

SUPREME COURT OF NIGERIA
FRIDAY 5TH JUNE, 2015. SC. 316/2010
CORAM:- M. MOHAMMED CJN, J. A. FABIYI,
S. GALADIMA, N. S. NGWUTA, M. D. MUHAMMAD,
C. B. OGUNBIYI, K. M. O. KEKERE-EKUN, JJSC

SUN INSURANCE NIGERIA PLC APPELLANT
AND	
UMEZ ENGINEERING CONSTRUCTION	
COMPANY LIMITED RESPONDENT

JURISDICTION - Determination of - Basis - Jurisdiction is determined by plaintiff's claim - As endorsed in the writ of summons and statement of claim (H1)

INSURANCE - Claim - Jurisdiction - To entertain claim based on simple contract of insurance - Is not vested exclusively on FHC - Rather the jurisdiction is vested on High Courts of the States (H2)

COURTS - Jurisdiction - Exercise of - Conditions - The subject matter of the case must be within jurisdiction of the court - And no feature in the case must prevent court from exercising its jurisdiction (H3)

JURISDICTION - Fundamental nature of - Court should first determine issue of jurisdiction - Before embarking on any proceeding for hearing on the merit (H4)

FACTS

Before the High Court of Imo State, plaintiff/respondent filed this action claiming against defendant/appellant, the sum of N6 million being the insured value of the vehicle less 5% and general damages for negligence in respect of the loss of its Toyota Land Cruiser Prado Jeep stolen by armed men at a location in Owerri, Imo State and which vehicle was insured with appellant. Respondent's contention is that the insured vehicle was stolen during the currency of the contract of insurance.

Without filing statement of defence, appellant brought a notice of preliminary objection challenging the jurisdiction of the court

to entertain the matter. The court heard the objection and dismissed same. The court assumed jurisdiction to entertain the action. Appellant being aggrieved with the ruling, appealed to the Court of Appeal Port Harcourt Division. The court in its majority judgment dismissed the appeal and affirmed the decision of the trial court. Aggrieved further, appellant appealed to Supreme Court.

ISSUE FOR DETERMINATION

“Whether having regard to Section 251(1) and 272 of the Constitution of the Federal Republic of Nigeria 1999 and Section 73 and 97 of the Insurance Act No. 2 of 1997, the High Court of Imo State is vested with jurisdiction to entertain this suit.”

HELD (Unanimously dismissing the appeal per
MOHAMMED CJN)

JURISDICTION - Determination of - Basis

1. The Law is indeed well settled as correctly argued by the learned Counsel to the Parties in their respective briefs of argument that jurisdiction of a trial Court is determined by the Plaintiff’s claim as endorsed in the writ of summons and the statement of claim. (p. 2326 D)

INSURANCE - Claim - Jurisdiction

2. Thus in the present case, the claim of the Plaintiff/Respondent as earlier stated in this judgment, relates to simple contract of insurance claim. Close examination of Section 251(1)(a)-(s) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), does not show any where that jurisdiction to entertain a claim based on simple contract of insurance was vested exclusively on the Federal High Court as claimed by the Appellant. That argument therefore does not support the case of the Appellant.

It is quite clear that the jurisdiction conferred on the Federal High Court by Section 80 of the Insurance Act No. 2 of 1997 is in respect of the trial of all Criminal offences committed under the Act. No civil jurisdiction at all has been conferred by the Act on the Federal High Court. The statute is quite plain

therefore that it does not confer any exclusive or any jurisdiction at all for that matter on the Federal High Court to entertain and determine simple claims arising from contract of Insurance between the Parties to that contract. The Courts below were therefore right in their Judgments that by virtue of Section 272(1) of the 1999 Constitution of the Federal Republic of Nigeria, jurisdiction to entertain and determine all simple contracts of insurance claims between parties to such contracts remain with the High Courts of the States.

In the final result, the Appellant having failed to show that the subject matter of the case of the Plaintiff/Respondent now pending at the trial Court is outside the jurisdiction of the trial or that the civil jurisdiction of the insurance claim now lies with the Federal High Court by virtue of Section 73 and 97 of the Insurance Act No. 2 of 1997, the appeal must fail.

(pp. 2326 E/2327 H/2328 G)

Jurisdiction - Exercise of - Conditions

3. The law is trite that one of the ingredients for the exercise of jurisdiction by a Court include the requirement that the subject matter of the case is within the jurisdiction of the Court and that there is no feature in the case which prevents the Court from exercising its jurisdiction. (p. 2328 B)

JURISDICTION - Fundamental nature of

4. The law is also well settled that the question of jurisdiction is so fundamental that the adjudicating Court should determine the issue first before embarking on any proceedings for hearing on the merit. (p. 2328 E)

REPRESENTATION

Femi Atteh with Edwin Ekwunife, for the Appellant

J. O. Asoluka with I. A. Okeke (Mrs.), for the Respondent

CASES REFERRED TO

N.D.I.C. v. Okem Enterprises Ltd. (2004) 4 SC (pt. 11) 77

Ladoja v. INEC (2007) 7 SC 99

Dingyadi v. INEC (2011) 10 NWLR (pt. 1255) 347

- Ndaeyo v. Ogunaya (1977) 1 SC 11
Adelakan v. Ecu-Line NV (2006) 12 NWLR (pt. 993) 33
Adeyemi v. Opeyori (1976) 9-10 SC 31
O.H.M.B. v. Garba (2002) 14 NWLR (pt. 788) 538
Madukolu v. Nkemdilim (1962) 1 All NLR 587
B Oloba v. Akereja (1988) 3 NWLR (pt. 84) 508
NDIC v. C.B.N (2000) All FWLR (pt. 99) 1021

STATUTES REFERRED TO

- C Constitution of the Federal Republic of Nigeria 1999, ss. 251(1), 272
Insurance Act No. 2 of 1997, ss. 73, 97
Supreme Court Act Cap S.16 LFN 2004, ss. 1-3

LEAD JUDGMENT BY MOHAMMED CJN

- D The dispute between the Parties in this appeal started in the year 2000, when on 31/5/2000, the Respondent as Plaintiff took out a writ of Summons which was accompanied by a statement of claim at the High Court of Justice of Imo State at Owerri, claiming the sum of Six Million Naira only (N6,000,000.00) being the insured value of
E the vehicle less 5% and general damages for negligence in respect of the loss of its Toyota Land Cruiser Prado Jeep stolen by armed men at No. 6 Orlu Road, Owerri, Imo State and which vehicle was insured with the Appellant, which was the Defendant at the trial High Court.

- F The Defendant now Appellant, without filing statement of defence, after filing memorandum of appearance on 13/11/2000 and in apparent response to the Motion on Notice for Judgment filed by the Plaintiff at the trial Court, came up with a Notice of Preliminary Objection to the case against it in the following terms:-

- G *“Take Notice that this Honourable Court shall be moved on Wednesday the 28th day of February, 2001 at 9 O’clock in the fore noon or so as Counsel for the Defendant/Applicant shall be heard for an order striking out this suit in its entirety for lack of jurisdiction of this Honourable Court on the grounds stated in the schedule herein:-*

- H *The Defendant/Applicant shall rely on all Court processes already filed -*

SCHEDULE

1. The cause of action being an Insurance Policy on the alleged stolen vehicle, the subject matter is outside the jurisdiction of this

Honourable Court.

2. The Civil jurisdiction of this matter now lies with the Federal High Court by virtue of Part XII Insurance Act No. 2 1997."

The facts in support of the Preliminary Objection contained in the affidavit in support, reveals that Plaintiff insured a Toyota Land Cruiser Prado Jeep in 1998 with Defendant under an Insurance contract policy cover of third party, fire and theft. It was the case of Plaintiff on pleadings that the insured vehicle was stolen during the currency of the contract of Insurance on the policy issued to Defendant. That is to say, the subject of Plaintiffs claim was based on insurance contract.

After giving the parties a hearing on the Preliminary Objection, the learned trial Judge in a considered Ruling delivered on 17/7/2002, dismissed defendant's objection and held that the High Court of Imo State was vested with the jurisdiction to entertain the Plaintiff's action. Being dissatisfied with the decision of the trial Court, the Defendant by a Notice of Appeal dated 17/7/2002, the same date the ruling dismissing the Preliminary Objection was given, appealed to the Court of Appeal Port-Harcourt Division against the decision of the trial Court. After hearing the Parties through their respective learned Counsel on the Appellant's and Respondent's briefs of argument, the Court of Appeal in a split Judgment of 2 to 1, dismissed the appeal and affirmed the decision of the trial Court that the claims of the Plaintiff/Respondent was within the jurisdiction of the trial Court. That Judgment of the Court of Appeal was delivered on 3/5/2007.

The Defendant/Appellant was still aggrieved with the Judgment of the Court of Appeal against it and therefore decided to challenge the same through the leave of this Court granted to it on 12/5/2010, resulting in filing a Notice of Appeal containing one ground of appeal giving rise to the sole issue of jurisdiction argued in the Appellant's brief of argument. The issue which was also adopted by the Respondent in the Respondent's brief of argument reads -

"Whether having regard to Section 251(1) and 272 of the Constitution of the Federal Republic of Nigeria 1999 and Section 73 and 97 of the Insurance Act No. 2 of 1997, the High Court of Imo State is vested with jurisdiction to entertain this suit."

In support of this issue learned Counsel to the Appellant referred to the statement of claim of the Plaintiff at pages 75 - 78 of the

record and restated the law that it is that statement of claim which determines the jurisdiction of the trial Court. Learned Counsel observed that the statement of claim of the Plaintiff before the trial Court shows that the central issue of the Plaintiff's claim was the determination of the rights of the Respondent/Plaintiff under and by virtue of the Insurance Contract between the Respondent and the Appellant. After quoting the entire provisions of Section 251(1) of the Constitution of the Federal Republic of Nigeria 1999 and noting that the provisions having started with the words 'Notwithstanding' which have been given judicial interpretation in the case of *N.D.I.C. VS OKEM ENTERPRISES LIMITED* (2004) 4 SC (Part.11) 77 at 111 - 113, learned counsel submitted that where that term is used in a Section of a statute, it is meant to exclude an impinging or impending effect of any other provision of a statute or other subordinate Legislation so that the said Section may fulfill itself. Therefore, the learned Counsel emphasized that the term as used in section 251(1) of the 1999 Constitution, no provision of that Constitution shall be capable of undermining the Section. Counsel placed further reliance on the case of *LADOJA VS. INEC & 30 ORS* (2007) 7 SC 99 at 161, in support of the position of the law that Section 272 of the 1999 Constitution which vests the High Court of Imo State with jurisdiction can impede or impinge the provisions of Section 251 of the same Constitution because Section 272(1) of the 1999 Constitution is subject to the provisions of Section 251(1) (a-r) of the same Constitution which conferred exclusive jurisdiction on those matters, on the Federal High Court, thereby ousting the jurisdiction of the High Court granted by Section 272 of the Constitution. That the National Assembly having exercised its powers under Section 251 (a-r) to give the Federal High Court additional jurisdiction in the Insurance Act No. 2 of 1997, the court below was wrong in holding that the Imo State High Court had jurisdiction in the claim of the Plaintiff/Respondent, the Insurance Act being an existing law by virtue of Section 315 of the 1999 Constitution. Making further reference to Section 232(1) of the 1999 Constitution which empowered the National Assembly to expand the Original jurisdiction of the Supreme Court which brought about the Additional jurisdiction - The Supreme Court of Nigeria Act CAP S.16 Laws of the Federation of Nigeria, 2004 which expanded the jurisdiction of the Supreme Court in Sections 1,

2 and 3 of the Act, learned Counsel stressed that the Additional jurisdiction conferred by the National Assembly on the Federal High Court in Sections 73 and 97 of the Insurance Act No. 2 of 1997, was quite in order and therefore urged this Court to allow the appeal and declare that the Imo State High Court lacks jurisdiction to hear the Plaintiff's/Respondent's case. B

For the Respondent, its learned Counsel started by observing that jurisdiction is the legal authority of a Court to adjudicate in a matter which is so fundamental to the determination of a case to the extent that it is regarded as the centre pin on which the entire litigation is hinged on and the blood that gives life to an action as stated by this Court in DINGYADI VS INEC (2011) 10 NWLR (Pt.1255) 347 at 390-391 and NDAEYO VS OGUNAYA (1977) 1 SC.11. C

Learned Counsel further pointed out that no matter how well a matter is conducted, if the Court has no jurisdiction, the entire D exercise is a nullity. Quoting the provisions of Section 212(1) of the 1999 Constitution spelling out the jurisdiction of the High Court, Counsel argued that the jurisdiction of High Court as stated in the section is limited only to the subject matters excluded by Section 251 E of the Constitution and other provisions of the Constitution in

Section 254 giving exclusive jurisdiction to National Industrial Court in matters stated therein.

Relying on several decisions including TRIUMPH ASSURANCE CO. LTD VS. FADLALLAH SONS LTD. (2000) 1 NWLR (Pt.640) 294 at 301 and C.G.G. (NIG.) LTD VS OGU (2005) 8 NWLR (Pt. 927) 366 at 381-382 and 385, learned Counsel stressed that in the determination of jurisdiction of a Court, what the law enjoins the Court to look at is the statement of claim of the Plaintiff which in the present case relates to a claim on simple contract of insurance between the insurer and the insured for indemnity and that several of such disputes had been heard and resolved in the High Court as in the case of LEADWAY ASSURANCE CO. LTD. VS J.U.C. LTD. (2005) 5 NWLR (Pt.919) 539. Counsel therefore pointed out that there was nothing in Section 251(1)(a) - (s) of the 1999 Constitution which H conferred exclusive jurisdiction on the Federal High Court to hear and determine causes/and/or claims on insurance and simple contract on insurance having regard to the case of ADELANAKAN VS. ECU-LINE NV (2006) 12 NWLR (Pt.993) 33 at 52.

As for the argument of the Appellant that the Insurance Act of 1997 had vested exclusive jurisdiction on the Federal High Court on Insurance matters, learned Counsel replied that there is nothing in the Insurance Act 1997, to support the argument of the Appellant's Counsel and therefore urged this Court to resolve the sole issue in this appeal against the Appellant and dismiss the appeal.

The single issue arising for determination in this appeal is whether having regard to the provisions of Sections 251(1)(a)-(s) and 272(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Sections 73 and 97 of the Insurance Act No. 2 of 1997, the Court below was right in the majority judgment that the High Court of Justice of Imo State was vested with jurisdiction to hear and determine the Plaintiff's/Respondent's claim arising from a simple contract of insurance.

The Law is indeed well settled as correctly argued by the learned Counsel to the Parties in their respective briefs of argument that jurisdiction of a trial Court is determined by the Plaintiff's claim as endorsed in the writ of summons and the statement of claim. See ADEYEMI VS OPEYORI (1976) 9-10 SC 31; MUSTAPHA VS GOV. OF LAGOS STATE (1987) 2 NWLR (Pt.58) 539; TUKUR VS GOVERNMENT OF GONGOLA STATE (1989) 4 NWLR (Pt.117) 592 and O.H.M.B. VS GARBA (2002) 14 NWLR (Pt.788) 538.

Thus in the present case, the claim of the Plaintiff/Respondent as earlier stated in this judgment, relates to simple contract of insurance claim. Close examination of Section 251(1)(a)-(s) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), does not show any where that jurisdiction to entertain a claim based on simple contract of insurance was vested exclusively on the Federal High Court as claimed by the Appellant. That argument therefore does not support the case of the Appellant.

As for the argument of the Appellant that additional jurisdiction had been vested on the Federal High Court by the Insurance Act of 1997, Section 251(s) relied upon by the Appellant reads -

“251(1) ...

(s) Such other jurisdiction Civil or Criminal and whether to the exclusion of any other Court or not as may be conferred upon it by

an Act of the National Assembly.”

It is the case of the Appellant that based on the above provisions of the 1999 Constitution, the National Assembly had conferred additional exclusive jurisdiction on the Federal High Court on all civil claims arising from Insurance Contract by virtue of Sections 73 and 91 of the Insurance Act, 1997. The provisions of Sections 73 and 97 B of the Insurance Act state -

“73 Settlement of claims -

(1) Where -

(a) Civil proceedings are taken in Court in respect of any claim C relating to the death of or bodily injury to any person caused by or arising from the use of a motor vehicle covered by a policy of Insurance; and

(b) Judgment is obtained against the person insured; then, notwithstanding that the insurer may be entitled to avoid or cancel or D may have avoided or cancelled the policy, the insurer shall, subject to this section pay to the person entitled to the benefit of such judgment the sum payable (including costs and interest on such sum) not later than 30 days from the date of delivery of the Judgment.”

I am afraid this Section 73 of the Insurance Act, has nothing to E do with conferring jurisdiction on the Federal High Court or any court for that matter and therefore it is not relevant in this case. As for Section 97 of the Act, it is an interpretation section which states -

“97 Interpretation.

In this Act, unless the context otherwise requires -

“Court” means Federal High Court.”

Looking through the entire provisions of the Act, it is only Section 80 that deals with provisions for jurisdiction and prosecution and it states- G

“80 Jurisdiction and prosecution.

(1) An offence under this Act shall, subject to the Rules of Court, be tried in the Federal High Court and reference in this Act to “Court” or the Court.” Shall be construed accordingly.”

It is quite clear that the jurisdiction conferred on the H Federal High Court by Section 80 of the Insurance Act No. 2 of 1997 is in respect of the trial of all Criminal offences committed under the Act. No civil jurisdiction at all has been conferred by the Act on the Federal High Court. The statute is

quite plain therefore that it does not confer any exclusive or any jurisdiction at all for that matter on the Federal High to entertain and determine simple claims arising from contract of Insurance between the Parties to that contract. The Courts below were therefore right in their Judgments that by virtue of
Section 272(1) of the 1999 Constitution of the Federal Republic of Nigeria, jurisdiction to entertain and determine all simple contracts of insurance claims between parties to such contracts remain with the High Courts of the States.

The law is trite that one of the ingredients for the exercise of jurisdiction by a Court include the requirement that the subject matter of the case is within the jurisdiction of the Court and that there is no feature in the case which prevents the Court from exercising its jurisdiction. See MADUKOLU & ORS VS NKEMDILIM & ORS (1962) 1 All NLR 587 at 594 and SKENCONSULT NIG.) LTD VS SECONDY UKEY (1981) 1 SC 6. The Respondent having shown that neither Section 251(1)(a)-(r) of the Constitution of the Federal Republic of Nigeria, nor the provisions of the Insurance Act No. 2 of 1997 by virtue of Section 251(1)(s) conferred exclusive or additional jurisdiction to entertain simple claims on Insurance contracts on the Federal High Court, the subject matter of such claims remains under the jurisdiction of the State High Courts under Section 272(1) of the 1999 Constitution.

The law is also well settled that the question of jurisdiction is so fundamental that the adjudicating Court should determine the issue first before embarking on any proceedings for hearing on the merit. See KATTO VS CENTRAL BANK OF NIGERIA (1991) 9 NWLR (Pt.214) 126.

In the final result, the Appellant having failed to show that the subject matter of the case of the Plaintiff/Respondent now pending at the trial Court is outside the jurisdiction of the trial or that the civil jurisdiction of the insurance claim now lies with the Federal High Court by virtue of Section 73 and 97 of the Insurance Act No. 2 of 1997, the appeal must fail.

This appeal therefore lacks merit and the same is hereby dismissed. There shall be N100,000.00 costs to the Respondent against the Appellant.

FABIYI JSC

I have had a preview of the judgment just delivered by my learned brother - Mahmud Mohammed, CJN. I agree with the reasons therein advanced to arrive at the conclusion that the appeal lacks merit and warrants an order of dismissal. B

This is an appeal against the judgment of the Court of Appeal, Port Harcourt Division (the court below) delivered on 23rd May, 2007. Therein, the decision of the trial High Court, Owerri, Imo State (the trial court) delivered on 17th July, 2000 was affirmed by a majority judgment of 2.1. C

The Ruling of the trial court was in respect of a Notice of Preliminary objection raised by the appellant challenging the jurisdiction of the trial court to hear and determine the respondent's/plaintiff's claim in the Writ of Summons/Statement of Claim for the sum of N6,000,000.00 (Six Million Naira) from the appellant; being the insured value of his stolen vehicle less 5% which the respondent insured with the appellant and damages for negligence. D

The appellant has, by the leave of this court granted on 10th May, 2010, filed its Notice of Appeal dated 10th June, 2010 to appeal against the judgment of the court below. E

The sole issue formulated for a due determination of the appeal by the appellant which was adopted by the respondent reads as follows:-

"Whether having regard to Section 251(1) and Section 272 of the Constitution of the Federal Republic of Nigeria 1999 (CFRN 1999) as amended and Section 73 and 97 of the Insurance Act No 2 of 1997 the High Court of Imo State is vested with jurisdiction to entertain the suit." F

Let me state it briefly that jurisdiction which is the authority a court has to decide matters that are litigated before it is very crucial in the process of adjudication. As it is very fundamental, it should be determined first and at the earliest opportunity. If a court has no jurisdiction to hear and determine a case, the proceedings remain a nullity ab initio no matter how well conducted and decided. A defect in competence is not only intrinsic but also extrinsic to the entire process of adjudication. See: *Madukolu v. Nkemdilim* (1962) 2 SCNLR, 341; *Oloba v. Akereja* (1988) 3 NWLR (Pt.84) 508. G
H

The next relevant point in this appeal is that in determining issue of jurisdiction, the court looks at the Writ of Summons and the Statement of Claim of the plaintiff. This is so since it is the plaintiff who initiated his complaint before the court. Refer to the cases of Triumph Assurance Co. Ltd. v. Fadlallah & Sons Ltd. (2000) 1 NWLR B (Pt.640) 289; NDIC v. C.B.N (2000) All FWLR (Pt.99) 1021 and Mustapha v. Gov. of Lagos State (1987) 2 NWLR (Pt.58) 539 at 591.

As can be gathered from the Writ of Summons and the Statement of Claim, the plaintiffs suit is in respect of a simple claim on insurance contract. It appears that this point is not in dispute.

The appellant appears to be trying to cling tenaciously to the provision of sec. 251(1)(a)-(s) to assert that the trial High Court has no jurisdiction in this matter. The stated Section provides as follows:-

"251(1) Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matter - (a) - (s)."

A careful perusal of matters expressly stated in (a) to (r) shows that there is no provision for the Federal High Court to hear and determine Insurance Claims.

At page 83 of the record, Rhodes-Vivour, JCA (as he then was) in a refined manner, stated as follows:

"In the interpretation of such provisions what is not said is not intended."

I wish to further expand same at this auspicious moment. Let me bring to the fore at this point the expressio unis est exclusio alterius Rule which means the express mention of one thing in a statutory provision, as herein - the Constitution.- the grundnorm, automatically excludes any other stipulation which would otherwise have been applied by implication. See Ogbunyiya v. Okudo (1979) 6-9 SC 32, PDP v. INEC (1999) 11 NWLR (Pt.626) 200; Buhari v. Dikko Yusuf (2003) 14 NWLR (Pt.841) 446, Udoh v. Orthopaedic Hospital Management Board (1993) 7 NWLR (Pt.304) 139 and Halsbury's Law of England 4th Edition, paragraph 876.

In short, it is clear that a simple insurance contract matter does not fall within the Jurisdiction of the Federal High Court. It is not expressly imbued with jurisdiction to entertain such a matter. The

decision of this court in Adelekan v. ECU Line NV (2006) 12 NWLR (Pt.993) 33 at 52 is clear on the point. This court pronounced thus:-

“that provisions of Section 251 of the Constitution of the Federal Republic of Nigeria 1999 are clear and unambiguous. It is the Section that confers jurisdiction on the Federal High Court, which jurisdiction clearly does not include dealing with case of simple contract or damages for negligence.” B

The appellant also attempted to hide under the umbrage of the provision of Section 251(1) (s) CFRN, 1999. In the lead judgment it is shown that the provisions of the Insurance Act No. 2 of 1997 did not confer exclusive or additional jurisdiction to entertain simple claims on Insurance Contracts on the Federal High Court. The subject matter of such claims remains under the jurisdiction of the State High Courts under Section 272(1) 1999 CFRN. I agree with; and respectfully adopt same. C D

For my above remarks and of course the lucid reasons adumbrated by my Lord - Hon. CJN, I too, feel that the appeal lacks merit and it is hereby dismissed. I abide with the order relating to costs; as well. E

GALADIMA JSC

I have been obliged a copy of the leading judgment of my learned brother MOHAMMED CJN, just delivered. I agree with him that the appeal lacks merit and should be dismissed. The appeal that is being dismissed emanated from the decision of the Court of Appeal, Port Harcourt Division, delivered on 3/5/2007 affirming the decision of the High Court of Imo State. The High Court held that it had jurisdiction to entertain plaintiff's (now Respondent) claim of N6 Million as general damages for negligence in respect of the loss of its Toyota Land Cruiser Prado Jeep which was stolen by armed robbers. The said Jeep was insured with the Appellant herein. F G

At the trial High Court the Defendant (now the Appellant), without filing any statement of defence, after filing memorandum of Appearance on 3/5/2000, and in response to the motion On Notice for Judgment filed by the Respondent at the trial Court came up with a Notice of Preliminary objection on page 14 of the record in the following terms: H

“TAKE NOTICE that this Honourable Court shall be moved

on Wednesday the 28 day of February, 2011 at 9 o'clock in the forenoon or so as counsel for the Defendant/Applicant shall be heard for an order striking out this suit in its entirety (sic) meaning "entirety," for lack of jurisdiction of this Honouable Court on the grounds stated in schedule herein.

B The Defendant/Applicant shall rely on all court processes already filed.

SCHEDULE:

C 1. The cause of action being an insurance policy on the alleged stolen vehicle, the subject matter is outside the jurisdiction of this Honouable Court.

2. The civil jurisdiction of this matter lies with the Federal High Court by virtue of Part XII Insurance Act, No. 2, 1997."

The summary of facts in support of the objection as contained
D in the supporting affidavit is as follows: That the plaintiff insured his Toyota Land Cruiser Prado Model Jeep in 1988 with the Defendant in Insurance Company, under an Insurance policy Cover of a third party, fire and theft. That the vehicle was stolen during the currency of the contract of Insurance on the Policy issued to the Defendant.
E That the plaintiff's claim was based on insurance contract.

Without much ado, after hearing the argument of parties on the preliminary objection, the learned trial judge in his considered Ruling dismissed the objection and held that the High Court of Imo State had jurisdiction to entertain the plaintiff's action.

F Dissatisfied with this decision, the Defendant appealed to the Court of Appeal which by majority decision affirmed the decision of the Imo State High Court which held that it had jurisdiction to entertain the plaintiff's claim of N6 Million general damages for loss of its
G Toyota Land Cruiser Jeep.

This is a further appeal against the majority decision of the court below by the Appellant who, raised a sole issue from its one ground of appeal. The issue raised by the Appellant, which the Respondent adopted, reads;

H "Whether having regard to section 251(1) and 272 of the Constitution of the Federal Republic of Nigeria 1999 and sections 73 and 97 of the insurance Act No. 2 of 1997, the High Court of Imo State is vested with jurisdiction to entertain the suit."

It is settled that in the determination of jurisdiction of a court

what the court is enjoined to look closely at are Writ of Summons and the statement of claim of the plaintiff where the action is commenced by a writ of summons or where it is commenced by Originating Summons, the Summons and the affidavit filed in support of the Summons. See ADEYEMI V. OPEYORI 1976, 9 - 10 SC 312, APGA v. ANYANWU (2014) 2 SC. (Pt.1) 1. In the case at hand the plaintiff's claim relates to simple Insurance Contract. B

I have closely examined the provisions of Section 251(1) (a) - (s) of the 1999 Constitution of the Federal Republic of Nigeria (as amended). No where it is shown that jurisdiction to entertain a claim based on simple contract of Insurance was exclusively vested in the Federal High Court, as contended by the Appellant herein. This is a clear misconception. Appellant also argued that Section 73 and 97 the Insurance Act of 1997 vests on the Federal High Court additional jurisdiction on all civil claims arising from Insurance contract. Now D what are the purport of the two foregoing Sections. First Section 73 of the Act which provides:

"73 settlement of claims -

(1) Where -

(a) Civil proceedings are taken in Court in respect of any claim relating to the death of or bodily injury to any person (caused by or arising from the use of a motor vehicle covered by a policy insurance; and E

(b) Judgment is obtained against the person incurred; then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to this Section pay to the person entitled to the benefit of such judgment the sum payable (including costs and interest on such sum) not later than 30 days from the date of delivery Judgment." F G

I disagree absolutely with the learned counsel for the Appellant that the National Assembly can and has by enacting Sections 73 and 97 of the Insurance Act (supra) pursuant to its powers under and by virtue of Section 251 (1) of the Constitution of the Federation of Nigeria, 1999 to include Insurance Matters and thereby ousted the jurisdiction of the State High Court in that regard. It is also of no moment, his argument that by the combined effect of Sections 251 and 315 of the 1999 Constitution and the aforesaid Sections 73 and 97 of the Insurance Act (supra). Insurance matters as in the present H

action are within the exclusive jurisdiction of the Federal High Court. In fact Section 97 is an interpretation Section. It defines the word “Court” used in the Act to mean “Federal High Court.”

Reading carefully the entire provisions of the Act, it is only Section 80 that provides for jurisdiction and prosecution.

B It states thus:

“80. Jurisdiction and prosecution:

(1) An offence under this Act shall, subject to the Rules of Court, be tried in the Federal High Court and references in this Act to “Court” or “the Court” shall be construed accordingly.

C *(2) Prosecution for offences under this Act shall be instituted before the Court in the name of the Federal Republic of Nigeria by the Attorney-General of the Federation or such officer in the Federal Ministry of Justice as he may authorize so to do, and in addition*
D *thereto, he may -*

(a) After consultation with the Attorney-General of any State in the Federation, authorize the Attorney-General or any officer in the Ministry of justice of that State; or

(b) if a Court so directs or if the Commission so requests, authorize any other legal practitioner in Nigeria, to undertake any such prosecution directly or assist therein.

(3) The question whether any or what authority has been given in pursuance of sub-section (2) of this section shall not be inquired into by any person other than the Attorney-General of the Federation.

(4) A person accused of an offence under this Act shall be entitled to defend himself in person or by a person or his own choice who is a legal practitioner resident in Nigeria.”

G I am also of respectful opinion that the jurisdiction conferred on the Federal High Court by Section 80 of the Insurance Act (supra) is a provision in respect of all criminal offence committed under the Act. No Civil Jurisdiction has been conferred by the Act on the Federal High Court.

H In the circumstance, I also agree with my learned brother MOHAMMED CJN that the Imo State High Court has jurisdiction to entertain the Respondent’s claim. The judgment of the court below is accordingly affirmed. I abide by the order made as to costs.

Appeal dismissed.

NGWUTA JSC

I had the privilege of reading in draft the lead judgment prepared and just delivered by my learned brother, Mohammed, CJN.

The lone issue in the appeal has been exhaustively dealt with by His Lordship. Not only do I agree with the reasoning and conclusion leading to the dismissal of the appeal for want of merit, I also adopt the sound reasoning and conclusions as mine. Consequently, I also dismiss the appeal as devoid of merit. I abide by order for costs.

MUHAMMAD JSC

I had a preview of the lead judgment of my learned brother Mahmud Mohammed CJN, just delivered. I entirely agree with his lordship that the appeal lacks merit and dismiss same. I abide by the consequential orders contained in the lead judgment including the order on costs.

OGUNBIYI JSC

The appeal is against the judgment of Port-Harcourt Division of the Court of Appeal delivered on the 3rd day of May, 2007. The judgment arose from the appeal against the ruling of the High Court of Imo State wherein the appellant challenged the jurisdiction of the court to hear and determine the Respondent's (plaintiff's) claim in the writ of summons for indemnity and damages in the sum of N6,000,000.00 (Six Million Naira) for the loss of the Respondent's vehicle insured with the appellant.

The High Court after hearing arguments of counsel delivered a considered ruling and dismissed the appellant's preliminary objection and held that the High Court of Imo State is vested with jurisdiction to entertain the action. An appeal to the Lower Court was dismissed and the trial court's decision was affirmed; hence a further appeal now before us and raises a lone issue as follows:-

"Whether having regards to Sections 251(1) and 272 of the Constitution of the Federal Republic of Nigeria, 1999 and Sections 73 and 97 of the Insurance Act No. 2 of 1997, the High Court of Imo State is vested with jurisdiction to entertain this suit."

The jurisdiction of the State High Court and Federal High Court are clearly spelt out in the relevant provisions of Sections 272(1) and

251(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

The use of the phrase:-

“Subject to the provisions of Section 251 of the Constitution and other provisions of this Constitution” (emphasis supplied)

B In Section 272(1) is very crucial and pre-supposes that the jurisdiction of the State High Court is limited only to the subject matters excluded by Section 251 and other provisions, inclusive of the jurisdiction conferred on the National Industrial Court established under Section 254(A)(B) and (C) of the said Constitution. The exclusive jurisdiction and its limitation in respect of the Federal High Court is also clear cut in Section 251(1) of the Constitution. The general principle of law is well established that the jurisdiction of a court is determined by the plaintiff’s statement of claim which is paramount. Judicial authorities are well entrenched in the cases of *Triumph Assurance Co. Ltd v. Fadlallah & Sons Ltd.* (2000) 1 NWLR (Pt.640) 28 - 94 at 301; *NDIC vs. C.B.N.* (2000) All FWLR (Pt.99) 1021 and *C.G.G. (Nig) Ltd. V. Ogu* (2005) 8 NWLR (Pt.927) 366 at 381- 382.

E With reference made to the record of appeal, the statement of claim reveal the plaintiff is a client of the defendant/appellant in terms of insurance policy taken out over and in respect of his vehicle which was subsequently stolen and hence the simple claim in Insurance contract being the subject matter of this appeal.

F It is the appellant’s argument that the National Assembly have by enacting Section 73 and 97 of the Insurance Act No. 2 of 1997, pursuant to its powers under and by virtue of Section 251(1) of the 1999 Constitution, expanded and extended the exclusive jurisdiction of the Federal High Court to include Insurance matters and thereby ousted the jurisdiction of the State High Courts in that regard. The verification and tenancy of this argument will only be authenticated when Sections 73 and 97 of the Insurance Act is put on the balance. The said two provisions have been plaintiff’s claim before the trial court is a claim in simple contract between the insurer and the insured for indemnity. It is meant for unforeseen future occurrence and not for an incident that has occurred. See *Leadway Assurance Co. Ltd. Vs. J.U.C. Ltd.* (2005) 5 NWLR (Pt.919) 539 and *Ajaokuta Steel Co. Ltd. Vs. Corporate Insurers Ltd.* (2004) 16

NWLR (Pt.899) 369.

Section 251(1) of the Constitution is very clear and not ambiguous. It is not part of the law to import into the Section, a speculation which not intended to be a part thereof. See the case of Adelekan Vs. Ecu-line N.V. (2006) 12 NWLR (Pt.993) 33 at 52 where this court said:-

“that provisions of Section 251 of the Constitution of the Federal Republic of Nigeria 1999 are clear and unambiguous, It is the Section that confers jurisdiction on the Federal High Court, which jurisdiction clearly does not include a case of simple contract or damages for negligence.”

The foregoing principle was enunciated in the earlier case of Onuorah v. K.R.P.C. LTD. (2005) 6 NWLR (Pt.921) 393.

On a careful perusal of Sections 73 and 97 of the Insurance Act, the two do not appear to come within the contemplation held by the appellant. In otherwords, while Section 73 is in respect of settlement of claims, Section 97 is an interpretation Section and they both have no bearing with simple claims in Insurance contracts. Reliance on the provisions does not therefore aide the appellant’s case. Making of a legislation must be specific and clearly spelt out and must leave no one in doubt on the expansion of the Federal High Court in Insurance matters. The absence of such clear enactment in Section 73 and 97 of the Insurance Act as well as Section 251 of the Constitution is an indication that claims in contract are excluded. The argument advanced by the appellant in the circumstance does not hold water therefore. The two Lower Courts are on firm ground that the jurisdiction of the State High Court under Section 272(1) remains resolute and applicable.

The appeal is devoid of any merit and I also dismiss same in terms of the lead judgment.

My learned brother Mahmud Mohammed, CJN has resolved the lone issue comprehensively. I therefore adopt his judgment as mine and also dismiss the appeal as lacking in merit. I further abide by the order made as to costs.

KEKERE-EKUN JSC

This is an appeal against the majority decision of the Court of Appeal, Port Harcourt Division, delivered on 3/5/2007 affirming the

decision of the High Court of Imo State, Owerri, which held that the High Court of Imo State had jurisdiction to entertain the plaintiff's (respondent's) claim for N6 Million general damages for negligence in respect of the loss of its Toyota Land Cruiser Prado Jeep stolen by armed men, which was insured by the Appellant.

B The Appellant (as defendant) filed a preliminary objection dated 19/2/2007 seeking an order striking out the suit for lack of jurisdiction on the following grounds:

1. The cause of action being an insurance policy on the alleged stolen vehicle, the subject matter is outside the jurisdiction of this Honourable Court.

2. The civil jurisdiction of this matter now lies with the Federal High Court by virtue of Part XII Insurance Act No. 2 of 1997.

The law is settled that in determining the jurisdiction of the court in a civil matter, the processes to be considered are the writ of summons and statement of claim where the action is commenced by a writ of summons or where it is commenced by originating summons, the summons itself and the affidavit in support thereof. See: Adeyemi Vs Opeyori (1976) 9 - 10 SC (Reprint) 18; A.G. Federation vs. Guardian Newspapers Ltd & Ors (1999) 9 NWLR (Pt.618) 187; A.G. Anambra State Vs A.G. Federation (2007) 12 NWLR (Pt.1047) 1; APGA Vs. Anyanwu (2014) 2 SC (Pt.1) 1.

In the instant case the plaintiff's claim is for a right to indemnity under a contract of insurance. The applicable law in respect of a cause or matter is the law in force at the time the cause of action arose. See: Uwaifo Vs A.G. Bendel State (1982) 7 SC (Reprint) 58; A.G. Lagos State vs. Dosunmu (1989) 3 NWLR (Pt.111) 552; Utih vs. Onoyivwe (1991) 1 NWLR (Pt.166) 166. By paragraph 8 of the statement of claim the cause of action arose on 27/7/1999, therefore the Constitution of the Federal Republic of Nigeria 1999, which came into force in May 1999 is the applicable law.

It is the Appellant's contention on the one hand, that the subject matter, being insurance, is within the exclusive jurisdiction of the Federal High Court by virtue of the Insurance Act No. 2 of 1997 (Cap. 117 Laws of the Federation of Nigeria (LFN) 2004) and that the said Act is an existing law within the meaning of Section 315 of the 1999 Constitution. The Respondent on the other hand contends that it is a matter of simple contract, which the State High Court has

jurisdiction to entertain. He argued that the Federal High Court is not vested with exclusive jurisdiction to hear insurance matters.

For a clear appreciation of the issue I deem it expedient to consider some of the relevant Constitutional provisions.

Section 272 (1) of 1999 Constitution confers jurisdiction on the State High Court “to hear and determine any civil proceedings in which the existence or extent of a legal right, power/duty, liability, privilege, interest, obligation or claim is in issue...” “subject to the provisions of Section 251 and other provisions of the Constitution.

Section 251(1) provides: “Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters...” It goes on in sub-paragraphs (a) - (r) to specifically set out the causes and matters in which such exclusive jurisdiction shall be exercised. In addition, pursuant to sub-paragraph(s), “*such other jurisdiction, civil or criminal and whether to the exclusion or any other court or not as may be conferred upon it by an Act of the National Assembly.*”

Giving the words used in the above provisions their natural and ordinary meaning, it follows that the jurisdiction of the High Court of a State is clearly ousted in respect of the specific matters enumerated in Section 251 (1) (a) - (r). It is significant to note that nowhere in Section 251 (1) (a) - (r) is insurance mentioned. In other words, on the face of it there is nothing in those provisions that prevents a State High Court from exercising jurisdiction in respect of contracts of insurance or insurance related matters.

There is no doubt that by Section 251(1) (s) of the Constitution, the jurisdiction of the Federal High Court as enumerated in subparagraphs (a) - (r) may be extended by an Act of the National Assembly. Furthermore, by the combined effect of Section 4(1) and (2) and Paragraph 33 of the 2nd Schedule Part 1 of the Constitution the National Assembly is empowered to make laws relating to insurance. By virtue of Section 315 (1) (a) of the Constitution the Insurance Act No. 2 of 1997 is an existing law, not having been repealed before the enactment of the 1999 Constitution.

Under the Insurance Act, Sections 30, 32 and 73 provide for the jurisdiction of the Federal High Court in some matters i.e. sanc-

tion of the court required for the amalgamation of certain types of insurers; petition for winding up; civil proceedings in respect of a claim relating to the death of or bodily injury to any person caused by or arising from the use of a motor vehicle covered by a policy of insurance. None of these provisions is applicable in the present case.

B Throughout the Act, there is no provision conferring exclusive jurisdiction on the Federal High Court in Insurance matters.

As observed earlier, Section 251 (1) (a) - (r) of the Constitution does not confer exclusive jurisdiction on the Federal High Court in relation to Insurance matters. The issue to be determined therefore, is whether the Insurance Act of 1997, being an existing law by virtue of Section 315 (1) (a) of the 1999 Constitution, confers such exclusive jurisdiction on the Federal High Court. Notwithstanding the fact that in Section 97 of the Act, "Court" is interpreted to mean the Federal High Court, the Sections of the law, which refer to the court do not confer exclusive jurisdiction on the Federal High Court nor oust the jurisdiction of the State High Courts to entertain matters relating to simple contracts of insurance. In other words, by virtue of Section 272(1) of the Constitution, the State High Courts are fully competent to hear and determine claims arising from simple contracts of insurance.

Where it is intended to confer exclusive jurisdiction on a court, the relevant law must expressly provide for it. An example of such express provision is to be found in the Supreme Court (Additional Original Jurisdiction) Act Cap.16 LFN 2004, which specifically expanded the original jurisdiction of the Supreme Court. The National Assembly has not enacted any law to expand the exclusive jurisdiction of the Federal High Court beyond what is prescribed in Section 251 (1) (a) - (r) of the Constitution.

G I therefore agree with my learned brother, MAHMUD MOHAMMED, CJN whose lead judgment I was privileged to read before now, that the Imo State High Court has jurisdiction to entertain the claim. For the above stated reasons and the more detailed reasons well articulated in the lead judgment, I also find no merit in this appeal and dismiss it accordingly. I affirm the decision of the Lower Court and abide by the order for costs.