

**SUPREME COURT OF NIGERIA**  
7TH APRIL, 2006. SC. 313/2001  
**CORAM:- S. U. ONU, A. I. KATSINA-ALU, U. A. KALGO,**  
**N. TOBI, M. MOHAMMED, JJSC**

COTECNA INTERNATIONAL LIMITED ..... APPELLANT  
AND

1. IVORY MERCHANT BANK LIMITED  
2. PAGADE AGRICULTURAL  
PROCESSING IND. LIMITED ..... RESPONDENTS  
3. PAGADE HOLDINGS LIMITED

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STATUTES - Construction - Jurisdiction - Pre-Shipment Inspection of Imports Act s. 9(2) - As to jurisdiction of the Federal High Court - Was properly construed by the Court of Appeal (H1)

LEGISLATION - Language used - Where clear and unambiguous - Courts must give the words their ordinary meaning - And not interfere with the Legislature's exclusive domain (H2)

JURISDICTION - Reliefs - Third Party Proceedings - Tukur case - Was wrongfully relied upon by lower court - On issue of principal and ancillary reliefs - In assigning jurisdiction to State High Court (H3)

ACTIONS - Jurisdiction - Reliefs - Principal relief in the Third Party Notice - Emanates from Pre-Shipment Inspection duty - Thereby making State High Court - To lack jurisdiction (H4)

**FACTS**

The 2nd and 3rd respondents (the Pagades) bought a crumb rubber processing machinery from the 1st respondent for the purpose of equipping their crumb rubber manufacturing plant in Delta State. The Pagades said that the machinery was sold to them upon material representations made by 1st respondent on the quality, merchantability and fitness. The representations turned out to be false and they brought an

action against the 1st respondent before the Lagos State High Court for breach of contract. 1st respondent denied the existence of breach of contract. In the alternative it pleaded that the representation was innocently made based on the negligent or fraudulent misrepresentations made by the appellant to it. 1st respondent commenced Third Party proceedings by the issuance of a Third Party Notice seeking against appellant contribution or indemnity in respect of the Pagades claim.

Appellant filed a defence and also raised a preliminary objection on the jurisdiction of the High Court of Lagos State to hear the matter. It prayed the court to strike out the Third Party Proceedings on the ground of lack of jurisdiction. The trial court dismissed the preliminary objection. On appeal to the Court of Appeal, it construed the relevant law properly as would have led to a conclusion that only the Federal High Court has jurisdiction. But it wrongfully relied on the case of Tukur on the issue of principal and ancillary reliefs in dismissing the appeal, holding that State High Court has jurisdiction. Dissatisfied, appellant has further appealed to the Supreme Court.

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

***Jurisdiction - Pre-Shipment Inspection of Imports Act s. 9(2)***

1. I should start from section 9(2) of the Pre-Shipment Inspection of Imports Act, 1985. It reads:

*“Every proceedings under this Act shall, subject to the applicable procedure (to) be commenced in the Federal High Court and references in this Act to “court” shall be construed accordingly.”*

Construing the subsection, the Court of Appeal said at page 329 of the Record:

*“The words of section 9(2) above are clear, plain and unambiguous. I ought therefore to construe them in accordance with their ordinary meaning... When so construed, the only conclusion “to be arrived at is that if the matters raised in the third- party notice issued by the appellant were proceedings under Cap. 363 above, only the Federal High Court could adjudicate in the matters... I am satisfied therefore that the proceedings before the lower court on the 3rd Party Notice were proceedings*

*under the Pre-Shipment Inspection of Imports Act, 1985.”*

The Court of Appeal cannot be faulted in the above conclusion because it is valid and correct. (p. 1224 H)

### ***LEGISLATION - Language used***

2. In *Ojokolobo v. Alamu*, supra, this court held that if the language used by the Legislature is clear and explicit the court must give effect to it because in such a situation the words of the statute speak the intention of the Legislature. That is the correct interpretation of the law. The rationale behind that interpretation is that the Legislature as the law maker must be trusted to use the correct and appropriate language and must be credited as the owner of parliamentary language that it will always use the language correctly and appropriately, unless the contrary is proved. It is saying the obvious that words are the tools of the Legislature and that the courts recognize that they use the language suitable in a statute.

As the role of the Legislature is that of making the law, or law making, the role of the Judiciary is that of interpretation of the law. Therefore where the language of a statute is clear, unambiguous, not subject to alternative interpretation, the courts must give the words their ordinary meaning. This accords with what this court said in *Ojokolobo* that words of a statute speak the intention of the Legislature. Where the language of a statute is clear and unambiguous, courts have no jurisdiction to introduce interpretation or construction not borne out from the clear and unambiguous language. That will be interfering with the exclusive domain of the Legislature as the law maker. (p. 1225 E)

### ***Third Party Proceedings - Tukur case***

3. The moment the Court of Appeal came to the correct conclusion it did, no other conclusion was available to it. But the court went further and examined whether the relief claimed in the Third Party Proceedings was the principal or ancillary relief.

The Court of Appeal in coming to the conclusion that the High Court was right to have assumed jurisdiction in the matter, relied on what this court said in *Tukur v. Government of Gongola State*, supra.

With respect, I do not agree with the Court of Appeal. Tukur cannot be authority in the case. It is clear in Tukur that the principal relief was the wrongful deposition of the appellant which made his right to fair hearing as an accessory right. This court had no difficulty to come to B that conclusion because the dividing line was clear.

While there are cases where the dividing line between principal and ancillary reliefs is clear and obvious, there are also cases where the line is not clear and obvious. In the latter case a court of law cannot so C dichotomize. In matters such as this, the court must be involved in measuring the reliefs with a view to finding out where the pendulum tilts. Measuring from the baseline to where the pendulum tilts, will give a rough arithmetical answer to the court in terms of whether the relief is principal or ancillary. (pp. 1226 B / G / 1227 C)

#### ***Principal relief in the Third Party Notice***

4. It is clear from the Third Party Notice that the act of negligence emanated from the breach of duty of care arising from performing the duty E of Pre-Shipment Inspection Agents. This is the expression of E above. In my humble view, it is the act of negligence that is parasitic or appurtenant to the duty of Pre-Shipment. In other words, the dominant claim in the Third Party Notice is the breach of duty of pre-shipment. That is F certainly and undoubtedly the principal relief if such a distinction is really necessary.

In the light of my conclusion on Issue No. 1 in favour of the appellant, I do not intend to take Issue No. 2. The appeal succeeds and it G is allowed. The cross appeal is dismissed. The judgment of the Court of Appeal is hereby set aside. The third party action pending at the High Court of Lagos State, which has no jurisdiction to entertain it, is hereby struck out. (p. 1228 D)

#### **H NOTABLE POINT OF INTEREST**

##### **MOHAMMED JSC**

##### ***1. Jurisdiction - When a court will have jurisdiction***

It is well settled law that the question of the validity vel non of the juris-

diction of the court touches on the competence of the court to hear and determine a cause or matter before it, and is fundamental to its exercise of jurisdiction and of adjudication and determination of the cause before it. In this respect, the existence or absence of jurisdiction in the court goes to the root of the matter and sustains or nullifies the decision of the court in respect of the relevant subject matter. The law is also trite that a court can be said to have jurisdiction and competence to hear a matter when (1) it is properly constituted as regards numbers and qualifications of the members of the bench such that no member is disqualified for one reason or another; (2) the subject matter of the case is within its jurisdiction, and there is no feature of the case which prevents the court from exercising its jurisdiction and (3) the case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction. (p. 1233 D)

### **REPRESENTATION**

Uzoma Azikiwe, Esq. for Appellant.

Norrison I. Quakers Esq. for 1st Respondent.

Olawale Akoni, Esq. for 2nd and 3rd Respondents

### **CASES REFERRED TO**

Obikoya v. Registrar of Companies (1975) 4SC 31 at 34

Ezomo v. Oyakhire (1985) 1 NWLR (pt.2) 195

Nwafia v. Ububa (1966) NMLR 219

Orubu v. National Electoral Commission (1988) 5 NWLR (Pt. 93) 323

Ojokolobo v. Alamu (1987) 3 NWLR (Pt. 61) 379

African Newspapers v. Nigeria (1985) 2 NWLR (Pt. 6) 137

Oforlete v. The State (2000) 12 NWLR (Pt.681) 415

Ilor v. Loko (1988) 2 NWLR (Pt. 77) 430

Zungkat Retduwas v. Dakyep Jwan (1992) 8 NWLR (Pt. 259) 358 at 367

Ochoma v. Onosi (1965) NMLR 325

UBA v. Achoru ( 1990) 6 NWLR (Pt. 156) 264

Olujitan v. Oshatoba (1992) 5 NWLR (Pt 241) 326 at 334 - 335

Ezeugo v. Ohanyere (1978) 6 - 7 SC. 171

Umeji v. Attorney - General of Imo State {1995} 4 NWLR (Pt. 391) 552 at 620

Seaview Investments Limited v. Munis (1991) 6 NWLR (Pt.I95) 67

B Adeniyi v. Oroja (1992) 4 NWLR (Pt.235) 322

**STATUTES REFERRED TO**

Pre-shipment Inspection of Imports Act 1985 ss. 7, 8 and 9

C

**LEAD JUDGMENT BY TOBI JSC**

Pagade Agricultural Processing Ind. Limited and Pagade Holding Limited, which I refer to as the Pagades, bought a crumb rubber processing machinery from Ivory Merchant Bank Limited for the purpose  
D of equipping their crumb rubber manufacturing plant in Delta State. The Pagades said that the machinery was sold by Ivory to them upon material representations made by Ivory on the quality, mere ban liability and fitness. The Pagades said that the representations turned out to be false and  
E they brought an action for breach of contract against Ivory at the High Court of Lagos State.

Ivory in its defence denied the existence of a contract. In the alternative, Ivory pleaded that the representations were innocently made  
F based on the negligent or fraudulent misrepresentations made by Cotecna International Limited to Ivory. Ivory commenced Third Party Proceedings against Cotecna by the issuance of a Third Party Notice seeking contribution or indemnity from Cotecna in respect of the Pagades claim.

G Cotecna filed a defence and also raised a preliminary objection on the jurisdiction of the High Court of Lagos State to hear the matter. Cotecna prayed the court to strike out the Third Party Proceedings on the ground of lack of jurisdiction by the court to hear the proceedings.

The High Court heard the preliminary objection and dismissed it.  
H Dissatisfied Cotecna appealed to the Court of Appeal. That court dismissed the appeal. Cotecna has appealed to this court.

Briefs were filed and duly exchanged. The appellant, Cotecna, formulated two issues for determination:

*“1. Whether the Court of Appeal was right when that court held that the High Court of Lagos State was right to have assumed jurisdiction over the subject matter of the Third Party Notice, the proceedings on which were under the Pre-shipment Inspection of Imports Act.*

*2. Whether the judgment of the Court of Appeal was a nullity B having been delivered a month earlier than the adjourned date for its delivery without Notice to the Appellant and the other parties.”*

Ivory, as 1st respondent/cross appellants, formulated one issue for determination:

*“Whether the Court of Appeal was right in confirming the C decision of the Lagos High Court that it had jurisdiction to ‘hear the 3rd party notice against the Appellant, being an ancillary claim which travels with the principal claim is cognizable in the State High Court.”*

The Pagades, as 2nd and 3rd respondents, formulated two issues D for determination:

*“ (i) Whether the High Court of Lagos State had jurisdiction over the Third Party Proceedings brought in the case*

*(ii) Whether the judgment of the Court of Appeal was nullity E having been delivered on a date earlier than the adjourned date for its delivery without notice to the appellant,”*

Learned counsel for the appellant, Mr. Uzoma Azikiwe, submitted on Issue No. 1 that the Court of Appeal came to correct interpretation of F section 9(2) of the Pre-shipment Inspection of Imports Act, 1985 and the only decision available to that court was to hold that the High Court of Lagos State lacked the jurisdiction to adjudicate on the subject matter of the Third Party proceedings. The decision reached by the Court of Appeal amounts to judicial amendment of statutory provisions, learned counsel G submitted. He contended that under the Nigerian Legal System and the Constitution, the courts have the jurisdiction or power circumscribed by provisions of the Constitution and statutes to abridge, constrict or even oust the jurisdiction of the court. He cited Attorney-General of Lagos H State v. Dosunmu (1989) 3 NWLR (Pt.1 11)552 at 567.

Counsel argued that Nigerian court exists to expound and not to expand their jurisdiction outside the limits prescribed by statutes. He cited

Seaview Investments Limited v. Munis (1991) 6 NWLR (Pt.195) 67 and Adeniyi v. Oroja (1992) 4 NWLR (Pt.235) 322.

On the issue of jurisdiction over a principal claim, learned counsel submitted that the case of Tukur v. Government of Gongola State (1989) 4 NWLR (Pt.177) 417 at 549, 564 and 565 cited by the Court of Appeal is so fundamentally different from the case before the court, that it is no authority for conferring jurisdiction on the High Court of Lagos State. Counsel took time to bring out the difference between the case of Tukur and this appeal. Counsel referred to African Continental Bank Ltd v. Wali Jallo (1975) 5 SC. 89 at 100; Union Bank of Nigeria Ltd v. Alhaji Bisi Edionseri (1988) 2 NWLR (Pt.74) 93 at 103 and Central Bank of Nigeria v. Manexport S. A. (1987) 1 NWLR (Pt. 47) 86 at 96.

Learned counsel quoted at paragraphs 5.6 and 5.7 of his brief statements made by the Court of Appeal which appeared to him to be outside the issues submitted by the parties for determination. Citing Zungkat Retduwas v. Dakyep Jwan (1992) 8 NWLR (Pt. 259) 358 at 367; Ochoma v. Onosi (1965) NMLR 325; UBA v. Achoru ( 1990) 6 NWLR (Pt. 156) 264; Olujitan v. Oshatoba (1992) 5 NWLR (Pt 241) 326 at 334 - 335; Ezeugo v. Ohanyere (1978) 6 - 7 SC. 171; Umeji v. Attorney - General of Imo State {1995} 4 NWLR (Pt. 391) 552 at 620, learned counsel submitted that courts exist to decide disputes between parties who come before them and do not make it their business to set up disputes different from the controversies on which the parties have joined issues.

On Issue No. 2, learned counsel submitted that delivery of the judgment earlier than scheduled without notice to the appellant is a violation to the appellant's right to fair hearing as guaranteed under section 36(1) of the Constitution. He cited Nigeria-Arab Bank Limited v. Barri Engineering Nigeria Limited (1995) 8 NWLR (Pt. 413) 257 at 290. He urged the court to hold that the judgment delivered on 24th May, 2000 earlier than the scheduled 19th June, 2000 without notice to the appellant is a nullity. He urged the court to allow the appeal.

Learned counsel for the 1st respondent, Mr. Nornson Quakers, submitted that Issue No. 2 which the appellant raised did not arise from



the judgment of the Court of Appeal but a procedural irregularity which has not occasioned a miscarriage of justice. Accordingly, if the appellant is to argue the issue, the leave of this court must be obtained, counsel contended. To learned counsel, Issue No. 2 goes to no issue as the appellant failed to obtain leave of this court to raise and argue it.

B

Arguing the only issue raised in his brief, learned counsel submitted that the 3rd party proceedings are not proceedings under the Pre-Shipment Inspection of Imports Act for the reason that section 9(2) of the Act applies to the exercise of jurisdiction of the Federal High Court in relation to criminal proceedings provided for under sections 7 and 8 of the Act.

C

On this effect of jurisdictional problems in principal and ancillary claims, learned counsel pointed out that the principal issue that this appeal raises is whether it was appropriate to join the appellant to the suit at the lower court. A claim based on liability in an unqualified clean report of findings involves a tortious ability of negligence which is not an exclusive preserve of the Federal High Court but the High Court of a State, counsel argued. He submitted that the trial court in the exercise of its jurisdiction rightly entertained the 3rd party notice being an ancillary claim to the principal claim. He cited *Tukur v. Government, of Gongola State* (supra).

D

E

Learned counsel for the 1st respondent took appellant's Issue No. 2 in the alternative, that is, in the event that this court comes to the conclusion that leave was not necessary. Counsel submitted that the appellant did not suffer anything as a result of its absence on the date judgment was delivered and that the case of *Nigeria-Arab Bank Limited v. Barri Engineering Nigeria Limited* (supra) cited by the appellant is inapplicable to the facts of this case.

F

G

On the cross-appeal whether section 9(2) of the Pre-Shipment Inspection of Imports Act applies to the 3rd party proceedings, learned counsel submitted that the Court of Appeal misconceived the provisions of the subsection in holding that it applies to the 3rd party proceedings, as the marginal notes of section 9 relate to criminal proceedings. Clearly, a claim for negligence pursuant to a statement contained in a clean report

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of findings is not a claim under the Act and can, therefore, be instituted in the State High Court, counsel contended. He cited *S. G. S. v. Rastico* (1987 - 1990) 3 N.S.C without the page.

B Learned counsel submitted that the appellant is not an agency of government to take advantage of the provisions of the Act. To learned counsel, for the appellant to qualify as an agency of government it must show that it is an organ of government created by statute to carry out government functions or objectives. He urged the court to dismiss the appeal.

C Learned counsel for the 2nd and 3rd respondents, Mr. Olawale Akoni, submitted on Issue No. 1 that the Court of Appeal was correct when it held that the Third Party Proceedings was a proceeding under the Act; thus permitting the Third Party Proceedings to continue in the D High Court of Lagos State. He relied on *Tukur v. Government of Gongola State*, supra. He submitted that a third party proceedings cannot come about without the existence of a main action between a plaintiff and a defendant. He called in aid Order 14 Rule 22 of the High Court of Lagos E State Rules. He argued that the third party proceeding is ancillary to the main action between Pagade and Ivory.

F On Issue No. 2, learned counsel submitted that as the date for the delivery of a judgment of a court is a matter entirely within its discretion, the judgment delivered by the Court of Appeal on 24th May, 2000 was valid and not a nullity. He urged the court to dismiss the main appeal and allow the cross appeal.

G In his Reply Brief, learned counsel for the appellant submitted that the validity of the judgment of the Court of Appeal raised by the appellant relates to and arises out of the judgment, subject of this appeal, and so leave was not required to raise same. He contended that the issue of agency raised by the cross appellant is a fresh issue which needed the leave of the court to raise. He urged the court to strike out ground two in H the Cross Appellants Notice of Appeal and all issues and arguments based on the ground. He relied on *Oforlete v. The State* (2000) 12 NWLR (Pt.681) 415 and *Ilor v. Loko* (1988) 2 NWLR (Pt. 77) 430.

**I should start from section 9(2) of the Pre-Shipment Inspec-**

tion of Imports Act, 1985. It reads:

*“Every proceedings under this Act shall, subject to the applicable procedure (to) be commenced in the Federal High Court and references in this Act to “court” shall be construed accordingly.”*

Construing the subsection, the Court of Appeal said at page 329 of the Record:

*“The words of section 9(2) above are clear, plain and unambiguous. I ought therefore to construe them in accordance with their ordinary meaning... When so construed, the only conclusion “to be arrived at is that if the matters raised in the third- party notice issued by the appellant were proceedings under Cap. 363 above, only the Federal High Court could adjudicate in the matters... I am satisfied therefore that the proceedings before the lower court on the 3rd Party Notice were proceedings under the Pre-Shipment Inspection of Imports Act, 1985.”*

The Court of Appeal cannot be faulted in the above conclusion because it is valid and correct. The court correctly relied on *Orubu v. National Electoral Commission* (1988) 5 NWLR (Pt. 93) 323. *Ojokolobo v. Alamu* (1987) 3 NWLR (Pt. 61) 379 and *African Newspapers v. Nigeria* (1985) 2 NWLR (Pt. 6) 137.

In Ojokolobo v. Alamu, supra, this court held that if the language used by the Legislature is clear and explicit the court must give effect to it because in such a situation the words of the statute speak the intention of the Legislature. That is the correct interpretation of the law. The rationale behind that interpretation is that the Legislature as the law maker must be trusted to use the correct and appropriate language and must be credited as the owner of parliamentary language that it will always use the language correctly and appropriately, unless the contrary is proved. It is saying the obvious that words are the tools of the Legislature and that the courts recognize that they use the language suitable in a statute.

As the role of the Legislature is that of making the law, or law making, the role of the Judiciary is that of interpretation of the law. Therefore where the language of a statute is clear, unambigu-

ous, not subject to alternative interpretation, the courts must give the words their ordinary meaning. This accords with what this court said in *Ojokolobo* that words of a statute speak the intention of the Legislature. Where the language of a statute is clear and unambiguous, courts have no jurisdiction to introduce interpretation or construction not borne out from the clear and unambiguous language. That will be interfering with the exclusive domain of the Legislature as the law maker.

**The moment** the Court of Appeal came to the correct conclusion it did, no other conclusion was available to it. But the court went further and examined whether the relief claimed in the Third Party Proceedings was the principal or ancillary relief. In dealing with the issue, the court argued at page 332 of the Record:

*“The plaintiffs claim before the lower court was for a breach of contract of sale. The lower court had the necessary jurisdiction to adjudicate in the dispute between the plaintiff and the defendant. It was the Third -Party Notice by the defendant which amounted to proceedings under the Pro-Shipments Inspection of Act, cap.363 over which only the Federal High Court had jurisdiction, I do not think that it would have been a correct approach for the lower court to have assumed jurisdiction over the principal claim of the plaintiff and to decline jurisdiction over the third party notice. By the third- party notice, the purpose of the defendant was to obtain indemnity or recompense from the 3rd party in the event the lower court gave judgment against the defendant. If the plaintiffs’ claim before the lower court failed, there would be no basis or purpose for the further pursuit of the 3rd party notice. Clearly therefore the claim of the plaintiff against the defendant was the principal claim whilst that of the defendant was the accessory or ancillary claim.”*

**The Court of Appeal in coming to the conclusion that the High Court was right to have assumed jurisdiction in the matter, relied on what this court said in *Tukur v. Government of Gongola State, supra*. Let me quote a portion of it:**

*“The fons et origo of his complaint in the determination of which he ought to have been accorded a fair hearing is not one over which the*

*Federal High Court has jurisdiction. In this respect, the appellant's right to a fair hearing is merely an accessory right. The principal right is his right not to be unjustly deposed. His right to a fair hearing before that deposition is an accessory right. The maxim here is *accessorium sequitur principal-* an accessory thing goes with the thing to which it is accessory. B Now if the principal right can only be litigated upon and maintained in the State High Court of unlimited jurisdiction, then the accessory right to a fair hearing will follow the principal right to its forum competence The State High Court."*

**With respect, I do not agree with the Court of Appeal. Tukur C cannot be authority in the case. It is clear in Tukur that the principal relief was the wrongful deposition of the appellant which made his right to fair hearing as an accessory right. This court had no difficulty to come to that conclusion because the dividing line was D clear.**

**While there are cases where the dividing line between principal and ancillary reliefs is clear and obvious, there are also cases where the line is not clear and obvious. In the latter case a court of E law cannot so dichotomize. In matters such as this, the court must be involved in measuring the reliefs with a view to finding out where the pendulum tilts. Measuring from the baseline to where the pendulum tilts, will give a rough arithmetical answer to the court in F terms of whether the relief is principal or ancillary.**

There is need to take the Third Party Notice. It reads;

*"A. COTECNA INTERNATIONAL LIMITED are Overseas Pre-Shipment Inspectors appointed by the Federal Government of Nigeria G pursuit to the Pre-Shipment of Imports Act 1981. Upon inspection of the Crumb Rubber machinery which is the subject matter of this action by the Plaintiff against the Defendant, COTECNA INTERNATIONAL LIMITED issued an Unqualified Clean Report of Findings (C. R. F) which H showed that the machinery was new and that its country of origin was Japan.*

B. .... .

C. ....

D. ....

E. By reason of A-D above, *COTECNA INTERNATIONAL LIMITED* acted in breach of its duty as Pre- Shipment Inspection agents and were negligent or fraudulent in misrepresenting the state of the said machinery to the Defendant.

PARTICULARS OF NEGLIGENCE

i. Failing to take proper or any care to determine the state of the Machinery before issuing the Unqualified Clean Report of Findings (C. R. F) which showed that the machinery were new.

ii. Failing to see that the Defendant was likely to suffer damage by placing reliance on the Clean Report of Findings (C. R. F) issued without proper or any care in determining the actual state of the said machinery.”

**It is clear from the Third Party Notice that the act of negligence emanated from the breach of duty of care arising from performing the duty of Pre-Shipment Inspection Agents. This is the expression of E above. In my humble view, it is the act of negligence that is parasitic or appurtenant to the duty of Pre-Shipment. In other words, the dominant claim in the Third Party Notice is the breach of duty of pre-shipment. That is certainly and undoubtedly the principal relief if such a distinction is really necessary.**

**In the light of my conclusion on Issue No. 1 in favour of the appellant, I do not intend to take Issue No. 2. The appeal succeeds and it is allowed. The cross appeal is dismissed. The judgment of the Court of Appeal is hereby set aside. The third party action pending at the High Court of Lagos State, which has no jurisdiction to entertain it, is hereby struck out. I award N10,000.00 against the respondents in favour of the appellant.**

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**ONU JSC**

Having been privileged to read before now the judgment of my learned brother Tobi, JSC just delivered, I am in entire agreement with his reasoning and conclusion. I adopt the same as mine and have nothing further to add thereto.

**KATSINA-ALU JSC**

I have before now read in draft the judgment delivered by my learned brother Niki Tobi JSC. I agree with him that the appeal has no merit. I also allow the appeal with N10,000.00 costs in favour of the appellant.

B

**KALGO JSC**

I have earlier read in draft the judgment just delivered by my learned brother Tobi JSC in this appeal. I agree with him entirely that there is merit in the appeal and it ought to be allowed.

C

My learned brother has succinctly set out the facts giving rise to the whole case at the very beginning of his judgment with which I agree and do not intend to repeat that here again.

There are only 2 issues for determination in the appeal and the most important issue is whether the trial Court had jurisdiction to entertain the third-party action in the circumstances of this case. There is no doubt in my mind that the main action is according to the statement of Claim based mainly on a claim for breach of contract and interest on the amounts claimed, against the appellant as defendant. The Lagos State High Court had the necessary jurisdiction to adjudicate on the claim.

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The third-party action was brought by the 1st respondent against the appellant claiming indemnity and or contribution as against the claims by the 2nd and 3rd respondents in the main action. The grounds upon which the third-party action was based as set out in the notice are:

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(a) COTECNA INTERNATIONAL LIMITED are Overseas Pre-Shipment Inspectors appointed by the Federal Government of Nigeria pursuant to the Pre-Shipment of Imports Act 1981. Upon inspection of the Crumb Rubber Machinery which is the subject matter of this action by the Plaintiff against the Defendant, COTECNA INTERNATIONAL LIMITED issued an unqualified Clean Report of Findings (C.R.F.) which showed that the machinery was new and that its country of origin was Japan.

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(b) Defendants offer of the aforesaid machinery for sale to PAGADE (SIC) AGRICULTURAL PROCESSING INDUSTRIES LIM-

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ITED was made on the strength of and upon reliance on the unqualified Clean Report of Findings issued by COTECNA INTERNATIONAL LIMITED which showed that the machinery being the subject of this suit was new and that the country of origin was Japan.

B (c) By its letter dated February 1, 1993 in response to several representations made by the Defendant, COTECNA INTERNATIONAL LIMITED informed the Defendant that the machinery was ‘not all new’ but was in accordance with an ‘agreement schedule’ which did not form part of the unqualified Clean Report of Findings earlier issued and which  
C said ‘schedule’ was not earlier communicated to the Defendant.

(d) By reason of A-C aforesaid, COTECNA INTERNATIONAL LIMITED caused the Defendant to believe and rely on the Clean Report of Findings for the state of the machinery being the subject of this suit.

D From the above grounds, it is certainly very clear that the 3rd party claim must arise from the performance of the appellant as Pre-shipment Inspectors on the Clean Report of Findings for the State of the Crumb Rubber Machinery which is the subject of the main action. It is  
E also very clear that the appellants were appointed as Overseas Pre-shipment Inspectors by the Federal Government of Nigeria pursuant to the provisions of the Pre-shipment of Imports Act 1981. This means that even though the claim is on tortious liability arising from the negligence  
F of the appellant, the negligence must be fully related to or associated with the requirement of the Pre-shipment of Imports Act Cap 363 of Laws of Nigeria 1990 which is the relevant statute governing such inspection.

The Court of Appeal made a clear finding on this when on P.330-331 of the record it said:-

G “There is no doubt that it was by virtue of the Pre-shipment Inspection of Imports Act, that the 3rd party had the opportunity to inspect and issue report of findings in respect of the crumb rubber machinery. The negligence ascribed to the 3rd party therefore arose out of the performance of the outing given to it by statute. In other words the basis of the  
H 3rd party notice was the negligent performance of a .statutory duty by the 3rd party. It would be wrong therefore to argue that this was a case of negligence under the common law.”



(Underlining mine)

Unfortunately the Court of Appeal after considering the decision in the case of Tukur Government of Gongola State (1989) 4 NWLR (Pt. 177) 517 derailed from this when it concluded that the Lagos State High Court was right to assume jurisdiction in the 3rd party action. It did so because it followed Tukur's case where it was held that the right to fair hearing which is merely ancillary to the principal right not to be unjustly deposed, are all within the jurisdiction of the State High Court. This principle or finding can clearly be distinguished from the present 3rd party action. And although the 3rd party action in this case is also ancillary or accessory to the main action before the High Court, the 3rd party action is based on the Pre-Shipment of Imports Act, and section 9 (2) of that Act provides:-

*"Every proceedings under this Act, shall, subject to the applicable procedure, be commenced in the Federal High Court and reference in this Act to "court" shall be construed accordingly."*

(Underlining mine)

In the Tukur's case (supra) the question of fair hearing is no doubt within the jurisdiction of a State High Court but in this case, the question of the 3rd party claim is caught by the Pre-Shipment of Imports Act which limits and restricts all proceedings under it to be commenced in the Federal High Court. I therefore disagree with the finding of the Court of Appeal and find that the Lagos State High Court had no jurisdiction to entertain the said 3rd party action; only the Federal High Court has jurisdiction.

From what I said above and the fuller reasons given in the leading judgment of my learned brother Tobi JSC, I also find no merit in this appeal. I accordingly allow it; set aside the decision of the Court of Appeal and allow the cross-appeal. I abide by the order of costs as assessed in the leading judgment.

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**MOHAMMED JSC**

The judgment of my learned brother Niki Tobi JSC just delivered was read by me in draft before today. I entirely agree with him that there

is merit in this appeal which deserves to succeed. I also agree that with the appeal being allowed, the cross appeal will have no legs to stand upon.

The appeal and the cross-appeal originated from a contract of sale transaction between the 1st respondent as the seller and the 2nd and 3rd respondents as the buyers. In the transaction, the 2nd and 3rd respondents bought a crumb rubber processing machinery from the 1st respondent for the purpose of equipping its crumb rubber manufacturing plant. The machinery was sold by the 1st respondent as new and in good quality as to its merchantability and fitness for the purpose it was purchased. The representation made by the 1st respondent turned out to be false which led the 2nd and 3 respondents instituting an action for damages for breach of contract against the 1st respondent at the Lagos State High Court of Justice. The 1st respondent as the defendant in the action in its statement of defence denied liability and attributed the state of the machinery it sold, to the negligent or fraudulent misrepresentations made to it by the Third Party/Appellant. Consequently, the 1st respondent as the defendant in the action against it by the 2nd and 3rd respondents as plaintiffs, commenced Third Party Proceedings in the same High Court against the Third Party/Appellant by issuing of a Third Party Notice seeking contribution or indemnity from the Third Party/Appellant as the defendant in the Third Party Proceedings in respect of the 2nd and 3rd respondents' claim.

In its reaction to the Third Party Proceedings against it, the Third Party/Appellant not only filed a statement of defence but also brought an application asking the trial High Court to strike out the Third Party Proceedings against it on the ground that the Lagos State High Court lacked jurisdiction to entertain the action by virtue of the provision of section 9(2) of the Pre-shipment Inspection of Imports Act CAP 363 Laws of the Federation of Nigeria 1990, which confers exclusive jurisdiction in the Third Party Proceedings on the Federal High Court. In its Ruling delivered on 2-2-1994, the trial High Court dismissed the preliminary objection to its jurisdiction and ruled that it has jurisdiction to entertain and determine the Third Party Proceedings along with the 2nd and 3rd

respondents action for breach of contract. The appeal by the Third Party/Appellant to the Court of Appeal Lagos was also dismissed on 24-5-2000, hence the Third Party/Appellant's further appeal to this court. Two issues were identified in the appellant's and respondent's briefs of argument for the determination of this appeal. The issues are:

*"1. Whether the Court of Appeal was right when that court held that the High Court of Lagos State was right to have assumed jurisdiction over the subject matter of the Third Party Notice, the 'proceedings on which were under the Pre-shipment Inspection of Imports Act.*

*2. Whether the judgment of the Court of Appeal was a nullity having been delivered a month earlier than the adjourned date for its delivery without notice to the appellant and other parties."*

I shall comment only on the first issue for determination involving the question of jurisdiction. It is well settled law that the question of the validity vel non of the jurisdiction of the court touches on the competence of the court to hear and determine a cause or matter before it, and is fundamental to its exercise of jurisdiction and of adjudication and determination of the cause before it. In this respect, the existence or absence of jurisdiction in the court goes to the root of the matter and sustains or nullifies the decision of the court in respect of the relevant subject matter. See *Obikoya v. Registrar of Companies* (1975) 4SC 31 at 34; *Ezomo v. Oyakhire* (1985) 1 NWLR (pt.2) 195 and *Nwafia v. Ububa* (1966) NMLR 219. The law is also trite that a court can be said to have jurisdiction and competence to hear a matter when (1) it is properly constituted as regards numbers and qualifications of the members of the bench such that no member is disqualified for one reason or another; (2) the subject matter of the case is within its jurisdiction, and there is no feature of the case which prevents the court from exercising its jurisdiction and (3) the case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction. See *Madukolu & Ors v. Nkemdelim* (1962) 2 SCNLR 341; *H* (1962) 1 All NLR 587.

In the present case, the resolution of the issue of jurisdiction of the trial Lagos State High Court of Justice lies squarely on the interpreta-

tion of section 9(2). of the Pre-shipment Inspection of Imports Act CAP 363 of the Laws of the Federation of Nigeria 1990 which reads -

*“9(2) Every proceeding under this Act shall,*

*Subject to the applicable procedure, to be commenced in the Federal High Court and references in this Act to ‘court’ shall be construed accordingly.”*

The provision of this statute which confers jurisdiction on the Federal High Court in ‘every proceeding’ under the Pre-shipment Inspection of Imports Act is quite clear, plain and unambiguous. When the language of a statute is free from ambiguity, the task of the court in interpreting it can hardly arise. Even the court below in its judgment interpreting the provision of section 9(2) of the Act, was fully satisfied that the proceedings in the Third Party Notice before the trial Lagos State High Court, were proceedings under the Pre-shipment Inspection of Imports Act. In that case, what the law requires is for the proceedings to be commenced before the Federal High Court subject only to the applicable procedure. This is to say that the Lagos State High Court before which the matter is now pending and which court wrongly assumed jurisdiction, has no jurisdiction to entertain it for the simple reason that the subject matter of the Third Party Action arose out of the operation of the duties of the Third Party/Appellant under the Pre-shipment Inspection of Imports Act. Therefore on this issue alone, I entirely agree that this appeal should be allowed.

Accordingly, I also allow the appeal and abide by the orders contained in the lead judgment including the order on costs.

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