

**SUPREME COURT OF NIGERIA**  
14TH DECEMBER, 2012. SC. 223/2006  
**CORAM:- W. S. N. ONNOGHEN, C. M. CHUKWUMA-  
ENEH, B. RHODES-VIVOUR, M. D. MUHAMMAD,  
C. B. OGUNBIYI, JJSC**

SUNDAY GBAGBARIGHA ..... APPELLANT  
AND  
1. MR. ADIKUMO TORUEMI  
2. SAMUEL GEORGE ..... RESPONDENTS

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JURISDICTION - Fundamental nature - Where court lacks jurisdiction over a matter - The entire proceedings amount to nullity - No matter how well conducted (H1)

JURISDICTION - Issue of - Time to raise - Jurisdiction can be raised at any stage of proceedings - Even on appeal up to Supreme Court (H2)

JURISDICTION - Manner of raising - Jurisdiction is raised by motion on notice in High Court - And by inclusion in ground of appeal in Court of Appeal and Supreme Court (H3)

JURISDICTION - Determination - Basis - Jurisdiction is determined by plaintiff's claim - Which should carefully be examined (H4)

STATUTES - Interpretation - Purpose - Intention of legislature is paramount in interpretation - And where words used are unambiguous - They must be given their plain meaning (H5)

COURTS - Customary courts - Procedure in superior courts are not strictly followed - As it is the substance of the matter - That is of importance in customary court (H6)

COURTS - Issues - Suo motu raising - When an issue is raised suo motu - Parties should be heard before decision is reached on the issue - Save where some exceptions apply (H7)

### **FACTS**

Plaintiff/appellant sued defendants/respondents in Customary Court of Bayelsa State sitting at Kaima. Appellant claimed among other things, for an order of the court directing respondents to refund the sum of N800.00 being the amount of money paid to respondents for the sale of a portion of land to appellant. Appellant also sought for an order directing respondents to refund the sum of N10,200 being expenses incurred in developing the land in dispute. After hearing evidence from both sides the court entered judgment for appellant by awarding damages to the tune of N9, 035.

Dissatisfied, respondents filed an appeal at the High Court of Rivers State, Port Harcourt. The court in its judgment, reasoned that the customary court has no jurisdiction to make an award exceeding N5,000. The appeal was allowed and judgment of the customary court set aside for being a nullity. Appellant this time lodged an appeal at the Court of Appeal, Port Harcourt division. The court dismissed the appeal and rather affirmed the judgment of the High Court. Aggrieved further, appellant appealed to Supreme Court.

### **ISSUES FOR DETERMINATION**

(a) Whether the customary court exceeded its jurisdiction.

(b) Whether the Chief Judge was right to raise the issue of jurisdiction suo motu.

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

*JURISDICTION - Fundamental nature*

**1. All courts and their jurisdiction are provided by the Constitution and/or relevant State legislation. Jurisdiction is a question of law. It is fundamental in all proceedings. Where a court does not have jurisdiction over a matter before it and it proceeds to hear and determine the matter, the entire proceedings no matter how well concluded would amount to a nullity. This is so since a judgment given without jurisdiction creates no legal obligation, and so such a judgment does not confer any rights on any of the parties.** (p. 4362 A)

*JURISDICTION - Issue of - Time to raise*

**2. Jurisdiction is so important, in that it can be raised at any stage of the proceedings, on appeal, and even in the Supreme Court for the first time. Once raised all proceedings must abate until it is resolved.** (p. 4362 C)

*JURISDICTION - Manner of raising*

**3. In the court of first instance, usually the High Court, jurisdiction is raised by the entry of conditional appearance, or in the pleadings, or by a Motion on Notice. In the Court of Appeal and the Supreme Court by including it as a ground of appeal, and incorporating arguments on it in the brief. The court treats the issue of jurisdiction first. If it succeeds the hearing of the appeal abates, with a striking out order. If it fails, the appeal is heard and a judgment on the merits of the case delivered. Jurisdiction can be raised informally, but it is desirable that some process is filed, in order to put the adverse party on good notice, so that he is not taken by surprise.** (p. 4362 E)

*JURISDICTION - Determination - Basis*

**4. The well laid down position of the law is that the plaintiff's claim determines jurisdiction. The claim of the plaintiff should be carefully examined to see if it comes within the jurisdiction conferred on the court by the relevant legislation.** (p. 4362 G)

*STATUTES - Interpretation - Purpose*

**5. The primary consideration when interpreting provisions of any legislation is to find out the intention of the legislature, and where words used are clear and unambiguous they must be given their plain and ordinary meaning. All the judge is required to do is to interpret the statute to bring out its intended meaning.** (p. 4363 D)

*Customary courts - Procedure*

**6. In Customary Courts, Rules of procedure and Practice well known and followed in superior courts of record are not strictly followed. As quite rightly pointed out by learned counsel for**

***the appellant the proceedings from a customary court should be examined in detail so that the real issue before that court is easily identified. It is the substance of the matter that is of importance in customary courts and not the form in which it is presented.*** (p. 4364 E)

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*COURTS - Issues - Suo motu raising*

***7. When a judge raises an issue on his own motion, or raises an issue not in the contemplation of the parties, or an issue not before the court, the judge is said to have raised the issue suo motu. The well laid down position of the law is that when an issue is raised suo motu the parties should be heard before a decision is reached on the issue. This is what procedural fairness entails.***

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***But there is an exception to this procedure. There would be no need to call on counsel to address the court on an issue raised suo motu by the judge -***

***1. When the issue relates to the court's own jurisdiction;***

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***2. When both parties are not aware or ignored a statute which may have bearing on the case; or***

***3. When on the face of the Record serious questions of the fairness of the proceedings is evident.*** (p. 4366 A)

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## **REPRESENTATION**

M. K. Wodu, for the appellant

E. C. Aguma with S. Somari, for the respondents

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## **CASES REFERRED TO**

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

Ajao v. Popoola (1986) 5 NWLR (pt. 45) 802

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

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

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

Mobil v. F.B.I.R (1977) 3 SC 53

Tariola v. Williams (1982) 7 SC 27

Odeneye v. Efunnuga (1990) 1 NWLR (pt. 164) 618

Ajuwon v. Akanni (1993) 9 NWLR (pt. 316) 182

Oyekanmi v. NEPA (2000) 15 NWLR (pt. 690) 414

B.W.S.E. Ltd. v. Nanze Int'l Ltd (2001) FWLR (pt. 69) 1435

Kuti v. Balogun (1978) 1 SC 53

Ogiamen v. Ogiaman (1967) NMLR 246

Adeniji v. Adeniji (1972) 4 SC 10

Irri v. Erhuehobara (1991) 2 NWLR (pt. 173) 252

B

### **STATUTES REFERRED TO**

Rivers State Customary Court Edict (No.7) 1987, s.6(1)

Evidence Act, s. 74

C

### **LEAD JUDGMENT BY RHODES-VIVOUR JSC**

The appellant, as plaintiff sued the respondents as defendants in a Kaima Customary Court Bayelsa State for-

1. An order of this honourable court asking the defendants to refund the sum of N800.00 (eight hundred naira) only being the amount of money paid to the defendants for the sale of a piece or portion of land situate at Ogienama compound to the plaintiff along with two bottles of native gin, a packet of cigarette and some bottles of mineral amounting to the sum of N50.00 (fifty naira).

E

2. An order of this honourable court to ask the defendants to refund the sum of N10,200 (Ten thousand, two hundred naira) being expenses incurred in developing or reclaiming the swampy part money spent for the survey or the fee for the blessing of the land. Total relief sought amounting to N11,000 (Eleven thousand naira.).

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After hearing evidence from both sides the customary court entered judgment for the plaintiff as follows:

*“(a) N800.00 (Eight hundred naira) be refunded for the sale of the land to the plaintiff.*

*(b) Eight thousand, two hundred naira (N8,200) being expenses incurred during the development of the said portion of the (land) plot to date.*

*(c) N35.00 (thirty-five naira) for costs, all amounting to the sum of N9,035 (nine thousand and thirty-five naira) be paid to the plaintiff within one month period from now...”*

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Dissatisfied with the judgment the defendants filed an appeal at the Port Harcourt High Court, Ungbuku CJ (as he then was) pre-

sided. The learned chief Judge reasoned thus:

“... I am of the view that the customary court indeed erred in law in granting to the plaintiff/respondent a relief that he did not seek in his claim before the customary court. In the said judgment the court awarded a total sum of N9,035.00 (nine thousand and thirty-five naira) only to the plaintiff saying that the sum be paid within one month from the date of judgment. It is clear from the claim of the plaintiff that he was asking from the defendants/appellants in monetary term is above the jurisdiction of customary court. The customary court has jurisdiction limited to N5,000 (five thousand naira) only...” And concluded as follows:

“The appeal is allowed. The judgment of the customary court is a nullity and is set aside. Costs and or any money if paid to respondent in compliance with the said judgment should be refunded...”

The plaintiff lodged an appeal before the Port Harcourt Division of the Court of Appeal, that court in a majority decision. (2-1) confirmed the judgment of the appellate High Court. The Court of Appeal in the penultimate paragraph said:

“...I would and do uphold and affirm the decision of the appellate High court.”

The customary court assumed jurisdiction and made gratuitous awards where it had no power to do so. This appeal is against that decision. Briefs of argument were filed and exchanged. The appellant (plaintiff) brief was filed on the 3rd of November 2006 while the respondents’ brief was filed on the 18th of December 2006. Learned counsel for the appellant distilled three issues from his five grounds of appeal. The issues are:

1. Whether the lower court was right when it refused to set aside the judgment of the Bayelsa State High Court presided over by Ungbuku CJ (as he then was), when the said judgment of the Bayelsa High court was based on a purported issue of jurisdiction raised suo motu and resolved against the appellant in the said judgment of the said Bayelsa State High Court without hearing the appellant.

2. Whether the lower court was right when it held that the trial customary court granted reliefs not sought for by the plaintiff /appellant before the customary court.

3. Whether the lower court was right when it held that the trial customary court had no jurisdiction to entertain the plaintiff /

appellant's claims before it.

On the other side of the fence, learned counsel for the respondents' also formulated three issues for determination. They read:

1. Was the customary court, Kaiama right to grant an unsolicited relief or excess of solicited relief.

2. Was the lower court right to set aside the decision of the customary court when it heard that the customary court had no jurisdiction to adjudicate a claim for relief above the limits set for it by law. B

3. Was the lower court right to uphold the issues of jurisdiction raised suo motu by Chief Judge Ungbuku (as he then was) of Bayelsa State High Court. C

After a diligent examination of the briefs and consideration of the issues formulated by both sides there is no doubt that the real grievance in this appeal is:

(a) Whether the customary court exceeded its jurisdiction. D

(b) Whether the Chief Judge was right to raise the issue of jurisdiction suo motu.

Accordingly only the appellants' issue 3 and the respondents' issue 3 are relevant and would be considered in this appeal. At the hearing of the appeal on the 16th of October 2012 learned counsel for the appellant, Mr. M. K. Wodu adopted the appellants brief filed on the 3rd of November 2006 and urged this court to allow the appeal. Learned counsel for the respondents' Mr. E. C. Aguma adopted the respondents brief filed on the 8th of December 2006 and urged on us to affirm the judgment of the Court of Appeal. E F

ISSUE 1: Whether the lower court was right when it held that the trial customary court had no jurisdiction to entertain the plaintiff /appellant's claims before it.

Learned counsel for the appellant observed that after taking G into cognizance the entire proceedings before the customary court it is clear that the appellant's suit is a land matter relating to the ownership, occupation or possession of land, submitting that the customary court had jurisdiction to entertain the appellant's suit and grant the reliefs sought. Learned counsel for the respondents, observed that it H is the plaintiff's claim that determines jurisdiction, contending that the claim before the customary court was for refund of money, a breach of contract claim. He submitted that the customary court, exceeded its jurisdiction when it awarded a total of N9,035.00 above

its limits. Concluding, he observed that the trial in the customary court was without jurisdiction and so a nullity. He urged this court to resolve this issue in the affirmative in favour of the respondents.

***All courts and their jurisdiction are provided by the Constitution and/or relevant State legislation. Jurisdiction is a question of law. It is fundamental in all proceedings. Where a court does not have jurisdiction over a matter before it and it proceeds to hear and determine the matter, the entire proceedings no matter how well concluded would amount to a nullity. This is so since a judgment given without jurisdiction creates no legal obligation, and so such a judgment does not confer any rights on any of the parties. Jurisdiction is so important, in that it can be raised at any stage of the proceedings, on appeal, and even in the Supreme Court for the first time. Once raised all proceedings must abate until it is resolved.*** See *Barclays Bank of Nig. v. Central Bank of Nig.* 1976 6 SC p.175, *Adeyemi v. Opeyori* 1976 9 - 10 SC. p.31, *Ajao v. Popoola* 1986 5 NWLR Pt.45 p.802, *Usman Dan Fodio University v. Kraus Thompson Organisation Ltd* 2001 15 NWLR Pt.736 p.305.

***In the court of first instance, usually the High Court, jurisdiction is raised by the entry of conditional appearance, or in the pleadings, or by a Motion on Notice. In the Court of Appeal and the Supreme Court by including it as a ground of appeal, and incorporating arguments on it in the brief. The court treats the issue of jurisdiction first. If it succeeds the hearing of the appeal abates, with a striking out order. If it fails, the appeal is heard and a judgment on the merits of the case delivered. Jurisdiction can be raised informally, but it is desirable that some process is filed, in order to put the adverse party on good notice, so that he is not taken by surprise.***

***The well laid down position of the law is that the plaintiffs claim determines jurisdiction. The claim of the plaintiff should be carefully examined to see if it comes within the jurisdiction conferred on the court by the relevant legislation.*** See *Anya v. Iyayi* 1993 7 NWLR Pt.305 p.290, *A.G. Kwara State v. Warah* 1995 7 NWLR Pt.405 p.121, *Anigboro v. Sea Trucks Nig. Ltd.* 1995 6 NWLR Pt.399 p.43, *Onuorah v. Okeke* 2005 10 NWLR



Pt.932 p.47. The relevant legislation is the River State Customary Court Edict (No .7) of 1987 applicable in Bayelsa State Section 6 (1) states that:

*"A customary court shall have and exercise original jurisdiction over causes and matters set out in column 1 of the first schedule to the extent or limit set out in column 2 of that schedule opposite the causes and matters.*

<i>Column 1</i>	<i>Column 2</i>	
<i>Causes and matters</i>	<i>Limit of jurisdiction of Customary Court</i>	
<i>1. Land causes and land matters relating to the ownership, occupation or possession of land</i>	<i>unlimited</i>	C
<i>5. Causes and matters relating to inheritance upon intestacy</i>	<i>N5,000</i>	D
<i>6 Civil actions in contracts, tort at common Law and at customary law</i>	<i>N5,000"</i>	

***The primary consideration when interpreting provisions of any legislation is to find out the intention of the legislature, and where words used are clear and unambiguous they must be given their plain and ordinary meaning. All the judge is required to do is to interpret the statute to bring out its intended meaning.*** See Mobil v. F.B.I.R 1977 3 SC p.53, Tariola v. Williams 1982 7 SC p.27, Odeneye v. Efunnuga 1990 1 NWLR pt.164 p.618. The intention of the legislature is that customary courts shall have their jurisdiction limited to N5,000 for matters relating to inheritance, civil actions in contract, torts at common law and at customary law.

Now, what is the plaintiff's claim. It reads:

1. An order of this Honourable court asking the defendants to refund the sum of N800 (eight hundred naira) only being the amount of money paid to the defendants for the sale of a piece or portion of land situate at Ogienama compound to the plaintiff along with two bottles of native gin, a packet of cigarette and some bottles of mineral amounting to the sum of N50 (fifty naira).

2. An order of this Honourable court to ask the defendants to refund the sum of N10,200 (Ten thousand, two hundred naira) being expenses incurred in developing or reclaiming the swampy part,

money spent for the survey or and fee for the blessing of the land. Total relief sought amounting to N11,000 (Eleven thousand Naira).

There is no doubt that the plaintiff (appellant's) claim is for the refund of expenses incurred in securing and preparing the land, the subject matter of the controversy between the parties. The claim  
B clearly has nothing to do with ownership, possession or occupation of the land. The appellant claimed a monetary refund and the customary court awarded N9,035, a sum beyond the statutory limits of the customary court's jurisdiction which must not exceed N5,000 as  
C provided for by section 6 (1) of the River State Customary Courts Edict (No.7) of 1987. The Court of Appeal was right when it held, confirming the decision of the appellate High Court that the Customary Court had no jurisdiction to entertain the appellant's claims before it. The judgment of the Customary Court is a nullity.

D In his submissions learned counsel for the appellant said, and I quote him:

*"It is our respectful submission that taking into cognizance the entire proceedings before the trial customary court the appellant's suit before the trial customary court was a land cause or land matter  
E relating to the ownership, occupation or possession of land."*

***In Customary Courts Rules of procedure and Practice well known and followed in superior courts of record are not strictly followed. As quite rightly pointed out by learned counsel for the appellant the proceedings from a customary court  
F should be examined in detail so that the real issue before that court is easily identified. It is the substance of the matter that is of importance in customary courts and not the form in which it is presented.***

G The parties are members of the Ogienema family of Odi. In this family if anyone wants land to build a house, land would be given to him free of charge. Land is not sold to family members. The plaintiff wanted land to build a house so he approached the 1st respondent who gave him part of his portion of land. The plaintiff gave  
H the 1st respondent the usual token of native gin, a packet of cigarette and N800. The plaintiff spent about N8,000 to prepare the plot for development. The respondent resiled. They wanted their land returned to them. The appellant then asked for a refund of the money he spent on the land so far. Oral testimony of witnesses called by

both sides in the customary court is replete with evidence that the plaintiff claim is for a refund of money spent by the plaintiff in preparing the land for development. The dispute is on the amount to be refunded. The respondents were prepared to refund N800, while the appellant insisted that he was entitled to N11,000.

After examining the entire proceedings in the customary court it is easy to identify, the real issue in controversy between the parties. There can be no doubt that the plaintiff's claim is for the refund of expenses incurred in securing and preparing the land, the subject matter of the controversy between the parties. It is obvious that if one examines plaintiff's claim or the entire proceedings it becomes abundantly clear that plaintiff's claim has nothing to do with ownership, possession or occupation of land. Rather plaintiff's claim is for a refund of money which he spent to prepare the land for development. The Court of Appeal was correct to affirm the decision of the appellate High Court which correctly found that the customary court awarded the sum of N9,035 to plaintiff appellant, a sum beyond the jurisdictional limits of N5,000 provided by the Rivers State Customary Court Edict (No.7) of 1987 applicable in Bayelsa State.

ISSUE 2: Was the lower court right to uphold the issue of jurisdiction, raised suo motu by Ungbuku CJ (as he then was) of Bayelsa State High Court.

Learned counsel for the appellant observed that it amounted to a denial of his client's right to fair hearing for the learned chief judge to raise the issue of jurisdiction of the customary court to hear the matter suo motu without affording counsel a hearing. Reliance was placed on *Ajuwon v. Akanni* 1993 9 NWLR Pt.316 p.182, *Oyekanmi v. NEPA* 2000 15 NWLR (Pt.690) p.414. Learned counsel submitted that the entire proceedings in the appellate High Court ought to be nullified since the learned trial judge did not give the appellant or his counsel an opportunity to address him on such an important issue as jurisdiction.

Learned counsel for the respondent observed that the jurisdiction of customary court is, statutorily provided for by law, and by virtue of Section 74 of the Evidence Act courts are to take judicial notice of all laws and enactments, contending that since there was no miscarriage of justice the appellants were not denied fair hearing. Reference was made to *B.W.S.E. Ltd. v. Nanze Int'l Ltd* 2001 FWLR

pt.69 p.1435. He urged this court to resolve this issue in favour of the respondents.

***When a judge raises an issue on his own motion, or raises an issue not in the contemplation of the parties, or an issue not before the court, the judge is said to have raised the issue suo motu. The well laid down position of the law is that when an issue is raised suo motu the parties should be heard before a decision is reached on the issue, This is what procedural fairness entails.*** See Kuti v. Balogun 1978 1 SC. p.53, Ogiamen v. Ogiaman 1967 NMLR p.246, Adeniji v. Adeniji 1972 4 SC p.10, Irri v. Erhuehobara 1991 2 NWLR Pt.173 p.252. ***But there is an exception to this procedure. There would be no need to call on counsel to address the court on an issue raised suo motu by the judge -***

***1. When the issue relates to the court's own jurisdiction;***

***2. When both parties are not aware or ignored a statute which may have bearing on the case; or***

***3. When on the face of the Record serious questions of the fairness of the proceedings is evident.*** See Comptoir Commercial & Ind. S.P.R. Ltd v. O.S.W.C. 2002 FWLR pt.105 p.839, M. O. Kolawole & ors v. A.G. Oyo & 3 ors 2006 3 NWLR Pt.966 p.50. The issue relates to the customary court's jurisdiction. The learned appellate judge was correct to take judicial Notice of the provisions of the Rivers State Customary Courts Edict (No.7) of 1987 and Rule that the trial customary court exceeded its jurisdiction fixed at N5,000 when it awarded N9,035 to the appellant. There was no need for the learned appellate judge to call on counsel to address him on the Rivers State Customary Courts Edict (No.7) of 1987 since the Edict states in clear terms the limits of the court's jurisdiction, a fact that needs no submission on.

Finally, since the issue of jurisdiction raised suo motu by the judge without affording counsel a hearing has not led to miscarriage of justice the decision will not be set aside. The Court of Appeal was right to uphold the issue of jurisdiction raised suo motu by the learned appellate High Court Judge. There is no merit in this appeal. It is dismissed with no order on costs.

**ONNOGHEN JSC**

I have had the benefit of reading in draft the lead judgment of my learned brother RHODES-VIVOUR, JSC just delivered. I agree with his reasoning and conclusion that the appeal is without merit and should be dismissed.

Jurisdiction is what gives life to adjudication. Where a court acts without jurisdiction, it acts in vain however brilliant the exposition of law on the subject of litigation may be. In the instant case, the trial court acted completely outside the jurisdiction conferred on it by the statute establishing same. The raising of the issue of jurisdiction by the appellate court suo motu and on which it based its decision upon the appeal arising from the determination by the trial court has not resulted in any miscarriage of justice which would have made it necessary for this court to intervene. In the circumstance, the appeal is dismissed for lack of merit. I abide by the consequential orders made in the said lead judgment including the order as to costs. Appeal dismissed.

**MUHAMMAD JSC**

I have read in draft the lead judgment of my learned brother Rhodes-Vivour JSC. I entirely agree with his lordship's reasonings and conclusion that the appeal lacks merit and it stands dismissed.

The appellant has raised an issue the consideration of which reveals a fundamental procedural lapse on the part of the High Court of Rivers State which decision the court below affirmed in spite of the lapse. The High Court exercising its appellate jurisdiction held per Ungbuku CJ (of blessed memory) as follows:-

*"I am of the view that the customary court indeed erred in law in granting to the plaintiff/respondent a relief that he did not seek in his claim before the customary court. In the said judgment, the court awarded a total sum of N9,035.00k (Nine Thousand and Thirty five Naira only) to the plaintiff saying that sum be paid within one month from the date of judgment. It is clear from claim of the plaintiff that he was asking from the defendants/appellants in monetary terms which is above the jurisdiction of customary court. The Customary Court has jurisdiction limited to N5,000.00 (five thousand naira only) The appeal is allowed. The judgment of the customary*

*court is a nullity and is set-aside. Cost and or any money if paid to the Respondent in compliance with the said judgment should be refunded."*

The respondent at the High court, appealed to the Port-Harcourt Division of the Court of Appeal which majority decision affirmed that of the high court. The Respondent has further appealed to this court. It is not any error that would lead to the setting aside of a judgment being appealed against. Appeals succeed only on the basis of such errors that have occasioned miscarriage of justice. In the instant action the trial court had proceeded on the matter before it and a granted relief without jurisdiction. Issue of jurisdiction is a fundamental one as no proceedings no matter how well conducted, would endure if the court lacks the jurisdiction to proceed in the first place. The proceedings is a nullity. Admittedly, Ungbuku CJ (as he then was) has suo motu raised an issue relevant to the matter before him and did not hear the parties before deciding on the issue so raised. The appellant has however failed to show that the lower court's affirmation of Ungbuku CJ's decision is perverse. This explains why his appeal must fail. The trial court's decision the appellant seeks to save, being a nullity, cannot anyway survive. Parties cannot confer on a court the jurisdiction it does not have. See *Adesola v. Abidoye* (1999) 14 NWLR (part 637) 28. It is for this and the further and fuller reasons contained in the lead judgment, I also dismiss the appeal. I abide by the consequential orders made in the lead judgment.

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### **OGUNBIYI JSC**

The law is well settled that it is the plaintiffs claim that determines jurisdiction. The question of jurisdiction is very fundamental and cannot therefore be undermined in any proceeding as it is its bedrock.

The relevant applicable legislation governing this case is the Rivers State customary court Edict (No 7) of 1987 wherein section 6 (1) is most appropriate. The jurisdiction of the customary court in the causes of the nature at hand is limited to N5,000.00. That is to say in matters relating to inheritance, civil actions in contract, torts at common Law and at customary law. The Plaintiff's claim had been clearly restated in the lead judgment; also relevant is the case of Abdulhamid

v. Akor (2006) All FWLR (pt 321) p.1204 wherein it was held:-

*“Jurisdiction is determined by the plaintiff’s claim or relief. In other words it is claim before the court that has to be looked at or examined to ascertain whether or not it comes within the jurisdiction conferred on that court...”*

The trial customary court for some reason which is totally unrelated to the claim nevertheless gave judgment for the plaintiff in the following terms:-

*“(a) (800) Eight hundred Naira be refunded for the sale of the land to the plaintiff (b) Eight thousand, two hundred Naira (N8,200) being expenses incurred during the development of the said portion of the (land) plot to date (c) (N35) thirty five Naira for costs, all amounting to the sum of (N9,035) Nine thousand and thirty-five Naira be paid to the plaintiff within one month period from now.”*

At the appellate High Court, the defendants/respondents on the question of jurisdiction raised by the Chief Judge suo motu, had the customary court judgment reversed in their favour. In its considered judgment this is what the learned Chief Judge had to say:-

*“It is clear from the claim of the plaintiff that what he was asking from the defendants/appellants in monetary term is above the jurisdiction of customary court. The customary court has jurisdiction limited to N5,000 (five thousand Naira) only. It is therefore a clear error in law for the customary court to have entertained the suit and to have given judgment above its limit. Any matter that involves the jurisdiction of a court is fundamental. It is so fundamental that it can be raised by either party at any stage of the proceedings or even on appeal for the first time. It can also be raised by the court suo motu because any decision or judgment however well taken by a court or tribunal without jurisdiction is void ab initio. That informed me to raise this issue of jurisdiction in this judgment although not raised by either party... The judgment of the customary court is a nullity and is set aside.”*

On a further appeal to the Court of Appeal from whence this appeal came, the lower court in its wisdom I hold, affirmed judgment of the appellate High Court and dismissed the appeal by a majority decision of two justices to one and hence the appeal now before us. The main bone of contention in this appeal zeros on question of jurisdiction. In other words, whether the lower court was right when

it held that the trial customary court had no jurisdiction to entertain plaintiff/appellant's claims before it. I hasten to state at this juncture and on the onset that the raising of a question of jurisdiction whether by the court, suo motu, or on the initiation of either of the parties should not be a matter of contention so as to make out a reason which should sustain an allegation of absence of fair hearing. In other words, once a court is found to have acted outside its jurisdiction, the principle of fair hearing is no longer relevant or applicable to the case. It becomes a matter of law, very fundamental and touches on the very foundational basis of the proceedings and which did not need further address thereon. The court should be in a position to properly inform itself of the defect either with or without an external intervention. Thus the established legal principle that the question of jurisdiction can be raised at any stage of the proceedings, on appeal and even in this court for the first time. Where a question of jurisdiction succeeds, it results into a total negative operational effect. In other words the totality of the proceedings becomes non-existent as it is with the situation at hand. For question of fair hearing to apply therefore there must be in existence valid and subsisting proceedings. The existence must be real and not hypothetical or imaginative.

The law is clear and very well spelt out the jurisdictional limit of customary court is N5,000.00. This act of legislation cannot be circumvented but ought strictly to be interpreted, and adhered to. The learned appellant's counsel from all indications appears to have misconceived and thereby wrongly interpreted the nature of the subject matter of controversy. The lower court I hold was properly guided and therefore could not be faulted when it confirmed the judgment of the appellate High Court wherein it held that the trial customary court had no jurisdiction to entertain the appellant's claim before it. The judgment of the customary court in other words is a nullity.

For the above reasons and more particularly on the comprehensive deduction arrived at by my learned brother Rhodes-Vivour, JSC which I hereby adopt, the appeal is also dismissed by me as lacking in merit. I also abide by the order made in the lead judgment as to costs.