

SUPREME COURT OF NIGERIA
3RD APRIL, 2009. SC. 115/2004
CORAM:- A. I. KATSINA-ALU, A. M. MUKHTAR,
W. S. N. ONNOGHEN, P. O. ADEREMI,
C. M. CHUKWUMA-ENEH, JJSC

OSUU S. C. ODUKO APPELLANT
AND
1. GOVERNMENT OF EBONYI
STATE OF NIGERIA
2. THE CIVIL SERVICE COMMISSION,
EBONYI STATE
3. CHIEF (DR.) I.E. ITUMA RESPONDENTS
(Former Chairman, Civil Service
Commission. Ebonyi State)
4. THE ATTORNEY-GENERAL AND
COMMISSIONER FOR JUSTICE,
EBONYI STATE.

JURISDICTION - Courts - Determining factor - It is the claim of the plaintiff which determines the jurisdiction of a court - To entertain a suit - The Court of Appeal was therefore right to hold that trial court had jurisdiction (H1)

EVIDENCE - Documents - Yet to be tendered - Findings thereon - Propriety - Those findings are premature - And ought not to have been made at this stage of the proceedings (H2)

FACTS

The plaintiff/appellant sued the defendants/respondents at the High Court of Ebonyi State, contesting the purported retirement of the appellant from the services of the 2nd respondent. The respondents, on being served with the writ of summons and the statement of claim, raised a preliminary objection to the jurisdiction of the court to try the suit on the basis that the dismissal action was carried out pursuant to the Public Officers (Special Provisions) Decree, 1984, the provisions of which ousted the jurisdiction of the court to question the validity of the dismissal. The respondents did not file any

916 Oduko v. Govt. of Ebonyi St. Nigeria (2009) 4 KLR (pt. 265) 915;
statement of defence.

The learned trial judge heard and upheld the preliminary objection of the respondents and consequently dismissed the suit. Aggrieved, the appellant appealed to the Court of Appeal which allowed the appeal and ordered that the suit be remitted to the High Court for a trial on the merits. Still dissatisfied, the appellant has brought this further appeal contending that the Court of Appeal ought to have entered judgment for him instead of ordering a retrial.

ISSUE FOR DETERMINATION

"Whether that court (the trial court, High Court of Justice, sitting at Abakaliki, Ebonyi State) has the legal power or authority - jurisdiction - to entertain the suit."

HELD (Unanimously dismissing the appeal per **ADEREMI JSC**)
JURISDICTION - Courts - Determining factor

1. It is now a well-established principle of our law that it is the claim of the plaintiff which determines the jurisdiction of a court entertaining the suit. A careful study of the statement of claim filed along with the writ leaves me in no doubt that justiciable issues are therein contained. Thus when the court below, after reviewing all the arguments canvassed by the counsel before it, held inter alia:

"The result is that I set aside the ruling of the court below dismissing the plaintiffs claim. The lower court has jurisdiction to hear and determine the suit."

I cannot but agree with that conclusion. (p. 924 C)

Documents - Yet to be tendered - Findings thereon

2. The court below should have stopped here, since it had directed that the case should be heard on its merit before another judge. This is because pleadings have not been completed and no evidence had been led. But, and this is very unfortunate, the court below went at length to subject a crucial document, yet to be tendered in evidence, to microscopic judicial examination and pronounced upon it. The findings made on this document are copious. With due respect, those findings in my view, are premature and ought not to have been made at this stage of the proceedings; pleadings have not been completed and no evidence had been led. (p. 924 G)

NOTABLE POINT OF INTEREST

ONNOGHEN JSC

1. Substantive matter should not be determined at interlocutory stage

Courts are not to determine substantive matters at the interlocutory stage of the proceedings. In the instant case, the issue as to whether the trial court has the jurisdiction to hear and determine the suit as constituted is an interlocutory matter which had nothing to do with the substantive suit before the court, yet the lower court, after holding that the trial court had jurisdiction in the matter did not stop there but proceeded further to declare the letter of retirement null and void and made other findings on the merit of the case. To do that constituted a serious error on the part of the lower court particularly as the pleadings on the matter were yet to be filed and exchanged between the parties and no evidence led in proof of the facts pleaded thereto. (p. 932 D)

CHUKWUMA-ENEH JSC

2. Nullification order does not arise from the ruling of trial court

What has all along been on the front burner in this application has always been the issue of jurisdiction simpliciter i.e. to hear and determine this matter so that the order declaring exhibit OSCO 1 a nullity and therefore void has no basis on which to stand *moreso* as it does not arise from the ruling of the trial Court. And so while the order declaring the offending letter, the cause of action here a nullity is completely discountenanced being an incompetent order in the circumstances and I, therefore, strike out the same; I uphold the order remitting this matter for trial on the merits before another judge. (p. 935 C)

REPRESENTATION

Appellant appeared in person.

Chief Jossy Eze, Attorney-General, Ministry of Justice, Abakaliki, Ebonyi State for the Respondents with him, Mr. S.U. Ena, Deputy Director of Civil Litigation, Ministry of Justice, Abakaliki, Ebonyi State

CASES REFERRED TO

OLUKOYA V WEMA BANK LTD. (1989) 1 S.C. (Pt.1) 132

UTI V ONOYIME (1991) SCNJ 25 at 49

DAPIALONG V DARIYE (2007) 8 NWLR (Pt.1036) 332

GOVERNOR, KWARA STATE V LAWAL (2007) 13 NWLR (Pt 105) 347

MINISTER. WORKS AND HOUSING V SHITTU (2007) 16 NWLR (Pt 1060) 351

^B ADESOLA V ABIDEYE (1999) 10-12 S.C. 109 at 122

GARBA V FEDERAL CIVIL SERVICE COMMISSION (1988) 1 NWLR (Pt.71) 449

ATTORNEY-GENERAL LAGOS STATE V HON. JUSTICE L. J.

^C DOSUMU (1989) 3 NWLR (PT 111) 556

STATUTES & RULES REFERRED TO

Public Officers (Special Provision) Decree No. 17, 1984, s. 1

Imo State High Court (Civil Procedure) Rules, 1988, O. 24

^D Supreme Court Act, s. 22

Supreme Court Rules, O. 8 r. 12(1) & (5)

LEAD JUDGMENT BY ADEREMI JSC

^E This is an appeal against the order of the Court of Appeal, Enugu Division (hereinafter referred to as the court below) for a re-trial of the suit at the High Court, Ebonyi State before another judge. The judgment of the court below was delivered on the 15th of May 2003 sequel to an appeal against the ruling of the High Court of Justice in Abakaliki, Ebonyi State delivered on the 6th of June, 2002

^F dismissing the suit of the plaintiff/appellant based on a preliminary objection taken against the jurisdiction of the trial court. Needless for me to say that by the ruling of 6th June, 2002, the preliminary objection was sustained.

^G Briefly, the facts of the case are thus: the appellant, who was the plaintiff before the trial court had claimed against the respondents, who were the defendants before that court, the following reliefs: -

^H *“(1) A declaration that the third defendant’s letter with Reference No. EBS/CSC/S.009/1/22 dated 5th May, 1999 but delivered to the plaintiff on the 2nd of June 2000, purporting to retire the plaintiff with effect from 1st May, 1999 is ultra vires the second defendant and on the third defendant and therefore is invalid, null, void and of no effect whatsoever.*

(2) *A declaration that the plaintiff was and is still a Permanent Secretary in the Civil Service of Ebonyi State Government of Nigeria and is entitled to all his emoluments including salaries, wages, over-time, leave allowances, commissions, fees, gratuity, benefits, advantages (whether or not that advantage is capable of being turned into money or money's worth) allowances, pensions, loans or annuity paid; given or granted in respect of his office as a Permanent Secretary.*

(3) *An order reinstating the plaintiff as a Permanent Secretary in the Ebonyi State Civil Service.*

(4) *A declaration that the plaintiff is the occupier of and is entitled to the possession and occupation of four (4 No.) BEDROOM EXECUTIVE BUNGALOW WITH APPURTENANCES SITUATE AT NO. 8 ILEZZA ROAD G.R.A. ABAKALIKI, EBONYI STATE pursuant to the Ebonyi State Government letters (a) No. SGE/ETB/69/36 dated 4th February, 1999 otherwise known as ESTABLISHMENT CIRCULAR NO. 2/1999 and (b) NO. SGE.ETB/0017/185 dated 4th July, 1999.*

(5) *An order of injunction restraining the defendants or any of them by themselves, their servants, agents, associates, privies and/or cohorts from further disturbing the plaintiffs quiet possession and occupation of the FOUR (NO.4) BEDROOM EXECUTIVE BUNGALOW WITH APPURTENANCES SITUATE AT NO. 8 ILEZZA ROAD GRA, ABAKALIKI, EBONYI STATE or otherwise ejecting or taking any further steps to eject the plaintiff from his said residential quarters of FOUR (4 NO.) BEDROOM EXECUTIVE BUNGALOW WITH APPURTENANCES SITUATE AT NO. 8 ILEZZA ROAD GRA, ABAKALIKI, EBONYI STATE.*

(6) *An order that the defendants do pay or cause to be paid to the plaintiff: -*

(i) *The sum of N504,000.00k (five hundred and four thousand naira) being the plaintiff's personal emoluments from the 1st day of May 1999 to the 30th day of April 2000 and continuing.*

(ii) *The sum of N160,000.00k (one hundred and sixty thousand naira) being the plaintiffs out of pocket expenses in respect of maintenance and running costs of his official Peugeot Saloon Car with Registration or Index Number EB04A09 by the plaintiff prior to the purported retirement to wit 1st of May 1999.*

(iii) *The sum of N95,040.00k (ninety-five thousand and forty naira only) being the equivalent of £576.00 (five hundred and seventy-six pounds sterling) converting at N165:00 to £1 (one pound) being the cost of medical out-of-pocket expenses incurred by the plaintiff while on official duty in London in May 1999.*

B (iv) *The sum of N255,000.00k (two hundred and fifty-five thousand naira) being out-of-pocket expenses in respect of maintaining and running costs of the plaintiffs official Peugeot Saloon Car with Registration or Index Number EBO4A09 from the 1st of May 1999 to 30th April, 2000 and continuing.*

C (v) *Housing loan of N1,500,000.00k (one million five hundred thousand naira) to the plaintiff on the same terms and conditions as granted to other Permanent Secretaries in the Ebonyi State civil Service by the second defendant to the plaintiff.*

D (7) *An order that the 1st defendant do forward or cause its appropriate arms forward the plaintiff's application for lateral transfer of service to the Federal Government for necessary action.*

E (8) *A declaration that the said purported letter of retirement if held valid can only be effective from the 2nd day of June, 1999, the date it was delivered to the plaintiff, or 5th day of May, 1999, the date it was written but not 1st day of May 1999."*

Suffice it to say that statement of claim was filed along with the writ of summons. The defendants thereafter brought an application praying the trial court to dismiss the suit for (a) lack of jurisdiction and (b) that the action was statute-barred. The application was supported by an affidavit. The plaintiff filed a counter-affidavit. Sequel to taking the arguments of counsel to the parties in a reserved ruling delivered on the 6th of June 2002, the trial court upheld the preliminary objection and consequently dismissed the suit. In so doing, the court reasoned: -

H *"There is clear evidence, even if not admitted by the plaintiff himself that he was removed from office by the Military Administrator by virtue of the Public Officers (Special Provisions) Decree No. 17 of 1984. Under that Decree the Military as the appropriate authority may direct the removal of a Public Officer, like the appellant, from office, or may delegate some one to do so. Once it is clear this was what happened, the court's jurisdiction to entertain any claim to contest the removal from office is completely ousted."*

Being dissatisfied with the said ruling, the plaintiff appealed to the Court of Appeal, Enugu Division (hereinafter referred to as the court below). After taking the arguments of the counsel for both parties based on the issues they raised, the court below, in its judgment delivered on the 15th of May 2003, allowed the appeal and thus set aside the ruling of the trial court and remitted the case to Ebonyi State High Court of Justice to be tried by another judge. In so doing, the court below reasoned: -

"I need to stress the point that in dealing with ouster of court's jurisdiction in a statute, the Judge has to be circumspect. He has to examine carefully the exhibit such as in this appeal. Exhibit OSCO so as to find out whether in fact, the jurisdiction of the court has been ousted

I have given the 'offending letter' to wit Exhibit OSCO 1 a close bird's eye view. The 3rd respondent who issued it described himself as Chairman Civil Service Commission. He is not the appropriate authority. He was not the Military Administrator of the State. There is no iota of evidence pointing to the direction that he was authorised by the appropriate authority to issue Exhibit OSCO 1 to the appellant. The 3rd Respondent has not been shown as falling within the ambit of the definition of 'appropriate authority' under Section 4 Sub-section 2 of the Act. The Exhibit cannot be justified under the Act.

It is glaring that the 3rd respondent did not act under the provisions of the Act. Therefore. Exhibit OSCO 1 issued by him without the authorisation of the appropriate authority is a nullity. I declare it so

It is clear that the Exhibit OSCO 1. the offending letter, was received by the appellant on 2nd June, 1999. And so. I find that the cause of action crystallised on the 3rd of June 1999 - that is a day after the stated exhibit was received by the appellant.

Earlier in this judgment the offending letter Exhibit OSCO 1 wrongly issued by the 3rd respondent to the appellant was declared a nullity. The letter has no legal consequence. It is as if nothing has happened to the appellant's position before the letter was wrongly issued. The result is that I set aside the ruling of the court below dismissing the

plaintiffs claim. The lower court has jurisdiction to hear and determine the suit.

It shall be heard on the merit by another judge of the Ebonyi State High Court of Justice other than Inya-Agha J.”

(The underlining is mine to emphasise what I shall later say about the judgment of the court below).

Being dissatisfied with the judgment of the court below, the appellant has again appealed to this court. He has raised six issues for determination by this court; and as set out in his brief of argument filed on 6th October, 2005, they are as follows: -

“(1) What is the future effect on the suit whose cause of action, on retirement order, was declared null and void for want of authority?”

(2) In action challenging an order issued in pursuance to an enabling Act, what should be the ingredients in the proceeding that will result in a trial on the merits.

(3) What should be the proper order, substantive or consequential, that should naturally flow from a judgment which has declared the cause of action a nullity and lacking of legal force.

(4) Was the Court of Appeal right in speculating an evidence to back up their Lord’s order of re-trial on the merit when the order was not necessary to achieve substantial justice but merely to concede (sic) the trial court the reason for his action rather than ascertaining whether his decision was right or wrong which unnecessarily prolonged the suit rather than end it.

(5) Granting that the Court of Appeal ordered the retrial in compliance with Order 24 of the Imo State High Court (Civil Procedure) Rules, 1988, applicable to Ebonyi State pursuant to which the jurisdiction of the trial court was questioned, was the Court of Appeal to order a re-trial as a privilege to the Respondents to adduce evidence on facts having not been able to establish grounds to dismiss the Appellant’s suit when such a privilege has been vitiated by: -

(i) The Court of Appeal declaring the cause of action null and void and of no effect.

(ii) The cause of action having no legal root having been issued after the enabling Act had been repealed and cannot be a subject of re-trial.

(iii) The Respondents having statutory immunity not to give

reason for removing a public officer (in the absence of (i) and (ii) above) but to rely on the authority of the enabling Act (see Nwosu V. Imo state Environmental Sanitation Authority (1990) 2 NWLR (pt.135) 688 at page 724 paras G - H) have not the necessity to give further evidence on facts and

(iv)By the doctrine of stare decisis observed in this country, there is no evidence that will be given at the High Court that will set aside the decision of the Court of Appeal in respect of the cause of action declared null and void, it is unnecessary to require the Respondents to adduce further evidence of facts.

(6) Given the circumstances of the case, the evidence on the record and the judgment of the Court of Appeal, is the appellant entitled to reinstatement, payment of his salaries, allowances and granting of other emoluments.”

The lone issue raised by the respondents and as set out in their brief of argument is as follows: -

“Whether the appellant is entitled to all the reliefs claimed by him at the High Court upon the determination of his Appeal by the Court of Appeal when pleadings had not been filed and exchanged and no evidence has been led at the High Court.”

When this appeal came before us on the 20th of January 2009, Osuu S.C. Oduko, the appellant in person, adopted his brief filed on the 6th of October 2005 together with the Reply brief filed on the 26th of May 2006 and urged us to allow the appeal. Chief Jossy Eze, the learned Attorney-General for Ebonyi State also adopted the respondents’ brief of argument filed on the 12th of April 2006 and urged us to dismiss the appeal.

As I have said above, the plaintiff/appellant had filed the writ of summons along with his statement of claim. The only process filed by the respondents is the Notice of Preliminary Objection challenging the jurisdiction of the court to try the case; no statement of defence had been filed. And so the case had not proceeded to trial. Jurisdiction is the legal power or authority which a court must have to decide matters that are litigated before it; or to take cognisance of matters presented in a formal way for its decision. The limits of this legal power or authority are circumscribed by the statute or act of the National Assembly under which the court is constituted and may be extended or restricted by similar means. Let me hasten to say that

the sole issue that arose from the decision of the trial court and which has travelled to this court is, whether that court (the trial court, High Court of Justice, sitting at Abakaliki, Ebonyi State) has the legal power or authority -jurisdiction - to entertain the suit. I shall therefore marry all the issues raised by the parties into this singular but fundamental issue. As I have said above, the singular point the trial court in reaching the conclusion that it lacked jurisdiction to entertain the suit is the provision of the Public Officers (Special Provisions) Decree No. 17 of 1984 under which according to it, the Military Governor, as the appropriate authority may direct the removal of a public officer, the like of the appellant, from office or the Military Governor may direct someone to so do. If (the trial court) went further to say that once it was clear that that was what happened, the court's jurisdiction to entertain the suit was ousted. I pause to say that ***it is now a well-established principle of our law that it is the claim of the plaintiff which determines the jurisdiction of a court entertaining the suit.*** See ADEYEMI & ORS. V. OPEROYI (1976) 9 & 10 S.C. 31. ***A careful study of the statement of claim filed along with the writ leaves me in no doubt that justiciable issues are therein contained. Thus when the court below, after reviewing all the arguments canvassed by the counsel before it, held inter alia:***

"The result is that I set aside the ruling of the court below dismissing the plaintiffs claim. The lower court has jurisdiction to hear and determine the suit."

I cannot but agree with that conclusion. I also endorse its order to the effect that the case shall be heard on the merit by another judge of the Ebonyi State High Court of Justice other than that judge that first heard the preliminary objection. I would think that ***the court below should have stopped here, since it had directed that the case should be heard on its merit before another judge. This is because pleadings have not been completed and no evidence had been led. But, and this is very unfortunate, the court below went at length to subject a crucial document, yet to be tendered in evidence, to microscopic judicial examination and pronounced upon it. The findings made on this document are copious. With due respect, those findings in my view, are premature and ought not to have been made at this stage of the proceedings; pleadings have not been***

completed and no evidence had been led. All the issues raised by the appellant are, consequently resolved against him. The only issue raised by the respondents and which has encapsulated all the issues identified by the appellant, is answered in the negative.

Following all I have said, I hereby set aside all the findings of the court below on the document referred to in its judgment. I agree with the court below that the case be sent back to the High Court of Justice sitting at Abakaliki, Ebonyi State before another judge for re-trial. Consequently, the appeal is dismissed. There shall be no order as to costs.

KATSINA-ALU JSC

I have read before now, in draft, the judgment delivered by my learned brother Aderemi, JSC. I agree entirely with his reasoning and conclusion. For the reasons given, I, too, dismiss the appeal and abide by all the consequential orders made therein including the order as to costs.

MUKHTAR JSC

Six issues for determination of this appeal were raised in the appellant's brief of argument to cover eight grounds of appeal. In their joint respondents' brief of argument, a single issue for determination was raised. The issue is:-

"Whether the appellant is entitled to all the reliefs claimed by him at the High Court upon the determination of his appeal by the Court of Appeal when pleadings had not been filed and exchanged and no evidence has been led at the High Court."

The issues in the appellant's brief of argument are so unwieldy that I tend to think that some of them are unnecessarily belabouring the essence of the appeal. I think a single issue in the respondents' brief of argument supra would have sufficed for the purpose of this appeal, or in the alternative, an issue that reads as follows:-

"Whether it was right for the learned Court of Appeal to have gone to the extent of making the findings it made in the judgment (in the circumstance of the case), other than the one that may lead to the order ultimately made."

After filing the plaintiff/appellant's processes against the respondents, the respondents filed and moved a motion on notice for the following at the trial court:-

"1. an order dismissing suit No. AB/55/2000 in limine on the following grounds:-

- B *(a) lack of jurisdiction;*
- (b) the action is statute barred."*

The whole gamut of the argument on the motion in the High Court of Ebonyi State is centered on the jurisdiction of the court to entertain the suit before it, and this the learned trial judge considered and came to the conclusion that his court had no jurisdiction to hear the suit. On appeal to the Court of Appeal, Enugu division, the learned Justice who wrote the lead judgment decided to go into a deep consideration of the case itself, when pleadings have not been completed, basing his findings on the plaintiff/appellants processes, and the affidavits before the court. The court below definitely went too far in his determination of the appeal before the court. He should have confined himself to the issue of jurisdiction that was at stake, and not go into the detailed appraisal of what was before the court, which inevitably led to the findings he made.

At any rate he eventually made the correct order at the end of the day, and it is my view that the treatment of the argument that revolved around the order should have sufficed. In this wise, I believe he was in order when he held as follows at the end of his judgment:-

"The result is that I set aside the Ruling of the court below dismissing the plaintiff's claim. The lower court has jurisdiction to hear and determine the suit. It shall be heard on the merit by another judge of the Ebonyi State High Court of Justice other than Inya - Agha J."

I agree with the above order and endorse and affirm it. In the light of this contribution, I agree completely with the conclusion in the lead judgment of my learned brother Aderemi, JSC. I abide by the consequential orders made therein.

ONNOGHEN JSC

The appellant caused a writ of summons to be issued against the respondents claiming the following reliefs:-

“(1) A declaration that the third defendant’s letter with reference NO. EBS/CSC/S.009/ 1/22 dated 5th May, 1999 but delivered to the plaintiff on the 2nd of June, 1999, purporting to retire the plaintiff with effect from 1st May, 1999 is ultra vires the second defendant and or the third defendant and therefore is invalid, null, void and of no effect, whatsoever.

(2) A declaration that the plaintiff was and is still a Permanent Secretary in the Civil Service of Ebonyi State Government of Nigeria and is entitled to all his emoluments including salaries, wages, overtime, leave allowances, commissions, fees, gratuity, benefit, advantages (whether or not that advantage is capable of being turned into money or money ‘s worth) allowances, pensions, loans or annuity paid; given or granted in respect of his office as a Permanent Secretary.

(3) An order reinstating the plaintiff as a Permanent Secretary in the Ebonyi State Civil Service.

(4) A declaration that the plaintiff is the occupier of and is entitled to the possession and occupation of four (4NO.) Bedroom Executive bungalow with Appurtenances situate at NO. 8. Illezza Road, GRA, Abakaliki, Ebonyi State pursuant to the Ebonyi State Government letters (a) NO. SGE/ETB/ 69/36 dated 4th February, 1999 otherwise known as Establishment Circular NO. 2/1999 and (b) NO. SGE.ETB/0017/185 dated 4th May, 1999.

(5) An injunction restraining the defendants or any of them by themselves, their servants, agents, associates, privies and/or cohorts from further disturbing the plaintiff’s quiet possession and occupation of the Four (4 NO.) Bedroom Executive Bungalow with Appurtenances Situate at NO 8. Illezza Road, GRA, Abakaliki, Ebonyi State or otherwise ejecting or taking any further steps to eject the plaintiff from his said residential quarters of Four (4 NO.) Bedroom Executive Bungalow with Appurtenances Situate at NO 8. Illezza Road, GRA, Abakaliki, Ebonyi State.

(6) An Order that the defendants do pay or cause to be paid to the plaintiff:-

(i) *The sum of N504,000.00k (Five Hundred and four thousand naira) being the plaintiffs personal emoluments from the 1st day of May, 1999 to the 30th day of April, 2000, and continuing.*

(ii) *The N160,000.00k (One hundred and sixty thousand naira) being the plaintiff's out-of-pocket expenses in respect of maintenance and running costs of his official Peugeot Saloon Car with Registration or Index Number EBO4A09 was which incurred by the plaintiff prior to the purported retirement to wit 1st of May, 1999.*

(iii) *The sum of N95,040.00k (Ninety-five thousand and forty naira only) being the equivalent of £576.00 (Five hundred and seventy-six British Pound Sterling) converting at N 165,000 to £1 (One pound) being cost of medical out-of-pocket expenses incurred by the plaintiff while on official duty in London in May, 1999.*

(iv) *The sum of N255,000.00 (Two hundred and fifty-five thousand naira) being out-of-pocket expenses in respect of maintenance and running costs of the plaintiffs official Peugeot Saloon Car with Registration or Index Number EBO4A09 from the 1st of May, 1999 to 30th April, 2000 and continuing.*

(v) *Housing loan of N1,500,000.00k (One million, five hundred thousand naira) to the plaintiff on the same terms and conditions as granted to other Permanent Secretaries in the Ebonyi State Civil Service by the second defendant to the plaintiff.*

(7) *An order that the first defendant do forward or cause its appropriate arms forward the plaintiff's application for lateral transfer of service to the Federal Government for necessary action.*

(8) *A declaration that the said purported letter of retirement if held valid can only be effective from 2nd day of June, 1999, the date it was delivered to the plaintiff, or 5th day of May, 1999, the date it was written but not 1st day of May, 1999.*

The facts relevant to the determination of the appeal are not in dispute. They include the following: The appellant was a civil servant who at the relevant time was of the rank of Permanent Secretary in the service of the Government of Ebonyi State. By a letter dated 5th May, 1999, the appellant was retired from the service of the said Government of Ebonyi State pursuant to the provisions of the now notorious section 1(1) of the Public Officers (Special Provisions) Act, Cap 381, Vol. XXI, Laws of the Federation of Nigeria, 1990 which has since been repealed. The instant action was instituted by the ap-

pellant to challenge the said retirement.

Upon being served with the writ of summons, the defendants/respondents filed a motion on the 27th day of April, 2000 praying the trial court for:

“An Order dismissing Suit. NO. AB/55/2000 in limine on the following grounds:-

(a) Lack of jurisdiction,

(b) The action is statute barred”.

It is important to note that at the time the objection to the jurisdiction of the trial court was raised, the plaintiff/appellant had filed no statement of claim neither did the defendants file a statement of Defence to the action. In fact, that position between the parties subsists to this day.

However, the trial, court, after hearing the arguments on the objections, sustained same in a considered ruling and dismissed the claim of the plaintiff which resulted in an appeal to the Court of Appeal,, .holder) at Enugu which appeal was allowed by that court in a judgment delivered on the 15th day of May, 2003 in favour of the appellant. The court remitted the matter to the trial court for hearing and determination on the merit. The appellant is not satisfied with the aspect of the judgment remitting the case for hearing, hence the instant appeal to the Supreme Court, where six issues have been identified by learned counsel for the appellant, Osuu S.C. Oduko Esq., who appears in person, in the appellant’s brief of argument filed on the 6th day of October, 2005, as follows:-

“1. What is the future effect on the suit whose cause of action, a retirement order, was declared null and void for want of authority? (Grounds 1 and 2.

2. In action challenging an order issued in pursuance to an enabling Act, what should be the ingredients in the proceeding that will result in a trial on the merits (Ground 3).

3. What should be the proper order, substantive or consequential, that should naturally flow from a judgment, which has declared the cause of action a nullity and lacking of legal force (Ground 4).

4. Was the Court of Appeal right in speculating on evidence to back up their Lords’ order of retrial on the merit when the order was not necessary to achieve substantial justice but merely to concede the

trial court the reason for his (sic) action rather than ascertaining whether his (sic) decision was right or wrong which unnecessarily prolonged the suit rather than end it (Grounds 5,6 & 7).

5. Granting that the Court of Appeal ordered the retrial in compliance with Order 234 of the Imo State High Court (Civil Procedure) Rules, 1988, applicable to Ebonyi State pursuant to which the jurisdiction of the trial court was questioned, was the Court of Appeal right to order retrial as a privilege to the respondents to adduce evidence on facts having not been able to establish grounds to dismiss the appellant's suit when such a privilege has been vitiated by:-

(i) the Court of Appeal declaring the cause of action null and void and of no effect;

(ii) the cause of action having no legal root having been issued after the enabling Act had been repealed and cannot be a subject of retrial;

(iii) the respondent having statutory immunity not to give reason for removing a public officer (in the absence of i & ii above) but to rely on the authority of the enabling Act (see *Nwosu vs Imo State Environmental Sanitation Authority* (1990) 2 NWLR (Pt.135) 688 at P. 724 Paras. G-H) have not the necessity to give further evidence of facts; and,

(iv) by the doctrine of *stare decisis* observed in this country, there is no evidence that will be given at the High Court that will set aside the decision of the Court of Appeal in respect of the cause of action declared null and void, it is unnecessary to require the respondents to adduce further evidence of facts (Ground 8).

6. Given the circumstances of the case, the evidence on the record and the judgment of the Court of Appeal, is the appellant entitled to reinstatement payment of his salaries, allowances and granting of other emoluments (Ground 9).

On the other hand, learned counsel for the respondents, the then A-G of Ebonyi State, *Nwokpor Vin. Nduka, Esq.*, in the respondents' brief filed on the 12th day of April, 2006, identified a single issue for the determination of the appeal. The issue being:

"Whether the appellant is entitled to all the reliefs claimed by him at the High Court upon the determination of his appeal by the Court of Appeal when pleadings had not been filed and exchanged

and no evidence has been led at the High Court”.

I am of the considered view that the issue formulated by the learned counsel for the respondents represents the real issue in controversy between the parties having regards to the facts of the case and the decisions of the lower courts. The issues formulated by the appellant are not only prolix but too generalized thereby making them hypothetical when put side by side with the facts of the case and the decisions on appeal, particularly as at the stage the objection was raised pleadings had neither been filed nor exchanged between the parties let alone evidence adduced before the court.

It follows therefore that for the purpose of this judgment, the issue to be considered by me is as formulated by the learned counsel for the respondents and reproduced supra.

In arguing the issue, learned counsel for the appellant submitted that the lower court having held that the letter of retirement is a nullity as the same was not authorized by the appropriate authority, the court in effect declared the letter of no effect and as such it was wrong for that court to order that the matter be remitted to the trial court for retrial since there is no longer anything to be retried; that the lower court, having found as stated above should have entered judgment for the plaintiff/appellant in terms of the claim before the court and consequently urged the court to invoke its powers under section 22 of the Supreme Court Act, and Order 8 Rule 12(2) and (5) of the Supreme Court Rules to grant the reliefs.

On the other hand, learned counsel for the respondents submitted that the appellant is in error in arguing that since his appeal at the Court of Appeal succeeded, he is entitled to judgment on his claim; that since the preliminary objection failed the proper thing is for the case to proceed to trial on the merit; that any judgment given to the appellant as urged at this stage will amount to a miscarriage of justice as the defendants will be denied the opportunity of presenting any defence or counter claim in defence of the action and urged the court to resolve the issue against the appellant and dismiss the appeal.

It is not disputed that at the time the preliminary objection was filed and argued, no statement of claim and defence had been filed in the action let alone evidence taken in the proceedings.

The proceeding was initiated by a writ of summons, not origi-

nating summons or motion supported by affidavit. The affidavit evidence used in the determination of the objection raised was filed in support of or to counter the said objection and had nothing to do with the merit of the case to be determined at the appropriate stage.

It follows therefore that the objection was purely on whether
 B the trial court had the jurisdiction to entertain the suit as constituted having regards to the provisions of the relevant law. It had nothing to do with the merit of the action before the trial court. From the records, the trial court held that it has no jurisdiction while the Court of Ap-
 C appeal held that the trial court had jurisdiction to entertain the matter having regards to the fact that the Act relied upon by the trial court to hold that it has no jurisdiction had been repealed.

It is however, true that the lower court went beyond the substantive issue before it to make pronouncements on the merits of the
 D substantive matter thereby giving the appellant the erroneous impression that he ought to have been granted the reliefs claimed in the suit in view of the extraneous findings/holdings by the lower court. It is however settled law that courts are not to determine substantive matters at the interlocutory stage of the proceedings. In the instant
 E case, the issue as to whether the trial court has the jurisdiction to hear and determine the suit as constituted is an interlocutory matter which had nothing to do with the substantive suit before the court, yet the lower court, after holding that the trial court had jurisdiction in the
 F matter did not stop there but proceeded further to declare the letter of retirement null and void and made other findings on the merit of the case. To do that constituted a serious error on the part of the lower court particularly as the pleadings on the matter were yet to be filed and exchanged between the parties and no evidence led in proof
 G of the facts pleaded thereto. The lower court held, *inter alia*, as follows:-

*“Earlier in this judgment, the offending letter - Exhibit OSCO 1 wrongly issued by the 3rd respondent to the appellant was declared a nullity. The letter has no legal consequence. It is as if nothing
 H has happened to the appellant’s position before the letter was wrongly issued”.*

However, that court, immediately after stating as above proceeded to hold, rightly in my view, as follows:

“The result is that I set aside the Ruling of the court below

dismissing the plaintiff's claim. The lower court has jurisdiction to hear and determine the suit. It shall be heard on the merit by another judge of the Ebonyi State High Court of Justice other than Inya - Agha J....".

I hold the considered view that despite the error in the lower court venturing into the merits of the substantive case while determining the appeal on an interlocutory matter, the final decision of that court is that the trial court has the jurisdiction to hear and determine the substantive case and that the case should now be heard by another judge of the High Court of Ebonyi State. The final conclusion/holding is sound in law and had rendered whatever the court earlier said regarding the nullity of the letter or retirement and other issues of no moment or irrelevant or *obiter dicta*.

In the circumstance and having regards to the more detailed reasons contained in the lead judgment of my learned brother *ADEREMI, JSC*, the draft of which I had the privilege of reading, I too dismiss the appeal for lack of merit and abide by all the consequential orders made therein, including the order as to costs.

Appeal dismissed.

E

CHUKWUMA-ENEH JSC

This appeal is against the decision of the Court of Appeal, Enugu Division. The facts and circumstances of the matter are as given in the lead judgment of my learned brother Aderemi, JSC and I adopt the same for this short contribution. One clear point highlighted in this case is that in dealing with interlocutory matters as the instant matter, the Court has to limit itself within the scope of the motion before it and not to prejudge a crucial point which is to be tried in the substantive matter in due course. See *OLUKOYA V WEMA BANK LTD.* (1989) 1 S.C. (Pt.1) 132. In this matter, the Court of Appeal has gone beyond the issue for determination to decide at interlocutory stage the main issue of the offending letter, the basis of this action.

It is in the main on the issue of nullity of the offending letter that this interlocutory appeal has eventually come to this Court. The sequence of events in this matter is elucidating as it ultimately has culminated in the order for hearing of the matter on the merit by the trial Court. The defendants (respondents in this Court) have brought

H

an application praying in limine the trial Court to dismiss this suit filed by the plaintiff (appellant in this Court) challenging his removal from office as Permanent Secretary in the Ebonyi State Civil Service for lack of jurisdiction, in that the plaintiff has been improperly removed from his office as Permanent Secretary under the provisions of the Public Officers (Special Provisions) Decree No. 17 of 1984 and importantly, because under the said provisions the trial Court's jurisdiction to entertain any claim contesting the removals from office of public officers is ousted. The plaintiff has filed the instant writ of summons and before pleadings have been filed and exchanged, the respondents have filed an application to hear and determine the suit on the ground that the Court lacks jurisdiction and that the suit is statute-bared. Thus, the jurisdiction of the trial Court in this matter has been called to question. Jurisdiction is the cornerstone of all litigations. See: UTI V ONOYIME (1991) SCNJ 25 at 49, DAPIALONG V DARIYE (2007) 8 NWLR (Pt.1036) 332, GOVERNOR, KWARA STATE V LAWAL (2007) 13 NWLR (Pt 105) 347 and also MINISTER. WORKS AND HOUSING V SHITTU (2007) 16 NWLR (Pt 1060) 351. It is settled law that if a Court is bereft of jurisdiction to hear and determine a matter before it any steps taken in the matter is a nullity and void. Hence the trial Court rightly has proceeded to take this application first See: ADESOLA V ABIDEYE (1999) 10-12 S.C. 109 at 122 GARBA V FEDERAL CIVIL SERVICE COMMISSION (1988) 1 NWLR (Pt.71) 449, ATTORNEY-GENERAL LAGOS STATE V HON. JUSTICE L. J. DOSUMU (1989) 3 NWLR (PT 111) 556, ATTORNEY-GENERAL. ANAMBRA STATE V ATTORNEY-GENERAL OF THE FEDERATION (1993) 6 NWLR (Pt.302) 692, KOTOYE V SARAKI (1994) 7 NWLR (Pt.357) 414.

The trial Court has acceded to the defendants' prayer. And sequel upon that, the plaintiffs suit has to be dismissed for want of jurisdiction. On appeal to the Court of Appeal (Court below) it has held inter alia that:

"The result is that I set aside the ruling of the Court below dismissing the plaintiff's claim. The lower Court has jurisdiction to hear and determine the suit".

Earlier on, the Court of Appeal has come to the conclusion that exhibit OSCO 1 that is, the offending letter - the cause of action in this matter which has issued to the plaintiff on the matter of his

removal from office without the authorization of the appropriate authority is a nullity. In the confusion that has ensued, respectfully, the Court of Appeal has thrown the baby out with the bath water.

The plaintiff has rightly challenged what, respectfully, is a legal double-talk by the Court below in that on the one hand it has declared exhibit OSCO 1, the cause of the instant action in this matter a nullity while on the other hand even though it has knocked the bottom off the entire case by so declaring the said offending letter a nullity, it has all the same, purported to remit the case to the trial Court to be heard and determined on the merits as the trial Court has the power to do so. What has all along been on the front burner in this application has always been the issue of jurisdiction simpliciter i.e. to hear and determine this matter so that the order declaring exhibit OSCO 1 a nullity and therefore void has no basis on which to stand moreso as it does not arise from the ruling of the trial Court. See IFABIYI V ADENIYI (2000) 5 S.C. 31 at 42. Even then, the parties have not joined issues on the pleadings as the parties have yet to file their pleadings. The Court below has, therefore, committed a grave error in this regard. And so while the order declaring the offending letter, the cause of action here a nullity is completely dis- countenanced being an incompetent order in the circumstances and I, therefore, strike out the same; I uphold the order remitting this matter for trial on the merits before another judge.

Subject to the foregoing conclusion, I agree with the judgment of my learned brother Aderemi, JSC, the draft of which I have read before now that the appeal should be dismissed. I also dismiss it and endorse all the orders made therein.

G

H