 for special and general damages arising from wrongful and H reckless acts of the respondent, as defendant, when the said appellant went into the respondent's farm land at Obor town. The appellant upon service of the writ on him, prayed the trial court by a motion to strike out the claim on the ground that the action complained of, as disclosed from the

plaintiff's Statement of Claim, arose from shooting of explosives and other geological survey activities in the course of oil exploration activities in the oil field and of which the State High Court lacked jurisdiction to entertain. The matter came before Ebete, J., who, after taking submissions from learned counsel for the parties, refused the application on the ground that the provisions of Order 24 rule 2 of the High Court Civil Procedure Rules, 1978, were not fully met. The court was silent on the issue of jurisdiction raised in the application. B

The appellant was dissatisfied with the ruling and an appeal was filed against it at the Court of Appeal. The Court of Appeal allowed the appeal and made an order remitting the case back to the High Court to determine the issue of jurisdiction raised in the appellant's motion. The appellant was again not satisfied with the decision of the Court of Appeal, hence the present appeal was filed against the judgment of the Court of Appeal. The parties filed their briefs of argument in this court. The main issue canvassed in the appeal is whether it was in fact necessary for the Court of Appeal to send the matter back to the High Court merely to determine the issue of jurisdiction since all the facts needed in resolving the question were before the said Court of Appeal and also since issue of jurisdiction could be raised at any stage. C D E

It is settled law that issue of jurisdiction can be raised at any stage. It can in fact be raised for the first time at the appellate court, including the Supreme Court: see *Pan Asian Co. Ltd. & Nikon* (1982) 9 S.C (Reprint) 1; (1982) 9 S.C 1; *Tukur v. Government of Gongola State* (1989) 9 S.C 1; (1989) 4 NWLR (Pt.117) 517. Similarly, jurisdiction of a court is determined by the plaintiff's claim as endorsed in the Writ of Summons and Statement of Claim: see *Tukur v. Government of Gongola State*, (supra). The Court of Appeal, in the instant case, had before it the appellant's motion together with the supporting affidavit in support of the appellant's contention that the trial High Court lacked the jurisdiction to entertain the claim. The plaintiff's claims as endorsed on the Writ of Summons and the Statement of Claim were also before it. In other words, all that the Court of Appeal needed in resolving the issue it decided to send back to the High Court for determination were before it. The court also has F G H

the power to deal with the matter under Section 16 of the Court of Appeal Act (Cap. 75, Laws of the Federation 1990). The decision of the court to remit the matter back to the High Court is therefore totally erroneous. Since the Supreme Court also has the power to deal with the matter under Section 22 of the Supreme Court Act (Cap. 424 Laws of the Federation 1990), there is also no need to send the matter back to the lower court for determination.

For the above reasons and the fuller reasons given in the leading judgment just delivered by my learned brother, Niki Tobi, JSC., the draft of which I was privileged to have read, I allow the appeal and set aside the judgment of the Court of Appeal. In its place, I hereby strike out the plaintiff's claim before the trial High Court on the ground that the court lacks the jurisdiction to entertain the claim. I also award N10,000.00 costs in favour of the appellant.

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