

SUPREME COURT OF NIGERIA
FRIDAY 17TH JUNE, 2016. SC. 98/2005
CORAM:- W. S. N. ONNOGHEN, C. B. OGUNBIYI
K. B. AKA'AH, K. M. O. KEKERE-EKUN,
C. C. NWEZE, JJSC

JOHN SHOY INTERNATIONAL LIMITEDAPPELLANT
AND
FEDERAL HOUSING AUTHORITYRESPONDENT

JURISDICTION - Determination of - Jurisdiction are conferred by the Constitution - And it is the claim presented by the plaintiff - That determines jurisdiction of the Court (H1)

JURISDICTION - Of Federal High Court - Basis - Judicial precedents - Distinguishing - Plaintiff's claim being one for recovery of debt - Does not relate to executive action of FG or its agency - Hence it is not within exclusive jurisdiction of FHC (H2)

CONSTITUTIONAL LAW - Interpretation - 1999 Constitution s. 251(1)(a) & (p) - Application of - For the provision to apply in a suit - Such must involve administration and management of Federal Agency (H3)

FACTS

Plaintiff/appellant initiated this action at the High Court of F.C.T. against defendant/respondent under the undefended list procedure wherein the claim is for recovery of N2,858,149.75k being the cost of repairs of roof and completion of Aluminium doors and windows, N546,958.88k retention fee and 10% of the entire sum as provided by the Rules of the Court from the date of judgment till the entire sum is liquidated. The claim arose from dispute between the parties following the housing contract awarded to appellant by respondent.

The parties were unable to settle the sums payable to appellant in the contract. Hence, the action was filed. The Court after considering the affidavit in support of appellant's claim and affidavit of respondent's notice of intention to defend as well as the submission of counsel for the parties, gave judgment for appellant in line

3038 John Shoy Int. Ltd. v. F HA (2016) 6 KLR (pt. 388) 3037;
with his claim. Respondent was dissatisfied and hence appealed to the Court of Appeal, Abuja Division, contending that being an agency of the Federal Government, the Federal Capital Territory High Court had no jurisdiction to have tried the matter. The Court agreed with the contention of respondent and allowed the appeal. Aggrieved, appellant has appealed to the Supreme Court.

ISSUE FOR DETERMINATION

Having regard to the claim of the plaintiff, whether the trial court lacked jurisdiction to have entertained the case of the appellant.

HELD (Unanimously allowing the appeal per
OGUNBIYI JSC)

JURISDICTION - Determination of

1. The principal issue in this appeal is whether the Federal High Court or High Court of the FCT can entertain this case. The law is trite and elementary that the jurisdictions of Courts in Nigeria are conferred by the Constitution of the Federal Republic of Nigeria 1999. In determining whether a court has jurisdiction therefore, it is paramount to examine the statute vesting it with jurisdiction, the writ of summons and the statement of claim filed before it. The relevant provision of the Constitution central to this appeal borders on section 251. Several judicial authorities are well established that, it is the claim of the plaintiff that determines the jurisdiction of the court. (p. 3047 C)

JURISDICTION - Federal High Court - Basis

2. The claim of the plaintiff being one for recovery of debt is not a claim that relates to executive or administrative action of the Federal Government or its agency. Furthermore, it is pertinent to restate again that the case of NEPA V. Edeghero (supra) is clearly distinguishable from the present case in many respects. In the first instance while that case dealt with master and servant relationship i.e. termination of employment, the present case is on a debt owed in respect of a contract wholly performed. Secondly, in Edeghero's case there was a

claim or declaration and injunction against NEPA; in the present case there was no such claim and none was granted by the trial court. (p. 3049 F)

1999 Constitution s. 251(1)(a) & (p) - Application of

3. The question whether the plaintiff's claim falls within the purview of section 251(1) (q), (r) and (s) of the 1999 Constitution, appears to have arisen as a result of taking the provisions of section 251(1)(a) to (s) in isolation of the whole provisions, so as to conclude that once an agent of the Federal Government is sued, it is the Federal High Court that has exclusive jurisdiction. The correct approach in the circumstance is to engage the well-established principles of interpretation whereby a statute must be read as a whole. The claim before the court was not about the Revenue of the Federal Government but about debt recovery.

In my view, it cannot reasonably be the intention of the framers of our constitution as far as section 251 of the 1999 constitution is concerned that the High Court of the FCT does not have jurisdiction in respect of simple debt involving Federal Government or any of its agencies.

For the provision of section 251(1)(a) and (p) of the 1999 Constitution to apply in a suit, such must involve the administration, management and control of the Federal Agency. It must also be an action for a declaration or injunction challenging the validity of executive decision or action of the Federal Agency. As rightly argued by the appellant's counsel therefore without any of the features in section 251(1)(p) being present, the Federal High Court cannot have exclusive jurisdiction in such a matter. (p. 3049 H)

NOTABLE POINTS OF INTEREST

OGUNBIYI JSC

1. Proliferation of issues is not allowed in law

The law is trite that a court is competent when:

(a) It is properly constituted as regards members and qualification of members of the court and no member is disqualified for one reason or the other.

(b) The subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction, and

(c) The case comes before the court initiated by due process of law and on upon fulfillment of any condition precedent to the exercise of jurisdiction. (p. 3044 B)

KEKERE-EKUN JSC

2. Competence of Court

C Without having to belabour the point, I seek to state quickly that the respondent's formulation is a sheer proliferation of issues which is not allowed in law. It is expected that the respondent takes its bearing from the appellant's formulation; he cannot in other words, be seen to cry more than the bereaved. In the absence of cross appealing, D the respondent's formulation is out of context and I therefore deem it appropriate that the appellant's lone issue is sufficient to determine this appeal. (p. 3054 A)

REPRESENTATION

E Ola Olanipeku Esq. for the Appellant with O. Ofoha
Abdullahi Haruna Esq. for the Respondent with A.V. Olubiyo Esq.

CASES REFERRED TO

- F NEPA v. Edeghero (2002) 18 NWLR (pt. 798) 79
F.M.B.N. v. Olooh (2002) 9 NWLR (pt. 773) 475
A.G.F. v. A.G. Abia State (2001) 11 NWLR (pt. 726) 689
Onuorah v. Kaduna Refinery & Pet. Co. Ltd (2005) 6 NWLR (pt. 921) 393
G Adisa v. Oyinlola (2000) 10 NWLR (pt. 674) 191
Tukur v. Government of Taraba State (1997) 7 NWLR (pt. 510) 549
A.G. Federation v. A. G. Abia State (2001) 11 NWLR (pt. 725) 689
African Newspapers Ltd v. Federal Republic of Nigeria (1985) 2 NWLR (pt. 6) 12
H Madukolu v. Nkemdilim (1962) 2 SCNLR 341
Skenconsult v. Ukey (1981) 1 SC 6
Oloriode v. Oyebi (1984) 1 SCNLR 39
Adeyemi v. Opeyori (1976) 9-10 SC 31
Tukur v. Govt. of Gongola State (1989) 4 NWLR (pt. 117) 592

Obiuweubi v. C.B.N. (2011) 17 NWLR (pt. 1247) 465

Kakih v. P.D.P. (2014) 15 NWLR (pt. 1430) 374

STATUTE REFERRED TO

Constitution of the Federal Republic of Nigeria 1999, ss. 251(1)(a) and (p), 272 B

LEAD JUDGMENT BY OGUNBIYI JSC

This is an appeal against the decision of the Court of Appeal, Abuja Judicial Division delivered on 18th day of March, 2004. C

By the said judgment the appeal of the Appellant (now Respondent) was allowed while the judgment of the Federal Capital Territory (FCT) High Court in favour of the Plaintiff (now Appellant) delivered on 5th February, 2003 was set aside.

The judgment of the trial court was set aside on the ground D that it lacked jurisdiction to have tried the case because the appellant (now Respondent) is an agency of the Federal Government. At the trial High Court, the plaintiff/appellant had commenced her action against the defendant/respondent under the undefended list procedure wherein she claimed as follows:- E

(i) N2,858,149.75k being the cost of repairs of roof and completion of Aluminum doors and windows.

(ii) N546,958.88k retention fee all totaling N3,405,107.63k .

(iii) 10% on the entire sum as provided by the F.C.T. High Court Civil Procedure Rules from the date of judgment till the entire sum is liquidated. F

The learned trial judge, after considering the affidavit in support of the plaintiff's claim and affidavit of the defendant's notice of intention to defend as well as the submission of counsel of the parties G on 5th February, 2003 gave judgment for the plaintiff in line with his claim.

The defendant/respondent was dissatisfied with the judgment of the trial court and hence appealed to the Court of Appeal contending that being an agency of the Federal Government, the Federal Capital Territory High Court had no jurisdiction to have tried the matter. Their Lordships of the Court below were in agreement with the contention held by the appellant/respondent and thereby allowed the appeal. H

It is against that decision that the appellant has now besought the favour of this court by way of his appeal. The fact of the case can be summarized as follows:

The Plaintiff vide a letter of award dated the 6th day of January 1998 was awarded a contract by the Defendant to construct 2
B Nos. of Block/units of MASFA house type at Gwarimpa II Estate in the sum of N25,049,648.36k (Twenty Five Million, Forty -Nine Thousand, Six Hundred and Forty- Eight Naira Thirty Six kobo).

Furthermore, by a letter dated 18/05/2001, the Plaintiff was
C equally authorized to install Aluminum Windows on the house at the contract sum of N2,858.149.75k (Two Million, Eight Hundred and Fifty Eight Thousand, One Hundred and Forty Nine Naira, Seventy Five kobo) according to the plaintiff/appellant . The defendant/respondent however disagrees and put the sum at N2, 614, 439.00
D (Two Million, Six Hundred and Fourteen Thousand, Four Hundred and Thirty Nine Naira).

By an order of the court, the writ of summons was issued under the undefended list procedure. Upon receipt of the writ of summons, the respondent filed a Notice of Intention to defend with an
E affidavit in support dated 3rd day of December, 2002.

On the 10th of December, 2002, when the case came up for hearing, counsel for the Respondent argued his Notice of Intention to defend and it's supporting affidavit. At the close of his argument, he applied that the case be transferred to the General cause list. The
F application was opposed by the respondent's counsel on the ground that the affidavit in support of the Notice of Intention to defend the suit did not disclose a defence on the merit. Following the foregoing submission, the respondent's counsel applied for a date to reply on
G points of law and the case was subsequently adjourned to the 22nd day of January, 2003. Before that date and precisely on the 14th day of January, 2003, the respondent's counsel filed a further affidavit in support of Notice of Intention to defend and exhibited some vital documents which were not attached to the earlier affidavit.

H On the 22nd January, 2003 when the case came up for reply on points of law, the respondent's counsel applied to rely on the further affidavit and the accompanying annexures as his reply despite the opposition by the learned counsel for the appellant .

On the 5th day of February, 2003 the learned trial judge dis-

regarded all the deposition in the affidavit and went ahead to give judgment to the plaintiff in the sum claimed. The Respondent in the appeal before us filed an appeal to the Court of Appeal challenging the jurisdiction of the trial court and also the trial court's failure to consider the Notice of Intention to defend the suit. The lower court allowed the appeal and set aside the judgment of the trial court on the ground that it lacked the jurisdiction to try the case. The respondent at the court below was unhappy with that court's decision and has filed the appeal now before us on the 24/11/05 wherein it raised a lone ground of appeal which same without its particulars reads as follows:-

GROUND OF APPEAL

The learned Justices of the Court of Appeal erred in law when they held that the trial court lacked jurisdiction to entertain the suit when it is not disputed that what was involved in this case was a Simple Contract or debt: (particulars i and ii are supplied]

In compliance with the rules of court, briefs were settled and exchanged between the parties. While the appellant's brief of argument was prepared and settled by O. I. Olorundare, Esq and filed on the 12th December, 2015, that of the respondent was by P. O. Okolo, Esq which was also filed on the 2nd March, 2006 but deemed properly filed on the 13th December, 2006.

On the 22nd March, 2016 when the appeal was fixed for hearing, both learned counsel adopted and relied on the respective briefs of arguments on behalf of their clients. On behalf of the appellant therefore, his learned counsel urged in favour of allowing the appeal while the counsel representing the respondent submitted the appeal as lacking in merit and that same should be dismissed.

From the only ground of appeal raised, the lone issue formulated is as follows;

That having regard to the claim of the plaintiff, whether the trial court lacked jurisdiction to have entertained the case of the appellant.

It is interesting to note that the respondent's counsel deemed it fit to formulate two issues from the lone ground of appeal raised on behalf of the appellant in his notice of appeal. The two issues are as follows:-

1. Whether the High Court of the Federal Capital

Territory had jurisdiction to entertain this suit despite the fact that the Defendant/Appellant/Respondent is an agency of the Federal Government.

2. Whether the subject matter of this suit can be described as a “*Simple Contract*” to confer jurisdiction on the High Court of the
B Federal Capital Territory.

Without having to belabour the point, I seek to state quickly that the respondent’s formulation is a sheer proliferation of issues which is not allowed in law. It is expected that the respondent takes its bearing from the appellant’s formulation; he cannot in other words,
C be seen to cry more than the bereaved. In the absence of cross appealing, the respondent’s formulation is out of context and I therefore deem it appropriate that the appellant’s lone issue is sufficient to determine this appeal. The issue questions the competence of the
D trial court which the respondent contends lacks the jurisdiction to have entertained the case of the appellant.

It is the submission by the appellant’s counsel that the claim of the plaintiff determines the jurisdiction of the court. Submitting further, counsel reiterates that the lower court erred by relying on section 251 (l)(a) and (p) of the 1999 Constitution and also on the
E authority of NEPA V. Edeghero (2002) 18 NWLR (Pt. 798) page 79 when it ruled that the trial court lacked jurisdiction to entertain the subject matter of the claim; that contrary to the contention held, the said foregoing constitutional provision has not divested the F.C.T. High
F Court of its jurisdiction to hear a simple debt matter arising from contract .

Submitting further, the appellant’s counsel, in seeking to relate the connection of the respondent to the Federal Government, concedes that the said respondent as a property of the Federal Government is not more than a commercial outfit set up by the same government with the sole aim of executing its National Housing Programme as enunciated in the Federal Housing Act. Counsel cites the case of F.M.B.N. v. Olooh (2002) 9 NWLR (Pt. 773) P475 at 487 in
G support of his argument. Copious reference was also made to the cases of A.G.F. V. A.G. Abia State (2001) 11 NWLR Pt.726 pg 689 per Ogundare JSC at 749; N.D.I.C. V. Okem Enterprises Ltd (2004) Pt.880 Pg 107 at 182 and 191 and also Onuorah V. Kaduna Refinery and Petrochemical Co . Ltd (2005) 6 NWLR Pt. 921 Pg 393 at
H

405. It is the submission of counsel therefore that the FCT High Court also has jurisdiction to try the case at hand.

In summary, the learned counsel for the appellant has urged the court to allow this appeal, set aside the judgment of the lower court and restore that of the trial court for the following reasons:

- that in an action on simple contract or debt recovery, the High Court of the Federal Capital Territory has jurisdiction; furthermore

- that the Exclusive jurisdiction of the Federal High Court under the 1999 Constitution is limited to 13 matters specified under sub-section 1 (a) to (s) of section 251 of the Constitution thereof.

In response to the appellant's counsel, Mr. P. O. Okolo on behalf of the respondent restates correctly the trite law, position which affirms that, it is the statute creating the court that vests it with jurisdiction. In other words, it is the Constitution of the Federal Republic of Nigeria 1999 that determines the jurisdiction of the High Court of the Federal Capital Territory and also that of the Federal High Court. Following from the foregoing, counsel submits that section 251 of the Constitution 1999 needs to be thoroughly examined against the background of the writ of summons and the statement of claim; he also relates copiously to the decision of this court in the case of NEPA V. Edeghero supra where the statutes conferring jurisdiction on the Federal High Court was closely examined; the facts of that case was essentially based on wrongful termination which counsel submits it affected the administration, management and control of the Federal Government or any of its agencies i.e. NEPA, in this case.

In the foregoing authority, the learned counsel drew attention specifically to the pronouncement made by Tobi, JSC wherein the learned jurist held that, in construing section 230 of the 1979 Constitution, which is in *pari materia* with section 251 of the 1999 Constitution, the arising two significant considerations are:- the parties to the case and the subject matter. It is not in dispute between the parties, counsel submits, that the Respondent, Federal Housing Authority is an Agency of the Federal Government; that the issue in contest however is, whether the Federal High Court has exclusive jurisdiction over the subject matter of this case. In response to the foregoing question, the respondent's counsel took the firm position that with the subject matter affecting the administration and control of the

agency of the Federal Government, the Federal High Court has exclusive jurisdiction; that the contract that was awarded to the appellant for the building of houses is part and parcel of the general administration of the Federal Housing Authority, who is the Respondent in this case; that when appraising or before concluding that a matter affects or involves the administration, management and control of an agency, it is important to look at the statute creating the agency or organization in order to appreciate the purpose for which it was created. It will also help to determine if the subject matter affects the administration management and control of the Federal Government or any of its agencies. In support of his contention, counsel cites sections 3 and 4(1) of the Federal Housing Act CAP 136 which spell out the functions and powers of the Agency.

For purpose of driving home his argument further, the learned counsel for the respondent, impressed upon this court to hold that by virtue of the provisions of the Federal Housing Authority Act Cap 136, the contract, the subject matter of this appeal, arose out of the administrative action of the Government of the Federation of Nigeria; that it is not all contracts that are “*simple contracts*” within the context of this court’s decision in the case of *Onuorah V. KRPC Limited* (2005) 6 NWLR P .921 p.393 which explains why the court refused to take contract of employment as a simple contract as it was held in the case of *NEPA V. Edeghero* (supra). In the same vein therefore, counsel submits, that the contract which is the subject matter of this case is a contract under seal and is, therefore too comprehensive and complex to be rated a simple contract; that this is a contract that involves civil, mechanical, electrical, building, engineering and quantity survey in large numbers in fulfillment of the very aims and objectives intended by the creation of the Federal Housing Authority by virtue of sections 3 & 4 of the Federal Housing Authority Act (supra); that from the totality of the provisions of paragraphs p, q and s of section 251, the constitution admits exclusively that only the Federal High Court has the power to entertain matters involving Federal Government and its agencies as it was the position taken by this court in the case of *Adisa V. Oyinlola* (2000) 10 NWLR (Pt 674) 191; that in the case of *Onuorah V. KRPC Limited* (supra) it was decided by this court that action for breach of contract *simpliciter* is not included in the provision of section 251.

The learned counsel, while seeking to resolve the question whether the subject matter of this case can be described as a breach of contract *simpliciter* or a simple contract, resolved that the contract is that of record, and also under seal as exhibited in the contract document, wherein the Federal Housing Authority executed the deed under seal. It is the conclusion of counsel therefore that the contract B which is the subject matter of this case is not a simple contract. Counsel urged the court to hold in the result that it is the Federal High Court that has exclusive jurisdiction and that the issues involved in the case of Onuorah V. KRPC Limited (supra) is quite distant from the case in hand; that the decision of the lower court should be up- C held while the appeal is to be dismissed.

The principal issue in this appeal is whether the Federal High Court has the exclusive jurisdiction to the exclusion of the High Court of the FCT to entertain this case. The law is trite and elementary that the jurisdictions of Courts in Nigeria are conferred by the Constitution of the Federal Republic of Nigeria 1999. In determining whether a court has jurisdiction therefore, it is paramount to examine the statute vesting it with jurisdiction, the writ of summons and the statement of claim filed before it. The relevant provision of the Constitution central to this appeal borders on section 251. Several judicial authorities are well established that, it is the claim of the plaintiff that determines the jurisdiction of the court. See *Tukur V. Government of Taraba State* (1997) 7 NWLR (Pt 510) Pg 549; *A.G. Federation V. A. G. Abia State* (2001) 11 NWLR (Pt 725) pg 689. D E F

For the purpose of recapitulation and ease of reference the plaintiff/appellant commenced her action against the defendant/respondent under an undefended list procedure. She claimed the sum of N3,405,107.63k being the cost of repairs of roof and completion of Aluminum doors and windows made up of N2,858,149.75k and N546,958.88k retention fee. The plaintiff equally claimed 10% on the entire sum as provided for by the F.C.T. High Court Civil Procedure Rules from the date of judgment till the entire sum is liquidated. G H

The point being made in the appeal before us has once again raised the vexed issue of proper interpretation of section 251(1) q, r and s of the 1999 Constitution. The Respondent has argued vehemently that as an agent of the Federal Government, she can only be

sued at the Federal High Court in view of section 251 of the 1999 Constitution and not the High Court of the Federal Capital Territory. Section 251(1) (q), (r) and (s) which form the fulcrum of the Respondent's argument provide thus;-

- "251(1) Notwithstanding anything to the contrary contained*
B *in this constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters.*
- C *(q) Subject to the provisions of this constitution in so far as it affects the Federal Government or any of its agencies;*
(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; and
D *(s) Such other jurisdiction civil or criminal and whether to the exclusion of any other court or not as may be conferred upon it by an Act of the National Assembly; provided that nothing in the provisions of paragraphs (p), (q) and (r) of this subsection shall prevent a person from seeking redress against the Federal Government or any*
E *of its agencies in an action for damages, injunction or specific performance where the action is based on any enactment, law or equity."*

While interpreting the foregoing section, I. T. Muhammad, JCA
F (as he then was) in delivering the lead judgment at page 91 of the record of appeal held thus and said:-

- "Exhibit 'A' and 'B' annexed to the affidavit in support clearly show that the transaction between the parties were contractual in nature."*
- G The court however concluded at pages 92 & 93 that:-
"It is not in dispute that the appellant is an agency of the Federal Government. ——— Thus from all intents and purposes, the respondent entered into contractual agreements with an agency of the Federal Government."

H By placing reliance on section 251(1)(a) and (p) of the 1999 Constitution and the authority of *NEPA V. Edeghero* (2002) 18 NWLR: (Pt 798) pg 79, the lower court set aside the judgment of the trial court and proceeded to strike out the suit before that court for want of jurisdiction.

A cursory look at the claim of the plaintiff reproduced supra, and the affidavit in support which gave details of the transaction reveal that the subject matter is purely a debt recovery. There was no declaratory or injunctive relief sought or granted. The respondent in its argument relied tenaciously on the pronouncement made by Tobi, JSC in the case of NEPA V. Edegbero (supra) at page 101 of the report where his Lordship held and said:-

“Administration is a large term in business and commerce so too management. Etymologically, the words are synonymous in our context. Administration is the management or direction of the affairs of a business. Management is the art or practice of managing especially business. Both words have a common denominator. Entering into a contract of employment with an employee is a business relationship which clearly comes within section 230(1)(q) of the 1979 Constitution as emended by Decree No.107 of 1993.”

The respondent’s counsel relied affirmatively on the said authority to argue that plaintiff’s claim is caught up by the pronouncement; that this court applied section 251 to the facts of the case and came to the just conclusion that it is the Federal High Court that has the jurisdiction to try the case; that it was the application of section 251 to the facts that led His Lordship Tobi, JSC to declare at page 95 of the Report that the cause of action, which is contract of employment arose out of the administrative action or decision of the defendant as an agency of government (NEPA).

The claim of the plaintiff being one for recovery of debt is not a claim that relates to executive or administrative action of the Federal Government or its agency. Furthermore, it is pertinent to restate again that the case of NEPA V. Edegbero (supra) is clearly distinguishable from the present case in many respects. In the first instance while that case dealt with master and servant relationship i.e. termination of employment, the present case is on a debt owed in respect of a contract wholly performed. Secondly, in Edegbero’s case there was a claim or declaration and injunction against NEPA; in the present case there was no such claim and none was granted by the trial court. The question whether the plaintiff’s claim falls within the purview of section 251(1) (q), (r) and (s) of the 1999 Constitution, appears to have arisen as a result of tak-

ing the provisions of section 251 (l)(a) to (s) in isolation of the whole provisions, so as to conclude that once an agent of the Federal Government is sued, it is the Federal High Court that has exclusive jurisdiction. The correct approach in the circumstance is to engage the well-established principles of interpretation whereby a statute must be read as a whole. The claim before the court was not about the Revenue of the Federal Government but about debt recovery.

In my view, it cannot reasonably be the intention of the framers of our constitution as far as section 251 of the 1999 constitution is concerned that the High Court of the FCT does not have jurisdiction in respect of simple debt involving Federal Government or any of its agencies.

For the provision of section 251(1)(a) and (p) of the 1999 Constitution to apply in a suit, such must involve the administration, management and control of the Federal Agency. It must also be an action for a declaration or injunction challenging the validity of executive decision or action of the Federal Agency. As rightly argued by the appellant's counsel therefore without any of the features in section 251(1)(p) being present, the Federal High Court cannot have exclusive jurisdiction in such a matter.

Again in NEPA V. Edeghero (supra), Tobi, JSC has this to say at page 100 of the report:-

"In my view, for the Federal High Court to have exclusive jurisdiction, the matter must be a civil matter arising from the administration, management and control of the Federal Government or any of its agencies. The matter must arise from the operation and interpretation of the constitution. And finally, the matter must arise from any action or proceedings for a declaration or injunction affecting the validity of any executive or administrative action decisions by the Federal Government or any of its agencies."

In the case of Onuorah V. KRPC Limited (supra) this court held that action for breach of contract, simpliciter, is not included in the provisions of section 251 of the Constitution. Contrary to the submission on behalf of the respondent therefore, the issue involved in this contract does not relate to administration or management and control of a Federal Government Agency, the Federal Housing Au-

thority. Equally there was no any claim of the appellant challenging the validity of the executive decision or action of the respondent by way of declaration or injunction. Again see *Onuorah V. Kaduna Refinery and Petrochemical Co. Ltd* (supra) at page 409 per Edozie, JSC.

Also in a related matter of *F. M. B.N. V. Olooh* (2002) 9 NWLR B (Pt 773) Pg.475 at 487 this court per Uwaifo, JSC delivering the lead judgment held as follows;

*“It is no doubt true that the said Bank was created by an Act of the National Assembly and therefore at best considered the property of the Federal Government with the sole aim of providing financial assistance in the form of long-term facilities to “Nigerian Individuals desiring to acquire houses of their own and the granting of long-term credit facilities to mortgage institutions with a view to enabling those institutions to grant comparable facilities to Nigerian Individuals” as per the pre-amble of the Act. **The Bank is no more than a business establishment given functions to perform; but neither of those functions nor the Bank itself has any connection with the affairs of the running of the Federal government.**”* (Emphasis provided). E

As rightly conceded by the learned counsel for the Appellant, in as much as the respondent is a property of the Federal Government, it is no more than a commercial outfit set up by the said Government with the sole aim of executing its National Housing Programme as enunciated in the Federal Housing Act. The respondent given the functions it performs has no connection with the affairs or the running of the Federal Government. I do not hesitate to say that the two Institutions (that is to say the bank in the foregoing case as well as the respondent herein perform more or less the same functions under their different laws and the same conclusion should therefore apply). The Federal Capital Territory High Court under section 272 of the 1999 Constitution has jurisdiction to try the case in dispute. Before the Federal High Court can have exclusive jurisdiction in a matter, such must be among those items specified within section 251(1)(a) to (s) of the 1999 constitution. F G H

Issues of jurisdiction are not a matter to be left to conjecture as held by this court in *African Newspapers Ltd V. Federal Republic of Nigeria* (1985) 2 NWLR (Pt.6) Pg.12 at 159-160. The case at hand

being a simple contract, the FCT High Court has Jurisdiction to try same as it did not fall within the specified items under section 251(1)(a) to (s) of the 1999 constitution, where the Federal High Court has exclusive jurisdiction.

B Akintan, JSC in delivering the lead judgment in the case of Onuorah V. KRPC (supra) at 405 held and said:-

“Section 230(1) of the 1979 Constitution as amended by Decree No.107 of 1993 does not confer the Federal High Court with jurisdiction over matters of simple contract. However, section 230(1) provides a limitation to the general and all embracing jurisdiction of the state high court, because, the items listed under the said action can only be determined exclusively by the Federal High Court. All other items not included in the list would therefore still be within the jurisdiction of the state high court pursuant to section 236 of the 1979 Constitution.”

The issue involved in this case was not that pertained to the administration, management and control of the Federal Government or any of its agencies, but a simple debt recovery on a contractual matter where no declaratory and injunctive reliefs were claimed. Contrary to the submission by the respondent, the matter at hand comes within the jurisdiction of the Federal Capital Territory, High Court to try.

The appeal in the circumstance is hereby allowed and the judgment of the lower court is set aside while that of the trial court delivered on 5th February, 2003 is restored. There shall be cost of this appeal and I will assess same at N500,000.00k in favour of the appellant.

Appeal is allowed with N500,000.00k costs.

G _____

ONNOGHEN JSC

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

H My learned brother has exhaustively dealt with the issue(s) relevant for the determination of the appeal thereby leaving me with nothing useful to add except to agree with his reasoning and conclusion that the appeal is meritorious and should be allowed.

The facts of the case revealed a simple debt recovery cause of

action of which the High Court of the Federal Capital Territory has the requisite jurisdiction to hear and determine.

Appeal is allowed and I abide by the consequential orders made in the said lead judgment including the order as to costs.

Appeal allowed.

B

AKA'AH'S JSC

I had a preview of the judgment just delivered by my lord Ogunbiyi JSC.

I entirely agree with the conclusion that the subject matter of the suit has to do with recovery of a debt and notwithstanding the fact that the respondent is an agency of the Federal Government, the jurisdiction of the Federal Capital Territory High Court was not ousted in entertaining the claim. Consequently the Court of Appeal was in error when it struck out the suit by placing reliance on section 251(i)(a) and (p) of 1999 Constitution to hold that the High Court of the Federal Capital Territory (FCT) lacked jurisdiction to entertain the claim since the reliefs sought did not involve a declaration or injunction thereby challenging the validity of executive decision or action of a Federal Government Agency.

For this and the more elaborate reasons contained in the lead judgment which I adopt as mine, I find that the appeal is hereby allowed. The judgment of the Court Appeal is hereby set aside while that of the trial court delivered on 5th February, 2003 is restored. I also award costs of N500,000.00 in favour of the appellant against the respondent.

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KEKERE-EKUN JSC

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

I agree with the reasoning and conclusion that the appeal is meritorious and should be allowed.

This appeal is against the judgment of the Court of Appeal, Abuja Division delivered on 18th March 2004 setting aside the judgment of the High Court of the Federal Capital Territory delivered on 5th February 2003 on the ground that the said court lacked jurisdic-

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tion to entertain the action before it having regard to the fact that the present respondent is an agency of the Federal Government.

The law is trite that a court is competent when:

(a) It is properly constituted as regards members and qualification of members of the court and no member is disqualified for one
B reason or the other.

(b) The subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction, and

(c) The case comes before the court initiated by due process of
C law and on upon fulfillment of any condition precedent to the exercise of jurisdiction. See: *Madukolu Vs Nkemdilim* 1962 2 SCNLR 341; *Skenconsult Vs Ukey* (1981)1 SC 6; *Oloriode Vs Oyebe* (1984) 1 SCNLR 39.

It is equally trite that in order to determine whether the court
D has jurisdiction to entertain a claim, it is the writ of summons and statement of claim or originating summons and supporting affidavit of the Plaintiff that would be considered. See: *Adeyemi Vs Opeyori* (1976) 9-10 SC 31; *Tukur Vs Government of Gongola State* (1989)
E 4 NWLR Pt.117 592; *Onuorah Vs Kaduna Refining & Petrochemical Co. Ltd.* (2005) 6 NWLR (Pt.921) 393 @ 404- 405; *Ocholi Enejo James, SAN Vs INEC* 2015 12 NWLR (Pt.1474) 538.

The court below placed considerable reliance on the decision
F of this court in *NEPA VS Edeghero* (2002) 18 NWLR (Pt.798) 79 @ 95 E - F to the effect that where the Federal Government or any of its agencies is a party in a cause or matter, only the Federal High Court by virtue of Section 230 (1) (p), (q) & (r) of the 1979 Constitution (now Section 251 (1) (p), (q) and (r) of the 1999 Constitu-
G tion, as amended) would have jurisdiction to hear the case notwithstanding the nature of the claim in the action.

However, as observed by my learned brother, NWEZE, JSC
in a recent decision of this court in *WEMA Securities & Finance Plc Vs Nigeria Agricultural Insurance Corporation* (2015) 6 -7 SC (Pt.IV)
H 163 @ 200 – 210, the position of the law is that when considering the jurisdiction of the Federal High Court where an agency of the Federal Government is a party, both the status of the parties and the nature of the subject matter in dispute would be considered. See also: *Obiuweubi Vs C.B.N.* (2011) 17 NWLR (Pt.1247) 465 @ 515

B – C; Kakih Vs P.D.P. (2014) 15 NWLR (Pt.1430) 374 @ 414 F- G. In Oloruntoba-Oju Vs Abdul Raheem (2009) 5 - 6 SC (Pt.II) 57 @ 88 lines 23 - 29 it was held that for an action or proceeding to fall within the exclusive jurisdiction conferred on the Federal High Court by Section 251 (1) of the 1999 Constitution (as amended), one of the parties must be Federal Government Agency and the subject matter must be an 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. B

It is important to note that even in NEPA Vs Edeghero (supra), in determining whether the Federal High Court had jurisdiction to determine the suit having regard to the provisions of Section 230 (1) (), (r) & (s) of the 1979 Constitution, it took into account the fact that the cause of action arose out of the administrative action or decision of the defendant/appellant and that it was an action for a declaration and injunction whose principal purpose was to nullify the decision of the appellant terminating the appointments of the plaintiffs/respondents and others. The court found that the action came squarely within the provision of Section 230 (1) (s) of the 1979 Constitution. C D E

The appellant's case was that it was awarded a contract by the respondent vide a letter dated 6/1/1998 to construct 2 Nos. of Blocks/ Units of MASFA house type at Gwarimpa, Abuja in the sum of N25,049,648.36 and that by a further letter dated 18/5/2001, it was authorized to install Aluminium Windows in the houses at the sum of N2,858,149.75. That the respondent fully paid for the first contract less the retention fee of N546,958.88, which was due after a six-months retention period. That the respondent failed to pay the said retention fee at the stipulated time despite issuing relevant certificates of completion and taking possession of the buildings and also failed to pay the sum of N2,858,149.75 being the cost of the varied contract. F G

The respondent, as plaintiff sought the following reliefs against the defendant/appellant: . H

(i) The sum of N2,858,149.75 from the defendant being the outstanding amount due to the plaintiff in respect of approval for the repairs on roof covering (2 Nos. Blocks/Units of MASFA) Team 4 contract No. 0352-2 No MASFA TEAM 4 Gwarimpa II project, Abuja.

(ii) The sum of N546,958.88 being the retention fee due and payable to the plaintiff on valuation certificate No. 06.

(iii) 10 % interest rate as provided by the rules of court on N3,405,107.63 kobo until the entire judgment debt is liquidated.

I agree with my learned brother that the cause of action in the instant case is a simple debt arising from the contract between the parties and that the claim has nothing to do with the administration, management and control of the respondent. I also agree that there was no claim challenging the validity of any executive decision or action of the respondent by way of declaration or injunction such as to bring it within the exclusive jurisdiction of the Federal High Court as provided by Section 251 (1) (a) to (s) of the 1999 Constitution, as amended. In other words, the mere fact that an agency of the Federal Government was a party to the action was not sufficient, without more, to oust the jurisdiction of the trial High Court of the Federal Capital Territory.

For these and the more elaborate reasons advanced in the lead judgment, also allow the appeal. I abide by the consequential orders contained in the lead judgment.

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NWEZE JSC

My Lord, Ogunbiyi, JSC, obliged me with the draft of the leading judgment just delivered now, I am in agreement with His Lordship that, since this appeal evinces considerable merit, it should be allowed.

The Court of Appeal (hereinafter referred to as “the lower court”), evidently, took a narrow view of the provisions of section 230(1) (p), (q) and (r) of the Constitution of the Federal Republic of Nigeria, 1979 (now, section 251(l)(p), (q) and (r) of the extant, Constitution. In its view, irrespective of the subject matter, once one of the parties in an action is the Federal Government or any of its agencies, the matter falls within the exclusive jurisdiction of the Federal High Court.

My Lords, I need not belabour this issue any longer. Speaking for this court, in the unanimous decision in *Wema Securities and Finance Plc v. N.A.I.C.* (2015) 6-7 SC (Pt. IV) 163.200 - 210; (2015) 16 NWLR (Pt. 1484) 93 at pp. 130-131, paras. H-E, I explained

that:

“Section 251(1) (supra) now delineates the jurisdiction of that court (that is, the Federal High Court), I.N.E.C. v. Musa (2003) 3 NWLR (Pt. 806) 72; N.N.P.C. v. Orhiowesele and Ors (2013) LPELR - 2034 (SC) 14 - 19, E-G; (2013) 13 NWLR (Pt. 1371) 211; Ladoja v. I.N.E.C. (2007) 40 WRN 1; (2007) 12 NWLR (Pt. 1047) 119 and circumscribes it (the said jurisdiction) to only eighteen items. Adetona & Ors v. Igele Gen Ent. Ltd. (2011) LPELR - 159 (SC) 47-53, G-B; (2011) 7 NWLR (Pt. 1247) 535; Onuorah v. K.P.R.C. Co. Ltd. (supra); Gafar v. Govt. of Kwara (2007) 4 NWLR (Pt. 1024) 375; Ports and Cargo Handling and C.H.S.C. Ltd. v. Migfo Nig. Ltd. (2012) LPELR - 9725 (SC); (2012) 18 NWLR (Pt. 1333) 555; 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 draft person, deliberately, itemized the matters which are intended to be under the exclusive jurisdiction of that court. Onuorah v. K.P.R.C. (supra) 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 thereunder. N.N.P.C. & Ors v. Orhiowasele & Ors (supra) 14-19, E-G; Onuorah v. K.P.R.C. 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; (2013) 14 NWLR (Pt. 1374) 221; Omina (Nig.) Ltd. v. Dyketrade (2007) 15 NWLR (Pt. 1058) 576, 603-604.”

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 look at. Obiuewvbi v. C.B.N. (2011) LPELR 2185 (SC) 20. C-F; (2011) 7 NWLR (Pt. 1247) 465, citing Oloruntoba-Oju v. Abdul-Raheem & Ors (2009) 5-6 SC (Pt. 11) 57; (2009) 6 MJSC (Pt. 1) 1; (2009) 13 NWLR (Pt. 1157) 83;

3058 John Shoy Ltd. v. Fed. Housing Auth. (2016) 6 KLR Nweze JSC
N.U.R.T.W. & Anor v. R.T.E.A.N. & Ors (2012) LPELR-7840 (SC)
47, C-G; (2012) 10 NWLR (Pt. 1307) 170; N.N.P.C. & Ors v.
Orhiwesele & Ors (supra); P.D.P. & Anor v. Sylva & Ors (2012) LPELR
- 7814 (SC) 52-52, G-E; (2012) 13 NWLR (Pt. 1316) 85.

I have no reason for departing from my above reasoning and
B I, accordingly, adopt it as my reason for endorsing the conclusion in
the leading judgment in the instant appeal. I, therefore, allow this
appeal. I abide by the consequential orders of my Lord, Ogunbiyi,
JSC.

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