

**SUPREME COURT OF NIGERIA**  
30TH MARCH, 2012. SC. 178/2005  
CORAM:- **A. M. MUKHTAR, F. F. TABAI, S. GALADIMA,**  
**N. S. NGWUTA, O. ARIWOOLA, JJSC**

1. MERILL GUARANTY SAVINGS  
& LOANS LIMITED

2. IBRAHIM BELLO ..... APPELLANTS  
AND

WORLDGATE BUILDING  
SOCIETY LIMITED

..... RESPONDENT

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CONSTITUTIONAL LAW - Courts - Jurisdiction - Banking matters -  
1979 Constitution s. 230(1)(d) - The section does not confer exclu-  
sive jurisdiction on Federal High Court (H1)

CONSTITUTIONAL LAW - Constitution - Interpretation - Principle -  
Where the words used are unambiguous - Court must give the words  
their ordinary meaning (H2)

**FACTS**

Plaintiff/respondent is a limited liability company while 1<sup>st</sup> de-  
fendant/appellant is a finance company and 2<sup>nd</sup> defendant/appellant  
is its Managing Director. Appellants executed a personal guarantee in  
favour of respondent on its investment of N500,000.00 on appel-  
lants' merit high yield certificate at an interest rate of 8.5% per month  
for 90 days to fall due on 24th August 1993. Appellants issued a  
post-dated Guarantee Trust Bank cheque to be presented subse-  
quently. Appellants however failed to redeem respondent's invest-  
ment despite several demands.

Hence, respondent instituted this action against appellants at  
the High Court of Lagos State. Appellants on the other hand filed  
notice of preliminary objection challenging the jurisdiction of the State  
High Court to entertain the matter by virtue of the provision of section  
230(1)(d) of the Constitution of the Federal Republic of Nigeria 1979.  
The court upheld the objection and struck out respondent's action.  
Dissatisfied, respondent appealed to the Court of Appeal, Lagos  
Division. The court allowed the appeal and gave order for remittal of

the matter to the State High Court for trial before another judge. Aggrieved, appellants filed appeal at the Supreme Court.

**HELD** (Unanimously dismissing the appeal per **MUKHTAR JSC**)  
**Courts - Jurisdiction - Banking matters**

1. Nothing in the pleadings signifies that any of the parties is a bank to fall within the ambit of the provision of section 230(1)(d) of the constitution of Nigeria of 1979, which is in pari material with the provision of the 1999 constitution. Besides, the proviso to the said section 230 of the 1979 constitution supra further throws light to the limitation of the provision. That is to say that even if one of the parties is a bank, an individual customer can seek remedy in a State High Court. The provisions is Banks and other Financial Institutions Decree 1991, which the learned counsel for the appellants made heavy weather of, in particular Section 61, under which “other financial institutions’ is defined does not to my mind detract from the interpretation given to the essence of the provisions of the Constitution of Nigeria, which overrides any other law. For the foregoing reasoning i am satisfied that this case falls within the ambit of the proviso to section 230(1)(d) supra, and so is not one of those cases in which the Federal High Court has exclusive jurisdiction. The High Court of Lagos State has jurisdiction to hear and determine the case. (p. 1339 B/1341 F)

**Constitution - Interpretation - Principle**

2. These provisions of the Constitution, which have already been reproduced are straight forward and unambiguous, and so should be given their ordinary and plain meaning. It is a cardinal principle of law that in the course of interpreting a statute a court must consider the words used in order to discover their ordinary meaning and the intention of the legislature. Where there is no ambiguity in the words used, then it behooves the court to give it its ordinary meaning as it relates to the subject matter. (p. 1339 E)

**NOTABLE POINT OF INTEREST**

**GALADIMA JSC**

*1. Jurisdiction is determined from plaintiff’s statement of claim*

It is trite law that the jurisdiction of Court is determined by the plain-

tiff's claim as endorsed on his writ of summons and elaborated in the statement of claim. Therefore to ascertain the jurisdiction of the Lagos High Court, it is the plaintiff's writ of summons and statement of claim that will be examined. (p. 1345 B)

### **REPRESENTATION**

Mr. T. O. Busari, for the Appellants

Mr. O. A. Owolabi, for the Respondent

### **CASES REFERRED TO**

Farms Ltd. v. NAL Merchant Bank Ltd (1994) 3 NWLR (pt. 331) 241

Nwankwo v. Nwankwo (1995) 5 NWLR (pt. 394) 153

Awolowo v. Shagari (1979) 6 - 9 SC 51

Owena Bank Nig PLC v. Nigerian Stock Exchange Ltd (1997) 8 NWLR (Pt.515) 1

U.B.A. PLC v. BTL Industries Ltd. (2006) 19 NWLR (pt. 1013) 61

Adeyemi v. Opeyemi (1976) 1 NMLR 149

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

UBA Plc v. BTL Industries Ltd. (2006) 19 NWLR (pt. 1013) 61

NDIC v. Okein Enterprises Ltd (2004) 10 NWLR (pt. 880) 107

Integrated Timber and Plywood Products Ltd v. Union Bank Nigeria PLC (2006) 12 NWLR (pt. 995) 483

Salami v. Chairman L.E.D.B. (1989) 5 NWLR (pt. 123) 539

Aqua Ltd v. Ondo State Sports Council (1988) 4 NWLR (pt. 91) 355

A. G. Bendel State v. Agbofodoh (1999) 2 NWLR (pt. 592) 476

Major and St. Mellons Rural District Council v. Newport Corporation (1952) A. C. (Pg. 189)

Assam Railways and Trading Co. Ltd. v. Inland Revenue Commissioners (1935) A.C. 445.

### **STATUTES REFERRED TO**

Constitution of the Federal Republic of Nigeria 1979, s. 230(1)(d)

Banks & Other Financial Institutions Decree No. 25 of 1991, ss. 2, 56-59, 61 and 517

Evidence Act Cap 112 LFN 1990, s. 75

Constitution of the Federal Republic of Nigeria 1999, 251(1)

**LEAD JUDGMENT BY MUKHTAR JSC**

In an action instituted in the High Court, Lagos State, the respondent who was then the plaintiff claimed against the appellants jointly and severally the following reliefs:-

- B *“(i) The sum of N553,013.69 being the principal sum and interest outstanding on the amount placed in the 1st Defendant’s high yield certificate as at 31st December, 1993, which sum the Defendant has refused and/or neglected to pay despite repeated demands.*  
 C *(ii) Interest on the said sum of N553,013.69 at the rate of 21 % per annum from 1st January, 1994, until the whole amount is totally liquidated.”*

Briefly, the plaintiff’s case is that it is a limited liability company, while the 1st defendant is a finance company and the 2nd defendant is its Managing Director, who executed a personal guarantee in favour of the plaintiff on its investment of N500,000 on the defendants’ merit high yield certificate at an interest rate of 8.5% per month for 90 days to fall due on 24th August 1993, and the defendant issued a post-dated Guarantee Trust Bank cheque to be presented on 24th August 1993. The defendant however failed to redeem the plaintiff’s investment despite several entreaties, hence it instituted this action against the defendants. After filing the plaintiff’s statement of claim, the defendant filed a notice of preliminary objection, the ground of which reads the following:-

- F *“The Lagos State Court lacks jurisdiction to entertain this suit by virtue of the provision of Section 230(1)(d) of the Constitution of the Federal Republic of Nigeria 1979 as amended by Section 1 (3) of the Constitution of the Federal Republic of Nigeria 1979 as amended by Section 1 (3) of the Constitution (Suspension and Modification)*  
 G *Decree No. 107 of 1993.”*

In an affidavit in support of the preliminary objection, the deponent, Olufunmilola Osisanya deposed to the following facts:-

- H *“3. That the Plaintiffs instituted this action at the Lagos High Court on 8th May 1995 claiming the total sum of N553,013.69 (five hundred and fifty three thousand and thirteen Naira sixty nine kobo) arising from a short term loan granted by the Plaintiff to the 1st Defendant.*

*4. That the cause of action in this suit arose as a result of the conduct of the business of the 1st Defendant as a financial institution.*

5. *That there is no banker-customer relationship between the plaintiff and the 1st Defendant.*

6. *That I verily believe that the Honourable court lacks jurisdiction to entertain this suit by virtue of the provisions of the constitution (suspension and Modification) Decree No. 107 of 1993.*

7. *That it is in the interest of justice that this suit be dismissed.*” B

The learned trial judge in his ruling upheld the objection and struck out the plaintiff’s action. Dissatisfied, the plaintiff appealed to the Court of Appeal, Lagos Division where Ogebe JCA (as he then was) in the lead judgment of the court allowed the appeal thus:-

“Consequently, I allow this appeal and set aside the ruling of the trial court. In its place I dismiss the respondent’s preliminary objection before the court” C

Aggrieved by the decision, the defendants appealed to this court on four grounds of appeal. In pursuance to the rules of this court the learned counsel for the parties exchanged briefs of argument, which were adopted at the hearing of the appeal. In its brief of argument, the appellant raised the following lone issue for determination of the appeal:-

“Whether the Lagos High Court had jurisdiction to determine Civil Causes and matters arising from financial institutions (such as between the Appellants and Respondent) not being a dispute between an individual customer and his bank, taking cognizance of the provisions of Section 230(1)(d) of the Constitution of the Federal Republic of Nigeria 1979 as amended by section 1(3) of the Constitution (suspension and Modification) Decree no.107 of 1993.” F

In its brief of argument, the respondent also formulated one issue for determination which is -

“Whether the High Court of Lagos State has jurisdiction to G entertain the plaintiff’s case as formulated in the Statement of claim.”

In arguing its sole issue, learned counsel for the appellants referred to paragraphs 1 and 2 of the plaintiffs statement of claim which he argued show that the respondent and 1st appellant are finance and investment companies whose activities fall within the category of H ‘other financial institutions’ regulated by part 1 i.e. Sections 56 - 59 of the Banks and Other Financial Institutions Decree No. 25 of 1991. The finding of the Court of Appeal which I will reproduce hereunder was attacked. It reads as follows:

*"I must begin the resolution of the sole issue of this appeal by saying that there is nothing on the face of the claim to show that the parties are financial institutions. To determine whether or not they are financial institutions of incorporation and registration as financial institutions would require evidence showing their documents of incorporation and registration as financial institutions. There was nothing before the trial court to establish this ....."*

The learned counsel contended that the above position is erroneous as it is trite law that facts that are admitted need not be proved. He referred to Section 75 of the Evidence Act Cap 112 Laws of the Federation of Nigeria 1990, *Farms Ltd. v. NAL Merchant Bank Ltd* 1994 3 NWLR part 331 page 241, and *Cecilia Ihuoma Nwankwo v. Emmanuel Nwankwo* 1995 5 NWLR part 394 page 153. The following finding of the court below was also attacked. It reads:-

*"Even if they are financial institutions I would hold that they are in the same class with banks and proviso to Section 230(1)(d) of the Constitution (Suspension and Modification) Decree 107 of 1993, applies to this dispute."*

The learned counsel has submitted that the provision of section 230(1)(d) of the Constitution (Suspension and Modification) Decree No.107 of 1993 (Decree 107) confers exclusive jurisdiction on the Federal High Court to try civil causes and matter connected with and pertaining to banks, banking and other financial institutions including actions between one bank and another but excluding bank to customer transactions. The said Section 230 of the Constitution supra reads as follows:-

*"Notwithstanding anything to the contrary contained in the constitution and 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:-*

*d. Banking, banks, other financial institutions including any action between one bank and other, any action by or against the Central Bank of Nigeria arising from banking, foreign exchange, coinage, legal tender, bills of exchange, letter of credit promissory note and other fiscal measures.*

*Provided that this paragraph shall not apply to any dispute*

*between an individual customer and his bank in respect of transactions between the individual customer and the bank.”*

The learned counsel has further submitted that the ordinary meaning of the above provision when applied to the facts of this case is inter alia that civil causes involving financial institutions shall fall within the exclusive jurisdiction of the Federal High Court. According to him the provision is clear and unambiguous and effect must be given to it without resorting to any intrinsic or external aid. Reliance was placed on the cases of *Awolowo v. Shagari* 1979 6 - 9 SC. 51, and *Owena Bank (Nig.) PLC v. Nigerian Stock Exchange Ltd* 1997 8 NWLR pt.515 page 1. The learned counsel added that ‘Bank and other Financial Institution Decree supra has adequately defined ‘banking business’ and ‘other financial institutions’.

The learned counsel for the respondent commenced its argument by stating that jurisdiction is determined by the claim as endorsed on the writ of summons and elaborated in the statement of claim, and so these have to be examined, (in which case paragraphs (1) (2) and (3) of the statement of claim in the case on hand). See *U.B.A. PLC v. BTL Industries Ltd.* 2006 19 NWLR part 1013 page 61, *Adeyemi v. Opeyemi* 1976 1 NMLR 149, *Tukur v. Government of Gongola State* 1989 4 NWLR part 117 page 517, and *United Bank for Africa PLC v. BTL Industries Ltd.* 2006 19 NWLR part 1013 page 61. I will reproduce the said pleadings hereunder. They read:-

*“1. The Plaintiff is at all times material to this action a limited liability company carrying on the business of Finance and Investment and a customer of the 1st defendant.*

*2. The 1st Defendant is at all times material to this suit a Finance and Investment company with head office at the Sugar House, 174B Murtala Mohammed Way, Ebute Metta, Lagos State.*

*3. The 2nd Defendant is at all times material to this suit, the Managing Director of the 1st Defendant.”*

The learned counsel has submitted that the facts pleaded in the statement of claim is not and cannot be stretched so far as to bring the transaction within the exclusive jurisdiction of the Federal High Court. According to learned counsel, since the judgment of the Court of Appeal, this court has had occasion to revisit the interpretation and effect of section 230 of the 1979 constitution which is in pari material with section 251(1) of the 1999 Constitution, except that

the phrase 'arising from' used in the former was replaced with 'connected with or pertaining to' in the later. He cited the cases of Nigerian Deposit Insurance Corporation (liquidator of Allied Bank of Nigeria PLC) v. Okein Enterprises Ltd & Ors. 2004 10 NWLR part 880 page 107, and Integrated Timber and Plywood products Ltd v. Union Bank Nigeria PLC 2006 12 NWLR part 995 page 483.

The argument of both parties are predicated on the provision of Section 230 of the 1979 Constitution *supra*, and what is germane is the interpretation of the provision which I have already reproduced in the earlier part of this judgment. The particular provision, which is salient and relevant to this discussion is subsection (d) of the said Section 230(1) and its proviso. By virtue of this provision, the suits referred to therein are cases that are purely pertaining to banks, banking and other financial institutions. Contrary to the argument of the appellants, the claims and the descriptions of the parties do not come within the ambit of the interpretation of the provision. A careful perusal of the averments *supra* does not suggest the parties are 'financial institutions', notwithstanding that they portray the parties as being involved with finance and investment. The mere use of the word 'finance' does not perform an abracadabra to translate the parties to 'financial institution', for they must be actually identified as such. The claim portrays the parties as companies dealing with investments, and when one looks at the other parts of the pleadings, it will be clear that the cause of action emanated from a simple contract. The following paragraphs illustrate this fact:-

*"4. On 26th May 1993 the Plaintiff invested the sum of N500,000 with the Defendant High Yield Certificate.*

*5. The 2nd Defendant executed a personal guarantee in favour of the Plaintiff as a result of its investment in the 1st Defendant High Yield Certificate.*

*6. The facility was expressed (sic) to last for 90 days and as such it was to fall due on 24th August 1993.*

*7. Interest as agreed between the parties was 8.5 ft flat per month.*

*8. To secure this facility the Defendant issued it post dated Guarantee Trust bank's cheque to be presented on the 24th August 1993.*

*9. Till date despite several entreaties to the defendant to re-*



*deem the plaintiff's investment, it has either neglected or refused to pay up since maturity on 24th August 1993."*

It is very clear from the above averments that what transpired between the parties was a contractual obligation, which the appellants had refused to meet, and from which a liability accrued on the part of the appellants. B

***Nothing in the pleadings signifies that any of the parties is a bank to fall within the ambit of the provision of section 230(1)(d) of the constitution of Nigeria of 1979, which is in pari material with the provision of the 1999 constitution. Besides, the proviso to the said section 230 of the 1979 constitution supra further throws light to the limitation of the provision. That is to say that even if one of the parties is a bank, an individual customer can seek remedy in a State High Court. The provisions is Banks and other Financial Institutions Decree 1991, which the learned counsel for the appellants made heavy weather of, in particular Section 61, under which "other financial institutions' is defined does not to my mind detract from the interpretation given to the essence of the provisions of the Constitution of Nigeria, which overrides any other law. These provisions of the Constitution, which have already been reproduced are straight forward and unambiguous, and so should be given their ordinary and plain meaning. It is a cardinal principle of law that in the course of interpreting a statute a court must consider the words used in order to discover their ordinary meaning and the intention of the legislature. Where there is no ambiguity in the words used, then it behooves the court to give it its ordinary meaning as it relates to the subject matter.*** See Salami v. Chairman L.E.D.B. 1989 5 NWLR G part 123 page 539, Aqua Ltd v. Ondo State Sports Council 1988 4 NWLR part 91 page 355, and A. G. Bendel State v. Agbafodoh 1999 2 NWLR part 592 pages 476. The intention of the legislature must also be explored. Authorities abound on this principle of interpretation. Lord Reid in the case of Kennedy v. Spratt 1972 A.C. page 83 H at page 89 had this to say:-

*"We are as always trying to find the intention of the legislature. Where, taking into account the surrounding circumstances and the likely consequences of the various possible construction, there can*

*be any doubt at all about the intention, we must where penalties are involved require that the intention shall clearly appear from the words of the enactment construed in light of those matters. But if we can say that those matters show that a particular result must certainly have been intended, we would I think, be stultifying the underlying principle if we required more than that the statutory provisions are reasonably capable of an interpretation carrying out that intention".* See also the cases of *Major and St. Mellons Rural District Council v. Newport Corporation* 1952 A. C. page 189, and *Assam Railways and Trading Co. Ltd. v. Inland Revenue Commissioners* 1935 A.C. 445.

In the light of the above explosions of law I am of the view that the learned trial judge was in error when in his judgment he held as follows:-

*"With regard to the second issue, the main provision of Section 230 (1) (d) specifically mentions 'banks, other financial institutions', but the proviso omits 'other financial institutions'. As the omission has in no way created any ambiguity, it is not for the court to extend the scope of the proviso. Therefore the proviso does not apply to other financial institution."*

My opinion is that the learned trial judge was economical with the correct interpretation of the said provision of Section 230 (1) (d) of the Constitution supra, for if he had given the rules of construction of statutes and interpretation the attention it deserves in the course of interpreting the provision he wouldn't have found as he did above. Again, in his judgment, the learned trial judge made the following observation and finding in his judgment:-

*"With regard to the first issue, paragraph 1 of the statement of claims states that the plaintiff is at all times material to this action a limited liability company carrying on the business of finance and investment and a customer of the 1st defendant also a Finance and Investment Company. The defendants have not disputed that averment and so I accept that the plaintiff and the 1st defendant are financial institutions."*

How, if I may ask did he come to the above conclusion, when no statement of defence to counter or admit the averment in the statement of claim was filed? Perhaps, he was influenced by paragraph (4) of the affidavit in support of the notice of preliminary ob-

jection, already reproduced above. But even then the above deposition does not in any way infer that the defendants were in tandem with the plaintiff on the nature or description of the plaintiff and the 1st defendant. The fact that the plaintiff averred that the 1st defendant is a Finance and Investment Company does not connote that it is a Financial institution within the context of the provision of section 230 (1) (d) of the Constitution supra. B

I will at this juncture re-echo the words of Ogundare JSC (of blessed memory), in the case of Federal Mortgage Bank of Nigeria v. Nigeria Deposit Insurance Corporation 1999 2 NWLR part 591 page 333, a case that is similar to the present one. In that case, the learned jurist in treating and interpreting the provision of Section 230(1) (d) and its proviso had the following to say:- C

*“To say that where there is a dispute between two banks, the forum for the resolution of the dispute is the Federal High Court is to read Section 230(1)(d) what is not there. A lot depends on the nature of the transaction between the two banks. The facts show that plaintiff, like any other customer placed a short-term deposit with the defendant on agreed interest. After some roll-overs, plaintiff sought to retrieve its deposit and interest but defendant defaulted. In the absence of any evidence to the contrary about the custom in the industry I must hold that a simple customer/banker relationship which the proviso in Section 230 (1)(d) exempts from the exclusive jurisdiction of the Federal High Court.”* E

I am fortified by the above finding, and relate it to the instant case. F

***For the foregoing reasoning i am satisfied that this case falls within the ambit of the proviso to section 230(1)(d) supra, and so is not one of those cases in which the Federal High Court has exclusive jurisdiction. The High Court of Lagos State has jurisdiction to hear and determine the case.*** G

In this wise, I affirm the judgment of the Court of Appeal, Lagos Division, which ordered the remittal of the case to the Chief Judge of Lagos State for its re-assignment. I also here order that the case be so re-assigned. The appeal fails for it lacks merit I hereby dismiss it. I hereby order costs at N50,000.00 in favour of the respondent, against the appellants. H

### **GALADIMA JSC**

On the 8th day of May, 1995, the Respondent as the plaintiff took out a writ of summons against the Defendants, the Appellants, herein jointly and severally at the Lagos High Court claiming as follows:

*“1. The sum of N553, 013.69 being the principal sum and interest outstanding on the amount placed in the 7th Defendant’s High Yield Certificate as at 31st December, 1993 which sum the defendant has refused and or neglected to pay despite repeated demand.*

*2. Interest on the said sum of N553, 013.69 at the rate of 21% per annum from 1st January, 1994 until the whole amount is totally liquidated”.*

The endorsed writ of summons was accompanied by a 15 - paragraph statement of claim. On the 25th September, 1996, the Appellants filed a preliminary objection supported by an 8 - paragraph Affidavit challenging the jurisdiction of the High Court of Lagos State to hear the matter contending that since the two parties in the suit were Financial Institutions, the Federal High Court had exclusive jurisdiction to hear the matter. The Learned trial Judge took arguments from counsel to both sides. He formulated the following two issues for determination:

(i). whether both parties are Financial Institutions within the meaning of BOFID 1991 (Decree No. 25 of 1991) and the Constitution. (Suspension and Modification) Decree 107 of 1993.

(ii) whether the proviso to section 230 (1) (d) of Decree 107 of 1993 is applicable to Finance Institutions.

In his considered Ruling, the learned trial Judge resolved both issues against the plaintiff. In other words he upheld the objection raised by the Defendants and declined jurisdiction to hear and determine the suit between the parties herein. The reasons for this decision can be summarised as follows:

(a). Both parties are Financial Institutions.

(b). The proviso to section 230 (1) (d) of the Constitution of the Federal Republic of Nigeria 1979, as amended by Decree No. 107 of 1993 did not include “Financial Institutions. Therefore, reference to the exclusions of Banker/Customer relationship does not cover

such relationships between Financial Institutions.

(c). The transaction between the parties did not fall within the ambit of Banking business under the Banks and other Financial Institutions. Decree No. 25 of 1991.

Dissatisfied, the plaintiff appealed against the Ruling of the trial High Court. In its considered Judgment delivered on 9th June, 2004. B The Court of Appeal Lagos Division unanimously upheld the plaintiffs' Appeal. The rationale of that decision can be summarised as follows:

(a) That there was nothing on the plaintiffs claim to suggest C that the parties involved on the suit are Financial Institutions.

(b) That the transactions between the parties do not come within the Exclusive Jurisdiction of the Federal High Court as envisaged by section 230 (1) (d) of the 1979 Constitution.

(c) Even if the parties are Financial Institutions and section 230 D (1) (d) supra applies, they are in the same class with Banks and therefore the proviso to section (1) (d) of the Constitution (Suspension and Modification) Decree, 107 of 1993 applies to the dispute.

Consequently, their Lordships remitted the case to the Chief Judge for re-assignment to another Judge other than Sahid J. for E hearing. The Defendants, now Appellants were aggrieved with this Judgment and they filed a Notice of Appeal containing 4 Grounds of Appeal. The parties filed and exchanged their respective briefs of argument. In the Appellants' brief the following sole issue was set F down as calling for determination:

*"whether the Lagos State High Court had jurisdiction to determine civil causes and matters arising from financial institutions (such as between the Appellants and Respondent) not being a dispute between and individual customer and his bank, taking cognizance of the provisions of the section 230 (1) (d) of the Constitution of the Federal Republic of Nigeria 1979 as amended by section 1 (3) of the Constitution (Suspension and Modification) Decree No. 107 of 1993?"* G

The Respondent in its brief of argument identified also a single H issue for determination thus:

*"Whether the High Court of Logos State has jurisdiction to entertain the plaintiff's case as formulated in the statement of claim".*

On 9/1/2012 this appeal was heard. Learned Counsel for the parties having identified their briefs adopted same. Learned Counsel

for the Appellants has submitted that going by the relevant paragraphs of the Respondent's statement of claim, it is not in dispute that both parties are Financial and Investment companies and that their activities fall within the category of "*other Financial Institutions*", regulated by sections 56-59 of BOFID No. 25 of 1991. These facts  
 B having been admitted need not be proved. Reliance was placed on section 75, Evidence Act and the cases of ANASON FARMS (1994) LIMITED v. NAL MERCHANT BANK LIMITED (1995) 1 NWLR (pt.331) 241 at 252, and NWANKWO v. NWANKWO (1995) 5 NWLR  
 C (pt.394) 153 at 171. The Appellants disagreed with the view expressed by Court below that even if the 1st appellant and the Respondent were financial institutions they are in the same class with the Bank and proviso to section 230 (1) (d) of the Constitution (Suspension and Modification) Decree 107 of 1993 applies to this dispute.  
 D

Learned Counsel further submitted that the ordinary meaning of this proviso, when applied to the facts of this case is that civil causes involving Financial Institutions shall fall within the exclusive jurisdictions of the Federal High Court. That the exceptions to this general  
 E rule are cases involving an individual customer and the bank in respect of transactions between the individual customer and the bank. It therefore submitted that since this proviso is clear and unambiguous effect must be given to it without resorting to any intrinsic or  
 F external aid.

The Appellants have noted that the Banks and other Financial Institutions Decree No.25 of 1991 (BOFID) makes a clear distinction between a "*Bank*" and "*other Financial Institution*." Reference was made to ss.2, 517, and S.61 of the Act and section 230 (1) (d) of the  
 G 1979 Constitution, as amended by section 1 (3) of the Constitution (Suspension and Modification) Decree No. 107 of 1993. It is in the light of these provisions that the learned counsel has contended that the forum for the dispute resolution is the Federal High Court, unless it is established that banker/customer relationship exists between the  
 H parties.

The Respondent has argued that a Banker/Customer relationship could be inferred from the relationship between the parties and that the issuance of the high yield Certificate by the 1st Appellant constituted a "*Banking business*" and the proviso to section 230 (1)

(d) (supra) should avail the Respondent. Reliance was placed on the authorities of this court in FEDERAL MORTGAGE BANK OF NIGERIA v. NIGERIA DEPOSIT INSURANCE CORPORATION (1992) 2 NWLR (pt.591) p.333 at 362-363 and also the Court of Appeal decision in the case of NIGERIA DEPOSIT INSURANCE CORPORATION v. FEDERAL MORTGAGE BANK OF NIGERIA (1997) 2 B NWLR (PT. 490) 766-767.

It is trite law that the jurisdiction of Court is determined by the plaintiff's claim as endorsed on his writ of summons and elaborated in the statement of claim. Therefore to ascertain the jurisdiction of the Lagos High Court, it is the plaintiff's writ of summons and statement of claim that will be examined. See UNITED BANK FOR AFRICA PLC v. BTL INDUSTRIES LTD (2006) 19 NWLR (pt.1013) 61 at 67. I shall therefore take very close look at the Plaintiff/Respondent's statement of claim, particularly paragraphs 1, 2, 3, and 4. It is stated as follows:

*"1. The plaintiff is at all times material to this action a Limited Liability Company carrying on the business of Finance and Investment and customer of the 1st defendant.*

*2. The 1st Defendant is at all times material to this suit, Finance and Investment Company with head office at the Sugar House, 174B Murtala Mohammed Way, Ebute Metta, Lagos State.*

*3. The 2nd Defendant is at all times material to this suit, the managing Director of the 1st Defendant.*

*4. On 26th May 1993, the Plaintiff invested the sum of N500,000 with the Defendants on the Defendants' Merrill High Yield Certificate."*

The operative phrases in paragraph 1 of the statement of claim are the fact that the plaintiff is a Limited Liability Company and a "Customer of the 1st Defendant". I agree with the Learned Counsel for the Respondent that there is no pleading that the Respondent is duly registered as "a Financial Institution." There is no pleading to the effect that the instrument of registration of the plaintiff will be tendered. The 1st Appellant was merely described as a "Finance and Investment Company".

In the light of the foregoing, I cannot fathom out why the learned trial judge should hold categorically at a preliminary stage of the proceedings that the parties are Financial Institutions. This finding

is unsound and premature. The court below therefore rightly found in its judgment at page 69 lines 4- 10 as follows:

“...*That there is nothing on the face of the claim to show that the parties are financial institutions. To determine whether or not they are financial institutions would require evidence showing their documents of incorporation and registration as financial institutions. There was nothing before the trial court to establish this. Even if they are financial institutions, I would hold that they are in the same class with banks and proviso to section 230 (1) (d) of the Constitution (Suspension and Modifications Decree 107, applies to this dispute.*”

What the Respondent herein pleaded in paragraphs 4-9 of the statement of claim is clear. It is that it invested N553, 013.69 with the appellants for 90 days and they were liable to pay up the said sum of money. The Respondent did not plead that it was acting as Financial Institution. This claim to my mind, reveals a simple contract to repay the Respondent’s investment guaranteed by the 2nd Appellant but which the Appellants breached when they refused to pay with agreed interest.

Since 2004 the Court below handed down its judgment in this matter, this Apex court, has had occasions in its decisions to revisit the vexed question of interpretation and effect of section 230 (1) (d) of the 1979 Constitution which is impari material with section 251 (1) (d) of the 1999 Constitution save that the phrase “*arising from*” used in the former was replaced with “connected or pertaining to” in the latter. See NIGERIA DEPOSIT INSURANCE CORPORATION (LIQUIDATOR of Allied Bank of Nigeria Plc) vs. OKEM ENT. LTD & ANOR. (2004) 10 NWLR (pt.880) 107 and INTEGRATED TIMBER AND PLYWOOD PRODUCTS LTD V. UNION BANK NIGERIA plc (2006) 12 NWLR (Pt.995) 483. The Principles established and restated by this court in those cases are clear and need no further emphasis.

Section 230 (1)(d) of the 1979 Constitution or S.251 (1) (d) of the 1999 provide for the following situations: where the Federal High Court will have exclusive jurisdiction viz:

(i) Matters arising from banking, banks and other Financial Institutions.

(iii) Any action between one bank and another.

(iv) Any action by or against the Central Bank of Nigeria arising



ing from banking, foreign exchange, coinage, legal tender, bills of exchange, letter of credit promissory note and other fiscal treasures.

A close look at the main clause of the section both under the 1979 and 1999 Constitutions and the Statement of claim of the Respondent shows that there is no pleading that this matter arose or is connected or pertain to “other Financial Institutions” or is an action between one Bank and another to bring it within exclusive jurisdiction of the Federal High Court. The main clause of section 230(1) (d) of the 1979 Constitution is clear and not ambiguous; it requires no extrinsic or external aid. See *BANK OF ENGLAND v. VOGLIANO BROTHERS* (1891) AC 107 at pp. 144 - 145; *OKEM ENT. LIMITED CASE* (supra): *AWOLOWO v. SHAGARI* (1979) 6-9 SC p.51. This matter does not fall within the exclusive jurisdiction of the Federal High Court: See further this Court decision in *TRADE BANK PLC v. BENILUX NIG. LTD.* (2003) 9 NWLR (pt.825) page 416 at p.431.

In summary, I hold that the nature of the transaction between the parties in this matter is based on simple contract. It is the State High Court and not the Federal High Court that has jurisdiction to hear and determine the case. Learned Counsel for the Respondent has gone further to discuss the second arm of the finding of the lower court. It is to the effect that its decision would not have been different, even if the two parties were financial institutions. I shall be brief in this discourse. I cannot agree less. This part of the decision of the court below is supported by the decision of this court in the case of *FEDERAL MORTGAGE BANK OF NIGERIA v. NDIC.* (1999) 2 NWLR (Pt. 591) 333. The decision in that case applies to the instant case. The court dealt substantially with the issue of the status of Banker/Customer relationship; like a bank interested in earning interest from another bank made a deposit in that other bank. In that case, where a dispute arises from such transaction then the relationship of individual customer and a banker is established. Then such dispute arising from that transaction is triable in the state High Court as well as in the Federal High Court. The transaction of placing money in a High yield Certificate is akin to Banking Business and in a class of Banker/Customer relationship for all interest and purposes. Section 51(1) of the Banks and other Financial Institutions Decree (BOFID) recognises the existence of other Banks including Commercial Bank, Mer-

chant Bank, Credit & Commerce-Bank, Mortgage Bank etc. In the instant case, the 1st Appellant was carrying on a Banking Business as Financial Institution when it took deposits from the Respondent as investment and issued a High yield Certificate. The nature of the business or transaction between the parties should be the guideline  
B for determination of jurisdiction of the Court under the proviso to section 230 (1) (d) supra. It will be incorrect to suggest that once parties are Banks or Financial Institutions, all disputes between them must be resolved at the Federal High Court. It is not in every simple  
C action for recovery of debt or money advanced on loan or investment that has to be resolved at the Federal High Court.

I agree with the learned counsel for the Respondent that when the 1st Appellant accepted deposit of money from the Respondent, it was engaged in banking business within the meaning of the law.  
D Hence, the relationship of Banker/Customer was established or deemed to have been created. It is the case of the 1st Appellant functioning or as it claims, like a Financial Institution and doing what is akin to banking business which brings the transaction clearly within the said proviso to section 230(1) (d).

E In the premise, I agree with my Learned Brother Mukhtar, JSC that this appeal lacks merit, it is dismissed. I abide by the consequential order made in the lead judgment including costs.

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### **NGWUTA JSC**

I have had the privilege and opportunity of reading in draft the lead judgment of my learned brother Mukhtar, JSC.

Each party submitted a single issue for determination. In sub-  
G stance, the two issues are the same. The issues were adequately and conclusively resolved in the lead judgment. I wish to add (or to emphasise a point already made) that the trial High court fell into a grave error when it purported to determine the status of the parties on the statement of claim without benefit of the statement of defence  
H or an admission in the affidavit evidence. The object of pleading is to state the issues for trial and to apprise the opponent of the case it would meet in court. See *George v. UBA Ltd* (1972) 8/9 SC 264; *Oduku & Ors v. Kasamu & Ors.* (1968) NMLR 28.

The question whether or not any party is or both parties are,

financial institution or Institutions is part of the pleading. The trial court cannot make a finding based on the statement of claim when the statement of defence had not been filed and ipso facto the defence had neither admitted any part of the pleading nor joined issue on same.

I adopt the reasoning and conclusion in the lead judgment. I agree that the appeal is bereft of merit and I also dismiss same. I adopt the consequential orders in the lead judgment, including order on costs.

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