

**SUPREME COURT OF NIGERIA**

FRIDAY 19TH APRIL, 2013. SC. 88/2005

**CORAM:- I. T. MUHAMMAD, C. M. CHUKWUMA-ENEH,  
S. GALADIMA, C. B. OGUNBIYI, S. S. ALAGOA, JJSC**

1. ABIOLA & SONS  
BOTTLING CO. NIG. LTD

2. SAMUEL ABIOLA  
& SONS CO. NIG. LTD

..... APPELLANTS

AND

1. FIRST CITY MERCHANT  
BANK LTD

2. ADEMOLA SOMORIN ESQ. F.C.A  
(TRADING UNDER THE SAME  
NAME AND STYLE OF ADEMOLA  
SOMORIN & CO.)

..... RESPONDENTS

3. SEVEN-UP BOTTLING CO. PLC

---

COMPANY LAW - Companies & allied matters - Jurisdiction - By 1991 Decree No. 60 s. 7(1) & other enabling laws - Federal High Court was conferred with exclusive jurisdiction - Over such matters (H1)

APPEALS - Reversal of judgment - Jurisdiction - CA can reverse itself where it earlier ruled - That lower court has no jurisdiction - Provided fresh arguments arose in the same case - As between same parties (H2)

JURISDICTION - Absence of - Effect - Where court lacks jurisdiction - All proceedings it conducts - Including ruling or judgment - Is a nullity (H3)

**FACTS**

By a Deed of debenture made between plaintiffs/appellants and 1<sup>st</sup> defendant/1<sup>st</sup> respondent, the sum of N3,500,000 was given as loan to 1<sup>st</sup> appellant. As appellants defaulted in repaying the loan, 1<sup>st</sup> respondent exercised its powers under clause 11 of the said Deed and appointed 2<sup>nd</sup> respondent as a receiver/manager. In exercise of

## 1502 Abiola & Sons Bottling Co. Ltd v. First City Merchant Bank

his powers, 2<sup>nd</sup> respondent sold off some of 1<sup>st</sup> appellants' assets to 3<sup>rd</sup> respondent. Not happy with the sale, appellants commenced this action before the High Court of Kwara State Offa, claiming inter alia, a declaration that the purported unstamped debenture deed made between appellants and 1<sup>st</sup> respondent is null and void and of no effect whatsoever.

After hearing, the learned trial judge granted 1<sup>st</sup> appellant's claims except the relief on sub-paragraph [ii], which was abandoned and struck out. In respect of 2<sup>nd</sup> appellant, the learned trial judge declined to award anything as loss of profits/income as there was no claim for it by 2<sup>nd</sup> appellant. The counter claim of respondents was dismissed in its entirety. Dissatisfied, respondents appealed to the Court of Appeal, Ilorin Division. At the hearing of the appeal, the court was confronted with the issue of jurisdiction of the trial court that the subject matter of appellants' action involved a civil matter pertaining to the operation of the Companies and Allied Matters Act. The court found merit in the issue and resolved same in favour of respondents. The appeal was eventually allowed and the decision of the trial court was set aside. Aggrieved, appellants appealed to Supreme Court.

### **ISSUES FOR DETERMINATION**

*"[3.01] Whether in the circumstance of this case, the learned Justices of the Court of Appeal erred in law when they over-ruled the Respondents/Appellants' preliminary objection in its entirety.*

*[3.02] Whether having regard to the circumstances of this case, the learned Justices of the Court of Appeal erred in law when they held that the trial High Court had/has no requisite jurisdiction to hear and determine the plaintiffs' [now appellants'] suit/claims vide Decree No.60 of 1991.*

*[3.04] Whether having regard to the circumstances of this case, PW1 can be classified and/or referred to as "A PERSON INTERESTED" when he prepared EXHIBITS 34 and 36 respectively as held by the Court of Appeal.*

*[3.05] Whether the Court of Appeal was right and proper in its decision when it held that:*

*"The failure, if any by the 2nd defendant/appellant to register his instrument of appointment or to make the requisite returns did not relate back to adversely affect his otherwise valid appointment."*

*[3.06] Whether the Court of Appeal rightly and properly considered the relevancy and/or applicability of the provisions of Auctioneers Law and Land Use Act in the circumstance of this case.*

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

*Companies & allied matters - Jurisdiction*

**1. In the first place, filing of the writ of summons and statement of claim by the respondents was done on the 31st of July, 1991. The Constitution of the Federal Republic of Nigeria, 1979 was clearly in vogue. All parties agreed and there is a finding by the court below that both the Kwara State High Court and Federal High court as at the 1st of July, 1991, shared concurrent jurisdiction on such claims.**

**Secondly, when Decree No.60 was promulgated in 1991 with its commencement date from the 30th day of December, 1991, there was a turn of events now that the Federal High Court was the only court conferred with exclusive jurisdiction to entertain matters in relation to the operation of companies and allied matters.**

**This Decree, therefore, divested any State High Court of original jurisdiction on any matter as specified by that section of the Decree as set out above. Thus, any matter that had to do with the operation of the companies incorporated thereunder including management of such companies and their assets, fell squarely within the jurisdiction of the Federal High Court.**  
(p. 1515 A)

*APPEALS - Reversal of judgment - Jurisdiction*

**2. The position of the law as adumbrated somewhere, is that where the Court of Appeal has ruled that the lower court lacks jurisdiction over a matter, this decision would not estop the same court from reversing itself in the same case between the same parties (as in this case) on the issue of jurisdiction, should fresh arguments or some other relevant statutes on the matter be brought to its attention.** (p. 1519 A)

*JURISDICTION - Absence of - Effect*

**3. Following the footsteps laid in Akinbobola's case, the lower court can hardly be faulted in its decision that the Kwara State High Court lacked jurisdiction to determine the case on hand.**

**B It is trite that where a court lacks jurisdiction all the proceedings it conducts including a ruling or judgment delivered, is a nullity.** (p. 1519 H)

**REPRESENTATION**

**C** Dr. J. O. Olatoke with B. O. Omodare, K. A. Uzamot, I. V. Ogiemwonyi and O. O. Aweda, for the Appellants  
A. A. Adegbonmire with D. D. Killi, for the Respondents

**CASES REFERRED TO**

Oforkere v. Maduiké [2003] 5 NWLR [pt. 812] 166

Oluwole v. LSDPC [1983] 5 SC 1

Savanah Bank of Nig. Ltd v. Pan Atlantic Shipping & Transport Agencies Ltd [1987] 1 NSCC 67

**E** Omisade v. Akande (1987) 1 NSCC 486

7Up Bottling Co. v. Abiola & Sons Bottling Co. Ltd (1996) 7 NWLR (pt. 463) 714

Akinbola v. Plisson Fisko Nig. Ltd. (1991) 1 NWLR (pt. 167) 270

**STATUTES REFERRED TO**

Constitution of the Federal Republic of Nigeria 1979, s. 233(3)

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

Decree No. 60 1991, s. 7(1)(6)

**G** Federal Revenue Court Act 1973, ss. 7, 8

Companies Act 1963

Companies Decree 1968

Constitution (Suspension modification) Decree No. 107 1993, s. 230

Federal High Court (Amendment) Decree No. 60 of 1991

**H**

**LEAD JUDGMENT BY MUHAMMAD JSC**

The 1st plaintiff at the Kwara State High court of Justice, holden at Offa [trial court] is a limited liability company carrying on the business of manufacture of and dealers in all kinds of soft drinks. The 2nd

plaintiff is also a limited liability company carrying on principally the business of building, civil and electrical contractors, saw-milling industry etc. The 1st defendant is also a limited liability company carrying on the business of banking while the 2nd defendant is a Chartered Accountant. The 3rd defendant, as its name suggests, is a limited liability company incorporated to manufacture or brew 7-Up soft-drinks. B

By a deed of debenture [which the plaintiffs termed “purported”], dated 27th November, 1986, between the plaintiffs and the 1st defendant, the sum of N3,500,000 [Three Million, Five Hundred Thousand Naira] was advanced in the form of a term loan overdraft facilities to the 1st plaintiff to meet their working capital requirement and finances to import raw materials. As the plaintiffs defaulted in repaying the loan, the 1st defendant exercised its powers under clause 11 of the Deed of Debenture and appointed the 2nd defendant as a receiver/manager. In exercise of his powers as such, the 2nd defendant sold off some of the 1st plaintiffs’ assets to the 3rd defendants. Not happy with the sale the plaintiffs took out a writ of Summons on 01/07/91, claiming in paragraph 35 of their joint further amended Statement of Claim the following reliefs: C D E

*“[i] A DECLARATION that the purported unstamped DEBENTURE DEED dated the 22nd day of November, 1986 between the 1st and 2nd Plaintiffs as “the company” AND the 1st Defendant as “the bank” is meaningless, worthless, unenforceable, illegal, null and void and of no effect whatsoever;* F

*[ii] A DECLARATION that the appointment by the 1st Defendant of the 2nd Defendant as a RECEIVER/MANAGER pursuant to the unstamped DEBENTURE DEEDS dated 27th November, 1986 to take over the physical control and sell off all the assets of the Plaintiffs etc, was/is premature, hasty, illegal, null and void and of no effect whatsoever.* G

*[iii] A DECLARATION that even if the unstamped DEBENTURE DEED dated 27th day of November, 1986 is irregular, the 1st Defendant cannot appoint any DEBENTURE DEED to sell off the plaintiffs’ assets or properties without giving adequate notices to each of the plaintiffs and that the appointment by the 1st Defendant of the 2nd Defendant to sell off the plaintiffs’ assets/properties without any notice at all being given to the 2nd plaintiff before, during or after* H

*the said appointment is irregular, illegal, null and void and of no effect whatsoever;*

[iv] A DECLARATION that the sale of the 1st Plaintiff's properties situate, lying and being at ASA DAM ROAD, ILORIN and covered by Certificate of Occupancy No.KW3065 and registered as No.6 at page 6 in volume viii [Certificate of Occupancy] of the Land registry at Ilorin to the 3rd defendant is dishonest, suspicious, illegal, null and void and of no effect whatsoever;

[v] A DECLARATION that the sale by the 1st defendant to the 3rd defendant of the 1st plaintiff's aforementioned properties is in flagrant violation of the provisions of the AUCTIONEERS LAW [Cap. 10] Laws of Northern Nigeria applicable to Kwara State and is therefore null and void and of no effect whatsoever;

[vi] A DECLARATION that all the actions, steps and decisions taken so far by the 2nd defendant in respect of the assets of the plaintiff under the purported unstamped DEBENTURE DEED dated 27th November, 1986, without due reference or accounting to the Registrar of Companies of the Companies Registry at Lagos or at Abuja are irregular, arbitrary, dishonest, suspicious, illegal, null and void and no effect whatsoever;

[vii] A DECLARATION that the sale, alienation, transfer or lease of the 1st plaintiff's landed property situate, lying and being at ASA DAM ROAD, ILORIN and covered by Certificate of Occupancy NO. KW3065 dated 16th May, 1979 by the 2nd defendant to the 3rd defendant without the prior consent [or any consent whatever] of the Military Governor of Kwara State is illegal, null and void and of no effect whatsoever;

[viii] A DECLARATION that the 1st defendant has no right or power to debit the 1st plaintiff's account for sundry and numerous expenses incurred by it or any of its agent in respect of or in connection with the sale of the 1st plaintiff's properties;

[ix] AN ORDER setting aside:

[a] The purported unstamped DEBENTURE DEED dated 27th November, 1986 between the plaintiffs and the 1st defendant;

[b] The appointment by the 1st defendant of the 2nd defendant as a DEBENTURE DEED to take physical control of the assets and properties of the plaintiff mentioned in the said DEBENTURE DEED of the 2nd defendant's letter of appointment [if any];

*[c] The sale[s], transfer, alienation etc, of the 1st plaintiff's properties or assets made by the 2nd defendant to the defendant.*

*[x] AN ORDER setting aside all interest rates excess of the prevailing banking interest rate as at 26th November, 1986 charged by the 1st defendant on the 1st plaintiff's account:*

*[xi] AN ORDER setting aside all debits made against the plaintiff's account by the 1st defendant in respect of all the or any of the expenses incurred by the 1st defendant or any of 1st agents pursuant to the sale of the 1st plaintiff's properties;*

*[xii] AN ORDER directing the defendants either jointly and/or severally to make full restitution of all the 1st plaintiff's assets and/or properties in the perfect and/or same conditions in which they were before the 1st defendant purportedly transferred or sold them to the 1st defendant;*

*[xiii] A sum of N1,872,000 [One million, eight hundred and seventy-two thousand naira] only per month being loss of minimum net profit/ income on the 1st plaintiff's properties and assets taken over by the defendants from the 1st day of November, 1987 until the day judgment is delivered in this case and thereafter until the defendants deliver possession to the plaintiffs;*

*[xiv] A sum of N10 million naira [Ten million Naira] being damages for the illegal and arbitrary take-over of the plaintiffs' properties by the defendants and the denial by the defendants of the plaintiff's right of access or entry to their premises;*

*[xv] AN ORDER of perpetual injunction restraining the defendants either jointly or severally or either by themselves, servants, agents or privies or through any person howsoever from further holding-on-to or seizing or asserting authority and control over any of the plaintiffs' properties covered by the purported unstamped DEBENTURE DEED dated 27th November, 1986"*

In their joint further amended statement of defence the defendants counterclaimed as follows:

*"[1] Declaration that the plaintiffs' claim concerning the management, dealing with disposal of the 1st plaintiff's property in the hands of the receiver/manager is a matter arising from the operation of the Company's Act and the High Court of Justice of Kwara State lacks jurisdiction.*

*[2] An order striking out all the plaintiffs' claim relating to the*

*sale, transfer and disposal of the 1st plaintiff's property by the 1st defendant/counter-claimant.*

*A declaration that the loan agreement and debenture deed entered into by the plaintiff and the 1st defendant/counter-claimant is valid, legal and binding on the parties”.*

B After full hearing, the learned trial judge granted the 1<sup>st</sup> plaintiffs claims except the relief on sub-paragraph [ii], which was abandoned and struck out. In respect of the 2nd plaintiff, the learned trial judge declined to award anything as loss of profits/income as there was no claim for it by the 2nd plaintiff. The learned trial judge dismissed the defendants' counter claim in its entirety. Dissatisfied, the defendants appealed to the Court of Appeal, Ilorin Division [court below]. There was a preliminary objection filed by the plaintiffs/respondents at the court below. The preliminary objection was taken C by way of motion on notice. It was moved accordingly. The court below over-ruled the objection. The court below then went into the merit of the appeal. It was however confronted with the issue of jurisdiction of the trial court that the subject matter of the plaintiffs' action involved a civil cause or matter pertaining to the operation of the D Companies and Allied Matters Act. The court below found merit in that issue which it resolved in favour of the defendants as appellants before it. The court below added a rider in the following words:

*“Ordinarily this would have been the end of the matter. But then, this is not the Final Court. In the event that the Supreme Court F finds that I am wrong in my view on the issue of jurisdiction they ought to have my views on the other issues canvassed so that a re-hearing on them by this court would not be rendered necessary.”*

The court below, per IKONGBE, JCA [as he then was but G now late], went on to discuss extensively the remaining issues which he found in favour of the defendants/appellants and allowed the appeal by setting aside the decision of the trial court and dismissing the plaintiffs' action in its entirety. Dissatisfied, the plaintiffs/respondents and now appellants appealed to this court. The defendants/H appellants and now respondents also cross-appealed against the said judgment.

Briefs as usual were settled by the parties. In their brief, the appellants set out the following issues for determination:

*“[3.01] Whether in the circumstance of this case, the learned*



*Justices of the Court of Appeal erred in law when they over-ruled the Respondents/Appellants' preliminary objection in its entirety. [Grounds 1, 2 and 3].*

*[3.02] Whether having regard to the circumstances of this case, the learned Justices of the Court of Appeal erred in law when they held that the trial High Court had/has no requisite jurisdiction to hear and determine the plaintiff's [now appellant's] suit/claims vide Decree No.60 of 1991. [Grounds 4 and 5].*

*[3.03] Whether the lower court of Appeal erred in law when it resolved the issue of validity or otherwise of the Deed of Debenture tendered as EXHIBIT 1 in favour of the appellants/respondents and whether the issue of validity or otherwise or EXHIBIT 1 was raised timeously. [Grounds 6, 7, 8, and 9]*

*[3.04] Whether having regard to the circumstances of this case, PW1 can be classified and/or referred to as "A PERSON INTER-ESTED" when he prepared EXHIBITS 34 and 36 respectively as held by the Court of Appeal. [Ground 16]*

*[3.05] Whether the Court of Appeal was right and proper in its decision when it held that:*

*"The failure, if any by the 2nd defendant/appellant to register his instrument of appointment or to make the requisite returns did not relate back to adversely affect his otherwise valid appointment." [Grounds 10 and 11]*

*[3.06] Whether the Court of Appeal rightly and properly considered the relevancy and/or applicability of the provisions of Auctioneers Law and Land Use Act in the circumstance of this case. [Grounds 12, 13, 14 and 15]*

*[3.07] Whether the judgment of the Court of Appeal is against the weight of evidence in the circumstances of this case. [Grounds 17] The appellants shall argue the issues in order in which they are arranged and/or seriatim "*

From the respondents' own side, although it is nowhere clearly stated, what I decipher from the arguments contained in part 'A' of the brief is that the respondents adopted the issues formulated by the appellants. However, before discussing the issues, the learned counsel for the respondents raised a preliminary objection against the competence of some of the grounds of appeal filed by the appellants. I shall consider this preliminary objection firstly.

The respondents' counsel pointed out that grounds numbers 7, 8, 11 and 17 are incompetent as these grounds raise issue of facts or at best issues of mixed law and facts for which no leave was sought and obtained before filing them in contravention of section 233[3] of the Constitution of the Federal Republic of Nigeria, 1999. Cases B such as OFORKERE VS MADUIKE [2003] 5 NWLR [part 812] 166; OLUWOLE VS. LSDPC [1983] 5 SC 1 at page 2 and 3, were cited in support. Further challenges are that no issues were formulated from grounds 11, 12 and 15 which are deemed abandoned and that arguments in respect thereof should be discountenanced. C

Permit me my lords, to reproduce the grounds of appeal challenged by the respondents. They are as follows:

#### **"GROUND SEVEN**

*The lower Court of appeal erred in law and shunned its sacred D duty when it held:*

*"This is clear evidence that the question of the non-payment of stamp duties was not raised in the plaintiffs' pleadings before the parties closed their cases. The plaintiff had the opportunity of raising it earlier in the proceedings, as evidenced by the fact of the applica- E tion for particulars that I just referred to. I do not think that the learned judge had been fair to the defendants."*

#### **PARTICULARS OF ERROR**

*[a] It is clear that the question of non-payment of stamp du- F ties was raised in the plaintiffs pleadings.*

*[b] The fact that the question of non-payment of stamp duties was raised in pleadings vide amendment of pleadings is immaterial.*

*[c] The trial court had been fair to the parties in this case as G the defendants had also had ample opportunity to amend their pleadings.*

*[d] The issue of fairness raised by the lower court is highly unwarranted and is capable of prejudicing the lower court's decision against the appellants herein and this has occasioned miscarriage of H justice against the appellant.*

#### **GROUND EIGHT**

*The learned justices of the lower court erred in law when they held that there was indeed evidence before the learned trial judge to convince any judge that stamp duties were paid on Exhibit*

1.

*PARTICULARS OF ERROR*

[a] *The findings of the trial court that no stamp duty was paid is a finding of fact which ought not to be disturbed by the lower court.*

[b] *There is nothing to show on the face of Exhibit 1 that stamp duty was paid on it and the trial court so found, albeit, rightly.*

[c] *The defendants, through DW2 confirmed that Exhibit 2 was not stamped as required by law on the ground that both plaintiffs are limited liability Companies.*

[d] *Even the appellants/respondents' brief before the lower court, their counsel submitted to the effect that if the respondents/appellants had stated in their pleadings at the appropriate time that exhibit 1 was unenforceable for alleged lack of stamping, they would have had the opportunity of tendering the certified copy to prove that it was duly stamped.*

[e] *The content of paragraph [d] above shows further that the appellant/respondents did not show or prove that exhibit 1 was stamp dutied.*

[f] *The wrong conclusion of the lower court has occasioned miscarriage of justice against the appellants herein.*

*GROUND ELEVEN*

*The lower court of appeal erred in law when it held that no notice was required for the enforcement of the Deed of Debenture and if notice was required it was duly given.*

*PARTICULARS OF ERROR*

[a] *The Deed of Debenture is in the nature of loan agreement and this being so demand is required for its enforcement.*

[b] *The appellants/respondents did not give the requisite written demand notice to the respondents/appellants before enforcing the Deed of Debenture.*

[c] *No requisite demand notice was given to the 2nd respondent/appellant for the refund of the money loaned her before enforcing the Deed of Debenture.*

[d] *There is no modicum of evidence in this case that any demand notice was written or issued on the 2nd respondent/appellant.*

[e] *It has not been established that the 2nd respondent/ap-*

*pellant made any default in the payment of the advance made to it by the 1st appellant/respondent.*

**GROUND SEVENTEEN**

*The judgment of the lower court is against the weight of evidence”*

B It is clear to me that the above grounds, especially grounds seven which questions the non-payment of stamp duties and its particulars; ground eight, ground eleven and its particulars and ground fifteen are grounds of mixed law and facts. The appellants did not  
C show that they obtained the requisite leave before filing them. This certainly offends the provisions of section 233 [3] of the Constitution of the Federal Republic of Nigeria, 1999 [as amended]. This renders the grounds to be incompetent. They are accordingly struck out. All issues and arguments in respect thereof are also incompetent and are  
D struck out and or discountenanced. See: OLUWOLE VS. LSDPC [supra]; OFORKERE VS. MADUIKE [supra]; In JOV VS. DOM (1999) 9 NWLR [part 620] 538 at page 541, this Court, per BELGORE, JSC, [as he then was] observed:

E *“A party to an appeal that intends to raise a new issue or introduce a novel matter into an appeal must seek leave to do so... this is in order to avail the other side every opportunity to advert to that issue, but to contend that issue of law or the constitution can be raised at any time and do nothing more than to raise it in argument is like laying a disrupting ambush for the opponent this is not the*  
F *spirit of our practice of adjudication of holding the even balance.”*

As against the submissions of learned counsel for the respondents, I have found as a fact that grounds of appeal Nos. 11, 12 and 15 are properly covered by issues Nos. 5 and 6 of the appellants’  
G brief. Thus, in the final determination of the preliminary objection it is my findings that grounds 1 - 6, 9, 10, 12 - 14 and 16 are competent and can sustain the appeal. Grounds 7, 8, 11 and 17 are incompetent and struck out. The preliminary objection succeeds partially. This appeal shall be determined on issues Nos. 1, 2, 4, 5 and 6 as  
H issues 3 and 7 are struck out for incompetence.

Issue No. 2 from the appellants’ brief of argument challenges the holding of the court below on trial court’s jurisdiction to hear and determine the appellants’ suit/claim vide Decree No. 60 of 1991. It is to be observed that the issue of jurisdiction of the trial court was

raised before the trial court and the trial court held inter alia as follows:

*"I do agree in toto, with the learned counsel for the defence, Chief Adegboyega Awomolo, SAN, that the issue of jurisdiction to adjudicate on this matter has never been canvassed before or decided upon by this Court. What happened was that during the prosecution of the appeal from my ruling of the 10th day of July, 1992, before the Court of Appeal, sitting in Kaduna, the learned counsel for the defendants sought for and obtained leave of the Court of Appeal to argue additional ground of appeal bordering on the jurisdiction of this Court to adjudicate on this matter in the light of Decree No. 107 of 1993. Chief Wole Olanipekun, SAN, learned counsel for the plaintiffs has tendered a certified true copy for the decision of the Court of Appeal in the case No. CA/K/243/92, where that court in rounding off [sic] its decision stated per OPENE, JCA, as follows at page 38 thereof:*

*"I am also of the view that the present suit being a pending case before the commencement of Decree 107, it is not affected by the said Decree."*

*This decision was anchored on the decision of the Court of Appeal in the same case that:*

*'In view of the fact that Decree 107 of the 1993 does not make any provision for the pending cases, it is deemed not to affect any pending case.'*

*This decision was handed down by the Court of Appeal on the 8th day of December, 1994 and the defendants herein who were the appellants in that appeal have not appealed from it further to the Supreme Court in accordance with the evidence of the DW2.*

*By the principle of hierarchy of Courts, all Courts below the Court of Appeal are bound by its decision until otherwise set aside by the Supreme Court. The matter does not end there. The issue of jurisdiction on this matter whether before me or in the Court of Appeal has already been destructively litigated upon [sic] and has been destructively by determined [sic]. In the circumstance of this case, it will be improper [sic] to seek to re-litigate on the same issue either before this court or the Court of Appeal...*

*Since the case has been remitted back to me after the decision of their Lordships in CA/K/243/92, the decision of their Lord-*

*ship becomes my decision on the issue and I cannot alter it or its effect. Being the decision of the Court of Appeal, I am bound by it...*

*In the light of the foregoing, I am of the firm view that this court has become functus officio and the parties are bound by the determination by the Court of Appeal, as far as the issue of competency of the Court to adjudicate on the cause of action herein is concerned. The defendants are therefore stopped from raising the issue of jurisdiction in this case by way of a counter claim."*

The first issue for determination raised by the appellants before the court below was whether the Kwara State High Court could exercise jurisdiction in respect of the plaintiffs' claim. The court below after having reviewed the decision taken by the trial court, the submissions of learned counsel for the parties and the prevailing law, came to the following conclusions:

*"I think I see some force in the submissions of counsel for the appellants on the point in contention. None of the reasons given by learned counsel for the respondents for asserting the inapplicability of the Order of 1993, is with all due respect to counsel, untenable. Counsel obviously had not read Decree 60 of 1991... if he had read it he would have seen that the Decree contained four sections.*

*"As from that new date on which Decree 60 came into fore, i.e. 26/08/93, only the Federal High Court could by the plaintiffs' action, which, as agreed by all, are connected with or pertained to the operation of the companies and Allied matters Act."*

It is the submission of the learned counsel for the appellants in this Court on issue No.2 that the Kwara State High Court, Offa had the jurisdiction and competence to entertain the plaintiffs' suit as it did and that it is trite that the relevant and applicable law in respect of a cause of action or matter is the law in force at the time the cause of action arose and in the case of law relating to jurisdiction when the action was instituted. This court is urged to set aside the judgment of the court below and affirm the judgment of the trial court as the court below erred in law when it refused to observe its sacred duty to consider and apply the right and appropriate law that is Decree No. 107 of 1993 which revised the jurisdiction of the Federal high court and has impliedly repealed the provisions of Decree No. 60 of 1991.

Before I answer this issue, I think there is the need to examine the historical antecedents of the legislations that were in opera-

tion vis-à-vis the jurisdiction of a State High Court and the Federal High Court, more particularly in relation to the nature of the claims filed by the plaintiffs/respondents, from the time of filing same up to the time when the trial court delivered its judgment.

***In the first place, filing of the writ of summons and statement of claim by the respondents was done on the 31st of July, 1991. The Constitution of the Federal Republic of Nigeria, 1979 was clearly in vogue. All parties agreed and there is a finding by the court below that both the Kwara State High Court and Federal High court as at the 1st of July, 1991, shared concurrent jurisdiction on such claims.*** A decided case which supports this view is that of SAVANAH BANK OF NIGERIA LIMITED VS. PAN ATLANTIC SHIPPING & TRANSPORT AGENCIES LIMITED & ANOR [1987] 1 NSCC 67 at page 72, where this court held that the Federal High Court and the State High Courts have concurrent jurisdiction on Admiralty matters.

***Secondly, when Decree No.60 was promulgated in 1991 with its commencement date from the 30th day of December, 1991, there was a turn of events now that the Federal High Court was the only court conferred with exclusive jurisdiction to entertain matters in relation to the operation of companies and allied matters.*** Section 7[1] thereof provides:

*“The Court shall to the exclusion of any other court have original jurisdiction to try Civil causes and matters connecting with or pertaining to -*

*[b] The operation of the Companies and Allied Matters Act, the Nigerian Enterprises Promotion Act, Federal enactments and any other Common Law action regulating the promotion of Nigerian Enterprises”*

***This Decree, therefore, divested any State High Court of original jurisdiction on any matter as specified by that section of the Decree as set out above. Thus, any matter that had to do with the operation of the companies incorporated there-under including management of such companies and their assets, fell squarely within the jurisdiction of the Federal High Court.*** See OMISADE VS. AKANDE (1987) 1 NSCC 486. It is to be observed that this section of the Decree re-enacted sections 7 and 8 of the then Federal Revenue Court Act of 1973 which conferred

exclusive jurisdiction on that court and divested State High courts on civil matters or causes arising from the operation of the Companies Decree 1968 or any other enactment regulating the operation of companies incorporated under the Companies Decree 1968. It also provided that in so far as jurisdiction is conferred upon the Federal Revenue Court in respect of the causes or matters mentioned in the foregoing provisions, the High Court or any other Court of a State shall, to the extent that jurisdiction is so conferred upon the Federal Revenue Court, cease to have jurisdiction in relation to such causes or matters. See: OMISADE's case, page 491, [Supra], per BELLO, CJN, as he then was and of blessed memory]. Now looking at the nature of the claims of the plaintiffs/respondents and the parties before the trial court, it can hardly be disputed that the matter had a lot to do with the companies or management thereof. Then by the operation of Decree 60 of 1991, it was only the Federal High Court that had jurisdiction and not the trial court.

Thirdly, when Decree 16 of 1992 section 5 thereof suspended Decree 60 of 1991, it also annulled all decisions taken in pursuance of that Decree.

In the fourth stage, a statutory instrument No.9 of 1993 restored the operation of Decree 60 of 1991. The instrument provided the commencement date of the re-enacted Decree No. 60 to be the 26th day of August, 1993.

Fifthly, that Decree 60 had been restored, recourse ought to be had to the provision of section 7 [6] thereof which provided that all pending matter connected with or pertaining to the operation of the Companies Act 1963 which were pending before any other court including a State High Court as of the 26th August, 1993, shall, as from that date, abate and shall be transferred to the Federal high court. This provision clearly and unmistakably divested the trial court of jurisdiction on the matter placed before it by the plaintiffs/respondents and the trial court ought to have transferred same to the Federal High court for determination. Thus, as at the 26th day of August, 1993, the trial court lost its jurisdiction in respect of the matter placed before it.

The sixth stage is the coming into effect of Decree 107 of 1993 [Constitution [suspension modification] Decree 1993] which came into operation on the 17th of November, 1993. It amended



section 230 of the Constitution, subsection [1] thereof with the following section:

*“230 [1] Notwithstanding anything to the contrary contained in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly or a Decree, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters arising from:*

*[e] the operation of any Act or Decree relating to companies and Allied Matters and any other Common Law regulating the operation of companies.”*

For completeness of the historical perspective of the legislations spelling out the exclusive jurisdiction of the Federal High Court, I think I should mention the seventh stage, that is the Constitution of the Federal Republic of Nigeria, 1999 [as amended] which made such provisions in section 251. I do not deem it necessary to produce this provision herein as the decision of the trial court was given years before the commencement of that Constitution. The judgment of the trial court was delivered on the 11th day of March, 1994. Thus, the enactments applicable to the claims and the parties before the trial court were the Federal High Court [Amendment] Decree No. 60 of 1991 and section 230 [1] [e] of Decree No. 107 of 1993. They came into operation on the 26th of August, 1993 and 17th of November, 1993, respectively. Decree 107 of 1993 did not make provisions for pending cases but section 7[6] of Decree No. 60 of 1991 did, that all pending matters connected with or pertaining to the operation of the Companies Act 1968 which were pending before any other Court including a State High Court as of the 26th August, 1993, shall be transferred to the Federal High Court. From this date therefore, the matter being treated by the [trial court] was removed from the subject matters that could be tried by the trial Court. For the avoidance of any further doubt, I consider it pertinent to re-examine the claims placed before the trial Court.

The respondents as plaintiffs sought 16 reliefs from the trial Court [already set out]. [1] The first declaration sought attacks the Debenture Deed made between the respondents and the 1st appellant. Part VII of the Companies and Allied Matters Act, that is, sections 166 - 210, deal with all matters pertaining to debentures including the remedies prescribed for debenture holder which is the

appointment of a receiver.

[2] Second and third reliefs relate to the appointment of the 2nd appellant as a Receiver pursuant to the said Debenture Deed. The powers, duties and liabilities etc, of a receiver or receiver/manager are governed by section 387 of the Act.

B [3] The fourth and fifth reliefs attack the power of the receiver to sell off the plaintiffs' assets or properties.

[4] The sixth relief complains about the 2nd appellant's failure to account to the registrar of Companies which is covered by section 393 of the Act.

C [5] The twelfth, thirteenth and sixteenth reliefs ask for an account from the 2nd appellant and this relates to s. 396 of the Act.

Thus, most of the respondents' claims fell squarely within the ambit of the provisions made by Decree 107 of 1993, section 230 D [1] thereof as they are causes and matters arising from the operation of an Act or Decree relating to Companies and Allied Matters. Afortiori, it is the Federal High Court that can competently exercise jurisdiction on such matters and I so hold.

It only remains for me to observe finally that the holding of E the learned trial judge that the plaintiffs/respondents were estopped from raising the issue of jurisdiction as the issue had once been settled by the Court of Appeal, Kaduna Division in the case of 7UP BOTTLING COMPANY VS. ABIOLA & SONS BOTTLING COMPANY LIMITED in Appeal No.CA/K/248/92 [reported in (1996) 7 NWLR F (Pt.463) 714] on which the learned counsel for the respondents argued at the court below and the court agreed with him, that this holding of the learned trial judge is erroneous in that the legislations that were considered by the Court of Appeal, Kaduna in that case G were Decree 107 of 1993, Decree 60 of 1991 and Decree 16 of 1992. The statutory instrument No.9 of 1993 [which restored Decree 60 of 1991] was never considered by the Kaduna Division of the Court of Appeal in that appeal. That decision by the Kaduna Court of Appeal, thus, given PER INCURIAM, that an existing statutory H instrument No.9 of 1993 was not brought to the attention of that court and the court of its own volition did not take judicial notice of that instrument. So by virtue of section 7 [6] of Decree No. 60 of 1991, the decision of the Court of Appeal, Kaduna in 7 Up Bottling Company vs. Abiola & Sons Bottling Company [Supra] was given

per incuriam. **The position of the law as adumbrated somewhere, is that where the Court of Appeal has ruled that the lower court lacks jurisdiction over a matter, this decision would not estop the same court from reversing itself in the same case between the same parties (as in this case) on the issue of jurisdiction, should fresh arguments or some other relevant statutes on the matter be brought to its attention** as in the case of AKINBOLA VS. PLISSON FSKO NIGERIA LIMITED (1991) 1 NWLR (Pt.167) 270. It is reported in that case as follows:

*“The appellant in this court was the plaintiff in the Kwara State High Court where he had instituted an action against the 1st respondent for “money had and received”. At the time of the institution of the suit, the 3rd respondent was in possession of the 1st respondent’s assets, having been appointed a receiver and manager by the 2nd respondent. The 2nd and 3rd respondents were joined as parties when the appellant realized that the assets of the 1st respondent were being, sold by the respondent at the instance of the 2nd respondent. The appellant then sought and obtained an ex-parte order from the Kwara State High Court restraining the 3rd respondent from selling all the plants, machinery and equipment of the 1st respondent, or in the alternative an order directing the 1st respondent to deposit the sum of N100,000 in court pending the determination of the case. Subsequently, learned counsel for the respondents filed a motion in the High Court praying the court to set aside the ex parte order on the ground that the Kwara State High Court had no jurisdiction to hear the substantive suit. The Court refused to do so holding that it had jurisdiction to hear the matter. Consequently, the respondents appealed to the Court of Appeal which Court ruled that the Kwara State High Court had no jurisdiction to hear the matter. The Appeal court then directed that the case be heard by the judge of the Federal High Court, Ilorin. All the relevant papers filed in the State Court relating to the case and sum of N100.000 deposited in that Court were subsequently transferred to the Federal High Court, Ilorin”.*

**Following the footsteps laid in Akinbobola’s case, the lower court can hardly be faulted in its decision that the Kwara State High Court lacked jurisdiction to determine the case on hand. It is trite that where a court lacks jurisdiction all the**

***proceedings it conducts including a ruling or judgment delivered, is a nullity.***

In the final result, this appeal lacks merit and it is dismissed on the first issue alone. There shall be no need to consider other issues dealings with the competence of the appeal. I order that the matter be remitted to the Chief Judge of the Federal High Court for consideration of the matter DE NOVO. I make no order as to costs.

---

**CHUKWUMA-ENEH JSC**

I have had a preview of the judgment prepared and delivered by my learned brother Muhammad JSC with which I entirely agree that the appeal lacks any merit whatsoever and should be dismissed.

I endorse all the orders contained in the judgment.

---

**GALADIMA JSC**

I have had the opportunity of reading in draft the leading Judgment of my learned brother I. T. MUHAMMAD, JSC just delivered. The facts of the matter and the intricate issues involved in the appeal have been meticulously, comprehensively, set out and admirably resolved. I cannot but agree entirely with reasoning and conclusion that the appeal lacks merit and it is dismissed on the first issue on whether the Kwara State High Court could exercise jurisdiction in respect of the Appellants' claim. The Kwara State High Court holden at Offa lacked jurisdiction to determine the case at hand, on the Authority of the case of AKINBOLA v. PLISSON FSKO (NIGERIA) LIMITED (1991) 1 NWLR (pt.167) 270.

It is needless to delve into other issues dealing with the competence of the appeal. I too, in the circumstance agree that the matter be remitted to the Learned Chief Judge of the Federal High Court for consideration of the matter de novo expeditiously.

---

**OGUNBIYI JSC**

I read in draft the judgment just delivered by my learned brother Muhammad, JSC and I agree that both the appeal and cross

appeal are lacking in merit and deserve to be dismissed. Briefly and for purpose of emphasis, I wish to state that where an appeal raises an issue of jurisdiction it is fundamentally a constitutional matter. Jurisdiction has been held as the life wire of adjudication which cannot be waived or compromised. The court in other words must first be clothed with jurisdiction before it can properly and competently operate. The determinant overriding consideration of a court in adjudication is to first ensure that it is by law predisposed to preside over a matter brought before it, without jurisdiction, the court acts in futility and the proceeding no matter how well conducted is a non-starter and therefore a nullity. The issue is so fundamental and cannot be relegated or dismissed by a wave of hand. B C

I wish to state briefly that as at July, 1991 when the writ of summons was taken out in the case at hand, both the State High Court and Federal High Court were clothed with jurisdiction to entertain the subject matter of the suit now before us on appeal. However by Decree 60 of 1991 which commenced on the 30th December, 1991, section 7(1) vested exclusive jurisdiction in the Federal High Court. The subsequent Decree 16 of 1992 also came into effect and operated to suspend Decree 60 of 1991 which directed that all cases of the nature of hand be transferred to the Federal High Court. The Decree therefore divested any other court inclusive of the State High Courts of jurisdiction over all pending matters connected with or pertaining to the operation of the companies Act 1968. The operative date was as at 26th August 1993 when the cases were abated and transferred to the Federal High Court. D E F

The lower court in its judgment cannot be faulted as rightly submitted by the learned respondent's counsel in concluding that the Kwara State High Court lacked jurisdiction to determine the case. My brother Muhammad JSC has adequately dealt with this issue which is sufficient in determining the appeal. I cannot therefore agree more with the lead judgment that the appeal is devoid of any merit and it is also dismissed by me. G

On the cross appeal by the defendants/appellants it is my view also that same should be dismissed. On the totality therefore I make an order that the suit be remitted back for the Federal High Court to hear de novo. H

***ALAGOA JSC***

I read before now in draft the lead judgment of my learned brother I. T. Muhammad, JSC and I am in total agreement with him. I have nothing useful to add.

B I also dismiss the appeal as lacking in merit and order that the matter be remitted to the Chief Judge of the Federal High Court to be tried de novo. I make no order as to costs.

C

D

E

F

G

H