

COURT OF APPEAL  
PORT HARCOURT DIVISION  
4TH JULY, 2005. CA/PH/347/98  
CORAM:- V. A. O. OMAGE, J. A. FABIYI, M. B. DONGBAN-  
MENSEM, JJCA

C. G. G. (NIG.) LTD. .... APPELLANT  
AND  
COLLINS AMAEWHULE ..... RESPONDENT

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JURISDICTION - Courts - Cause of action - Arising from seismic activities - By the provisions of s. 251 (1) (n) 1999 Constitution - Every civil cause arising from seismic activities - Fall within the exclusive jurisdiction of the Federal High Court (H1)

JURISDICTION - Determinant factors - Courts - Jurisdiction is a function of the operation of law and the character of the particular suit - Which character is ascertained from the facts, the contents and essence of the claim - Not necessarily the terms used by the plaintiff (H2)

### **FACTS**

The plaintiff/respondent sued the defendant/appellant at the High Court of Rivers State for negligence claiming special and general damages for damage done to his houses as a result of the seismic activities of the appellant. The appellant challenged the jurisdictional competence of the Rivers State High Court to hear and determine the matter.

The basis of the appellant's challenge was that by the provisions of the Federal High Court (Amendment) Decree, 1991, which commenced on 26/08/93, before the instant action, the Federal High Court had exclusive jurisdiction in matters arising from seismic activities. After hearing the appellant's objection, the trial court ruled that it had jurisdiction to entertain the matter. Dissatisfied, the appellant has brought this appeal against that ruling of trial court.

### **ISSUE FOR DETERMINATION**

*"Whether the High Court of Rivers State had jurisdiction to try*

**HELD** (Unanimously allowing the appeal per **DONGBAN-MENSEM JCA**)

***JURISDICTION - Courts - Cause of action***

1. By the clear provisions of the then Decree No. 60 of 1991 and Decree No. 107 of 1993 which are now the provisions of section 251 (1)(n) of the 1999 Constitution, every civil cause or matter arising from or connected with, or pertaining to mines and minerals, including oil fields, oil mining, geological surveys and natural gas fall within the exclusive jurisdiction of the Federal High Court.

It is correct to say, as contends the learned counsel to the respondent that the claim discloses the subject matter of the suit to be negligence. The negligence however, arose, as claimed by the respondent, from seismic activities of the appellant. Seismic activities have been adjudged to be mining activities, an area of adjudication which falls exclusively within the judicial competence of the Federal High Court to the exclusion of every other court (Ref. section 251(1) (n) of the 1999 Constitution). The State High Courts, that of the Federal Capital Territory inclusive, are jurisdictionally incompetent to hear and determine matters pertaining to mining etc. (p. 3127 C/F)

***JURISDICTION - Determinant factors***

2. The fact that a plaintiff crafts out his suit in terms which tend to take it out of the province of an activity or the provisions of a particular law does not necessarily change the character of the suit.

No amount of rigmarole will change the facts and confer jurisdiction where it does not repose by the operation of law. It is a matter of facts. It was the Venerable John Adams, the second President of the United States of America (1735-1826) who said that:

*“Facts are stubborn things, and whatever may be on our wishes, our inclinations, they cannot alter the state of facts and evidence.”*  
The facts, the contents and the essence of the claim of the respondent place his suit squarely at the feet of seismic activities which are mining related activities. The Federal High Court possesses the exclusive adjudicatory authority to hear and determine the matter.  
(pp. 3127 H/3128 B)

**REPRESENTATION**

D. O. Ezaga, Esq. (with him, J. Ovie [Miss]; N. K. Dedo) for the Appellant

E U. Okoro, Esq. for the Respondent

**CASES REFERRED TO**

Isaiah and 2 ors. v. Shell Petroleum Dev. Co. Nig. Ltd. (2001) 11 NWLR (Pt. 723) p.168 at 183

Mpidi Barry & Ors. v. Obi A Eric & Ors (1998) 8 NWLR (Pt. 562) 404

University of Ilorin v. Olutola (1998) 12 NWLR (Pt. 576) pg. 72 at 79-80

Saidu Garba v. Federal Civil Service (1988) 2 S.C (Pt. 11) 221 at 232-235; (1998) 1 NWLR (Pt.71) 449

Ige v. Obiwale (1969) 1 All NLR p. 292

Anoleye v. Board of Customs & Excise & Anor. (1990) All NLR 127 at 128

Tukur v. Government of Gongola State (1989) 4 NWLR (Pt.117) p. 517 at 549

Western Steel Works v. Steel Workers (1987) 1 NWLR (Pt.49) p. 284

Thomas Oyibo v. Chief Peter Tolubi (1995) 7 NWLR (Pt.408) p. 480

Benjamin Ekpeogu v. Ashaka Cement Coy. Plc. (1997) 6 NWLR (Pt. 508) p.280 at 292(B)

Overseas Construction Ltd. v Creek Ent. Ltd. (1985) 3

NWLR (Pt.13) p. 407 at 414-419

Complete Communications Ltd. v. Miss Bianca Onoh (1998) 5 NWLR (Pt. 549) p. 197 at 218

**STATUTES REFERRED TO**

Explosives Regulation Act, Cap. 117, Laws of the Federation of Nigeria, 1999, s. 2

Federal High Court (Amendment) Decrees Nos. 60 & 107 of 1993

**BOOK REFERRED TO**

Encyclopaedia Britannica 2005, Deluxe Edition

**LEAD JUDGMENT BY DONGBAN-MENSEM**

In a suit No. PHC/664/94 between Mr. Collins Amaewhule v. C.G.G. (Nig.) Ltd., the plaintiff claimed against the defendant, *"the sum of N 1,000,000.00 (One million naira) only being for special and general damages for the extensive damages to the plaintiff's houses and buildings lying and situate at Elioze village, Oro-Igwe in Obio/Akpor Local Government Area of Rivers State which resulted from the negligence of the defendant in carrying out seismic survey works and operations at Elioze village ... between the 28th of February and the 4th of March, 1993"*.

Pleadings were filed and the suit proceeded to hearing up to conclusion.

At the stage of address, the learned counsel to the defendant filed a motion challenging the jurisdiction of the trial State High Court to hear and determine the suit.

The jurisdictional competence of the trial Court was challenged upon the provisions of the Federal High Court (Amendment) Decree, 1991, which Commenced on the 26/08/93. It was the contention of the learned counsel to the defendant/appellant that the said Decree came into operation well over a month before the suit of the plaintiff/respondent was filed.

Counsel submitted that the learned trial Judge had no jurisdiction in the suit which relates to seismic and explosive matters. Counsel urged the learned Judge to strike out the suit.

The plaintiff's learned counsel argued to the contrary and urged the learned trial Judge on, being of the considered view that the contents of the plaintiff's claim placed the suit within the powers of the State High Court to determine.

In a well considered ruling, the learned trial Judge dismissed the motion and declared that the State High Court had jurisdiction to hear and determine the matter.

The defendant, hereinafter referred to as the appellant, has come before us, urging us to over-turn the decision of the trial court.

Three grounds of appeal were filed from which the appellant had formulated for him, three issues for determination. These issues are:

(i) Whether the learned trial Judge was right in inferring and holding that the filing of this suit took place before the law ousting jurisdiction through a Gazette was put in place without properly checking the true position through the writ and the gazette.

(ii) Whether the State High Court can assume jurisdiction in this suit even if the cause of action arose and/or the suit is filed before the commencement of the Decrees. B

(iii) Whether the Port Harcourt High Court, being a State High Court, has jurisdiction to try this suit. The plaintiff, herein after referred to as the respondent, formulated a sole issue from the three grounds of appeal. The respondent's issue is C

*“whether the High Court of Rivers State had jurisdiction to try and determine the subject matter in suit No. PHC/664/93”*

I find the issue made out by the respondent as more appropriate for the determination of the very narrow, though fundamental subject of this matter; that of jurisdiction. D

It is the position of the appellant that the learned trial Judge erred by holding that the suit arose and was commenced before the Federal High Court (Amendment) Decree No. 60 of 1991 came into force. That the course of action in the suit arose between the 28th February and the 4th of March 1993, while the action commenced on the 28th September, 1993. E

To buttress his submission, the learned counsel relies on the following facts and authorities:

1. The writ of summons in the suit recorded at pages 1-4 of the records of this appeal. F

2. The statutory instrument No. 9 of 1993.

3. *Isaiah and 2 ors. v. Shell Petroleum Dev. Co. Nig. Ltd.* (2001) 11 NWLR (Pt. 723) p.168 at 183. G

4. *Mpidi Barry & Ors. v. Obi A Eric & Ors* (1998) 8 NWLR (Pt. 562) 404.

It was equally the contention of appellant that the learned trial Judge misdirected himself in assuming jurisdiction on the ground that the suit had commenced before the Federal High Court (Amendment) Decree No. 60 of 1991 came into force. The learned counsel for the appellant argues that even if the cause of action and the filing of same were before the commencement of the said Decrees, those H

facts do not vest on the State High Court the jurisdiction to try the matters which have now been placed under the exclusive jurisdiction of the Federal High Court. Counsel drew our attention to the proviso to section 7(6) of Decree 60 of 1991 which states that all pending matters at the commencement of the Decree shall abate and be transferred immediately to the registrar of the Federal High Court. Counsel relies on the case of: *University of Ilorin v. Olutola* (1998) 12 NWLR (Pt. 576) pg. 72 at 79-80 which held that the said Decree has a retrospective Status.

Further, contends counsel, since the suit was commenced after the Decree, the proviso to section 7(6) (supra) would not apply because the jurisdiction to transfer exists only where the matter was already pending not after. The former, contends counsel is abatement of jurisdiction while the latter is a lack of jurisdiction ab initio.

Counsel cites in support, the cases of:

1. *Saidu Garba v. Federal Civil Service* (1988) 2 S.C (Pt. 11) 221 at 232-235; (1998) 1 NWLR (Pt.71) 449

2. *Ige v. Obiwale* (1969) 1 All NLR p. 292.

3. *Anoleye v. Board of Customs & Excise & Anor.* (1990) All NLR 127 at 128.

4. *C.G.G. (Nig.) Ltd. v. Chief Lawrence Ogu*, (unreported) SC.303/2000; (2005) 8 NWLR (Pt.927) 366. Upon these facts, statutes and decided cases, submits the learned counsel for the appellant, the trial court lacked the requisite jurisdiction to try the suit. The Decree No. 60 had placed all mailers which relate to seismic and explosives exclusively under the jurisdiction of the Federal High Court.

The learned counsel urges us to set aside the decision of the Port Harcourt High Court of 22/04/98 and strike out the said suit No. PHC/664/93 for want of jurisdiction.

The learned counsel for the respondent magnanimously concedes to the fact that the reason given in the ruling of the learned trial Judge, upon which his Lordship assumed jurisdiction was wrong both in fact and in law. Counsel however contends that the learned Trial Judge nonetheless had the requisite jurisdiction to try and determine the suit.

It is the position of the counsel for the respondent that the subject matter in the suit does not fall within the provisions of Decree

No. 60 and 107 of 1993. Counsel purports that by the terms of the relief sought as expatiated in the statement of claim, the subject matter of the suit is negligence, that there is nothing therein which suggest that the defendant's seismic activities which gave rise to the suit was in the process of oil milling.

It is the submission of counsel that to hold otherwise would be to speculate in the absence of facts to substantiate the contention of the appellant before the trial court. Counsel submits that it is not the province of this court to speculate. Counsel relies on the following authorities:

1. *Tukur v. Government of Gongola State* (1989) 4 NWLR (Pt.117) p. 517 at 549
2. *Western Steel Works v. Steel Workers* (1987) 1 NWLR (Pt.49) p. 284
3. *Thomas Oyibo v. Chief Peter Tolubi* (1995) 7 NWLR (Pt.408) p. 480
4. *Benjamin Ekpeogu v. Ashaka Cement Coy. Plc.* (1997) 6 NWLR (Pt. 508) p.280 at 292(B)
5. *Overseas Construction Ltd. v Creek Ent. Ltd.* (1985) 3 NWLR (Pt.13) p. 407 at 414-419.
6. *Complete Communications Ltd. v. Miss Bianca Onoh* (1998) 5 NWLR (Pt. 549) p. 197 at 218.

It was also the submission of the learned counsel that not every error or misdirection committed by a learned trial Judge will result in its judgment being over-turned by the appellate court but only such as occasion a miscarriage of justice. Counsel cites in support the following cases:

1. *Udeze v. Chidebe* (1990) NWLR (Pt. 125) 141 p. 162
2. *Oro & Ors. v. Falade & Ors.* (1995) 4 NWLR (Pt.396) p. 385 at 416-417 (H-B).

I must say on this last point that the learned counsel for the respondent is right. Not all errors lead to a miscarriage of justice or are so substantial that such could lead to a reversal of the decision of the trial court.

However, is this principle applicable in the circumstances of this appeal?

The learned counsel urges us to discountenance the conten-

tion of the appellant, answer the issue in this appeal in the affirmative, affirm the decision of the learned trial Judge and dismiss the appeal with substantial cost.

We had earlier reproduced in this judgment, the claim of the respondent before the trial court. The respondent seeks compensation for damages to his buildings occasioned by the seismic activities of the appellant. In the very words of the respondent; “the subject matter of the suit is negligence and that the negligence arose from the seismic activities of the defendant”

The question to ask, in order to place this appeal in its proper perspective is what is seismic activity ordinarily associated with?

The Encyclopaedia Britannica 2005 Deluxe Edition defines seismic survey as

*“a method of investigating subterranean structure, particularly as related to exploration for oil, gas and ore deposits”*

It appears therefore that seismic activity is ordinarily associated with mining.

First and foremost, it is instructive to state that the provisions of Decrees No. 60 and 107 have since been incorporated into the provisions of section 251(l)(n) of the Constitution of the Federal Republic of Nigeria of 1999.

In the case of:- C.G.G. (Nig.) Ltd. v. Chief Lawrence Ogu (unreported) S.C. 303/2000; (2005) 8 NWLR (Pt.927) 366 the Supreme Court, per Niki Tobi JSC gave a full judicial elucidation to the statutory provisions pertaining to seismic activity in Nigeria. The Apex Court considered and interpreted the provisions of section 2 of the Explosives Regulations Cap. 117, Laws of the Federation of Nigeria 1990 which defines explosives as including seismic explosives;; which is also the subject matter of the instant appeal.

The court held that mining is defined by section 2 of the Explosives Regulations (supra) as having

*“the same meaning assigned to it in the Minerals Act and shall include the use of explosives in works authorized under the Petroleum Act”*

The Apex Court found that although there is no definition of “mining” in the Minerals Act as claimed by the definition in the Explosives Regulation of 1990, it held that “*the second arm of the defi-*



*nition of mining is vindicated by the definition of explosives in the same regulations".* Giving a community reading of the two definitions, the Supreme Court per, held that mineral exploration activities have to do with mining.

In the particulars of negligence laid out copiously in the statement of claim of the respondent at pgs 4-7 of the records, reference is made to the use of *"dynamite and such like explosives substances in carrying out seismic survey works and operations which caused the vibrations that caused the damage to the respondent's buildings which are said to be within one hundred and eighty (180) meters of the site of seismic operation,"*

***By the clear provisions of the then Decree No. 60 of 1991 and Decree No. 107 of 1993 which are now the provisions of section 251 (l)(n) of the 1999 Constitution, every civil cause or matter arising from or connected with, or pertaining to mines and minerals, including oil fields, oil mining, geological surveys and natural gas fall within the exclusive jurisdiction of the Federal High Court.*** (Refer: .

1. Shell Petroleum Dev. Co. (Nig.) Ltd. v. Maxon (2001) 9 NWLR (Pt.719) P. 541.

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

3. Compagnie Generals De Geophysique Nig. Ltd. Assagbar (2001) 1 NWLR (Pt. 693) P 155.

***It is correct to say, as contends the learned counsel to the respondent that the claim discloses the subject matter of the suit to be negligence. The negligence however, arose, as claimed by the respondent, from seismic activities of the appellant. Seismic activities have been adjudged to be mining activities, an area of adjudication which falls exclusively within the judicial competence of the Federal High Court to the exclusion of every other court (Ref. section 251(1) (n) of the 1999 Constitution). The State High Courts, that of the Federal Capital Territory inclusive, are jurisdictionally incompetent to hear and determine matters pertaining to mining etc.***

***The fact that a plaintiff crafts out his suit in terms which tend to take it out of the province of an activity or the provisions of a particular law does not necessarily change the char-***

**acter of the suit.** The change of law does not affect the accrued rights of the plaintiff, if any, no, only the venue has changed, power has shifted and the plaintiff, of necessity, must take his claim to the court with the legal power to determine it. (refer University of Ilorin v. Olutola (supra) and Compagnie Generate (supra).

**B No amount of rigmarole will change the facts and confer jurisdiction where it does not repose by the operation of law. It is a matter of facts. It was the Venerable John Adams, the second President of the United States of America (1735-1826) who said that:**

**C “Facts are stubborn things, and whatever may be on our wishes, our inclinations, they cannot alter the state of facts and evidence.”**

**D The facts, the contents and the essence of the claim of the respondent place his suit squarely at the feet of seismic activities which are mining related activities. The Federal High Court possesses the exclusive adjudicatory authority to hear and determine the matter.**

**E** The High Court of the Rivers State Government lacks jurisdiction.

**F** This appeal succeeds. The decision of the State High Court of 22/04/98, is hereby set aside. Consequentially, the suit No. PHC/664/93 filed before the State High Court is hereby struck out for the lack of the jurisdiction of the State High Court to hear and determine same.

I award a cost of N5,000.00 to the appellant against the respondent.

**G**

### **OMAGE JCA**

**H** I have been privileged to read before now the lead judgment of my learned brother Dongban-Mensem JCA just delivered. I am in agreement with the decision and conclusion therein that the appeal of the defendant/appellant has merit and should be allowed. I make my contribution herein to further amplify the issue competently set out by my learned brother, Dongban-Mensem JCA in the lead judgment.

The respondent has filed in the court below a claim, which he verified and endorsed specially against the defendant; a private company engaged in the business of seismic survey, particularly in Rivers State. In his statement of claim, the plaintiff averred that his houses at Elioju village Oro Igwe in the Obio/Akpor Local Government were damaged when the defendant negligently fired its seismic dynamite which caused the damage he complained about to the value of one million Naira, the damages the plaintiff now claim. After entering an appearance in the suit, the defendant filed a motion on notice in the claim in which he urged the court to dismiss the claim because the High Court of Rivers State has no jurisdiction to hear the case.

The applicant cited the provisions of sections 1 & 2 of the (Constitution Suspension and Modification) Decree 107 of 1993 and relied on section 7(1) M & P of the Federal High Court Act as amended by Decree No. 60 of 1991, and of section 230(l)(i) and (c) of the 1979 Constitution as amended by Decree 107 which places exclusive jurisdiction on the Federal High Court in respect of matters of 'Arms, Ammunitions and explosives. Mines and Minerals including oil fields, oil mining. Geological surveys and natural gas'.

The defendant applicant urged the court to dismiss the plaintiff's claim in limine. He argued that the State High Court has no jurisdiction to transfer the matter to the Federal High Court and that the proper order to make is to dismiss the claim. Applicant's counsel cited many legal authorities, most of them unreported to support his submission to dismiss the plaintiff's claim.

The learned counsel for the plaintiff/respondent to the motion vehemently opposed the application, and submitted to the court that the State High court has jurisdiction to hear the suit. That it is not in any and all cases that the issue of geological survey is made that the jurisdiction of the State High Court is excluded. In this case, counsel submitted that the plaintiff's claim is not for geological or seismic survey, nor is it a claim being made for the death of a person when dynamite or geological survey is being made. He submitted that the plaintiff's claim is for damages for negligence of the defendant in the performance of its function. The learned advocate now submitted that in the interpretation of the provisions of the law, the court must, where more than one interpretation of the law is available, give the

law an interpretation which preserves its jurisdiction and cited the case of *Jennifer Amadike v. I. G. of Police* (1992) NWLR (Pt.227) 70

Finally, the counsel for the respondent urged the court to look at the date of filing of the writ of summons in the instant case and the commencement date of section 60 of the Federal High Court law, which amends the provisions of section 107, which amended section 230 of the 1999 Constitution, and the court will find that the commencement day of the law is in 11th November, 1993 while the writ of summons was filed on 29th September, 1993. There is, counsel submitted, no provisions for retrospective application of the law. Therefore, assuming applicant's counsel is right which is not conceded, the provisions of section 60 of the Decree of 1993 have not come into operation at the time the writ of summons was filed. He urged the court to dismiss the defendant/applicant's motion and assume jurisdiction on the plaintiff's case in the State High Court.

In his ruling, the learned trial court, the Hon. Justice Odili (as she then was) she is now a Justice of the Court of Appeal, referred to several legal authorities cited in the case and carefully made a distinction in the reported cases where claims of plaintiff were refused in the State High Court because the claim for damages of the plaintiff occurred in the course of seismic operation or geological survey. Those cases the court held exclude the jurisdiction of the State High Court but held that this is not so, where damages occur to the plaintiff whose property was damaged, his house or property is not in the course of a minefield exploration or survey.

The court ruled that in a case of this nature, the State High Court has jurisdiction. The court recited the facts in *Bronick Motors Ltd. v. Wema Bank Ltd.* (1983) NSCC 226; (1983)1 SCNLR 296 where the Supreme Court held in similar facts that the proper forum for the claim of the respondent is not the Federal High Court, and as such, Lagos High Court has jurisdiction to hear the suit; whereas in *Mpidi Barn & ors. v. Eric & ors.* where the plaintiffs alleged that in the course of carrying out their oil prospecting activities in or around Bee farm, the defendant opened up some beehives in the farm and caused the bees to migrate; it was held that the cause of action arose in the course of oil exploration or in the course of prospecting for oil; the matter went to the jurisdiction of the High Court. In a case where the

plaintiff claimed special and general damages, Nwosu v. C.G.G. in HUK 60/96: or in the judgment of Johnson J, unreported in A/476/92, the plaintiff claim which arose from the shooting of explosives which killed several fishes in the course of geological survey activities was held to be a matter for the Federal High Court, not State High Court. B

In the instant case, neither the land of the plaintiff nor the house was in the course of geological survey. The distinction must be pronounced though not so categorical in the ruling of the trial court. However, the trial court ended by stating this -

*"I cannot in consciences decline jurisdiction in an action which cause of action and the filing of a suit took place before the law ousting the jurisdiction (of the court) in related matters was put in place through a gazette at a much later date; therefore say this matter had occurred before the Decree came into being, and the writ effective also before that law, this court has jurisdiction to adjudicate in the case and reach judgment."* C

The motion is dismissed for lacking in merit. No order was made for costs. The applicant in the motion was dissatisfied and he filed an appeal. The issues formulated by the appellant and of respondents are clearly set out in the lead judgment of the two sets of issues for determination of the appeal. I prefer the directives and pith of the issues formulated by the respondent which reads E

*"Whether the High Court of Rivers State had jurisdiction to try and determine the subject matter in suit No. PHC/664/93?"* F

In his brief, the respondent concedes to the submission of the appellant that the provisions of section 60 of the Decree had come into operation at the time the suit was filed but not the cause of action, which arose in February 1993. However, it is a matter of statutory application. It cannot be denied that the statute came into force on August 1993 before the writ was filed. Respondent however maintained that the State High Court still has jurisdiction to try and determine the case. The jurisdiction to try a case is determined by contents of the claim in the writ of summons and statement of claim. See Tukur v. Government of Gongola State (1989) 4 NWLR (Pt 117) 549. The appellants' counsel in his submission in his brief maintained that in any matter concerning the shocking of dynamite in a geologi- H

cal survey, it is the Federal High Court, which has jurisdiction by provisions of section 60 as amended of the Federal High Court Law.

I have considered the submissions of both counsel in this appeal, the meaning of explosive regulations Cap 117 Laws of the Federation of Nigeria includes seismic explosives, which is defined as inclusive of the use of explosives in the works authorised under the Petroleum Act. When therefore Decree No. 60 of 1991 Constitution (Suspension and Modification Decree No. 107 of 1993 and section 251(1)a of 1999 Constitution speak of any civil cause and matters arising from or connected with or pertaining to mines and mineral etc., including geological surveys, come within the exclusive jurisdiction of the Federal High Court. A State High Court will have no jurisdiction, in “any matter or complaint, which involve such matters in any form or to any degree., see *Shell Petroleum Development Co. Nig. Ltd. v. Maxon* (2001) 9 NWLR (Pt. 719) 511. It seems lo me that the provisions of the law which gives jurisdiction to the Federal High Court in a complaint such as the claim of the plaintiff of ordinary negligence which otherwise is a subject of State High Court where explosives are shot, the provisions in the law which say whenever explosives are used, “*in any form, to any degree*”, the jurisdiction of a State High Court will be excluded. Consequently, though negligence against the defendant is the foundation of the plaintiff/ respondents claim, the use of explosive in seismic or geological work; even though the plaintiff’s property is not on a minefield, the matter of such complaint must go to the jurisdiction of the Federal High Court. See *Barry v. Eric* (1998) NWLR (Pt. 562) 404, (ii) *Compagnie General De Geophysique Nig. Ltd. v. Asagbara* (2001) 1 NWLR (Pt.693) 155. In a recent Supreme Court decision *C.G.G. (Nig.) v. Ogu* reported in (2005) 8 NWLR (Pt. 927) p. 366 at 381, A-B, C-F; Supreme Court re-examined the issues of inter alia of interpretation, scope and extent of the provisions of Decree No. 60 of 1991, the Constitution (Suspension and Modification Decree No. 107 of 1993 and section 251(l)(n) of the 1999 Constitution and concluded that the exclusive jurisdiction of the Federal High Court over mailers of geological survey where dynamites are shot is conclusively expressed in the law.

In the result, I agree that the claim of the plaintiff, which alleges

damage to his two houses as a result of negligent shooting of dynamite, should properly be heard in the Federal High Court. There is no jurisdiction in the State High Court to transfer a suit from it to the Federal High Court. The Court of Appeal is seized of jurisdiction under section 16 of the Court of Appeal Rules to exercise the powers the High Court could have exercised for determining the real question in controversy; which in this case is an order to strike out the plaintiffs claim. Suit No. PHC/664/93 is hereby struck out. I abide by the consequential order for costs in the lead judgment

B

C

### **FABIYI JCA**

I have had a preview of the judgment just delivered by my learned brother - Dongban-Mensem, J.C.A. I agree with the reasons therein contained leading to the conclusion that the appeal lacks merit and should be dismissed.

D

In *C.G.G. (Nig.) Limited v. Chief Lawrence Agu* S.C. 303/2000, delivered on 18th February, 2005, (2005) 8 NWLR (Pt.927) 366, the Supreme Court, in a unanimous decision, pronounced that jurisdiction in adjudicating upon the matter vests in the Federal High Court exclusively. This present appeal is very similar to the above case. There is no way that a court can pronounce on negligence without first touching upon the effect of seismic explosive activity. The Court that has the power to try the 'cause' Should treat the 'effect'. To my mind such sounds plausible; in the main. Refer also to *Shell Petroleum Development Co. of Nigeria Ltd. v. Maxon* (2001) 9 NWLR (Pt. 719) 541; *Barry v Eric* (1998) 8 NWLR (Pt. 562) 404.

E

F

Jurisdiction is very vital in the realm of administration of justice. Any step taken without jurisdiction is null and void. One should not attempt to put something upon nothing. Refer to *McFoy v. U.A.C.* (1962) A.C. 152.

G

The State High Court has no jurisdiction in the matter. Suit No. PHC/664/93 is hereby struck out as the appeal is allowed. I abide by the order for costs contained in the lead judgment.

H

Appeal allowed.