

SUPREME COURT OF NIGERIA
19TH DECEMBER, 2008. SC. 397/2002
CORAM:- A. I. KATSINA-ALU, A. M. MUKHTAR,
M. MOHAMMED, F. F. TABAI, P. O. ADEREMI, JJSC

FIRST BANK OF NIGERIA PLC. APPELLANT
AND
KAYODE ABRAHAM RESPONDENT

APPEALS - Grounds - Nature of - Determinant factor - The important consideration is not the form of the ground but the question it raises - If it borders on a misunderstanding or misapplication of the law - As in the instant case - They are grounds of law (H1)

CONTRACTS - Loans - Recovery action - Proper venue - Appropriate venue could be where the contract was made - Where it was performed or was to be performed - Or where defendant resides or does business - Court of Appeal was therefore wrong to hold that trial court lacked jurisdiction (H2)

FACTS

The plaintiff/appellant had sued the defendant/respondent at the High Court of Lagos State for the recovery of certain sums variously loaned to the respondent, as well as interest thereon. It is common ground that the respondent took the loans from the appellant at the appellant's London branch. At the time of taking the loans, respondent was residing and doing business in London, but as at the time of the instant action for recovery, respondent was residing and doing business in Lagos.

The respondent filed a preliminary objection to the suit, contending, inter alia, that the court lacked jurisdiction to entertain the suit and that the suit ought to be instituted in England where the loan was obtained. The learned trial court upheld the objection and declined jurisdiction. Appellant's appeal to the Court of Appeal was dismissed. Hence it has brought this further appeal to the Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the court below was right to have assumed that

the repayment of the loan was to be in London to preclude any recovery action in Nigeria.

2. Whether Order 1A Rule 3 of the High Court of Lagos Civil Procedure Rules 1972 confers jurisdiction on the court below to adjudicate in this suit especially when the court found for (sic) a fact that the respondent was within jurisdiction in the absence of any agreement to show that the hand (sic) parties agreed that English law should apply to the transaction to the exclusion of Nigerian law.

3. Whether the court below was right to have raised the issue of the Exchange Control Act Cap 113 Laws of the Federation of Nigeria suo motu without calling on the parties to address it and subsequently held that the recovery action of the appellant in Nigeria if allowed will circumvent the provision of the Exchange Control Act even when parties were not called upon to address the court on this issue.

4. Whether the fact, that the respondent's account at the appellant's London Branch at which the loan was granted in foreign currency was tagged resident account is capable of vesting jurisdiction to adjudicate in the matter solely in English Courts under English law.

HELD (Unanimously allowing the appeal per **ADEREMI JSC**)
APPEALS - Grounds - Nature of - Determinant factor

1. The important consideration in the determination of the nature of a ground of appeal is not the form of the ground rather it is the question it raises. Indeed, a ground of appeal questioning the exercise of discretion by a lower court is a ground not of law, but, at best, of mixed law and fact. But the crucial or fundamental issue raised in this appeal is whether the trial court (Lagos High Court) has the jurisdiction to entertain the suit. I have had a careful examination of the four grounds of appeal and I am clear in my mind that they all relate to an alleged misunderstanding by the lower court of the law or a misapplication of the law to the accepted factual contents of the claims as reproduced supra.

Therefore, where, as in the instant case, the grounds of appeal reveal a misunderstanding by the court below or a misapplication of the law to the settled and admitted factual contents of the claim such

grounds are pure grounds of law. The preliminary objection is consequently overruled. (p. 3716 A/C)

Loans - Recovery action - Proper venue

2. It is common ground between the parties that the defendant/respondent took loan from the plaintiff/appellant at its London Branch of the bank; that as at the time the plaintiff/appellant sought to recover the debt, the defendant/respondent was residing and carrying on business at No. 7, Adeniran Ogunsanya Street, Surulere Lagos, a place within jurisdiction. Equally, the registered office of the plaintiff/appellant was and still at 35, Marina Lagos. The plaintiff/appellant (the bank) is the creditor while the defendant/respondent is the debtor. If a debtor is allowed to escape justice in terms of a court of law located where he presently resides being unable to adjudicate in a simple case of debt for just the reason that he has relocated from the place where he took the loan and which is the seat of his creditor, gross injustice will rear its head, and this will not be in the interest of healthy growth of business transaction. To forestall the likelihood of this unfortunate incident rules of court regulating place of instituting and trial of suit of this nature (suits upon contract) have always taken the same form when newly promulgated or amended under civilian regime or military regime.

The rule of court applicable to the suit is Order 2 Rule 3 of the High Court of Lagos State (Uniform Civil Procedure) Rules reproduced above. Interpreting the above rule this court in ARJAY LTD VS. AIR-LINE MANAGEMENT SUPPORT LTD (2003) 2 - 3 S C 1, said that an action for breach of contract can be commenced in any of the following places: i.e.

- (1) where the contract was entered into
- (2) where the contract was performed or was to be performed and
- (3) where the defendant resides or does business.

Let me here say that Rules of Court are made to be followed. (pp. 3717 C/3718 E/3719 C)

NOTABLE POINT OF INTEREST
MOHAMMED JSC

1. Absence of specific jurisdiction clause in a foreign loan agreement

The fact that the loan transaction took place between the parties outside Nigeria in a foreign country and involving foreign currencies, does not remove the subject matter of the Appellant's claim out of the jurisdiction of Nigerian courts including the trial court, as claimed by the Respondent in his brief of argument. To me, a loan is certainly a burden that moves along on the shoulders of the debtor. In other words, the debt does not remain firmly and permanently fixed at the spot or country where it was negotiated or incurred.

For this reason, I have no doubt whatsoever that the trial court is quite competent to hear and determine the appellant's action against the Respondent in the absence of any specific jurisdiction clause in the Loan Agreement, excluding the jurisdiction of Nigerian courts in any action to recover the loan. (p. 3727 B/E)

REPRESENTATION

Mr. A.M. Makinde (with him Mr. Nicholas Okafor) for the Appellant
Mr. Adekunle Oyesanya (with him Miss Bolanle Ogunbiyi) for the Respondent

CASES REFERRED TO

- Peter Obi Vs INEC (2007) 11 MWCR (PT.1046) 560
ADEYEMI & ORS VS. OPEYORI (1976) 9 & 10 S.C. 31
OGBECHIE VS. ONOCHIE (1986)2 NWLR (PT.23) 484
METAL CONSTRUCTION (W. A.) LTD. VS. MIGLIORE (1990) 1 NWLR (PT. 126) 299
P.N. UDOH TRADING COMPANY LTD VS. SUNDAY ABERE (2001) 11 NWLR (PT.723) 114
NATIONAL BANK (NIG.) LTD & AN. VS. SHOYOYE & AN (1977) REPRINT 5 S. C. 110
ARJAY LTD VS. AIRLINE MANAGEMENT SUPPORT LTD (2003) 2 H - 3 S C
Popoola v. Adeyemo 1992 8 NWLR part 257 1
Abidoye v. Alawode 2001 WRN 71
Obatovinbo v. Odutola 1996 5 NWLR part 450 page 531

Yusuf v. UBA LTD 1996 6 NWLR part 457 page 632

Shanu v. Afribank (Nig.) PLC 2000 13 NWLR part 684 page 392

A.C.B. PLC v. Obimiami Brick and Stone 1993 5 NWLR part 294
page 399

Adeyemi Vs Opeyori (1976) 9-10 SC. 31

B

STATUTES & RULES REFERRED TO

Exchange Control Act, Cap 113, L. F. N., 1990

Supreme Court Act, s. 22

High Court of Lagos State (Civil Procedure) Rules, 1992, O. 10 rr. 1 & 2 and O. 2 r. 3 C

LEAD JUDGMENT BY ADEREMI JSC

This is an appeal against the judgment of the Court of Appeal (Lagos Division) delivered on the 13th of June, 2002 in Appeal No CA/L/275/95 : First Bank of Nigeria Plc. Versus Kayode Abraham. The appellant who was also the appellant in the court below and the plaintiff in the trial court had taken out a writ of summons in the trial court claiming against the respondent before this court and who was then the defendant in the trial court, as follows: E

“The plaintiff’s claim against the defendant is for recovery of the sums of \$644,382.16 DR. i.e. (N6,416,821.99) and \$499,786.15 DR. (N4,976,920.46) in Loan Accounts Nos. 5814903420 and 5814904160 respectively and £64,816.59 i.e. (N1,109,672.98) in Loan Account No. 7114902420 as at 31st October 1991 totaling in all N12,503,415. 43 DR. being the total indebtedness owed to the plaintiff by the defendant as a result of credit facilities by way of loans granted to the defendant by the plaintiff sometimes in 1988 which indebtedness the defendant has failed and /or refused to settle despite repeated demands. F

The plaintiff claims interest on the said sum of N12,503,415.43 DR at the rate of 21 % per annum from 31st October, 1991 until the final payment of the debt.” G

The final pleadings filed and exchanged between the parties H are statement of claim by the plaintiff/appellant and by the leave of court, an amended statement of defence by the defendant/respondent. The plaintiff/appellant had, upon the entering of appearance

by the defendant, filed an application for summary judgment under Order 10 Rules 1 and 2 of the High Court of Lagos State (Civil Procedure) Rules, 1992. The defendant/respondent filed a preliminary objection together with a counter affidavit against the plaintiffs application for summary judgment. In his preliminary objection, the defendant/respondent raised the issue of jurisdiction contending that the High Court of Lagos State lacked jurisdiction to entertain the suit adding that the suit ought to be taken in England where the loan was obtained by the defendant/respondent at the London Branch of the appellant bank. The learned trial judge who heard the preliminary objection upheld it and thus declined jurisdiction in the matter.

In so declining jurisdiction, the trial judge had reasoned thus:

"Even though the defendant is now within the jurisdiction of this court, it is clear that he negotiated the loans and obtained then (sic) in the United Kingdom where his account with the London Branch of the bank is designated "Resident Account." I believe that the loans will be governed by the United Kingdom Laws particularly as they were loans calculated in the United Kingdom currency and United States dollars.

I am in no doubt that action for the recovery of the loans ought to be properly commenced in the United Kingdom where the loans were obtained. Any judgment obtained in that country can then be registered in this jurisdiction for the purpose of enforcement."

Consequent upon the ruling of the trial court, the plaintiff/appellant filed an appeal against that ruling to the court below. In dismissing the appeal to it, the court below held inter alia:

"It is a well established principle of International Law that a Nation State can only validly make laws covering its own territory. The Rules of court made under an enabling law of Lagos State of Nigeria cannot have effect over transactions conducted in England and governed by English Law. Indeed, the Rules of a State High Court do not govern transactions conducted in another State within Nigeria. It is therefore a fundamental flaw in the argument of appellant's counsel to accept that a banking transaction conducted in London is subject to the Lagos State High Court rules as to the court in which a suit could be brought.

To allow the appellant to enforce in Nigeria a loan transaction

in London is to enable the appellant to circumvent the provisions of Exchange Control Act, cap 113 Laws of the Federation of Nigeria 1990.

The lower court not only declined jurisdiction but offered to the appellant advice as to the proper method to approach its claim.

I entirely agree with the reasoning of the court below. This appeal lacks merit.”

Dissatisfied with the judgment of the court below, the appellant has appealed to this court per a Notice of Appeal dated 12th September, 2002 which has incorporated into it five (5) grounds. Distilled therefrom, for determination by this court, are four issues which, as set out in the appellant’s brief of argument filed on the 6th of February 2004, are in the following terms:

1. Whether the court below was right to have assumed that the repayment of the loan was to be in London to preclude any recovery action in Nigeria.

2. Whether Order 1A Rule 3 of the High Court of Lagos Civil Procedure Rules 1972 confers jurisdiction on the court below to adjudicate in this suit especially when the court found for (sic) a fact that the respondent was within jurisdiction in the absence of any agreement to show that the hand (sic) parties agreed that English law should apply to the transaction to the exclusion of Nigerian law.

3. Whether the court below was right to have raised the issue of the Exchange Control Act Cap 113 Laws of the Federation of Nigeria suo motu without calling on the parties to address it and subsequently held that the recovery action of the appellant in Nigeria if allowed will circumvent the provision of the Exchange Control Act even when parties were not called upon to address the court on this issue.

4. Whether the fact, that the respondent’s account at the appellant’s London Branch at which the loan was granted in foreign currency was tagged resident account is capable of vesting jurisdiction to adjudicate in the matter solely in English Courts under English law.

When this appeal came before us on the 22nd of September, 2008 for argument, Mr. Makinde, learned counsel for the appellant referred to, adopted and relied on the appellant’s brief of argument

dated 6th of February 2008 and filed the same date and the appellant's reply brief filed on 14th March, 2002. He (Learned counsel) urged the court to invoke the provisions of Section 22 of the Supreme Court Act; citing the decision of this court in Peter Obi Vs INEC (2007) 11 MWCR (PT.1046) 560 adding that there was no dispute as to the debt owed; he finally urged that the appeal be allowed. Mr. Oyesanya, learned counsel for the respondent for his part, first raised a preliminary objection as to the grounds of appeal contained on the Notice and submitted that, at best, they are all mixed law and facts for which it is mandatory that the leave of court should be obtained before they are filed, there being no leave of court obtained in the instant appeal, he urged that these grounds of appeal be struck out as being incompetent. On the merit of the appeal, learned counsel referred to, adopted and relied on his client's brief of argument filed on the 5th of February 2002 and urged this to dismiss the appeal.

I shall start the discussion of this appeal by first treating the preliminary object as it relates to the grounds of appeal i.e. grounds 1 to 4 which the respondent contends that, at best, they are grounds of mixed law and facts.

The grounds of appeal complained of are as follows:

(1) GROUND 1

"The Court of Appeal erred in law when it held that the fact that the contract took place in London, that performance was to be in London and that the repayment must be in London.

PARTICULARS OF ERROR

The respondent, a Nigerian who obtained a loan from the appellant a Nigerian bank with a branch in London was found to be resident in Nigeria as at the time the action for recovery of the loan was commenced against him by the appellant by the trial judge.

There was no evidence or document upon which the Court of Appeal could have relied upon to come to the conclusion that the repayment must be in London but the Court of Appeal in its reasoning, assumed that repayment must be in London even though there was no such averment in the pleadings in the record before the court below. There was nothing on record at the court below to assume the place of performance of the contract as done by the Court of

Appeal.

GROUND 2

The Court of Appeal erred in law when it held that the Lagos State High Court Civil Procedure Rules particularly ORDER 1 RULES 3 and 4 1972 cannot have effect over transaction conducted in England and governed by English Law. B

PARTICULARS OF ERROR

There is nothing on record at the court below upon which the court could have come to the conclusion that English Law was agreed (sic) by the parties to be the law to govern the transaction. C

GROUND 3

The Court of Appeal erred in law when it held that to allow the appellant to enforce a loan transaction in London is to enable the appellant to circumvent the provisions of Exchange Control Act Cap 113 Laws of the Federation of Nigeria 1990. D

PARTICULARS OF ERROR

The learned trial justice of Court of Appeal failed to state what section of the Exchange Control will be circumvented if the appellant is allowed to enforce the loan recovery in Nigeria.

GROUND 4

The Court of Appeal erred in law when it upheld the reasoning of the trial court that the fact that the respondent (sic) account was tagged “*Resident Account*” makes the transaction subject to United Kingdom Laws particularly as they were loans calculated in the United Kingdom currency and United States dollars: F

PARTICULARS OF ERROR

The reasoning of the learned trial judge who found that the respondent was within jurisdiction but for the fact that the loan was calculated in the United Kingdom currency and United States dollars on an account tagged “*resident account*” makes the transaction subject to United Kingdom Law cannot be supported by any evidence from the record at the court below

The court below jettisoned the provisions of Order 1A Rules 3 and 4 of the High Court Civil Procedure Rules which clearly confers jurisdiction on the trial court and the court below for recovery action to be commenced in United Kingdom and adjournment of which can be registered in Nigeria. H

The important consideration in the determination of the nature of a ground of appeal is not the form of the ground rather it is the question it raises. Indeed, a ground of appeal questioning the exercise of discretion by a lower court is a ground not of law, but, at best, of mixed law and fact. But the crucial or fundamental issue raised in this appeal is whether the trial court (Lagos High Court) has the jurisdiction to entertain the suit. And, it no longer admits of any argument that in determining whether a court has the jurisdiction or the legal power to entertain a claim or suit, it is only to the claim of the plaintiff that a resort must be had see ADEYEMI & ORS VS. OPEYORI (1976) 9 & 10 S.C. 31; I have quoted the claim supra. Suffice it to say that the factual content of that claim generates no controversy between the parties. ***I have had a careful examination of the four grounds of appeal and I am clear in my mind that they all relate to an alleged misunderstanding by the lower court of the law or a misapplication of the law to the accepted factual contents of the claims as reproduced supra.***

Therefore, where, as in the instant case, the grounds of appeal reveal a misunderstanding by the court below or a misapplication of the law to the settled and admitted factual contents of the claim such grounds are pure grounds of law. See (1) OGBECHIE VS. ONOCHIE (1986)2 NWLR (PT.23) 484, (2) METAL CONSTRUCTION (W. A.) LTD. VS. MIGLIORE (1990) 1 NWLR (PT. 126) 299 and (3) P. N. UDOH TRADING COMPANY LTD VS. SUNDAY ABERE (2001) 11 NWLR (PT.723) 114. ***The preliminary objection is consequently overruled.*** All the four grounds of appeal are pure grounds of law and they are competent.

Now, to the merit of the appeal, it is clear from the pleadings that the defendant/respondent took a loan from the London branch of the plaintiff/appellant. In paragraphs 1, 2, 5 and 6 of its statement of claim dated 18th August 1992, the plaintiff/appellant avers thus:

Para 1

The plaintiff is a commercial bank duly licensed and registered and carries on business both at its registered office at 35, Marina, Lagos and overseas and throughout the Federal Republic of Nigeria.

Para 2

The defendant who is a Nigerian businessman ordinarily resides and carries on business at No. 7, Adeniran Ogunsanya Street, Surulere Lagos within the jurisdiction of this Honourable court.

Para 5

Plaintiff avers that the purpose of the facilities was to assist the defendant meet up with some financial expenses in the lifting of crude oil from Nigeria to Florida Petroleum Corporation in the USA. B

Para 6

Plaintiff further avers that the credit facilities granted were utilized by the defendant for the purpose aforesaid. C

The above averments were admitted by the defendant/respondent when, averred thus:

“The defendant admits paragraph 1, 2, 5, and 6.”

It is common ground between the parties that the defendant/respondent took loan from the plaintiff/appellant at its London Branch of the bank; that as at the time the plaintiff/appellant sought to recover the debt, the defendant/respondent was residing and carrying on business at No. 7, Adeniran Ogunsanya Street, Surulere Lagos, a place within jurisdiction. Equally, the registered office of the plaintiff/appellant was and still at 35, Marina Lagos. The plaintiff/appellant (the bank) is the creditor while the defendant/respondent is the debtor. D E

The general principle must not be lost sight of that money is paid to a creditor by a debtor where the creditor is; see the old English case of THE ELDER (1893) PROBATE 119. The question may be asked: F
What is the meaning of jurisdiction? By judicial authorities, jurisdiction is the authority by which a court has to decide matters that are laid before it for litigation or to take cognizance of matters presented in a formal way for its decision. Let it be said that the limits of this G
authority are, by practice, imposed by statute or law under which the court is constituted. It may be extended or restricted by similar means. If no restriction is imposed, the jurisdiction is said to be unlimited. In the case of NATIONAL BANK (NIG.) LTD & AN. VS. SHOYOYE & AN (1977) REPRINT 5 S. C. 110, a preliminary objection to the H
jurisdiction of the High Court Abeokuta (then in Western State) to hear the suit was taken. The main grounds of the objection were: that the 1st plaintiff/appellant had their headquarters in Lagos. The

overdraft, the subject matter of the suit, was granted by the 1st plaintiff/appellant to the defendant in Lagos though it was later assigned to the 2nd plaintiff/appellant with their headquarters in Ibadan, then in Western State. The defendants were resident and were served in Lagos though the writ was addressed for service on the defendant at Abeokuta Motor Road, Ifo, then in Western State. An objection, by way of oral preliminary objection before the commencement of the trial was taken. The preliminary objection was overruled by the learned trial judge. This decision was overruled by the then Western State Court of Appeal. This court (Supreme Court) in holding that the then Western State Court of Appeal erred in its approach to the question before it and consequently erred in its decision, said at page 118 thus:

"The place of instituting and of trials of suit is however regulated by Order 6 of the High Court Civil Procedure Rules and this action being for the payment of debt (an overdraft assigned by the 1st to the 2nd plaintiff) the relevant rule is Rule 4 Order 6. This Rule deals with suits arising out of contract, and it reads:

"All suits for specific performance or upon the breach of any contract may be commenced and determined in the judicial division in which such contract ought to have been performed or in which the defendant resides."

It seems to me that the above rule is a confirmation of the saying that the debt follows the debtor. **If a debtor is allowed to escape justice in terms of a court of law located where he presently resides being unable to adjudicate in a simple case of debt for just the reason that he has relocated from the place where he took the loan and which is the seat of his creditor, gross injustice will rear its head, and this will not be in the interest of healthy growth of business transaction. To forestall the likelihood of this unfortunate incident rules of court regulating place of instituting and trial of suit of this nature (suits upon contract) have always taken the same form when newly promulgated or amended under civilian regime or military regime.** Order 2 Rule 3 of the High Court of Lagos State (uniform Civil Procedure) Rules, Cap 52 Laws of Lagos state promulgated under Edict No 1 of 1988 with side note:

“All suits for the specific performance, or upon the breach of any contract, may be commenced and determined in the judicial division in which such contract ought to have been performed or in which the defendant resides.”

Under the uniform rules, Order 10 Rule 3 which relates to suits upon contract is in pari materia with the provisions quoted above. B Indeed, all to the above quoted provision. Going by the admitted averment in the pleadings the loans were taken by the defendant/respondent at the London branch of the plaintiff/appellant between 1988 and 1991 and it was thereafter that the defendant/respondent C relocated to Lagos. **The rule of court applicable to the suit is Order 2 Rule 3 of the High Court of Lagos State (Uniform Civil Procedure) Rules reproduced above. Interpreting the above rule this court in ARJAY LTD VS. AIRLINE MANAGEMENT SUPPORT LTD (2003) 2 - 3 S C 1, said that an action D for breach of contract can be commenced in any of the following places: i.e.**

- (1) where the contract was entered into**
- (2) where the contract was performed or was to be performed and** E
- (3) where the defendant resides or does business.**

Let me here say that Rules of Court are made to be followed. They are there to regulate matters in court and help parties to present their case within a procedure for the purpose of a fair and quick trial. Indeed, it is the strict compliance with these rules of court F that make for quicker administration of justice. I have had a careful examination of the provisions of Exchange Control Act, Cap 113 Laws of the Federation of Nigeria, 1990, I fail to see how any of such provisions was or capable of being breached by instituting the suit in G Lagos, a place where the defendant/respondent resides.

Consequently, the four issues indemnified by the appellant in its brief of argument are hereby resolved in its favour. The only issue raised by the respondent in his brief is hereby resolved against him.

H It is my judgment that this appeal is meritorious. It is hereby allowed. The judgment of the court below and the ruling of the trial court are hereby set aside. It is further ordered that the suit be remitted to the Chief Judge of Lagos for reassignment to another judge

for trial of the suit to commence. There shall be costs of this appeal which I assess at N50,000.00 (Fifty thousand naira only) in favour of the appellant but against the respondent.

B

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment delivered by my learned brother Aderemi JSC. I agree with it, and for the reasons he has given I also allow the appeal with N50,000.00 costs in favour of the appellant.

C

MUKHTAR JSC

This appeal from the Court of Appeal, Lagos division is based on the jurisdiction of the court of first instance to hear the claim. Briefs of argument were exchanged by learned counsel for the parties, and these briefs were adopted at the hearing of the appeal. In the appellant's brief of argument are four issues raised for determination. These issues are:-

E

(1) Whether the court below was right to have assumed that the repayment of the loan was to be in London to preclude any recovery action in Nigeria.

F

(2) Whether Order 1A Rule 3 of the High Court of Lagos Civil Procedure Rules 1972 confers jurisdiction on the courts below to adjudicate in this suit especially when the court found for a fact that the Respondent was within jurisdiction in the absence of any agreement to show that the parties agreed that English law should apply to the transaction to the exclusion of Nigeria law.

G

(3) Whether the court below was right to have raised the issue of the Exchange Control Act Cap 113 Laws of the Federation of Nigeria suo motu without calling on the parties to address it and subsequently held that the recovery action of the Appellant in Nigeria if allowed will circumvent the provision of the Exchange Control Act even when parties were not called upon to address the court on this issue.

H

(4) Whether the fact that the Respondent's account at the Appellant's London branch at which the loan was granted in foreign

currency was tagged resident account is capable of vesting jurisdiction to adjudicate in the matter solely in English court under English Law.

A sole issue for determination was raised in the respondent's brief of argument, and this issue is,

"Whether or not the Lagos High Court is seised with jurisdiction over this matter considering the facts of the case." B

The respondent raised a preliminary objection, complaining that the grounds of appeal are grounds of mixed law and fact and that Ground 5 does not arise from the judgment of the lower court. The objection was argued in the respondent's brief of argument. Learned counsel stated the position of the law on the requirement of obtaining leave of court where grounds of appeal raise questions of mixed law and fact, and failure of which will make the ground incompetent and liable to be struck out. Reliance was placed on the cases of Popoola v. Adeyemo 1992 8 NWLR part 257 1 and Abidoye v. Alawode 2001 WRN 71. He further argued that grounds 1 - 4 of appeal involved evaluation of facts of the loan transaction or on inference deduced there from. The cases of Ajayi v. Omorogbe 1993 6 NWLR part 301 page 512, Obatoyinbo v. Odotola 1996 5 NWLR part 450 page 531, and Yusuf v. UBA LTD 1996 6 NWLR part 457 page 632, were cited. C D E

As far as ground (5) of appeal complained against is concerned the appellant in its reply brief of argument, and in the court abandoned the said ground, hence the need to deal with the argument related to that aspect of the objection is obviated. In the circumstance, ground of appeal No. (5) is hereby struck out. In the said appellant's brief of argument learned counsel submitted that grounds 1 - 4 of appeal reveal a misunderstanding or misapplication of the law to facts not in dispute between the parties, so they are grounds of law for which no leave is required. He placed reliance on the cases of Ogbeche v. Onochie 1986 3 SC. 54, and A.C.B. PLC v. Obimiami Brick and Stone 1993 5 NWLR part 294 page 399. F G

Now, what are the complaints in the grounds of appeal? It may be difficult to analyse the grounds without reproducing them for proper understanding. So I will reproduce them hereunder. They read:- H

“Ground 1.

The Court of Appeal erred in law when it held that the fact that the contract took place in London, that performance was to be in London and that the repayment must be in London.

Particulars of Error

B *The respondent a Nigerian who obtained a loan from the Appellant a Nigerian bank with a branch in London was found to be resident in Nigeria as at the time the action for recovery of the loan was commenced against him by the Appellant by the trial judge. There*
C *was no evidence or document upon which the Court of Appeal could*
have relied upon to come to the conclusion that the repayment must be in London even though there was no such averment in the pleadings in the record before the court below., There was nothing on record at the court below to assume the place of performance of the
D contract as done by the Court of Appeal.

Ground 2

The Court of Appeal erred in law when it held that the Lagos State High Court Civil Procedure Rules particularly Order 1, Rules 3 and 4 1972 cannot have effect over transaction conducted in En-
E gland and governed by English Law.

Particulars of Error

There is nothing on record at the court below upon which the court could have come to the conclusion that English Law was agreed
F by parties to be the law to govern the transaction.

Ground 3

The Court of Appeal erred in law when it held that to allow the Appeal and to enforce a loan transaction in London is to enable the Appellant to circumvent the provisions of Exchange Control Act Cap
G 113 Laws of the Federation of Nigeria 1990.

Particulars of Error

The learned Justice of the Court of Appeal failed to state what section of the Exchange control Act will be circumvented if the 1 Appellant is allowed to enforce the loan recovery in Nigeria.

H Ground 4

The Court of Appeal erred in law when it upheld the reasoning of the trial court that the fact that the Respondent account was tagged Resident Account makes the transaction subject to the United

Kingdom Laws particularly as they were Loans calculated in the United Kingdom currency and United States, Dollars.

Particulars of Error

The reasoning of the learned trial judge who found that the Respondent was within jurisdiction but for the fact that the loan was calculated in the United Kingdom currency and United States Dollar on an account tagged resident account makes the transaction subject to United Kingdom Law cannot be supported by evidence from the record at the court below. B

The court below jettisoned the provisions of Order 1'A Rules 3 and 4 of the High Court of Lagos Civil Procedure Rules which clearly confers jurisdiction on the trial court and the court below for recovery action to be commenced in the United Kingdom and judgment of which can be registered in Nigeria. After a careful perusal of the grounds of appeal I am of the view that all the surviving grounds of appeal are indeed grounds of law, that do not require leave of court. I am guided by Ayoola JSC in the case of Shanu v. Afribank (Nig.) PLC 2000 13 NWLR part 684 page 392, where he described a ground of law thus:- D

"A ground of appeal involves a question of law alone where in answering the question raised by the ground of appeal the appellate tribunal can determine the issue on the admitted or uncontroversial facts without going beyond a direct application of legal principles." E

I think the surviving grounds of this appeal fits into the ambit of the above. I hereby hold that grounds 1 - 4 are competent and can sustain the appeal. In the circumstance, the respondent's notice of preliminary objection is overruled. F

A single issue for determination was raised respondent's brief of argument, and this single issue is:- G

"Whether or not the Lagos High Court is seized with jurisdiction over this matter considering the facts of the case."

I would however like to highlight issue (2) supra in the appellant's brief of argument, which revolves around the provision of Order 1A Rule 3 of the High Court of Lagos Civil Procedure Rules 1972, which I will reproduce here under. It reads thus:- H

"All suits for the specific performance or upon the breach of any contract, may be commenced and determined in the judicial

division in which such contract ought to have been performed or in which the defendant resides.”

That the defendant resides in Nigeria, and Lagos to be specific is not in dispute. Likewise, there is nowhere in the pleadings where it was alluded that the transaction that led to this action in the trial court was meant to be governed by English Law. Perhaps I should reproduce the pertinent pleadings of the parties at this juncture. In the statement of claim are the following averments:-

“1. *The plaintiff is a commercial Bank duly licensed and registered and carries on business at its registered office at 35, Marina Lagos and Overseas and throughout the Federal Republic of Nigeria.*

2. *The Defendant who is a Nigerian businessman ordinarily resides and carries on business at No. 7, Adeniran Ogunsanya street, Surulere, Lagos within the jurisdiction of this honourable court.*

3. *The Defendant who is a customer of the Plaintiff bank at its London branch between 1988 and 1991 operated three separate loan Accounts with the Plaintiff at its London branch as follows, loan Account No. 5814903420, 5814904160 and 7114903420.*

4. *During the course of its business as banker the Defendant requested for and was granted credit facilities by the Plaintiff by way of loans on the three Accounts aforesaid.*

5. *Plaintiff avers that the purpose of the facilities was to assist the Defendant meet up with some financial expenses in the lifting of crude oil from Nigeria to Florida Petroleum Corporation in the U.S.A.....”*

Then in the amended statement of defence the defendant replied as follows inter alia:-

“1. The Defendant admits paragraphs 1,2,3,4,5, and 6.”

As can be seen from the above averments, there is no doubt what so ever on the residence of the appellant, and from paragraph (5) of the statement of claim, which have been admitted by the respondent, the performance of the contract was to be in Nigeria as well. Based on these facts the trial court was clothed with jurisdiction and nothing could have divested it of jurisdiction, for no law could have done so in view of the provision of Section 236 of the Constitution of the Federal Republic Nigeria which vests the courts with jurisdiction. More so, when there is nothing in the pleadings to suggest or

confirm that the contract was governed by English Law.

The lower court definitely erred when it held thus:-

“The rules of court made under an enabling laws of Lagos State of Nigeria cannot have effect over transactions conducted in England and governed by English law. Indeed the Rules of a State High Court do not govern transaction conducted in another state within Nigeria. It is therefore a fundamental flaw in the argument of appellant’s counsel to accept that a banking transaction conducted in London is subject to the Lagos State High Court Rules as to the court in which a suit could be brought.”

For the foregoing reasoning and the fuller reasoning in the lead judgment of my learned brother Aderemi JSC, I allow the appeal. I agree with Judgment and abide by the consequential orders made in the leading judgment.

MOHAMMED JSC

I have read before today the judgment of my learned brother Aderemi, JSC, which has just been delivered. I agree with him that this appeal has merit and ought to be allowed.

This appeal involves a Bank and Customer relationship. The Respondent as a customer of the Appellant obtained a loan in foreign currencies of United States Dollars and Pounds sterling at the London Branch of the Appellant for the purpose of using the same in the business of lifting crude oil from Nigeria to Florida in the United States of America. The loan which was obtained since 1988, remained unpaid by the Respondent up to the time the suit to recover the same was filed by the Appellant at the High Court of Justice of Lagos State on 13/8/92. At the time the suit was filed, the Respondent had relocated his business to Lagos where he was operating from No. 7 Adeniran Ogunsanya Street, Surulere, Lagos. The Respondent was duly served with the court processes to which he responded by entering appearance through his learned counsel. There upon, the Appellant as the Plaintiff brought an application by a Motion for Summary Judgment under Order 10 of the Lagos State High Court (Civil Procedure) Rules. In his reaction to the suit against him and Motion for judgment, the Respondent as the Defendant, not only filed a

statement of Defence and Amended Statement of Defence but also filed a counter Affidavit to the Appellant's motion for judgment. In addition, the Respondent also filed a Notice of Preliminary Objection to the jurisdiction of the trial High Court to entertain the Appellant's suit. This Preliminary Objection was heard by the learned trial judge who in his ruling delivered on 27/10/94, specifically found that the parties, particularly the defendant, was resident within the jurisdiction of the trial court but all the same came to the conclusion that the loan transaction between the parties having been concluded in the United Kingdom, under the Laws of that country, the courts in Nigeria have been deprived of the jurisdiction to hear and determine any suit arising from the loan transaction. This decision of the trial court was affirmed on appeal to the Court of Appeal in a unanimous decision of that court given on 13/6/2002, hence the present further appeal to this court. Having regard to the undisputed facts of this case, I completely agree with the single issue identified in the Respondent's brief for the determination of this appeal.

Jurisdiction is the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are prescribed by the constitution or statute creating such a court. The law is well settled in this respect that the jurisdiction of a court is determined by the claim of the Plaintiff. See *Adeyemi Vs Opeyori* (1976) 9-10 SC. 31; *Barclays Bank (Nigeria) Ltd Vs. Central Bank of Nigeria* (1976) 6 SC. 175 and *Attorney General of Kwara State Vs Olawale* (1993) 1 NWLR (Pt.272) 645 at 674-675. In the present case, by the writ of summons filed by the Appellant as the Plaintiff at the trial court, the claim was for the recovery of a debt totaling in all to the sum of £112,503,415.43 arising from a loan granted by the Appellant to its customer, the Respondent. Therefore on the face of this simple debt claim, by virtue of the then provisions of section 236 of the 1979 Constitution, the trial Lagos State High Court of Justice, whose jurisdiction, subject to the provisions of the same constitution was described as "*unlimited*", had clear jurisdiction to entertain and determine the claim of the Appellant in its suit against the Respondent. This of course is in line with the decision in the leading case on the subject of jurisdiction namely, the case of *Madukolu & Ors Vs*

Nkemdelim & Ors (1962) 2 SCNLR 341, relied upon by the Respondent in his brief of argument. This is because the suit having been initiated in accordance with the Rules of the trial High Court, the subject matter of the claim being recovery of debt was within the jurisdiction of the court and as the court was properly constituted in its composition and qualification of the learned trial judge and there being no extrinsic matter or factor affecting its jurisdiction, the trial court in my view, was and it still quite competent to hear and determine the Appellant's action against the Respondent. B

The fact that the loan transaction took place between the parties outside Nigeria in a foreign country and involving foreign currencies, does not remove the subject matter of the Appellant's claim out of the jurisdiction of Nigerian courts including the trial court, as claimed by the Respondent in his brief of argument. To me, a loan is certainly a burden that moves along on the shoulders of the debtor. In other words, the debt does not remain firmly and permanently fixed at the spot or country where it was negotiated or incurred. In any case, it is quite plain from the pleadings filed by the parties in this case and the affidavit and counter affidavit filed by them in support of and in opposing the motion for preliminary objection the ruling on which is now on appeal, that both parties are Nigerians who are properly residing squarely within the Nigerian territory and consequently within the territorial jurisdiction of the trial court, in Lagos. For this reason, I have no doubt whatsoever that the trial court is quite competent to hear and determine the appellant's action against the Respondent in the absence of any specific jurisdiction clause in the Loan Agreement, excluding the jurisdiction of Nigerian courts in any action to recover the loan. In fact even if there were such a jurisdiction clause in the Loan Agreement specifically excluding the jurisdiction of Nigerian courts in the event of any dispute arising between the parties in the performance or breach of such contract entered into in a foreign country, this court has held that where there is clear evidence that the plaintiffs right of claim is likely to be statute barred in the foreign country where the parties agreed to pursue their rights under the agreement, Nigerian courts should be allowed to assume jurisdiction in the interest of justice. See the case of Sonner (Nigeria) Ltd & Anor Vs Partenneedri M. S. Norwind & Anor (1987) 4 NWLR (Pt. 66) F H

520, where this court in allowing the appeal by the plaintiffs whose action was pending at the Federal High Court, Lagos, directed that court to proceed and determine the action in spite of the fact that the contract between the parties was not only entered into between the parties outside Nigeria in Germany as in the present case, but also in addition the parties had agreed to the application of foreign German law and foreign German courts to resolve any dispute arising from the contract between them, I must say that the same interest of justice applied in that case is glaringly staring at me in the face in the instant case.

Finally, for the above reasons and more comprehensive reasons contained in the judgment of my learned brother Aderemi, JSC, I also allow this appeal and abide by the orders in that judgment including the order on costs.

TABAI JSC

I had, before today, read in draft the lead judgment of my learned brother Aderemi JSC and I agree with his reasoning and conclusion that the appeal has merit and ought or be allowed.

The facts are essentially undisputed. In the writ of summons issued at the High Court of Lagos State, the Plaintiff which is the Appellant herein claimed against the Defendant who is the Respondent herein as follows:

"The plaintiffs claim against the Defendant is for the recovery of the sum of \$644,382.16 DR. i.e. (N6,416,821.99) and \$499,786.15 DR. (W4.976.920.46) in Loan Accounts Nos. 5814903420 and 5814904160 respectively and £64,816.59 i.e. (N1,109,672.98) in Loan Account No. 7114902420 as at 31st October, 1991 totalling in all N12,503,415.43 DR. being the total indebtedness owed to the Plaintiff by the Defendant as a result of credit facilities by way of loans granted to the Defendant by the plaintiff sometimes in 1988 which indebtedness the Defendant has failed and/or refused to settle despite repeated demands.

The plaintiff claims interest on the said sum of N12,503.43 DR at the rate of 21% per annum from 31st October, 1991 until the final payment of the debt."

After pleadings had been settled the Plaintiff/Appellant filed an application for summary judgment under Order 10 Rule 1 and 2 of the High Court of Lagos State (Civil Procedure) Rules 1992.

On his part the Defendant/Respondent filed a Notice of Preliminary objection contending that the Lagos State High Court lacked the jurisdiction to entertain the suit, the ground of the objection being that the loan transaction took place in the London branch of the Plaintiff/Appellant bank. The objection was sustained and the suit struck out. Aggrieved by the decision the Plaintiff/Appellant appealed to the Court below. The appeal was dismissed.

The Plaintiff is still aggrieved and has come on further appeal to this court. The parties have through their counsel filed their Briefs of argument. The Respondent has, by way of notice of preliminary objection, challenged the competence of the appeal. The ground of the challenge, according to the Respondent, is that each of the four grounds of appeal is at best one of mixed law and fact and it was therefore necessary to seek and obtain the leave of court to appeal. It was contended therefore that the leave of court not having been obtained, the appeal was incompetent.

As stated earlier in this judgment, the facts are not in dispute. The loan transaction was concluded and the loan obtained by the Respondent from the Appellant at the Appellant's London branch sometime in 1988. The loan was for the Respondents business of lifting crude oil from Nigeria to Florida in the United States of America. At that time, the Respondent was resident in London. And the Appellant was resident both in London, England and Nigeria. At the time the suit was filed the Respondent had relocated to and was resident in Lagos Nigeria. These facts, I repeat, are not in dispute and so not in issue. I have examined each of the four grounds of appeal with the particulars and in my consideration, none raised any issue of fact. The grounds complain about the construction and alleged misapplication of the Exchange Control Act Cap 113 Laws of the Federation of Nigeria 1990. Order 1 Rules 3 and 4 of the Lagos State High Court (Civil Procedure) Rules 1972 and other legal principles to the undisputed facts of the case. I hold therefore that all the grounds of appeal are grounds of law simplicities entitling the Appellant to appeal as of right. No leave of court is needed. On this issue therefore,

I hold that the preliminary objection was misconceived and is accordingly overruled.

With respect to the merit of the appeal itself, Order 2 Rule 3 of the Lagos State High Court (Civil Procedure) Rules 1988 provides:

B *“All suits for the specific performance, or upon the breach of any contract may be commenced and determined in the judicial division in which such contract ought to have been performed or in which the defendant resides.”*

C Although the above rule relates to judicial divisions the principle embodied therein applies with equal force to this case. A debtor or someone who otherwise incurs some liability under a contract should not be allowed to escape his liability or obligation thereunder simply because he has changed his residence from the judicial division, state or country at the time of such debt or obligation. The D courts should be careful not to lay down any principle which ultimately impedes the course of justice.

E The Plaintiff/Appellant was, at the time of the loan transaction resident both in the United Kingdom and Nigeria and is still so resident in both countries. The loan was for the funding of the Defendant/Respondent’s oil lifting business in Nigeria and the United States of America. And although the Defendant/Respondent was at the time of the loan in 1988 resident in the United Kingdom, he has since been resident in Nigeria within the jurisdiction of the Lagos State High Court. In these circumstances, can the Defendant/Respondent F be had to contend, as he has done, that the High Court of Lagos State has no jurisdiction to entertain the action? I do not think so. Given all the circumstances of this case, it is my firm view that the Lagos State High Court has the jurisdiction to entertain the suit. The G two courts below were, with respect, wrong in their decision on this issue of jurisdiction.

In view of the foregoing considerations, I also allow the appeal. And I abide by the consequential orders contained in the lead judgment.

H