

**SUPREME COURT OF NIGERIA**

FRIDAY 13TH MARCH, 2002. SC. 261/2003

**CORAM:- W. S. N. ONNOGHEN, B. RHODES-VIVOUR,  
N. S. NGWUTA, O. ARIWOOLA, M. D. MUHAMMAD, JJSC**

1. NIGERIAN NATIONAL PETROLEUM  
CORPORATION (NNPC)

2. NIGERIAN PETROLEUM DEVELOPMENT  
COMPANY LTD (NPDC)

..... APPELLANTS

AND

1. CHIEF STEPHEN ORHIOWASELE

2. MR. SIMON DADA ODJERAVMEN

.... RESPONDENTS

3. MRS. SAMSON UIEBU UBA

(Suing for themselves and on behalf of  
Ogbe-Udu Community, Okpe Local  
Government Area of Delta State)

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JURISDICTION - Fundamentality of - Once raised all proceedings abate till resolved - It can be raised by any party including court at any stage - Absence of it renders the entire proceeding a nullity (H1)

JURISDICTION - Fresh issue of - Raised in Supreme Court - Appellant seeking to raise the issue for the first time before the court - Does not need leave - He only needs to raise it in his brief (H2)

JURISDICTION - Determination - Basis - For court to assume jurisdiction - The subject matter must be within its jurisdiction - With no feature in the case preventing it - And the case must be initiated by due process of law (H3)

COURTS - Federal High Court - Jurisdiction - Mines & minerals - By Constitution 1979 s. 230(i)(a) - Jurisdiction of State HC on the subject and allied matters is ousted - But is given exclusively to FHC (H4)

**FACTS**

Plaintiffs/respondents commenced this suit before the High Court Delta State, Effurun claiming against defendants/appellants the

sum of N20 million being special and general damages for the negligence acts of appellants in allowing crude oil spill from their (appellants') burst oil wells onto the land, swamps creeks, ponds shrines of respondents. The action was commenced in a representative capacity for respondents themselves and on behalf of the Ogbe-Udu Community in Okpe Local Government Area of Delta State.

In its judgment, the trial court found for respondents and awarded the sum of N18,329,350.00. On appeal by appellants to the Court of Appeal Benin City Division, the judgment of the trial court was affirmed but with reduction in the award by N2 million. Not satisfied, appellants lodged appeal at Supreme Court. Their major contention is that the State High Court does not have jurisdiction to entertain the action. They rather contend that it is the Federal High Court that can entertain the claim of respondents.

### **ISSUE FOR DETERMINATION**

Whether the Federal High Court had jurisdiction to entertain the claims of the respondents.

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

*JURISDICTION - Fundamentalality of*

**1. It is long settled that once the issue of jurisdiction is raised it must be heard first. Once raised all proceedings abate until it is resolved. The issue of jurisdiction is threshold. It is very fundamental as it goes to the competence of the court. It is very important, so it can be raised by any of the parties, or even by the court suo motu. Once raised the judge would do well to examine it in detail and rule appropriately. The fundamental nature of jurisdiction is further emphasized by the fact that it can be raised at trial, on appeal and even before the Supreme Court for the first time. Once a court has no jurisdiction to hear a case and it goes ahead to hear the case, there would be nothing as useless as conducting a case even if flawlessly only to find out that the case ought not have been heard at all because the judge has no jurisdiction to hear the case. The entire proceeding would be a nullity. Cases con-**

**ducted without jurisdiction are declared a nullity and struck out.**

**Applying the above to the case in hand, trial commenced for the first time on 1/12/93, i.e. after 17/11/93 when Decree No.107 of 1993 came into force. The Federal High Court had exclusive jurisdiction as at 17/11/93. Consequently proceedings before the State High Court on 1/12/93 are clearly a nullity for the simple reason that as at 1/12/93 the State High Court has no jurisdiction to hear the respondents claim since that jurisdiction was taken away on 17/11/95 when Decree No.107 of 1993 was promulgated. (pp. 1724 C/1728 F)**

*JURISDICTION - Fresh issue of*

**2. A trial conducted without jurisdiction is a waste of precious judicial time. The whole proceeding no matter how well conducted and decided would ultimately be declared a nullity. That explains why the issue of jurisdiction can be raised and heard at any time. During trial, on appeal, or in the Supreme Court for the first time.**

**An appellant seeking, to raise the issue of jurisdiction before this court for the first time does not need to ask for leave. All that he needs to do is to raise the issue of jurisdiction in his brief, thereby given the respondent enough time to respond. The issue of jurisdiction raised by the appellant for the first time before this court is very much in order.**  
(p. 1725 C)

*JURISDICTION - Determination - Basis*

**3. The principles which guide a court in determining if it has jurisdiction are:**

**(a) that the subject matter of the case is within its jurisdiction;**

**(b) that there is no feature in the case which prevents the court from exercising its jurisdiction; and**

**(c) that the case comes before the court initiated by due process of Law and upon fulfillment of any condition precedent to the exercise of jurisdiction. (p. 1725 G)**

*Federal High Court - Jurisdiction - Mines & minerals*

**4. The facts of this case fall comfortably within Section 250(i) (a) of the 1979 Constitution as amended by Decree No.107 of 1993**

- B** *“Notwithstanding” in Section 230(i) of the 1979 Constitution means that no provision in the Constitution itself or any statute or legislation shall be allowed to prevail over the provisions of Section 230(i) supra. Notwithstanding is thus a term of exclusion. The Federal High Court has exclusive jurisdiction over the eighteen items, (a) to (s), but for the Federal High Court to have jurisdiction to adjudicate the course of action must be or arise from one of the items in (a) to (s) and one of the parties must be the Federal Government or an agency of the Federal Government.*
- C** *There is no doubt that the 1st appellant is an agency of the Federal Government of Nigeria. It is so obvious that cause of action and jurisdiction are not interchangeable. The effect of Section 230(i) (a) of the 1979 Constitution as amended by the Constitution (Suspension and Modification) Decree No.107 of 1993 is to oust the jurisdiction of the State High Court to adjudicate on mines and minerals and allied matters and give that jurisdiction exclusively to the Federal High Court. (p. 1727 A)*
- D**
- E**

**F** **REPRESENTATION**

Chief E. K. Ashiekaa, with N. Dangiri, J. Festus, A. C. Mato, V. Iroshenge, L. Atagher, D. Somoni, G. Ezeoke, for the Appellants  
H. G. Erhabor, for the Respondents

**G** **CASES REFERRED TO**

Barclays Bank of Nig. v. CBN (1976) 6 SC 175

Oloba v. Akereja (1988) 3 NWLR (pt. 84) 508

A.G. Lagos State v. Dosunmu (1989) ALL NLR 504

- H** Usman Dan Fodio University v. Kraus Thompson Organization Ltd. (2001) 15 NWLR (pt. 736) 305

SPDC (Nig.) Ltd. v. Isaiah (2011) 11 NWLR (pt. 723) 168

Madukolu v. Nkemdilim (1962) 2 SCNLR 341

Zakari v. IGP (2000) 8 NWLR (pt. 670) 666

Akegbajo v. Ataga (1998) 1 NWLR (pt. 534) 459

IGP v. Aigbiremelen (1999) 13 NWLR (pt. 635) 443

NEPA v. Edegbero (2002) 18 NWLR (pt. 798) 79

Oloruntoba-Oju v. Abdul Raheem (2009) 5 - 6 SC (pt. 11) 57

Obiuweubi v. CBN (2011) 2 - 3 SC (pt. 1) 46

Olutola v. Unilorin (2004) 18 NWLR (pt. 905) 416

Osakue v. FCE (2010) 2 - 3 SC (pt. 111) 158

MILAD Benue State v. Abayilo (2001) FWLR 604

### **STATUTES REFERRED TO**

Federal High Court Amendment Act, s. 7(p)

Constitution of Federal Republic of Nigeria 1979, ss. 230(1), 236(1), 250(1)

Constitution (Suspension & Modification) Decree No.107 of 1993, s. 230(i)(o)

Petroleum Act 1960

Oil Pipeline Act, 1956

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

The respondents as plaintiffs commenced their suit before an Effurun High Court Delta State, presided over by Omo-Agege CJ (as he then was) claiming against the appellants (defendants) the sum of Twenty Million Naira for special and general damages for the negligence of the defendants, allowing crude oil spill from its burst oil wells onto the land, swamps creeks, ponds shrines of the plaintiffs. The plaintiffs sued for themselves and as representatives of the Ogbe-Udu Community, in Okpe Local Government Area of Delta State. Both courts below found for the respondents. The sum of N18,329,350.00 (Eighteen Million, Three Hundred and Twenty-Nine Thousand, Three Hundred and Fifty Naira) was awarded by the Trial High Court. The Court of Appeal agreed with the learned trial judge but reduced the judgment sum by N2,000,000.00 (Two Million Naira). Still dissatisfied with the judgment of the Court of Appeal the appellant have come here on a further and final appeal presenting four issues in their brief deemed duly filed on the 10th of January, 2007. The respondents brief was deemed duly filed on the 2nd of May, 2012.

In the appellants brief four issues were formulated for deter-

mination. They are:

1. Whether the respondents claims were statute barred.
2. Whether the Federal High Court had jurisdiction to entertain the claims of the respondents.
3. Whether the respondents were entitled to the special damages in the sum of N15, 329, 350.00 awarded by the lower court.
4. Whether the extra award of N3, 000, 000.00 (Three Million Naira) as general damages after the initial award of special damages amounts to double compensation.

Learned counsel for the respondents adopted in the respondents brief the four issues formulated by the appellants learned counsel.

***It is long settled that once the issue of jurisdiction is raised it must be heard first. Once raised all proceedings abate until it is resolved. The issue of jurisdiction is threshold. It is very fundamental as it goes to the competence of the court. It is very important, so it can be raised by any of the parties, or even by the court suo motu. Once raised the judge would do well to examine it in detail and rule appropriately. The fundamental nature of jurisdiction is further emphasized by the fact that it can be raised at trial, on appeal and even before the Supreme Court for the first time. Once a court has no jurisdiction to hear a case and it goes ahead to hear the case, there would be nothing as useless as conducting a case even if flawlessly only to find out that the case ought not have been heard at all because the judge has no jurisdiction to hear the case. The entire proceeding would be a nullity. Cases conducted without jurisdiction are declared a nullity and struck out.*** See Barclays Bank of Nig. v. CBN (1976) 6 SC p.175, Oloba v. Akereja 1988 3 NWLR pt.84 p.508, A.G. Lagos State v. Dosunmu 1989 ALL NLR p.504, Usman Dan Fodio University v. Kraus Thompson Organization Ltd. 2001 15 NWLR pt.736 p.305.

In view of what I have been saying Issue No.2 on the appellants brief, adopted by the respondents is crucial and important. If it succeeds the entire proceedings before both courts below will be declared a nullity and it will be unnecessary to consider any of the other issues.

Learned counsel for the appellants argued that by Section 7(p)

of the Federal High Court Amendment Act and Section 1 of the Admiralty Jurisdiction the Federal High Court and not the State High Court has jurisdiction over the respondents' claims. Relying on SPDC (Nig.) Ltd. v. Isaiah (2011) 11 NWLR (pt. 723) 168. He urged on this court to allow the appeal on this ground.

In reply, learned counsel for the respondents observed that by virtue of the provisions of Section 236(1) of the 1979 Constitution the Delta State High Court was correct to hear the respondents' claims. He further observed that it was wrong to raise the issue of jurisdiction for the first time in this court, contending that it is incompetent and should be struck out.

**A trial conducted without jurisdiction is a waste of precious judicial time. The whole proceeding no matter how well conducted and decided would ultimately be declared a nullity. That explains why the issue of jurisdiction can be raised and heard at any time. During trial, on appeal, or in the Supreme Court for the first time.** See Usman Dan Fodio University v. Kraus Thompson Organization Ltd. Supra.

**An appellant seeking, to raise the issue of jurisdiction before this court for the first time does not need to ask for leave. All that he needs to do is to raise the issue of jurisdiction in his brief, thereby given the respondent enough time to respond. The issue of jurisdiction raised by the appellant for the first time before this court is very much in order.**

Legislations relevant for consideration of this issue on jurisdiction are:

1. Constitution of Nigeria 1979. Section 230(1)
2. Constitution (Suspension and Modification) Decree No.107 of 1993. Section 230 (i)(o).
3. Petroleum Act 1960 and the Oil pipeline Act, 1956.

**The principles which guide a court in determining if it has jurisdiction are:**

- (a) **that the subject matter of the case is within its jurisdiction;**
- (b) **that there is no feature in the case which prevents the court from exercising its jurisdiction; and**
- (c) **that the case comes before the court initiated by due process of Law and upon fulfillment of any condition pre-**

**cedent to the exercise of jurisdiction.** See *Madukolu v. Nkemdilim* 1962 2 SCNLR p. 341.

The issue in this matter on jurisdiction is whether the facts of this case fall within matters connected with or pertaining to mines and minerals, including oil fields, oil mining, geological surveys and natural gas. This falls within (a) and (b) above. If so found then, does the State High Court have jurisdiction to hear claims involving oil spillage.

It becomes clear that a court will have the necessary competence to hear and determine a matter before it if the subject matter is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction. Section 230(1) of the 1979 Constitution vested in State High Courts unlimited jurisdiction to hear and determine about eighteen major items numbered (a) to (s) including the respondents' claims in this action. But in 1993 the Constitution (Suspension and Modification) Decree No.107 of 1993 with commencement date of 17/11/95 came into force. Section 250(1) of the Decree restored the jurisdiction of the Federal High Court pertaining to all the eighteen items, including the respondents' claims in this action.

Section 230(i)(o) of Decree No.107 of the Constitution (suspension and Modification) Decree No.107 of 1993 provides 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 of any other court in civil causes and matters arising from (a) mines and minerals (including oil fields mining, geological surveys and natural gas)"*

Now, do the facts in this case fall within (a) above. That is to say within matters connected with or pertaining to mines and minerals, including oil fields, oil mining, geological surveys and natural gas.

The construction, operation and maintenances of an Oil pipeline by a holder of oil prospecting licence is an act pertaining to mining operations. It is clear from the pleadings that the spillage and pollution occurred due to the negligence of the appellants handling their oil wells. Since the spillage occurred it can be explained as hav-

ing arisen from or connected with or pertaining to mines and minerals including oil fields and mining. See The Petroleum Act 1960, Oil Pipeline Act 1956, Shell Petroleum Development Co. Nig. Ltd. v. Isaiah 2001 11 NWLR pt.723 p.168.

**The facts of this case fall comfortably within Section 250(i) (a) of the 1979 Constitution as amended by Decree No.107 of 1993.** B

**“Notwithstanding” in Section 230(i) of the 1979 Constitution means that no provision in the Constitution itself or any statute or legislation shall be allowed to prevail over the provisions of Section 230(i) supra. Notwithstanding is thus a term of exclusion. The Federal High Court has exclusive jurisdiction over the eighteen items, (a) to (s), but for the Federal High Court to have jurisdiction to adjudicate the course of action must be or arise from one of the items in (a) to (s) and one of the parties must be the Federal Government or an agency of the Federal Government.** See Zakari v. IGP 2000 8 NWLR pt.670 p.666, Akegbajo v. Dr. Ataga 1998 1 NWLR pt.534 p.459, IGP v. Aigbiremelen 1999 13 NWLR pt.635 p.443, NEPA v. Edegbero 2002 18 NWLR pt.798 p.79, Oloruntoba-Oju v. Abdul Raheem & 3 Ors. 2009 5-6 SC (pt.11) p.57, Obiuweubi v. CBN 2011 2-3 SC pt.1 p. 46. **There is no doubt that the 1st appellant is an agency of the Federal Government of Nigeria.** C D E

Before I conclude I must say a thing or two on cause of action and jurisdiction. In Obiuweubi v. CBN supra I said that: F

*“... The law in force or existing at the time the cause of action arose is the law applicable for determining the case. This law does not necessarily determine the jurisdiction of the court at the time that jurisdiction is invoked. That is to say the law in force at the time cause of action arose governs determination of the suit, while the law in force at the time of trial based on cause of action determines the court vested with jurisdiction to try the case. For example Decree 107 of 1993 came into force on 17/11/93. A litigant who had a cause of action in 1990 would have his case governed by the law at the time (i.e. 1990) if trial commences before 1995 the court to try the case would be the State High Court but if after 17/11/93 the case would be tried by the Federal High Court.”* G H

**It is so obvious that cause of action and jurisdiction**

**are not interchangeable. The effect of Section 230(i) (a) of the 1979 Constitution as amended by the Constitution (Suspension and Modification) Decree No.107 of 1993 is to oust the jurisdiction of the State High Court to adjudicate on mines and minerals and allied matters and give that jurisdiction exclusively to the Federal High Court.**

In *Obiuweubi v. CBN* supra I examined several cases decided by this court, to mention a few *OHMB v. Garba* 2003 7 SC (pt.11) p.138, *Olutola v. Unilorin* 2004 18 NWLR pt.905 p.416, *Osakue v. FCE* 2010 2 - 3 SC (pt.111) p.158 and held that:

*“For the State High Court to have jurisdiction under Decree 107 of 1993 the cause of action must arise before 17/11/93 and the trial must also be in progress before the said date. That is to say all part heard cases in the State High Court before 17/11/93 can continue after 17/11/93 in the State High Court because Decree 107 of 1993 does not have retrospective operation, and in view of Section 6(i) of the interpretation Act Cap 192 Laws of the Federation of Nigeria 1990.”*

In further examination of these cases I found that in *Osakue v. FCE* supra and *Olutola v. Unilorin* (supra):

*“Trial commenced for the first time in 1994 i.e. after 17/11/93 when Decree 107 of 1993 came into force. The Federal High Court had exclusive jurisdiction as at 17/11/93.*

*Consequently proceedings before the State High Court in 1994 are clearly a nullity.”*

**Applying the above to the case in hand, trial commenced for the first time on 1/12/93, i.e. after 17/11/93 when Decree No.107 of 1993 came into force. The Federal High Court had exclusive jurisdiction as at 17/11/93. Consequently proceedings before the State High Court on 1/12/93 are clearly a nullity for the simple reason that as at 1/12/93 the State High Court has no jurisdiction to hear the respondents claim since that jurisdiction was taken away on 17/11/95 when Decree No.107 of 1993 was promulgated.**

This issue has determined this appeal. Considering, other issues in the light of my findings on jurisdiction would amount to an academic exercise.

This appeal succeeds. The judgment of the High Court and

Court of Appeal are hereby set aside with no order on costs. The claims of the respondent can only be heard by a Federal High Court.

### NGWUTA JSC

I read in draft a copy of the lead judgment just delivered by my Lord, Rhodes-Vivour JSC. The reasoning is flawless and conclusion inevitable. I will put in a few words by way of contribution. B

Section 230 of the Constitution (Suspension and Modification) Decree (now Act) No. 107 of 1993 provides:

*“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 of any other Court in civil causes and matters arising from (o) mines and minerals including oil fields, mining, geological surveys and natural gas.”* C

The above provision came into force on 17th November, 1993. The suit from which appeal arose was commenced on 1st December, 1993 after Decree 107 of 1993 had come into force. A claim based on oil spillage falls within the expression “... causes and matters arising from mines and minerals including oil fields, mining, geological surveys and natural gas” in the Decree (now Act). E

At the time the suit was commenced, the State High Court was divested of jurisdiction in the subject matter of the suit and same was vested in the Federal High Court. The proceedings in the lower Court as well as the proceedings in the trial Court were conducted without jurisdiction and therefore null and void. See *Attorney-General Anambra State v. Attorney-General Federation* (1993) 6 NWLR G page 614, paras F-G; *Military Administrator Benue State v. Abayilo* (2001) FWLR 604 & 605. F

Jurisdiction of the Court is examined and determined not as at the time it was invoked but at the time the cause of action arose. See *Uwaifo v. Attorney-General Bendel State & Ors* (1982) 7 SC 124 at 279. H

Based on the above observation and particularly the fuller reasons in the lead judgment, I also allow the appeal. I adopt the consequential orders in the lead judgment. G

**ONNOGHEN JSC**

I have had the privilege 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 has merit and should be allowed in part.

The facts relevant to the determination of the fundamental issues, which deal with the jurisdiction of the trial court to hear and determine the action have been stated exhaustively in the lead judgment thereby making it unnecessary for me to repeat them here except as may be needed to emphasis the point being made by me.

The issues identified by learned Counsel for appellants ISRAEL A. USMANESQ. in the appellant brief deemed filed and served on 10/1/07 are as follows:-

*“(a) Whether the Respondents claims were statute-barred (Grounds 1, 4, 5 and 6).*

*(b) Whether the Federal High Court had jurisdiction to entertain the claims of the Respondents (Ground 12).*

*(c) Whether the Respondents were entitled to the special damages in the sum of N15,329,350.00 awarded by the lower court (Ground 8, 9, 10 and 11).*

*(d) Whether the extra award of N3,000,000.00 (Three Million Naira) as general damages after the initial award of special damages, amounts to double compensation (Ground 3)”.*

It is clear from the above that issues (a) and (b) supra, raise the question of jurisdiction of the trial court to hear and determine the suit, which is a fundamental issue in any adjudication. It is settled law that where an issue of jurisdiction is raised in any proceeding and before any court, it has to be dealt with first and foremost before proceeding any further because where a court has no jurisdiction to hear and determine a matter but it nonetheless goes ahead to do so, the proceeding and the resultant judgment are a nullity irrespective of the fact that it was well conducted. The above principle gives rise for the description of jurisdiction as being the life blood of adjudication.

It is settled law that the jurisdiction of a court to hear and determine any matter before it is determined by the applicable law in force at the time of the institution of the action which in this case was

the 8th day of September, 1993. It is clear that as at that date, the law applicable is the provisions of the Constitution (Suspension and Modification) Decree No.107 of 1993 which came into force some time in August, 1993. Section 230(i) (a) of the said Decree 107 of 1993 confers exclusive jurisdiction on the Federal High Court in respect of matters relating to mines and minerals, including oil fields, oil mining, geological survey and natural gas. B

In the case of Shell Petroleum Development Co. (Nig.) Ltd v. Isaiah (2001) 11 NWLR (pt.723) 168 at 179, this Court held thus:-

*“It is clear from the pleadings that the spillage and pollutions occurred when the appellant was trying to repair the indented pipeline by cutting of the said section and installing a new section. I think it cannot be disputed if I say that installation of pipelines, producing, treating and transmitting of crude oil to the storage tanks is part of petroleum mining operations.”* C

*Therefore if an accident happens during the transmission of petroleum to the storage tanks it can be explained as having arisen from or connected with or pertaining to mines, and minerals, including oil fields, and oil mining. I therefore agree that the subject matter of the respondents’ claim falls within the exclusive jurisdiction of the Federal High Court as is provided under Section 230(1) (a) of the Constitution (Suspension and Modification) Decree No.107”.* D

Haven held that the trial court was without jurisdiction to entertain the action it follows that issue (a) which deals with the question as to whether the action was statute barred cannot be decided by this court in the instant proceeding as the same is to be looked into by the appropriate court with requisite jurisdiction to hear and determine the action, that is, the Federal High Court. E

I therefore allow the appeal in part and set aside the decision of the lower courts. I abide by the consequential orders made in the said lead judgment of my learned brother, including the order as to costs. Appeal allowed in part. F

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### ARIWOOLA JSC

I had the privilege of reading in draft, the lead judgment of my learned brother, Rhodes-Vivour, JSC just delivered. I am in agreement with the reasoning therein and the conclusion arrived thereat. G

The respondents herein were the plaintiffs before the trial High Court of Delta State, sitting in Effurun. They had sued in representative capacity, for themselves and for the Ogbe-Udu Community of Okpe Local Government of Delta State. They had sued the appellants, claiming the sum of N20 Million as special and general damages for the appellants' negligence in allowing crude oil spill from their burst oil wells onto the land, swamps, creeks, ponds shrines of the respondents. The trial High Court found for the respondent and awarded the sum of N18,329,350.00. On appeal to the court below, the judgment of the trial court was affirmed but with reduction in the award by N2 Million.

Dissatisfied again with the judgment of the court below, led to the instant appeal. In their brief of argument which was deemed properly filed and served on 10th January, 2007 the appellants distilled four issues for determination of their appeal by this court, one of which is

*"whether the Federal High Court had jurisdiction to entertain the claims of the respondents".*

The respondent's brief of argument was deemed properly filed and served on 2nd May, 2012 having been filed out of time. They adopted the issues for determination as formulated by the appellants in their brief of argument.

As clearly shown above, the issue concerns the jurisdiction of the court. It had been held that sometime, question of jurisdiction of a court is latent and the moment it is raised by any of the parties to the action it must necessarily be addressed first by the court. The reason being that if a court should embark on a trial of or adjudication on a matter without jurisdiction, its exercise will be a nullity. See; *Onyema v. Oputa* (1989) 3 NWLR (Pt.60) 259, *The State v. Onagoruwa* (1992) 2 SCNJ 1 at 8 - 9; *Ekulo Farms & Anor v. Union Bank Nigeria Plc* (2006) 6 SCM 78 at 91 - 92.

In other words, where a court takes upon itself to exercise a jurisdiction which ordinarily it does not possess, its decision no matter how ably it appears to have been decided, it amounts to nothing and will be so declared on appeal. See; *A-G for Trinidad & Tobago v. Erichie* (1893) AC 518 at 522-523; *Timitimi v. Amabebe* 14 WACA 374; *Halsbury Laws of England Vol.10 p.323 paragraph 715 4th edition*. The issue of jurisdiction certainly goes directly to the root of

an action to sustain or nullify it hence the issue can be raised and taken at any stage of the proceedings even on appeal. See; Cotecna International Ltd. v. Ivory Merchant Bank Ltd. & Ors. (2006) 5 SCM 17 (2006) 26 NSCQR 528; Mozie & Ors. v. Mbamalu & Ors. (2006) 12 SCM (pt.1) 306.

The appellants in their brief of argument had argued that by virtue of Section 7(p) of the Federal High Court (Amendment) Act and Section 1 of the Admiralty Jurisdiction of the court, the Federal High Court but not the State High Court has jurisdiction over the respondents' claim. They relied on SPDC (Nig.) Ltd. v. Isaiah (2011) 11 NWLR (pt.723) at 168 and urged the court to allow the appeal.

On this issue, the respondents referred to Section 230 (1) of the 1979 Constitution and submitted that it was the Delta State High Court that had jurisdiction to entertain the respondents' claims as it did hence they urged the court to dismiss the appeal.

There is no doubt that this issue has to do with which court has competence to entertain the respondents' claims as couched before the trial court. Was it the state or Federal High Court? In other words and as earlier stated, a court must be competent to adjudicate on any matter put before it. Otherwise its exercise without jurisdiction will be in futility.

When then can a court be said to be competent to adjudicate over a matter brought before it. This has long been settled by this court in *Madukolu v. Nkemdilim* (1962) 2 SCNLR 341 at 348 (1962) 1 All NLR (Pt.4) 587 at 595; per Bairamian, F.J that a court is competent when:

(a) It is properly constituted as regards numbers and qualification of the members of the bench and no member is disqualified for one reason or another;

(b) The subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction; and

(c) The case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.

In the matter on hand, by virtue of the provisions of all relevant Laws, in particular - Section 230(1) of the Constitution (Suspension and Modification) Decree No.107 of 1993, Oil Pipeline Act,

1956 and Petroleum Act, 1950, there is no doubt that the respondents' claims fall within the competence of the Federal High court as opposed to the State High Court. Indeed, the Federal High court is to the exclusion of any other court including the State High court, competent to adjudicate on the claims as formulated by the respondents. There is no ambiguity in the provisions of the law on this matter. In other words, the spillage of and pollution by oil and gas being alleged only occurred in the negligent handling of the oil wells under the care and management of the appellants. The Trial High Court of Delta State therefore did not have jurisdiction to entertain the respondents' claims as it did. Only the Federal High Court could have competently exercised jurisdiction on the matter.

For the above reason, and the fuller and more detailed reasons ably stated in the lead judgment, I hold that this appeal has merit and it succeeds. It is accordingly allowed.

I abide by the consequential orders in the said lead judgment.

#### **MUHAMMAD JSC**

I was obliged a preview of the lead judgment of my learned brother Rhodes-Vivour JSC, with whom I entirely agree that the appeal has merit and same should succeed.

The facts of the case that brought about the appeal are fully contained in the lead judgment. I rely on his lordship's account on them to emphasise the importance of jurisdiction in the adjudication process.

The Delta State High Court, Coram Omo Agege CJ (as he then was), found the appellants herein liable in negligence arising from Oil Spillage from its burst Oil wells and pipelines. The court awarded damages in that behalf in favour of the respondents herein. The trial court's decision though affirmed by the court below, the court of Appeal, the damages of Eighteen Million, Three Hundred and Twenty Nine Thousand, Three Hundred and Fifty Naira was reduced to Two Million Naira.

The 2nd issue distilled by the appellants for the determination of the appeal is on jurisdiction. The issue requires immediate consideration for obvious reasons. Once a court lack jurisdiction it is

bereft of the competence to determine the issue parties approach it to resolve for them. It does not matter how well the proceedings pertaining the controversy was conducted. The proceedings remain a nullity and unavailing to or against any of the parties thereto. See A-G Lagos State v. Dosunmu (1989) 3 NWLR (pt.111) 5525 and Garba v. FCSC (1988) 1 NWLR (Pt.71) 449 SC. B

Learned respondent counsel has argued that the court below is right to have affirmed the decision of the court below in the light of Section 236(1) of the 1979 Constitution which conferred on the court unlimited jurisdiction. It appears learned counsel has forgotten that at the time of the accrual of respondent's cause of action, the Constitution (Suspension and Modification) Decree No.107 of 1993 by Section 230(1) (o) thereof had vested exclusive jurisdiction in the subject matter of the action on the Federal High Court. A Decree in those days prevailed over any legislation, including the unsuspended part of the Constitution inconsistent with the said Decree. It is for this significant reason that learned appellant counsel's submission in that behalf is profoundly formidable. C

A court, see *Madukolu v. Nkemdilim* (1962) 2 SCNLR 341, is said to have jurisdiction when inter-alia:- E

- (a) the subject matter of the case is within its jurisdiction
- (b) there is no feature in the case which prevents the court from exercising its jurisdiction and

In the case at hand, the subject matter of the suit is not within the jurisdiction of the trial court and the court has, therefore, adjudicated over a matter in respect of which it lacks jurisdiction to. The court below is wrong to have affirmed such a null and void decision. F

I adopt, in addition to the foregoing the fuller reasons articulated in the lead judgment to allow the meritorious appeal. I abide by the consequential orders made in the lead judgment including the one on costs.