

The Exclusive Jurisdiction of The Federal High Court in relation to the operation of the Companies and Allied Matters Act CAP C20 LFN 2008- the need for a touchstone jurisdictional test. A review of the case of Standard Trust Bank Plc -v- Chief Emmanuel Olusola (2007) 9 CLRN 41

Introduction

The challenges of a private sector driven economy are here with us. This is exemplified by the recent surge in activities at the Nigeria Capital Market. The Nigerian secondary market has witnessed a remarkable culture of massive stock acquisition by Nigerians as well as foreign investors. In the process, some of the inadequacies of the target Companies, the regulatory institutions and existing legislation in this sector to deal with such massive investments were exposed.

An investor in the Capital Market expects that when a dispute arises between him and any of the various operators or Companies in the sector, he should be able to approach the Courts for a resolution of such dispute. This is vital, otherwise, there will be lack of confidence in the system and the investor may be wary of committing his funds. He needs to know however, which Court to take his dispute to, the dispute resolution mechanism available as well as other things associated with the justice delivery system such as time.

The issue of jurisdiction is fundamental.¹ Until the coming into force of the 1999 Constitution, the jurisdiction of the Federal High Court vis-à-vis the State High Court in commercial matters has provoked serious legal debate as evident in the number of cases on the issue. The Supreme Court had taken pains to examine the areas of conflict of jurisdiction between the two courts and made far-reaching pronouncements in a number of cases². Legislative attempts to resolve the imbroglio resulted in the current Section 251(1) of the 1999 Constitution of the Federal Republic of Nigeria, which prescribes the exclusive jurisdiction of the Federal High Court. This Constitutional provision notwithstanding, the controversy rages on as some borderline cases have presented difficulties to the Court to define

¹ Madukolu -v- Nkemdilim (1962) 2 SCNLR 341, S.P.D.C (Nig.) Ltd -v- Sirpi-Alusteel Const. Ltd (2007) 1 NWLR (Pt. 1067) p 128

² See the cases of Jammal Steel Structures Ltd. -v- African Continental Bank Ltd. (1973) 1 All N. L. R (PT 2) 208, Bronik Motors Ltd. -v- Wema Bank (1983) 1 SCNLR 296, Savannah Bank (Nig.) Ltd -v- Pan Atlantic (1987) 1 A.N.L.R (PT 1) 31 etc.

with exactitude which of the two courts has jurisdiction in a given commercial matter.

This problem was again recently brought to the fore in the case of *Standard Trust Bank -v- Chief Emmanuel Olusola*³.

The Facts

Sometime in 2003, the Appellant bank advertised some of its shares for sell to the public. On 16th December 2003, the Respondent, a customer of the Appellant bank, paid the sum of ₦250,000.00 to the Appellant through a cheque drawn on his account with the Ado-Ekiti branch of the Appellant for some units of those advertised shares of the Appellant. At the end of the offer period, the Respondent did not receive his share certificate or rejection of his application and a refund of his money. He wrote to find out what was wrong. He got no response. On 11th February 2005 the Respondent's Solicitors wrote to the Appellant on the issue but no response.

After much pressure from the Respondent, the Appellant advised the Respondent to contact its Registrar, which he did. In his reply of 18th July 2005, the Registrar advised the Respondent to liaise with the Appellant's Ado-Ekiti branch, which he did. The branch confirmed that it had record of Respondent's payment of ₦250,000.00 and promised to get in touch with its Registrar, but again nothing positive followed. The Respondent then commenced an action at the Ekiti State High Court, Ado-Ekiti seeking the following reliefs:

"Plaintiff hence claims against the defendant as follows:

- (a) *A declaration that the sum of ₦250,000.00 (Two Hundred and Fifty Thousand Naira) paid over to the Defendant on 16th December 2003 through Plaintiff's cheque number 03349815 drawn on Plaintiff's account number NGN. 0562526001 with Defendant at Ado-Ekiti were for purposes of buying shares in the defendant.*
- (b) *A mandatory order on Defendant to issue to plaintiff the necessary share certificate in respect of the said sum of money.*

³ (2007) 9 CLRN 41

- (c) ~~₦~~ 2,000,000.00 (Two Million Naira) General Damages for Defendant's breach in giving plaintiff his share certificate and the consequent loss of dividends'.

At the High Court, the Appellant filed an application seeking an order to strike out the Respondent's claim for want of jurisdiction, contending that only the Federal High Court had jurisdiction to entertain the suit. The Respondent opposed the application and filed a Counter-affidavit. The learned trial Judge, after hearing the addresses of Counsel on both sides held that he had jurisdiction.

Dissatisfied with the ruling, Appellant appealed to the Court of Appeal, and argued that the claim before the lower Court bordered on the sale and purchase of shares in the Appellant Company and that the legal effect of such a purchase made the Respondent a co-owner in the Appellant Company. This, the Appellant argued, was not a matter between a Customer and his banker and therefore beyond the jurisdiction of the lower Court but within the jurisdiction of the Federal High Court by virtue of Section 251(1)(e) of the 1999 Constitution.

The Court of Appeal Decision

The Court of Appeal held (by a majority of 2-1) that the claim was cognizable only in the High Court and accordingly dismissed the appeal. Agube JCA in his dissenting judgment held that the case involved the sale of shares of a public company and the interpretation of certain sections of the Companies and Allied Matters Act and as such was within the exclusive jurisdiction of the Federal High Court under section 251(1) of the 1999 Constitution.

Issues Arising From the Judgment

This judgment has once again brought up the vexed issue of the jurisdiction of the State High Court and Federal High Court over certain commercial disputes, even with the provision of Section 251(1) of the 1999 Constitution defining the limits of the latter court.

The conclusions reached by the lower court and the majority decision of the Court of Appeal in this case, reveals the need for a precise understanding and the formulation of a distinct paradigm by which jurists

and lawyers can decipher with precision the Court with jurisdiction over a commercial matter.

In my humble view, it is possible to formulate such a jurisdictional test. The foundations of such a test has already been laid by the Supreme Court in *NEPA -v- Edegedero*⁴ per Tobi JSC at page 100 as follows:

“ In construing section 230(1) of the 1979 constitution as amended, two important matters arise. They are the parties in the litigation as well as the subject-matter of the litigation”.

The elements of the test/proposition would be as follows-

- (ii) ‘what is the cause of action and the subject matter of litigation as determined from the claimants writ of summons, particulars of claim(if any) and statement of claim’,⁵
- (iii) ‘who are the parties’.

Though the two limbs of the proposition above may apply concurrently, they are independent and disjunctive indices, dependent on the exact paragraphs of section 251(1) in issue and the facts of each case.

(a) Cause of action and the subject matter of litigation

This is the first step in proceeding to determine whether the Federal High Court has jurisdiction and in this regard reference is made to the claimants writ of summons, particulars of claim (if any) and statement of claim. This has received judicial recognition and has been restated in a number of cases⁶.

In *Nashtex Int’l Ltd -v- Habib (Nig.) Banks Ltd*⁷ the Court of Appeal held as follows;

“In determining whether or not a court has jurisdiction or competence to adjudicate on a matter, what is to considered by the court is the claim of the

⁴ (2002) 18 NWLR (Pt. 798) p79 SC.

⁵ See the case of Continental Industrial Gases Ltd –v- Onafeko (2003) 7 NWLR (Pt. 820) 479 @ 492.

⁶ Continental Industrial Gases Ltd –v- Onafeko (supra)

⁷ (2007) 17 NWLR (Pt.1063) p. 308 CA.

plaintiff. That is, the endorsement on the writ of summons and statement of claim, in an action begun by writ of summons. But in an action commenced by originating summons, it is the relief sought and affidavit in support with any annexure that may be attached. In other words, the jurisdiction of a trial court is determined by the subject matter of the action and the claim before the court”.

It is very important to consider the cause of action and subject matter first before referring to the parties. A reference to the parties without first having a clear view of the cause of action and subject matter may mislead the court. Further, the exception created in the case of simple contracts can only be determined by having regard to the cause of action and the subject matter first and foremost. It is also not enough to conclude that it is a contractual matter without having regard to the relevant paragraph of section 251(1) to determine the subject of the contract.

(b) Who are the parties?

A consideration of the parties is particularly relevant where the Federal Government or any of its agencies is a party to the action, as section 251(1) paragraphs (a), (p), (q), (r) and (s)⁸ tends to deal with parties more than the subject matter; subject to the exception as it relates to simple contracts.

The same would apply under the proviso to paragraph (d), which relates to banker/customer relationships, but as earlier noted this operates as an exception to the substantive paragraph dealing with the subject matter (banking) and can only come into effect after a consideration of the cause of action and subject matter.

Application of the Above To The Case Under Review

In the case under review, the proviso to paragraph (d) and paragraph (e) of section 251 (1) of the 1999 constitution are germane to the determination of the issue of jurisdiction and will be considered in the light of the above opinion.

Section 251(1) (d) provides as follows:

⁸As can be seen in the cases of NEPA –V- Edeghero (supra), NEPA –V- Bot (2008) 1 NWLR (Pt1068) p.240.

'connected with or pertaining to banking, banks, other financial institutions, including any action between one bank and another, any action by or against the Central Bank of Nigeria arising from banking, foreign exchange, coinage, legal tender, bills of exchange, letters of credit, promissory notes and other fiscal measures:

Provided that this paragraph shall not apply to any dispute between an individual customer and his bank in respect of transactions between the individual customer and the bank

Section 251(1) paragraph (e) is as follows:

'arising from the operation of the Companies and Allied Matters Act or any other enactment replacing the Act or regulating the operation of companies incorporated under the Companies and Allied Matters Act'.

The relevant portions of the pleadings and claim of the plaintiff at the High Court is as follows:

- 1) *Plaintiff is a petrol dealer of Okesa Street, Ado-Ekiti.*
- 2) *Defendant is a body corporate engaged in banking operations all over Nigeria with its headquarters at Plot 1662, Oyin Jolayemi Street, Victoria Island, PMB 12859, Lagos State with a branch in Ado-Ekiti.*
- 3) *Plaintiff is a customer of defendant in its Ado-Ekiti branch.*
- 4) *Sometimes in 2003 defendant invited people to buy shares in it.*
- 5) *On 16th December, 2003 plaintiff paid to defendant N250,000.00 (Two Hundred and Fifty Thousand Naira) through a cheque number 03349815 drawn on plaintiff's account with defendant number NGN 0562526001 at the Ado-Ekiti branch. Defendant's Letter of 28th December 2004 will be relied upon at the trial.*
- 6) *Till today defendant has failed, neglected and refused to issue plaintiff necessary shares certificate in return for the said sum of money.*

After a review of the facts, the High Court held as follows-

'I have considered the claim of the plaintiff before this court and come to the conclusion that what is before me has to do with a transaction between an individual customer and the bank and to this end it is my considered and humble view that this court has jurisdiction to entertain this case'.⁹

⁹ at p. 49

The Court of Appeal held (per Abdulahi JCA) in the lead judgment that the question to be resolved was

'...whether the dispute between the appellant and respondent is a dispute between an individual customer and his bank in respect of transactions between the individual customer and his bank'.¹⁰

In answering the question, the Court held that the proviso to section 251(1) (d) of the 1999 Constitution applied to the appeal, being a dispute between an individual customer and his bank. The Court further stated:

'For the avoidance of any doubt, the dispute is between an individual and his bank, and the Federal High Court has no jurisdiction to hear and determine the matter under consideration.'¹¹

In his dissenting judgment, Agube JCA held that this was not a case involving a dispute between a customer and his banker, rather upon a careful scrutiny of the pleadings and claim of the plaintiff the cause of action bordered on the non-issuance of share certificates to the plaintiff, a matter governed by the Companies and Allied Matters Act (CAMA) and which by section 251(1)(e) of the 1999 constitution was reserved for the exclusive jurisdiction of the Federal High Court.

The approach of the High Court and the majority judgment of the Court of Appeal was to treat the case as one that can be resolved by providing an answer to the poser "is the dispute not one between a banker and its customer?" The Justices seem to have been deceived by the fact that the Respondent was a customer of the Appellant bank without considering that the transaction, which formed the basis of the action, was the buying and selling of shares of the Appellant bank. One is tempted to ask whether the decision of the Justices would have remained the same if the Respondent was not a customer of the bank, paid for the shares and was not allotted the shares paid for?

A cause of action has been defined as the wrongful act of the defendant and the consequent damage suffered by the Plaintiff¹². The cause of action

¹⁰ at p. 57

¹¹ respectfully, the Court of Appeal did not advert its mind to the Supreme Court decision in **NDIC –V- Okem Enterprises Ltd (2004) 10 NWLR (Pt. 880) 107 SC** which held that both the Federal High Court and the State High Court had concurrent jurisdiction in such a matter.

in this case is the non-issuance of share certificates to the plaintiff and it is immaterial that the shares were those of the Appellant bank in which he had an account. The relevant question for purpose of the jurisdictional test is: would the matter be decided without reference to the CAMA. From the facts, the Respondents gave the Appellant notice to issue him with the share certificates, upon this notice the latter by section 146(2) of CAMA had 10 days to remedy the default. They did not do this. Sections 37, 124, 125, 126, 146(1) –(6) and 567(the 1st schedule) of CAMA apply to this case and consequently section 251(1)(e) confers exclusive jurisdiction on the Federal High Court.

In *A.G. Lagos State -v- Eko Hotels Ltd & Anor*¹³, the Supreme Court considered a similar issue as this case on whether the Federal High Court had exclusive jurisdiction in a matter relating to the sale of shares in a Limited Liability Company. The Supreme Court held that the sale of shares was governed by sections 151-157 of CAMA over which the Federal High Court had exclusive jurisdiction. This decision was not brought to the Courts attention in this case under review.

Conclusion

Litigants have always borne the brunt of each pursuit in futility at litigating their claims at the State high court - when the matter ought to have been filed at the Federal High Court. In commercial disputes involving the interpretation of the provisions of CAMA, the exclusive jurisdiction of the Federal High Court can be determined by having recourse to the cause of action and the subject matter of litigation. Reference to the parties may not be relevant, except where the Federal Government is a party to the action.

¹² See *Savage -v- Uwechie* (1972) 1 A.N.L.R p.255 @ 261

¹³ (2006) 11 CLRN 1 SC