

SUPREME COURT OF NIGERIA
FRIDAY 14TH DECEMBER, 2012. SC. 130/2005
**CORAM:- W. S. N. ONNOGHEN, C. M. CHUKWUMA-
ENEH, B. RHODES-VIVOUR, M. D. MUHAMMAD,
C. B. OGUNBIYI, JJSC**

BENSON AGBULE APPELLANT
AND
WARRI REFINERY &
PETROCHEMICAL CO. LTD RESPONDENT

APPEALS - Jurisdiction - Objection - Issue of jurisdiction is constitutional and a matter of law - Hence appellant needed no leave to raise same (H1)

TECHNICALITIES - Court processes - Wrong naming - The use of the word refinery or refining interchangeably - Did not overreach respondent - In absence of any earlier complaint (H2)

COURTS - Federal High Court - Jurisdiction - 1979 Constitution s. 230(1)(q)(r)(s) - The court has exclusive jurisdiction - In any matter affecting the Federal government or any of its agencies (H3)

JURISDICTION - Determination - Basis - Jurisdiction of court is determined by plaintiff's claim - As can be seen from the paragraphs of the statement of claim (H4)

CONSTITUTIONAL LAW - 1979 Constitution s. 230(1) - Interpretation - "Any of its agencies" - The phrase is interpreted to cover all organs established by law - Through which Federal government carries out its functions (H5)

JURISDICTION - Absence of - *Madukolu v. Nkemdilim* - In absence of jurisdiction the court will be acting in futility - No matter how well a proceeding is conducted (H6)

FACTS

Defendant/respondent is a limited liability company i.e. a sub-

subsidiary company owned by the Nigerian National Petroleum Corporation (NNPC), a Federal Government owned corporation established by the NNPC Act Cap 320 LFN 1990. Plaintiff/appellant was a staff of respondent. By a letter addressed to appellant, respondent terminated the employment of appellant.

Consequently, appellant instituted this action at the High Court of Delta State, claiming *inter alia* that he is a staff of respondent and that the purported termination letter is invalid. Respondent on its part raised objection to the hearing of the suit on the ground that the State High Court lacks jurisdiction to entertain the action by virtue of section 230 of the 1979 Constitution. The court held that it had jurisdiction to entertain the matter because the suit is based on master and servant relationship and thus is not against the Federal Government. Being dissatisfied, respondent appealed to the Court of Appeal Benin City. The court allowed the appeal, upset the ruling of trial court and held that the Federal High Court has jurisdiction in the matter. Aggrieved, appellant filed appeal at Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the Learned Justices of the Court of Appeal were justified in the interpretation of Section 230 (1) of the 1979 Constitution as amended by Decree 107 of 1993 to hold that in all matters affecting Federal Government or its agencies only the Federal High Court has jurisdiction to entertain Appellant's claim as couched and not the Delta State High Court?

2. Whether the Learned Justices of the Court of Appeal were justified in their interpretation of Section 230 (1) of the 1979 Constitution of the Federal Republic of Nigeria as amended by Decree 107 of 1993 in holding that Warri Refining and Petrochemical Ltd, the Respondent herein, is a Federal Government Agency that robs the State High Court jurisdiction from entertaining the Appellant's Claim?

3. Whether the Learned Justices of the Court of Appeal were justified in their interpretation of Section 230 (1) 1979 Constitution as amended by Decree 107 of 1993 in holding that the claim of Appellant challenged the validity of the executive and administrative actions or decisions of the Federal Government or its agencies which excluded the jurisdiction of the State high Court from entertaining the Appellant's Claim.

4. Whether the Learned Justices of the Court of Appeal cor-

rectly applied the decision of NEPA Vs. Edegero to the case of the Appellant in holding that the State High Court lack the jurisdiction to entertain the Appellant claim by virtue of Section 230 (1) of the 1979 Constitution as amended by ' Decree 107 of 1993.

HELD (Unanimously dismissing the appeal per
OGUNBIYI JSC)

Jurisdiction - Objection

1. Briefly on the effect of the preliminary objection raised, I hasten to say that the appeal at hand for all intent and purpose is fought solely on a jurisdictional issue between the High Court and the Federal High Court. Without belabouring the question, it is trite law that the issue of jurisdiction is constitutional and therefore a matter of law. The appellant needed no leave to raise same. (p. 3446 B)

Court processes - Wrong naming

2. Furthermore, and on the other objections 2 and 3 I hold the view that they are only ancillary to the 1st objection and therefore a mere technicality in nature. It is also borne out on the record that both parties have, for instance, used the word Refinery or Refining Interchangeably in describing the respondent at one time or the other. It goes without saying therefore that a defendant/respondent who did not protest against the name used and in fact filed processes using such interchangeably cannot now be heard to complain at this stage. This is because he is deemed to have waived his right and is therefore estopped from contending the contrary as rightly submitted by the learned appellant's counsel. The wrong use of the name did not overreach or put the respondent to any form of disdain in the absence of any earlier complaint thereof. The use of the name in my view is at best a misnomer and which did not occasion any negative effect. This court under its inherent powers has the jurisdiction to correct such inconsequential error which did not require any formal application to be made. (p. 3446 D)

Federal High Court - Jurisdiction

3. At this stage and for proper comprehension of the Constitutional provision it will be pertinent to reproduce section 230 (1) in particular (q), (r) and (s) of the 1979 Constitution as amended by Decree 107 of 1993

From the foregoing provision as reproduced, it is specific that jurisdiction is conferred on the Federal High Court to the exclusion of any other court in, inter alia, any action or proceeding for declaration or injunction affecting the validity of executive or administrative action or decision by the Federal Government or any of its agencies.

From the pleadings of the parties, it is admitted that the respondent is a subsidiary of Nigerian National Petroleum Corporation (NNPC) established by the Federal Government. This is as pleaded by the appellant in paragraph 2 of the Statement of Claim appearing at page 4 of the record of appeal which averment was specifically admitted by the respondent in paragraph 2 of the amended statement of defence also at page 47 of the record of appeal. Following from above, it is therefore settled that the respondent being a subsidiary of NNPC, it goes without further saying that it is an agency of the Federal Government having regard to Decree 107 of 1993.
(p. 3454 B)

JURISDICTION - Determination - Basis

4. It is also trite law and well settled that the jurisdiction of a court is determined by the plaintiffs claim before it.
For the purpose of determining the jurisdiction of the court in this case therefore, the plaintiff appellant's paragraphs 1, 2, 9, 10, 18(b) and 19 of his Statement of Claim are relevant.
(p. 3455 C)

H 1979 Constitution s. 230(1) - Interpretation

5. The use of the phrase "any of its agencies" as provided in the proviso to section 230(1) of the 1979 Constitution as amended by Decree No 107 of 1993 has been judicially interpreted to cover all the organs established by law through which

the Federal Government carries out its functions. (p. 3455 F)

JURISDICTION - Absence of

6. As rightly held by the learned Justices of the Court of Appeal, the trial court had no jurisdiction in entertaining the proceedings in this case as it did. The question of jurisdiction is trite and well settled in the locus classical case of Madukolu v. Nkemdilim (1962) 1 ALL NLR (Pt. 4) 587. In the absence of jurisdiction, the court will be acting in futility no matter how well a proceeding is conducted. The product of such a proceeding in otherwords is a nullity. B C

The learned justices of the Court of Appeal correctly interpreted the provision of section 230 (1) of the 1979 Constitution as amended by Decree 107 of 1993 in holding that in all matters affecting Federal Government or its agencies only the Federal High Court has jurisdiction to entertain appellant's claim as couched and not the Delta State High Court. In otherwords, the justices cannot be faulted on their judgment and hence the said 1st issue is therefore resolved against the appellant. (p. 3459 B) D E

NOTABLE POINTS OF INTEREST

RHODES-VIVOUR JSC

1. Manner of raising jurisdiction in trial court F

Once raised proceedings should be put on hold and the issue of jurisdiction resolved quickly. In the court of first instance, usually the High Court jurisdiction is raised by the entry of conditional appearance, or in the pleading or by an application on Notice. (p. 3464 F) G

2. Manner of raising jurisdiction in Court of Appeal & Supreme Court

In the Court of Appeal and the Supreme Court jurisdiction can be raised as a ground of appeal and formulating an issue on it, thereafter incorporating arguments on it in the brief of argument. H (p. 3464 G)

3. Issue of jurisdiction must be treated first

All courts treat the issue of jurisdiction first. If it succeeds the matter abates and the suit is struck out. If on the other hand it fails the appeal is heard and a judgment on the merits of the case delivered.

(p. 3464 G)

B

4. Parties are bound by their pleadings

The plaintiff (appellant) pleaded that the defendant (respondent) is a subsidiary of NNPC. Parties are bound by their pleadings. That in effect means that if pleadings are to be of any use parties must be held bound by them.

C

The plaintiff should adhere to the fact he pleaded that the defendant is an agency of the Federal Government, and in any case he is correct. (p. 3465 H)

D

REPRESENTATION

O. J. Oghenejakpor Esq, S. Esharivwotu Esq, A. O. Itedjere, S. G. Ediagbonuvie, S. O. Adamu and E. J. Oghenejakpor, for appellants
C. D. Bello, for respondent

E

CASES REFERRED TO

NEPA v. Edeghero (2003) 1 MJSC 69

Afolabi v. Adekunle (1983) 8 SC 98

Williams v. Williams (1995) 2 NWLR (Pt. 375) 1

F

AH v. CBN (1997) 4 NWLR (pt 498) 192

Broniks Motor v. Wema Bank (1983) All NLR 272

Omosowan v. Chiedozie (1998) 9 NWLR (Pt 566) 477

Olutola v. University of Ilorin (2005) 3 MJSC 151

G

University of Abuja v. Ologe (1996) 4 NWLR (Pt. 445) 706

Akeem v. University of Ibadan (2003) 10 NWLR (Pt. 829) 584

Madukolu v. Nkemdilim (1962) 1 ANLR 587

Anyia v. Iyayi (1993) 7 NWLR (pt. 305) 290

A-G Kwara State v. Warah (1995) 7 NWLR (Pt. 405) 121

H

Anigboro v. Sea Tucks Nig Ltd (1995) 6 NWLR (Pt. 399) 43

Onuorah v. Okeke (2005) 10 NWLR (Pt. 932) 47

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

STATUTES REFERRED TO

Constitution of Federal Republic of Nigeria 1979, ss. 6(6)(a)(b), 230(1), 236

Constitution of Federal Republic of Nigeria 1999, ss. 233(3), 251(1)

Federal Revenue Court Act, s. 7(1)(a)(b)

B

LEAD JUDGMENT BY OGUNBIYI JSC

This is an appeal from the decision of the Court of Appeal, Benin Division, delivered on the 29th day of June, 2004 which allowed the Appeal of the Respondent solely on the issue of jurisdiction and struck out the Appellant's claims. C

The appellant was the plaintiff in the Trial court while the Respondent was the Defendant. The Respondent is a limited Liability Company, one of the subsidiary companies owned by the Nigerian National Petroleum Corporation (NNPC), a Federal Government D owned Corporation established by the NNPC Act Cap 320 Laws of Federation 1990. The Appellant at all material time is a staff of the Respondent at Ekpan, Warri before the events leading to this suit.

The plaintiff by Writ of summons dated and filed on 24th March, 1994 as reflected in paragraph 18 of the statement of claim dated on 20th April, 1994, but filed on 21st April, 1994 claimed among others, the following reliefs:- E

(a) An order that the plaintiff is a staff of the Defendant.

(b) A Declaration that the purported termination of the plaintiff as per letter dated 8th April, 1993 is unconstitutional, unlawful, ultra F vires, capricious, wrongful, invalid, null and void.

(c) An order for the Defendant to pay the plaintiff all emoluments and entitlements including promotions due and payable to him as from April, 1993 and to be so calculated until final determination of this suit. G

(d) An order reinstating the plaintiff with all his promotions and entitlements to his office.

(e) And in the alternative to (c) & (d), an order for the payment of his entitlement, gratuity and pension at his retirement age of H 2008.

The plaintiffs statement of claim was filed on the 21st April, 1994 at pages 4-12 of the record of appeal. The Defendant, in their response also filed their statement of Defence on 24th May, 2004 as

evidenced at pages 12 - 19 of the record. The plaintiff commenced evidence on 14th May, 1996 and closed his case on 31st July, 1996. This is evidenced at pages 27- 43 of the record. After the close of evidence of the plaintiff, the Defendant by a motion dated 13th September, 2006 filed an Amended statement of Defence dated 13th September, 1996 at pages 43 - 45 in which they raised for the first time, the issue of jurisdiction in paragraph 17(a) at pages 52 - 53 of the record thus:-

“17(a) The Defendant shall also raise as a preliminary point of law or at the trial of this case that by virtue of section 230 of the constitution of the Federal Republic of Nigeria 1979 as amended by the constitution (suspension and modification) Decree No. 107 of 1993, this Honourable court lacks jurisdiction to entertain or try this case in that the plaintiff hereby seeks a declaration affecting and/or challenging the validity of the executive and/or administrative action of the Defendant, an agency of the Federal Government of Nigeria, in terminating the plaintiff appointment, the said Decree No. 107 having vested only the Federal High Court with jurisdiction to try the case to the exclusion of any other court.”

The plaintiff testified at pages 27 - 43 of the record while the defendant's only witness also testified at pages 58-62 of the record with the address of the defendant contained at pages 63 - 69. The address on behalf of the plaintiff is also contained at pages 63 - 72 of the record and the reply on points of law at pages 73 - 74.

By his considered judgment delivered on the 27th September, 1996 and at pages 74 - 90 of the record, the trial court found in favour of plaintiff/appellant as follows:-

1. That Delta State High Court has jurisdiction to entertain this suit because this case is based on master and servant relationship and that being so, it is not a matter against the Federal Government order, which is precluded by section 230 1 of the 1979 constitution as amended by Decree 107 of 1993.

2. That the Termination of the plaintiff as per the letter dated 8/04/93 is invalid, ultra vires and hence null and void as the appropriate authority that is, the Managing Director of NNPC who ought to issue the letter did not do so.

3. That the plaintiff is therefore considered as still in the employment of the Defendant since there is no body known as man-

agement given power to terminate the appointment of the staff.

4. The court ordered the reinstatement of the plaintiff and payment of all his entitlements due to him up till the date of judgment forthwith.

5. The court in the alternative awarded the sum of N1.5 million (one Million, Five Hundred Thousand Naira), to the plaintiff as damages. B

The Defendant/Respondent was dissatisfied with the judgment of the trial court and hence the appeal lodged to the Court of Appeal on various grounds including the ground of jurisdiction of the High Court to entertain the case based on section 230 (1) of the 1979 Constitution as amended by Decree 107 of 1993. The plaintiff/appellant also cross-appealed on the award of N1.5 million as general damages and challenged same on the ground that the trial court having granted re-instatement cannot again grant N1.5 million which was not claimed by the plaintiff appellant. Briefs were filed and exchanged at the lower court. The Defendant/Respondent (appellant) Brief in that court is at pages 122-136 of the record while that of the Plaintiff/Appellant (Respondent) at the court below is at page 183 - 212 of the record. C D E

The Court of Appeal in its findings narrowed the judgment on the interpretation of section 230 (1) of the 1979 Constitution as amended by Decree 107 of 1993. In other words the court held that since the plaintiff pleaded that the Defendant is a subsidiary of NNPC it follows that it is an agency of the Federal Government within the decision in *Edeghero v. NEPA* and that Decree 107 of 1993 robs the state High Court of its jurisdiction. The Court of Appeal also held that the award of the 141.5 million which was not claimed by the appellant was made in error. The court in the result therefore struck out the appellant's claim. The judgment of the Court of Appeal is at pages 225-240 of the records. F G

Dissatisfied with the said judgment of the Court below, the appellant has now filed a notice of appeal on 3 original grounds at pages 243-245 of the record. With the leave of this court sought and obtained, the appellant filed five additional grounds of appeal with their particulars. H

In compliance with the Rules of this court, parties filed and exchanged their respective briefs of arguments. While that of the

appellant filed 8th November, 2006 was by the order of this court deemed filed on the 23rd May 2007, respondent's brief was however filed on the 6th August, 2007. The two briefs were settled by O.J. Oghenejakpor Esq and C.D. Bello also Esq on behalf of the parties respectively. Imbedded in the respondent's brief was argument on a
B preliminary objection.

The appellant in response to the preliminary objection raised by the respondent also filed a reply brief on the 24th January, 2008. On the 16th October, 2012 when the appeal was fixed for hearing,
C the learned respondent's counsel informed the court of the preliminary objection raised following which both counsel representing the parties adopted and relied on their respective briefs of arguments.

On the merit of the appeal therefore, while the appellant urged in favour of allowing the appeal, it was argued on behalf of the
D respondent that the entire appeal be dismissed as lacking in merit.

The learned appellant's counsel on their brief of argument applied to abandon the original ground one of the grounds of appeal and argued the appeal on the original grounds 2, 3 and the additional grounds 1-5. On the application by the learned counsel
E therefore, the original ground one of the grounds of appeal having been abandoned is hereby struck out. From the subsisting seven grounds of appeal, four issues were formulated on behalf of the appellant and same reproduced are as follows:-

1. Whether the Learned Justices of the Court of Appeal were
F justified in the interpretation of Section 230 (1) of the 1979 Constitution as amended by Decree 107 of 1993 to hold that in all matters affecting Federal Government or its agencies only the Federal High Court has jurisdiction to entertain Appellant's claim as couched and
G not the Delta State High Court?

2. Whether the Learned Justices of the Court of Appeal were justified in their interpretation of Section 230 (1) of the 1979 Constitution of the Federal Republic of Nigeria as amended by Decree 107 of 1993 in holding that Warri Refining and Petrochemical Ltd, the
H Respondent herein, is a Federal Government Agency that robs the State High Court jurisdiction from entertaining the Appellant's Claim?

3. Whether the Learned Justices of the Court of Appeal were justified in their interpretation of Section 230 (1) 1979 Constitution as amended by Decree 107 of 1993 in holding that the claim of

Appellant challenged the validity of the executive and administrative actions or decisions of the Federal Government or its agencies which excluded the jurisdiction of the State high Court from entertaining the Appellant's Claim.

4. Whether the Learned Justices of the Court of Appeal correctly applied the decision of NEPA Vs. Edeghero to the case of the Appellant in holding that the State High Court lack the jurisdiction to entertain the Appellant claim by virtue of Section 230 (1) of the 1979 Constitution as amended by Decree 107 of 1993. B

It is pertinent to also state that on a cursory perusal of the four issues formulated by the respondent's counsel same are not far from those of the appellant and reproduced supra. It will therefore only be repetitive to highlight those 'of the respondent, which are not saying anything different from those of the appellant. C

With the heads of preliminary objection raised against the hearing of this appeal, it is pertinent as laid down by legal pronouncements that the objections ought first be disposed of before the merit of the appeal could be determined. The three heads predicating the preliminary objection are as follows:- D

1st Objection E

That the three original grounds of appeal filed by the appellant are grounds of mixed law and facts for which the appellant did not seek and obtain leave of the Court of Appeal or this Court to file, contrary to section 233(3) of the Constitution of the Federal Republic of Nigeria 1999. F

2nd Objection

That the amendment of the name of the respondent by the appellant arbitrarily in his brief from "Warri Refinery and Petrochemical Company Limited" to "Warri Refining and Petrochemical Company Limited" without the leave of court is erroneous and an abuse of the process of court. G

3rd Objection

That the appellant has failed to conclude his brief with a numbered summary of the reasons upon which his argument is founded. H

For purpose of substantiating the preliminary objection raised, the respondent canvassed the argument grounding same from paragraphs 3.00 through to 7.01 at pages 4-8 of the respondent's brief thereof and concluded in summary that this appeal ought in the cir-

cumstance be struck out for incompetence.

The appellant in response to the objection submitted on the totality that same be dismissed. In other words, while he argued that the 1st objection is a total misconception and unmeritorious, the doctrine of estoppel should also operate against the 2nd objection wherein the respondent who had all along waived the use of the names interchangeably and therefore cannot now be heard to complain. On the 3rd objection, counsel urged that same be also dismissed as it only serves a cosmetic purpose.

Briefly on the effect of the preliminary objection raised, I hasten to say that the appeal at hand for all intent and purpose is fought solely on a jurisdictional issue between the High Court and the Federal High Court. Without belabouring the question, it is trite law that the issue of jurisdiction is constitutional and therefore a matter of law. The appellant needed no leave to raise same.

Furthermore, and on the other objections 2 and 3 I hold the view that they are only ancillary to the 1st objection and therefore a mere technicality in nature. It is also borne out on the record that both parties have, for instance, used the word Refinery or Refining Interchangeably in describing the respondent at one time or the other. It goes without saying therefore that a defendant/respondent who did not protest against the name used and in fact filed processes using such interchangeably cannot now be heard to complain at this stage. This is because he is deemed to have waived his right and is therefore estopped from contending the contrary as rightly submitted by the learned appellant's counsel. The wrong use of the name did not overreach or put the respondent to any form of disdain in the absence of any earlier complaint thereof. The use of the name in my view is at best a misnomer and which did not occasion any negative effect. This court under its inherent powers has the jurisdiction to correct such inconsequential error which did not require any formal application to be made.

A similar situation in the case of Afolabi & 2 Ors Vs. Adekunle & Anor. (1983) 8 SC 98 is in evidence wherein this court in the lead judgment delivered by Aniagolu JSC approved the power of Court of Appeal to amend the capacity of a party without a

formal application. At pages 117 & 119 in particular, the learned jurist said:-

“It is the duty of Court to aim at, and to do, substantial justice and to allow such formal amendments, in the course of the proceedings, as are necessary for the ultimate achievement of justice and the end of litigation... while recognizing that the Rules of court should be followed by parties to a suit, it is perhaps necessary to emphasize that justice is not a fencing game in which parties engage themselves in an exercise of out-smarting each other in a whirligig of technicalities, to the detriment of the determination of the substantial issues between them.”

See also the cases of *Sam Warri Osi Vs. Shell B. P. Petroleum Dev. Coy. Of Nigeria Ltd.* (1985) 3 FSC 94 and *Maersk Line Vs. Addide Investment Ltd.* (2002) FWLR (Pt 125) 608 where it was emphatically laid down that the power of the court, that is to say, the High Court, The Court of Appeal and the Supreme Court, to correct a misnomer is inherent. The objection in this respect is hereby overruled. In the result and as a consequence therefore, an order is hereby made and correcting the misnomer that is to say “*Warri Refining & Petrochemical Company Limited*” wherever it appears on all the processes in this appeal to read “*Warri Refinery & Petrochemical Company Limited*.”

The 3rd and last objection is that the appellant’s Brief is not concluded with a numbered summary of the reasons upon which the argument is founded. As rightly submitted by the learned appellant’s counsel, the objection is merely cosmetic and sustains no ground. This I hold especially wherein this appeal raises a very substantial Constitutional issue which calls for definite pronouncement by this court on the question of jurisdiction. It cannot be dispensed with by a mere wave of hand by way of a preliminary objection as sought to do by the respondent. The said head of objection like the others 1st and 2nd heads are all overruled and accordingly dismissed.

On the merit of the appeal, the 1st issue raised questions whether the learned justices of the Court of Appeal were justified in the interpretation of section 230 (1) of the 1979 Constitution as amended by Decree 107 of 1993 to hold that in all matters affecting Federal Government or its agencies only the Federal High Court has jurisdiction to entertain Appellant’s claim and not the Delta state High

Court?

The learned appellant's counsel in disdain and on the conclusion arrived at by the justices of the lower court sought to raise yet another question whether the Constitution of the Federal Republic of Nigeria dictates that the state High Court in the given circumstance would no longer have jurisdiction to entertain matters in which the Federal Government or its agency is a party, notwithstanding the nature of the claim. The counsel, while submitting on the oppressiveness of Decree No. 107 related copiously to the following judicial authorities pronounced thereon as follows:- Integrated Timber & Plywood Products Ltd. v. U.B.N Plc (2006) All FWLR (PT 324) 1789; Also the case of Unuorah Vs. Kaduna Refining and Petrochemical Ltd. (2005) All FWLR (pt 256) P. 1356 and AH v. CBN (1997) 4 NWLR (pt 498) P. 192. The learned counsel in tracing the Constitutional developments and the judicial interpretation therefore as to which of the courts have the jurisdiction to entertain a particular claim submitted that recourse must be had to section 230 (1) of the 1979 Constitution as amended by Decree 107 of 1993. Specific reference for instance was made on subsections (q)(r) and (s).

The counsel proceeded to highlight the situational circumstance wherein this court in dealing with the jurisdiction of the Federal or state High Court had consistently shown that the jurisdiction of the Federal High Court is limited to the items specified under the law establishing the Court and that the state High Court has unlimited jurisdiction, save however on the item specifically conferred on the Federal High Court. That the originating factor of the conflict was stemmed from the introduction of the Federal Revenue Court in 1973; in other words the conflict was whether or not section 7(1) (b) (iii) which conferred the Federal Revenue Court with jurisdiction to hear matters on banking, foreign exchange, currency or other fiscal measures had robbed the state High Court of its jurisdiction from entertaining a dispute between the Bank and its customers. The learned counsel cited a number of judicial authorities and in particular the case of Broniks Motor Vs. Wema Bank (1983) All NLR 272 wherein he argued that this court examined the correct import or meaning of section 7(1) (a) and (b) of the Federal Revenue Court Act. That the court also considered the effect of the Constitutional provision of section 230 of the 1979 constitution which specifically

set out the jurisdiction of the Federal High Court and Limited it to the jurisdiction previously exercised by the Federal Revenue Court. That in that case, the court unanimously held that the jurisdiction of the Federal High Court as specified in section 230 of the 1979 Constitution is limited while the state High Court has unlimited jurisdiction by virtue of section 236 of the 1979 constitution. B

The learned counsel further submitted that one of the common features of all the Supreme Court judgments highlighted that-transactions which are the normal day to day running of the organizations and which do not affect Federal Government's specific directives do not come within the jurisdiction of the Federal High Court but are within the state High Court. That it is only matters affecting specific directives, policy of Federal Government that are to be entertained by the Federal High Court. That the lower court therefore erred in its opinion on the Constitution wherein it states that a state high court would no longer have jurisdiction to entertain matters in which the Federal Government or any of its agencies is a party, notwithstanding the nature of the claim. This view, the learned counsel argued cannot be correct. To buttress his submission, the counsel cited the view of this court in the case of Omosowan Vs. Chiedozie (1998) 9 NWLR (Pt 566) 477 at 484 also in another case of Minister for Works Housing Vs. Tomas Nig. Ltd. (2002) FWLR (Pt 124) 398 at 478 -481. That the jurisdiction of the Federal High Court will only be limited to those items listed under Decree 107, thus establishing the principle :- *expressio unius, est exclusion alterus* as applicable. C D E F

On a further submission on the claim of the appellant, counsel argued that same relates to the question of Master and Servant relationship and which by section 6(6)(a) and (b) and section 236 of the 1979 Constitution, the state High Court is vested with judicial powers to entertain. That claims of this nature or contract of employment are matters ordinarily within the jurisdiction of the state High Court. That the fact that a staff sought a declaratory relief would not ipso facto oust the jurisdiction of the State High Court. That in the absence of listing such cases in Decree 107 or section 251(1) of the 1999 Constitution, to divest the State High Court, there must be involved a Federal Government order or directive which takes the matter from the ordinary course of events. G H

Furthermore, that the proviso to section 230(l)(q)(r)(s) of

Decree 107 empowers a person to sue the Federal Government or its agencies if such can be supported by any other law. That the interpretation of section 230(1)(q)(r)(s) must be given within the context of its enactment and not go outside that which was intended by the law makers. Counsel in support of his submission affirmatively relied on the authority of the case of Jammal Steel Structure (supra). That the interpretation of Decree 107 or section 251 of the 1999 Constitution must be done in such a way that it will not lead to absurdity. That the rule of Construction exposition *ex visce ribus actus* should therefore be the guide.

In his final submission on this issue, the learned appellant's counsel pointed out that had the lower court adopted the correct interpretation of Decree 107, it would have held that the Trial Court had jurisdiction to entertain the claim. That the failure to do so had occasioned the lower court justices erring in the interpretation of the draconian laws as contained in section 230 (l) (q) (r) (s) of 1979 Constitution an equivalent to section 251(1) of the 1999 Constitution. That the lower Court had therefore unduly expanded its provisions by reading into it that which the law makers did not intend. Counsel submitted that the appeal should on this score therefore be allowed.

The learned respondent's counsel in response to the submission advanced on behalf of the appellant re-iterated that the lower court relied and predicated its judgment on the view held by this court in the case of NEPA v. Edeghero (2003) 1 MJSC 69. In other words that the Court of Appeal made no categorical statement of its own except that it hinged the consideration of this case on the Supreme Court decision in the case under reference supra. That the lower court unhesitatingly adopted the principle laid down in that case in following the order of hierarchy of courts, wherein the decision of the Supreme Court is binding on all courts in the country. The learned counsel therefore, while emphasizing the principle laid down in the cases of NEPA v. Edeghero (supra) and Olutola v. University of Ilorin (2005) 3 MJSC 151 submitted that the lower court in the circumstance had no option but to act on the authority of NEPA v. Edeghero (supra). That this is obvious especially with the respondent being an agency of the Federal Government as agreed by the parties.

Counsel further restated that following the principle in NEPA v. Edeghero and Olutola v. University of Ilorin therefore, the lower court was justified in holding that jurisdiction to try this case was vested in the Federal High Court and not the Delta State High Court by reason of section 230 (1) of the 1979 Constitution as amended by Decree No. 107 of 1993 (section 251 of the 1999 Constitution). B

That the plethora of authorities cited by the learned appellant's counsel, though decided on the basis of whether it is the Federal High Court or the State High Court that had jurisdiction to try the cases, are not germane or applicable to the issue at hand. C

On the submission by the appellant's counsel relating section 6(6)(a) and (b) and 236 of 1979 constitution, and the inherent power available to High Court to grant declaratory and injunctive orders, this view counsel argued is subject to section 230 (1) of the 1979 Constitution as amended by Decree No. 107 of 1993. D

That the judicial powers contained in section 6 of 1979 Constitution as well as the 1999 Constitution apply to all superior courts of record listed in section 6(5) of both Constitutions. That the appellant's counsel was therefore in error to assume that by the said section 6(6) (a) and (b) the State High Court has acquired additional jurisdiction which he thinks the Federal High Court does not have. E That the jurisdiction of the Delta State High Court to entertain the case in hand cannot be based on section 6(6)(a) and (b) of the 1979 Constitution. F

The learned counsel to buttress his submission cited the case of University of Abuja v. Ologe (1996) 4 NWLR (Pt 445) 706 at 725 per Oguntade JCA (as he then was) wherein he held thus and said:-

"It seems to me that the use of the expression any of its agencies in Decree No. 107 of 1993 is meant to cover all the organs established by law through which the Federal Government carries out its functions." G

The learned respondent's counsel, to further illuminate on the jurisdiction of the Federal High Court also related to the case of Ona V. Atanda (2000) 5 NWLR (Pt 656) at 269 - 270 wherein Akintan H JCA (as he then was) held and said:-

"The jurisdiction of that court (referring to the High Court of the Federal Capital Territory, Abuja) however is subject to the provisions of section 230(1) (q) and (r) of Decree No. 107 of 1993 (now

section 251 of the 1999 Constitution) whereby the Federal High Court would assume jurisdiction where the Government of the Federation or any of its agencies is a party to the action.”

In further submission, counsel argued that in NEPA Vs. Edegbero supra, the Supreme Court adopted and acted on the above decision in Ona’s case when it was faced with the Interpretation of section 230 (1) of the 1979 Constitution as amended by Decree No, 107 of 1993. That the argument by the appellant’s counsel in paragraph 5 of his brief is a complete deviation from the issue at hand because he had extensively delved into academic matters which should go to no issue.

In the result and on the 1st issue raised, learned counsel submitted that the appellant’s argument is untenable. Consequently, that the issue should therefore be resolved in favour of the respondent while the appeal should be dismissed.

The totality of the grouse or the genesis of the appeal at hand is predicated on the issue that begs the question:- whether Decree 107 of 1993 excluded the jurisdiction of the State High Court to entertain the plaintiff/appellant’s claim. While the learned appellant’s counsel vehemently argued against the question, the respondent’s counsel upholds the contention.

For purpose of a reminder, it is on record that the Delta State High Court in its judgment delivered on 27th September, 1996 while dismissing the objection to jurisdiction raised by the Respondent based it on the interpretation of section 230(1) of the 1979 Constitution as amended by Decree 107 of 1993 wherein it held thus at page 88 of the record:-

“I have carefully considered the argument adduced by both lawyers in this matter and I agree with the submission of Mr. Oghenejakpor that this Honourable Court has jurisdiction to entertain this suit because this case is based on master and servant relationship and that being so, it is not a matter against the Federal Government order.”

On an appeal to the Court of Appeal however, the law lords in considering the issue of jurisdiction extensively referred to the decision in the case of NEPA v. Edegbero (2002) 18 NWLR (Pt. 798) 79. The lower court in other words highlighted the deduction drawn by the apex court and said thus at page 238 of the record:-

“The Supreme Court held in that case, that the aim of paragraphs (q), (r) and (s) of subsection 230 (1) of the 1979 Constitution as amended by Decree No. 107 of 1993 was to vest exclusive jurisdiction in the Federal High Court in matter in which the Federal Government or any of its agencies was a party, and a State High Court would no longer have jurisdiction in such matter notwithstanding the nature of the claim in the action.”

Further still and from the same page 238 through to 239 of the record, the lower court proceeded and upturn the view held by the trial judge in the following terms:-

“I only wish to comment on the submission canvassed for the Respondent that it will lead to absurdity to expect a Security Guard in Warri, whose salary is below N2000, to challenge the validity of his removal by an action in the Federal High Court in Benin. Justice has not got two weights and measures - one for the Managing Director of a Company for instance, and another for the Security Guard or cleaner in the same Company. As Oputa, JSC observed in Kalu v. The State (1988) NWLR (Pt. 90) 503, “it should be one and the same even handed Justice, blind to all social distinctions and disparities in wealth and status and no respecter of person”. In the circumstances of this case, it is the Constitution of the Federal Republic of Nigeria, the highest law of the land, which guarantees equal constitutional rights to all its citizens that dictated that a State High Court would no longer have jurisdiction to entertain matters in which the Federal Government or any of its agencies was a party, notwithstanding the nature of the claim in the action. The Respondent’s claim as couched took it outside the ambit of the State High Court.

He sought for a declaration that his purported termination” as per letter dated 8th April 1993 is unconstitutional, unlawful, ultra vires, capricious, wrongful, invalid, and null and void”.

I hasten to say at this point that this appeal was decided on the principle laid down by this court in the case of NEPA v. Edeghero supra. The lower court in its consideration related same to Decree No. 107 of 1993 as it applies to the case at hand.

On a gruesome and careful determination of the case of NEPA v. Edeghero, (2003) 1 MJSC 69, this court per Ogundare JSC while interpreting the constitutional enactment as provided in paragraph (q), (r) and (s) of section 230 (1), held the following pronouncement

at pages 80-81 of the report and said:-

“From what I have said earlier in this judgment the aim of paragraphs (q), (r) and (s) of sub section 230 was to vest exclusive jurisdiction in the Federal High Court in matters in which the Federal Government or any of its agencies was a party. A State High Court would no longer have jurisdiction in such matters notwithstanding the nature of the claim in the action”.

At this stage and for proper comprehension of the Constitutional provision it will be pertinent to reproduce section 230 (1) in particular (q), (r) and (s) of the 1979 Constitution as amended by Decree 107 of 1993 which state as follows:-

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

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

(r) Subject to the provisions of this Constitution, the operation and interpretation of this Constitution in so far as it affect the Federal Government or any of its agencies; and

(s) 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.

Provided that nothing in the provisions of paragraphs (q), (r) and (s) of this subsection shall prevent a person from seeking redress against the Federal Government or any of its agencies in an action for damages injunction or specific performance where the action is based on any enactment, law or equity.”

From the foregoing provision as reproduced, it is specific that jurisdiction is conferred on the Federal High Court to the exclusion of any other court in, inter alia, any action or proceeding for declaration or injunction affecting the validity of executive or administrative action or decision by the Federal Government or any of its agencies. See again the decision in the case of University of Abuja v. Ologe (1996) 4 NWLR (Pt 445) 706 at 722.

From the pleadings of the parties, it is admitted that the

respondent is a subsidiary of Nigerian National Petroleum Corporation (NNPC) established by the Federal Government. This is as pleaded by the appellant in paragraph 2 of the Statement of Claim appearing at page 4 of the record of appeal which averment was specifically admitted by the respondent in paragraph 2 of the amended statement of defence also at page 47 of the record of appeal. Following from above, it is therefore settled that the respondent being a subsidiary of NNPC, it goes without further saying that it is an agency of the Federal Government having regard to Decree 107 of 1993.

It is also trite law and well settled that the jurisdiction of a court is determined by the plaintiffs claim before it. See the case of Akeem v. University of Ibadan (2003) 10 NWLR (Pt 829) 584. **For the purpose of determining the jurisdiction of the court in this case therefore, the plaintiff appellant's paragraphs 1, 2, 9, 10, 18(b) and 19 of his Statement of Claim are relevant.** The reproduction of paragraphs 18(b) and 19 in particular would be apt as follows:-

"18 WHEREUPON THE PLAINTIFF CLAIMS

(b) A declaration that the purported termination of the plaintiff as per letter dated 8th April, 1993 is unconstitutional, unlawful, ultra vires, capricious, wrongful invalid, and null and void.

(19) The plaintiff has tried to secure alternative employment but all to no avail. And the plaintiff claims the sum of 4,152,000.00 for breach of contract of employment by the unconstitutional, wrongful, unlawful termination of his appointment contrary to the principle of natural justice."

The use of the phrase "any of its agencies" as provided in the proviso to section 230(1) of the 1979 Constitution as amended by Decree No 107 of 1993 has been judicially interpreted to cover all the organs established by law through which the Federal Government carries out its functions. The case of University of Abuja v. Ologe (supra) is relevant in point. In further serving as point of reference is the pronouncement made by this court per Tobi JSC again in the case of NEPA v. Edegbero (2002) 18 NWLR (Pt 798) 79 wherein he said thus at page 100:-

"In construing section 230(1) of the 1979 Constitution as amended, two important matters arise. They are the parties in the

litigation as well as the subject matter of litigation. The court must consider both. In construing the parties, the court will have no difficulty in identifying the Federal Government but it may have some difficulty in identifying the agency of the Federal Government in certain matters.

- B *The case law and the law of agency will certainly be of help in relevant cases... Another important area is the subject matter of the litigation. In my view, for the Federal High Court to have exclusive jurisdiction, the matter must be a civil matter arising from the admin-*
 C *istration, management and control of the Federal Government or any of its agencies. The matter must arise from the operation and*
 D *Interpretation of the Constitution. And finally, the matter must arise from any action or proceedings for a declaration or injunction affect-*
 E *ing the validity of any executive or administrative action or decisions*
 F *by the Federal Government, or any of its agencies.” (emphasis is*
 G *mine)*

In the light of the view held by this court in the case of NEPA v. Edeghero (supra) the case at hand is on all fours thereto and could also be interpreted in the same vein as rightly arrived at by their
 E Lordships of the lower court. In otherwords, the pleadings of parties have conceded as a matter of fact that the respondent is an agency of the Federal Government. It is also an established fact from the same pleadings that the appellant’s claim relates to a breach of contract of
 F employment. This is the subject matter that arose in the case of NEPA v. Edeghero (supra) wherein this court confirmed that a contract of employment with an employee of the nature in that case comes within section 230(1) (q) of the 1979 Constitution as amended.

The principle in the case of NEPA v. Edeghero has also been
 G applied with affirmative approval in the later case of Olutola v. University of Ilorin (2005) 3 MJSC 151 at PP 173-174 wherein this court per Ejiwunmi JSC held and said:-

- “In the case at hand, it is not in doubt that Decree No. 107 of 1993 had removed the jurisdiction of State High Courts to hear and*
 H *determine causes and matters including declaratory actions against the Federal Government or its agencies.”*

From the foregoing conclusion, the questions as to parties and subject matter are seen to be of paramount significance. With the question of parties having been settled therefore the subject mat-

ter of consideration does not in my view also pose any difficulty especially having regard to the reliefs sought by the appellant which same are also similar to the ones claimed by the respondents in the case of NEPA v. Edegbero (supra). It has been clearly pronounced by this court per Ogundare JSC in the same case as stated supra that the aim of sub paragraphs (q), (r) and (s) to section 230 (1) of the 1979 Constitution as amended by Decree No 107 of 1993 was to vest exclusive jurisdiction in the Federal High Court in matters in which the Federal Government or any of its agencies was a party; the consequential effect is that the State High Court would no longer have jurisdiction in such matters notwithstanding the nature of the claim in the action. Note the use of the phrase “*in such matters*”, which in otherwords is relevant to restate that the nature of such claims relating paragraphs (q), (r) and (s) are not at large but specifically restricted as per the deduction arrived at by his Lordship Tobi JSC in NEPA v. Edegbero (under reference).

I hasten to repeat again that such applicable situations could only be read in the phrase laid down by his Lordship; that is to say:-

“That the matter must be a civil matter arising from the administration, management and control of the Federal Government or any of its agencies. The matter must arise from the operation and interpretation of the Constitution. And finally the matter must arise from any action or proceedings for a declaration or injunction affecting the validity of any executive or administrative action or decisions by the Federal Government, or any of its agencies.”

The caveat or proviso thereto is that any subject matter which does not fall within the exclusive and water tight phrase supra will not come within the expectation of section 230 (1) sub paragraphs (q), (r) and (s). The case of NEPA v. Edegbero therefore is very interpretative and unambiguous of the said constitutional provision. The clear intendment of the modification to section 230 of the 1979 Constitution therefore was to confer on the Federal High Court exclusive jurisdiction in respect of subsection (1) (a) to (s) thereof. This was the view held by Uwais CJN in his concurring judgment in NEPA v. Edegbero wherein he further said thus in respect of the proviso to the section:-

“The proviso applies merely to the right of a person seeking redress in an action for damages, injunction or specific performance

but does not extend the exclusive jurisdiction conferred on the Federal High Court to a state High Court..."

This is a clear confirmation that the matter must arise from the operation and interpretation of the constitution before the exclusive application of section 230 (1) (a) to (s) could be involved. The learned
 B appellant's counsel in my view had misconceived the clear interpretation of the provision therefore. This is more so especially wherein the said appellant's counsel submitted extensively on the jurisdictional struggle or rivalry between the State High Court and Federal High
 C Court, which I hold does not exist as rightly submitted by the respondent's counsel. The perceived confusion appears only to be a mirage which is not a reality. This is affirmed by the clear Judicial Interpretation which is well pronounced in the case of NEPA v. Edegbero. Hence the authority in the case of Unuorah v. Kaduna
 D refinery and Petrochemical Ltd (2005) All FWLR (Pt 256) 1356 referred to by the appellant's counsel as well as the hosts of other related authorities cited are not relevant to this case. With the subject matter of the case, under reference, being on all fours with the case at hand, the lower court was therefore on the right footing in holding
 E that the case of NEPA v. Edegbero applies. In other words the State High Court would no longer have jurisdiction in such matters. On this score I will again restate the view held by the learned jurist Tobi, JSC in the case of NEPA v. Edegbero at pages 100 - 101 wherein he said:-

F *"I entirely agree with the submission of learned counsel for the Respondent... that the plaintiffs' claim should be looked at alongside with the provision of section 230 (1) of the 1979 Constitution... I do not however agree with him that the claim, which relates to*
 G *breach of contract of employment has nothing to do with the administration or management or control of the appellant. Administration is a large term in business and commerce. So too management. Etymologically, the words are synonymous in our context. Administration is the management or direction of the affairs of a business. Man-*
 H *agement is the art or practice of managing especially a business. Entering into a contract of employment with an employee is a business relationship, which clearly comes within the section 230(q) of the 1979 Constitution as amended by Decree 107 of 1993."*

The applicability of the case of NEPA v. Edegbero therefore

is not far fetched especially in the light of the reliefs claimed by the appellant in his Statement of claim wherein he sought for declaration that his purported termination “*as per letter dated 8th April, 1993 is unconstitutional, unlawful, ultra vires, capricious, wrongful, invalid, null and void.*” The claim for the breach of contract of employment was alleged as a result of the unconstitutional, wrongful, unlawful termination of his appointment contrary to the principle of natural justice.

As rightly held by the learned Justices of the Court of Appeal, the trial court had no jurisdiction in entertaining the proceedings in this case as it did. The question of jurisdiction is trite and well settled in the locus classical case of Madukolu v. Nkemdilim (1962) 1 ALL NLR (Pt. 4) 587. In the absence of jurisdiction, the court will be acting in futility no matter how well a proceeding is conducted. The product of such a proceeding in otherwords is a nullity. The cases of Trustees, P.A.W. V. Trustees A.A.C.C. (2002) 15 NWLR (Pt 790) 424, App v. Ogunsola (2002) 5 NWLR (Pt. 761) and Lawal V. Oke (2001) 7 NWLR (pt. 711) 88 are all relevant in support.

The learned justices of the Court of Appeal correctly interpreted the provision of section 230 (1) of the 1979 Constitution as amended by Decree 107 of 1993 in holding that in all matters affecting Federal Government or its agencies only the Federal High Court has jurisdiction to entertain appellant’s claim as couched and not the Delta State High Court. In otherwords, the justices cannot be faulted on their judgment and hence the said 1st issue is therefore resolved against the appellant.

With the deduction arrived at on the 1st issue therefore, the consequential effect is that all the other issues 2, 3, and 4 have been taken care of and therefore overtaken. The outcome is that they are also resolved against the appellant and I so hold.

In otherwords, in respect of issue 2, the question as to whether the respondent herein is a Federal Government Agency has been settled on the pleadings of the parties.

The next is the 3rd issue wherein the question relates to the judicial Interpretation of section 230 (1) of the 1979 Constitution as amended by Decree 107 of 1993. This I also hold has been well

resolved by the judicial pronouncements and principles enunciated in the case of *NEPA v. Edegbero* under reference.

Finally and on the 4th issue, it goes without further saying that the case of *NEPA v. Edegbero* is an authority properly applied in resolving the perceived misconception envisaged by the enactment
B of Decree 107 of 1993 on section 230 (1) of the 1979 Constitution.

On the totality of this appeal therefore, it is devoid of any merit and I make an order dismissing same. The judgment of the Court of Appeal Benin Division delivered on the 29th June 2004,
C which set aside that of the High Court of Justice Effurun Delta State dated 27th September, 1996 is hereby affirmed.

In respect of costs, I shall make an order that each party bears its own costs. Appeal is therefore dismissed while the judgment of the Court of Appeal Benin Division is hereby affirmed. No order is
D made as to costs.

ONNOGHEN JSC

I have had the benefit of reading in draft the lead judgment of
E my learned brother *OGUNBIYI, JSC* just delivered.

I agree with his reasoning and conclusion that the appeal lacks merit and should be dismissed.

I therefore order accordingly and abide by the consequential
F orders made in the said lead judgment including the order as to costs.

CHUKWUMA-ENEH JSC

I have had a preview in draft of the lead judgment prepared
G and just delivered by my learned brother *Ogunbiyi JSC*. I agree with the reasoning and conclusions in the lead judgment culminating in dismissing this appeal.

This appeal is a case of master and servant relationship and in which the appellant is a staff of the respondent, from which employment on having been terminated he has claimed among others
H the following reliefs:

(a) An order that the plaintiff is a staff of the Defendant.

(b) A Declaration that the purported termination of the plaintiff as per letter dated 8th April, 1993 is unconstitutional, unlawful, ultra

vires, capricious, wrongful, invalid, null and void.

(c) An order for the Defendant to pay the plaintiff all emoluments and entitlements including promotion due and payable to him as from April, 1993 and to be so calculated until final determination of this suit.

(d) An order reinstating the plaintiff with all his promotions and entitlements to his office. B

(e) And in the alternative to (c) & (d), an order for the payment of his entitlement, gratuity and pension at his retirement age of 2008. C

The trial court has found in the appellant's favour as follows:

1. That Delta State High court has jurisdiction to entertain this suit because this case is based on master and servant relationship and that being so, it is not a matter against the Federal Government order, which is precluded by section 230 (1) of the 1979 constitution as amended by Decree 107 of 1993. D

2. That the Termination of the plaintiff as per the letter dated 8/4/93 is invalid, ultra vires and hence null and void as the appropriate authority that is, the Managing Director of NNPC who ought to issue the letter did not do so. E

3. That the plaintiff is therefore considered as still in the employment of the Defendant since there is no body known as management given power to terminate the appointment of the staff.

4. That court ordered the reinstatement of the plaintiff and payment of all his entitlements due to him up till the date of judgment forthwith. F

5. The court in the alternative awarded the sum of N1.5 million (One Million, Five Hundred Thousand Naira), to the plaintiff as damages. G

The Defendant/Respondent has appealed the decision to the lower court and has raised the substantial issue of jurisdiction of the High court to entertain the case based on Section 230 (1) of the 1979 Constitution as amended by Decree 107 of 1993. The Plaintiff/Respondent has cross appealed on the quantum of the award of general damages. The lower court upheld the appeal on jurisdiction and set aside the judgment of the trial court; hence this appeal. H

As can be seen the main issue in this appeal is on the question of jurisdiction, and in the arguments that have ensued in the

appeal which evolved round the principles in the case of NEPA v. Edegbero (2002) 18 NWLR (Pt.798) 79 - a case on a question of master and servant relationship where one of the parties is an agency of the Federal Government which decision is a binding authority on the court in regard to the issue of jurisdiction in actions on the same
B facts as in this matter.

The cited case has held that section 230 (1) paragraphs (Q), (R), and (S) has vested exclusive jurisdiction in the Federal High court in matters involving the Federal Government and its agencies,
C unarguably the respondent/defendant is an agency of the Federal Government. The difficulty with this decision is that it has not given due consideration to the nature of the subject-matter of a case as exemplified in land cases between individuals and agencies of the Federal Government. And in that regard it has raised more difficult
D problems for the courts vis-à-vis when a court is competent to deal with a matter as expounded in Madukolu v. Nkemdilim (1962) 1 ANLR 587.

However, the decision in NEPA v. Edegbero has in expounding on the meaning of “administration and management” as per section 230(1) (q) (supra) has at page 101 of the said report held that:
E

“Entering into a contract of employment will abide by the (sic) employee is a business relationship which clearly comes within Section 230 (1) (q) of...”

I agree entirely with this finding and it is applied with approval.
F

Edegbero’s case has settled the crucial question in this appeal since the respondent is an agency of the Federal Government and that the instant contract of employment between the parties is within
G the ambit of the provisions of Section 230 (1) (q) and (R) of Decree No.107 of 1993 (now Section 251 of the 1999 Constitution (as amended)). And what remains is to conclude on the effect with regard to the issue of jurisdiction of the trial court in this matter.

Clearly from my reasoning above, the principle in Edegbero’s
H case has decided this matter to the effect that to have commenced this action in the State High court, ostensibly with no jurisdiction over the parties and the subject matter of the claim is incompetent; the action is therefore liable to be struck out for incompetency.

Therefore the claim being incompetent there is no merit in the

appeal. It is also dismissed by me. I abide by the orders in the lead judgment.

RHODES-VIVOUR JSC

I have had the advantage of reading in draft the leading judgment prepared by my learned brother Ogunbiyi JSC. I agree with the judgment that the Federal High Court and not the State High Court is the proper court to hear and determine the appellants' claims. I propose to add only a few observations which I hope will be of assistance to judges who find themselves saddled with the task of applying the Law in this difficult area. The appellant is/was an employee of the respondent. By a letter dated the 8th day of April, 1993 the respondent terminated his employment. He sued claiming the following.

- (a) An Order that the plaintiff is a staff of the Defendant
- (b) A declaration that the purported termination of the plaintiff as per letter dated 8th April, 1993 is unconstitutional, unlawful, ultra vires, capricious, wrongful, invalid, null and void.
- (c) An Order for the Defendant to pay the plaintiff all emoluments and entitlements including promotions due and payable to him as from April, 1993 and to be so calculated until final determination of this suit.
- (d) An Order reinstating the plaintiff with all his promotions and entitlements to his office.
- (e) And in the alternative to (c) and (d), an order for the payment of his entitlement, gratuity and pension at his retirement age of 2008.

Accordingly to the above the appellant as plaintiff sought in the Delta State High Court that his purported termination as per letter dated the 8th of April, 1993 was unconstitutional, unlawful, null and void.

The respondent as defendant raised the issue of jurisdiction of the State High Court to hear the plaintiffs claims. The defendant was of the view that it is only the Federal High Court that can hear and determine the plaintiffs claims. The defendants objection runs as follows:

"...By virtue of section 230 of the Constitution of the Federal

Republic of Nigeria 1979 as amended by the Constitution (suspension on and modification) Decree No.107 of 1993 this Honourable court lacks jurisdiction to entertain or try this case in that the plaintiff hereby seeks a declaration affecting and/or challenging the validity of the executive and/or administrative action of the defendant, an agency of the Federal Government of Nigeria, in terminating the plaintiffs appointment, the said Decree No.107 having vested only the Federal High Court with jurisdiction to try the case to the exclusion of any other court."

C Now, the plaintiff claim determines jurisdiction. See Anya v. Iyayi 1993 7 NWLR pt.305 p.290 A.G. Kwara State v. Warah 1995 7 NWLR pt.405 121. Anigboro v. Sea Tucks Nig Ltd (1995) 6 NWLR (pt. 399) 43 and Onuorah v. Okeke (2005) 10 NWLR (pt. 932) 47.

D Jurisdiction is a question of law. It is a threshold issue, very fundamental, the livewire of a suit where a court does not have jurisdiction over a matter before it and it proceeds to hear and determine the matter, the whole proceedings no matter how well decided would amount to a nullity. This is premised on the position of the law that a judgment given without jurisdiction creates no legal obligations. Such a judgment confers no rights on any of the parties. Jurisdiction is very important, and so it can be raised at any stage of the proceedings in the court of first instance on appeal and even in the Supreme Court for the first time. See Adeyemi v. Opeyori 1976 9-10 SC p.31 Usman Dan Fodio University v. Kraus Thompson Organisation Ltd 2001 15 NWLR pt.736 p.305

G Once raised proceedings should be put on hold and the issue of jurisdiction resolved quickly. In the court of first instance, usually the High Court jurisdiction is raised by the entry of conditional appearance, or in the pleading or by an application on Notice.

H In the Court of Appeal and the Supreme Court jurisdiction can be raised as a ground of appeal and formulating an issue on it, thereafter incorporating arguments on it in the brief of argument. All courts treat the issue of jurisdiction first. If it succeeds the matter abates and the suit is struck out. If on the other hand it fails the appeal is heard and a judgment on the merits of the case delivered.

The learned trial judge held that he had jurisdiction to entertain the suit because the suit is based on master and servant relationship and that being so, it is not a matter against the Federal Govern-

ment.

Well, this reasoning was upset on appeal and rightly too. The Court of Appeal had this to say:

“...it is the constitution of the Federal Republic of Nigeria, the highest constitutional rights to all its citizens that dictated that a State High Court would no longer have jurisdiction to entertain matters in which the Federal Government or any of its agencies was a party, notwithstanding the nature of the claim in the action. The Respondent’s claim as couched took it outside the ambit of the State High Court...”

The live issue is: Which of the Courts, a State High Court, or a Federal High Court has jurisdiction to hear and determine the appellant’s (plaintiffs) claims.

S. 230(i)(q)(r)(s) of 1979 Constitution as amended by Decree 107 of 1993 is ipsissima verba section 251(i)(q)(r)(s) 1999 Constitution. (the exact words were used in both Constitutions). It reads:

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

(q) The administration or the management and control of the Federal Government or any of its agencies.

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

(s) 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.

Provided that nothing in the provisions of paragraphs (q) (r) and (s) of this subsection shall prevent a person from seeking redress against the Federal Government or any of its agencies in an action for damages, injunction or specific performance where the action is based on any enactment, law or equity.”

The plaintiff (appellant) pleaded that the defendant (respondent) is a subsidiary of NNPC. Parties are bound by their pleadings. That in effect means that if pleadings are to be of any use parties must be held bound by them. See *Balogun v. Adejobi* 1995 2 NWLR

pt. 376 p. 131. Williams v. Williams 1995 2 NWLR pt.375 p.1. The plaintiff should adhere to the fact he pleaded that the defendant is an agency of the Federal Government, and in any case he is correct. I earlier alluded to the plaintiff claim that it was for a declaration that his purported termination as per letter dated 8th of April 1993 is unconstitutional, null and void.

Now, in Isaac Obieweubi 2011 2-3 SC pt.1 p.46 I explained section 230 of the 1979 Constitution. I said:

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

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

(b) Subject matter of the litigation.

That is to say jurisdiction is the combination of parties and subject matter...”

Again in PDP v. T. Sylva & 2 ors 2012 All FWLR pt.637 p.606. I said that:

“Section 251 of the Constitution confers exclusive jurisdiction on the Federal High Court for the items listed in the section. All items not listed in the section are to be heard and determined by the State High Court. When the jurisdiction of the Federal High Court is in issue the following must coexist.

(a) The parties or a party must be the Federal Government or its agency

(b) Subject matter of the litigation

I continued. I said that:

Satisfying above is not the end of the matter. The pleadings of the plaintiff not be carefully examined so as to understand the facts and circumstances of the case in order to determine if the claims are within the jurisdiction of the court. It is clearly not enough only to have an agency of the Federal Government as a party before Federal High Court has jurisdiction...”

After a diligent examination of the plaintiffs pleadings, it is clear that he sues an agency of the Federal Government for wrongful termination of his services. Termination of employment falls within administration and management of an agency of the Federal Government the respondent. Since it has been established that the plain-

tiff sues an agency of the Federal Government for a matter which falls within section 230(1) (q) of the 1979 Constitution, (251 (i) (p) of the 1999 Constitution) the Federal High Court has exclusive jurisdiction to hear and determine the plaintiffs claims.

That is to say the Federal High Court has exclusive jurisdiction where the government of Nigeria or any of its agencies is a party to the action. Section 230 of 1979 Constitution removed the jurisdiction of State High Courts to hear and determine cause and matters including actions against Federal Government and its agencies.

The Federal Government performs its functions through its agencies provided they are established by law. The respondent is an agency of the Federal Government. The appellant, one of its employees. He had his employment terminated by that agency. Termination of employment is within administration or management of an agency (section 230 (i) (q)) and that is a matter for no other court but the Federal High Court to hear and determine.

In view of what I have been saying the judgment of the Court of Appeal is confirmed. Appeal dismissed.

MUHAMMAD JSC

I read in draft the thorough lead judgment of my learned brother Ogunbiyi. JSC just delivered and agree with the reasonings therein leading to the conclusion that the appeal lacks merit. In dismissing the appeal, I choose to enjoy the liberty of emphasizing some of the points outlined in the lead judgment in my own words.

The appellant is an employee of the respondent. His employment is terminated by his employer. Appellant as plaintiff took out a writ of summons on 24th March 1994 against respondent as defendant challenging the legality of the termination of his employment.

Pleadings were filed and exchanged between the parties and trial commenced. The appellant led evidence in proof of his case. He closed his case on 31st July 1996. The respondent in paragraph 17 (a) of its amended statement of defence, filed on September 1996, challenged the jurisdiction of the trial court thus:-

“17 (a) The defendant shall also raise as a preliminary point of law or at the trial of this case that by virtue of Section 230 of the Constitution of the Federal Republic of Nigeria 1979 (as amended)

by the Constitution (suspension and modification) Decree No. 107 of 1993, this Honourable Court lacks jurisdiction to entertain or try this case in that the plaintiff hereby seeks a declaration affecting and/or challenging the validity of the executive and/or administrative action of the defendant, an agency of the Federal Government of Nigeria in terminating the plaintiff's appointment, the said Decree No 107 having vested only the Federal High Court with jurisdiction to try the case to the exclusion of any other court."

The trial court overruled respondent's preliminary objection in its 27th September 1996 decision and assumed jurisdiction. Dissatisfied, the respondent, the defendant at the trial court, appealed to the Benin Division of the Court of Appeal hereinafter referred to as the court below. The instant appeal is at the instance of the plaintiff at the trial court. He was the respondent at the court below. The court below, in finding that the trial court, given Section 230 (I) of the 1979 Constitution as amended by Decree 107 of 1993, lacked the jurisdiction to hear and determine plaintiff's suit, allowed defendant's appeal and set aside the trial court's judgment. Dissatisfied with the decision, plaintiff at the trial court has appealed to this court.

The question this appeal raises is most appropriately captured in the three issue distilled by the appellant for the determination of the appeal. The issue reads :-

"3. Whether the Learned Justices of the Court of Appeal were justified in their interpretation of Section 230 (1) 1979 Constitution as amended by Decree 107 of 1993 in holding that the claim of Appellant challenged the validity of the executive and administrative action or decisions of the Federal Government or its agencies which excluded, the jurisdiction of the State High Court from entertaining the Appellant's Claim."

I am not unmindful of the preliminary objections raised by the respondent as to the competence of the appeal, some grounds of the appeal and/or the appellant's brief. With the fundamental issue of jurisdiction being the vexing controversy between the parties, I am constrained in spite of the provision of Order 2 Rule 9 of the rules of this Court, to discountenance the objections by invoking order 8 rule 5 thereof in addressing the real issue in controversy between the two sides. For one, parties cannot by whatever means confer on a court a jurisdiction it does not have. It is either the court has the jurisdiction

or it does not. Also, court's judgment arrived at in the absence of jurisdiction is a nullity and it is most perverse to allow such a contraption to endure. See *Aladegbemi V. Fasanmade* (1989) 3 NWLR (part 81) 129 and *Lakanmi V. Adeni* (2003) 10 NWLR (part 828) 353. The question therefore remains whether the court below is right in its decision that the trial court, by virtue of Section 230 of the 1979 Constitution as amended by Decree 107 of 1993, lacked the jurisdiction to hear and determine appellant's suit. B

I am of the firm and considered view that the court below's decision in that regard is unassailable. I shall expatiate at once. Section 230 (1) (q) (r) of the 1979 Constitution as amended by Decree No. 170 of 1993 are *pari materia* with Section 251 (1) p, q and r of the 1999 Constitution of the Federal Republic of Nigeria (as amended) which provide: - C

"251(1) 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 National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters-

(p) the administration or the management and control of the Federal Government or any of its agencies: E

(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." F

This Court in *Adeyemi and Ors V. Oyeyori* (1976) 1 FNLR 149 has clearly stated that it is the claim of the plaintiff that determines the jurisdiction of the Court which entertains the claim. In *Western Steel Works V Iron and Steel Works Union of Nigeria and Others* (1987) 1 NSCC 133 at 140 the Court per Karibi-Whyte JSC further stated that while considering the plaintiffs claim in determining the jurisdiction of the court to hear a matter when objection is raised as to the exercise of the Court's jurisdiction, it is the subject-matter of the claim and not the ancillary reliefs which depend on the primary claim that should be given overriding attention. H

In the instant case appellant's claim per paragraph 18 of his statement of claim filed on 21st April, 1994 are *inter alia* for:-

(a) An order that the plaintiff is a staff of the defendant

(b) A declaration that the purported termination of the plaintiff's

employment as per the letter dated 8th April 1993 is unconstitutional, unlawful, ultra vires, capricious, wrongful invalid, null and void.

(c) *An order for the defendant to pay the plaintiff all emolument and entitlements including promotions due and payable to him as from April 1993 and to be so calculated until the final determination of this suit.*

(d) *An order reinstating the plaintiff with all his promotions and entitlements to his office.*

(e) *And in the alternative to (c) and (d), an order for the payment of his entitlements to his office, gratuity and pension at his retirement age (sic) of 2008.* “ (Underlining mine for emphasis).

It is beyond argument that the subject-matter of appellant’s suit are as contained in (a) and (b) of his claim supra. All the other reliefs are ancillary to the declaratory reliefs the appellant seeks in (a) and (b) arising from the determination of his employment by the respondent. From the state of parties’ pleadings and the evidence the appellant led, the respondent is a subsidiary of the NNPC which is wholly owned by the Federal Government. Section 230 (1) of the 1979 Constitution as amended by Decree 107 of 1993 clearly vests in “the Federal High Court, to the exclusion of any other court, the jurisdiction in civil cases or matters arising from 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 the its agencies.

I am of the firm and considered view that the decision to terminate appellant’s employment by the respondent in respect of which he seeks the declarations in (a) and (b) in paragraph 18 of his statement of claim is an executive and/or administrative one by the respondent which, being a subsidiary of the NNPC that is wholly owned by the Federal Government, is also an agency of the latter. The judgment of the court below in this regard is beyond reproach.

For the forgoing and the fuller reasons contained in the lead judgment, I also dismiss this appeal, and affirm the judgment of the court below. I abide by the consequential orders made in the lead judgment including the order on cost.