

SUPREME COURT OF NIGERIA

FRIDAY 12TH FEB., 2016. SC. 223/2009

**CORAM:- W. S. N. ONNOGHEN, N. S. NGWUTA, M. U.
PETER-ODILI, O. ARIWOOLA, M. D. MUHAMMAD, JJSC**

DIAMOND BANK LIMITED APPELLANT
AND
PRINCE ALFRED AMOBI UGOCHUKWU RESPONDENT

COURTS - Competence of - Conditions - Court is competent when inter alia it is properly constituted - Subject matter is within its jurisdiction - And action is initiated by due process of law (H1)

JURISDICTION - Ouster of - Edict No. 7 of 1985 ousted the jurisdiction of the court - Thus the freezing of respondent's account and subsequent transfer of the funds - Are not subject to litigation (H2)

FACTS

This action was commenced at the Federal High Court Port Harcourt by plaintiff/respondent against defendant/appellant, challenging the refusal of the latter to honour his cheques on the ground of incomplete mandate and the freezing of his account and transfer of funds therein to another account. Appellant is a commercial bank while respondent opened and operated two accounts with appellant. There were two signatories to the accounts. Both accounts were for the purpose of lodging funds realized from contracts between respondent and Imo State Secondary Education Management Board and the Primary Education Board for the production of student's identity cards. Later on, a dispute arose between the signatories regarding the operation of the accounts. This led to the refusal of cheques issued by respondent to some 3rd parties.

Subsequently, the two accounts were frozen on the orders of Imo State Task Force for the Recovery of Public Property and Funds. It was alleged that respondent used the contract to defraud the Imo State Government and paid the proceeds into the said accounts with appellant. Appellant was ordered to transfer the funds in the accounts to the account of Imo State Government with Afribank Plc. Appellant consequently complied with the order of transfer of the

1526 Diamond Bank Ltd. v. Ugochukwu (2016) 2 KLR (pt. 382)

funds in the account. Respondent was therefore dissatisfied and hence filed the action. In the course of the trial, appellant sought leave to further amend its amended Statement of Defence to plead a standard banking practice but the court struck out the motion. At the conclusion of trial, the trial court entered judgment for respondent, which judgment was affirmed by the Court of Appeal, resulting in the instant appeal by appellant.

ISSUE FOR DETERMINATION

Whether the jurisdiction of the trial court was not ousted by section 18(1) of the Recovery of Public Funds and Property (Special Provisions) Edict, 1995 of Imo State - Ground 4.

HELD (Unanimously allowing the appeal per **ONNOGHEN JSC**)

COURTS - Competence of - Conditions

1. A court is only competent or has jurisdiction to hear and determine a matter when:

“1. It is properly constituted with respect to the number and qualifications of its members;

2. The subject matter is within its jurisdiction.

3. The action is initiated by the due process of law; and

4. The condition precedent to the exercise of jurisdiction has been satisfied.”

It is clear that failure to satisfy any of the above preconditions is fatal to the court’s exercise of jurisdiction or adjudication. (p. 1534 D)

JURISDICTION - Ouster of

2. It should however be pointed out that jurisdiction may be ousted by Statute or Decree or Edict - such as section 18(1) of Edict No. 7 of 1985 supra.

Once again, let me repeat that the freezing of the account of the respondent and subsequent transfer of the funds therein to Afribank were acts and things done under Edict No. 7 of 1985, as found by the lower court thereby constituting bar to the cause of action and are consequently not subject to litigation.

It is also unconscionable for the respondent to be allowed to exploit/manipulate the law to his advantage having regard to the circumstance in which he got the funds lodged in those accounts, as revealed in evidence on record. (p. 1534 F)

NOTABLE POINT OF INTEREST

ONNOGHEN JSC

1. Jurisdiction – Fundamentality of

In view of the fact that it is now settled law that an issue of jurisdiction is a thresh-hold issue which is fundamental to adjudication, it is important to consider and resolve same, (issue C) first before proceeding any further with the consideration of the merits of the substantive appeal. The above position is also advised by the principle of law that a decision of a court without the requisite jurisdiction is null and void, however well the trial or proceeding leading thereto was conducted. (p. 1529 G)

REPRESENTATION

L. M. Alozie, Esq for the appellant

Kevin Ugwu Esq for the respondent with A. I. Nwachukwu Esq

CASES REFERRED TO

Madukolu v. Nkemdilim (1962) All NLR 587

Anyia v. Yayi (1993) 7 NWLR (pt. 305) 290

A-G Kwara State v. Warah (1995) 7 NWLR (pt. 405) 121

Onuorah v. Okeke (2005) 10 NWLR (pt. 932) 47

Agbabiaka v. Saibu (1999) 10 NWLR (pt. 548) 1

Oduiba v. Azege (1998) 9 NWLR (pt. 566) 370

Odulaja v. Haddad (1973) 11 SC 357

STATUTES REFERRED TO

Recovery of Public Funds & Property (Special Provisions) Edict No. 7 of 1985 of Imo State, ss. 12, 18(1)

Evidence Act, s. 149(d)

LEAD JUDGMENT BY ONNOGHEN JSC

This is an appeal against the judgment of the Court of Appeal, Holden at Port Harcourt in appeal No. CA/PH/329/2005 delivered

on the 28th day of March, 2007 in which the court dismissed the appeal of the present appellant.

The facts of the case include the following.

Appellant is a commercial bank while the respondent opened and operated two accounts with appellant, one of which was a current account in the name of AL-CLEMENT with two signatories thereto. It was account No. 0712555017. The signatories were Prince Alfred Amaobi Ugochukwu and Uzoma Onuoha (also known as Unachukwu Ugochukwu), a then Special Assistant to the Military Administrator of Imo State. Exhibit 'M' is the specimen signature card for the account. Respondent also opened a fixed deposit account with appellant. Both accounts were for the purpose of lodging funds realized from contracts between the respondent and Imo State Secondary Education Management Board and the Primary Education Board for the production of student's identity cards.

Some cheques were issued and lodged in the two accounts while cheques for withdrawals were signed by the signatories to the account.

Later on, a dispute arose between the two signatories over the operation of the account resulting in the respondent writing exhibit 'D' to appellant in which he dropped the signature of Uzoma Onuoha. Efforts by DW1, the manager of appellant to resolve the dispute was unsuccessful. Respondent issued exhibits E.F.G. and H to some people for payment but were dishonoured and marked "incomplete mandate" as the cheques were signed by respondent alone.

The accounts of the respondent were later frozen on the orders of Imo State Task Force for the Recovery of Public Property and Funds headed by a High Court Judge. It was alleged that respondent used the contract to defraud the Imo State Government and paid the proceeds into the said accounts with the appellant. Appellant was ordered to transfer the funds in the accounts to the account of Imo State Government with Afribank Plc. The orders are exhibits 'S' and 'T'. The initial reluctance of appellant to comply with exhibits 'S' and 'T' resulted in a threat by the Task Force on DW1, a manager of appellant with imprisonment as per exhibit 'U'. Appellant consequently complied with the order of transfer of the funds in the account.

Respondent was aggrieved by the refusal of appellant to hon-

our the cheques on grounds of incomplete mandate and the orders of the Task Force freezing and transferring the funds in the accounts and consequently instituted two suits namely HON/208/97 in the Federal High Court, Holden at Port Harcourt - see exhibits 'W' and 'U' respectively. While the two suits supra, were pending, respondent instituted the suit resulting in the instant appeal. B

In the course of the trial, appellant sought leave to further amend its amended Statement of Defence to plead a standard banking practice but the court struck out the motion. At the conclusion of trial, the trial court entered judgment for the respondent, which judgment was affirmed by the lower court on appeal, resulting in the instant further appeal, the issues for the determination of which have been identified by learned Counsel for appellant. Louis M. Alozie Esq in the appellant's brief filed on the 19th day of October, 2010 as follows:- C

"(a) Whether the Appellant was wrong to have dishonoured the four cheques (Exhibits E, F, G and H) Grounds 1 and 2. D

(b) Whether the Defendant/Appellant was wrong to have complied with the orders of the Imo State Task Force for Recovery of Government Property and Funds by transferring the funds in the Respondent's accounts to the Account of Imo State Government at Afribank Plc. Grounds (sic) 3. E

(c) Whether the jurisdiction of the trial court was not ousted by section 18(1) of the Recovery of Public Funds and Property (Special Provisions) Edict, 1995 of Imo State - Ground 4. F

(d) Whether the court below was right in law in affirming the decision of the trial court refusing the Appellant's application for amendment having regard to the evidence already on record."

In view of the fact that it is now settled law that an issue of jurisdiction is a thresh-hold issue which is fundamental to adjudication, it is important to consider and resolve same, (issue C) first before proceeding any further with the consideration of the merits of the substantive appeal. The above position is also advised by the principle of law that a decision of a court without the requisite jurisdiction is null and void, however well the trial or proceeding leading thereto was conducted. G

It is the submission of learned Counsel for appellant that by the provisions of section 18(1) of the Recovery of Public Funds and H

Property (Special Provisions) Edict, 1985 of Imo State, the jurisdiction of the trial court to hear and determine the matter was ousted; that by section 12 of the said Edict, the Task Force has the power to enquire into the accounts of the respondent which it did before issuing exhibits 'S' and 'T', that the funds in the said accounts of the respondent were paid by parastatals or boards under the State Government for contracts that were abandoned by the respondent; that the Task Force traced the sums paid to respondent for contracts not executed to the accounts of the respondent with appellant which it has the power to do.

It is the further submission of learned Counsel for appellant that the lower court in error in holding that failure of appellant to produce the Government White Paper showing the name of the respondent as one of the debtors means that it would not favour appellant if were to have been produced thereby invoking the provisions of section 149(d) of the Evidence Act against appellant; that the above holding results from a misconception of the provisions of section 6(a) and (b) of the Imo State Recovery of Public Funds and Property (Special Provisions) Edict, 1985 and section 149(d) of the Evidence Act; that it was not the duty of appellant who did not plead a White Paper, nor was in possession of same to produce the White Paper, thereby making the provisions of section 149(d) of the Evidence Act, inapplicable, that the Task Force ought to have been made a party in the proceedings and failure to do so is fatal to the competence of the suit.

Finally, learned Counsel urged the court to resolve the issue in favour of appellant.

On his part, learned Counsel for respondent, KEVIN UGWU ESQ. in the respondent brief filed on 10/1/11 referred to the decision of this Court in the case of *Madukolu vs Nkemdilig* (1962) All NLR 587 and submitted that the decision contains the instance in which the "jurisdiction of a court can only be ousted," and that it is the plaintiff's claim that determines the jurisdiction of the court, referring to *Anya vs Yayi* (1993) 7 NWLR (pt. 305) 290; *A-G Kwara State vs Warah* (1995) 7 NWLR (pt. 405) 121; *Onuorah vs Okeke* (2005) 10 NWLR (pt. 932) 47; that the case of the respondent as contained in his pleading being a claim for N126,796,500.00 general and special damages for dishonouring of his cheques and con-

version and unlawful freezing of the plaintiff's accounts with the defendant; that the case of action arose in 1997 based on a contract between a banker and its customer under section 230(1) of Decree 107 of 1993; that the provisions of sections 14 and 18(1) of the Edict in question did not divest the High Court of Imo State of its jurisdiction to hear the suit and urged the court to resolve the issue B against appellant.

It is not in dispute that the issue of jurisdiction of the trial court to hear and determine the matter having regard to the provisions of section 18(1) of the Recovery of Public Funds and Property (Special C Provisions) Edict, 1985 was pleaded by appellant and argued before the lower courts. Also not disputed is the fact that Imo State Government, at the time, set up a Task Force on Recovery of Government Property and Funds under Edict No. 7 of 1985 and that by exhibits 'S' and 'T', which are orders issued by the said Task Force, the funds D standing to the credit of the respondent with appellant were frozen and appellant ordered to transfer same to Imo State Government account with another bank, which appellant reluctantly complied with after duly informing the respondent. Also not in dispute is the fact that the funds in the said accounts of the respondent with appellant E were proceeds of contracts with Imo State Government Parastatals which the respondent failed to execute. It is also in evidence that respondent was declared wanted by the Task Force on account of the failed contracts he had with Imo State Primary Education Board and the Secondary Education Board, both under the State Ministry of F Education. Respondent admitted that the moneys in the two accounts operated with appellant were payments he received from the contracts which he failed to perform.

It is also not in dispute that by the provision of section 12 of G the Recovery of Public Funds and Property (Special Provisions) Edict No. 7 of 1985, the Task Force has the power to fill bank order forms and the inquire from any bank the financial position in that bank of a person named in the bank order from freeze the account of the person named etc. It was in compliance with the above provision that H the Task Force issued the order freezing the accounts of the respondent with appellant as evidence in exhibits 'S' and 'T'.

Now section 18(1) of the said Edict No. 7 of 1985 provides as follows:-

“No action shall lie or be maintained in any court of law in respect of any action taken or anything done or omitted to be done in respect of any matter under the Edict.

It is not in doubt whatsoever, that the freezing of the accounts and transfer of the funds as order in Exhibits ‘S’ and ‘T’ are actions
 B *taken or things done “under the Edict.”*

What did the lower courts hold in respect of the issue under consideration?

The trial judge held that the case before the court relates simply to banker-customer relationship and that the Task Force was a
 C third party; that exhibits ‘S’ ‘T’ and ‘U’ are extraneous to the relationship between the plaintiff and defendant, that *“even though the exhibits were signed by Hon. Justice A.O.H. Ukachukwu, he signed same not as a High Court Justice but as Chairman. These exhibits do*
 D *not show any exercise of judicial powers to warrant defendant to breach its duty to its customer...”*

What did the lower court say on exhibits ‘S’ and ‘T’ and the provisions of sections 14 and 18(1) Edict No. 7 of 1985?

At page 227 of the record, the lower court found and held
 E thus:

“Exhibits ‘S’ and ‘T’ show beyond doubt that it was the Task Force that ordered the appellant’s Bank to freeze and transfer the funds in the respondent’s account to Afribank and exhibit ‘U’ shows clearly that the appellant’s Manager refused to comply with the orders in Exhibits ‘S’ and ‘T’ hence the summons.”
 F

After the above finding/holding, the lower court then proceeded to examine the provisions of sections 6, 7 and 12 of Edict No. 7 of 1985 and stated, at page 228 of the record as follows:-

G *“The interpretation of sections 6 and 7 supra and the purpose of the legislation in question is to give powers to the Task Force to recover monies from persons indebted to the Government. These persons are named either in the White Paper or in documents produced by Government Ministries or Parastatals.*

H *Where the Task Force is satisfied that a person named in the White Paper or in document produced by Government Ministries or Parastatals it has power under section 12 (supra) to give orders to the Bank in which such a person has an account to freeze same and thereafter withdraw the amount to clear the indebtedness.”*

However, after making the above findings/holdings the court then stated immediately thereafter that:

“The issue for determination is on what basis did the Task Force order appellant to freeze the account of the respondent.” And when on to hold at page 229 that no White Paper was tendered in evidence to justify to directive of the Task Force in exhibits ‘S’ and ‘T’^B thereby invoking the provisions of section 149(d) of the Evidence Act against appellant.

I am of the considered view that the lower court was in error in holding that the issue for determination was the basis for the order of the Task Force to freeze the account of the respondent after having found as a fact that exhibits ‘S’ and ‘T’ were duly issued by that body to appellant and that appellant dully acted on them, though upon threat as evidenced in exhibit ‘U’. I am equally of the considered view that the invocation of the provisions of section 149(d) of the Evidence Act against appellant in respect of the non-production of the White Paper was in error as appellant never pleaded same nor was it claimed that the said document was in its possession etc. To me, the lower court, having made the findings earlier referred to in relation to exhibits ‘S’ and ‘T’, the next question to be considered is what effect(s) those findings have on the jurisdiction of the trial court having regard to the provisions of section 18(1) of Edict No. 7 of 1985.^D

The lower court in holding that the provision of section 18(1) of Edict No. 7 of 1985 did not apply based its decision, like the trial court, on the fact that the action as constituted was on banker customer relationship which is governed by section 230(1) (d) of Decree No. 107 of 1993. It is true that jurisdiction of the court is determined by the claim of the plaintiff. However, in considering the claim of the plaintiff, the defence must also be considered when the issue is that of the jurisdiction of the court to hear and determine the matter. From the findings/holdings of the lower court in relation to exhibits ‘S’ and ‘T’ earlier reproduced in this judgment, it is clear that the case goes beyond ordinary banker/customer relationship. Once the lower courts found that appellant acted in accordance with exhibit ‘S’ and ‘T’ issued by the Task Force acting within the provisions of Edict No. 7 of 1985, the question to be answered is whether in the circumstance the jurisdiction of the court is not ousted in view of the provi-^F^G^H

sions of section 18(1) supra. The cause of action in relation to the jurisdiction of the court complained of is the freezing of the account of the respondent and transferring the proceeds therein to Imo State Government account in another bank.

In interpreting a similar provision in section 6(3) of Decree No. 10 of 1976 in the case of A-G Federation vs Sode (1990) 1 NWLR (Pt. 128) 500 at 505, this court held, inter alia, as follows:-

“The prohibition contained in section 6(3) of Decree No. 10 of 1976 was absolute in that no civil proceedings will lie to be instituted in any court on account of or in respect of any act, matter or thing done under the Decree. In the instant case, the matter or thing done, under the Decree was forfeiture and in respect thereof no civil proceeding could lie or be instituted. The exclusion of jurisdiction related both to acts done, and those purported to be done under the Decree.”

A court is only competent or has jurisdiction to hear and determine a matter when:

“1. It is properly constituted with respect to the number and qualifications of its members;

2. The subject matter is within its jurisdiction.

3. The action is initiated by the due process of law; and

4. The condition precedent to the exercise of jurisdiction has been satisfied.” – See Madukolu and Ors vs Nkemdilim

and Ors (1962) 1 All NLR (pt. 4) 587.

It is clear that failure to satisfy any of the above preconditions is fatal to the court’s exercise of jurisdiction or adjudication.

It should however be pointed out that jurisdiction may be ousted by Statute or Decree or Edict - such as section 18(1) of Edict No. 7 of 1985 supra.

Once again, let me repeat that the freezing of the account of the respondent and subsequent transfer of the funds therein to Afribank were acts and things done under Edict No. 7 of 1985, as found by the lower court thereby constituting bar to the cause of action and are consequently not subject to litigation.

It is also unconscionable for the respondent to be allowed to exploit/manipulate the law to his advantage having

regard to the circumstance in which he got the funds lodged in those accounts, as revealed in evidence on record.

In the circumstance and having regard to the facts and applicable law, I resolve the issue in favour of appellant. I find no reason to consider the other issues raised for determination as they have become irrelevant. B

Consequently, I allow the appeal and set aside the judgment of the Court of Appeal in appeal No. CA/PH/329/2005 delivered on the 28th day of March, 2007 affirming the decision of the High Court of Imo State, Holden at Owerri in Suit No. NOW/346/97 delivered on the 19th day of July, 2002 which is also hereby set aside. In their place, it is hereby ordered that the said suit No. HOW/346/97 be and is hereby struck out for want of jurisdiction. C

It is further ordered that parties bear their costs.

Appeal allowed. D

NGWUTA JSC

I have read in advance the lead judgment just delivered by my learned brother, Onnoghen, JSC and I agree that the appeal has merit and ought to be allowed. E

Section 18(1) of the Recovery of Public Funds and Property (Special Provisions) Edict 1985 of Imo ousted the jurisdiction of the trial courts and ipso facto the court below.

It provides: F

‘S.18(1): No action shall lie or be maintained in any court of law in respect of any action omitted to be done in respect of any matter under the Edict. (underlining mine for emphasis)

The freezing of the account of the respondent as shown in Exhibits ‘S and ‘T’ is an action taken under the Edict as per s.18(1) thereof. G

Also there is no moral or legal basis for the respondent to keep and enjoy the found he got from a contract he did not exercise.

For the above and the full reasons in the lead judgment I also H allow the appeal and order that Suit No. HOW/346/97 be and is hereby struck out for want of jurisdiction.

Parties to bear their respective costs.

PETER-ODILI JSC

I agree completely with the judgment just delivered by my learned brother, W. S. N. Onnoghen JSC and the reasoning from which the decision emanated. I shall make some comments to show my support.

This is an appeal from the Port-Harcourt Division of the Court of Appeal which delivered its decision on the 23rd March 2007 in favour of the plaintiff now respondent and the Defendant and Appellant aggrieved has come before this court in challenge of the concurrent judgment of the two courts including the High court, Owerri.

The background facts of the appeal have been fully dealt with in the lead judgment and I shall not bother repeating them.

On the 17th November, 2015 when the appeal was heard, learned counsel for the Appellant, L. M. Alozia Esq. adopted their Brief of Argument filed on the 19th October 2010. He identified four issues for determination which are as follows:-

a. Whether the Appellant was wrong to have dishonoured the four cheques (Exhibits E, F, G and H) Grounds 1 and 2.

b. Whether the Defendant/Appellant was wrong to have complied with the orders of the Imo State Task Force for Recovery of Government Property and funds transferring the funds in the Respondent's accounts to the Account of Imo State Government at Afribank Plc. Ground 3.

c. Whether the jurisdiction of the trial court was not ousted by Section 18(1) of the Recovery Public Funds and Property (Special Provisions) Edict, 1985 of Imo State. Ground 4

d. Whether the court below was right in law in affirming the decision of the trial court refusing the Appellant's application for amendment, having regard to the evidence already on record.

Mr. Kevin Ugwu, learned counsel for the respondent adopted the Brief of Argument of the Respondent riled on the 10/1/2011 and in it went along the issues as crafted by the Appellant.

The first three issues go hand in hand and so best handled together and I shall restrict my comments there.

ISSUES (a), (b) & (c):

The questions are whether the Appellant acted rightly in dishonouring the four cheques Exhibits E, F, G, & H and if the Appel-

lant was wrong to have complied with the orders of the Imo State Task Force for Recovery of Government Property and funds by transferring the funds from the Respondent's account to that of Imo State Government at Afribank Plc. Also if the jurisdiction of the court was not ousted. Canvassing the position of the Appellant, Mr. Alozie of counsel stated that it was in dispute that the account opened in the name of AL-CLEMENT, a sole proprietorship firm with a joint account and Respondent and one Uzoma Onuoha were the authorised signatories of the said account. That the respondent on 7/7/97 by Exhibit 'D' informed the Appellant that he had dropped Uzoma Onuoha as co-signatory which Appellant ignored and went ahead to dishonour the four subsequent cheques, Exhibits E, F, G & H issued by the Respondent alone on the ground that the mandate was incomplete, but honoured the cheque Exhibit R, issued to one Paul Anuebunwa where Respondent alone signed and pleaded that it was honoured in error. That these pieces of evidence were not controverted by the Appellant and so the mandate of one of the signatories cannot validly terminate the joint mandate. That this therefore showed that the two courts below did not base their decision that Respondent had validly terminated the mandate of the co-signatory on any evidence on record and so the decision was perverse and should be set aside by this court. He cited *Agbabiaka v Saibu* (1999) 10 NWLR (pt. 548) 1; *Oduiba v Azege* (1998) 9 NWLR (pt. 566) 370; *Odulaja v Haddad* (1973) 11 SC 357.

That the Court below holding that by honouring Exhibit R, the Appellant was estopped from dishonouring Exhibits E, F, G & H was not good law since estoppel was not pleaded by the Respondent and so it could not avail him. He referred to *Alakija vs Abdullahi* (1998) 6 NWLR (Pt. 552) 1; *Ude v. Osuji* (1998) 13 NWLR (Pt. 580) 1.

Going further, Mr. Alozie of counsel for the Appellant submitted that it was not in dispute that the Military Administration of Imo State had constituted a Task Force on the recovery of Public property and funds with mandate to the Task Force to recover debts owed to the Government from persons named in a white paper or in a document produced by Government ministries or parastatals. That the said Task Force was headed by a serving judge of Imo State High Court, Justice A. O. Ukachukwu and that the said Task Force by Ex-

hibits S and T ordered the manager of the Appellant's Branch to freeze the Account of the Respondent and to transfer all monies standing in the to a designated Bank Account i. e. to credit Afri-Bank. That it is evidence that the Appellant by Exhibit K communicated to the Respondent of this development and the Appellant initially resisted compliance but after being summoned before the Task Force to show cause for the failure had no option than to comply. Learned Counsel said that Exhibits S and T operated to frustrate the contract between the Appellant and the Respondent and so Appellant was right in complying with the said orders. He cited *Marzin Engineering Ltd v. Tower Aluminums* (1993) 5 NWLR (Pt. 295) 526; *Balonwu v. Obi* (2007) 5 NWLR (Pt. 1028) 488 at 562-563

For the Appellant was contended that the Task Force was set up by the Imo state Government pursuant to the Imo state recovery of Public Funds and Property (Special Provision) Edict, 1985 and there was no evidence the appellant custody of the proceedings or record of the Task Force and so Appellant cannot be said to have withheld documents forming the basis of the orders of the Task Force and so the court below was wrong to invoke section 149 (d) of the Evidence Act against the Appellant on withholding evidence which have been produced at the trial. He referred to *Union Bank Nig. Plc. V. Ishola* (2001) 15 NWLR (Pt. 735) 47 at 81; *Asake v. Nigerian Army Council* (2007) 1 NWLR (Pt. 1015) 408 etc.

That rather it is section 150 (1) in the presumption of regularity of official or judicial acts that apply in this case. He cited *Oyakhire v. State* (2006) 15 NWLR (1001) 157 at 172; *Adamu v. Akukalia* (2007) 4 NWLR (Pt. 1023) 64 at 89.

On whether the jurisdiction of the Trial Court was not ousted by Section 18 (1) of the recovery of Public Funds and Property (Special Provisions) Edict, 1985 of Imo State, Learned counsel for the Appellant referred to Section 12 of the said Edict that the Trial Court ought not to have assumed jurisdiction. Learned counsel for the Appellant said the freezing of the Respondent's accounts and the subsequent transfer of the monies therein were acts and things done under the Edict and not subject to civil litigation.

Responding, the learned counsel for the respondent Mr. Kevin Ugwu submitted that the Appellant acted in bad faith when it dishonoured Exhibits E F G & H having honoured Exhibit A and

after receiving the respondent's letter revoking the 2nd signatory that is Exhibit D. That Exh. D effectively revoked Exh. O and ended the co-signatorship and that the Appellant failing to honour Exh. E F G & H was inexcusable. He cited *Okomu Oil Palm Co. v Iserhienhien* (2001) FWLR (Pt 45) 670 at 689.

It was submitted for the Respondent that the relationship between the parties is governed by Federal legislation and Common law whereas the Task Force is a creation of a state Edict which is not applicable to the relationship between the parties that the orders of the Task Force are neither orders of a competent Court of law nor that of a Tribunal as known in Nigeria and the Appellant not under any obligation to the Task Force since the operations of the Appellant are governed by the Federal legislations like CAMA and BOFID and Decree No. 107 of 1993 and so the Edict cannot impose any contrary obligations on the Appellant.

Mr. Ugwu of counsel for the Respondent went on to contend that the failure to produce any White Paper or documents from the Ministries or Parastatals etc containing the name of the respondent as debtor or liable to the Imo State government is indicative of the fact that no such document existed and if it existed, it would have been adverse to the Appellant. He cited *Ogwuru v. Co. Operative Bank of Eastern Nigeria* (1994) 8 NWLR (Pt 365) 685; *Jalco Ltd. V. Owoni Boys Tech. Services Ltd* (1995) 4 NWLR (Pt.391) 534.

For the respondent was submitted that the jurisdiction of the Trial Court was not ousted as the condition for the ouster did not present. That it is the Plaintiff's claim that determines jurisdiction and in this instance the Plaintiff's claim evidenced that the court was vested with the necessary jurisdiction as it was banker/customer relationship. He relied on *Madukolu v. Nkemdilim* (1962) ALL NLR 587; *A. G. Federation v. State* (1990) 1 NWLR (Pt.128) 500; *Anya v. Yayi* (1993) 7 NWLR (Pt. 305) 290 etc

The contest between the parties are on one side the Appellant's contention that the Appellant rightly and lawfully dishonoured Exhibits E F G & H as this is a clear case of breach of contract which arose because the manager of the Appellant obeyed the illegal orders from the Task Force. Also that the Trial judge was right to assume jurisdiction as section 18 of the said Edict of 1985 did not apply in the present circumstances.

With regard to the termination of the joint mandate by one of the signatories the sole proprietorship/partnership account form, Exhibit M, part of which provides thus;

“*Until a written notice from us to the contrary hereby request and authorize you to honour respective signatories as under on behalf of the firm*”.

Exhibit O, the mandate for operation of the account and the form states that cheques issuing from or drawn on the account must be co-signed by the two signatories.

Clearly, the positions in the two documents which govern the words of operation of such a joint account are the terms of the contract and so termination thereof cannot be unilateral as the respondent set out to do with his letter to appellant and that being the case, the purported termination of the co-signatories role cannot be given effect to without his being part of that determination or revocation joint of the relationship. Therefore, the court below giving effect to that one-sided revocation of the joint mandate is akin to making a new contract for the parties. See *Agbabiaka v. Saibu* (1991) 10 NWLR (Pt. 548)1. The Learned author of “The Law of Banking” by Ian F.G Baxter (3rd Edition) Toronto, The Carswell Company Ltd (1981) at pages 44-45; *Ayoke v. Bello* (1992) NWLR (Pt. 218) 380 at 384; *Adeniji v. Adeniji* (1992) 1 All NLR (Pt. 1) 298.

The above point I needed to state as an aside as the main obstacle that should be dealt with is if the Task Force had jurisdiction to entertain the suit as the question that crops up is if by Section 18 (1) of the recovery of Public Funds and Property (Special Provisions) Edict, 1985 of Imo State had not ousted the jurisdiction of the court.

The said Edict was promulgated by the Imo State Military Governor in 1985 and by Section 12 set up the body for the recovery of Public Funds and it stipulates thus:-

“*Section 12 –The Task Force shall have the power to fill bank order forms and to inquire from any bank the financial position in that bank of a person named in the bank order form and upon the receipt of necessary information from the bank, freeze the account of the person named and withdrawal from such account and amount not exceeding the persons indebtedness or surcharge*”.

It therefore follows that the Task Force was properly empowered to inquire into the account of the Respondent in the Appellant’s

bank and thereafter issued the instructions or directions in Exhibits S and T on the above situation the court below was on a wrong footing to hold that the Appellant should have produced the government White Paper that showed the name of the Respondent as one of the debtors and calling in aid of Section 149 (d) of the Evidence Act on the ground that such a document would not have been favourable to the Appellant's case. B

To buttress the powers of the Task Force to make the orders in Exhibits S and T were well provided for under Section 18 (1) of the said Edict which stipulates thus:-

"18 (1): No action shall lie or be maintained in any court of law in respect of any action taken or anything done or omitted to be done in respect of any matter under the Edict." C

The ouster clause clearly spelt out in Section 18 (1) of the Edict forecloses any court delving into the rightness or otherwise of acts done under the said Edict. This is because what has now become trite occurred and that is that the court was not competent to entertain the suit because there were features in it which had divested the court of the requisite jurisdiction. I rely on *Madukolu v. Nkemdilim* (1962) 1 All NLR (Pt. 4) 587 at 595. D E

It is therefore from the foregoing and the better reasoning in the lead judgment that I hold that the court lacked jurisdiction.

ARIWOOLA JSC

My learned brother Onnoghen, JSC obliged me a draft of the lead judgment just delivered and I am in agreement entirely with the reasoning and the conclusion of the said lead judgment. F

I too will allow the appeal and set aside the judgment of the court below which had earlier affirmed the decision of the trial High Court delivered on the 19th day of July, 2002. G

I abide by the other consequential orders in the lead judgment including the order on costs. H

MUHAMMAD JSC

I read in draft the lead judgment of my learned brother Onnoghen JSC, just delivered. I adopt same as mine in allowing the

1542 Diamond Bank Ltd. v. Ugochukwu (2016) 2 KLR Muhammad JSC

appeal and abiding the consequential orders reflected in the lead judgment including order costs.

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