

**SUPREME COURT OF NIGERIA**

27TH JANUARY, 2012. SC. 22/2005

CORAM: - **F. F. TABAI, C. M. CHUKWUMA-ENEH, J. A. FABIYI, B. RHODES-VIVOUR, M. U. PETER-ODILI, JJSC**

1. NATIONAL UNION OF  
ROAD TRANSPORT WORKERS ..... APPELLANTS

2. CHIEF ADEWOLE OJO  
AND

1. ROAD TRANSPORT EMPLOYERS  
ASSOCIATION OF NIGERIA

2. ISAAC FATIMEHIN

3. THE GOVERNOR OF EKITI STATE

4. THE SPEAKER, EKITI STATE

HOUSE OF ASSEMBLY ..... RESPONDENTS

5. THE ATTORNEY-GENERAL,  
EKITI STATE

6. COMMISSIONER OF POLICE,  
EKITI STATE

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ACTIONS - Necessary party - Failure to join - Effect - Presence of such a party is apt for complete adjudication of the matter - And any judgment made behind the party - Will be to no avail (H1)

JURISDICTION - Fundamentality of - It is to be determined at earliest opportunity - Because if a court lacks jurisdiction over a case - The proceeding remains a nullity ab initio - No matter how well conducted (H2)

COURTS - Competence of - A court is competent to entertain a case - When the subject matter of the action is within its jurisdiction - And the action is initiated by due process of law (H3)

COURTS - Jurisdiction - Determination of - Basis - It is the claim of plaintiff - That court should examine to determine whether or not it has jurisdiction - To entertain the action (H4)

ACTIONS - Cause of action - Applicable law - Is the law as at the

time when the cause of action arose - And the suit was initiated (H5)

COURTS - Federal High court - Jurisdiction - Declaratory and injunctive reliefs - By 1999 Constitution s. 251(1)(r) - Reliefs claimed are within the court's jurisdiction - Since the COP being also a party - Is a federal government agency (H6)

COURTS - National Industrial court - Jurisdiction - By Trade Dispute Act s. 15 - The jurisdiction of the court does not include - Power to make declarations and to order injunctions (H7)

TRADE UNIONS - National Industrial Court - Trade dispute - Manner of initiating - By 1976 Trade Dispute Act s. 10 - All matters within the competence of the court - Must be referred to the court by the Minister of Labour (H8)

STATUTES - Interpretation - Principles - Court should adopt broad and liberal approach - In interpretation of statutes (H9)

### **FACTS**

1<sup>st</sup> and 2<sup>nd</sup> plaintiffs/appellants filed their originating summons on 23rd August 1999 at the Federal high court, Akure. They prayed for the determination of the question - *"Whether by Decree No 4 of 1996 Trade Union (Amendment) Decree 1996, the plaintiffs are the rightful parties to engage in the transportation of passengers and goods by road at the motor-parks in the various towns and villages in Ekiti State of Nigeria."* If the answer to the question is in the affirmative, then they claim inter alia, declaration that the members of the 1st appellant's Union including 2<sup>nd</sup> appellant are the rightful persons by law to engage in the transportation of passengers and goods by road in various motor-parks in Ekiti State. 1st and 2nd respondents were not made parties by appellants at the trial Court. They applied to be joined thereat as defendants. On 23rd November, 1999, they were found to be necessary parties so that all issues in dispute as placed before the court could be properly pronounced upon and to obviate being accused of standing by.

A preliminary objection was raised to the jurisdiction of the trial Judge to entertain the matter. This, he over-ruled on 12th Octo-

ber, 2000. Thereafter, the trial Judge heard arguments on the originating summons. In his reserved judgment the judge ruled in favour of appellants. Dissatisfied, 1st and 2nd respondents appealed to the Court of Appeal, Ilorin division. The issue of jurisdiction was also raised by 1<sup>st</sup> and 2<sup>nd</sup> respondents. The court in its own judgment decided to only treat the issue of jurisdiction. The court allowed the appeal and held that trial court has no jurisdiction over the matter. Aggrieved, appellants have appealed to Supreme Court.

### **ISSUES FOR DETERMINATION**

*“(b) Whether the claim of the appellants at the trial Court is a trade union dispute.*

*“(c) Whether the trial Court was clothed with jurisdiction to hear and determine the subject matter of this appeal.”*

**HELD** (Unanimously dismissing the appeal per **FABIYI JSC**)

### ***Necessary party - Failure to join - Effect***

1. The 1st respondent was a party who should have been joined by the plaintiffs in the first instance. It was a party whose presence before the Court as a defendant was apt to enable the Court to effectually and completely adjudicate or settle all the questions involved in the matter. It was not right for the plaintiffs to keep it out of the game and attempt to ‘steal the show’ behind the back of a deserving defendant. After all, any judgment made with an order against a necessary and desirable party behind its back will be to no avail. It cannot be allowed to stand. (p. 156 E)

### ***JURISDICTION - Fundamentality of***

2. It has been pronounced by this Court several times that jurisdiction is very fundamental. It is the live wire of a case which should be determined at the earliest opportunity. If a Court has no jurisdiction to determine a case, the proceedings remain a nullity ab initio no matter how well conducted and decided. This is so since a defect in competence is not only intrinsic, but extrinsic to the entire process of adjudication. (p. 158 D)

### ***COURTS - Competence of***

3. It is basic and not in contention that a Court is only competent to entertain a case when, inter alia, the subject matter of the action is

within its jurisdiction and the action is initiated by due process of law.  
(p. 160 D)

***Jurisdiction - Determination of - Basis***

4. It is now trite that the claim of the plaintiffs (herein appellants)  
B determines the jurisdiction of the Court. In this matter, same is the  
Originating Summons of the appellants as initiated at the trial Court.  
It is the claim of the plaintiffs as in this case, the appellants' Originat-  
ing Summons that a Court should examine to determine whether or  
C not it has jurisdiction to entertain the action. (pp. 160 E/161 C)

***Cause of action - Applicable law***

5. I need to state it here that the law which is applicable to a case is  
the law as at the time when the cause of action arose and the suit was  
D initiated.

I have tried to depict it clearly that jurisdiction in this matter rightly  
inheres in the Federal High Court as at the time the suit was initiated  
before it. The Court below took a narrow and rather simplistic view  
that since the 1st appellant and the 1st respondent are trade unions,  
E the matter must per force go before the National Industrial Court.  
With due diffidence, as at that time that view was erroneous.

In short, the order of the Court below in which the trial by the  
trial Court was declared null and void was ill tuned and same is hereby  
F set aside. I pronounce that the inherent jurisdiction imbued in the  
trial Court at the material time was without blemish.  
(pp. 160 G/162 F)

***Federal High court - Jurisdiction***

G 6. It is of moment to reiterate it that the suit of the appellants was  
initiated at the trial Federal High Court on 23rd August, 1999. I note  
it that the 1999 Constitution of the Federal Republic of Nigeria came  
on board effectively as from 29th May, 1999. Section 251 (1) (r) of  
same imbued the Federal High Court with jurisdiction to determine -  
H *"Any action or Proceeding for declaration or injunction affect-  
ing the validity of any executive or administrative action or decision  
by the Federal Government or any of its agencies"*

The suit of the appellants at the trial Court, as earlier set out in  
this judgment, relates to declaratory and injunctive reliefs against the

defendants thereat that include the Commissioner of Police of the Nigerian Police Force, no doubt, for agency of the Federal Government. It is incontestable that the subject matter of this suit, as constituted, is within the jurisdiction of the trial Court as at 23rd August, 1999 when the cause of action emanated.

The claim/reliefs of the appellants, I repeat are declaratory and injunctive in nature and purport. No trade dispute existed and none was declared as provided by sections 1 to 6 of the Trade Dispute Act as between the parties in this appeal. The utmost of it all is that the reliefs being claimed were not within the jurisdictional competence of the National Industrial Court. On the other hand, they were within the jurisdictional competence of the trial Federal High Court as at 23rd August, 1999, when the suit was rightly initiated before that Court. (pp. 160 G/162 D)

#### ***National Industrial court - Jurisdiction***

7. Let me now depict the side of this matter as it relates to the National Industrial Court. It is well settled by this Court in the case of Western Steel Works Ltd. v. Iron and Steel Workers Union of Nigeria (supra) that section 15 of the Trade Dispute Act, 1976 conferring jurisdiction on the National Industrial Court in respect of certain species of cases did not include jurisdiction to make declarations and to order injunctions as in this case. (p. 161 G)

#### ***National Industrial court - Trade dispute - Manner of initiating***

8. Apart from the above, as at the time this action was initiated, all matters within the competence of the National Industrial Court must be referred to it (National Industrial Court) by the appropriate Minister of Labour as prescribed by section 10 of the Trade Dispute Act, 1976. In this matter, no trade dispute was set in motion and none was referable by the Minister to the National Industrial Court.

By implication, no individual Union could directly approach the National Industrial Court except through the Minister after a trade dispute must have arisen. Same is not the situation in the subject matter of this appeal. This is so since the request of the appellants at the trial Court is a declaration of right and its enforcement by injunctive orders by appropriate government authorities including the State's Commissioner of Police. (p. 162 A)

***STATUTES - Interpretation - Principles***

9. It is basic that one of the vital canons of interpretation of statutes is that a Court of record should be minded to make broad interpretation or what is sometimes referred to as giving same a liberal approach. A Court should give a holistic interpretation to a statute as required by law. A Court should aim at giving a statute purposeful interpretation; I dare say. It sounds ludicrous that the trial Court could say that the name of the 1st respondent herein was only inserted in Decree No 1 of 1999 for the sake of it. The legislator does not act in vain. The 1st respondent was registered for transportation by road; not by air or water. Article 4 (g) of the 1st respondent's constitution as quoted above by the counsel at the Court below supports same.

It is clear that the 1st respondent was not inserted in Decree 1 of 1999 just for the sake of it. The objective and purport of same was to cater and provide for Senior Staff Employers Association as extant in the explanatory note to the Decree.

Learned trial Judge failed to appreciate that he should not have made a restrictive, negative and purposeless interpretation of the law. In my opinion, he should have made a holistic, broad, and liberal interpretation which encapsulates the inescapable point that the 1st respondent having been registered and recognized has, by implication, jurisdictional scope to operate in Ekiti State motor-parks and roads just like the 1st appellant herein. (p. 165 D)

**REPRESENTATION**

Niyi Idowu for Appellants

Dayo Akinlaja, Attorney-General Ekiti State with L. O. Ojo, Attorney-General Ag. S. C; J. A. Ajibare, Asst. C. L. O., for the 3rd-6th Respondents

**CASES REFERRED TO**

- David Green v. Dublin Green (1987) 3 NWLR (Pt. 60) 480
- Uku v. Okumagba (1974) 1 ALL NLR 475
- Madukolu v. Nkemdilim (1962) SCNLR 341
- Oloba v. Akereja (1988) 3 NWLR (Pt. 84) 508
- Ladoja v. INEC & Ors. (2007) 4 WRN 1
- Akeem v. University of Ibadan (2001) 15 NWLR (Pt. 736) 352

Shittu v. Nigeria Agric & Cooperative Bank Ltd. (2001) 3 NWLR (Pt. 647) 25

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

Savannah Bank Ltd. v. Pan Atlantic (1987) NWLR (Pt. 29) 212

Index Nig. Ltd. v. Maskau (1998) 3 NWLR (Pt. 542) 404

Mustapha v. Governor, Lagos State (1987) 2 NWLR (Pt. 58) 539 **B**

FAAN v. Wamal Express Services Nig Ltd (2011) 1-2 SC (Pt.11) 93

Ibrahim v. Barde 1969 NWLR (Pt. 474) 513

U. A. Ventures v. FCMB 1998 4 NWLR (Pt. 547) 546

Rabiu v. The State (1980) 8-11 SC 130

**C**

### **STATUTES REFERRED TO**

Constitution of Federal Republic of Nigeria, 1999, ss. 1 (3), 231, 251 (1) (q) (r), 180 (2)

Trade Union (Amendment) Decree No. 4 1996, s. 6

**D**

Trade Union (Amendment) Decree No.1 of 1999

Trade Dispute Act, 1976, ss. 1-6, 10, 15

Supreme Court Act, Cap. S15 LFN 2004, s. 22

### **LEAD JUDGMENT BY FABIYI JSC**

**E**

This is an appeal against the judgment of the Court of Appeal, Ilorin Division ('the Court below' for short) which found in favour of the 1st and 2nd respondents herein that the trial Court lacked jurisdiction to entertain the action and struck out the claim before the trial Federal High Court, Akure ('the trial Court' for short).

**F**

The 1st and 2nd appellants herein, as plaintiffs at the trial Court, filed their originating summons on 23rd August, 1999, by which they prayed for the determination of the question-

"Whether by Decree No 4 of 1996 Trade Union (Amendment) Decree 1996, the plaintiffs are the rightful parties to engage in the transportation of passengers and goods by road at the motor-parks in the various towns and villages in Ekiti State of Nigeria."

If the answer to the question is in the affirmative, then the plaintiffs claim:-

**H**

"1. Declaration that the members of the 1st plaintiff Union including the other plaintiff are the rightful persons by law to engage in the transportation of passengers and goods by road in various motor-parks in Ekiti State.

2. Perpetual injunction restraining any other Unions, Association and/or groups of persons not authorised by law to engage in transportation of passenger and goods by road from operating, interfering and/or disturbing the plaintiffs and/or their agents, servants or members at the various motor parks in Ekiti State, where they are lawfully engaged.

3. Perpetual injunction restraining the 2nd defendant and the Ekiti State House of Assembly under his authority from entertaining, considering or making any resolution tantamount to amending Decree 4 of 1996 by allowing or permitting a non-authorised Union, Association or group(s) of persons to operate at the motor-parks in the State to engage in the transportation of passengers and goods by road in various motor-parks in Ekiti State.

4. An order directing the 1st, 3rd and 4th defendants to enforce Decree 4 of 1996 by seeing to the EXIT of NON-AUTHORISED UNIONS and non-registered or non-recognized, Union or Associations from various motor parks in Ekiti State.”

The 1st and 2nd respondents herein were not made parties by the plaintiffs at the trial Court. They applied to be joined thereat as defendants. On 23rd November, 1999, they were found to be necessary parties so that all issues in dispute as placed before the Court could be properly pronounced upon and to obviate being accused of standing by.

***The 1st respondent was a party who should have been joined by the plaintiffs in the first instance. It was a party whose presence before the Court as a defendant was apt to enable the Court to effectually and completely adjudicate or settle all the questions involved in the matter. It was not right for the plaintiffs to keep it out of the game and attempt to ‘steal the show’ behind the back of a deserving defendant. After all, any judgment made with an order against a necessary and desirable party behind its back will be to no avail. It cannot be allowed to stand.*** See: Chief Abusi David Green v. Dr. E. T. Dublin Green (1987) 3 NWLR (Pt. 60) 480; Uku v. Okumagba (1974) 1 ALL NLR 475. In short, the learned trial Judge acted in the right direction on this point. A preliminary objection was raised to the jurisdiction of the trial Court to entertain the matter. This, he overruled on 12th October, 2000. Thereafter, the trial Judge heard argu-



ments on the originating summons. In his reserved judgment handed out on 26th September, 2000, he held as follows:-

*“But by Decree No 1 of 1999 Trade Union (Amendment) Decree No.1 of 1999, the Third Schedule of the Principal Act (Trade Unions Act Cap. 437) was amended by the addition of Part C which contains the Senior Staff Employers Association. In this new Part C, the 5th defendant was recognized. It is important to note that not been given although the name of the 5th defendant was recognized it has any specific area or jurisdictional operation. Section 6 of Decree No 4 of 1996 has not been repealed so also Part B of the Third Schedule which contains the Trade Unions and their jurisdictional scope. It is therefore my view that the 5th defendant’s name has only been inserted for the sake of it. If the legislature intended to give it any jurisdictional scope having provided by the relevant enactment (sic). I will answer the question posed for determination in this originating summons in favour of the plaintiff...”*

The 1st and 2nd respondents herein, felt unhappy with the above stance of the trial Judge and appealed to the Court below where issue of jurisdiction of the trial Court was again raised along with other issues. The Court below, in its own judgment handed out on 7th May, 2004, decided to only treat the issue of jurisdiction. It held as follows:-

*“The name of the Road Transport Employers Association of Nigeria (1st appellant is listed as No 29 under the Third Schedule Part C thereof. It is therefore a trade union. Being a trade Union, the dispute between it and the 1st respondent cannot be heard by the lower Court.”*

On point of jurisdiction, the Court below allowed the appeal and declared the trial as null and void. The appellants herein have decided to appeal to this Court.

Three (3) issues formulated in the appellants’ brief of argument read as follows:-

*“(a) Whether the lower Court was right by refusing to consider the appellants’ complaint and argument that the issue formulated by the 1st and 2nd respondents at the lower Court did arise in the Notice and Ground Appeal filed at the lower Court.*

*(b) Whether the claim of the appellants at the trial Court is a trade union dispute.*

(c) *Whether the trial Court was clothed with jurisdiction to hear and determine the subject matter of this appeal.*”

On behalf of the 3rd-6th respondents, three similar issues were also formulated. They read as follows:-

“(a) *Whether the claim of the appellants at the Court of trial is a trade union dispute.*

(b) *Whether the trial Court was clothed with jurisdiction to hear and determine the subject matter of this appeal.*

(c) *Whether the lower Court was right by refusing to consider the appellants’ objection that issues B and D formulated before the lower Court by the 1st and 2nd respondents did not arise in the Notice of Appeal filed by the 1st and 2nd respondents, as appellants at the lower Court.*”

Issue (c) formulated by the appellant is similar to issue (b) couched on behalf of the 3rd -6th respondent. It is an issue which touches on jurisdiction of the trial Court to determine the subject matter of this appeal.

***It has been pronounced by this Court several times that jurisdiction is very fundamental. It is the live wire of a case which should be determined at the earliest opportunity. If a Court has no jurisdiction to determine a case, the proceedings remain a nullity ab initio no matter how well conducted and decided. This is so since a defect in competence is not only intrinsic, but extrinsic to the entire process of adjudication.*** See: *Madukolu v. Nkemdilim* (1962) SCNLR 341; *Oloba v. Akereja* (1988) 3 NWLR (Pt. 84) 508.

Consequently, I now at this point proceed to determine the issue touching on the jurisdiction of the trial Court to determine the subject matter of this appeal.

On behalf of the appellants, it was submitted that the Court below was wrong when it held that the trial Court lacked jurisdiction to entertain the matter and subsequently declared the judgment of the trial Court as null and void. Learned Counsel contended that it is not the duty of any Court to go on an expedition to find or garner facts to support the position of the 1st and 2nd respondents that the issue in dispute is a trade dispute. He observed that it has been held by this Court that what a court should examine in determining whether or not, it has jurisdiction to entertain an action is the claim as con-

tained in the plaintiffs' claim; in this case, the appellants' originating summons. Learned Counsel cited the case of *Ladoja v. INEC & ors.* (2007) 4 WRN 1 at 37-38; 42-43, 66.

Learned Counsel referred to the case of *Western Steel Works Ltd. v. Iron and Steel Workers Union of Nigeria* (2004) 7 WRN 58 at 85 where this Court affirmed that section 15 of the Trade Dispute Act, 1976, which conferred jurisdiction on the National Industrial Court in respect of certain specie of cases did not include jurisdiction to make declarations and to order injunctions as in this case. He observed that all matters within the competence of the National Industrial Court must be referred to it by the Minister as prescribed by section 10 of the Trade Dispute Act, 1976. He felt that the necessary implication of this is that no individual union can directly approach the National Industrial Court except through the Minister after a trade dispute must have arisen which is not the situation in the subject matter of this appeal. He observed that the request of the appellants at the trial Court is a declaration of right and its enforcement by the appropriate government authorities.

Learned Counsel further reiterated that the relief being claimed are declaratory and injunctive. He felt that no trade dispute existed and none was declared as provided by sections 1 to 6 of the Trade Dispute Act as between the parties in this appeal and the reliefs being claimed are not within the jurisdictional competence of the National Industrial Court.

Learned Counsel submitted that the trial Court, by virtue of section 231 of the Constitution of the Federal Republic of Nigeria, 1999 has jurisdiction to the exclusion of the National Industrial Court to entertain the appellants' claim as constituted. Learned Counsel further submitted that the provision of the section of Decree 47 of 1992 (now Act) cannot infract or take away the jurisdiction conferred by section 251 of the 1999 Constitution of the Federal Republic of Nigeria on the trial Court and if it is in conflict, as it seems to be, with the Constitution, it is void to the extent of the inconsistency. He referred to section 1 (3) of the 1999 Constitution. Learned Counsel urged this Court to hold that the trial Court was right to assume jurisdiction over the subject matter of the appellants' suit.

On behalf of the 3rd - 6th respondents, it was submitted that a Court is only competent to entertain a case when the subject matter

of the action is within its jurisdiction. Learned Counsel cited the cases of Madukolu v. Nkemdilim (1962) 1 SCNLR 341; Akeem v. University of Ibadan (2001) 15 NWLR (Pt. 736) 352 at 369.

Learned Counsel submitted that the claim of the appellants determines the jurisdiction of the Court; and in this case, the Originating Summons of the appellants before the trial Court. He cited the cases of Shittu v. Nigeria Agric & Cooperative Bank Ltd. (2001) 3 NWLR (Pt. 647) 25; Adeyemi v. Opeyemi (1976) 9-10, SC.31 and Savannah Bank Ltd. v. Pan Atlantic (1987) NWLR (Pt. 29) 212.) Learned Counsel submitted that the Originating Summons of the appellants and the reliefs sought therein before the trial Court disclosed trade dispute, jurisdiction upon which is exclusively conferred on the National Industrial Court. Learned Counsel cited the cases of National Industrial Court. Learned Counsel cited the cases of National Union of Road Transport Workers v. Ogbodo (1995) 6 NWLR (No part) 56, Index Nig. Ltd. v. Maskau (1998) 3 NWLR (Pt. 542) 404 at 422. Learned Counsel urged that the issue be resolved in favour of the respondents.

***It is basic and not in contention that a Court is only competent to entertain a case when, inter alia, the subject matter of the action is within its jurisdiction and the action is initiated by due process of law.*** See: Madukolu v. Nkemdilim (supra); Akeem v. University of Ibadan (supra).

***It is now trite that the claim of the plaintiffs (herein appellants) determines the jurisdiction of the Court. In this matter, same is the Originating Summons of the appellants as initiated at the trial Court.*** The cases of Adeyemi v. Opeyemi (supra) and savannah Bank Ltd. v. Pan Atlantic (supra) are clearly in Point.

***I need to state it here that the law which is applicable to a case is the law as at the time when the cause of action arose and the suit was initiated.*** See: Mustapha v. Governor, Lagos State (1987) 2 NWLR (Pt. 58) 539 at 591.

***It is of moment to reiterate it that the suit of the appellants was initiated at the trial Federal High Court on 23rd August, 1999. I note it that the 1999 Constitution of the Federal Republic of Nigeria came on board effectively as from 29th May, 1999. Section 251 (1) (r) of same imbued the Federal High Court with jurisdiction to determine -***

***“Any action or Proceeding for declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies”***

**The suit of the appellants at the trial Court, as earlier set out in this judgment, relates to declaratory and injunctive reliefs against the defendants thereat that include the Commissioner of Police of the Nigerian Police Force, no doubt, for agency of the Federal Government. It is incontestable that the subject matter of this suit, as constituted, is within the jurisdiction of the trial Court as at 23rd August, 1999 when the cause of action emanated.**

**It is the claim of the plaintiffs as in this case, the appellants’ Originating Summons that a Court should examine to determine whether or not it has jurisdiction to entertain the action.** In the case of Ladoja v. INEC & Ors. (supra), this Court at pages 37 -38, in a similar circumstance, pronounced as follows per Mohammed, JSC -

*“This law is indeed trite that in a situation that arose at the Court below regarding the determination of whether or not the trial Federal High Court has jurisdiction to entertain the claim of the appellant as contained in the Originating Summons, it is that claim that needed to have been examined... Looking at the appellant’s Originating Summons... I am of the view that the declaratory and injunctive reliefs sought therein are squarely within the jurisdiction of the Federal High Court as prescribed under section 251 (1) (q) and (r) of the 1999 Constitution.”*

And Aderemi, JSC at page 66 further pronounced on the same point that:-

*“Generally it is the claim of the plaintiff that determines the jurisdiction of a Court that is invited to adjudicate in the matter.”*

**Let me now depict the side of this matter as it relates to the National Industrial Court. It is well settled by this Court in the case of Western Steel Works Ltd. v. Iron and Steel Workers Union of Nigeria (supra) that section 15 of the Trade Dispute Act, 1976 conferring jurisdiction on the National Industrial Court in respect of certain specie of cases did not include jurisdiction to make declarations and to order injunctions as in this case.**

***Apart from the above, as at the time this action was initiated, all matters within the competence of the National Industrial Court must be referred to it (National Industrial Court) by the appropriate Minister of Labour as prescribed by section 10 of the Trade Dispute Act, 1976. In this matter,***  
 B ***no trade dispute was set in motion and none was referable by the Minister to the National Industrial Court.***

***By implication, no individual Union could directly approach the National Industrial Court except through the Minister after a trade dispute must have arisen. Same is not the situation in the subject matter of this appeal. This is so since the request of the appellants at the trial Court is a declaration of right and its enforcement by injunctive orders by appropriate government authorities including the State's Commissioner of Police.***  
 C  
 D

***The claim/reliefs of the appellants, I repeat are declaratory and injunctive in nature and purport. No trade dispute existed and none was declared as provided by sections 1 to 6 of the Trade Dispute Act as between the parties in this appeal. The utmost of it all is that the reliefs being claimed were not within the jurisdictional competence of the National Industrial Court. On the other hand, they were within the jurisdictional competence of the trial Federal High Court as at 23rd August, 1999, when the suit was rightly initiated before that Court.***  
 E  
 F

***I have tried to depict it clearly that jurisdiction in this matter rightly inheres in the Federal High Court as at the time the suit was initiated before it. The Court below took a narrow and rather simplistic view that since the 1st appellant and the 1st respondent are trade unions, the matter must per force go before the National Industrial Court. With due diffidence, as at that time that view was erroneous.***  
 G

***In short, the order of the Court below in which the trial by the trial Court was declared null and void was ill tuned and same is hereby set aside. I pronounce that the inherent jurisdiction imbued in the trial Court at the material time was without blemish.***  
 H

The above is not the end of this matter. The Court below after

treating the issue relating to jurisdiction left the other issues before it undetermined for reasons best known to it.

After finding that the Court was imbued with jurisdiction, I am of the opinion that issue B before the Court below which was formulated from Ground 2 of the Grounds of Appeal thereat is of moment here. Stricto sensu, the issue relates to a crucial point of law. The arguments of parties are extant in the transcript record of appeal. I am of the opinion that vides section 22 of the Supreme Court Act, Cap.S.15, LFN, 2004 same should be determined by this Court right away. See: Federal Airports Authority of Nigeria v. Wamal Express Services (Nig.) Ltd. (2011) 1-2 SC (Pt.11) 93 at 112. And, I so embark on it. C

The issue reads as follows:-

*“B. Whether the lower Court was right in holding that the Road Transport Employers Association was only inserted for the sake of it without jurisdictional scope. (Appeal Ground 2).”* D

On page 250 of the record of appeal, the trial Court, in respect of the above quoted issue stated as follows:-

*“But by Decree No. 1 1999 (Trade Unions [Amendment] Decree No. 1 of 1999) the Third Schedule of the Principal Act (Trade Unions Act Cap 437) was amended by the addition of Part C which contains the Senior Staff and Employers Association. In this new Part C, the 5th defendant was recognized. It is important to note that although the name of the 5th defendant was recognised it has not been given any specific area or jurisdictional operation. Section 6 of Decree No 4 of 1996 has not been repealed so also Part B of the Third Schedule which contains the Trade Unions and their jurisdictional scope. It is therefore my view that the 5th defendant’s name has only been inserted for the sake of it.”* E F G

The brief of argument of the 1st and 2nd appellants at the Court below who are 1st and 2nd respondents in this appeal was settled by A. O. Akanle, SAN (of blessed Memory). Arguments in respect of the issue thereat as contained on pages 264-266 of the record should be recapitulated as follows:- H

(a) The trial Court held that:

*“It is therefore my view that the 5th defendant’s name has only been inserted for the sake of it.”*

(b) It is curious that a High Court can hold that a Decree could

be made for fun and that a Trade Union registered for mere sake, yet it is recognized.

(c) If only by its name the 5th defendant (1st defendant - appellant is registered for transportation the implied hope is transportation by road and not by air or water.

B (d) Article 4(g) of the government made Constitution of first defendant -appellant (fifth Defendant) says -

C “The Association shall have absolute control and authority, subject to the law or bye-law of the land, over all motor-park activities orderliness and secure complete welfare of the passengers and the safety of their luggage.

(e) The quotation above is the jurisdiction scope which the lower Court says does not exist.

D (f) It was plainly established before the Court that the great omission was made in Decree 4 of 1996 and it is only understandable that the scope cannot be given in respect of a Trade Union whose name is omitted.

E (g) But even then, Decree 1 of 1999 does supersede Decree 4 of 1996 and the former (Decree 1 of 1999) does not give any scope to either first plaintiff (first plaintiff-respondent) or fifth defendant (1st defendant-respondent) .

F (h) It was hence wrong to go back to the 1999 (sic) Decree which has been superseded to fish out the jurisdictional scope of first plaintiff-respondent.

(j) The 1978 Trade Unions Decree listed both Trade Unions as Numbers 54 and 55.

G (k) It is wrong for the lower Court to have given a negative interpretation to Decree 1 of 1999; such an act is against the canon of interpretation of laws.

(i) Ibrahim v. Barde 1969 NWLR (Pt. 474) 513 at 582 F-G

(ii) U. A. Ventures v. FCNB 1998 4 NWLR (Pt. 547) 546 at 559 E.G.

H (l) This Court is prayed to resolve the issue here in favour of the appellants.

In respect of this issue before the Court below learned Counsel for the 1st and 2nd respondent thereat who are appellant in this Court merely opined that the ground upon which the issue was drafted did not arise in the proceedings at the lower Court. I should state it



right away that in view of the findings of the trial Court as quoted above, the stance of counsel herein failed to stand the test of time. The point made is in direct confrontation with the finding of the trial Court. It cannot stand as it fails to hit the target.

The learned Counsel for the 3rd-6th respondents thereat was more pragmatic and down to earth. He asked a pertinent question - B If the 1st appellant was not given any area or jurisdictional scope of operation, then what was it registered and recognized to do? He submitted that the 1st appellant was not and could not have been inserted in Decree 1 of 1999 just for the sake of it as the whole purport and objective of same was to cater and provide for Senior Staff and C Employers Associations as shown on the explanatory note to the Decree. He further submitted that the trial court gave a negative interpretation to Decree 1 of 1999 instead of giving it a holistic interpretation as required by law. He cited the case of Mobil Oil (Nig) Plc D v. IAL 36 Inc. (2000) 6 NWLR (Pt. 659) 146 at 168 D-E. Learned Counsel urged that the issue be resolved in favour of the appellants and allow the appeal before the Court below.

***It is basic that one of the vital canons of interpretation of statutes is that a Court of record should be minded to make E broad interpretation or what is sometimes referred to as giving same a liberal approach. See: Rabi v. The State (1980) 8-11 SC 130 at 151, 195. A Court should give a holistic interpretation to a statute as required by law. See: Mobil Oil Nig Plc v. IAL F 36 Inc. (supra). A Court should aim at giving a statute purposeful interpretation; I dare say. It sounds ludicrous that the trial Court could say that the name of the 1st respondent herein was only inserted in Decree No 1 of 1999 for the sake of it. The legislator does not act in vain. The 1st respondent was G registered for transportation by road; not by air or water. Article 4 (g) of the 1st respondent's constitution as quoted above by the counsel at the Court below supports same.***

***It is clear that the 1st respondent was not inserted in Decree 1 of 1999 just for the sake of it. The objective and H purport of same was to cater and provide for Senior Staff Employers Association as extant in the explanatory note to the Decree.***

***Learned trial Judge failed to appreciate that he should***

***not have made a restrictive, negative and purposeless interpretation of the law. In my opinion, he should have made a holistic, broad, and liberal interpretation which encapsulates the inescapable point that the 1st respondent having been registered and recognized has, by implication, jurisdictional scope to operate in Ekiti State motor-parks and roads just like the 1st appellant herein.***

I hereby pronounce in this respect as I set aside the erroneous pronouncement of the trial Court. I dismiss the claim of the appellant before the trial Court in its totality as same is ill-tuned.

One word more and I shall be done. The perennial hegemony between the 1st appellant and the 1st respondent should come to an end. Both of them have come to stay as transporters on land. One cannot disappear into the thin air for the other. After all, it is often said that the sky is wide enough for two birds to fly without colliding with each other.

I come to the conclusion that the appeal should be dismissed, and I order accordingly. I make no order as to costs.

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### **RHODES-VIVOUR JSC**

I have had the advantage of reading in draft, the leading judgment prepared by my learned brother, Fabiyi, JSC. I agree entirely. I propose to add only a few observations on jurisdiction. Jurisdiction is a threshold matter. Where a Court has no jurisdiction to hear a case and it proceeds to hear the case whatever decision arrived at is a nullity. The issue of jurisdiction is so fundamental to any proceeding, and so it can be raised at any stage of the proceedings, on appeal, and even for the first time in the Supreme Court. See *Usman Dan Fodio University v. Kraus Thompson Organisation Ltd* 2001 15 NWLR pt. 736 p.305.

Consequently, before a Court can be said to be competent or claim to have jurisdiction in respect of any matter:

(a) It must be properly constituted with respect to the number and qualification of its members.

(b) The subject matter of the action must be within its jurisdiction.

(c) The action is initiated by due process of Law, and,

(d) Any condition precedent to the exercise of its jurisdiction must have been fulfilled. See *Madukolu & Ors v. Nkemdilim* 1962 Vol.2 NSCC p.375 *Ajao v Popoola* 1986 5 NWLR pt. 45 p. 802

It is well settled that the claim of the plaintiff determines jurisdiction. See *Anya v. Iyayi* 1993 7 NWLR pt.305 p.290 *Anigboro v. Sea Trucks Nig Ltd* 1995 6 NWLR pt. 399 p.43.

In this matter, the learned trial Judge, a Judge of the Federal High Court had the task of deciding if the Federal High Court had jurisdiction to hear the plaintiffs claims.

The Federal High Court has jurisdiction under Section 251 of the Constitution if the following co-exist.

1. The Parties or a party must be the Federal Government or any of its agencies;

2. The Subject matter of the Litigation must relate to matters within subsections (a) - (s).

Jurisdiction is thus a combination of parties and subject matters. That is to say the Federal High Court has exclusive jurisdiction to entertain matters within sub paragraphs (a) to (s) provided one of the parties is the Federal Government or any of its agencies. See *Obiwenbi v. CBN* 2011 2 - 3 SC pt. 1 p. 46 *NEPA v. Edeghero* 2002 18 NWLR pt. 798 p.79, *Oloruntoba-Oju v. Abdul-Raheem & 3 Ors* 2009 5-6 SC pt.11 p.57.

The claim before the trial Court is/was for declaration/ Injunction. Section 251 (i)(r) of the Constitution reads:

251(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, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other Court in civil causes and matters.

(r) Any action or proceeding 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...

The plaintiff's claims are for Declarations and Injunction and the 6th defendant is an agent of the Federal Government of Nigeria. Both situations earlier alluded to co-exist. The Federal High Court has exclusive jurisdiction to entertain the plaintiff claim. The decision of the trial Court on jurisdiction was correct while the decision of the Court of Appeal on the same issue was wrong.

The learned trial Judge proceeded to hear the case and thereafter gave a judgment on the merits. On appeal the Court of Appeal only decided the issue of jurisdiction. The Court of Appeal, being the penultimate Court in one judicial system when confronted with the issue of jurisdiction should decide the issue one way or the other and then proceed to determine the main appeal thereby affording this Court with the benefit of its opinion.

In this case the issue of jurisdiction was wrongly decided by the Court of Appeal and this Court does not have a judgment from the Court of Appeal on the main appeal. Had this matter been one in which invoking the provision of section 22 of the Supreme Court Act is not possible the matter would have been remitted to the Court of Appeal for a hearing with great delay and expense to the Litigant, all due to the lapse by the penultimate Court.

For this, and the detailed reasoning in the leading judgment the appeal is dismissed.

### **PETER-ODILI JSC**

The 1st and 2nd respondents who were plaintiffs at the trial Court commence a proceeding at the Court by way of originating summons praying the Court to determine the question whether by virtue of the provisions of the Decree No.4 of 1996 Trade union (Amendment) Decree they are the rightful persons to engage in the transportation of passengers and goods by road at the motor parks in various towns and various in Ekiti State of Nigeria.

If the answer to the question is in the affirmative then the plaintiff hence claims the following reliefs:

(i) Declaration that the member of the 1st plaintiff union including the other plaintiff are the rightful persons authorized by law to engage in the transportation of passengers and goods by road in various motor parts in Ekiti State.

(ii) Mandatory injunction order ordering the respondents/defendants jointly and severally to enforce the relevant federal laws against any Trade unions, Associations and/or groups of persons not authorised by law to engage in the transportation of passengers and goods by road from operating, interfering and/or disturbing the plaintiff and/or their agents, servants or members of the various motor parks

in Ekiti state, where they are lawfully engaged.

(iii) Perpetual injunction restraining 2nd defendant and the Ekiti State House of Assembly from entertaining, considering or making any resolution tantamount to amending Decree 4 of 1996 by allowing or permitting non-recognised or un-authorised unions, Association or group(s) of persons to operate at the motor parks in the state or to engage in the transportation of passengers and goods by road in various motor parks in Ekiti State. B

(iv) An order directing the 1st, 3rd and 4th defendants to enforce Decree 4 of 1996 and other enabling laws, by preventing non-authorised unions and non-registered or non-recognised unions or associations from operating their transport business in the various motor-parks in Ekiti State. C

The claims were made against the 1st to 4th respondents who are statutorily invested with the responsibility of executing without the respondents in contemplation nor made partners. The 5th and 6th defendants later applied to be joined and the Court obliged in spite of the opposition from the 1st and 2nd plaintiffs now appellants in this Court.

The respondents filed their counter affidavit and the Court heard the case and found for the appellants and being dissatisfied the respondents filed a four ground notice of appeal to the Court of Appeal. E

The Court of Appeal gave judgment in favour of the 1st and 2nd respondents by declaring that the trial Court lacked jurisdiction to entertain the action being an Inter-Trade dispute. It is against that judgment that the appellants have appealed to this Court upon a four ground of appeal in a notice of appeal filed on 18th May, 2004. F

To better understand the dispute between the parties it seems that only from the affidavit evidence can the facts be properly seen and understood and therefore I quote hereunder at the risk of verbosity. G

#### AFFIDAVIT IN SUPPORT

I, Chief Adewole Ojo J. P., Chairman Ekiti State Council of the National Union of Road Transport Workers, (hereafter called the N.U.R.T.W), N.U.R.T.W Secretariat No.1, Ireje Street, Ado-Ekiti, Nigerian, Male, make oath and say as follows: H

1. That I am a Commercial Driver by profession and the 2nd

applicant in this suit; by virtue of my position I am conversant with the facts of the case.

2. My union Lawyer told me and I verily believe that by virtue of all relevant laws of the Federation, the national union of road transport workers is the only trade union allowed and/or permitted by the Federal Laws to engage in the transportation of passengers and goods by road.

3. That recently some meddlesome and busybody elements or touts, asserting the identities or membership of unauthorized unions or unregistered and unrecognized associations or organizations, have emerged at various motor-parks in Ekiti State threatening the peace, order and good governance in the state.

4. That the said unauthorized bodies have induced, and incited unnecessary acrimonies and disturbances at motor-parks in recent time which attracted the attention of the Council of Chiefs, under the auspices of the EWI OF ADO-EKITI which had decided, resolved and advised the Military Governors of Ekiti, since the creation of the State, that only the N.U.R.T.W. authorized to engage in the transportation of passengers and goods by road, should be allowed in the motor-parks in Ekiti State.

5. That my Lawyer told me and I honestly believe that the Federal Laws have vested in the plaintiff/ applicants the exclusive right to engage in the transportation of passengers and goods by road and the same laws have refrained from vesting the same jurisdictional scope in any other trade union.

6. That my lawyer told me and I verily believe that, labour, including trade unions, industrial relations, conditions, safety and welfare of labour, industrial disputes,... and industrial arbitrations are matters within the exclusive Legislature Lists (vide item 34) and is ultra-vires, the State and local government to legislate upon.

7. That my lawyer told me and I verily believe that an application recently made to the 2nd defendant/ respondent for the allocation of motor-parks between one unauthorized union and the applicant is misleading and would lead to ultra-vires resolution of the Ekiti State House of Assembly and the Government of Ekiti State.

8. My lawyer told me and I verily believe that a grant by the Ekiti State House of Assembly permitting the unauthorized union to engage in the transportation of passengers and goods by union or

association not included in the list of 29 Restructured Trade Unions in the Third schedule Part A with their corresponding jurisdictional scope in part B as amended by Trade Unions (amendment) Decree 1999, is ultra-vires the State laws and such grant will be repugnant and void.

9. That my lawyer told me and I verily believe that a Trade union not affiliated with the central labour organization cannot operate or take benefit under the protection principles of the Central Labour Organisation, as contained in the Labour Act. B

10. My lawyer told me and I truly believe that unless the questions raised in this Originating Summons are resolved positively, the anomalies in the Trade Unions structures caused by frivolous duplications, amorphous structures, of Trade Unions and over lapping jurisdictions in order to eradicate inter and intra union disputes and litigation, will be restored in Ekiti State. C

11. That the schedule of the relative and relevant reactions from various states are hereby annexed as Exhibit GA1. D

12. That this affidavit is made in good faith.

#### FURTHER AFFIDAVIT

I, Chief Adewolo Ojo J. P. Chairman, Ekiti State Council of the N.U.R.T.W. No.1, Ireje Street, Ado Ekiti, commercial driver, Nigerian, male, make oath and say as follows: E

1. That I am the 2nd defendant and deponent to the main affidavit in support and by virtue of that position am conversant with the facts of this case. F

2. That in the earlier affidavit in support, I forgot to disclose some facts which are relevant to the considerations of our application for interlocutory (or interim) injunctions, as prayed.

3. That since the intervention of the Ewi of Ado-Ekiti into the frequent clashes between our union, the statutorily recognized union and various incognito, unregistered and un-recongised transport unions, the peace, order and good-governance at the motor-park has broken down, and lawlessness disorder, chaos and crisis deliberately induced by the un-recongised trade union and has destroyed peace and order at motor-parks, to the detriment of the applicants business as commercial drivers. G H

4. That the legitimate right, arising from the fact of registration of the applicants to ply and re-ply from motor-parks to motor-parks

in the various motor-parks and garages have been violated, disturbed and some parks totally destroyed or annihilated by the faceless incognito trade unions, to the knowledge, permissive authority and/or connivance of the respondents.

B 5. That in consequence of their inactions, connivance, condonation or permissiveness and inactions, the applicants have suffered and are still suffering insurmountable damages to their interest as a trade union, and in the losses of due business income as members of the registered trade unions.

C 6. That to the knowledge, permissiveness, connivance, inactions of the respondents, the unregistered union or their members have threatened, and repeatedly threatening that their lawless operation will continue until they drive out members of the applicants union out of all motor-garages and motor-parks in the state.

D 7. That recently in the months of July, 1999 members of the applicants union were attacked by members of the unrecognized unions during cut-throat competition or struggles for loading at motor-parks; but notwithstanding that the applicant member were the complainants, members of the unregistered union laughed happily  
E out of the police station, while our members were locked-up.

8. That to the knowledge and permissiveness of the respondents, the members of the unrecognized unions have been threatening, and repeatedly threatening that they will continue and escalate  
F their unlawful operations and bragging as well that there is no Court or authority that can stop or disturb them all these arising from the connivance, condonation and conspiracies of the respondents.

9. That there are very serious matters to be determined at the hearing of the originating summons, the case of the applicant is sup-  
G portable and deserves sympathetic considerations.

10. That the balance of convenience is in our favour as the applicants duly registered under the law, while the attitude of the unregistered trade-unions, (being protected and indulged by the inactions of the respondents) cannot be tolerated in any civilized so-  
H ciety.

11. That the applicants undertake to pay necessary damages if the application is erroneously granted.

12. That I make the affidavit in good faith.

COUNTER-AFFIDAVIT



I, Mrs. Elizabeth Oni, Christian, a Nigerian citizen and a civil servant in the Ekiti State Civil Service and lives at No.5 Ajowa Street, Ado-Ekiti make oath and say as follows:-

1. That I am a litigation clerk in the office of 3rd defendants/respondent and that by virtue of that position, I am conversant with the facts of this case. B

2. That I have the authority of the Honourable Attorney-General and commissioner for Justice, Ekiti State to make this oath.

3. That the instant application by the plaintiffs/applicants counsel was passed on to me and I have perused the supporting affidavit and I dearly understood them. C

4. That paragraphs 4, 5, 6, 7, 8, 9 and 10 in support of the applicant of the 1st and 2nd plaintiffs/applicants are false.

5. That the Ekiti State House of Assembly has not made any amendment to Decree 4 of 1996. D

6. That the Ekiti state Government has not recognised any trade union apart from all trade unions recognized, by Decree No .4 of 1996 as amended and Decree No.1 of 1999 as amended.

7. That I was informed by the counsel to the respondents and I verily believe him that there is no serious cause of action disclosed in the said application. E

8. That the applicants are still carrying on their legitimate business in all the motor-parks within Ekiti state undisturbed.

9. That the Government of Ekiti state has not connived with or colluded with any unregistered trade unions. F

10. That contrary to the allegation of the applicants, it is the applicants union that has been causing great unrest state.

11. That I was informed by the learned Counsel to the respondents and this I verily believed that the applicant and Road Transport Employers Association of Nigeria are the only recognized trade union allowed to operate in the motor-parks within Equity state by virtue of Decree No.1 of 1999 as amended. G

12. That the Local Government councils who own the motor-parks in Equity State allowed only the two registered unions to operate within the motor parks. H

#### RE-SWORN AFFIDAVIT IN SUPPORT

I, Chief Adewole Ojo J.P, Chairman Equity State Council of the National Union of Road Transport workers, (hereinafter called

N.U.R.T.W.) N.U.R.T.W. Secretariat No. 1, Ireje Street, Ado Equity, Nigerian, male, make oath and say as follows:

1. That I am a commercial driver by profession and the 2nd application this suit, by virtue of my position, I am conversant with the facts of the case.

B 2. My union lawyer told me and I verily believe that virtue of all relevant laws of the Federation, the National Union of Road Transport Workers is the only trade union allowed and/or permitted by the Federal Laws to engage in the transportation of passengers and goods by road.

C 3. That owing to the inactions and inadvertence of the respondent, to the Federal laws recently some meddlesome and busybody elements or touts, asserting the identities or membership of unauthorised unions or unregistered and unrecognised associations or D organizations, have emerged at various motor-parks in Ekiti State threatening the peace, order and good governance in the state.

E 4. That the said unauthorized bodies have induced, and incited unnecessary acrimonies and disturbances at motor-parks in recent time which attracted the attention of the Council of Chiefs, under the auspices of the EWI OF ADO-EKITI which had decided, resolved and advised the Military Governors of Equity, since the creation of the State, that only the N.U.R.T.W. authorized to engage in the transportation of passengers and goods by road, should be allowed in the motor-parks in Equity State.

F 5. That my Lawyer told me and I honestly believe that the Federal Laws have vested in the plaintiff/ applicants the exclusive right to engage in the transportation of passengers and goods by road and the same laws have refrained from vesting the same jurisdictional G scope in any other trade union.

6. That my lawyer told me and I verily believe that, labour, including trade unions, industrial relations, conditions, safety and welfare of labour, industrial disputes,... and industrial arbitrations are matters within the exclusive Legislature Lists (vide item 34) and is H ultra-vires, the state and local government to legislate upon.

7. That my lawyer told me and I verily believe that an application recently made to the 2nd defendant/respondent for the allocation of motor-parks between one unauthorized union and the applicant is misleading and would lead to ultra-vires resolution of the Eq-

uity State House of Assembly and the Government of Equity State.

8. My lawyer told me and I verily believe that a great(sic) by the Ekiti State House of Assembly permitting the unauthorized union to engage in the transportation of passengers and goods by union or association not included in the list of 29 Restructured Trade Unions in the Third schedule Part A with their corresponding jurisdictional scope in part B as amended by Trade unions (Amendment) Decree 1999, is ultra-vires the State laws and such grant will be repugnant and void. B

9. That my lawyer told me and I verily believe that a Trade union not affiliated with the central labour organization cannot operate or take benefit under the protection principles of the Central Labour organisation, as contained in the Labour Act. C

10. My lawyer told me and I truly believe that unless the questions raised in this originating summons are resolved positively, the anomalies in the Trade unions structures caused by frivolous duplications, amorphous structures of Trade Unions and over lapping jurisdictions in order to eradicate inter and intra union disputes and litigation, will be restored in Equity State. D

11. That the schedule of the relative and relevant reactions from various states are hereby annexed as Exhibit GA1. E

12. That this affidavit is made in good faith.

The appellants in their brief of argument filed on the 14/11/07 distilled three grounds which are

(a) whether the lower Court was right by refusing to consider the appellant's complaint and argument that the issue formulated by the 1st and 2nd respondents at the lower Court did not arise in the notice and grounds of appeal filed at the lower Court. F

(b) Whether the claim of the appellants at the Court of trial is a trade union dispute. G

(c) Whether the trial Court was clothed with jurisdiction to hear and determine the subject matter of this appeal.

The respondents 3rd - 6th filed their brief on 3/7/08 and couched their issues raising same questions as those of the appellants and so there is no need to have them repeated. H

On the date of hearing the appellants adopted their brief and argued that the lower Court was not right to have ignored the objection raised that the ground of appeal was incompetent not having

arisen from the judgment of the Court. That the lower court was duty bound to determine whether the ground complained of was competent or not. That the failure to so do was fatal to the success of the appeal at the Court of Appeal. He cited *Kano Textile Printers Ltd. v. Gloede & Hoff Ltd* (2005) 5 SC 140 at 144; *U.B.A Plc v A.C.B Ltd* B (2005) 12 NWLR (Pt. 939) 232.

Learned Counsel for the appellants further contended that a perusal of their claim would show that their request at the Court of trial was for a judicial interpretation of the provision of Trade Union C Amendment Decree 4 of 1996 and no more. That the joinder of 1st and 2nd respondents as defendants could not turn a non-trade dispute into a trade dispute. That the claim of the appellants at the Court of trial was not a trade dispute, but a decision of the Court to declare a right granted by a statutory provision. He went on to submit D that the lower Court erred in declining jurisdiction to entertain the matter on the basis that it was a trade dispute and for the National Industrial Court and not the High Court as had happened.

For the appellants it was further canvassed that the request of the appellant at the Court of trial is a declaration of right and its E enforcement by the appropriate government authorities and there was no trade dispute in existence concerning this matter. That the reliefs claimed are not within the jurisdiction of the National Industrial Court. He cited *Ladoja v. INEC & Ors.* (2007) 40 WRN 1; *Western Steel Works Ltd. v. Iron & Steel Workers Union of Nigeria* (2004) 7 F WRN.

Learned Counsel stated that by virtue of section 251 of the constitution of the Federal Republic of Nigeria 1999, the trial Court has jurisdiction to the exclusion of the National Industrial Court to G entertain the appellants' claim. That Decree 47 of 1992 now Act did not take away the jurisdiction conferred by section 251 of the 1999 Constitution and where there is conflict the constitution would hold sway as against the Act.

In response, learned Counsel for the respondents submitted H that the originating summons of the appellant and the reliefs sought disclosed a trade dispute which jurisdiction is conferred exclusively upon the National Industrial Court. He cited: *Akeem v. University of Ibadan* (2001) 15 NWLR (Pt. 736) 352 at 369; *Shittu v. Nigeria Agric & Coop Bank Ltd.* (2001) 3 NWLR (Pt. 647) 25; *Adeyemi v.*

Opeyemi (1976) 9 - 10 SC 31; Savannah Bank Ltd. v. Pan Atlantic (1987) 1 NELR (Pt.29) 212; National Union of Road Transport Workers v. Ogbodo (1995) 6 NWLR; Onigboro v. Sea Truck (1995) 6 NWLR 56; Index Nigeria Ltd. v. Maskau (1998) 3 NWLR (Pt. 542) 404 at 422.

He further submitted for the respondents that the lower Court was right in refusing the objections of the appellants that issues B & D formulated by the 1st & 2nd respondents as appellants before the lower Court did not arise from the ground of appeal. That the issue of jurisdiction is very vital to the determination of this action and should be resolved first. He referred to Shell Petroleum Development Co. Ltd. v. Isiaiah (2001) SC. (Pt.11) 8; Kotoye v. Saraki (1994) 7 NWLR (Pt.357) 414 at 453 - 454.

It is to state that it is the claim of the plaintiff and in this case that within the Originating Summons that determines jurisdiction. This position was well stated by this Court in Ladoja v. INEC & Ors. (2007) 40 WRN 1. I would like to quote some portions of that judgment cited above and it is thus: Ladoja v. INEC & Ors. (2007) 40 WRN 1 at 37 to 38 per Mohammed JSC:

*"This law is indeed trite that in a situation that arose at the Court below regarding the determination of whether or not the trial Federal High Court has jurisdiction to entertain the claim of the appellant as contained in the Originating Summons, it is that claim that needed to have been examined...Looking at the appellant's Originating Summons...I am of the view that the declaratory and injunctive relief's sought wherein are squarely within the jurisdiction of the Federal High court as prescribed under section 251(1)(q) and (r) of the 1999 Constitution ....."*

This view was supported forcefully by ADEREMI JSC at page 66 of the Ladoja v. INEC supra when he held.

*"Generally, it is the claim of the plaintiff that determines the jurisdiction of a Court that is invited to adjudicate in the matter".*

Katsina-Alu JSC also held at pages 42 and 43 of the case that:

*"The claim of the plaintiff is an invocation of the interpretative jurisdiction of the High Court by section 251 (r)(q) and (r) of the constitution of the Federal Republic of Nigeria 1999... The claim as endorsed on the originating summons cannot be conceivably said to be an election matter. It is not. All that the plaintiff claimed was an*

*interpretation of section 180(2) (a) of the 1999 constitution as it affects his tenure of office. It is crystal clear that the Federal High Court has the jurisdiction to interpret the provisions of the constitution and to make declaratory and injunctive reliefs as conferred upon it by section 251(1)(g)(r) of this constitution. One does not require a sooth-sayer to see that the Federal High Court has jurisdiction to hear and determine the present claim."*

What has occurred here is the fact that from that claim of the plaintiff, there is a need to see whether or not it is such a species of cases that must go to the National Industrial Court for adjudication or to the Federal High Court. In this instance where the claim sought declarations and injunctive reliefs, then the jurisdiction of the Federal High Court has not been taken away in favour of the National Industrial Court as it is not covered by section 15 of the Trade Dispute Act 1976. See *Western Steel Works Ltd. v. Iron & Steel Workers Union of Nigeria* (2004) 7 WRN.

Having settled the jurisdiction of question as to whether or not the trial Court had the vires which I had no difficulty in finding affirmatively. The next issue therefore which needs be dealt with, since recourse is had on section 22 of the Supreme Court Act in order to determine the crucial second issue which is as follows:

*"B. Whether the lower Court was right in holding that the Road Transport Employers Association was only inserted for the sake of it without jurisdictional scope."*

It had been argued for the 1st and 2nd respondents that the ground of appeal upon which the Issue B above stated did not arise in the course of the proceedings at the lower Court. Learned Counsel for the 3rd - 6th respondents had proceeded with a question thus:

*"If the 1st appellant was not given any area or jurisdiction scope of operation, then what was it registered and recognized to do?"*

Learned Counsel had answered the question himself by saying that the registration was to cater and provide for the senior staff and Employers Association in keeping with the explanatory note to Decree 1 of 1999. That the narrow interpretation given by the trial Court was wrong.

Indeed, it cannot be seen the justification of the dry and narrow interpretation of Decree 1 of 1999 instead of the broad and

liberal approach which it deserved. The Government provided Constitution of the 1st defendant appellant Article 4(g) reads as follows:

*“The Association shall have absolute control and authority, subject to the law or bye-law of the land, over all motor-park activities orderliness and secure complete welfare of the passengers and the safety of their luggage.”* B

The 1st respondent was registered for transportation by road and it is indeed strange to either argue or as the trial Court held that the 1st respondents name was merely inserted in Decree 1 of 1999 just for the sake of it. That cannot be as it is unthinkable that a legislator can make a law just for fancy or the fun of it. Therefore, the 1st respondent having been registered and recognized has the scope and jurisdiction to operate in the motor-parks of Ekiti State and the roads just as the 1st appellant is entitled to do. C

Having stated the foregoing and the better articulated reasoning of my learned brother, John Afolabi Fabiyi JSC, I also dismiss the appeal. D

I make no order as to costs.

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