

SUPREME COURT OF NIGERIA

11TH MARCH, 2011, SC. 266/2006

CORAM:- C. M. CHUKWUMA-ENEH, J. A. FABIYI, O. O. ADEKEYE, S. GALADIMA, B. RHODES-VIVOUR, JJSC

ISAAC OBIUWEUBI APPELLANT

AND

CENTRAL BANK OF NIGERIA RESPONDENT

JURISDICTION - Federal High Court - S. 251 of 1999 Constitution
- Conditions - A party must be the Federal Government or its agent
- And subject matter must arise from its management decision - Or interpretation of constitution (H1)

JURISDICTION - Courts - Trial - Governing law - It is the law in force at time of trial - That determines the court vested with jurisdiction to try a case (H2)

JUDICIAL PRECEDENTS - Jurisdiction of Courts - Abatement - O.H.M.B v. Garba - The ratio in that case is that an intervening change in the law - Cannot divest a court of jurisdiction - To conclude its part heard matters (H3)

JUDICIAL PRECEDENTS - Stare decisis - Application - Caveat - Facts must be examined before following precedents - As judgments can only be understood in the light of facts - On which they were decided (H4)

JUDICIAL PRECEDENTS - Abatement of jurisdiction - Egypt Air v. Abdullahi - Correctness - The case was wrongly decided - In so far as it held that all proceedings after change of law are a nullity (H5)

JUDICIAL PRECEDENTS - Stare decisis - Contradictory authorities - Duty of counsel - Where there are contradictory Supreme Court authorities on a point - Counsel should follow that which is more recent (H6)

STATUTES REFERRED TO

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

Interpretation Act, L.F.N. 1990, s. 6

Constitution of the Federal Republic of Nigeria, 1979, s. 230

Constitution (Suspension and Modification) Decree No. 107 of 1993

Central Bank of Nigeria Act, Cap 47, L.F.N., 1990, s. 39

FACTS

The plaintiff/appellant sued defendant/respondent before the High of Lagos State on 7th July 1988, challenging the termination of his employment with the respondent as unlawful, null and void. The suit was before Fafiade J. (as she then was). Before trial could commence in the suit, Her Lordship retired. Consequently, on 22nd January 1991, the case came before Olugbani J. (as he then was) for the first time. On 15th December, 1993, trial commenced with appellant giving evidence, which evidence he concluded on 8th October 1996. Again, at that point, His Lordship retired. So on 23rd September, 2002, the case started de novo before Lufadeju J. (as she then was).

By this time, the Constitution of the Federal Republic of Nigeria, 1999, had come into force. On the basis of section 251(i) (p) and (r) thereof, respondent raised a preliminary objection to the jurisdiction of the High Court of Lagos State to try the suit as the Constitution had conferred exclusive jurisdiction on the Federal High Court. The objection was heard and on 16th December, 2003 The learned trial judge ruled that it lacked jurisdiction to try the suit. Aggrieved, appellant appealed to Court of Appeal which court dismissed the appeal. Still dissatisfied appellant has come on a further and final appeal to the Supreme Court. It is appellant's contention that the decision of Court of Appeal derogated from the decisions of Supreme Court on the point and so was in total disregard of the principal of stare decisis.

ISSUE FOR DETERMINATION

Whether the High Court of Lagos had jurisdiction to hear and determine the suit which was brought before it by the appellant in view of the Constitution. (Suspension and Modification) Decree 107 of 1993 and the 1999 Constitution.

HELD (Unanimously dismissing the appeal per **RHODES-VIVOUR JSC**)

JURISDICTION - Federal High Court

1. For the Federal High Court to have jurisdiction under Section 230 of the 1979 Constitution or Section 251 of the 1999 Constitution the following must coexist.

(a) The parties, or a party must be the Federal Government or its agencies;

(b) Subject matter of the Litigation.

That is to say jurisdiction is the combination of parties and subject matter. The words used in this piece of legislation are plain as plain can be and have been interpreted by this court on several occasions. On subject matter of the litigation, the matter must arise from the administration, management and control of the Federal Government or any of its agencies, from the operation and interpretation of the Constitution and from any action or proceedings for a declaration or injunction affecting the validity of any executive or administrative action or decisions by the Federal Government, or any of its agencies.

(p. 849 B/F)

JURISDICTION - Courts - Trial - Governing law

2. The Law in force, or existing at the time the cause of action arose is the law applicable for determining the case. This law does not necessarily determine the jurisdiction of the court at the time that jurisdiction is invoked. That is to say the law in force at the time cause of action arose governs determination of the Suit, while the law in force at the time of trial based on cause of action determines the court vested with jurisdiction to try the case. For example. Decree 107 of 1993 came into force on 17/11/93. A litigant who had a cause of action in 1990 would have his case governed by the law at the time (i.e. 1990) if trial commences before 1993 the court to try the case would be the State High Court but if after 17/11/93 the case would be tried in the Federal High Court. (p. 852 A)

JUDICIAL PRECEDENTS - Jurisdiction of Courts

3. The next case is:

O.H.M.B. v Garba and 2 ors 2002 7 SC Pt .11 P 138

Learned Counsel for the appellant relied heavily on it, and asked that we follow it. In the case (Supra) the respondents were employees of the appellant's Board. They, with other employees were put

on indefinite suspension in 1992. They brought action in the High Court against the appellant's Board for declarations, and arrears of salaries. The cause of action arose before 17/11/93 and trial also commenced before that date.

B Infact the respondents closed their case on 17/1/93. As at 17/11/93 when the State High Court was divested of jurisdiction to hear the case, the matter was part heard. This court held that it was the High Court that had jurisdiction to hear and determine the case and not the Federal High Court. The reasoning of this Court runs as follows:
C Decree 107 of 1993 cannot affect pending proceedings to deprive the State High Court of jurisdiction to conclude such proceedings. Reliance was placed on Section 6(i) of the Interpretation Act, Cap. 192 Laws of the Federation of Nigeria 1990. (p. 853 E)

D *Stare decisis - Application - Caveat*

4. The Supreme Court is the final Court of Appeal in Nigeria. Its decisions are binding on every court in this country. By the doctrine of Stare Decisis all courts are bound to follow the decisions of this Court. The reason is simple. Following previous decisions of this court
E ensures certainty and order in the judicial system. It ensures stability and removes surprises. Counsel is assured that justice would be done, and it reduces stress and makes the task of dispensing justice easier and less onerous.

F Before following Precedent, facts must be examined. This is so because judgments can only be understood in the light of the facts on which they were decided. Afterall facts have no views. (p. 854 E)

Abatement of jurisdiction - Egypt Air v. Abdullahi

G 5. I now, go back to consider decisions in:
Egypt Air v Abdullahi 1997 1NWLR Pt 528 p182, and SDPC v Isaiah 2001 11 NWLR Pt 723 p168

In the former it was held that if the trial in the State High Court is not concluded before the amendments came into force, proceedings after the amendment are a nullity. The case ought to be transferred to the Federal High Court. This case is clearly in conflict with O.H.M.B. v Garba (Supra).

I must observe, first, that it is a decision of the court of Appeal. To my mind it is wrong, for the simple reason that had their Lordships ad-

verted their minds to Section 6(i) of the Interpretation Act Cap 192 Laws of the Federation of Nigeria 1990 they would not have decided in the manner they did.

Decree No 107 of 1993 is substantive law. It has no retrospective operation, and so would not affect proceedings that are ongoing before 17/11/93. B

Cases that were on going before 17/11/93 were to be concluded by the State High Court, while cases that commenced after 17/11/93 are to be heard by the Federal High Court. It is thus clear that Egypt Air v Abdullahi (Supra) was wrongly decided. (p. 855 H/856 F) C

Stare decisis - Contradictory authorities - Duty of counsel

6. It is SDPC v Isaiah 2001 FWLR Pt 56 p 608

that is in conflict with O.H.M.B. v Garba (Supra). In SDPC v Isaiah (Supra) the reasoning of this court is that proceedings before the State High Court terminates when Decree 107 of 1993 comes into force not withstanding whether proceedings commenced before the Decree came into force, while O.H.M.B. v Garba (supra) is of the view that proceedings commenced in the State High Court continue after the Decree came into force in the State High Court. E

SDPC v Isaiah (supra) was decided in 2001 while O.H.M.B. v Garba (supra)

Olutola v Unilorin (supra)

Osakue v F.C.E (supra) were decided in 2002, 2004 and 2010. F

The position of Stare Decisis is not for counsel to follow the decision he likes but to follow the decision that is more recent.

O.H.M.B. Garba (supra),

Olutola v Unilorin (supra) and

Osakue v F.C.E. (supra) G

are sound law and represent the correct interpretation of the Legislation under consideration. (p. 857 H)

NOTABLE POINTS OF INTEREST

ADEKEYE JSC H

1. Procedural jurisdiction can arise by submission

There are broadly two types of jurisdiction and a distinction must be drawn between them namely:-

(a) Jurisdiction as a matter of procedural law

(b) Jurisdiction as matter of substantive law.

While a litigant may submit to a procedural jurisdiction, he or she cannot confer jurisdiction on a court where the Constitution or a Statute or any provision of the common law says that the court does not have jurisdiction. (p. 863 F)

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2. Jurisdiction is not the same as competence

There is a tendency to equate jurisdiction and competence of a court to mean one and the same thing. A court must have both jurisdiction and competence to be properly seized of a cause or matter. Jurisdiction is the power conferred on a court by statute or the Constitution. A court is competent when:-

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(1) It is properly constituted with respect to the number and qualification of members.

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(2) The subject matter of the action is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction.

(3) The action is initiated by due process of law and

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(4) Any condition precedent to the exercise of its jurisdiction has been fulfilled.

A court can not entertain a cause which it has no jurisdiction to adjudicate upon. (p. 864 F)

REPRESENTATION

F

Chief J.O. Akpuduro; for the Appellant
K.S. Omosivwe; for the Respondent.

CASES REFERRED TO

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Tariola v Williams 1982 7 SC p27

Ajao v Popoola 1986 5 NWLR Pt 45 p 802

Okoya v Santilli 1990 2NWLR Pt 131 P172

Oloriode v. Oyebi (1984) 1 SCNLR pg. 390

Galadima v. Tambai (2000) 6 SC pt. 1, pg. 196

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N.E.P.A. v Edegbero 2002 18 NWLR pt 798 p79

Adigun v. Ayinde 1993 8 NWLR, pt.313, pg. 516

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

Egypt Air v Abdullahi 1997 11 NWLR Pt528 p182

Umanah v. Attah (2006) 17 NWLR pt. 1009, pg. 503

Globe Fishing Industries Ltd. v. Coker 1990 11 SCNJ p56
Eperokuu v University of Lagos 1986 4 NWLR pt 34 p162
Afribank (Nig.) Plc v. Akiwasa (2006) 5 NWLR, pt. 974, pg. 619
Osakue v F.C.E. (Technical) Asaba and 2 ors 2010 2-3 SC Pt111 p158

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STATUTES REFERRED TO

Constitution of the Federal Republic of Nigeria, 1999, s. 251
Interpretation Act, L.F.N. 1990, s. 6
Constitution of the Federal Republic of Nigeria, 1979, s. 230
Constitution (Suspension and Modification) Decree No. 107 of 1993
Central Bank of Nigeria Act, Cap 47, L.F.N., 1990, s. 39

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LEAD JUDGMENT BY RHODES-VIVOUR JSC

The facts are rather straightforward. The Appellant was a senior employee of the Respondent Bank. On the 11th day of August 1987 he was put on suspension, and on the 30th day of October 1987 his appointment was terminated. Aggrieved by the situation, he sued the respondent at the Lagos High Court. He sought a declaration that the decision to terminate his employment was unlawful, null, and void as it offends the Rule of Natural Justice. He also claimed his entitlements and general damages in the sum of N100,000 against the respondent bank. The Writ of Summons and statement of claim were filed in the Registry of the Lagos High Court on the 7th day of July 1988. The suit was before Fafiade J (as she then was). Pending before the learned trial judge was a Motion to dismiss the suit for want of jurisdiction. Reliance was placed on Section 3 (3) of Decree No. 17 of 1984. On the 14th of April, 1989 the learned trial judge ruled that the Lagos High Court had jurisdiction to hear the case and adjourned hearing for the 25th and 26th of October, 1989. Trial never commenced before Fafiade J. Her Lordship retired and on the 22nd day of January, 1991 the case came before Olugbani J. (as he then was) for the first time. On the 15th of December, 1993 trial commenced with the appellant (as plaintiff) giving evidence. (see page 145 of the Record of Appeal). The plaintiff concluded his evidence on the 8th of October, 1996. No witnesses were taken thereafter, then on the 23rd of September, 2002 the case came before Lufadeju J (as she then was) for the first time. Olugbani J. has since retired.

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On the 23rd of September, 2003 both Counsel adopted their written addresses on the issue of jurisdiction. Ruling was reserved by Lufadeju J for the 28th of October, 2003 but subsequently delivered on the 16th of December, 2003.

The objection to jurisdiction was for an order striking out the suit for want of jurisdiction in view of the provisions of Section 251 (1) (p) and (r).

In a considered Ruling delivered on the 16th of December, 2003 the learned trial Judge said in the penultimate paragraph that:

“.....By virtue of Section 251(i) (p) and (r) of the 1999 Constitution, only the Federal High Court has exclusive jurisdiction in Civil Cases and matters pertaining (among other things) to the Administrative action or decision of the Federal Government or any of its agencies.

And with the above reasoning the learned trial judge ruled that the Lagos High Court lacks jurisdiction to hear the case and struck it out. The plaintiff (as appellant) appealed to the Court of Appeal. The concluding part of the well considered judgment reads:

“.....In conclusion, I affirm the decision of the lower Court in its Ruling of 16th December, 2003 on the Respondents Motion on Notice. This appeal therefore fails. Each party to bear its costs”

This appeal is against that judgment. In accordance with Rules of the court, the appellant filed his Brief on the 7th of December, 2006. While the respondent’s Brief filed on the 19th of March, 2007 was deemed duly filed and served on the 7th of July, 2010. The appellant formulated four issues for determination. They are:

ISSUE 1.

Whether the Court of Appeal after recanting the provisions of Section 236 (i) of the 1979 Constitution as the applicable law in this action and Section 251(i) (p) and (r) of the 1999 Constitution respectively was right to hold that the provisions of section 251 (i) (p) and (r) of the 1999 constitution operated in retrospect to deprive the State High Court of the jurisdiction it competently exercised in 1988 before the amendment that ousted its jurisdiction having regard to the fact that Section 251 of the 1999 Constitution did not contain abatement provision or have retroactive effect.

ISSUE 2

Was it open to the Court of Appeal to depart from or derogate

from a decision of the Supreme Court delivered in the *Orthopaedic Hospitals Management Board v Garba* 2002 7 SC Pt 11 p 138 at 148 even when the Court of Appeal held see page 267 - 268 of the Records

"The case of *OHMB v Garba* (Supra) cited by the Appellant is instructive and very remarkable but I fear the Appellant is inviting the Court to misapply the Law..... was in total disregard to the hallowed principle of stare - decisis.

ISSUE 3

Whether the Court of Appeal correctly interpreted the Provisions of Section 6 (i) of the Interpretation Act 1990 as to when an enactment expires, lapses or ceases to have effect or is repealed and particularly sub-section (6) (i) (e) of the aforesaid Act in relation to the pending proceedings of the Appellant in the Lagos High Court.

ISSUE 4

Whether the Court of Appeal was right to hold that Decree No. 107 of 1993 with effect from 17th November, 1993 operated in retrospect to affect the Appellant's action which was already pending in the Lagos State High Court since 1988 without any provision whatsoever for cases pending in the State High Courts to abate in the said Decree and thereby importing into the Decree No. 107 of 1993 abatement provisions.

Learned counsel for the respondent formulated a sole issue for determination. It reads:

Whether the claimant's action is caught by the provisions of Section 251 (i) (p) (r) of the 1999 Constitution notwithstanding its commencement in 1988 before the promulgation of the 1999 Constitution.

Let me say straightway that issues formulated by the appellant are at best prolix, of an academic nature and do not address the real grievance in this appeal. The sole issue formulated by the respondent is nearer the point. An Appeal Court is at liberty to adopt issues formulated or formulate issues that would determine the real grievance in an appeal, if not satisfied with the issues formulated as I now find myself. The main issue arising in this appeal is:

Whether the High Court of Lagos had jurisdiction to hear and determine the suit which was brought before it by the appellant in view of the Constitution. (Suspension and Modification) Decree 107

of 1993 and the 1999 Constitution.

At the hearing of the appeal on the 16th of December, 2010. Learned Counsel for the appellant, Chief J.O. Akpuduro adopted his brief filed on the 7th of December, 2006 and urged this court to allow the appeal. Likewise, K.S. Omosivwe adopted his brief filed on the 19th of March, 2007, and deemed duly filed on 7th of July, 2010. He urged us to uphold the decisions of the two courts below and dismiss the appeal.

This is an area of our Law that appears difficult. In the course of this judgment I shall examine some judgments of the Supreme court and make observations which I venture to hope will be of assistance to judges who have the task of applying the law in this difficult area. It is well settled that where the words of a statute are clear, the court should accord it its ordinary and plain meaning. See

D Mobil v F. B. I. R. 1977 3SC p53

Tariola v Williams 1982 7 SC p27

Section 230 of the 1979 Constitution was amended by the Constitution (Suspension and Modification) Decree No. 107 of 1993.

The Section as amended, relevant to this appeal reads thus:

E “(i) Notwithstanding anything to the contrary contained in this constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly or a Decree the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters arising from:

F (q) the administration or the management and control of the Federal Government or any of its agencies;

(r) subject to the provisions of this Constitution in so far as it affects the Federal Government or any of its agencies

G (s) any action or proceedings for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies; provided that; nothing in the provisions of paragraphs (q), (r) and (s) of this subsection shall prevent a person from seeking redress against the H Federal Government or any of its agencies in an action for damages, injunction or specific performance where the action is based on any enactment, law or equity.

Section 251 (i) (p) (q) (r) of the 1999 Constitution is *impari materia* with the above. The provisions vest exclusive jurisdiction in the Fed-

eral High Court in Civil causes and matters arising from the administration, management and control of the Federal Government and its agencies, the operation and interpretation of the Constitution as it affects the Federal Government and its agencies as well as any action or proceedings for a declaration or injunction affecting the validity of any executive or administrative action or decisions by the Federal Government and its agencies. B

For the Federal High Court to have jurisdiction under Section 230 of the 1979 Constitution or Section 251 of the 1999 Constitution the following must coexist.

(a) The parties, or a party must be the Federal Government or its agencies; C

(b) Subject matter of the Litigation.

That is to say jurisdiction is the combination of parties and subject matter. The words used in this piece of legislation are plain as plain can be and have been interpreted by this court on several occasions. D

See: N.E.P.A. v Edeghero 2002 18 NWLR pt 798 p79

Oloruntoba - Oju v Abdul-Raheem & 3 Ors 2009 5-6 SC (Pt.11) P 57. E

In this appeal it is not in dispute that the respondent, the Central Bank of Nigeria is an agency of the Federal Government. Any lingering doubt of that fact is put to rest by the provisions of Section 39 of the Central Bank of Nigeria Act, Cap 47 Laws of the Federation of Nigeria 1990 which states that the Central Bank may act generally as agent for the Federal Government or of a State Government. It is thus obvious that the respondent Bank was established as an Agency of the Federal Government. ***On subject matter of the litigation, the matter must arise from the administration, management and control of the Federal Government or any of its agencies, from the operation and interpretation of the Constitution and from any action or proceedings for a declaration or injunction affecting the validity of any executive or administrative action or decisions by the Federal Government, or any of its agencies.*** F G H

I am firmly of the view that as from the 17th of November, 1993 the Federal High Court had exclusive jurisdiction if the matter is a civil matter arising from the administration, management and control of

the Federal Government or any of its agencies.

The matter must arise from the operation and interpretation of the Constitution.

Finally the matter must arise from any action or proceedings for a declaration or injunction affecting the validity of any executive or administrative action or decisions by the Federal Government, or any of its agencies.

This suit has to do with the administration or management and control of the Federal Government. The respondent is a Federal agency and the appellant is/was its employee. The termination of the appellant's appointment is an administrative action by an agency of the Federal Government, the respondent.

Learned Counsel for the appellant in his brief observed that at the time the appellant's cause of action arose in 1987, neither Decree No. 107 of 1993 or Section 251 (i) (p) (r) of the 1999 Constitution was in force contending that the said Legislations do not have retro-active provisions. He argued that the two courts below were wrong to hold that the said provisions applied. Reliance was placed on:

N.E.P.A. v B Atukpor 2001 1NWLR Pt 693 p96

OHMB v Garba 2002 7 SC Pt11 p138

Learned counsel observed that OHMB v Garba (Supra) is on all fours with the appellant's case and the courts below ought to have followed the principle of Stare decisis. Reliance was placed on:

Globa Transport Oceanic SA and Anor v Free Enterprises Nig. Ltd. 2001 2SC p154

Eperokuu v University of Lagos 1986 4 NWLR pt 34 p162.

Finally he observed that Section 251 of the 1999 Constitution and Decree No 107 have no abatement regarding pending cases and also have no retrospective effect. Reliance was placed on Section 6(i) of the Interpretation Act Cap 192.

The urged us to allow the appeal and set aside the decision of the Court of Appeal. In response, learned counsel for the respondent argued that for the Federal High Court not to have jurisdiction under Decree 107 OR Section 251 (p) (q) (s) of the 1999 Constitution, the cause of action must arise before 17/11/93, the date the amendments come into force, and the trial must be concluded before that date. Reliance was placed on:

Egypt Air v Abdullahi 1997 11 NWLR Pt528 p182

SPDC v Isaiah 2001 FWLR Pt56 p608

Learned Counsel submitted that the appeal lacks merit. Jurisdiction is a threshold matter. It is very fundamental as it goes to the competence of the Court to hear and determine a suit. Where a court does not have jurisdiction to hear a matter, the entire proceedings no matter how well conducted and decided would amount to a nullity. It is thus mandatory that courts decide the issue of jurisdiction before proceeding to consider any other matter. See:

Bronik Motors Ltd and another v Wema Bank Ltd. 1983 1 SCNLR p.296

Okoya v Santilli 1990 2NWLR Pt 131 P172

Madukolu v Nkemdilim 1962 1 ANLR Pt 4 p587

Jurisdiction can be raised at any stage of the proceedings in the High Court, on appeal and even in the Supreme Court for the first time. See:

Usman Danfodio University v Krans Thompson Organisation Ltd 2001 15 NWLR Pt 736 p305

It can be raised by any of the parties or by the court, and once raised the judge would do well to examine it and render a considered Ruling on it. In the task of determining if the court has jurisdiction to hear and determine a case the following principles must be considered diligently by the Judge.

(a) Whether the subject matter of the case is within the court's jurisdiction;

(b) Whether there is any feature in the case which Prevents the court from exercising its jurisdiction, and

(c) Whether the case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction; see:

Madukolu v Nkemdilim 1962 2 SCNLR p342

Ajao v Popoola 1986 5 NWLR Pt 45 p 802

Furthermore when there is an appeal on the substantive matter to the Court of Appeal and issue of jurisdiction is raised, the Court of Appeal should make a finding on jurisdiction and if finds that it has no jurisdiction it should go ahead and say so and give a considered judgment on the substantive matter. This is so because as the penultimate court it must make its decision on the substantive appeal known to the Supreme Court, since its Ruling on jurisdiction may

very well be wrong. See:

Ebba v Egodo and Anor 1984 1.S.C.N.L.R. p372 Jamgbndi v Jamgbadi 1963 2 SCNLR p311.

The Law in force, or existing at the time the cause of action arose is the law applicable for determining the case. This law does not necessarily determine the jurisdiction of the court at the time that jurisdiction is invoked. That is to say the law in force at the time cause of action arose governs determination of the Suit, while the law in force at the time of trial based on cause of action determines the court vested with jurisdiction to try the case. For example. Decree 107 of 1993 came into force on 17/11/93. A litigant who had a cause of action in 1990 would have his case governed by the law at the time (i.e. 1990) if trial commences before 1993 the court to try the case would be the State High Court but if after 17/11/93 the case would be tried in the Federal High Court.

Decree 107 of 1993 denied the State High Court jurisdiction as from 17/11/93 and transferred jurisdiction on the matters in Section 251 of the Constitution to the Federal High Court. As from 17/11/93 the State High Court no longer had jurisdiction. See:

Uwaifo v A-G Bendel State 1982 7SC p124

Adah v NYSC 2004 13 NWLR Pt 891 p639

Jurisdiction of the Court to entertain an action is determined by examining the law conferring Jurisdiction at the time the suit is instituted and trial commences.

The Supreme Court has dealt with the Constitutional provision in the past. I shall now examine a few cases particularly OHMB v Garba (Supra) which learned counsel for the appellant says is on all fours with this case:

In Olutola v Unilorin 2004 18NWLR Pt 905 p416

The appellant, a Professor of Education at the University of Ilorin was removed from office in 1989. He sued the University. His action was filed on 13/1/93. Trial commenced on 31/3/94.

This court ruled that the court that had jurisdiction to hear and determine the suit was the Federal High Court.

This was so because Decree 107 of 1993 came into force on 17/11/93. It divested the state High Court of jurisdiction to hear the case. Since trial in the case commenced on 31/3/94 a date after 17/11/93,

the correct court to hear the case was the Federal High Court.

In *Osakue v F.C.E. (Technical) Asaba and 2 ors* 2010 2-3 SC Pt111 p158

The cause of action arose in 1990 when the appointment of the appellant was terminated. The appellant sought redress at the High Court in Asaba in 1992. The court commenced trial in the action in 1994. Decree 107 of 1993 became operative on 17/11/93. The law applicable to determine jurisdiction is Decree 107 of 1993. At the time the case was heard in 1994, the State High Court had been divested of jurisdiction. The correct court to hear the case once again was the Federal High Court.

Olutola v Unilorin Supra and *Osakue v F.C.E Supra* are similar in that in both cases cause of action arose before 17/11/93. At the time cause of action arose it was the State High Court that had jurisdiction to hear and determine the case, but when the cases were eventually heard after 17/11/93 jurisdiction of the Court to entertain the action had changed. Jurisdiction to hear the action was conferred on the Federal High Court exclusively as at 17/11/93. Trial commenced in both suits in 1994.

The next case is:

***O.H.M.B. v Garba and 2 ors* 2002 7 SC Pt 11 P138**

Learned Counsel for the appellant relied heavily on it, and asked that we follow it. In the case (Supra) the respondents were employees of the appellant's Board. They, with other employees were put on indefinite suspension in 1992. They brought action in the High Court against the appellant's Board for declarations, and arrears of salaries. The cause of action arose before 17/11/93 and trial also commenced before that date.

Infact the respondents closed their case on 17/1/93. As at 17/11/93 when the State High Court was divested of jurisdiction to hear the case, the matter was part heard. This court held that it was the High Court that had jurisdiction to hear and determine the case and not the Federal High Court. The reasoning of this Court runs as follows: Decree 107 of 1993 cannot affect pending proceedings to deprive the State High Court of jurisdiction to conclude such proceedings. Reliance was placed on Section 6(i) of the Interpretation Act, Cap.

192 Laws of the Federation of Nigeria 1990. The provision runs thus:

- “6(i) *The repeal of an enactment shall not*
 (a) *revive anything not in force or existing at the time when the repeal takes effect;*
 B (b) *affect the previous operation of the enactment or anything duly done or suffered under the enactment;*
 (c) *affect any right, privilege, obligation or liability accrued or incurred under the enactment;*
 C (d) *affect any penalty, forfeiture or punishment incurred in respect of any offence committed under the enactment;*
 (e) *affect any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment.*
 D and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and such penalty, forfeiture or punishment may be imposed, as if the enactment had not been repealed. Decree 107 of 1993 is substantive Law and it does not have retrospective operation. That explains the reasoning in: O.H.M.B. v Garba
 E (Supra)

Whether O.H.M.B. v Garba (Supra) can be followed in this case.

- The Supreme Court is the final Court of Appeal in Nigeria. Its decisions are binding on every court in this country. By the doctrine of Stare Decisis all courts are bound to follow the decisions of this Court. The reason is simple. Following previous decisions of this court ensures certainty and order in the judicial system. It ensures stability and removes surprises.***
 F
Counsel is assured that justice would be done, and it reduces stress and makes the task of dispensing justice easier and less onerous.
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- Before following Precedent, facts must be examined. This is so because judgments can only be understood in the light of the facts on which they were decided. After all facts have no views.***
 H

In this case the cause of action arose on the 30th of October, 1987 when his (appellant's) appointment was terminated. He sued the respondent on the 7th of July, 1988. The 1st judge to hear the case

was Fafiade J. No witnesses were taken before her Lordship retired. The case then came before Olugbani J for the first time on 22nd of January, 1991. Trial commenced before Olugbani J. with evidence of the appellant on the 15th of December, 1993. The appellant concluded his evidence on the 8th of October, 1996. No witness was taken thereafter. Olugbani J. retired, and so the case came before B Lufadeju J. It is clear that the facts in O.H.M.B. v Gabra Supra are different from the facts in this case. The important thing to note is the date, 17/11/93 when the State High Court no longer had jurisdiction to hear the case.

In O.H.M.B. v Garba Supra, the cause of action and trial commenced C before 17/11/93. In this case the cause of action arose before 17/11/93 but trial commenced before Olugbani J after 17/11/93. i.e on 15/12/93. Furthermore the proceedings before Olugbani J are of no effect, since the case went before Lufadeju J to start “*de novo*”. D De novo means anew. That is, to start all over again.

Anyway one looks at it the facts in O.H.M.B. v Garba supra are different from the facts in this case, and so O.H.M.B. v Garba cannot be followed. If I may add this case was filed in the Lagos High Court on the 7th of July 1988. This year makes it twenty-three years (23 years) E since it was filed in court. It was sent to the Court of Lufadeju J in 2002 to start De novo. Lufadeju J has since retired. That is to say for twenty three years not a single witness has been taken. This is Classic case where interlocutory appeals should be discouraged. Counsel F ought to have proceeded with the trial before the State High Court and at the end of trial appeal on the substantive case (if the need arises) and include jurisdiction.

Twenty three years waiting for his entitlements is clearly too long a time to wait. It must be highly traumatic and at great cost to the G appellant, and waste of precious judicial time. Unnecessary interlocutory appeals such as this have been frowned upon by this court. See: *Tukur v Government of Gongola State* 1989 4 NWLR Pt 117 p317 *Globe Fishing Industries Ltd. v. Coker* 1990 11 SCNJ p56.

I now, go back to consider decisions in:

***Egypt Air v Abdullahi* 1997 1 NWLR Pt528 p182, and *SDPC v Isaiah* 2001 11 NWLR Pt723 p168**

In the former it was held that if the trial in the State High Court is not concluded before the amendments came into force, pro-

ceedings after the amendment are a nullity. The case ought to be transferred to the Federal High Court. This case is clearly in conflict with O.H.M.B. v Garba (Supra).

I must observe, first, that it is a decision of the court of Appeal. To my mind it is wrong, for the simple reason that had their Lordships adverted their minds to Section 6(i) of the Interpretation Act Cap 192 Laws of the Federation of Nigeria 1990 they would not have decided in the manner they did. Section 6(i) Supra provides:

- C “6(i) the repeal of an enactment shall not:
- (a) revive anything not in force or existing at the time when the repeal takes effect;
- (b) affect the previous operation of the enactment or anything duly done or suffered under the enactment;
- D (c) affect any right, privilege, obligation or liability accrued or incurred under the enactment;
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under, the enactment;
- E (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;
- and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if, the enactment had not been repealed.”

F **Decree No 107 of 1993 is substantive law. It has no retrospective operation, and so would not affect proceedings that are ongoing before 17/11/93.**

G **Cases that were on going before 17/11/93 were to be concluded by the State High Court, while cases that commenced after 17/11/93 are to be heard by the Federal High Court. It is thus clear that Egypt Air v Abdullahi (Supra) was wrongly decided.**

H The SDPC case is a decision of this court. This court observed that:

“While it is correct that the cause of action arose before the promulgation of the Decrees mentioned above, the trial of the action was in progress when Decree 107 of 1993 was signed into law.....”

This court concluded ”From that moment when the Decree was signed into Law the jurisdiction of the State High Court to determine

any matter connected with or pertaining to mining and minerals, including oil fields, oil mining, geological surveys and natural gas has been ousted. Once the jurisdiction of a court to determine a matter has been ousted any further hearing in the matter is indeed null and void because any decision it makes amounts to nothing”.

I must at this stage, for the purpose of emphasis state clearly what this court decided on proceedings in High Courts in the light of Decree 107 of 1993. Decree 107 of 1993 became operative on 17th November, 1993. On that date the State High Courts ceased to have jurisdiction for the causes of action in Section 230(i) of the 1979 Constitution. As from that day the Federal High Court was conferred with the said causes of action.

In *Osakue v F.C.E.* (supra) and *Olutola v Unilorin* (Supra)

It was held that where the cause of action arises before the amendments came into force by Decree 107 of 1993 but trial commenced after the date the amendments came into force, then the Federal High Court would have exclusive jurisdiction to hear and determine the case. In *O.H.M.B. V Garba* supra

It was held that if as in the two cases referred to above the cause of action arose before amendments by Decree 107 of 1993 came into force and trial commenced before that date, and so trial was part heard before the said date, trial should continue in the State High Court, because Decree 107 of 1993 has no retrospective provision. To my mind there is no conflict in these cases. In: *Osakue v F.C.E.* (supra) and *Olutola v Unilorin* (supra) Trial commenced for the first time in 1994, i.e. after 17/11/93 when Decree 107 of 1993 came into force. The Federal High Court had exclusive jurisdiction as at 7/11/93. Consequently proceedings before the State High Court in 1994 are clearly a nullity.

In: *O.H.M.B. v Garba* (supra) as at 17/11/93 the case was part heard in the State High Court. The State High Court could continue since Decree 107 of 1993 has no retrospective provision.

To my mind there is no conflict whatsoever in the following cases.

Osakue v F.C.E. 2010 2-3 SC (Pt.111) p.158

Olutola v Unilorin 2004 18 NWLR Pt905 p416

O.H.M.B. v Garba 2002 7SC (Pt. 11) p138

It is SDPC v Isaiah 2001 FWLR Pt56 p608

that is in conflict with O.H.M.B. v Garba (Supra). In SDPC v

Isaiah (Supra) the reasoning of this court is that proceedings before the State High Court terminates when Decree 107 of 1993 comes into force not withstanding whether proceedings commenced before the Decree came into force, while O.H.M.B. v Garba (supra) is of the view that proceedings commenced in the State High Court continue after the Decree came into force in the State High Court.

SDPC v Isaiah (supra) was decided in 2001 while O.H.M.B. v Garba (supra)

Olutola v Unilorin (supra)

Osakue v F.C.E (supra) were decided in 2002, 2004 and 2010. The position of Stare Decisis is not for counsel to follow the decision he likes but to follow the decision that is more recent.

***O.H.M.B. Garba (supra),
Olutola v Unilorin (supra) and
Osakue v F.C.E. (supra)***

are sound law and represent the correct interpretation of the Legislation under consideration.

E For the State High Court to have jurisdiction under Decree 107 of 1993 the cause of action must arise before the 17th of November, 1993 and the trial must also be in progress before the said date. That is to say all part heard cases in the State High Court before 17/11/93 can continue after 17/11/93 in the State High Court because Decree 107 of 1993 does not have retrospective operation, and in view of Section 6(i) of the interpretation Act Cap 192 Laws of the Federation of Nigeria, 1990. See:

O.H.M.B. v Garba 2002 7SC (Pt 11) p138

G For the Federal High Court to have jurisdiction the suit must be filed on or after 17/11/93. All cases filed in the State High Court filed before 17/11/93 but in which trial had not commenced as at 17/11/93 shall be heard by the Federal High Court. See: *Olutola v Unilorin* 2004 18NWLR Pt 905 p416 *Osakue v F.C.E.* 2010 2-3 SC (pt 111) p158.

In this case, the appellant's cause of action arose on the 30th of October, 1987 when his appointment was terminated by the respondent. The appellant sued the respondent at the Lagos High Court in 1988. As at today, twenty three years thereafter trial has not com-

menced in the State High Court. Legislation applicable to the cause of action and that applicable to the jurisdiction of the Court in this case are so obviously different. When this case would eventually be heard the State High Court would have been divested of jurisdiction. For the purpose of clarity I must restate that this suit is against the Central Bank, a Federal Government Agency. The Central Bank terminated the appellant's employment. That act is an administrative action by the Central Bank. The Appellant's action is for declaration affecting the validity of an administrative decision of the Central Bank. It falls within the warm embrace of Section 251 (i) (r), provisions in *pari materia* with Section 230 of the 1979 Constitution as amended by the constitution (suspension and modification) Decree No. 107 of 1996.

Now, the appellant's cause of action arose in 1987. If trial commenced before 17/11/93 the State High Court would have jurisdiction if even trial continued after 17/11/93. On the other hand since trial has not yet commenced, since trial is to start *de novo*, it is the federal High court that has jurisdiction to hear the case. Furthermore since the case would commence after the 1999 Constitution came into force it is the Federal High Court that has jurisdiction to hear and determine the suit, in view of the provisions of Section 251 of the 1999 Constitution.

Finally I must observe that both courts below found that the proper court vested with jurisdiction to hear and determine the appellant's case is the Federal High Court. Both courts below are correct. Trial in the State High Court had not commenced before Decree 107 of 1993 came into force in 1993. In fact twenty three years thereafter (i.e. 2011) trial has still not commenced in any court. Learned counsel for the appellant would do well to pursue the claims of his client in the substantive suit- his entitlements, instead of putting his client through the harrowing experience for twenty three years to decide which court as between the State High Court and the Federal High Court is the correct court to hear his case. This appeal has no redeeming features. It is hereby dismissed. No order on costs.

CHUKWUMA-ENEH JSC

I have had the advantage of reading before now the lead judgment prepared and delivered by my learned brother Rhodes-Vivour JSC in this matter. I agree with his reasoning and conclusion that the appeal lacks merit and should be dismissed. I endorse the orders contained therein.

FABIYI JSC

I have read before now the judgment just delivered by my learned brother Rhodes-Vivour, JSC. I agree that this appeal lacks merit and deserves to be dismissed.

The appellant whose employment was terminated by the respondent - an agency of the Federal Government initiated his action before the Lagos State High Court in 1988. By virtue of section 230 (1) (s) of the 1979 Constitution as amended by the Constitution (Suspension and Modification) Decree No.107 of 1993, exclusive jurisdiction was vested in the Federal High Court in actions for declaration or injunction involving the Federal Government or any of its agencies. The respondent filed an application dated 4th October, 2001 to challenge the jurisdiction of the State High Court to hear the matter. Lufadeju, J. of the Lagos High Court determined the application on 16th December, 2003 in favour of the respondent and struck out the case for lack of jurisdiction. The Court of Appeal, Lagos Division on appeal by the appellant, affirmed the stand point of the trial court.

This is a further appeal to this court. Once again, the question of the jurisdiction of the State High Court vis-a-vis that of the Federal High Court is brought into lime light.

Section 230 (1) of the 1979 Constitution as amended by Decree 107 of 1993 provides as follows:-

Notwithstanding anything to the contrary contained in the constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly or a Decree, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters, arising from (actions stated in sub-paragraph (s)).

It hardly needs any gain-saying that the substantive law-exist-

ing at the time a cause of action arose governs the determination of the action. See: Attorney-General Lagos State v. Dosunmu (1989) 3 NWLR (Pt. 111) 552;

Uwaifo v. Attorney-General Bendel State (1982) 7 SC 124.

However, the law relating to jurisdiction is the prevailing law when the same is invoked. While the existing substantive law at the time a cause of action arose governs the determination of the action, the law in force at the time of the trial of the action determines the court that is vested with jurisdiction to try the case.

See: Adah v. N.Y.S. C. (2004) 13 NWLR (Pt. 891) 639 at 648; Utih v. Onoyivwe (1991) 1 NWLR (Pt. 166) 166 at 201.

The above stated position of the law is strongly fortified by the decision of this court in SPDC v. Isaiah (2001) FWLR (Pt. 56) 608 at 622-623 where it was held as follows:-

"Although the cause of action in this case arose before the promulgation of the applicable Decree ousting the jurisdiction of the State High Court and vesting exclusive jurisdiction on the Federal High Court, the trial of the action was in progress when the Constitution (Suspension and Modification) Decree No. 107 of 1993 was signed into law. From the moment when the Decree was signed into law, the jurisdiction of the State High Court to determine any matter connected with or pertaining to mining and minerals including oil mining, geological surveys and natural gas has been ousted. Consequently, the State High Court has no jurisdiction to determine the suit filed by the respondents against the appellant."

Further, in Olutola v. Unilorin (2004) 18 NWLR (pt. 905) 416 at 471 which is on all fours with this matter, this court per Edozie, JSC pronounced as follows:-

"Although a statute is prospective and not retrospective, since Decree No. 107 of 1993 made no special provision for cases already pending in court on its effective date of 17th November, 1993, those cases such as the one that gave rise to the instant appeal were caught by the Decree thereby rendering the decision of the trial court on 8th May, 1993 (sic) 1996 in the instant case a complete nullity."

In a recent similar case of Osakue v. F.C.E (Technical) Asaba & Ors. (2010) 2-3 SC (Pt. 111) 158, this court, in clear terms confirmed the position taken in Olutola v. Unilorin (supra). I was part of it. I have no reason to depart from the opinions therein expressed.

In short, the cause of action in the matter culminating in this appeal arose in 1988 when the appointment of the appellant was terminated and suit was initiated. Decree 107 of 1993 became operative as from November, 17th 1993. As at 16th December, 2003 when Lufadeju, J. of the Lagos State determined the application in
 B favour of the respondent and struck out the appellant's suit for want of jurisdiction in the matter became exclusively vested in the Federal High Court. The Court of Appeal was right in upholding the ruling of the trial court. I hereby affirm same.

C For the above reasons and those fully adumbrated in the lead judgment, I too feel that the appeal lacks merit and should be dismissed. I order accordingly. No order on costs.

D **ADEKEYE JSC**

I was privileged to read before now the judgment just delivered by my Learned Brother B. Rhodes-Vivour JSC.

I agree with his lordship's reasoning and conclusion on the fundamental points of law raised in this appeal, which draw a line
 E between the jurisdiction of the State High Court and the exclusive jurisdiction of the Federal High Court since the promulgation of Decree 107 of 1993, now 251 (i) (q) (r) (s) of the 1999 Constitution. This question had constantly cropped up before the courts and they
 F had aired their views on that legal position in numerous authorities in our law Reports. There is a common conclusion that whichever court will assume jurisdiction over a particular cause of action after that Decree came into existence can be determined from the peculiar facts of each case at the time of commencement of the action before
 G the court. After a microscopic digestion of some decisions of this court both ancient and modern, I hold that the reasoning and conclusion are similar.

The courts are now still speaking the same language in the area of the determination of which court as between the State High
 H Court and the Federal High Court has the jurisdiction to adjudicate on a particular cause of action.

Generally speaking, courts are creatures of statute and it is the statute that created a particular court that will also confer on it, its jurisdiction. Jurisdiction may be extended not by the courts but by the leg-

islature.

Afribank (Nig.) Plc v. Akiwasa (2006) 5 NWLR, pt. 974, pg. 619.

Okulate v. Awosanya (2000) 1SC 107 Onuorah v. KRPC (2005) 6 NWLR, pt. 921, pg. 393.

Messers Mr. Scheep v. the M.V.S. Araz (2000) 12 SC, pt. 1 pg. 164. B

African Newspaper of Nigeria v. Federal republic of Nigeria (1985) 2 NWLR pt. 6, pg. 137.

Jurisdiction is a term of comprehensive import embracing every kind of judicial action. The term may have different meanings in a different context. It has been defined as the limits imposed on the power of a validly constituted court to hear and determine issues between persons seeking to avail themselves of its process by reference to the subject matter of the issues or to the persons between whom the issues are joined or to the kind of relief sought. D

A-G Lagos State v. Dosunmu (1989) 3 NWLR pt.111, pg.552 SC.

N.E.PA v. Edegbero (2002) 18 NWLR pt. 798, pg. 79

Once a court lacks jurisdiction, a party cannot use any statutory provision or common law principle to impose it because absence of jurisdiction is irreparable in law. The matter ends there, while the only procedural duty of the court in the circumstance is to strike it out. The only valid step to take by a litigant is to file an action in a court of competent jurisdiction. F

Umanah v. Attah (2006) 17 NWLR pt. 1009, pg. 503

KLM Airlines v. Kumzlu (2004) 8 NWLR pt. 875, pg. 231.

There are broadly two types of jurisdiction and a distinction must be drawn between them namely:- G

(a) Jurisdiction as a matter of procedural law

(b) Jurisdiction as matter of substantive law.

While a litigant may submit to a procedural jurisdiction, he or she cannot confer jurisdiction on a court where the Constitution or a Statute or any provision of the common law says that the court does not have jurisdiction. A defect in competence is extrinsic to adjudication; hence a challenge to jurisdiction can be entertained at any stage of the proceedings, at first instance or on appeal even at the Supreme Court by any of the parties and even by the court itself suo H

motu to prevent an obvious miscarriage of justice.

Madukolu v. Nkemdilim (1962) 3 SCMLR, pg. 341

Oloriode v. Oyebe (1984) 1 SCNLR pg. 390

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

Oduase v. Agho (1972) 1 All NRL pt. 1, pg. 170

B Sofekun v. Akinyemi (1980) 5-7 SC 1

Ajao v. Alao (1986) 5 NWLR pt. 45, pg. 802

NDIC v. CBN (2002) 7 NWLR (pt. 766) pg. 272

C When the jurisdiction of a court over a suit is challenged, the court is entitled under section 6 of the 1999 Constitution to consider the plaintiff's claim before it in order to decide whether it has jurisdiction to entertain it.

Onuorah v. K. R. P. C (2005) 6 NWLR, pt.921, pg. 393

Izenkwe v. Nnadozie (1953) 14 WACA 361

D Adeyemi v. Opeyemi (1976) 9-10 SC 31

Western Steel Works v. Iron & Steel Workers (1987)

Tukur v. Government of Gongola State (1989) 4 NWLR (pt. 117) pg. 517

E Attorney General Kwara State v. Olawale (1993) 1 NWLR pt. 272, pg. 645.

Broadly speaking, jurisdiction will encompass "legal capacity" power of authority of a court- but in a narrower sense, there is distinction between jurisdiction, *stricto sensu* and power. Jurisdiction of a court is different from the competence of the court. Competence of a court is the hand maiden of jurisdiction of a court. There is a tendency to equate jurisdiction and competence of a court to mean one and the same thing. A court must have both jurisdiction and competence to be properly seized of a cause or matter. Jurisdiction is the power conferred on a court by statute or the Constitution. A court is competent when:-

(1) It is properly constituted with respect to the number and qualification of members.

H (2) The subject, matter of the action is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction.

(3) The action is initiated by due process of law and

(4) Any condition precedent to the exercise of its jurisdiction has been fulfilled.

A court can not entertain a cause which it has no jurisdiction to adjudicate upon.

Madukolu v. Nkemdilim (1962) 2 SCNRL 341

Ibeanu v. Ogbeide (1994) 7 NWLR pt. 359, pg 697

Where a court takes upon itself to exercise a jurisdiction which it does not possess its decision amounts to nothing. B

Peenok Limited v. Hotel Presidential Limited (1982) 13 NSCC pg. 477

Attorney General V. Lord Hotham (1827) 3 Russ 415

I regard this as a convenient juncture to state the facts of this case. The Appellant before this court sued the Respondent, the Central Bank of Nigeria at the Lagos High Court for the termination of his appointment by a letter dated 30th of October, 1987. He was offered a pensionable appointment by the Respondent by a letter dated the 14th of December, 1981. The employment was supposed D to have been terminated in accordance with the provisions of the Public Officers (special provision) Decree No. 17 of 1984.

The defendant as respondent before the trial court raised preliminary objections to the hearing of the suit.

The learned trial Judge delivered a considered Ruling in the matter E on 14/4/89. After pleadings were amended, and the amended processes were filed, the matter proceeded to trial before another judge of the High Court due to the retirement of the judge who initially handled the trial of the case. The appellant gave evidence on the 15th of December, 1993 in support of his claim. The appellant continued his case until 8/10/96. F

On the 12th of November, 1998 and 31/10/2000 the respondent raised an objection to the jurisdiction of the High Court pursuant to section 230 (1) (q) and (s) of the 1979 Constitution as amended G by the Constitution (Suspension and Modification) Decree No. 107 of 1993. The application was abandoned before the judge who like his predecessor in office retired from the Lagos State High Court Bench. The Respondent filed the same objection before another Judge to whom the suit was assigned. The preliminary objection was heard H by this court and a ruling in the matter was delivered on the 16th of December, 2003.

The learned trial Judge upheld the respondent's objection that by virtue of section 251 (1) (p) and (r) of the 1999 Constitution, only

the Federal High Court has exclusive jurisdiction to hear the suit. The Court of Appeal Lagos affirmed the Ruling of the High Court.

I agree with my learned brother that the crucial issue for determination in this appeal is which court has the jurisdiction to entertain this matter as between the Lagos High Court and the Federal High Court
B when Decree No. 107 of 1993 was promulgated vesting exclusive jurisdiction in a category of civil cases in the Federal High Court.

The unique aspect of this case is that the plaintiff/appellant's cause of action accrued at the time of termination of his employment
C on the 30th of October, 1987, and he instituted an action in court against his employer in 1988. The question to determine is, whether the plaintiff/appellant's action is caught by the provisions of section 251 (1) (p) (r) of the 1999 Constitution despite the fact that it was
D filed in court in 1988 before the promulgation of the 1999 Constitution. I shall limit the law to Decree No. 107 of 1993 as that was the turning point in the unlimited jurisdiction given to the State High Courts in civil cases by the 1979 Constitution in its section 236 (1).
As I have mentioned earlier on, in the determination of any civil cause or matter, a court must have both jurisdiction and competence
E to entertain it. Jurisdiction in that sense meaning the legal capacity, power or authority vested on it by the Constitution or Statute creating the court. While competence is when it has the right and power to adjudicate concerning the particular subject matter in controversy-
F in other words, that the subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction. These are preliminary issues which are investigated not when a cause of action accrued or an action is filed in court but at the hearing of a case. At the commencement of a trial,
G where there is a challenge to the jurisdiction of a court, the court must first assume jurisdiction to consider whether it has or lacks jurisdiction; as jurisdiction cannot be assumed in the interest of justice.

Ajayi v. Military Administration Ondo State (1997) 5 NWLR pt. 504, pg. 233

H Amadi v. NNPC (2000) 6 SC pt. 1 pg. 66

Galadima v. Tambai (2000) 6 SC pt. 1, pg. 196.

The jurisdiction of the High Court was challenged before two Judges of the High Court in 12/11/98 and 4/10/01.

I must not forget to reveal that since the suit was filed in 1988, it was

assigned to two Judges who retired at the stage of commencement of hearing and a third Judge who now heard the preliminary objection relating to jurisdiction based on the provisions of Decree No. 107 of 1993 and subsequently section 251 of the 1999 Constitution. Each of the three Judges had to commence trial in the matter de novo. The germane question to ask is , what is the position of all the Civil Matters pending at the High Court when Decree 107 of 1993 vesting jurisdiction of a category of Civil Matters exclusively in the Federal High Court was passed to law. The case subject -matter of this appeal was one of such cases. When the cause of action accrued on the 30th of October, 1987 and an action was filed in court in 1988, the operative law was the 1979 Constitution as its section 236 vested the State High Courts with unlimited jurisdiction to hear and determine Civil matters. It is the contention of the appellant that the rights and obligations of parties can only be determined by the provisions of the law in existence at the time this cause of action arose- and any law that comes into effect thereafter is irrelevant.

The learned counsel supported his argument with cases like:

National Electric Power Authority v. B. Atukpor (2001) 1 NWLR, pt. 693, pg. 96.

Adigun v. Ayinde 1993 8 NWLR, pt.313, pg. 516

O. H. M. B V. Garba (2002) 7 SC pt. 11, pg. 138 at pg. 144

University of Ilorin Teaching Hospital v. Akilo 22 WRN 117 at pg. 123.

Uwaifo v. A-G Bendel 1982 NSCC, pg. 2211

Egbuonu v. Borno Radio 1997, 12 SCNJ 99

The appellant submitted that the fact that the statute conferring jurisdiction had been amended did not mean that it could by necessary implication have the effect of putting a stop to proceedings which had already been validly commenced. The Lagos State High Court has jurisdiction to hear and conclude the appellant's action pending before it not withstanding the provisions of Decree 107 of 1993 or Section 251 of the 1999 Constitution.

The appellant specifically mentioned Section 6(1) of the Interpretation Act Cap 192 Laws of Nigeria 1990. Section 6(1) Interpretation Act 1990 reads that:-

"When an enactment expires, lapses or cases to have effect or is repealed such expiry or repealing shall not

(a) *Revive anything not in force or existing at the time when the repeal takes effect.*

(b) *Affect the provisions operation of enactment of anything duly done or suffered under the enactment.*

B (c) *Affect any right privilege, obligation or liability accrued or incurred under the enactment.*

(d) *Affect any penalty forfeiture or punishment incurred in respect of any offence committed under the enactment.*

C (e) *Affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment.*

And any such investigation, legal proceeding or remedy may be instituted, continued or enforced and such penalty forfeiture or punishment may be imposed as if the enactment had not been repealed."

D It was the submission of the appellant that the lower court was wrong not to follow the decision in *OHMB v. Garba* (2002) 7 SC pt. 11, pg. 138 (2002) 14 NWLR pt. 788, pg. 138.

E The court in the foregoing case unanimously held that a right in existence at the time a new law is passed transferring jurisdiction of one court to another will not be lost. In the case of *OHMB v. Garba*, the High Court of Kano State was about to deliver its judgment when the new law was passed ordering that all cases dealing with the administration and control of the Federal Government or any of its
F Agencies shall be within the exclusive jurisdiction of the Federal High Court. The Decree did not affect the High Courts jurisdiction to conclude and decide the cases pending before it when the Decree was promulgated and came into force. The court affirming the decision in the case of *Are v. A-G Western Region* 1960 SCNLR 224 held that:-

G *"Unless it affects purely procedural matters, a statute cannot apply retrospectively except when it is made to do so by clear and express terms."* *"Thus, the effect of the words of an amending law or enactment is "in futuro" and therefore it could not by necessary implication have the effect of putting a stop to proceedings which had*
H *already been validly commenced. Decree 107 of 1993 has no retrospective effect as it was a constitutional amendment which was not declared to take effect retrospectively, neither did it contain any abatement provision"*.

In sum, Decree No. 107 of 1993 would not affect pending

legal proceedings so as to deprive the State High Court jurisdiction to conclude such proceedings. In the instant appeal the case was filed in 1988:-

1) The court heard an objection and gave its ruling on 14/1/89 after which the Judge retired.

2) The matter was commenced de novo before another Judge B in 1991 where pleadings were amended and trial commenced and continued till 24/6/2002 when the Judge also retired.

3) Case came up for mention before another Judge on the 23rd of September 2002 for trial de novo. Ruling was delivered on the issue of jurisdiction on 16/12/03 whereby the Judge declined C jurisdiction in the matter in view of section 251 (1) (p) and (r) of the 1999 Constitution which vests exclusive jurisdiction in the Federal High Court in civil cases and matters pertaining to the administrative action of the Federal Government and the Agencies. It is however D noteworthy that trial commenced in the suit on 15/12/93 regardless of the promulgation of the Decree in November, 1993.

This court has to consider whether the High Court of Lagos has jurisdiction and competence to adjudicate on this suit not only when the case was filed and also at the time of commencement of trial. The suit E was filed at the Lagos High Court on 7/7/88. Trial commenced before one of the Judges first on 15/12/93, and before another Judge in September 2002. On both dates the High court had no jurisdiction based on the provision of section 230 of Decree 107 of 1993, to F adjudicate on the matter.

In the hearing and determination of any suit, there ought first and foremost, to exist a jurisdiction before the issue of the judicial Powers exercisable under that jurisdiction can arise.

Tukur v. Government of Gongola State 1989 4 NWLR pt. 117, G pg. 517.

It is established that the relevant law applicable in respect of a cause of action is the operative law at the time the cause of action accrued, while the law determining jurisdiction is the prevailing law when the action was instituted and heard. H

Cyril Osakwe v. FCE (Technical) Asaba & Ors (2010) 2.3 SC pt. 111, pg. 158.

As at now trial has not commenced before the Judge to whom it was assigned on the 23rd of September, 2002. The Lagos State High

Court had been divested of power to adjudicate on the suit.

With the community reading of Section 230 of Decree 107 of 1993 and section 251 (1) (d) of the 1999 Constitution, the law provide as follows:-

- “Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters connected with or pertaining to banking, banks, other financial institutions, including any action between one bank and another any action by or against the Central Bank of Nigeria arising from banking, foreign exchange, coinage, legal tender, bills of exchange, letters of credit, promissory notes and other fiscal measures. The section does not however apply to a dispute between an individual customer and his bank in respect of transactions between the individual customer and the bank. By virtue of Section 251 (1) (q) (r) and (s) the Federal High Court shall have and exercise exclusive jurisdiction in matters in which the Federal government or any of its Agencies is a party”.*

- Consequently a State High Court would no longer have jurisdiction in such matters notwithstanding the nature of the claim in the action. In order to give the Federal High Court exclusive jurisdiction, the matter must be a civil matter arising from the administration, management and control of the Federal Government or any of its Agencies. The matter must arise from the operation and interpretation of the Constitution. The matter must also arise from any action or proceedings for a declaration or injunction affecting the validity of any executive or administrative action or decisions by the Federal Government, or and any of its Agencies.

Sam Fam Financiers Limited v. Aina (2004) 2NWLR, pt. 857, pg. 297

J. U.T.H v. Ajeh (2007) 1 NWLR pt. 1016, pg. 490

Onuorah v. K.R.P.C. (2005) 6 NWLR, pt. 921, pg. 393

- Minister of Internal Affairs v. Aliyu (2005) 3 NWLR, pt. 911, pg. 30.

NEPA v. Edeghero (2002) 18 NWLR pt. 798, pg. 79

University of Abuja v. Ologe (1996) 4 NWLR, pt.445, pg 706

University of Ilorin v. Olutola (1998) 12 NWLR pt. 576, P9.72

Adah v. NYSC (2004) 13 NWLR pt. 891, pg. 639.

The appellant filed this action against the Central Bank of Nigeria a Federal Government Agency for the termination of his employment which is an administrative action of the Agency. The action is for declaration affecting the validity of an administrative decision of the Central Bank. B

The Court of Appeal was right to affirm the Ruling of the Lagos State High Court where it declined jurisdiction over the appellant's suit which now falls within the exclusive jurisdiction of the Federal High court. C

With fuller reasons given by my lord in his lead judgment, I also dismiss the appeal. I abide the consequential order including the order as to costs.

GALADIMA JSC

D

This case has a chequered history and pathetic antecedent but it has brought once more to the fore the overflogged issue of jurisdiction of the Federal and State High Court to hear and determine the suit which is brought before them. My Learned brother, Rhodes Vivour JSC has meticulously set out facts leading to this appeal in his lead judgment. The Appellant, whose appointment as a senior employee of the Respondent was terminated in 1987, sued the said Respondent seeking for a declaration that termination of his appointment was unlawful, null and void. He commenced this action on 7/7/98, at the Lagos State High Court. The Respondent's objection to jurisdiction was for an order striking out the suit for want of jurisdiction in view of the provision of Section 251 (1) (p) and (v) of the 1999 Constitution. E
F
G

The trial judge ruled that the High Court lacks jurisdiction to hear the case and struck it out. The Court of Appeal affirmed the ruling of the trial court. This appeal is against that judgment. The Respondent's sole issue for determination which is apt reads thus:

"Whether the claimant's action is caught by the provisions of section 251 (1) (p) (p) of the 1999 Constitution. Notwithstanding its commencement in 1988 before the promulgation of the 1999 Constitution"

For comparison, I observe that section 251 (1) (p) of the 1999

Constitution is in pari materia with section 230 of the 1979 Constitution as amended by the Constitution (Suspension and Modification) Decree No.107 of 1993. The two provisions vest exclusive jurisdiction in the Federal High Court in civil cause and matters arising from administration, management and control of the Federal Government and its agencies, the operation and interpretation of the constitution as it affects the Federal Government and its agencies as well as any action or proceedings for a declaration or injunction affecting the validity of any executive or administrative action or decisions by the Federal Government and its agencies.

Jurisdiction is the combination of consideration of a status of the parties and the subject matter in the suit. This case has to do with the interpretation of these pieces of legislation dealing with the jurisdiction of the two courts. In the case at hand it is not in doubt that the Respondent herein (the Central Bank of Nigeria) is an agency of the Federal Government by virtue of the provisions of section 39 of the Central Bank of Nigeria Act, Cap. 47 Laws of the Federation of Nigeria 1990. It is stated clearly therein that the Central Bank of Nigeria may act generally as agent for the Federal Government or of a State Government.

The Appellant's action was commenced at the High Court in 1988 before the promulgation of Constitution. (Suspension and Modification) Decree 107 of 1993 and the 1999 Constitution. Therefore as from the 17th of November, 1993, the Federal High Court had exclusive jurisdiction if the matter is a civil matter arising from the administration, management and control of the Federal Government or any of its agencies. This suit, the termination of the Appellant's appointment, is a complaint on administrative action of the Respondent, an agency of the Federal Government.

Learned counsel for the Appellant in his brief of argument has contended that at the time the appellant's cause of action arose on 30th October. 1987 when his appointment was terminated neither Decree No. 107 of 1993 nor Section 251 (i) (p) (v) of the 1999 Constitution was in force because the two Legislations do not have retroactive provisions. He submitted that the two Courts were wrong to hold that the two provisions applied to this case. He relied with a measure of confidence on the two decisions of this Court in N.E.P.A. v. ATUKPOR (2001) 1 (NLWLR) Pt. (693) 96 and O.H.M.B. v GARBA

(2002) 7 SC (Pt. II) P. 138. Learned counsel further observed that OHMB V. GARBA (supra) is on all fours with the appellant's case and the two Courts below ought to have followed the principle of stare decisis. He placed reliance on GLOBAL TRANSPORT OCEANIC SA and ANOR. V. FREE ENTERPRISES NIG. LTD. (2001) 2 SC. 154, and EPEREKUN V. UNIVERSITY OF LAGOS (1986) 4 NWLR (Pt. B 34) p.162. Placing reliance on S. 251 of the 1999 Constitution and Decree No. 107 and Section 6 (1) of the Interpretation Act, cap. 192, he finally submitted that these provisions do not contain abatement provision.

On the other hand, learned counsel for the Respondent argued that for the Federal High Court not to have jurisdiction under Decree No. 107 or S. 251(1) (P) (q) (s) of the 1999 Constitution the cause of action must have commenced before 17th November, 1993 and the trial must be concluded before that date. Reliance was placed on EGYPT AIR V. ABDULLAHI (1997) 11 NWLR (Pt. 28) p. 182 and JPDC V. ISAIAH (2001) FWL (Pt. 56), 608.

In the determination of the exclusive jurisdiction of the Federal High Court in respect of Section 251 (1) of the 1999 Constitution, the Court must carefully examine the facts of the case to see whether they justify the application of that section. It is only a careful examination of the pleading filed by the parties in a cause or matter that the Court can ascertain whether or not the Federal High Court has exclusive jurisdiction pursuant to S. 251 (1) (p) (q) of the 1999 Constitution, (supra). I shall explain further. In respect of the applicable law for determining the case before the Court it is the law in force at the time cause of action arose. I take example from Decree No. 107 of 1993 which came into force on 17/11/93. If a litigant had a cause of action; for example, in 1990, he would have his case governed by the law in 1990. If trial commenced before 1993 the court to try the case would be the respective State High Court, but after 17/11/93, the case would be tried in the Federal High Court.

In arriving at a fair determination of the case at hand I shall be guided by a few decisions of this Court. First the case of O.H.M.B V. GARBA (supra) which the learned counsel for the appellant submitted that is on all fours with the case at hand. The question in that case is whether the coming into effect of Decree No. 107 of 1993 on 17th November 1993, deprive the High Court of Kano State jurisdiction

to continue and conclude the plaintiff's action before it. The court below held that the High Court lost its jurisdiction over the proceedings on 17th November 1993. On further appeal this Court held that the court below was wrong. Reliance was placed on section 6(1) of the Interpretation Act Cap. 199, Laws of the Federation of Nigeria and cases of COLONIAL SUGAR RIFINING CO. LTD. V. IRVING (1905) AC. 369, and UNIVERSITY OF IBADAN V. ADEMOLAKUN (1967) 5 N.S.C.C. 210. In GARBA case (supra) the cause of action arose before 17/11/93 and, the trial commenced also before that date. The case for the Plaintiffs had closed but defence did not open its case until 14/02/94. As at 17/01/93 when the State High Court was divested of jurisdiction to hear the case, the matter was part heard. Hence, this Court held that it was the State High Court that had jurisdiction to hear and determine the case not the Federal High Court. D The reasoning of this Court runs thus:

"With respect to their Lordships of the Court below, they are wrong. Not being an adjectival law but one of substantive law and not having retrospective operation, Decree No. 107 of 1993 would not affect pending legal proceedings so as to deprive the State Court jurisdiction to conclude such proceedings. Section 6(1) of the Interpretation Act, cap 192, Laws of the Federation 1990 is a complete answer..... In my respectful view the same principle that applied in Ademolekun and Irving applies equally in this case too where the facts are similar to those in two earlier cases. In effect the High Court of Kano State properly concluded the Plaintiffs action, notwithstanding Decree No. 107 of 1993. The Decree did not affect the Kano State High Court's jurisdiction to conclude and decide the cases pending before it when the Decree was promulgated and came into force." G

In EGYPT AIR V. ABDULLAHI (supra) it was held that if the trial in the State is not concluded before the amendment came into force, proceedings after the amendment are a nullity. The case ought to be transferred to the Federal High Court. This Court of Appeal decision is in conflict with O.H.M.B. V. GARBA (supra). In my view the decision in Egypt Air (supra) which is the Court of Appeal decision is wrong. Their Lordships did not advert their minds to Section 6 (1) of the Interpretation Act (supra).

In SPDC v. ISALAH (supra) this Court observed that;

“While it is correct that the course of action arose before the promulgation of the Decrees mentioned above, the trial of the action was in progress when Decree No. 107 of 1993 was signed into law..... From that moment when the Decree was signed into law the jurisdiction of the State High Court to determine any matter connected with or pertaining to mining and minerals, including oil fields, oil mining, geological surveys and natural gas has been ousted. Once the jurisdiction of a court to determine a matter has been ousted any further hearing in the matter is indeed null and void because any decision it makes amounts to nothing.”

In OSAKUE V. F.C.E. (TECHNICAL) ASABA (2010) 2 - 3 SC (Pt. 11) P158, and OLUTOLA V. UNILORIN (2004) 18 NWLR (Pt. 905) 416 it was held that where the cause of action arises before the amendments came into force by Decree 107 of 1993 but trial commenced after the date the amendments came into force than the Federal High Court would have exclusive jurisdiction to hear and determine the case.

In the instant case, the Appellant’s cause of action arose on 30/10/87, when his appointment was terminated by the Respondent. He sued the Respondent at the Lagos High Court in July 1988. As at today, it is over twenty-two years since the appellant commenced his action in the State High Court. But the two courts below found that the proper court vexed with jurisdiction to hear and determine the appellant’s case is the Federal High Court. The reason is simple. Trial in the case before the Lagos State High Court had not commenced before Decree No. 107 of 1993 came into force in 1993. That court may have the jurisdiction to entertain the suit at the time the cause of action founded on that suit arose, but at time of actual trial it is divested of that jurisdiction.

It is for my above reasons and those carefully elaborated in the leading judgment of my Learned Brother RHODES-VIVOUR, JSC that I too dismiss the appeal without costs.