

SUPREME COURT OF NIGERIA
FRIDAY 22ND JANUARY, 2016. SC. 546/2013
CORAM:- I. T. MUHAMMAD, M.S. MUNTAKA-
COOMASSIE, O. RHODES-VIVOUR, C. B. OGUNBIYI,
C. C. NWEZE, JJSC

OLUBUNMI OLADIPO ONI APPELLANT
AND
CADBURY NIGERIA PLC RESPONDENT

JURISDICTION - Issue - Time to raise - Issue of jurisdiction can be raised at any time - Even in the Supreme Court for the first time (H1)

JURISDICTION - Absence of - Effect - The trial court and Court of Appeal acted in vain - As appellant's complaint governed by CAMA ss. 262 & 266 - Should have been brought at Federal High Court (H2)

JURISDICTION - Consent by parties - Submitting to jurisdiction is no answer to want of jurisdiction of a court - For a total lack of jurisdiction - Cannot be cured by assent of parties (H3)

FACTS

Before the High Court of Lagos State Ikeja, plaintiff/appellant instituted this action against defendant/respondent, claiming for wrongful and unlawful termination of his employment. Respondent counter-claimed against appellant. Appellant testified for himself, while one witness testified for respondent. At the end of the hearing, the court suo motu raised the issue of its jurisdiction to entertain the matter and asked the learned counsel for the parties to address it on same. Despite the issue of jurisdiction, the court proceeded with the resolution of the case.

The court found that the dismissal of appellant was not lawful for failure of respondent to follow due process in the company. The court granted the claims of appellant in part. Respondent's counter-claim was dismissed. Dissatisfied, respondent appealed to the Court of Appeal Lagos Division, while appellant cross appealed. The court

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in its judgment dismissed the main appeal, affirmed the judgment of
the trial court and dismissed the cross appeal. Aggrieved, appellant
brought the main appeal, while respondent brought the cross appeal
to the Supreme Court.

HELD (Unanimously striking out the appeal per
NWEZE JSC)

JURISDICTION - Issue - Time to raise

1. Although, the respondent raised this question for the first time in the Respondents brief filed on May 15, 2015, it cannot be gainsaid that it was properly raised and in consequence, cannot be wished away. Surely, the rationale of all binding authorities on this point is that a jurisdictional issue, such as the one now canvassed by the respondent, could be raised at any time, even in this Court for the first time.

Having been canvassed, it (the question of the jurisdiction of the trial Court) must be disposed of before dealing with the rest of the arguments in the appeal, if need be. True indeed, a finding in favour of the arguments on the absence of jurisdiction would even obviate the need to attend to those other issues, both in the main appeal and Cross Appeal.

(pp. 468 A/469 G)

JURISDICTION - Absence of - Effect

2. In effect, contrary to the submissions of his counsel, the appellant's impeachment of the procedure for his removal, (via the meeting which he impugned in Paragraph 8 (a) and (e) of the pleading - a matter governed by Sections 262 and 266 of CAMA) was the pivot of his complaint at the lower Court. As such, by virtue of Section 251 (1) (e) of the 1999 Constitution as amended), the proper forum for the ventilation of that complaint should have been the Federal High Court.

The trial Court was, therefore, not the proper forum for agitating the above questions.

Against this background, the only conclusion is that both the trial and lower Courts toiled in vain. As it is well known, the issue of jurisdiction poses a crucial question of compe-

tence.

Unarguably, where there is absence of jurisdiction, the entire proceedings, trial, findings, orders and pronouncement of the Court come to naught. (p. 474 H)

JURISDICTION - Consent by parties

3. What is more, submitting to jurisdiction of a Court is no answer to want of jurisdiction. This must be so for a total want of jurisdiction cannot be cured by the assent of the parties. I, therefore, find that the judgment of the lower Court, which affirmed the trial Courts findings and conclusion, is a nullity for, since the trial Court lacked the jurisdiction to entertain the matter, ipso facto, the lower Court, equally lacked the jurisdiction to deal with the appeal before it. (p. 475 G)

REPRESENTATION

C. A. Candide-Johnson, SAN, with O.A. Falore, for the Appellant
F. Oditah, SAN, with O. Enunwa, for the Respondent

CASES REFERRED TO

Wema Securities & Finance Plc. v. NAIC (2015) LPELR-24833 (SC)
Kalu v. Odili (1992) 6 SCNJ (pt. 1) 76
Onigeneh v. Egbochualam (1996) NWLR (pt. 448) 255
NEPA v. Ango (2001) 15 NWLR (pt. 737) 627
F.C.D.A. v. Sule (1994) 3 NWLR (pt. 332) 256
Oro v. Falade (1995) 5 NWLR (pt. 396) 385
Ifeanyi Chukwu (Osondu) Ltd. v. Solch Boush Ltd. (2000) 5 NWLR (pt. 656) 327
Njikonye v. MTN Nig. Comm. Ltd. (2008) 9 NWLR (pt. 1092) 339
Cotecna Int'l. Ltd. v. Ivory Merchant Bank Ltd. (2006) 9 NWLR (pt. 985) 215
Madukolu v. Nkemdilim (1962) 2 NSCC 374
Okoya v. Santilli (1960) 3 SC (pt 11) 1
Emeka v. Okadigbo (2012) 7 SC (pt. 1) 1
Aloa v. ACB Ltd. (200) 6 SC (pt. 1) 27
Bronik Motors Ltd. v. Wema Bank Ltd. (1983) 1 SCNLR 296
Obi v. INEC (2007) 11 (pt. 1046) 565

STATUTES REFERRED TO

Companies & Allied Matters Act, ss. 236, 262, 266

Constitution of the Federal Republic of Nigeria 1999, s. 251(1)

B LEAD JUDGMENT BY NWEZE JSC

At the High Court of Lagos State, Ikeja Judicial Division, the appellant in this appeal (as Claimant) took out a writ of Summons, accompanied by a Statement of Claim, against the respondent herein (as defendant). His claim before the said Court (hereinafter referred to as, the trial Court) was (on the face of it) for wrongful and unlawful termination of his of employment.

For their hearing on the ultimate outcome of this case, the pleadings, his grouse against the respondent are set out hereunder:

D 5. The express terms of his contract of employment as executive director provide for the payment of salary

7. On 11th December, 2006, when the Claimant had been summoned to London by the principal Company (CSP) and remained there on their instructions, the defendant peremptorily repudiated E the Claimant's contract of employment by a letter signed by one "Imo J. Itsueli, Chairman" purportedly on behalf of the defendant.

(In passing, I note that the said letter was, subsequently admitted in evidence as exhibit C2).

F 8. The said letter was invalid and wrongful on its face for the following reasons

(a) There was no or no valid meeting of the directors of the defendant at which the decision communicated on 11th December, 2006 was taken.

G (c) No notice of the relevant board meeting was given to the claimant although he was at all times an extant member of the board of directors and legally entitled to such notice. (pages 5-6 of Volume 1 of the record, italics supplied for emphasis. Again, I note in passing that both the trial Court, at pages 1785-1785 of Vol 3 of the record H were to hinge the logic of their reasoning on these crucial averments)

In what, unarguably, must be seen as the confirmation of the said letter of December 11, 2006 as the *cassus belli* at the lower Court, the Claimant, first and foremost, beseeched that Court with a supplication for:

1. A Declaration that the purported dismissal of the Claimant by a letter dated 11th December, 2006 signed by Imo J. Itsueli (Chairman of the Board) is wrongful, unlawful and is a repudiatory breach of the Claimant's contract of employment. (page 17 of Vol 1 of the record; italics supplied. Again, I note in passing that the lower Court affirmed the trial Court's finding in favour of this limb of the Claimant's relief.) B

The defendant swiftly, reacted to the Claimant's Summons in its Statement of Defence and Counter Claim of June 6, 2008; processes that were, subsequently, amended. In effect, the defendant joined issues with the Claimant in the Amended Statement of Defence and Amended Counter Claim. [pages 1350 of the record]. These processes prompted the Claimant's Reply and Defence to Counter Claim of September, 28, 2009. C

Although, in accordance with the prevailing Rules of the trial Court, four witnesses were listed; at the actual hearing, only the Claimant testified in proof of his case. He was designated CW1. On their part, the defendant marshaled one witness, DW1, in rebuttal of the Claimant's evidence in Court. D

In his spirited effort to establish the case he put forward in his pleadings, the Claimant adopted his three Statements on oath as his evidence in chief. A bundle of eighteen documents were, equally, tendered and admitted in evidence through him as exhibits, (page 1351 of the record). As indicated above, only one witness DW1, was marshaled by the defendant. E F

Sequel to the conclusion of the oral evidence, the trial Court suo motu enjoined counsel to address it on the pertinent question of its jurisdiction to entertain the matter, (page 1361 of the record).

Although the said Court proceeded with the resolution of the case, its reasoning, (pages 1381- 1382 of Vol 2 of the record) affirmed by the lower Court) pages 1786 -1789 of Vol 3 of the record), engendered a fresh jurisdictional agitation before the Court, Paragraphs 18 -32 of the respondent's brief (pages 4-7, of the respondent's brief filed on May 15, 2015). G H

The trial Court, in its judgment of November 12, 2010, found in favour of the Claimant in respect of only the first and second reliefs. At page 1382, it held:

"...I do hold that the Claimant ought to have been given notice

of this meeting (that is, the meeting which the claimant impugned in Paragraph 8 of the pleadings as invalid and wrongful on its face for the following reasons

(a) *There was no or no valid meeting of the Directors of the defendant at which the decision communicated on 11th December, 2006 was taken as the fact that he was suspended as at the date of the meeting does not rob him of the right to be so notified of the meeting where his fate is to be discussed, ... [italics supplied].*

I therefore find that the dismissal of the Claimant by the defendant was not lawful for the above reasons (that is, because “*there was no or no valid meeting of the Directors of the defendant at which the decision communicated on 11th December, 2006 was taken*) and I hold that this matter was very shoddily handled by the defendant as it has given the impression that it just gave a dog a bad name in order to hang it. It was obviously in such a hurry to remove the claimant from its ranks that it forgot due process.... I feel that the least it could have done... was to hear him out... before taking the decision (in the said meeting) to throw him... as was done in the matter. (pages 1382 - 1383 of Vol 2 of the record).

In Clause 20 (a) of exhibit C1, the contract of employment, the claimant, upon termination of his employment, is only entitled to liquidated damages in a sum equivalent to 6 months gross salary and that is all he is entitled to in this instance... There is no basis in this matter to grant the claimant’s 3rd, 4th and 5th claims. The Claimant therefore is only entitled to part of his claim in this action. (pages 1383 1384 of Vol 2 of the record)”

It had no difficulty in dismissing the defendant’s Counter Claim. While the defendant, whose Counter Claim was dismissed, appealed to the Court of Appeal, Lagos Division (hereinafter referred to as the lower Court) via its Notice of Appeal of January 25, 2011; the Claimant, whose claim partially succeeded, cross appealed to the lower Court by Notice of Cross Appeal of October 6, 2011 which was deemed properly filed and served on October 13, 2011.

On the one hand, the lower Court dismissed the main appeal (that is, the defendant/appellant’s appeal to it against the trial Court’s dismissal of the Counter Claim on the ground that “*there is every cogent reason for me to hold that the instant appeal is unmeritorious;*” in consequence, affirming the trial Court’s judgment in that regard).

On the other hand, it (the lower Court) dismissed the cross Appeal [that is, the Claimant's appeal against the lower Court judgment refusing to favour him with relief three, four and five).

It reasoned that *"...the Cross Appellant can only claim as liquidated damages the three items mentioned in Clause 20 (exhibit C1) viz (i) 6 months' gross salary; (ii) accrued pension rights; and (iii) accrued but unpaid bonus entitlements, respectively, (pages 1808 - 1809, Vol 111 of the record.)*

Its further reasons for dismissing the Cross Appeal were that:

"The Cross Appellant had not tendered in evidence the so called 'Agreement' referred to in exhibit C3 above or called any witness to rectify regarding the 'ruling rates', as at December 2006. Exhibit C3 is undoubtedly lacking in any probative value.

Regarding the claim of interest, I think there is every reason for me to hold that it must also fail for having been raised the first time on appeal. The claim for interest was neither made in the writ of Summons nor in the Statement of Claim of the Cross Appellants. Undoubtedly, the principle is well settled that a claim for interest must not only merely be pleaded, but also proved..."(page 1809, Vol 111 of the record).

Being dissatisfied with the respective outcomes of their Appeal and Cross Appeal, the parties referred to this Court with their grievances against the judgments of the lower Court. On his part, the Claimant (Cross Appellant at the lower Court and now appellant before this Court) impugned the lower Courts judgment which dismissed the Cross Appeal as being unmeritorious.

Contrariwise, the appellant at the lower Court (who was the defendant at the trial Court and now the Cross Appellant before this Court) cross appealed against the lower Court's judgment. That judgment found that the dismissal of the appellant herein claimant at the trial Court and respondent/Cross Appellants at the lower Court) *"for his admitted gross misconduct was wrongful, unlawful and constituted a repudiatory breach of the Claimant's contract of employment."*

A FRESH JURISDICTIONAL ISSUE

The appellant herein formulated five issues for the determination of the main appeal, Paragraphs 8.1, pages 13-14 of the appellants brief filed in this Court on January 16, 2014. On their part, the

respondents to the main appeal, for the first time, canvassed a jurisdictional issue, namely, that the “trial Court lacked the jurisdiction” to entertain the case. In consequence, it invited the Court to dismiss the appeal.

Although, the respondent raised this question for the first time in the Respondents brief filed on May 15, 2015, it cannot be gainsaid that it was properly raised and in consequence, cannot be wished away. Surely, the rationale of all binding authorities on this point is that a jurisdictional issue, such as the one now canvassed by the respondent, could be raised at any time, even in this Court for the first time. As this Court held in *Wema Securities and Finance Plc v. NAIC* (2015) LPELR-24833 (SC), per Nweze JSC:

“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; (1968) 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), 625 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) 8 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 reason is not far to seek. Due to its fundamental nature, it is exempted from the disability 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. Otunsanya* (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. Onagowura (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. Ogunnaya (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. Oyebe (1984) 1 SCNL 390; Ezomo v. Oyakhire (1985) 1 NWLR (pt 2) 193; Akegbeja v. Ataga (1998) 1 NWLR (pt 134) 459, 468, 469; Bronik Motors v. Wema Bank Ltd (1983) 6 SC 158; Senate President v. Nzeribe (2004) 41 WRN 60; Odiasa v. Agbo (1972) 1 All NLR (pt 1) 170; Dickson Moses v. The State (2006) 7 SCM 137; 169.

Thus, although it is desirable that preliminary objection 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; Owoniboys 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) 1 NWLR (pt. 214) 126; Utih v. Onaytare (1991) 1 NWLR (pt. 166) 166."

Having been canvassed, it (the question of the jurisdiction of the trial Court) must be disposed of before dealing with the rest of the arguments in the appeal, if need be. *Kalu v. Odili (1992) 6 SCNJ (pt 1) 76. True indeed, a finding in favour of the arguments on the absence of jurisdiction would even obviate the need to attend to those other issues, both in the main appeal and Cross Appeal.* *Onigeneh v. Egbochualam (1996) NWLR (pt 448) 255; NEPA v. Ango (2001) 15 NWLR (pt 737) 627.*

Other decisions include *F.C.D.A. v. Sule (1994) 3 NWLR (pt*

332) 256, 282; Oro v. Falade (1995) 5 NWLR (pt 396) 385, 407; Ifeanyi Chukwu (OSONDU) Ltd v. Solch Boush Ltd (2000) 5 NWLR (pt 656) 327, 352; Onigemeh v. Egbochualam (1996) NWLR (pt 448) 755; NEPA v. ANGO (2001) 15 NWLR (pt 737) 627.

SUBMISSIONS OF COUNSEL

B As indicated earlier, learned senior respondent's counsel, for the first time, contested the jurisdiction of the trial Court to entertain the matter. He pointed out that the appellants contention was that he was entitled to, but was not given, notice of the board meeting at which he was dismissed as the Managing Director and that he was denied the right and opportunity to make representations to the shareholders of the respondent pursuant to Sections 236, 262 and 266 of CAMA.

D In his submission, given the above claim of the appellant, he should have approached the Federal High Court for resolution of his complaint of the breaches of CAMA and respondents articles of association, (citing Section 251(1) of the Constitution and not the trial Court.

E He explained that the appellant's principal complaint is his alleged wrongful removal as the respondent's Managing Director. Accordingly, he maintained that the action ought to have been commenced at the Federal High Court. He urged the Court to uphold the objection and dismiss the appeal.

CONTENTION OF THE APPELLANT'S COUNSEL

F Pages 3 - 8 of the Appellant's Reply brief were devoted to the arguments in response to the jurisdictional challenge which the respondent canvassed. It was, firstly, pointed out that the fulcrum of the case at the trial Court was the respondent's unlawful removal of the appellant as employee and Managing Director contrary to the provisions of his contract of employment, citing Paragraphs 7-15 of Vol 1 of the record.

H Learned senior counsel submitted that it is the claim, as pleaded in the Statement of Claim, that determines the Courts jurisdiction, Onuorah v. Kaduna Refinery and Petroleum Co Ltd (2005) 6 NWLR (pt 921) 393. He maintained that the appellant's relief for a declaration that his purported dismissal was a repudiatory breach of his contract of employment etc had no connection with Section 251 of the Constitution.

Citing counsel address at the trial Court, (Paragraphs 11-15 of the address on jurisdiction, pages 343-344, Vol 111), he observed that the respondent admitted the appellant's position. In his view, counsel's volte face on this question before this Court would not affect the jurisdiction of the trial Court. He contended that the trial Court, rightly, considered the CAMA provisions having regard to Paragraph 24 of the Contract of Employment, page 159 of Vol 1 of the record.

In his view, Paragraph 24 (supra) made Cadbury's Articles of Association and CAMA provisions on the procedure for removal of a director part and parcel of the contract. As such, failure to remove in accordance with them the respondent was liable and the lower Courts rightly found as such. He pointed out that the arguments on CAMA were ancillary to Paragraph 24, pages 7-8 of reply brief.

RESOLUTION OF THE JURISDICTIONAL POINT

To situate this issue in its proper context, it is necessary here to re-iterate the point that the proximate cause of the litigation was exhibit C2, the letter of December 11, 2006 which the Claimant inveighed against as "invalid and wrongful on its face?" Indeed, at page 1785 of Vol. 111 of the records, the lower Court "alluded to exhibit C2 as being the genesis of the instant action." Elaborating further, the Court observed that by the said exhibit C2, the attitudinal disposition of the respondent as an employee of the appellant was questioned.

It proceeded to quote a passage from exhibit C2 which speaks to the cogency of the respondent's argument relating to the want of jurisdiction of the trial Court to entertain the matter. Listen to this:

"Clearly, your conduct contravenes the values of Cadbury Nigeria and is unjustifiable (sic) in the circumstance, the Board has resolved to summarily dismiss you from office as Managing Director and Chief Executive." (Page 1768)

The averment in the Claimant's pleading was couched thus:

"8. The said letter was invalid and wrongful its face for the following reasons

(a) there was no or no valid meeting of the Directors of the defendant at which the decision

(c) No notice of any relevant Board meeting was given to the Claimant although he was at all times an extant member of the Board

of Directors and legally entitled to such notice”(pages 5-6 of Volume I of the records, italics supplied for emphasis).

Indeed the logic of the reason that his removal was unlawful was erected on the premise that, in its operation (through the manner in which the notice of meeting was handled) was less than salutary. It, therefore, found that his dismissal was unlawful for “the above reasons, that is, non-notification of the Claimants of the Directors meeting which it held was shoddily handled:

“I therefore find that the dismissal of the Claimant by the defendant was not lawful for the above reasons (that is, its earlier reason that the claimant ought to have been given notice of this meeting as the fact that he was suspended as at the date of the meeting does not rub him of the right to be notified of the meeting where his fate is to be discussed...

I hold that the matter (the defendant’s said meeting) was very shoddily handled by the defendant as it was given the impression that it just gave a dog a bad name in order to hang it”(pages 1382, italics supplied)

The lower Court affirmed the position of the trial Court.

After the lower Court painstaking examination of the provisions of CAMA on the point, it concluded (page 1795, Vol. 111 of the record) that *“it is a well settled principle that the combined effect of the provisions of Section 266 (1) and 262 (of CAMA) is that a director, liable to be removed shall be entitled to be given a notice of the meeting. It is immaterial whether or not the director attends, or is represented at such meeting.”*(pages 1795, vol. 111 of the record, italics supplied)

As indicated above, the learned senior counsel for the respondent contended that, against the background of the appellant’s contention, the trial Court had no jurisdiction to entertain the complaint. He pointed out that the appellants grouse was that though he (appellant) was entitled, he was not given notice of the board meeting at which he was dismissed as the Managing Director. Ipso facto, he was denied the right and opportunity to make representations to the shareholders of the respondent pursuant to Sections 236; 262 and 266 of CAMA.

In Paragraph 2.2 of the reply brief, counsel for the appellant contended that “Oni’s complaint is termination of his employment

notwithstanding that incident of Company Law touch upon his substantive claim.

With profound respect, this argument, having regard to the excerpts of the appellant's claim and the reliefs (in particular, relief one set out earlier) is non sequitur. At the risk of repetition, Paragraph 8 of the Statement of Claim is reproduced here, even if ad nauseam:

"8. The said letter was invalid and wrongful on its face for the following reasons

(a) There was no or no valid meeting of the Directors of the defendant at which the decision communicated on 11th December, 2006 was taken.

(b)

(c) No notice of any relevant Board meeting was given to the Claimant although he was at all times an extant member of the Board of Directors and legally entitled to such notice". (pages 5-6 of Volume 1 of the records, italics supplied for emphasis)

On its part, the trial Court's findings on the "unlawfulness" of the Claimant's dismissal - findings premised on the infraction of his right to be notified of the meeting where his fate was to be discussed - were so inextricably tied to the question of a limited liability company, in this case, the notice of meeting under Section 266 (4) of CAMA where his fate was sealed.

As pointed out earlier, at page 1382, the trial Court held:

"...I do hold that the Claimant ought to have been given notice of this meeting (that is, the meeting which the Claimant impugned in Paragraph 8 of the pleadings as invalid and wrongful on its face..."

Still on the same page, it concluded thus:

"I therefore find that the dismissal of the Claimant by the defendant was not lawful for the above reasons (that is, its earlier reason that the Claimant ought to have been given notice of this meeting as the fact that he was suspended as at the date of the meeting does not rob him of the right to be so notified of the meeting when his fate (as Managing Director) is to be discussed..."

I hold that the matter (the defendant's said meeting) was very shoddily handled by the defendant as it has given the impression that it just gave a dog a bad name in order to hang it!" (page 1382, italics supplied)

Thus, from the express averments in Paragraph 8 of the Statement of Claim and the first declaratory relief (*supra*), the crux of his complaint was the non-issuance of the notice of the board meeting where his fate was sealed. As such, there was no way he could have navigated his claim out of the prevailing provisions of Section 251 B (1) (e) of the 1999 Constitution.

As, demonstrably, shown in the exposition of the lower Court, the entire case revolved around the appellant's entitlement to notice of meeting prior to removal as company director. It, first, quoted the finding of the trial Court with regard to exhibit C2. Thereafter, it (the C lower Court) delved into an exposition of the procedure for the removal of a director.

For these, it cited the respondent's Articles of Association, (page 1786-1787, Vol. 111), Section 236 of the Companies and Allied D Matters Act (CAMA, for short), (part 1787, Vol. 111).

It finally affirmed the postulations that:

(1) The appellant's (that is, respondent before this Court) Board of Directors did not meet to decide on a majority vote to remove the respondent (appellant in this appeal) in accordance with Articles 96 E and 94 of exhibit D1 as well set out (sic) Provisions of Section 236 of CAMA (*supra*);

(2) That the respondent (Cadbury) did not pass any resolution, either special or ordinary and pass same upon the respondent;

(3) That upon the receipt of the Price Water House Coopers F Report (exhibit D15), the respondent (appellant herein) was not accorded the opportunity to make representations. And that the respondent's representation was not sent to the persons that participated in the meeting of 11/12/06 in compliance with Section 262 (3) G of CAMA (*supra*);

(4) That upon the removal thereof, the appellant (Cadbury) refused to pay the respondent the agreed damages as envisaged in clause 20 (a) and (b) of exhibit C1 and Section 262 (6) of CAMA (pages 1788-1789, Vol 111 of the record, italics supplied)

H ***In effect, contrary to the submissions of his counsel, the appellant's impeachment of the procedure for his removal, (via the meeting which he impugned in Paragraph 8 (a) and (e) of the pleading - a matter governed by Sections 262 and 266 of CAMA) was the pivot of his complaint at the lower Court.***

As such, by virtue of Section 251 (1) (e) of the 1999 Constitution as amended), the proper forum for the ventilation of that complaint should have been the Federal High Court. Longe v. First Bank Nigeria Plc. (2010) 6 NWLR (pt 1189) 1; Yalaju Amaye v. A.R.E.C. Ltd (1990) 4 NWLR (pt 145) 422.

The trial Court was, therefore, not the proper forum for agitating the above questions. Babington-Ashaye v. E. M. A. General Enterprises (Nig) Ltd (2011) 10 NWLR (pt 1256) 479, 522; Njikonye v. MTN Nig. Comm. Ltd. (2008) 9 NWLR (pt 1092) 339, 368, E-B.

Against this background, the only conclusion is that both the trial and lower Courts toiled in vain. Cotecna International Ltd v. Ivory Merchant Bank Ltd (2006) 9 NWLR (pt 985) 215, 297. **As it is well known, the issue of jurisdiction poses a crucial question of competence.** Madukolu and Ors v. Nkemdilim (1962) 2 NSCC 374; Okoya v. Santilli (1960) 3 SC (pt 11) 1; Emeka v. Okadigbo and Ors (2012) 7 SC (pt 1) 1.

Unarguably, where there is absence of jurisdiction, the entire proceedings, trial, findings, orders and pronouncement of the Court come to naught. Okoya v. Santilli (supra); Osafire v. Odi (supra); Emeka v. Okadigbo and Ors (supra).

The cases on this point are legion: they are many, Madukolu and Ors v. Nkemdilim (1962) SCNLR 31; West Minister Bank Ltd v. Edwards (1942) AC 529, 533; Dangote v. CSC Plateau State (2001) 4 SCNJ 131; Aloa v. ACB Ltd (200) 6 SC (pt 1) 27; Bronik Motors Ltd and Anor v. Wema Bank Ltd (1983) 1 SCNLR 296; Obi v. INEC (2007) 11 (pt 1046) 565, Galadima v. Tambai (2000) 6 SC (pt 1) 196;.

What is more, submitting to jurisdiction of a Court is no answer to want of jurisdiction. This must be so for a total want of jurisdiction cannot be cured by the assent of the parties. Ukwu v. Bunge [1997] 57 LRCN 1. **I, therefore, find that the judgment of the lower Court, which affirmed the trial Courts findings and conclusion, is a nullity for, since the trial Court lacked the jurisdiction to entertain the matter, ipso facto, the lower Court, equally lacked the jurisdiction to deal with the appeal before it.**

Decidedly, I shall refrain from broaching any consideration of

the other arguments in the briefs and, afortiori, in the Cross Appeal, else in so doing, the ultimate outcome of the matter in the proper forum (if, and when, the appellant repairs thereto) may be prejudiced.

Accordingly, I find that this appeal is unmeritorious and therefore, struck out for want of jurisdiction in this Court as well. NDIC v. CBN (2002) 7 NWLR (pt 706) 300; Oloriode v. Oyebe (1984) 1 SCNLR 390; (1984) 5 SC 1. Parties are to bear their costs.

C

MUHAMMAD JSC

I read before now the judgment just delivered by my learned brother, Nweze, JSC, I am in agreement with him in his reasoning process and conclusion on both the main and the cross appeals. I abide by consequential orders made there in.

MUNTAKA-COOMASSIE JSC

I was allowed to have read in draft this clear judgment rendered by my learned brother C. C. Nweze, JSC and delivered on 22/1/2016. I agree with the reasons and reasoning adumbrated by my learned brother. I adopt both and in my opinion, his lordship was correct in his conclusion that this appeal is devoid of any merit and is hereby dismissed. However, I agree with learned lord that in view of the existence of preliminary objection the appeal is finally struck out.

RHODES-VIVOUR JSC

I have had the advantage of reading in draft the judgment of my learned brother Nweze, JSC. I agree with his Lordship that the Lagos High Court had no jurisdiction to hear the matter in view of Section 251(1)(e) of the Constitution. In view of the fundamental nature of jurisdiction I add a few words of mine.

In J.O. Emeka v. Okadigbo & 4 ors (2012) 7 SC (pt. 1) p.1

I said that:

“The issue of jurisdiction is fundamental in any suit. It is the heart and soul of a suit. It is a Court’s authority or power to hear an issue and/or the suit. Once a Court lacks jurisdiction to hear a suit

and it goes ahead to hear the suit as if it had jurisdiction, no matter how well the suit was decided, the whole proceedings and judgment would amount to a nullity. See also *Okoya v. Santilli* (1990) 3 SC (pt II) p.1, *Osafire v. Odi* (1990) 5 SC (Pt II) p.1.

Jurisdiction can be raised at anytime in the Court of trial, on appeal and in this Court for the first time. See *NNPC v. Klifco Nig Ltd* (2011) 4 SC (pt.1) p.108, *Olagunju & Anor v. PHCN* (2011) 4 SC (pt.1) p.152, *Ogembe v. Usman & 2 Ors* (2011) 12 SC (pt. III) p.34, *Alims Nig Ltd v. UBA* (2013) 1 SC. p.1.

Jurisdiction is so fundamental that it can be raised informally, although it is desirable that some process is filed so that the adverse party is not taken by surprise. It can be raised *Suo Motu*, and a party seeking to raise the issue of jurisdiction on appeal does not need leave of any Court to do so.

The well settled practice is for the issue of jurisdiction to be resolve quickly, one way or the other thereby saving time and costs. There is nothing as useless as doing efficiently that which should not have been done at all.

In deciding whether a Court has jurisdiction to hear a matter, the Court should examine the Plaintiff/Claimant's pleadings and no other document. It is those pleadings that determines jurisdiction *Anya v. Iyayi* (1993) 7 NWLR (pt 305) p. 290, *Anigboro v. Sea Trucks Nig. Ltd* (1995) 6 NWLR (pt.399) P43.

In *Madukolu & Ors v. Nkemdilim* (1962) vol 2 NSCC p.374 This Court said that a Court is competent when:

1. It is properly constituted as regards numbers and qualification of the members of the bench, and no member is disqualified for one reason or another, and
2. The subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the Court from exercising its jurisdiction; and
3. The cases come before the Court initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction.

The Appellant sued for wrongful and unlawful termination of his contract of employment with the respondent where he was Managing Director of the Respondent Company. According to the Appellant, he was dismissed as the Managing Director contrary to Section

236, 262 and 266 of the Company and Allied Matters Act, and the Articles of Association of the Respondent.

Section 251 (1) (e) of the Constitution reads:

“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 cases and matters-

(e) arising from the operation of the companies and Allied Matters Act or any other enactment replacing that act regulating the operating of companies incorporated under the companies and allied matters Act”

My Lord, the Appellant’s action is a civil cause. Averments in his statement of claim that he was dismissed from the office of Managing Director in the Respondent’s company contrary to the Articles of Association of the said company and Provisions of the Companies and Allied Matters Act to wit: Sections 236, 262 and 266 are company matters that arise from the operation of a company and fall within the warm embrace of Section 251 (e) of the Constitution. Furthermore, the subject matter of the appellant case is not within the jurisdiction of the State High Court. It is within the jurisdiction of the Federal High Court. See (2) in *Madukolu v. Nkemdilim* supra. The Appellant’s suit can only be heard by the Federal High Court and not the Lagos State High Court. In the circumstances, the Lagos State High Court had no jurisdiction to hear the Appellant’s claim, and so the decision of the Lagos State High Court and the Court of Appeal are complete nullities.

For this, and the more detailed reasoning in the leading judgment this appeal is struck out.

This Court has no jurisdiction over a suit that both Courts below had no jurisdiction to adjudicate on since you cannot put something on nothing and expect it to stand.

H

OGUNBIYI JSC

I read in draft the lead judgment just delivered by my learned brother Chima Centus Nweze, JSC. I agree that the appeal has no merit and should be struck out for want of jurisdiction.

The two lower Courts failed to appreciate the fundamental defect of the absence of jurisdiction and embarked on an exercise of futility. The jurisdiction of this Court is not at large but must be exercised within the confines of the law. In other words, this Court can only be clothed with jurisdiction if and only if the two lower Courts were competently constituted in the proceedings before them which cannot be conducted in a vacuum. B

It is elementary to say that proceedings, no matter how well conducted, without jurisdiction is null and void ab initio and will be declared a nullity. It will not have any recognition in the legal parlance. C

It is pertinent to state with emphasis, the obvious, that an issue of jurisdiction is so fundamental and it touches right deep into the foundational framework or genesis of the case.

In other words, proceedings well conducted, without jurisdiction is akin to a house without foundation which will and surely collapse. The celebrated locus classical case of *Madukolu v. Nkemdilim* (1962) SC NLR 31 among others is very succinct and well settled on this matter. D

The issue of jurisdiction is constitutional and cannot be conferred on the Court either by itself or by the consent of the parties/counsel themselves. It is needless to say also that it cannot be partially conferred but must be either total or none at all. In other words, the conditions or criteria stipulated in the principles laid down in the case of *Madukolu v. Nkemdilim* (supra) must all co-exist in totality for the Court to be properly constituted. E F

The horse has been flogged long enough and I only wish to say finally that in terms of the lead judgment of my brother Nweze, JSC I also find no merit this appeal and same is struck out for want of jurisdiction. I further endorse the order made as to costs. G