

SUPREME COURT OF NIGERIA
FRIDAY 14TH JUNE, 2013. SC. 4/2004
**CORAM:- W. S. N. ONNOGHEN, M. S. MUNTAKA-
COOMASSIE, N. S. NGWUTA, O. ARIWOOLA,
M. D. MUHAMMAD, JJSC**

MUSACONI LIMITED APPELLANT
AND
MR. H. ASPINALL RESPONDENT

APPEALS - Issue - Competence - Appellant's issue 2 is incompetent for not relating to decision of CA - As appeal to SC is against decision of CA - And not that of trial HC (H1)

APPEALS - Issue - Determination - Appeals are decided upon issues raised - And once issues are distilled from grounds of appeal - The latter become extinguished (H2)

APPEALS - Issue - Clarity of - Parties are to avoid verbosity in formulating issues - But economy of words should not be made at the expense of clarity (H3)

APPEALS - Court - Issue - Reformulation - Where appellant's issues are verbose - Court is entitled to reframe the issues - For the purpose of narrowing down same - In the interest of clarity (H4)

APPEALS - Issue - Formulation by respondent - Respondent can formulate different issues - But such must be traceable to the grounds of appeal filed by appellant - And appellate court can rely on such issues - To determine the appeal (H5)

APPEALS - Briefs - Reply - Purpose - Appellant's reply brief is liable to be discountenanced - As such brief is not to raise fresh points - Or repeat arguments in previously filed brief (H6)

JURISDICTION - Meaning - It is the authority which court has to decide matters - That are litigated before it - Or take cognizance of matters presented in a formal way for its decision (H7)

JURISDICTION - Fundamentality of - It is important in adjudication process - As where there is no jurisdiction in court - Every step taken in the proceedings amounts to a nullity (H8)

JURISDICTION - Issue of - Objection to - Where there is challenge to jurisdiction of court - The court must first settle that issue - Before proceeding to hear the case on merit (H9)

COURTS - Competence - Principles - Court is competent to adjudicate over matter when inter alia - It is properly constituted - Subject matter is within its jurisdiction - And the case is initiated by due process of law (H10)

COURTS - Jurisdiction - Objection to - Option available - When court's jurisdiction is challenged - Court still has competence to enquire whether it has jurisdiction - To hear the case (H11)

JURISDICTION - Issue of - Time to raise - Jurisdiction can be raised at any stage of the proceedings - Either at trial court or on appeal - Even before the Supreme Court (H12)

JURISDICTION - Issue of - Objection to - Basis - Objection to competence of court is on the basis of statement of claim - Evidence received - Motion supported by affidavit setting out facts relied on - And on the face of writ of summons (H13)

PLEADINGS - Statement of claim - Averments in - For appellant to have successfully challenged the averments - It was required to join issue with respondent - And come up with its motion before the case proceeded to trial (H14)

ACTIONS - Company - Legal personality - Proof - Issue of appellant's legal personality cannot be treated on affidavit evidence - And except it is admitted - It must be proved that appellant has ceased to exist (H15)

JURISDICTION - Objection - Validity - Nothing exists on the writ of

summons and statement of claim - To show that trial court had no jurisdiction - Hence the objection is premature (H16)

FACTS

Plaintiff/respondent commenced this action in 2002 by writ of summons filed before the High Court of Kogi State, Ankpa Judicial Division, claiming through his statement of claim the sum of US\$60,000.00 or its then current Naira approximate equivalent of N6,000,000.00, being debt allegedly owed to respondent by appellant arising from a contract of service between the parties. Upon receipt of the initiating process of the action, appellant without filing its statement of defence to the action, brought an application seeking for an order striking out the suit for being incompetent on the ground of lack of jurisdiction of the court.

Appellant supported the application with 18 paragraphs affidavit. Respondent in reply, filed a counter-affidavit challenging the application. In its ruling, the court refused the application and held that there is nothing on the originating process to show that it lacks jurisdiction to entertain the action. Dissatisfied, appellant appealed to the Court of Appeal, Abuja Division. The court found the appeal to be lacking in merit. The appeal was therefore dismissed. Aggrieved further, appellant filed appeal in Supreme Court.

ISSUE FOR DETERMINATION

“Whether the Court below was not right when it held that there was nothing in the Writ of Summons and Statement of Claim that conveys the fact that the lower Court had no jurisdiction to hear the case.”

HELD (Unanimously dismissing the appeal per

ARIWOOLA JSC)

APPEALS - Issue - Competence

1. Indeed, a careful reading of the second issue shows that it is about the decision of the trial Judge but not that of the Court below as it should be. It is the law that an appeal to this Court is ordinarily against the decision of the Court below but not that of the trial Court.

Issue No.2 of the Appellant is not related to the decision of the Court below appealed against but that of the trial High Court, it is therefore incompetent and is to be discounted. (pp. 2705 H/2706 A)

B *APPEALS - Issue - Determination*

2. It is now settled practice that appeals are decided upon the issues raised or formulated for determination by the appellate Court. In other words, once issues are distilled from the Grounds of Appeal, the latter become extinguished.

C (p. 2706 A)

APPEALS - Issue - Clarity of

D 3. Generally, in the formulation of issues for determination parties are to avoid verbosity. In the same vein, economy of words should not be made at the expense of clarity. An attempt to be brief and succinct should not result in obscurity.
(p. 2706 C)

E *Court - Issue - Reformulation*

4. However, it is now settled that where a Court finds that there is verbosity and clumsiness in the issues distilled by the Appellant for determination, the Court is entitled to reformulate or reframe the issues for the purpose of narrowing down the issues in controversy in the interest of accuracy, clarity and brevity. (p. 2706 D)

APPEALS - Issue - Formulation by respondent

G 5. Similarly, since the respondent in an appeal is entitled to formulate issues for determination of an appeal and couch same in its own words, as long as the said issues so formulated and differently couched from the issues distilled by the Appellant, are traceable to and formulated from the Grounds of Appeal filed by the Appellant, the appellate Court can rely on the Respondent's issues to determine the appeal, if they are more succinct and precise than that of the Appellant.
(p. 2706 G)

APPEALS - Briefs - Reply - Purpose

6. In the reply brief of argument filed by the Appellant, there is no new point of law or argument in the Respondent's brief which necessitated the said reply brief. The reply is only re-arguing his original brief of argument and repeating itself. This is not the purport of a reply brief. It is not to raise fresh points or repeat arguments in previously filed brief of argument. It is liable to be discountenanced and I so do. (p. 2713 A) B

JURISDICTION - Meaning

7. What is jurisdiction? Generally, the word "jurisdiction" means the authority which a Court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision. (p. 2713 D) C

JURISDICTION - Fundamentality of

8. Jurisdiction is therefore of paramount importance in the process of adjudication. Where there is no jurisdiction in a Court to handle or adjudicate on a matter before the Court, everything done or every step taken in the proceedings amounts to nothing. D

In other words, jurisdiction is the life-wire of any proceeding in Court and everything done in the absence of jurisdiction is simply a nullity. (p. 2713 E) E

JURISDICTION - Issue of - Objection to

9. It is now trite that when a Court's jurisdiction or competence is challenged by the Defendant, it is neater and indeed far better for the Court to settle that issue one way or another before proceeding to hearing of the case on the merit. (p. 2713 H) F

COURTS - Competence - Principles

10. When then does a Court become competent with power to adjudicate over the matter brought before it for adjudication? This has long been settled and needs no further controversy. A court is competent when:- H

(a) It is properly constituted as regards numbers and

qualifications 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;

B ***(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.***

C ***Any defect in competence is fatal, for the proceedings are nullity, however well conducted and decided, the defect is extrinsic to the adjudication. (p. 2713 H)***

Jurisdiction - Objection to

D ***11. However, when a Court's jurisdiction is challenged, the Court still has the competence and jurisdiction to enquire into the question whether it has jurisdiction to hear the case. (p. 2714 D)***

JURISDICTION - Issue of - Time to raise

E ***12. There is no doubt that the issue of jurisdiction of the Court, in particular, when the Court is said to be lacking in competence, can be raised at any time and at any stage of the proceedings. That is, either at the trial court or on appeal, even before this apex Court. It must still be entertained and decided upon. (p. 2714 E)***

JURISDICTION - Issue of - Objection to - Basis

G ***13. In raising an objection to the competence of a court, any of the following situations can be employed. This is the law.***

(a) On the basis of the statement of claim, or

(b) On the basis of evidence received, or

(c) By motion supported by affidavit setting out the facts relied on; or

H ***(d) On the face of the Writ of Summons, where appropriate as to the capacity in which the action was brought or against who the action was brought.***

It is settled law, that the only process the Court is to consider to know whether or not it has jurisdiction is the claim before

it. There is no doubt that the challenge to jurisdiction of Court can be raised in the Statement of Defence or even before filing any defence, just after the Defendant is served with the Writ of Summons. But it must be apparent on the Writ of Summons and Statement of Claim that the Court is lacking in competence if it is to be raised before the Defendant files defence and issues are joined. B

From the averments in the Statement of Claim there is indeed nothing yet to show that the trial Court was lacking in competence. The Plaintiff claimed to be then residing in Makurdi, Benue State. The Appellant was said to be having its Head Office at 74 Awolowo Road, South West, Ikoyi Lagos but was carrying on business in various towns in Nigeria including Ankpa, Kogi State. This is the only document the trial Court was obliged to look at and consider to know whether or not it has jurisdiction to entertain the Plaintiff's claim. There is no doubt that on the face of the Writ of Summons and Statement of Claim, there is nothing to show that the trial Court has no jurisdiction. (pp. 2714 G/2715 C/2716 D) C
D

PLEADINGS - Statement of claim - Averments in

14. I am of the view and believe I am right, that for the Appellant to have successfully challenged and controverted the averments in the Statement of Claim, it was required to join issue with the Respondent and then come up with its Motion on Notice as it did before the case proceeded to trial. (p. 2716 F) E
F

Company - Legal personality - Proof

15. It is interesting to note that while the Respondent in his Statement of Claim categorically averred that the Appellant "is a Limited Liability Company incorporated or deemed to have been incorporated under the Companies and Allied Matters Act 1990" meaning that it is a legal person recognized by law to sue and be sued, the Appellant in its affidavit in support of the application which it brought to urge the Court to strike out the case for want of jurisdiction deposed, inter alia, as follows:- G
H

"15. That MUSACONI LIMITED from inception of its

incorporation till when it died naturally or wounded (sic) up, has never carried out any business in Kogi State including Ankpa Town.

16. That MUSACONI LIMITED carried out its business mainly in Lagos and partly in Makurdi when same was functional.”

It is noteworthy that the deponent to the said affidavit in support of the application, Alhaji M. M. Abdu, deposed that he is and was the Chairman/Managing Director of the Defendant” and by virtue of that fact he was conversant with the facts of the case and competent to depose to those facts.

I am not in the slightest doubt that the issue of the legal personality of the Appellant cannot be treated on affidavit evidence as raised by the Appellant. Issue must be joined on it after being clearly pleaded. And except it is admitted by the opponent it must be proved that the appellant has ceased to be in existence. (p. 2717 A)

JURISDICTION - Objection - Validity

16. I am therefore of the firm view and I so hold that the Court below was right to have held that there was nothing on the Writ of Summons and Statement of Claim that conveys the fact that the trial Court had no jurisdiction to entertain the case. The type of objection raised to the jurisdiction was indeed premature, to say the least. Accordingly the issue is resolved against the Appellant. (p. 2718 A)

REPRESENTATION

Olumuyiwa Akinboro with Onairi Otokunrin Esq., for the Appellant A. A. Ibrahim Esq. with S. I. Abu, Esq. N. I. Janfa Esq., for the Respondent

CASES REFERRED TO

***Anaeze v. Anyaso (1993) 5 SCNJ 151
Unity Bank Plc v. Bouari (2008) 2 SCM 193
Musa Sha (Jnr.) v. Kwan (2000) 8 NWLR (pt. 670) 685
Kalio v. Kalio (1975) 2 SC 15
Edu v. Cedan Community (1980) 11 SC 103***

A-G Lagos State v. Dosunmu (1989) 3 NWLR (pt. 111) 552

Okeje v. N.C.F. Co. Ltd. (1991) 6 NWLR (pt. 699) 501

NDIC v. Central Bank of Nigeria (2000) 9 SCNJ 430

Oke v. Nwaogbuinya (2001) 5 NSCQR 93

Ukpai v. Okoro (1983) 2 SCNLR 380

Onuorah v. KRPC (2005) All FWLR (pt. 256) 1356

B

Trade Bank Plc. v. Banilux (Nig) Ltd. (2003) 9 NWLR (pt. 825) 416

Madukolu v. Nkemdilim (1962) 1 All NLR

Adesola v. Abidoye (1999) 10-12 SC 109

Funduk Engrn. Co. v. McArthur (1995) 4 NWLR (pt. 392) 640

C

STATUTES & RULES REFERRED TO

Kogi State High Court (Civil Procedure) Rules Edict 1991, O. 10 rr. 3, 4(1)

D

BOOK REFERRED TO

Black's Law Dictionary 9th Ed. p. 218

LEAD JUDGMENT BY ARIWOOLA JSC

This is an appeal against the judgment of the Court of Appeal, Abuja Division, hereinafter referred to as Court below, delivered on 9th June, 2003, which judgment upheld the decision of the trial High Court of Anka in Kogi State of Nigeria which dismissed the defendant's preliminary objection to the jurisdiction of the trial Court.

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The Appellant was the Defendant before the Anka High Court of Kogi State where the Respondent as Plaintiff had claimed from the Defendant the sum of \$60,000 US Dollars or its then current Naira approximate equivalent which was N6,000,000 (Six Million Naira only), being debt allegedly owed to the Plaintiff arising from a contract of service between the Appellant and Respondent.

G

On the 10th August, 2000, the Plaintiff, hereinafter referred to as the Respondent filed his Statement of Claim in the said suit No. AHC/18/2000. Upon receipt of the initiating process of the action, the Defendant, hereinafter referred to as the Appellant filed an application on 23rd February, 2001 wherein it prayed, inter alia, for the following:

H

"An order striking out this suit for being incompetent on ground

of lack of jurisdiction.”

In support of the said application, the Appellant/Applicant filed an affidavit of 18 paragraphs while the Respondent filed a counter-affidavit to oppose on 2nd February, 2001 and a further counter-affidavit filed on 18/3/2001. After taking argument of counsel on the application, the trial Court ruled as follows:

“I have carefully considered the arguments advanced by learned Counsel on both sides. It is my view that it will be premature to strike out this case, at this stage since there is nothing to show that this Court lacks jurisdiction to entertain this action.

In the circumstances, Applicant’s prayer that this case be struck out on grounds of want of jurisdiction is premature and it can therefore not be granted at this stage. Hence that application is refused.” See page; 29 of the record.

The Appellant was dissatisfied with the ruling of the trial Court leading to the appeal to the Court below on two Grounds of Appeal and raised two issues therefrom for determination by the Court below. The Appeal was found by the Court below to be lacking in merit hence it was dismissed with costs in favour of the Respondent. That has led to the further appeal to this Court on two Grounds of Appeal filed on 25/8/2003.

Upon receipt of record of appeal, in compliance with the rules of this court, both parties filed and exchanged briefs of argument. This appeal was therefore argued on the following processes.

- (i) Appellant’s brief of argument filed on 20/01/2004.
- (ii) Respondent’s brief of argument filed on 20/04/2012 but deemed properly filed and served on 23/05/2012.
- (iii) Appellant’s reply brief of argument filed on 5/10/2012.

From the two Grounds of Appeal filed by the Appellant was distilled the following two issues for determination.

Issues for Determination:

“1. Whether the lower court was right in law in holding that in the circumstance of the Appellant’s prayer that this case be struck out on the ground of want of jurisdiction, was premature and it could not therefore be granted at that stage of the proceedings and that the duty on the court to consider it had not arisen since hearing had not begun (Ground One)

2. Whether the learned trial judge adequately considered the

affidavit and documentary evidence placed before it by the Appellant and or parties and the oral submissions of the counsel thereon before arriving at the conclusion that there was nothing to show that this Court lacked jurisdiction. (Ground two). ”

In his said brief of argument, the Respondent distilled a sole issue from the two Grounds of Appeal as follows:

“Whether the Court below was not right when it held that there was nothing in the Writ of Summons and Statement of Claim that conveys the fact that the lower Court had no jurisdiction to hear the case.”

Before I proceed to consider the submissions of Counsel on the issues raised from the Grounds of Appeal filed by the Appellant, I wish to state the two Grounds of Appeal and match them with the above issues said to be raised therefrom.

The Grounds of Appeal without their particulars are as follows:

“1. The Court of Appeal, Abuja Division erred in law when it held as follows:

“The Lower Court was correct in its view that the Defendant raised its objection prematurely. The duty of the trial Court to consider the depositions and affidavit in support of the application by the Defendant had not arisen for performance as hearing had not started. This appeal is plainly without merit. It is dismissed with N7,000 (seven thousand Naira) cost in favour of the Respondent and thereby occasioned miscarriage of justice. The question of jurisdiction can be raised at any stage of proceedings.

2. The Court of Appeal erred in law by failing to consider the submission of the Counsel, judicial decisions cited and statutory authorities cited in support of the appeal and caused miscarriage of justice.”

As can be seen from the issues formulated and the grounds from which they were said to have been distilled, there is no doubt that the two issues of the Appellant are not only verbose and rather unclear but are also proliferate.

Indeed, a careful reading of the second issue shows that it is about the decision of the trial Judge but not that of the Court below as it should be. It is the law that an appeal to this Court is ordinarily against the decision of the Court be-

low but not that of the trial Court.

It is now settled practice that appeals are decided upon the issues raised or formulated for determination by the appellate Court. In other words, once issues are distilled from the Grounds of Appeal, the latter become extinguished. Issue B No.2 of the Appellant is not related to the decision of the Court below appealed against but that of the trial High Court, it is therefore incompetent and is to be discountenanced. See Anaeze v. Anyaso (1993) 5 NWLR (Pt.291); (1993) 5 SCNJ 151 (1993) LPELR 480 (SC).

Generally, in the formulation of issues for determination parties are to avoid verbosity. In the same vein, economy of words should not be made at the expense of clarity. An attempt to be brief and succinct should not result in obscurity. D See Anaeze V. Anyaso (supra).

However, it is now settled that where a Court finds that there is verbosity and clumsiness in the issues distilled by the Appellant for determination, the Court is entitled to reformulate or reframe the issues for the purpose of narrowing down E the issues in controversy in the interest of accuracy, clarity and brevity. See African International Bank Ltd. v. Integrated Dimensional System Ltd. & Ors (2012) 11 SCM 1 at 24-25; (2012) 17 NWLR (pt.1328) 1; (2012) 5 SC (Pt.11) 112 (2012) 50 NSCQR 434, Unity Bank Plc & Anor V. Edward Bouari (2008) 2 SCM 193 at F 240; In Musa Sha (Jnr.) & Anor V. Kwan & 4 Ors (2000) 8 NWLR (pt.670) 685, (2000) 5 SCNJ 101; this Court stated as follows:

“So long as it will not lead to injustice to the opposite side, appellate Court possess the power and in the interest of justice, to G reject, modify or reframe any or all issues formulated by the parties...”

Similarly, since the respondent in an appeal is entitled to formulate issues for determination of an appeal and couch same in its own words, as long as the said issues so formulated and differently couched from the issues distilled by the H Appellant, are traceable to and formulated from the Grounds of Appeal filed by the Appellant, the appellate Court can rely on the Respondent’s issues to determine the appeal, if they are more succinct and precise than that of the Appellant.

As a result, this appeal shall be determined on the sole issue formulated by the Respondent. It covers the two Grounds of Appeal filed by the Appellant.

In arguing the Appeal, learned Appellant's Counsel took the issue for determination as follows:

On its Issue No.1, learned Counsel referred to the conclusion of the trial Court earlier referred to in this judgment as the basis of the appeal. He contended that it was a misdirection on point of law for the Court to have held the way it did, as the issue of jurisdiction of a Court can be raised at any stage of the proceedings. He submitted that to say that it was premature to raise an objection to the jurisdiction of the trial Court at that stage was a travesty of justice.

He submitted further that the question of the jurisdiction of a Court is a radical and fundamental issue, which must be settled first before further proceedings in the case. He cited; Attorney-General, Anambra State v. Attorney-General of the Federation (1993) 6 NWLR (Pt. 302) 693, Kalio V. Daniel Kalio (1975) 2 SC 15 at 22; Edu v. Cedan Community (1980) 11 SC 103 at 124, Attorney-General, Lagos State V. Dosunmu (1989) 3 NWLR (pt.111) 552 at 566. Okeje V. N.C.F. Co. Ltd. (1991) 6 NWLR (pt.699) 501.

Learned Counsel referred to the Appellant's preliminary objection raised when they found that the Writ of Summons and the Statement of Claim told lies about themselves, about the venue of the trial that the Respondent was resident and carrying on business at Ankpa, and that the contract was entered and was to be performed in Lagos. The venue of the trial was being challenged by the Appellant. Learned Counsel contended that the earlier the issue of jurisdiction is raised the better to avoid an exercise in futility and nullity. He submitted that the issue of jurisdiction can be raised at any stage of the proceedings even on appeal. He relied on Nigerian Deposit Insurance Corporation v. Central Bank of Nigeria & Anor (2000) 9 SCNJ 430.

Learned Counsel contended that objection to jurisdiction of Court can be taken at any time, depending on what materials are available. It could be taken in any of the following situations:

- (a) On the basis of the Statement of Claim or
- (b) On the basis of evidence received, or
- (c) By a Motion supported by affidavit giving the full facts

upon which reliance is placed; or

(d) On the face of the Writ of Summons where appropriate as to capacity in which action was being brought.

He relied on the following: Attorney-General, Kwara State V. Olawale (1993) 1 NWLR (Pt.272) 645; Izenkwe V. Nnadozie (1953)

B 14 WACA 361; Adeyemi V. Opeyori (1976) 9-10 SC 31; Kasikwu Farms Ltd V. A-G Bendel State (1986) 1 NWLR (Pt.19) 695, Barclays Bank of Nigeria Ltd. V. Central Bank of Nigeria (1976) 1 All NLR 409, National Bank of Nigeria Ltd. V. Shoyeye (1977) 5 SC 181.

C Learned Counsel contended that there is a distinction between a demurrer and objection to jurisdiction. The issue of jurisdiction is not matter for demurrer proceedings. It is much more fundamental than that of demurrer, and does not entirely depend such on what a Plaintiff may plead to prove the relief sought. He submitted D that once the issue of jurisdiction is raised in a suit, the Court must not give an order in the suit to affect the Defendant until the issue is settled.

Learned Counsel contended that the Ankpa High Court had no business in entertaining a suit on the transaction that took place in E Lagos and where the Defendant was neither resident nor carry on any business at Ankpa. He submitted that both the trial Court and Court below were wrong to have held that the preliminary objection was raised prematurely.

F Learned Counsel contended further that when the issue of jurisdiction is raised, the Court must first dispose of it to make sure it has jurisdiction before going further in the case to avoid an exercise in futility or nullity, when it turns out that the Court has no jurisdiction to entertain the suit.

G He urged the Court to resolve issue No.1 in favour of the Appellant that objection to the jurisdiction of the trial Court was properly raised by the Appellant, and therefore not premature.

It is interesting to note that the argument of learned Counsel to the Appellant on their second issue does not tally with the issue. H The submissions of learned Counsel were based on the issue whether the Court below was right in holding that the trial Court was correct in not considering the affidavit and documentary evidence, placed before it on the preliminary objection the Appellant raised on the competence of the trial Court in adjudicating on the matter.

Learned Counsel contended that both Courts below ignored the said processes and documentary evidence because, according to the Courts, the issue was raised too early before hearing had begun.

Learned Counsel referred to the affidavit and counter-affidavit filed by both parties. He submitted that the counter-affidavit of the Respondent did not contradict the facts in the affidavit of the Appellant. He contended that the Court considered only the Writ of Summons and Statement of Claim to decide that there was nothing to show that the trial Court had no jurisdiction to entertain the matter. The Court failed to consider the affidavit evidence of the Appellant, and that has led to a misdirection in law and a miscarriage of justice, he concluded. He relied on Order 10 rule 4 (1) of the High Court (Civil Procedure) Rules, Edict 1991 of Kogi State. Also Order 10 rule 3 (supra) and contended that the suit of the Respondent before the trial Court was for breach of contract of employment. The contract was to be performed in Lagos and the Defendant does not reside in Ankpa nor carries on business at Ankpa. He stated that these facts were contained in the affidavit in support of the Appellant's Motion, but were not considered by the Courts. He submitted that the failure of the Court to consider the facts in the affidavit and the documentary evidence led to denial of fair hearing. He relied on *Elom Onwe Oke & Ors V. Eze Nwaogbuinya & 13 Ors* (2001) 5 NSCQR 93 at 96, *Ukpai V. Okoro* (1983) 2 SCNLR 380.

Learned Counsel urged the Court to allow the appeal and set aside the decision of the Court below and strike out the Respondent's case before the trial Court for lacking in jurisdiction.

As stated earlier, the sole issue formulated by the Respondent from the two Grounds of Appeal filed by the Appellant, once again goes thus:

"Whether the Court below was not right when it held that there was nothing in the Writ of Summons and the Statement of Claim that conveys the fact that the lower Court had no jurisdiction to hear the case."

Learned Counsel submitted that it is the Plaintiff's claim in the Writ of Summons and averments in the Statement of Claim that determine whether or not a given case comes within the jurisdiction conferred on a Court. He relied on *Onuorah V. KRPC* (2005) All FWLR (Pt.256) 1356; (2005) 6 NWLR (Pt.921) 393. In other words,

he submitted that in determining the jurisdiction of a Court, the enabling law vesting jurisdiction in the Court has to be examined in the light of the reliefs sought by a Plaintiff. The moment the relief sought comes within the jurisdiction of the Court as revealed by the facts in the Statement of Claim and the relief sought, the Court must assume jurisdiction as it then has jurisdiction to do so. He cited *Trade Bank Plc. v. Banilux (Nig) Ltd.* (2003) 9 NWLR (pt.825) 416.

The Respondent conceded that the issue of jurisdiction of a Court is a threshold matter and fundamental, as it affects the competence of a Court to hear and determine a suit. Learned Counsel also conceded as the position of the law that anything done where a Court has no jurisdiction to entertain a claim will be an exercise in futility relying on *Madukolu V. Nkemdilim* (1962) 1 All NLR, *Adesola V. Abidoye* (1999) 10-12 SC 109, *Funduk Engineering Co. v. McArthur* D (1995) 4 NWLR (pt.392) 640.

Applying the above principle to the extant case, learned Counsel referred to the judgment of the Court below on pages 59-60 and contended that it will be garnered that the address for service of the Court processes was one within jurisdiction of the Court and the Appellant had a place of business within the jurisdiction of the trial Court. Also, that the claim of the Respondent was one that was within the competence of the trial Court. He submitted that the trial Court was therefore correct to have refused to strike out the suit for want of jurisdiction. And the Court below was right in affirming the decision of the trial Court that there was nothing on the Writ of Summons and Statement of Claim that divested the Court of jurisdiction.

Learned Counsel referred to the situations, as decided in several decisions of this Court, in which objection to the jurisdiction of a Court can be raised, relying on, *Nnonye v. Anyichie* (2005) All FWLR (pt 253) 623, *A-G Kwara State v. Olawale* (1993) 1 NWLR (pt. 272) 645, *NDIC v. CBN* (2002) FWLR (pt 99) 1021; (2002) 7 NWLR (pt 766) 272.

He contended that the Appellant's application was considered by the trial Court on the basis of the Writ of Summons and Statement of Claim. He submitted that there was nothing on the processes which conveys the fact that the trial Court had no jurisdiction to hear the case.

Learned Counsel referred to the opinion of the Court below

expressed on the possibility of the Appellant being able to at the hearing provide satisfactory evidence that the trial Court had no jurisdiction, and submitted that the said obita was made in passing and did not occasion any miscarriage of justice to the Appellant. He said the opinion expressed by the court is in tandem with the principles of law enunciated in the case on *Nnonye v. Anyichie* (supra). B

Learned Counsel again conceded that because the issue of jurisdiction is regarded as a threshold and a lifeline for continuing any proceedings, objection to jurisdiction ought to be taken at the earliest opportunity if there are sufficient materials before the Court to consider it and a decision must be taken. This is in the interest of justice and to save time, avoid waste and a trial in nullity. He cited *NDIC v. CBN* (supra). C

He submitted that nothing precluded the trial Court from revisiting the issue of jurisdiction in so far as sufficient materials or evidence has been adduced in the course of the proceedings or trial of the suit. He submitted further that the issue of jurisdiction may be inchoate, premature where sufficient materials had not been placed before a Court. The Court below was therefore not in error when it held that the issue of jurisdiction could be raised later. D E

Learned Counsel again conceded that it is settled law that usually, when a Court's jurisdiction is challenged by the defence, it is better to settle the issue once and for all before proceeding to hearing the case on the merits. Failure to so determine the preliminary objection or any form of challenge to the Court's jurisdiction one way or another may result in the further proceedings being nullity. He cited; *First Bank Plc V. T.S.A. Industries* (2010) All FWLR (pt 537) 652-653. F

Learned Counsel contended that the Respondent's case is G predicated on breach of contract and gave the following places in which action for breach of such contract can be commenced -

- (a) Where the contract was entered into.
- (b) Where the contract was performed or was to be performed and H
- (c) Where the Defendant resides or does business.

He relied on *First Bank Plc v. Abraham* (2008) 12 SC (pt 111) 108.

On whether or not the Court below considered the docu-

mentary evidence and the affidavit filed by the Appellant, learned Counsel submitted that the Court below considered all the processes available and the submissions of Counsel and the applicable principles of law before coming to the conclusion it reached that there was nothing yet on record to show that the trial Court lacked jurisdiction to entertain the matter. He submitted that parties are bound by the printed record of appeal, relying on *Garba V. Omokhodion* (2011) 6 - 7 SC (pt v) 89 at 132.

Learned Counsel contended that the Court below adequately considered the challenge to the jurisdiction of the trial Court as initiated by way of Motion on Notice by the Appellant. He urged the Court to hold that from the processes before the Court, the trial Court has jurisdiction to hear the matter and the Court below was right in holding that there was nothing on record to show that the trial Court does not have jurisdiction on the matter.

Learned Counsel further contended that the Appellant has not shown that there was any miscarriage of justice against the Appellant or anything to show perversion of justice. He submitted that there was no denial of fair hearing or breach of fair trial, relying on *7UP Bottling Company Limited V. Abiola & Sons Bottling Company Limited* (2001) FWLR (pt 70) 1632.

He urged the Court to dismiss the appeal for lacking in merit and being highly frivolous.

As earlier stated, the Appellant upon receipt of Respondent's brief of argument filed a reply brief on 5th October, 2012.

What is a reply brief? It is a brief that responds to issues and arguments raised in the brief previously filed by one's opponent. In other words, it is an Appellant's brief of argument in opposition. See *Black's Law Dictionary*, Ninth Edition P. 218.

A reply brief of argument is therefore filed when an issue of law or arguments raised in the Respondent's brief calls for a reply in rebuttal. In other words, a reply brief is expected to and should deal with only new points arising from the Respondent's brief of argument. When no new point has been raised in the Respondent's brief of argument, a reply brief becomes otiose and the Court will be entitled to discountenance it. It has been held that a reply brief is not a repair kit to correct or put right an error or lacuna in the Appellant's brief of argument. See *Dr. Augustine N. Mozie & Ors. V. Chike*

Mbamalu (2006) 12 SCM (pt 1) 306; (2006) 27 NSCQR 425, Basinco Motors Limited vs. Woermann Line & 1 Or. (2009) 13 NWLR (pt 1157) 149; (2009) 8 SCM 103.

In the reply brief of argument filed by the Appellant, there is no new point of law or argument in the Respondent's brief which necessitated the said reply brief. The reply is only re-arguing his original brief of argument and repeating itself. This is not the purport of a reply brief. It is not to raise fresh points or repeat arguments in previously filed brief of argument. It is liable to be discountenanced and I so do.

Now to the main issue for determination of the appeal which is “*whether the Court below was not right in holding that there was nothing in the Writ of Summons and Statement of Claim that conveys the fact that the lower Court had no jurisdiction to hear the case.*”

What is jurisdiction? Generally, the word “jurisdiction” means the authority which a Court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision. See Mobil Production Nigeria Limited v. Lagos State Environmental Protection Agency & Ors. (2002) 14 SCM 167 at 179.

Jurisdiction is therefore of paramount importance in the process of adjudication. Where there is no jurisdiction in a Court to handle or adjudicate on a matter before the Court, everything done or every step taken in the proceedings amounts to nothing. See Attorney-General for Trinidad & Tobago V. Erichie (1893) AC 518 at 522. Timitimi v. Amabebe 14 WACA 374. Mustapha v. Governor of Lagos State (1987) 2 NWLR (pt 58) 539; Utih v. Onoyivwe (1991) 1 NWLR (pt 166) 206. ***In other words, jurisdiction is the life-wire of any proceeding in Court and everything done in the absence of jurisdiction is simply a nullity.*** See Jumang Shelim & Anor. v. Fwendim Gobang (2009) 7 SCM 165; (2009) 12 NWLR (pt. 1156) 435.

It is now trite that when a Court's jurisdiction or competence is challenged by the Defendant, it is neater and indeed far better for the Court to settle that issue one way or another before proceeding to hearing of the case on the merit.

When then does a Court become competent with power

to adjudicate over the matter brought before it for adjudication? This has long been settled and needs no further controversy. A court is competent when:-

(a) It is properly constituted as regards numbers and qualifications 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.

Any defect in competence is fatal, for the proceedings are nullity, however well conducted and decided, the defect is extrinsic to the adjudication. See *Madukolu & Anor v. Nkemdilim* (1962) 1 All NLR (pt 4) 587 at 597; (1962) 2 SCNLR 341 at 348, per Bairamina, F.J.

However, when a Court's jurisdiction is challenged, the Court still has the competence and jurisdiction to enquire into the question whether it has jurisdiction to hear the case. See *Barclays Bank of Nigeria Limited v. Central Bank of Nigeria* (1976) 1 All NLR 409 at 421; *Attorney-General of Lagos State v. Dosumu* (1989) 3 NWLR (Pt. 111) 552 at 600.

There is no doubt that the issue of jurisdiction of the Court, in particular, when the Court is said to be lacking in competence, can be raised at any time and at any stage of the proceedings. That is, either at the trial court or on appeal, even before this apex Court. It must still be entertained and decided upon. See *Oloriode v. Oyebe* (1984) 5 SC 1 at 28 - 33.

In raising an objection to the competence of a court, any of the following situations can be employed. This is the law.

**(a) On the basis of the statement of claim, or
(b) On the basis of evidence received, or
(c) By motion supported by affidavit setting out the facts relied on; or**

(d) On the face of the Writ of Summons, where appropriate as to the capacity in which the action was brought or

against who the action was brought. See Chief Nnonye v. Anyichie & Ors. (2005) 1 SCM 133 at 146; Attorney-General of Kwara State V. Olawale (1993) 1 NWLR (pt 272) 645; NDIC v. Central Bank of Nigeria (2002) 4 SCM 128; (2002) 7 NWLR (pt 766) 272; Arjay Limited & Ors. V. Airline Management Support Limited (2003) 5 SCM 17; (2003) 7 NWLR (pt 820) 577.

In the instant case, the Appellant had challenged the jurisdiction of the trial Court and had sought for the striking out of the suit for the reason that on the face of the Writ of Summons and Statement of Claim, the Court does not have jurisdiction.

It is settled law, that the only process the Court is to consider to know whether or not it has jurisdiction is the claim before it. There is no doubt that the challenge to jurisdiction of Court can be raised in the Statement of Defence or even before filing any defence, just after the Defendant is served with the Writ of Summons. But it must be apparent on the Writ of Summons and Statement of Claim that the Court is lacking in competence if it is to be raised before the Defendant files defence and issues are joined.

In the instant case, the challenge to jurisdiction was raised on the basis of Writ of Summons and Statement of Claim. The Court below on pages 58 - 59 considered the affidavit in support of the application by the Appellant and opined as follows:

“From the depositions reproduced above, it is apparent that the application that the Plaintiff’s suit be struck out was predicated on the grounds - (1) That the Defendant had no registered office in Nigeria; and no branch office in Ankpa; (2) that the Plaintiff did not reside in Kogi State.”

As earlier stated, it is now settled that it is the Plaintiff’s claim before the Court that determines the jurisdiction of the Court and no other process. See Tukur v. Governor of Gongola State (1989) 4 NWLR (pt 117) 517; Adeyemi V. Opeyori (1976) 9 - 10 SC 31 at 49; Akinbiyi V. Governor of Ondo State (1990) 3 NWLR (pt 140) 525 at 532.

In paragraphs 1 and 2 of the Statement of Claim, the Plaintiff averred as follows:

“1. The Plaintiff is at all times material to this suit expatriate and Briton (sic) national and he is presently residing in Makurdi, Benue

State.

2. *The Defendant is a Limited liability company incorporated or deemed to have been incorporated under the Companies and Allied Matters Act, 1990 and is involved in engineering works/construction et cetera and having its Head Office at 74 Awolowo Road, South West, Ikoyi, Lagos while carrying on business in various towns in Nigeria including Ankpa, Kogi State.*”

It is noteworthy that the address for service on the Defendant indicated on the originating process is - “*Prince Abubakar Audu Way, Ankpa.*”

Upon consideration of the Writ of Summons and Statement of Claim before the trial Court, the Court below came to the conclusion, in agreeing with the trial Court, that there is nothing on the said originating processes to divest the Court of jurisdiction.

From the averments in the Statement of Claim there is indeed nothing yet to show that the trial Court was lacking in competence. The Plaintiff claimed to be then residing in Makurdi, Benue State. The Appellant was said to be having its Head Office at 74 Awolowo Road, South West, Ikoyi Lagos but was carrying on business in various towns in Nigeria including Ankpa, Kogi State. This is the only document the trial Court was obliged to look at and consider to know whether or not it has jurisdiction to entertain the Plaintiff’s claim. There is no doubt that on the face of the Writ of Summons and Statement of Claim, there is nothing to show that the trial Court has no jurisdiction. I am of the view and believe I am right, that for the Appellant to have successfully challenged and controverted the averments in the Statement of Claim, it was required to join issue with the Respondent and then come up with its Motion on Notice as it did before the case proceeded to trial.

The issue of jurisdiction can be attended to and disposed of by the trial Court, if on the face of the Writ of Summons, or Originating Summons and the affidavit in support as the case may be, as to the capacity in which the action was instituted or against who the action was brought, it is apparent that the Court has no jurisdiction. For instance, when on the face of the originating process either of the parties is not a juristic person known to law with capacity to sue and be sued.

It is interesting to note that while the Respondent in his Statement of Claim categorically averred that the Appellant “is a Limited Liability Company incorporated or deemed to have been incorporated under the Companies and Allied Matters Act 1990” meaning that it is a legal person recognized by law to sue and be sued, the Appellant in its affidavit in support of the application which it brought to urge the Court to strike out the case for want of jurisdiction deposed, inter alia, as follows:-

“15. That MUSACONI LIMITED from inception of its incorporation till when it died naturally or wounded (sic) up, has never carried out any business in Kogi State including Anka Town.

16. That MUSACONI LIMITED carried out its business mainly in Lagos and partly in Makurdi when same was functional.”

It is noteworthy that the deponent to the said affidavit in support of the application, Alhaji M. M. Abdu, deposed that he is and was the Chairman/Managing Director of the Defendant” and by virtue of that fact he was conversant with the facts of the case and competent to depose to those facts.

I am not in the slightest doubt that the issue of the legal personality of the Appellant cannot be treated on affidavit evidence as raised by the Appellant. Issue must be joined on it after being clearly pleaded. And except it is admitted by the opponent it must be proved that the appellant has ceased to be in existence. That is what led the court below to hold, inter alia, as follows:-

“There was nothing that prevented the Court from determining whether or not it had jurisdiction to hear the suit at the stage the Defendant brought its application provided there was evidence before it to be garnered only from the Writ of Summons and Statement of Claim which were then before it. It was at the state (sic) not permissible for the lower Court to decide the issue of jurisdiction on any other evidence than that which was before it in the form of Writ of Summons and Statement of Claim... A perusal therefore of the Writ of Summons and Statement of Claim reveals nothing which conveys that the lower Court had not the jurisdiction to hear the

case. It may well be that the Defendant could at the hearing of the case provide satisfactory evidence, that the lower Court had no jurisdiction but that stage was yet to be reached.”

I am therefore of the firm view and I so hold that the Court below was right to have held that there was nothing on the Writ of Summons and Statement of Claim that conveys the fact that the trial Court had no jurisdiction to entertain the case. The type of objection raised to the jurisdiction was indeed premature, to say the least. Accordingly the issue is resolved against the Appellant.

In the final analysis, this appeal is devoid of merit and substance. It is liable to dismissal and it is dismissed. The judgment of the Court below delivered on 9th June, 2003 is affirmed.

There shall be costs of N100,000 to the Respondent against the Appellant.

ONNOGHEN JSC

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

I agree with his reasoning and conclusion that the appeal is without merit and should be dismissed.

It is settled law that it is the claim of the Plaintiff as stated in the Writ of Summons and Statement of Claim that determines the jurisdiction of the Court.

In the instant case, at the time the motion challenging the jurisdiction of the Court was filed, no defence had been filed. In any event, looking at the Writ of Summons and the Statement of Claim filed, I agree with the lower Courts that there is nothing disclosed therein to support the claim of lack of jurisdiction and that the issue is therefore premature.

This is another example of counsel wasting the time of the Courts, all the way to the Supreme Court, over a matter or issue that had remained long established. This case was filed in 2002 at the trial Court but is yet to take off, due to the antics of Appellant and his Counsel. At the end of the day there will be an outcry of *“justice delayed is justice denied”*.

In conclusion, I dismiss the appeal for lack of merit and abide

by the consequential orders made in the lead judgment of my learned brother including the order as to costs. Appeal dismissed.

MUNTAKA-COOMASSIE JSC

I have read in advance the lead judgment of my learned brother Ariwoola, JSC and I agree with him that this particular appeal lacks merit and should be dismissed. B

The lead judgment in my view is highly exhaustive and correct. I do not intend to add anything. I too dismiss the appeal for lacking in substance. I endorse also the order as to costs. C

NGWUTA JSC

I have had the honour of reading in draft the lead judgment just delivered by my Lord, Ariwoola, JSC with whose reasoning and conclusion I entirely agreed. D

The lone issue for determinant is “*whether the Court below was not right when it held that there was nothing in the Writ of summons and the Statement of Claim that conveys the fact that the lower Court had no jurisdiction to hear the case*” E

The word “jurisdiction” means the authority the Court has to decide matters before it or to take cognizance of matters presented in a formal way for its decision. See *Ndaeyo v. Ogunnaya* (1977) 1 SC 11, *National Bank v. Shoyoye* (1977) 5 SC 181, *AG Fed. V. A-G Abia State & 35 ors* (2001) 7 SC 100. F

A Court has jurisdiction or is competent to decide a matter before if when:

(1) The Court is properly constituted as regards members G and qualification of the members of the bench and no member is disqualified for one reason or another, and

(2) The subject matter of the case is within its jurisdiction and there is no feature as to the case which prevents the Court from exercising its jurisdiction, and H

(3) The case comes before the Court initiated by the due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction. See *Madukolu v. Nkemdilim* (1962), AUNLR 287. See also *Ukine v. Edjerpde* (7001)sic 92 LRLN 3288, and 3316,

Adeyemi v. Opeyori (1976) 9 - 10 SC 31, Ogbuinyinya v. Okudo (1976) 6-9 SS 32.

No cause or matter is prima facie, deemed to be beyond the jurisdiction of a superior Court unless it is specifically or expertly shown to be so. See Anakwenze v. Aneke & ors (1985) 6 SC 4.

B Learned Counsel for the Appellant had argued that the issue of jurisdiction may be inchoate, premature when sufficient materials had not been placed before a Court. This is not correct.

C The Court cannot go outside the claim before it to settle the issue of jurisdiction.

A party questioning the jurisdiction of a Court over a matter before it must confine his argument within the claim before the Court, not on extraneous matters to show that the Court has no jurisdiction on the matter.

D Based on the above and the fuller reasons in the lead judgment, I also dismiss the appeal and affirm the judgment of the lower Court delivered on 9th June 2003.

E I also award N100,000 cost in favour of the Respondent against the Appellant.

F

G

H