

SUPREME COURT OF NIGERIA
FRIDAY 3RD JULY, 2015. SC. 177/2006
CORAM:- J. A. FABIYI. O. ARIWOOLA,
M. D. MUHAMMAD, C. B. OGUNBIYI, C. C. NWEZE, JJSC

WEMA SECURITIES AND FINANCE PLC APPELLANT
AND
NIGERIA AGRICULTURAL INSURANCE
CORPORATION RESPONDENT

APPEALS - Preliminary objection - Incorporated in brief - CA Rules O. 3 r. 15 - Notice of the objection raised in brief - To which appellant has reacted - Is sufficient compliance with the rule (H1)

APPEALS - Jurisdiction - Fresh issue of - Although a party must seek leave to raise fresh issue - But where issue is on jurisdiction - The same can be raised for the first time on appeal without leave (H2)

COURTS - Federal High Court - Jurisdiction - Extent of - Exclusive jurisdiction of the court is tied to the listed items - And to others as may be conferred upon it by Act of the National Assembly (H3)

CONTRACTS - Jurisdiction - As the action is on simple contract - FHC cannot arrogate itself jurisdiction - Hence CA wrongfully held that trial court lacked jurisdiction to entertain the action (H4)

COURTS - Federal High Court - Jurisdiction - In considering issue of its jurisdiction - Status of the parties and subject matter of the claim must be looked at (H5)

STATUTES - Public Officers Protection Act - Application of - S. 2 of the Act does not apply to cases of contract - Otherwise it will negate the general principles of law of contract (H6)

UNDEFENDED SUITS - Objective of - It is used where the claim is for liquidated money demand - To secure quick justice especially when there is no genuine defence on the merit (H7)

2558 Wema Securities & Finance Plc. v. Nig. Agric. Insu. Corp. (2015)

UNDEFENDED SUITS - Defence - Affidavit in support - Of notice of intention to defend must disclose facts - Which throw some doubt on plaintiff's case (H8)

UNDEFENDED SUITS - Defence on merit - Transfer to general list - Where there is such defence - Justice demands that the matter be transferred to general cause list - For hearing on the pleadings (H9)

INTERESTS - Claim of - Where interest is claimed as a matter of right - Proper practice is to claim entitlement to it on the writ - And plead facts which show such entitlement in statement of claim (H10)

FACTS

Plaintiff/appellant commenced this action against defendant/respondent under the undefended list procedure at the High Court of the Federal Capital Territory, Abuja. Appellant claims the sum of N5,088,211.18 based on an overdraft of N570,000.00 which it extended to one Charles Ogbolu. Upon being served with the writ, respondent filed notice of intention to defend the suit. In the accompanying affidavit, it was averred that respondent was not privy to the loan agreement between appellant and the said Charles Ogbolu.

The court in its judgment, found for appellant as claimed under the undefended list procedure. Aggrieved, respondent appealed to the Court of Appeal Abuja Division. The appeal was allowed. Appellant's claim was struck out on the ground that the trial court lacked jurisdiction to entertain the claim, the action was statute-barred, the action was incompetent having been commenced without the mandatory pre-action notice and that the action was not suitable for placement under the undefended list procedure. Being dissatisfied appellant lodged appeal in the Supreme Court.

ISSUES FOR DETERMINATION

(a) Whether the lower court was right to have discountenanced the Preliminary Objection of the appellant and allow (sic) the new issues raised by the respondent (then appellant) without leave of court?

(b) Whether the lower court was right to have decided that the trial court in the circumstances had no jurisdiction to try the matter?

(c) Whether the lower court was right to have held that the trial court was wrong to have heard and determined the matter un-

der the Undefended List as it did?

HELD (Unanimously allowing the appeal in part and striking out the cross appeal per **NWEZE JSC**)

APPEALS - Preliminary objection - Incorporated in brief

1. With profound respect, quite apart from demonstrating a total misapprehension of the jurisprudential postulate that underlies the provision of Order 3 Rule 15 (supra), the lower court's position smacked of a slavish adherence to the letters of its rules. It cannot be gainsaid that the whole idea behind the said notice requirement is to foreclose the imminence of surprise, with its attendant embarrassment on the appellant. Simply put, the object or purpose of the notice requirement under the above rule is to safeguard against embarrassing an appellant and taking him by surprise.

Even then, a notice of preliminary objection raised in a brief of argument, to which the appellant has reacted, is sufficient compliance with the rule.

Indeed, as with Order 2 Rule 9 of the Supreme Court Rules (as amended in 2009), failure to bring the notice in accordance with Order 3 Rule 15 of the Court of Appeal Rules (supra) does not render it ineffective. Quite apart from that, this court has taken the view that a respondent, who intends to challenge the competence of an appeal, has the option of raising a preliminary objection to it either by giving the appellant three clear days' notice before the date of hearing pursuant to the above rule or by incorporating it in the respondent's brief or both.

On this score, therefore, I find that the lower court, imprudently, discountenanced the said objection having regard to the fact that, apart from raising it in the respondent's brief, the respondent in this appeal (as appellant at the lower court) had, actually, joined issues with the objector in the appellant's reply brief. That was sufficient compliance with the rule.

In all, I resolve the first limb of this issue in favour of the appellant; in other words, the incorporation of its preliminary

objection in the respondent's brief (at the lower court) was sufficient compliance with Order 3 Rule 15 of the Court of Appeal Rules (supra). (pp. 2570 F/2573 D)

Jurisdiction - Fresh issue of

B 2. Of course, it is still a valid general principle that where a party seeks to raise a fresh issue on appeal, he must seek the leave of court. Where he fails to do so, the issue, which ipso facto is rendered incompetent, would be liable to be struck out.

C However, the issue of jurisdiction constitutes an exception to this general principle for it (such an issue of jurisdiction) could be raised for the first time before an appellate court, with or without leave.

D The lower court's view that the issue of jurisdiction could be raised without leave is well-taken. The reason is not far to seek. Due to its fundamental nature, it is exempted from the disabilities and restrictions which hamper other legal points from being canvassed or agitated for the first time on appeal.

E In effect, such an issue of jurisdiction could always be raised without leave.

In consequence, it can never be too late to raise the issue of jurisdiction because of its fundamental and intrinsic nature and effect in judicial administration.

F Thus, although it is desirable that preliminary objections on issues of jurisdiction be raised early, once it is apparent to any party that the court may not have jurisdiction, it can be raised even viva voce. What is more, it is always in the interest of justice, where necessary, to raise jurisdictional issues so as to save time and costs and to avoid a trial which may, ultimately, amount to a nullity. However, the second limb of the said issue, that is, the issue of jurisdiction raised before the lower court without its leave, must be, and is hereby, resolved against the appellant. The lower court's view on the point was well-taken.

A jurisdictional issue, such as the one under consideration, could be canvassed, for the first time, on appeal, without leave of that court. (pp. 2571 H/2573 E)

COURTS - FHC - Jurisdiction - Extent of

3. In effect, the drafts person, deliberately, itemized the matters which are intended to be under the exclusive jurisdiction of that court. Simply put, therefore, that court is a court of enumerated jurisdiction and, a fortiori, its exclusive jurisdiction is expressly tied to those items enumerated there-under. As such, in the exercise of its said exclusive jurisdiction, that court (the Federal High Court) can only orbit within the universe of those enumerated issues and to others as may be conferred upon it by an Act of the National Assembly. (p. 2579 E)

CONTRACTS - Jurisdiction

4. However, actions on simple contract are not included in those items enumerated above, as such, the court cannot arrogate to itself a jurisdiction only exercisable by the trial court or a State High Court, on such simple contractual matters as the one which the appellant tabled before the trial court. From all I have said so far, it is unarguable that the drafts person of the said Section 251(1) (supra) could not have contemplated that the loan agreement which was facilitated by the respondent's letter of domiciliation would come under the jurisdiction of the Federal High Court. The lower court was, therefore, wrong in holding that the trial court lacked the jurisdiction to entertain the action. It, surely, has the requisite Jurisdiction under Section 257(1) of the Constitution. (pp. 2579 H/2585 H)

COURTS - FHC - Jurisdiction - Determination - Basis

5. Now, from a conspectus of recent decisions, it would be correct to assert that this court has now, taken the position that in considering the issue of the jurisdiction of the Federal High Court under Section 251(1) (supra), both the status of the parties (that is whether it is the Federal Government or any of its agencies) and the subject matter of the claim (that is, whether it relates to any of the enumerated items in the said section) have to be looked at.

From the tenor and context of the above provisions, that is, Section 251(1)(c); (d); (e); (f); (g); (h); (i); (j); (k); (l); (m); (n) and (o) (supra), the drafts person would seem to leave no one in doubt that it is the subject matter of the claim of the plaintiff that would be determinative of the jurisdiction of the court.

- B As such, in an action involving any of the above sub-paragraphs, the court's duty may, simply, be to find out if the plaintiff's claim could be pitch-forked into any of the items in the above sections. If it could be factored into any of them, then it is only the Federal High Court that has the jurisdiction subject to the observations to be made subsequently in this judgment under the proviso to Section 251(1)(d) (supra).**
(pp. 2580 C/2581 F)

- D STATUTES - Public Officers Protection Act - Application of**
6. It is now settled law that Section 2 of the Public Officers Protection Act (and all such enactments similarly worded like it, for example, Section 26(1)(a) and (b) of the Nigerian Agricultural Insurance Act (supra)) do not apply to cases of contract.

- E To hold otherwise would be to negate the general principles upon which the Law of Contract is based, per Rhodes-Vivour JSC in Ugwuanyi v. NICON Insurance Plc (2013) LPELR -20092 (SC) which I, approvingly, adopt as part of my reason in this judgment. I, therefore, hold that the lower court erred in its conclusion on this point. I resolve this issue in favour of the appellant.** (p. 2586 D/H)

- G UNDEFENDED SUITS - Objective of**
7. Now, it is no longer open to argument that the Undefended List Procedure is a truncated form of the civil litigation process peculiar to the adversarial judicial system. Under the said procedure, ordinary hearing is rendered unnecessary due, in the main, to the absence of an issue to be tried. Essentially, therefore, it is designed to secure quick justice and to avoid the injustice likely to occur when there is no genuine defence on the merits to the plaintiffs case.

It is, usually, meant to shorten the hearing of a suit where

the claim is for a liquidated sum.

Put differently, the object of the rules relating to actions on the undefended list is to ensure quick dispatch of certain types of cases, such as those involving debts or liquidated money claims.

Such rules are, thus, designed to relieve the courts of the rigour of pleadings and burden of hearing tedious evidence on sham defences mounted by defendants who are just determined to dribble and cheat plaintiffs out of reliefs they are normally entitled to because the case is, patently, clear and unassailable. (pp. 2588 D/2589 B) ^B ^C

UNDEFENDED SUITS - Defence - Affidavit in support

8. However, this procedure is not designed to shut out a defendant who can show in his affidavit in support of intention to defend that there is, indeed, a triable issue. ^D

For this purpose, the said affidavit in support of the notice of intention to defend must, of necessity, disclose facts which will, at least, throw some doubt on the case of the plaintiff. This it can achieve by donating facts which, on the face of the affidavit, disclose a reasonable defense. The affidavit should not, merely, parade general statements that the defendant has a good defence to the action. Such a general statement must be supported by particulars which, if proved, would constitute a defense. ^E ^F

However, it would suffice if the affidavit discloses facts which point to the subsistence of difficult points of law; to a dispute as to the facts which ought to be tried; to a real dispute as to the amount due which could only be resolved by settling accounts or any other circumstances showing reasonable grounds of a bona fide defense. (p. 2589 E) ^G

UNDEFENDED SUITS - Defence on merit - Transfer to general list

9. In all, what will constitute a defence on the merit will depend on the facts of the case. This is within the discretion of the trial court: a discretion which must be exercised judicially and judiciously after a full and exhaustive consideration of the affidavit in support of the notice to defend. ^H

In effect, where such a defence is disclosed, the justice of the case would demand that the matter be transferred to the General Cause List for hearing on the pleadings.

(p. 2590 C)

B INTERESTS - Claim of

10. Where interest is being claimed as a matter of right, the proper practice is to claim entitlement to it on the writ and plead facts which show such an entitlement in the statement of claim.

C As noted above, there was no such averment in the plaintiff's averments in the affidavit in support of his application indicating either that the said claim relating to interests was contemplated by the agreement between the parties, or under a mercantile custom, or under a principle of equity such as breach of a fiduciary relationship. (p. 2591 C)

NOTABLE POINT OF INTEREST

FABIYI JSC

E 1. Liquidated sum – Meaning of

F What then is a liquidated 'sum' or 'damages'? Damages is said to be liquidated when a specific sum of money has been expressly stipulated by the parties to a bond or other contract as the amount of damages to be recovered by either party for a breach of the agreement by the other side.

It is now clear that the factors for determining a liquidated sum are as follows:-

G (a) The sum must be arithmetically ascertainable without further investigation.

(b) If it is in reference to a contract, the parties to same must have mutually and unequivocally agreed on a fixed amount payable on breach.

H (c) The agreed and fixed amount must be known prior to the breach. (p. 2593 B)

REPRESENTATION

Rotimi Seriki; for the Appellant

Innocent Njaka; for the Respondent

CASES REFERRED TO

- Auto Import Export v. Adebayo (2003) 7 WRN 1
 Nsirim v. Nsirim (1990) 3 NWLR (pt. 138) 285
 Jov v Dom (1999) 9 NWLR (pt. 620) 538 B
 Oforkire v. Maduiké (2003) 13 NSCQR 339
 Gaji v. Paye (2003) 8 NWLR (pt. 823) 583
 Durwode v. State (2000) 15 NWLR (pt. 691) 467
 Mgt. Enterprises Ltd. v. Otusanya (1987) 18 NSCC 577 C
 Ijebu Ode L.G. v. Balogun & Co (1991) 1 NWLR (pt. 166) 16
 Onyema v. Oputa (1987) 3 NWLR (pt. 60) 259
 Skenconsult (Nig) Ltd. v. Ukey (1981) NSCC 1
 UNIJOS v. Carlen (Nig) Ltd (1992) 5 NWLR (pt. 241) 352
 Shitta-Bey v. A-G Federation (1998) 10 NWLR (pt. 570) 392 D
 Agbaka v. Amadi (1998) 11 NWLR (pt. 572) 16
 Maigoro v. Garba (1999) 10 NWLR (pt. 624) 555
 Ajide v. Kelani (1985) 2 NSCC 1298

STATUTES & RULES REFERRED TO

- Constitution of the Federal Republic of Nigeria 1999, ss. 251, 257
 Public Health Act 1875 of England, s. 264
 Ports Act, s. 97
 Federal High Court Act, Cap. 134 LFN 1990, s. 7
 Nigerian Agricultural Insurance Act, s. 26(1)(a)(b) F
 Court of Appeal Rules, O. 3 r. 15

LEAD JUDGMENT BY NWEZE JSC

The appellant in this appeal, (as plaintiff), took out a Writ under the Undefended List at the High Court of the Federal Capital Territory against the respondent in this appeal (as defendant). The claim, which was for the sum of Five Million, Eighty Eight Thousand, Two Hundred and Eleven Naira, Eighteen Kobo (N5,088,211.18), was predicated on an overdraft of Five Hundred and Seventy Thousand (N570,000.00) which the plaintiff, allegedly, extended to one Charles Ogbolu. G H

Pursuant to the applicable rules of the said court (hereinafter, simply, referred to as “the trial court”), the respondent filed a Notice

of intention to defend. In the accompanying affidavit, it was averred that the respondent was not privy to the alleged loan agreement between the appellant and the said Charles Ogbolu.

The trial court entered judgment, as claimed, under the Unde-
 B defended List. Dissatisfied, the respondent approached the Court of
 Appeal, Abuja Division, which after due hearing, in its judgment of
 December 8, 2005, allowed the appeal. In consequence, the said
 court (in this judgment, simply, called “the lower court”) struck out
 the appellant’s claim on the ground that (a) the trial court lacked the
 C jurisdiction to entertain the claim; (b) the action was statute-barred;
 (c) the action was incompetent having been commenced without the
 mandatory pre-action Notice and (d) the action was not suitable for
 placement under the Undeferred List procedure.

The aggrieved appellant (respondent at the lower court), then,
 D turned to this court with its complaints against the said judgment. It
 entreated the court to determine the following four questions:

(a) Whether the lower court was right to have discountenanced
 the Preliminary Objection of the appellant and allow (sic) the new
 issues raised by the respondent (then appellant) without leave of court?

E (b) Whether the lower court was right to have decided that the
 trial court in the circumstances had no jurisdiction to try the matter?

(c) Whether the lower court was right to have held that the
 trial court was wrong to have heard and determined the matter un-
 der the Undeferred List as it did?

F (d) Whether the lower court could raise and determine an is-
 sue suo motu without hearing the parties?

On the other hand, the respondent re-phrased the said issues
 in these words:

G (1) Whether the Court of Appeal was not right to have consid-
 ered the issue of jurisdiction raised by the respondent and discounte-
 nanced the Preliminary Objection raised by the appellant for non-
 compliance with Order 3 Rules 15 of the Court of Appeal (sic, Rules)?;

H (2) Was the Court of Appeal was (sic) not right to have struck
 out the appellant’s action at the High Court for lack of jurisdiction?

(3) Whether the Court of Appeal (sic) not right to have held
 that the trial court ought to have transferred the appellant’s action to
 the General Cause List?

(4) Was the finding of the Court of Appeal that the appellant’s

claim is not suitable for trial under the Undefended List Procedure (because the claim also demanded interest) not founded on issues and points raised by the parties?

Having regard to the concision of their phraseology, the tenor of the appellant's issues is preferable and shall be adopted in the determination of this appeal. However, for reasons that would soon be obvious, only issues one, two and three will suffice in the determination of this appeal. They will be attended to seriatim. B

ARGUMENTS ON THE ISSUES

ISSUE ONE

Whether the lower court was right to have discountenanced the Preliminary Objection of the appellant and allow (sic) the new issues raised by the respondent (then appellant) without leave of court? C

APPELLANT'S SUBMISSIONS

When this appeal came up for hearing on April 14, 2015, counsel for the appellant, Rotimi Seriki, adopted the appellant's brief of argument filed August 1, 2007; the reply brief filed on March 30, 2010 and the cross respondent's brief filed on March 30, 2010 but deemed, properly, filed on May 14, 2013. D

With regard to this first issue, counsel explained that the respondent in this appeal (as appellant at the lower court) raised new issues that were not canvassed at the trial court. These were: that the respondent in this appeal (as appellant at the lower court), being an agency of the Federal Government, the trial court could not entertain any matter against it irrespective of the subject matter. It was, equally, contended that the action at the trial court was statute-barred by virtue of the Public Officers' Protection Act. E F

The present appellant (as respondent at the lower court) raised a preliminary objection in its brief of argument. The crux of the objection was that the respondent herein (as appellant at the lower court) was wrong to have raised the said new issues without leave of the lower court. The said lower court discountenanced the preliminary objection on the ground that three clear days' notice was not given to the respondent herein (as appellant) as stipulated by Order 3 Rule 15(1) of the Court of Appeal Rules (then applicable to the proceedings). G H

Counsel contended that the essence of the above rule was to put the appellant on notice of the objection raised within three days.

He noted that the preliminary objection was raised in the respondent's brief and the present respondent (as appellant at the lower court) replied to the objection in its Reply brief. Above all, the appeal was not argued until much later, precisely, five months later; thereby giving the appellant at the lower court more time than the three days
 B prescribed by the said rule, citing *Auto Import Export v Adebayo* (2003) 7 WRN 1; *Nsirim v Nsirim* (1990) 3 NWLR (Pt 138) 285, 296.

He drew attention to the two jurisdictional issues which the
 C present respondent (as appellants) raised at the lower court, namely, that being an agency of the Federal Government, the trial court could not exercise jurisdiction over it and that the action was statute-barred since it was not commenced within the three months' period as stipulated by the Public Officers' Protection Act. In his view, these new
 D jurisdictional issues could not have been canvassed for the first time at the lower court without its leave. Put simply, he emphasised the point that, though the issue of jurisdiction could be raised at any time, it must be with leave of court, *Owie v Ighiwi* 21 NSCQR 207, 226; *Jov v Dom* (1999) 9 NWLR (Pt 620) 538, 547. He maintained
 E that the lower court was in error in discountenancing the preliminary objection the appellant, as respondent, brought at the lower court.

RESPONDENT'S CONTENTION

On his part, counsel for the respondent adopted the
 F respondent's brief filed on December 11, 2006, although deemed, properly, filed on April 25, 2007. In the said brief, he took the view that the lower court, rightly, dismissed the said objection since, according to him, it was in contravention of Order 3 Rule 15 (*supra*). He cited *Nsirim v Nsirim* (1990) 3 NWLR (Pt 138) 285, 297; *Ofokire*
 G *v Maduiké* (2003) 13 NSCQR 339; (2003) 5 NWLR (Pt 812) 166, 178; *Gaji v Paye* (2003) 8 NWLR (Pt 823) 583, 599; *Durwode v State* (2000) 15 NWLR (Pt 691) 467, 479 and devoted paragraphs 1.1 - 1.8, pages 2-12 of the respondent's brief to the Court of Appeal decisions on this point. He observed that the lower court could
 H even have raised the jurisdictional issues *suo motu*, *Management Enterprises Ltd and Anor v Otusanya* (1987) 18 NSCC 577; (1987) ANLR 375, 382; *Ijebu Ode Local Government v. Adedeji Balogun and Co* (1991) 1 NWLR (Pt 166) 16, 153 and that, indeed, the said issues could be raised without leave of court. He litanised a host of

authorities, pages 6 et seq.

He urged the court not to overlook the said issues of jurisdiction since parties cannot confer jurisdiction on a court by consent, *Onyema v Oputa* (1987) 3 NWLR (Pt 60) 259, 262; *SkenConsult (Nig) Ltd v Ukey* (1981) NSCC 1, 3; *UNIJOS v Carlen (Nig) Ltd* (1992) 5 NWLR (Pt 241) 352, 357; *Shitta-Bey v AG Federation* B (1998) 10 NWLR (Pt 570) 392, 408.

APPELLANT'S REPLY

As noted above, counsel for the appellant, also, adopted the Reply brief filed on March 30, 2010. In it he re-iterated the point that the lower court discountenanced the said objection because it did not comply with Order 3 Rule 15 (supra) in that it was not brought by way of a motion that gave three days' notice to the respondent (as appellant at the lower court). C

RESOLUTION OF THE ISSUE

What prompted this issue was the lower court's view on the preliminary objection which the appellant in this appeal (as respondent) filed at the lower court. Although the said objection was incorporated in the respondent's brief, the respondent in this appeal (as appellant at the lower court) was not given the three days' notice prescribed by Order 3 Rule 15 of the Rules of the lower court (then in force). D E

Order 3 Rule 15 (supra) provided thus:

A respondent intending to rely upon a preliminary objection to the hearing of the appeal shall give the appellant three clear days notice thereof before the hearing, setting out the grounds of the objection, and shall file such notice together with twenty copies thereof with the Registrar within the same time. F

According to Order 3 Rule 15(3): G

If the respondent fails to comply with this rule the court may refuse to entertain the objection or may adjourn the hearing thereof at the cost of the respondent or may make such other order as it thinks fit.

Instructively, the respondent herein (as appellant at the lower court) replied to the objection in its Reply brief. However, the lower court saw the matter differently. After citing the above provisions, it proceeded thus: H

"I have looked in the court's file of this case. I have not been

- informed by the Registrar of the court that the respondent filed any notice of preliminary objection. The provision of the rule are (sic) mandatory and the respondent has failed to file the requisite Notice of Intention to raise a preliminary objection or (sic) the hearing of those issues to prevent the appellant from pleading in the letters (sic) brief lack of jurisdiction of the court on the second defendant/appellant render (sic) the trial of the second defendant a nullity. It is now late to adjourn the hearing of the appeal as briefs on both side (sic) have been adopted. In the event I refuse to countenance the preliminary objection and rule as valid the submission of the appellant that the Federal Capital Territory High Court has no jurisdiction on the second defendant for the following reasons (1) That the second defendant is an agency of the Federal Government and by the provisions of Schedule 2 of the 1999 Constitution it is only subject to the jurisdiction of the Federal High Court. Secondly, the action against the second defendant/appellant was commenced after the expiration of three months provided by the law for the period within which an action may commence against a public body... ” (Pages 178-179 of the record)*
- E In other words, just because the appellant in this appeal (as respondent/objector at the lower court) did not scrupulously comply with the provisions of Order 3 Rule 15 (supra), the lower court discountenanced its objection. It did not matter to it that the respondent herein (as appellant at the lower court) had replied to the said objections in its reply brief. Interestingly, although the parties had joined issues on the said objection, the appeal (and, by implication, the objection) did not come up for hearing until five months after the consummation of the filing of the processes.
- G ***With profound respect, quite apart from demonstrating a total misapprehension of the jurisprudential postulate that underlies the provision of Order 3 Rule 15 (supra), the lower court’s position smacked of a slavish adherence to the letters of its rules. It cannot be gainsaid that the whole idea behind the said notice requirement is to foreclose the imminence of surprise, with its attendant embarrassment on the appellant. Simply put, the object or purpose of the notice requirement under the above rule is to safeguard against embarrassing an appellant and taking him by surprise.*** Magit v. University of Agri-

culture, Makurdi and Ors (2005) LPELR 1816 (SC) 29, B-F; Agbaka and Ors v. Amadi and Anor (1998) 11 NWLR (Pt. 572) 16, 25; (1998) 7 SCNJ 367, 375-376; Auto Import Export v Adebayo and Ors (2002) 18 NWLR (Pt. 799) 554; (2002) 2 SCNJ 124, 139.

Even then, a notice of preliminary objection raised in a brief of argument, to which the appellant has reacted, is sufficient compliance with the rule. Ajide v. Kelani (1985) 3 NWLR (pt. 12) 248; Agbaka & Ors. v Amadi and Anor (supra).

Indeed, as with Order 2 Rule 9 of the Supreme Court Rules (as amended in 2009), failure to bring the notice in accordance with Order 3 Rule 15 of the Court of Appeal Rules (supra) does not render it ineffective. Agbaka v Amadi and Anor (1998) 7 SCNJ 367, 375; Maigoro v Garba (1999) 10 NWLR (Pt. 624) 555; (1999) 7 SCNJ 270; Ajide v. Kelani (1985) 2 NSCC 1298, 1306. **Quite apart from that, this court has taken the view that a respondent, who intends to challenge the competence of an appeal, has the option of raising a preliminary objection to it either by giving the appellant three clear days' notice before the date of hearing pursuant to the above rule or by incorporating it in the respondent's brief or both.** Magit v University of Agriculture, Makurdi and Ors (supra) 29, B-F; Equity Bank of Nigeria Ltd. vs. Halilco Nig. Ltd. (2006) 7 NWLR (Pt.980) 568.

On this score, therefore, I find that the lower court, imprudently, discountenanced the said objection having regard to the fact that, apart from raising it in the respondent's brief, the respondent in this appeal (as appellant at the lower court) had, actually, joined issues with the objector in the appellant's reply brief. That was sufficient compliance with the rule. Ajide v. Kelani (supra); Agbaka and Ors. v Amadi and Anor (supra).

The second limb of the appellant's submission was that the lower court erred in allowing the respondent herein (as appellant at the lower court) to canvass new jurisdictional issues for the first time before it without its leave. Although, he conceded that the issue of jurisdiction could be raised at any time, he maintained that it could not be done without the leave of court.

Of course, it is still a valid general principle that where a party seeks to raise a fresh issue on appeal, he must seek the leave of court. Where he fails to do so, the issue, which

ipso facto is rendered incompetent, would be liable to be struck out. A-G., Oyo State v Fairlakes Hotel Ltd (1988) 12 SC (Pt. 1) 1; (1988) 5 NWLR (Pt.92) 1; Uor v Loko (1988) 2 NWLR (Pt.77) 430.

However, the issue of jurisdiction constitutes an exception to this general principle for it (such an issue of jurisdiction) could be raised for the first time before an appellate court, with or without leave. Obiakor and Anor v.

The State (2002) 10 NWLR (Pt. 776) 612, 626 G; Gaji v. Paye (2003) 8 NWLR (Pt. 823) 583; Oyakhire v The State (2006) 7 SCNJ 319, 327 - 328; (2006) 15 NWLR (Pt.1001) 157; Okoro v. Nigerian Army Council (2000) 3 NWLR (Pt.647) 77, 90 - 91; Ajakaiye v. Military Governor, Bendel State (1993) 9 SCNJ 242; Yusuf v. Cooperative Bank Ltd (1994) 7 NWLR (Pt. 359) 676.

The lower court's view that the issue of jurisdiction could be raised without leave is well-taken. The reason is not far to seek. Due to its fundamental nature, it is exempted from the disabilities and restrictions which hamper other legal points from being canvassed or agitated for the first time on appeal.

Western Steel Works Ltd and Anor. v. Iron Steel Workers Ltd (1987) 2 NWLR (Pt 179) 188. ***In effect, such an issue of jurisdiction could always be raised without leave.*** Aderibigbe v. Abidoye (2009) 10 NWLR (Pt.1150) 592, 615, paragraphs. C - G; Comptroller Nigeria Prisons Services Lagos v. Adekanye (2002) 15 NWLR (Pt.790) 33; Obatoyinbo v Oshatoba (1996) 5 NWLR (Pt.450) 531; Management Enterprises Ltd. v. Otusanya (1987) 2 NWLR (Pt 179) 188.

In consequence, it can never be too late to raise the issue of jurisdiction because of its fundamental and intrinsic nature and effect in judicial administration. Magari v Matari (2000) 8 NWLR (Pt 670) 722, 735; Akegbe v Ataga (1998) 1 NWLR (Pt 534) 459, 465; State v Onagoruwa (1992) 2 SCNJ 1; A.G., Lagos v Dosumu (1989) 3 NWLR (Pt.111) 552. Indeed, leave of the appellate court is unnecessary since it can itself raise it suo motu as soon as sufficient facts or materials are available for it to do so, Obikoya v. The Registrar of Companies (1975) 4 SC 31, 35; NNPC v Orhiowasele and Ors (2013) LPELR - 20341 (SC); Elabanjo v Dawodu (2006) 15 NWLR (Pt.1001) 76; Ndaejo v. Ogbonnaya (1977) 1 SC 11; Chacharos v. Ekimpex Ltd (1988) 1 NWLR (Pt. 68) 88; Bakare v.

A.G. Federation (1990) 5 NWLR (Pt. 152) 516; Oyakhire v. State (2006) 15 NWLR (Pt.1001) 157; Oloriode v. Oyebe (1984) 1 SCNLR 390; Ezomo v. Oyakhire (1985) 1 NWLR (Pt 2) 193; Akegbeja v. Ataga (1998) 1 NWLR (Pt 534) 459, 468; 469; Bronik Motors v. Wema Bank Ltd (1983) 6 SC 158; Senate President v Nzeribe (2004) 41, WRN 60; Odiase v Agbo (1972) 1 All NLR (Pt 1) 170; Dickson Moses v The State (2006) 7 SCM 137, 169. B

Thus, although it is desirable that preliminary objections on issues of jurisdiction be raised early, once it is apparent to any party that the court may not have jurisdiction, it can be raised even viva voce. What is more, it is always in the interest of justice, where necessary, to raise jurisdictional issues so as to save time and costs and to avoid a trial which may, ultimately, amount to a nullity. Osadebay v. A-G., Bendel State (1991) 1 NWLR (pt. 169) 525; Owoniboyes Tech. Services Ltd v John Holt Ltd (1991) 6 NWLR (Pt.199) 550; Okesuji v. Lawal (1991) 1 NWLR (pt. 170) 661; Katto v. Central Bank of Nigeria (1991) 9 NWLR (pt. 214) 126; Utih v. Onoyivwe (1991) 1 NWLR (pt. 166) 166. C D

In all, I resolve the first limb of this issue in favour of the appellant; in other words, the incorporation of its preliminary objection in the respondent's brief (at the lower court) was sufficient compliance with Order 3 Rule 15 of the Court of Appeal Rules (supra). However, the second limb of the said issue, that is, the issue of jurisdiction raised before the lower court without its leave, must be, and is hereby, resolved against the appellant. The lower court's view on the point was well-taken. E F

A jurisdictional issue, such as the one under consideration, could be canvassed, for the first time, on appeal, without leave of that court. Western Steel Works Ltd and Anor. v. Iron Steel Workers Ltd (supra); Aderibigbe v. Abidoye (supra) 615 paragraphs. C - G; Comptroller Nigeria Prisons Services Lagos v Adekanye (supra); Obatoyinbo v Oshatoba (supra); Management Enterprises Ltd v Otusanya (supra). G H

ISSUE TWO

Whether the lower court was right to have decided that the trial court in the circumstances had no jurisdiction to try the matter?

On this issue, counsel noted that it was the view of the lower

court that, as an agency of the Federal Government, the respondent herein was only subject to the jurisdiction of the Federal High Court. He challenged this position on two main grounds. In the first place, he pointed out that the respondent was, merely, a property of the Federal Government, *FMBN v Olloh* (2002) 30 WRN 1, 9. He also
 B canvassed the view that, since the dispute between the parties revolved around a simple contract, the trial court was the proper forum and not the Federal High Court, citing Section 257(1) and (2) of the Constitution of the Federal Republic of Nigeria (as amended)
 C on the jurisdiction of the trial court and Section 251 of the said Constitution with regard to the jurisdiction of the Federal High Court, *Onuorah v Kaduna Refining and Petrochemical Co Ltd* (2005) 6 MJSC 137; *FGN v Zebra Energy Ltd* (2002) 18 NWLR (Pt 798) 162.

D He made the point that, in determining whether a court is imbued with the requisite jurisdiction to deal with a matter, it is the Statement of Claim that would be given paramount consideration, *Tukur v Government of Gongola State* (1989) 4 NWLR (Pt 117) 517 because the plaintiff's claim is the determinant of jurisdiction,
 E *Onuorah v Kaduna Refining and Petrochemical Co Ltd* (2005) 6 MJSC 137; (2005) 16 WRN 1, 148; 153. He explained that the plaintiff's claim at the trial court, as per the Writ, was for the recovery of outstanding loans granted to the first defendant on the strength of the second defendant's domiciliation letter.

F He, further, contended that, having regard to Section 257 of the Constitution (supra), which confers general and unlimited powers to the trial court with respect to matters emanating from the Federal Capital Territory, the trial court had the requisite jurisdiction over
 G the matter, *Jack v University of Agriculture, Makurdi* (2004) 14 WRN 91, 106.

He took the view that the provisions of Section 26(1)(a) and (b) of the Nigeria Agricultural Insurance Act, is in pari materia Section 2(a) of the Public Officers' Protection Act; Section 264 of the Public
 H Health Act, 1875 of England and Section 97 of the Ports Act, are inapplicable to actions for recovery of land, breach of contract and claims for work and labour done, *FGN v Zebra Energy Ltd* (supra). He observed that a public officer would even lose the protection affordable under the Act if his action amounts to an abuse of office or

was done in bad faith, *Offoboche v Ogoja Local Government* (2001) 16 NWLR (Pt 73) 458.

In his view, the effect of Section 26(2) and (3) of the Nigerian Agricultural Insurance Corporation Act, dealing with pre-action notice, is to protect the said public corporation against unexpected imminent legal action thereby giving it an opportunity to consider settlement. He pointed out that, on July 22, 2002, the appellant gave notice to the respondent of its intention to commence action to recover its outstanding debt if, within fourteen days, the sum due was not paid over to it. The action was, however, not filed until about a year after the notice which, he maintained, was well over the one month's notice required by the above sections. He submitted that the said notice, evidenced in the above letter of July 22, 2002, was sufficient compliance with the said pre-action notice requirement, *Mobil Prod (Nig) Unltd v LASEPA* (2002) 18 NWLR (Pt 798) 1, 36.

He maintained that where the intention and identity of a prospective plaintiff were clearly manifested in a letter, it would amount to technicality to insist on strict compliance with the niceties of pre-action requirements, *Mobil Prod (Nig) Unltd v LASEPA* (supra) 99 pointing out that courts now de-emphasise technicalities, *C and C Const. Co Ltd. v. Okhai* (2003) 18 NWLR (Pt 851) 79, 103-104.

RESPONDENT'S SUBMISSIONS

For the respondent, it was contended that the lower court, rightly, held that the trial court had no jurisdiction due to the presence of an agent of the Federal Government; the extinction of the appellant's right of action by Section 26(1)(a) and (b) (supra) and Section 2(a) of the Public Officers' Protection Act and the absence of pre-action notice. He ruled out the applicability of *FMBN v Olloh* (supra).

He contended that since the respondent was established as a Corporation by an Act of the National Assembly, it qualifies as a Federal Government agent, *Idoniboye-Obu v NNPC* (2003) 2 NWLR (Pt 805). He invited the court to hold that, since it has been established that the second respondent is an agent of the Federal Government, the nature of the action was immaterial, *NEPA v Edegbenro and Ors* (2002) 18 NWLR (Pt 798) 79, 97; *CBN v SAP Nig Ltd* (2004) 37 WRN 103; *FGN v Oshiomole* (2004) 25 WRN 50, 63.

In his submission, an appellate court is in the same position as

the trial court in the determination of the issue of limitation law, *Woherem v Emereuwe* (2004) 13 NWLR (Pt 890) 398, 403 and, in this regard, he pointed out that, by virtue of Section 26(1)(a) and (b) (supra), the action was statute-barred, *Olatunbosun v N.I.S.E.R.C.* (1988) 1 NSCC 1025, 1030. He maintained that the section is applicable irrespective of the nature of the action as the Act did not make any distinction between nature or cause of action, *Eboigbe v NNPC* (1994) 5 NWLR (Pt 347) 649. He insisted that *FGN v Zebra Energy Ltd* (supra) is inapplicable.

He disclaimed the submission that the respondent waived its right to pre-action notice. He observed that the series of letters which the parties exchanged did not qualify as pre-action notice, *NPA v Nweke* (1972) NCLR 100, 112; *T.R.T.K.A.D. v. Asa Local Government* (2003) 32 WRN 53, 65 and that, even then, the proper notice must be served as required by law. He urged the court to uphold the decision of the lower court, *City Engineering v NAA* (1999) 6 SCNJ 263.

APPELLANT'S REPLY

Counsel for the appellant, quite apart from re-iterating his earlier submissions, maintained that the jurisdiction of the Federal High Court is limited to the subject matters listed in Section 251 of the Constitution (supra). He, equally, re-iterated the submission that the respondent, not being an agent of the Federal Government, could not invoke the Public Officers' Protection Act. He pointed out that, since the respondent went through the trial without raising the issue, it could no longer be raised now as it must be deemed to have waived it, being an issue of procedural jurisdiction, *Ex Parte Ojiegbo* (1962) 1 ANLR 40. He urged the court to rely on *Amadi v NNPC* (supra) in stressing that the essence of a pre-action notice is to put the respondent on notice of an impending action.

RESOLUTION OF THE ISSUE

What prompted the lower court's view, now being impugned, was the submission of the respondent in this appeal (as appellant at the lower court) at page 75 of the record. According to him "*where an action falls within the category listed in paragraphs (a) - (g) of Section 251(1) of the Constitution (of the Federal Republic of Nigeria (as amended)), the Federal High Court is the only court imbued with the jurisdiction to entertain the action.*"

In resolving the divergent submissions of counsel before it, the court held that the trial court (the High Court of the Federal Capital Territory) “*has no jurisdiction on the second defendant (because it) is an agency of the Federal Government...*” (page 178 of the record, italics supplied for emphasis). In this appeal, this open-ended view of the lower court has thrown up the well-worn conundrum regarding the interpretation of Section 251(1) of the Constitution (supra) with regard to the jurisdiction of the Federal High Court. B

My Lords, permit me to take the liberty of this leading judgment to re-iterate the disenchantment I expressed on this nagging question in 2009, that is, about six years ago. Speaking for the Court of Appeal, Ilorin Division, in my leading judgment in *Oladipo v Nigerian Customs Service Board* (2009) 12 NWLR (Pt 1156) 563; (2009) LPELR - 8278 (CA), I voiced my worry over this development, which had become an albatross on efficient Case flow management both at the Federal High Court and the State High Courts, in these words, which I, respectfully, adopt as part of my reasons in this judgment: C

The prototype enactment that spelt out the substantive jurisdiction of what is now known as the Federal High Court was the Federal Revenue Court Act No 13 of 1973. Somewhat, enigmatically, ever since the evolution of that court as a superior court of record in Nigeria, that is, for about thirty six years now (forty two years in 2015), the determination of the question of its substantive jurisdiction has been enveloped in a web of recondite. D

Prior to the inauguration of the 1999 Constitution, the determination of the precise extent of the court’s jurisdiction had become such a heady and exciting question that it provoked a handful of forensic contests, see, C. C. Nweze, “*Jurisdiction of the State High Court*”, in E. Azinge (ed.), *Jurisprudence of Jurisdiction* (Abuja: Oliz G Publisher, 2005) 85, 90, citing *Jammal Steel Structures Ltd v ACB Ltd* (1973) 11 SC 77; *Bronik Motors Ltd and Anor v Wema Bank Ltd* (1993) 6 SC 1; *American International v Ceekay* (1981) 5 SC 87; *Savannah Bank v Pan-Atlantic Shipping Transport Shipping Agencies* (1987) 1 SCNJ 88 etc. F

Expectably, these developments elicited engaging responses from jurists: A.G. Karibi-Whyte, *The Federal High Court: Law and Practice* (Enugu: FDP 1986); A. Emiola, “*Implication and Complications of Federal High Court (Amendment) Decree 1991*”, in Oct-Dec H

1992 Jus. 1; M. B. Belgore, “The Parallel System of Federal and State High Courts in a Federation”, in *Nigerian Law and Practice Journal* 1997, 86; Y. Fashakin, “Jurisdictional Limitation of the Federal High Court in Banker/Customer Relationship”, in *Modern Practice Journal of Finance and Investment Law* Vol. 7 Nos. 1-2, 2003, B 231, 234; O.K. Edu and I. Ehighelua, “Revisiting the issues arising from the jurisdiction of the Federal High Court in the Banker/Customer Relationship: *Sam Fam Financiers Ltd v Charles Aina* (2003) FWLR (Pt 159) 1482”, in *The Constitution* Vol. 4 No. 3 Sept. 2004, C 49; P. C. Okorie, “Extent of the Jurisdiction of the Federal High Court in Fundamental Human Rights Cases in Nigeria: A Review of the Supreme Court Decision in *Grace Jack v University of Agriculture, Makurdi ...*”, in *Nigerian Bar Journal* Vol 2, 2004, 241 etc. The authoritative books of Justice Obande Ogbuinya, *Understanding The D Concept of Jurisdiction in the Nigerian Legal System* (Enugu: Snaap Press Ltd, 2008) 290-333 and S. T. Hon, *Civil Procedure in Nigeria* (Volume 1) (Port Harcourt: Pearl Publishers, 2008) 357-384 have also dealt admirably with the problematic of the jurisdiction of the Federal High Court.

E Decree No 107 of 1993 introduced the most radical innovation into the question of the substantive jurisdiction of the Federal High Court: it divested State High Courts of jurisdiction over matters involving the Federal Government and its agencies. Section 251(1) F (...) of the 1999 Constitution perpetuated this divestiture.

...somewhat curiously, the inelegant phraseology of most of the provisions of that Section (Section 251) unwittingly afforded occasion for broadening the frontiers of the already existing hermeneutic divergences, see, C. C. Nweze, *“Jurisdiction of the State High Court”*, G in E. Azinge (ed), (supra) 101.

Such were the divergent judicial reactions to the correct interpretation of this radical element in the above section that this court was forced to point to the “frenzy of doctrinal debates... in the Law Reports over the scope of the additional powers conferred on the H Federal High Court...”, see, *Achebe v Nwosu* (2002) FWLR (Pt.106) 1000.... (pages 582 - 583)

As if it was minded to perpetuate the said “frenzy of doctrinal debates,” the lower court, as already shown above, took the view that the trial court had no jurisdiction to entertain the matter before it

just because the second defendant (the respondent in this appeal) was an agency of the Federal Government!

In my humble view, while it rightly found that the respondent is an agency of the Federal Government, *FMBH v Olloh* (supra); *Idoniboye-Obu v N.N.P.C.* (supra); its conclusion that the mere presence of that agency of the Federal Government robbed the trial court of jurisdiction must rankle all liberal constitutional jurisprudence and juridical exegetes. As indicated above, prior to the 1979 Constitution, Section 7 of the Federal High Court Act, Cap 134, LFN, 1990, set out the limited jurisdiction of the Federal High Court.

Section 251(1) (supra) now delineates the jurisdiction of that Court, *INEC v Musa* (2003) 3 NWLR (Pt 806) 72; *NNPC v Orhiowesele and Ors* (2013) LPELR -2034 (SC) 14-19, E-G, *Ladoja v INEC* (2007) 40 WRN 1; and circumscribes it (the said jurisdiction) to only eighteen items, *Adetona and Ors. v. Igele Gen Ent Ltd.* (2011) D LPELR-159 (SC) 47-53 G-B; *Onuorah v. KRPC Co. Ltd.* (supra); *Gafar v. Govt of Kwara* (2007) 4 NWLR (Pt.1024) 375; *Ports and Cargo Handling and CHS C Ltd. v. Migfo Nig. Ltd.* (2012) LPELR - 9725 (SC); *Olutola v. UNILORIN* (2004) 18 NWLR (Pt.905) 416, 462. Such matters are, exclusively, reserved for the Federal High Court, *Adetona and Ors v Igele Gen Ent* (supra).

In effect, the drafts person, deliberately, itemized the matters which are intended to be under the exclusive jurisdiction of that court. *Onuorah v. KRPC Ltd* (supra) at 1364. ***Simply put, therefore, that court is a court of enumerated jurisdiction and, a fortiori, its exclusive jurisdiction is expressly tied to those items enumerated there-under.*** *NNPC and Ors v Orhiowesele and Ors* (supra) 14 - 19, E-G., *Onuorah v KRPC Ltd* (supra). ***As such, in the exercise of its said exclusive jurisdiction, that court (the Federal High Court) can only orbit within the universe of those enumerated issues and to others as may be conferred upon it by an Act of the National Assembly.*** *Gassol v Tutare* (2013) LPELR -20232 (SC) 39, B-F; *Omnia (Nig) Ltd v Dyketrade* (2007) 15 NWLR (Pt 1058) 576, 603 - 604.

However, actions on simple contract are not included in those items enumerated above, *Adelekan v. Ecu-line N.V.* (2006) 12 NWLR (Pt. 993) 33, 52, F-N; ***as such, the court cannot arrogate to itself a jurisdiction only exercisable by the trial court***

or a State High Court, PDP and Anor v Sylva and Ors (2012) LPELR -7814 (SC) 52-53, G-E; NNPC and Ors v Orhiowesele and Ors (supra) **on such simple contractual matters as the one which the appellant tabled before the trial court.**

While it is possible to lump the items in Section 251(1) (supra) into categories, as counsel for the respondent contended, it would, definitely, defy all logic to consign all the eighteen items into just one category. Contrariwise, from an intimate reading of the subsections, as interpreted by this court, the said eighteen items could be structured into three broad typology or classes of items in accordance with their constitutional context and design, Kmart Corp v Cartier Inc., 486 U.S. 281, 291 (1988), cited in A. Scalia and B. Garner, Reading Law: The Interpretation of Legal Texts (Minnesota: Thomson West, 2012) 167 et seq.

Now, from a conspectus of recent decisions, it would be correct to assert that this court has now, taken the position that in considering the issue of the jurisdiction of the Federal High Court under Section 251(1) (supra), both the status of the parties (that is whether it is the Federal Government or any of its agencies) and the subject matter of the claim (that is, whether it relates to any of the enumerated items in the said section) have to be looked at. Obiuevbi v. CBN (2011) LPELR -2185 (SC) 20, C-F, Citing Oloruntoba-Oju v Abdul-Raheem and Ors (2009) 5-6 SC (Pt 11) 57; (2009) 6 MJSC (Pt 1) 1; NURTW and Anor v RTEN and Ors (2012) LPELR -7840 (SC) 47, C-G; NNPC and Ors v Orhiowesele and Ors (supra); PDP and Anor v Sylva and Ors (2012) LPELR -7814 (SC) 52-53, G-E; James v INEC and Ors (decision of this court delivered on March 13, 2015); Ohakim v Agbaso (2010) 19 NWLR (Pt 1226) 172, 236 - 237, G-D; Kakih v PDP and Ors (2014) 15 NWLR (Pt 1430) 374, 414, F-G; Ahmed v Ahmed and Ors (2013) 15 NWLR (Pt 1377) 274, 335, C-H.

However, the tenor of certain provisions in Section 251(1) (supra) would, even, seem to obviate the necessity to consider the status of the parties where the claims, obviously and manifestly, fall within the enumerated items. The thirteen sub-paragraphs under Section 251(1) (supra) will be cited here for they clearly exemplify the point being made here. I must concede, from the outset, that this extrapolation, which was prompted by the submission of the respondent's

counsel that all the paragraphs of this section fall into one category, is outside the narrow question before this court, under this issue. I am, only, embarking on it just to correct the erroneous impression which that submission created.

The paragraphs are: 251(1)(c) customs; excise duties and export duties etc, Adetona and Ors v Igele Enterprises Ltd (2011) LPELR B -159 (SC) 47-53, G-B; Cotecna Int'l Ltd v. I.M.B. Ltd (2006) 9 NWLR (Pt 985) 275, 297-298; 251(1)(d) banks; other financial institutions etc so on, Adetona and Ors v Igele Enterprises Ltd (2011) LPELR -159 (SC) 47- 53, G-B; 251(1)(e) operation of the Companies and Allied Matters Act etc, Adetona and Ors v Igele Enterprises Ltd (2011) LPELR -159 (SC) 47-53, G-B; 251(1)(f) any Federal enactment relating to copyright etc, Omnia (Nig) Ltd v Dyketrade (2007) 15 NWLR (Pt 1058) 576, 603-604. C

Others within the thirteen sub-paragraphs are: 251(1)(g) admiralty jurisdiction etc, I.T.P.P. Ltd v UBN Plc (2006) 12 NWLR (Pt 995) 483, 507; PCHS Co Ltd and Ors v Migfo Nig Ltd and Ors (2012) LPELR -9725 (SC); Onuorah v KPRC Ltd (supra); 251(1)(h) diplomatic; consular and trade representation; 251(1)(i) citizenship etc; 251(1)(j) bankruptcy and insolvency; 251(1)(k) aviation and safety of aircraft; 251(1)(l) arms; ammunitions and explosives; 251(1)(m) drugs and poisons; 251(1)(n) mines etc, S.P.D.C. (Nig) Ltd v Tiebo VII (2005) 9 NWLR (Pt 931) 439, 459-460; C.G.G. (Nig) Ltd v Ogu (2005) 8 NWLR (Pt 927) 366; NNPC and Ors v Orhiowesele and Ors (supra); 251(1)(o) weights and measures. D E F

From the tenor and context of the above provisions, that is, Section 251(1)(c); (d); (e); (f); (g); (h); (i); (j); (k); (l); (m); (n) and (o) (supra), the drafts person would seem to leave no one in doubt that it is the subject matter of the claim of the plaintiff that would be determinative of the jurisdiction of the court. As such, in an action involving any of the above sub-paragraphs, the court's duty may, simply, be to find out if the plaintiff's claim could be pitch-forked into any of the items in the above sections. If it could be factored into any of them, then it is only the Federal High Court that has the jurisdiction subject to the observations to be made subsequently in this judgment under the proviso to Section 251(1)(d) (supra). I.T.P.P. Ltd v UBN Plc (supra); F.M.B.N. v. N.D.I.C. (supra). G H

On the other hand, the intention of the drafts person would seem very obvious from the phraseology of such items under Section 251(1)(a) ... revenue of the Government of the Federation of the Federation in which the said Government or any organ thereof or a person suing or being sued... Adetona and Ors v Igele Enterprises Ltd (2011) LPELR -159 (SC) 47-53, G-B; Mokelu v. Federal Commissioner for Works & Housing (1976) 3 SC 35; Ansaldo v. NPFMB (1991) 2 NWLR (Pt.174) 392, 403-404; 251(1)(b) connected with or pertaining to the taxation of companies... Adetona and Ors v Igele Enterprises Ltd (2011) LPELR - 159 (SC) 47-53, G-B; 251(1)(p) administration or the management and control of the Federal Government or any of its agencies; 251(1)(q) ...the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies, Elelu-Habeeb and Anor v. A.G., Federation and Ors (2012) LPELR; Oloruntoba-Oju v Dopamu (supra).

No doubt, the drafts person in the above paragraphs, in unequivocal terms, anticipates the court's consideration of the question whether an action brought under the above paragraphs falls, squarely, within any of them and whether any of the parties is an agency of the Federal Government, Obiuevbi v. CBN (2011) 7 NWLR (Pt 1247) 465, 492, paragraphs E - F; PDP v. Sylva and Ors (2012) 13 NWLR (Pt 1316) 85, 138, paragraphs B-E; Oloruntoba-Oju v. Dopamu (2008) 7 NWLR (Pt.1085) 1, 31, paragraphs H-O; 32 paragraph B; (2008) All FWLR (Pt.411) 810, 815-816; 829-830, A-C; University of Abuja v Ologe (1996) 4 NWLR (Pt 445) 706, 722; NEPA v Edegbero, 100 paras D-E (from the recent decision in Ahmed v Ahmed and Ors (supra) 335, C-H, it would seem that counsel have, often times, interpreted Ogundare JSC's leading judgment in NEPA v Edegbero (supra) narrowly). In this class, therefore, it becomes inevitable that the court has to consider the status of the parties and the subject matter, Obiuevbi v. CEN (supra); Oloruntoba-Oju v Abdul-Raheem and Ors (supra); NURTW and Anor v RTEN and Ors (supra); NNPC and Ors v Orhiowesele and Ors (supra); PDP and Anor v Sylva and Ors (supra).

Section 251(1)(r) adds an additional complexion to the above categories. It provides that the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in “(r) any

action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies.”

In effect, in action under this class, the court would be required to resolve three sub-questions (i) whether the claim relates to the validity of any executive or administrative action or decision; (ii) if the either of the parties is the Federal Government or any of its agencies and (iii) the nature of the reliefs, that is, whether they are for declaration; injunction; damages or specific performance, PDP v Sylva (2012) LPELR -7814 (SC) 52-53, G-E; Oloruntoba-Oju v. Dopamu (supra) 815-816; 829-830, A-C; University of Abuja v Ologe (supra) 722; PDP v Sylva (2012) LPELR -7814 (SC) 52-53, G-E; Ladoja v INEC (2007) LPELR - 1738 (SC) 27-28, G-D; Obi v INEC (2007) 11 NWLR (Pt 1046) 565, 636 - 637, G-C; 638, B-E; Ahmed v Ahmed and Ors (supra) 335, C-H.

In effect, contrary to the contention of the respondent’s counsel that all the paragraphs fall into one category, the sub-paragraphs of Section 251(1) could, actually, be classified under three sub-categories and not just under one broad class, I must, however, reiterate the point made earlier that this extrapolation, which was prompted by the above submission of the respondent’s counsel, is outside the narrow question before this court, under this issue. I have, only, delved into it just to correct the erroneous impression which that submission created.

The answer to the question, which the appellant posed under this issue, therefore, is that the lower courts position to the effect that the trial court (and, by implication, State High Courts) cannot entertain any matter (*italics for emphasis*) against the respondent (again, and by implication, any agency of the Federal Government) irrespective of the subject matter (*italics for emphasis*) would, certainly, seem a fallacious proposition. This must be so in view of the avalanche of the decisions of this court (cited above) which have announced, with magisterial finality and robust certainty, the death knell of above heady question that had, hitherto, tasked the adversarial skills of bar advocates and exacted the judicial patience of trial courts since 1973: for forty two years!

For the avoidance of doubt, the prevailing jurisprudence on the actual question before this court under issue two - and this is

evident in the cases cited above - is that in considering the issue of the jurisdiction of the Federal High Court under Section 251(1) (supra), both the status of the parties (that is, whether it is the Federal Government or any, of its agencies) and the subject matter of the claim (that is, whether it relates to any of the enumerated items in the said section) have to be looked at, *Obiwevbi v. CBN* (supra) 20, C-F; *Oloruntoba-Oju v. Abdul-Raheem and Ors* (supra); *NURTW and Anor v. RTEN and Ors* (supra) 47, C-G; *NNPC and Ors v. Orhiowesele and Ors* (supra); *PDP and Anor v. Sylva and Ors* (supra) 52-53, G-E; *Ocholi Enojo James v. INEC and Ors* (2015) LPELR - 24494 (SC) 56-57; *Ohakim v. Agbaso* (supra) 172, 236 - 237, G-D, *Kakih v. PDP and Ors* (supra) 374, 414, F-G; *Ahmed v. Ahmed and Ors* (supra) 274, 335, C-H.

It is hoped that counsel would, henceforth, stop hampering the smooth administration of justice and efficient management of cases, both at the Federal High Court and State High Courts, by their irksome recourse to their time-worn objection to the jurisdiction of these courts based on the interpretation of Section 251(1) (supra), now rested by the above decisions of this court.

CONTRACTUAL OBLIGATION BETWEEN THE APPELLANT AND FIRST DEFENDANT

As noted above, the appellant herein, in his application filed on December 22, 2004, prayed the trial court for leave to have his suit placed under the Undefended List. In the Affidavit in support of the application, it was averred inter alia:

7. That sometimes (sic) in 1999, the first defendant approached the plaintiff and applied vide a letter dated March 19, 1999, for finance facility for the execution of a supply of contract awarded by the second defendant...

8. That one of the conditions of granting the finance facility was the domiciliation of all payments due for the first defendant to plaintiff's account by the second defendant;

9. That in fulfillment of this requirement, the second defendant wrote to the plaintiff vide letter dated March 23, 1999, agreeing to domiciliate all payments due to first defendant in respect of the contract to the plaintiff's account;

10. That in reliance on paragraph 9 above, the plaintiff granted finance facility to the first defendant to the sum of N570,000 (Five

Hundred and Seventy Thousand Naira only) vide an agreement dated April 9, 1999;

11. That sometimes (sic) in July, 1999, the plaintiff discovered that despite the letter of domiciliation, 50% of the total contract value awarded to the first defendant by the second defendant had already been paid to the first defendant without plaintiff's consent thereby contravening the condition of payment in the agreement of April 9, 1999 and the letter dated March 23, 1999, from the second defendant;

12. That the plaintiff immediately conveyed this discovery to the second defendant vide a letter dated July 13, 1999 and insisted that immediate payment of the sum of N1,230,000.00 (One Million, Two Hundred and Thirty Thousand Naira only). Being the total contract sum to be made directly to the plaintiff's account;

13. That the plaintiff also made a demand for the payment of the finance facility to the first defendant, vide letter dated October 14, 1999;

14. That in fact, in 2000, precisely, vide letter dated September 12, 2000, the second defendant admitted to the plaintiff that it had in fact written a letter of domiciliation of payment but had failed to honour the domiciliation and paid the cheque directly to the first defendant;

15. That the plaintiff vide letter dated October 18, 2000, made another demand to the second defendant to domiciliate its account to the total contract sum;

16. That the plaintiff made a further demand to the second defendant for the outstanding sum via a letter dated July 25, 2002. (pages 23-24 of the record)

In the Notice of Intention, (page 40 of the record, particularly, paragraph 4(c)-k, (pages 40-41), the first defendant canvassed defences pursuant to which it invited the trial court to transfer the matter to the General Cause list. As, already, noted above, the trial court entered judgment in favour of the plaintiff as per the claim, page 56 of the record. On its part, the lower court allowed the appeal of the second defendant, the respondent in this appeal, and, consequently, struck out the plaintiff's claim against the second defendant only for lack of jurisdiction, page 180 of the record.

From all I have said so far, it is unarguable that the drafts

person of the said Section 251(1) (supra) could not have contemplated that the loan agreement which was facilitated by the respondent's letter of domiciliation would come under the jurisdiction of the Federal High Court. Onuorah v. KRPC (supra); Adelekan v. Ecu-Line NV (supra 3). **The lower court was, therefore, wrong in holding that the trial court lacked the jurisdiction to entertain the action. It, surely, has the requisite Jurisdiction under Section 257(1) of the Constitution.**

Although the courts have, ingeniously, delineated the scope of the immunity which avails public officers by virtue of Section 2(a) of the Public Officers Protection Law both in England and in Nigeria, learned counsel for the respondent still found it convenient to dredge up the said issue before the lower court. That court's erroneous resolution of the issue prompted the divergent submissions of counsel before this court. I need not dissipate valuable judicial energy on this.

It is now settled law that Section 2 of the Public Officers Protection Act (and all such enactments similarly worded like it, for example, Section 26(1)(a) and (b) of the Nigerian Agricultural Insurance Act (supra)) do not apply to cases of contract. Nigerian Ports Authority v. CGFCS and Anor (1974) 1 All NLR (pt. 2) 463; Salako v. L.E.D.B. and Anor (1953) 20 N.L.R. 169; Osun State Government v. Dalami (Nig) Ltd (2007) LPELR - 2817 (SC) 13, A-B; (2007) All FWLR (pt. 365) 439, 452, A-F; I. T. P. P. v. UBN Plc (supra); PCHS Co Ltd and Ors v. Migfo Nig Ltd (2012) LPELR - 9725 (SC).

Other decisions on this point include: Adelekan v. Ecu-line NV (supra); A. D. H. Ltd v. A. T. Ltd (2006) 10 NWLR (pt 989) 635, 650; C.B.N v. Adededeji (2004) 13 NWLR (pt. 890) 226; F.G.N. v. Zebra Energy Ltd. (supra) 162, 197; Adigun v. Ayinde (1993) 8 NWLR (pt.313) 516; Gyang v. N.S.C (2002) 15 NWLR (pt. 791) 454; Bakare v. Nigerian Railway Corporation (2007) 17 NWLR (pt. 1064) 628; N.B.C. v. Bankole (1972) NSCC 220; NPA PLC v. Lotus Plastics Ltd. (2005) 19 NWLR (pt. 959) 158; Salako v. L. E. D. B. and Anor (supra) per de Comarmond SPJ., citing Milford Docks Co. v. Milford Haven U. D. C Empire Digest, Vol 38, 109 No 780; Foat v. The Mayor and C of Margate 11 QBD 299; Halsbury's Laws of England 2nd Edition Vol. XXVI, 298.

To hold otherwise would be to negate the general prin-

ciples upon which the Law of Contract is based, per Rhodes-Vivour JSC in Ugwuanyi v. NICON Insurance Plc (2013) LPELR -20092 (SC) which I, approvingly, adopt as part of my reason in this judgment. I, therefore, hold that the lower court erred in its conclusion on this point. I resolve this issue in favour of the appellant.

ISSUE THREE

Whether the lower court was right to have held that the trial court was wrong to have heard and determined the matter under the Undefended List as it did?

On this issue, counsel cited the opinion of the lower court on the Undefended List Procedure at page 179 of the record. He faulted the court's conception of the procedure. He opined that, contrary to the view of the lower court, a defendant, who intends such an action, must disclose a defence on the merits in the supporting affidavit, Planwell Watershed Ltd v. Ogala (2013) 16 NSCQR 138, 146. He maintained that the court had a duty, when a notice of intention to defend is filed, to examine the affidavit with a view to ascertaining whether it discloses a triable issue, Ataguba and Co v. Gura (Nig) Ltd (2005) 6 MJSC 156.

Contending that the main object of the Undefended List Procedure is for the quick resolution of certain types of cases, he maintained that the lower court erred when it stated that the trial court should have transferred the matter to the general cause list for hearing immediately the defendant filed a notice of intention to defend without determining whether it discloses a defence on the merit.

RESPONDENT'S ARGUMENTS

On his part, counsel for the respondent canvassed the view that the Notice of intention to defence disclosed a reasonable defence that ought to have warranted the action being transferred to the General Cause List, citing paragraphs 4.1-4.5 and 6.0 - 6.2, pages 84-87 and 161 - 162 of the record, respectively, FMG v. Sanni (1990) 4 NWLR (pt 147) 688, 713. He pointed out that, at the trial, the respondent (as defendant) raised a triable issue. In his view, even the issue of non-service of pre-action was enough to prompt the transfer of the matter to the General Cause List, Katsina Local Authority and Anor v. Makudaura (1971) 7 NSCC 119, 125.

Counsel, further, contended that, by its Notice of Intention to

defend and Affidavit in support as well as the Further and Better Affidavit, (pages 38-42) 43 - 44 of the record), the respondent disclosed a good defence; since it was not expected to provide an iron cast defence. He explained that the respondent raised substantial questions of facts: facts which it entitled it to interrogate the appellant
B or to cross examine the witnesses (if any).

In his view, it was immaterial if the defendant's defence was shallow or shadowy provided a triable issue was raised in the said Notice of intention. He cited some cases to buttress his position. According to him, since the appellant's action was steeped in controversy, the lower court, rightly, ordered the matter to be transferred to
C the General Cause List.

APPELLANT'S REPLY

In reply to the respondent's submissions on points of law, counsel
D pointed out that the lower court made a sweeping statement at page 179 of the record that where a defendant has filed a Notice of Intention to defend, the matter ought to be sent to the General Cause List.

RESOLUTION OF THE ISSUE

Now, it is no longer open to argument that the Unde-
E ***fended List Procedure is a truncated form of the civil litigation process peculiar to the adversarial judicial system. Under the said procedure, ordinary hearing is rendered unnecessary due, in the main, to the absence of an issue to be tried.*** UBA and Anor v. Jargaba (2007) LPELR - 3399 (SC) 27; Agwuneme v. Eze
F (1990) 3 NWLR (Pt. 137) 242. ***Essentially, therefore, it is designed to secure quick justice and to avoid the injustice likely to occur when there is no genuine defence on the merits to the plaintiffs case.*** International Bank for West Africa Limited v.
G Unakalamba (1998) 9 NWLR (pt. 565) 245.

It is, usually, meant to shorten the hearing of a suit where the claim is for a liquidated sum. Co-operative and Commerce Bank (Nigeria) Plc v. Samed Investment Company Limited (2000) 4
NWLR (pt. 651) 19.

Put differently, the object of the rules relating to actions on the undefended list is to ensure quick dispatch of certain types of cases, such as those involving debts or liquidated money claims. Bank of the North v. Intra Bank SA (1969) 1 All NLR
H 91; Bendel Construction Co. Ltd. v. Anglo Development Co. (Nige-

ria) Ltd (1972) All NLR (pt.1) 153; Olubusola v. Standard Bank (1975) 1 All NLR (pt.1) 125; N. M. C. B. (Nig) Ltd v. Obi (2010) LPELR - 2051 (26) 26 which are, virtually, uncontested, Ataguba and Co v. Gura Nig Ltd (2005) LPELR - 584 (SC) 16-17; Macaulay v. NAL Merchant Bank Ltd. (1990) 4 NWLR (pt. 144) 283 at 324-325; Nwankwo and Anor v. EDCS UA (2007) LPELR -2108 (SC) 46; Bank of the North v. Intra Bank S.A. (1969) 1 All NLR 91; Ataguba & Co. v. Gura (Nig.) Ltd. (2005) 8 NWLR (pt.927) 429; (2005) 2 SCNJ, 139, 157; (2005) 2 S.C (Pt.1) 101.

Such rules are, thus, designed to relieve the courts of the rigour of pleadings and burden of hearing tedious evidence on sham defences mounted by defendants who are just determined to dribble and cheat plaintiffs out of reliefs they are normally entitled to because the case is, patently, clear and unassailable. Cow v. Casey (1949) 1 K.B. 482; Sodipo v. Leminkainen and Ors (1986) NWLR (pt.15) 220; UBA and Anor v. Jargaba (2007) LPELR -3399 (SC) 24; Obaro v. Hassan (2013) LPELR - 20089 (SC); Planwell Ltd v. Ogala (2003) 18 NWLR (pt.852) 478; (2003) 12 SCNJ 58, 68. In such a case, it would be inexpedient to allow a defendant to defend for the mere purpose of delay, Sodipo v. Leminkainen (1986) 1 NWLR (pt.15) 220; Adebisi Macgregor Ass. Ltd v. N.M.B. Ltd (1996) 2 NWLR (pt.43) 378; (1996) 2 SCNJ 72, 81.

However, this procedure is not designed to shut out a defendant who can show in his affidavit in support of intention to defend that there is, indeed, a triable issue. Nishizawa v. Jethwani (1984) 12 SC 124, 134; Akpan v. A. I. P. I. C Ltd (2013) LPELR -20753 (SC); Ataguba and Co v. Gura Nig Ltd (supra); Nortex (Nigeria) Limited v. Franc Tools Co. Ltd (1997) 4 NWLR (pt. 501) G 603.

For this purpose, the said affidavit in support of the notice of intention to defend must, of necessity, disclose facts which will, at least, throw some doubt on the case of the plaintiff. Agro Millers Limited v. Continental Merchant Bank (Nigeria) Plc (1997) 10 NWLR (pt. 525) 469; **this it can achieve by donating facts which, on the face of the affidavit, disclose a reasonable defense.** Jipreze v. Okonkwo (1987) 3 NWLR (pt. 62) 737; Bendel Construction Co. Ltd v. Anglocan Development Co. (Nig.) Ltd (1972)

1 All NLR 153. ***The affidavit should not, merely, parade general statements that the defendant has a good defence to the action. Such a general statement must be supported by particulars which, if proved, would constitute a defence.*** John Holt and Co. (Liverpool) Ltd v. Fajemirokun (1961) All NLR 492.

B ***However, it would suffice if the affidavit discloses facts which point to the subsistence of difficult points of law; to a dispute as to the facts which ought to be tried; to a real dispute as to the amount due which could only be resolved by settling accounts or any other circumstances showing reasonable grounds of a bona fide defence.*** Nishizawa Ltd v. Jethwani (1984) 12 SC 234; F.M.G. v. Sani (1990) 4 NWLR (pt. 147) 688, 713.

C ***In all, what will constitute a defence on the merit will depend on the facts of the case. This is within the discretion of the trial court: a discretion which must be exercised judicially and judiciously after a full and exhaustive consideration of the affidavit in support of the notice to defend.*** Grand cereals and Oil Mills Ltd v. As-Ahel International Marketing Ltd and Anor (2000) 4 NWLR (pt. 652) 310; Alhaji Danfulani v. Shekari (1996) 2 NWLR (pt. 433) 723; Alhaji Ahmed v. Trade Bank of Nigeria Plc (1997) 10 NWLR (pt. 524) 290; Calvenply Limited v. Pekab International Limited (2001) 9 NWLR (pt. 717) 164.

F ***In effect, where such a defence is disclosed, the justice of the case would demand that the matter be transferred to the General Cause List for hearing on the pleadings.*** N.M.C.B. (Nig) Ltd v. Obi (2010) LPELR- 2051 (SC) 26; Adebisi Macgregor Associates Ltd v. Nigeria Merchant Bank Ltd (1996) 2 NWLR (pt. 431) 378; ACB Ltd v. Gwagwada (1994) 4 SCNJ (pt. II) 268; Olubusola Stores v. Standard Bank of Nig. Ltd (1975) NSCC 137; John Holt and Co (Liverpool) Ltd v. Fajemirokun (1961) ANLR 513; N. M. C. B (NIG) Ltd v. Obi (supra).

H At page 179 of the record, the lower court held that the plaintiff's reliefs were not suitable for placement under the Undeferred List.

Indeed, at page 20 of the record, the plaintiff entreated the trial court for:

An order directing the defendant to pay to the plaintiff interest

on the said sum of N5,088,211.18 (Five Million, Eighty Eight Thousand, Two Hundred and Eleven Naira, Eighteen kobo) at the rate of 21% per annum from April 2003 until judgement is delivered and thereafter on the judgement debt at the rate of 10 % per annum until the whole debt is finally liquidated.

Instructively, there is no single averment in the twenty five paragraph affidavit relating to the pre-judgment interest of N5,088,211.18 (Five Million, Eighty Eight Thousand, Two Hundred and Eleven Naira, Eighteen kobo). However, as this court held in *Ekwunife v. Wayne (West Africa) Ltd* (1989) 5 NWLR (pt 122) 422 interest may be claimed as a right where it is contemplated by the agreement between the parties, or under a mercantile custom, or under a principle of equity such as breach of a fiduciary relationship, citing *London, Chatham & Dover Railway v. S. E. Railway* (1893) A.C. 429, 434.

Where interest is being claimed as a matter of right, the proper practice is to claim entitlement to it on the writ and plead facts which show such an entitlement in the statement of claim. *Ekwunife v. Wayne (West Africa) Ltd* (supra).

As noted above, there was no such averment in the plaintiff's averments in the affidavit in support of his application indicating either that the said claim relating to interests was contemplated by the agreement between the parties, or under a mercantile custom, or under a principle of equity such as breach of a fiduciary relationship. *Ekwunife v. Wayne (West Africa) Ltd* (supra), *London, Chatham & Dover Railway v. S. E. Railway* (supra). The lower court was, therefore, right in its view, *Alhaji Gombe v. P. W. Ent Nig Ltd and Ors* (1995) 7 SCNJ 19. In effect, this appeal succeeds in part.

The case is, hereby, remitted to the Chief Judge of the High Court of the Federal Capital Territory for re-assignment to another Judge who will hear it on the General Cause on the pleadings to be filed and exchanged by the parties. Against this background, the issue of pre-hearing notice which, invariably, revolves around the conflicting factual situations of (the issuance vel non and service or non-service of the said pre-hearing notice) will abide the hearing of the matter at the trial court.

CROSS APPEAL

Aggrieved by the decision of the lower court striking out the

action of the trial court, the respondent (as cross appellant) cross appealed to this court, urging it to determine the two issues it formulated for hearing. Briefs were filed. The Cross Appellant's brief was filed on February 27, 2008. On the other hand, the Cross Respondent's brief was filed on March 5, 2010, although, deemed properly filed on May 14, 2013. The Cross Appellant filed its reply on May 20, 2013 although deemed properly filed on April 14, 2015.

The two issues of the Cross Appellant were couched thus:

1. Whether the Hon Court of Appeal was right to have held it inexpedient to discuss and pronounce on other related issues raised by the Cross Appellant on the ground of having found that the trial court lacked jurisdiction:

2. Whether the Hon Court of Appeal should not have dismissed the Cross Respondent's suit having found that same was statute barred?

These two issues were dealt with in paragraphs 1- 2.2, pages 1- 6 of the Cross Appellant's brief. On its part, the Cross Respondent devoted pages 1-9 of the brief to the preliminary objection to the Cross Appeal and the main brief. In the said reply brief, the Cross Appellant, invariably, re-argued the arguments in the original brief with the result that, whereas the main brief was only six pages, the reply brief was articulated in thirteen pages.

Be that as it may, having, in the main judgment, found that the trial court is clothed with the requisite jurisdiction to hear and determine the case, necessitating the above order for a re-trial of the suit, this court can no longer dabble into the above two issues: issues which the trial court will have to hear on the pleadings. In consequence, the said issues will abide the rehearing of the suit at the trial court. Accordingly, I enter an order striking them out as being inchoate.

In all, this appeal succeeds in part. The suit is hereby remitted to the Chief Judge of the High Court of the Federal Capital Territory for re-assignment to another Judge of that court for hearing on the General Cause List on the pleadings of the parties. The Cross Appeal is hereby struck out. Parties are to bear their respective costs.

FABIYI JSC

I have had a preview of the comprehensive judgment just de-

livered by My Lord - Nweze, JSC. I agree entirely with all the reasons therein advanced as well as the conclusions ably arrived at, as agreed.

I wish to briefly point it out that the undefended list proceeding is meant to shorten the hearing of a suit where the claim is for a liquidated sum. It is designed to avoid the intricacies of pleadings in a normal hearing in our trial courts. It should be noted that its employment, in recent times, is often subject to abuse. Such should not be the case. B

What then is a liquidated 'sum' or 'damages'? Damages is said to be liquidated when a specific sum of money has been expressly stipulated by the parties to a bond or other contract as the amount of damages to be recovered by either party for a breach of the agreement by the other side. *Stein v. Bruce* 366 S.W 2d. 732, 735 (Blacks Law Dictionary, Sixth Edition at page 391). See also the cases of *Eko Odume vs. Ume Nnachi* (1964) 1 All NLR 324 at 328 and *Maja vs. Samouris* (2002) 7 NWLR (pt. 765) 78 at 102. C

It is now clear that the factors for determining a liquidated sum are as follows:-

(a) The sum must be arithmetically ascertainable without further investigation. E

(b) If it is in reference to a contract, the parties to same must have mutually and unequivocally agreed on a fixed amount payable on breach.

(c) The agreed and fixed amount must be known prior to the breach. F

As pointed out in the lead judgment, there was no averment by the plaintiff in support of 21% per annum interest from April 2003 until judgment. I agree that the appeal should be allowed in part. The suit is remitted to the trial court to be heard in the general cause list. G

My Lord said it all. As stated at the on-set, I adopt the conclusions arrived at in the lead judgment.

H

ARIWOOLA JSC

I had the opportunity of reading the draft of the leading judgment prepared and just delivered by my learned brother, Nweze, JSC. His Lordship meticulously dealt with all the issues that arose in

the said appeal and I am in total agreement with the reasoning and conclusion arrived thereat. I have nothing more to add as I adopt same as mine.

Accordingly, I also allow the appeal in part and strike out the cross appeal.

B I abide by the consequential orders in the said leading judgment including the remittance of the case to the Chief Judge of the Federal Capital Territory for reassignment to another Judge of the court for hearing on pleadings in the general cause.

C Parties are to bear their costs.

MUHAMMAD JSC

I had a preview of the lead judgment of my learned brother D Nweze, JSC, just delivered. For all the reasons articulated in the judgment, I agree that the appeal succeeds and abide by the consequential orders made in the lead judgment.

OGUNBIYI JSC

E I read in draft the lead judgment just delivered by my learned brother, Nweze, JSC. He has adequately and comprehensively resolved all the issues raised in both the main appeal and the cross appeal as well as the preliminary objection earlier raised.

F I completely agree with the reasoning and conclusion arrived thereat in his lead judgment which I adopt as mine and do not have any further useful point to add.

G While the appeal is hereby allowed in part, the cross appeal is relegated and rendered a mere academic and it is dismissed accordingly.

The matter in the circumstance is remitted to the trial court and be heard on the pleadings as against an undefended list. I abide by all orders made in the lead judgment.

H