

# LITIGATION INSIGHT QUARTERLY [AUGUST EDITION] -

## COMPARATIVE ANALYSIS OF THE CASE OF STATOIL NIGERIA LIMITED V. INDUCON NIGERIA LIMITED & ANOR [2021] 7 NWLR PT.1774 at 1 vis-à-vis THE JURISDICTION OF THE FEDERAL HIGH COURT UNDER SECTION 251(1) OF THE 1999 CONSTITUTION

### Synopsis

The definition of jurisdiction has been long pronounced upon in a long line of cases and most importantly, by the Supreme Court. The Supreme Court in **JACOB NDAEYO v. GODWIN OGUNAYA**<sup>1</sup> defines jurisdiction as the authority or legal weapon which a court must possess to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision.<sup>2</sup> Such authority of the court is controlled and circumscribed by the statute creating the court.

Jurisdiction, a mantra in adjudication, is so fundamental that where it is absent the entire proceedings, no matter how ingeniously conducted, is marooned in an intractable web of nullity. In the words of per **Adekeye, J.S.C. in EGAREVBA v. ERIBO**<sup>3</sup>, jurisdiction is equally to Court what a door is to a house, that is why it is called a threshold issue because it is at the threshold of the temple of justice. Therefore, where a Court finds that it lacks the required jurisdiction to conduct a matter, the appropriate thing to do is to strike out the suit<sup>4</sup>. Otherwise, it will amount to an exercise in futility. Undoubtedly, the jurisdictional relationship of the Federal High Court and State High Courts has attracted endless controversies in line with the interpretation of **Section 251 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) (the "Constitution")**.

Section 251 generally confers jurisdiction on the Federal High Court to the exclusion of other courts, including the High Court of a State and the Federal Capital Territory in civil causes and matters relating to the following:

- (a) the revenue of Government of the Federation;
- (b) taxation of companies;
- (c) customs and excise duties and export duties;

- (d) banking, banks and other financial institutions (with the exception of dispute between an individual customer and his bank in respect of transactions between the individual customer and the bank);
- (e) operation of the Companies and Allied Matters Act;
- (f) any Federal enactment relating to copyright, patent, designs, trademark and passing-off, etc.;
- (g) any admiralty jurisdiction;
- (h) diplomatic, consular and trade representation;
- (i) citizenship, naturalization and aliens, etc.;
- (j) bankruptcy and insolvency;
- (k) aviation and safety of aircraft;
- (l) arms, ammunition and explosives;
- (m) drugs and poisons;
- (n) mines and minerals (including oil fields, oil mining, geological surveys and natural gas);
- (o) weights and measures;
- (p) the administration or the management and control of the Federal Government or any of its agencies;
- (q) Subject to the provisions of the Constitution, the operation and interpretation of the Constitution in so far as it affects the Federal Government or any of its agencies;

<sup>1</sup> (1977) SC 7

<sup>2</sup> See *ENYADIKE v. OMEHIA & 4 ORS* (2010) 11 NWLR (PT.1204) 92 at 112.

<sup>3</sup> (2010) 9 NWLR (PT.1199) 411

<sup>4</sup> See *SPDC v. GOVT. OF BAYELSA STATE & ANOR.* (2017) LPELR-45224(CA) where the Court held thus: "Where a Court is divested of the jurisdiction to hear a matter, the order it makes is not a second guess. It is one striking out" See also *OKOLO v. UBN LTD* (2004) 3 NWLR (PT.859) 87.



- 5 [2021] 7 NWLR PT.1774  
 6 (2006) 12 NWLR (PT.995) 483  
 7 (2006) 12 NWLR (PT.993) 33  
 8 (2012) 18 NWLR (PT 1333) 555  
 9 (1988) 1 NWLR (PT.68) 39

- (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
- (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.

These provisions have been drafted for the purpose of harmonising the scope of jurisdiction of the Federal High Court to cover federal matters, particularly entrenching the exclusivity of the Court's jurisdiction in relation to the matters specifically listed. The supposition from this list is that matters which fall beyond it should be heard by the State High Court, for example, matters of simple contract. Therein lies the source of the controversy, despite a plethora of pronouncements interpreting Section 251(1), appeals on the section are rife before the Court of Appeal and Supreme Court. Thus, this article will seek to provide a robust analysis of the case of **STATOIL NIGERIA LIMITED v. INDUCON NIGERIA LIMITED & ANOR**<sup>5</sup> which is a recent decision on this subject matter, deciphering the reasoning of the Justices of the apex court, and ultimately proposing recommendations.

### Facts of The Appeal

Inducon Nigeria Limited and Dr. John Abebe (the "Respondents"), commenced **Suit No: FHC/L/CS/224/2010** at the Federal High Court (the "Trial Court") against Statoil Nigeria Limited (the "Appellant"), for the enforcement of Net profit interest which the Respondents assert they are entitled to, following an agreement between Inducon Nigeria Limited and Statoil Nigeria Limited. On account of the Appellant's refusal to assign the 1.5% Net profit interest to the Respondents, the Respondents entreated the trial Court for the following orders -

- (i) A declaration of their entitlement to a 1.5% Net Profit Interest in any and all of the Appellant's oil and gas interests including those in Agbami Oil field;
- (ii) Specific performance of the Net Profit Interest sharing agreement between the Appellant and 1st Respondent; and
- (iii) Other reliefs that appear to flow from (i) and (ii) above.

The Trial Court made the following consequential order:

*"The specific performance of the Respondent's 1.5% net profit or leasehold Interest Agreement with the Appellant in respect of all Appellant's oil and gas interests in Nigeria to be enforced by the Ministry of Petroleum Resources, the Department of Petroleum Resources, the Nigerian National Petroleum Corporation, the Ministry of Finance, the Federal Inland Revenue Service and the Nigerian Customs service."*

The Appellant dissatisfied with the judgment of the Trial Court appealed to the Court of Appeal (the "Lower Court") which upheld the decision of the Trial Court. The affirmation of the Trial Court's decision informed a further appeal to the Supreme Court by the Appellant against the concurrent decisions of the courts below.

### Issue for Determination and Arguments of parties

At the hearing of the appeal before the Supreme Court, the Appellant distilled on record, twelve (12) issues while the Respondents distilled thirteen (13) issues. For this analysis however, only the first issue is relevant and the ipsissima verba is reproduced below:

*"a. Issue One: Considering the contractual nature of the claim of the Respondents and the reliefs granted by the trial court, whether the Federal High Court had the statutory jurisdiction to have entertained the claim and make the orders granted by it and affirmed by the Court of Appeal (Ground 1 of the 3rd Amended Notice of Appeal).*

### Appellant's Arguments

The contention of the Appellant is that the Trial Court lacked jurisdiction to hear and determine the dispute between the two sides. The main or principal reliefs the Respondents sought by their amended statement of claim, it was argued, were simply contractual in nature. Learned senior counsel to the Appellant proceeded to argue that the evidence on record as well as the Trial Court's finding thereon show clearly that the dispute between the parties is whether they had concluded a legally enforceable agreement. Inter alia relying on **I.T.P.P. LTD v. V.B.N. PLC**<sup>6</sup>; **ADELEKAN v. ECU-LINE NV**<sup>7</sup>; and **P&C.H.S. LTD & ORS v. MIGFO (NIG.) LTD & ANOR**<sup>8</sup>, learned senior counsel to the Appellant submitted that the Trial Court lacks the competence of proceeding upon and determining claims on simple contract. Further referring to **TUKUR v. GOVT. OF GONGOLA STATE**<sup>9</sup>, learned senior counsel insisted that only the State High Court can grant an order for specific performance of a contract which the Trial Court's decision has done in the instant case. Learned senior counsel urges that the decision of the Trial Court as wrongly affirmed by the Lower Court, being a nullity, be set aside.

### Respondents' Arguments

Respondents in their brief of argument contended that the Appellant deliberately focused its attention exclusively on the reliefs entreated by the Respondents rather than the facts of their case as pleaded. The jurisdiction of the Trial Court in relation to the subject matter of the case, it was submitted, is statutory. Learned senior counsel submitted that Section 251 of the Constitution is the Trial Court's primary source of jurisdiction with Section 7(1) (n) and (3) of the Federal High Court Act (as amended) being the secondary source. Read together, learned senior counsel further submitted, the Trial Court is invested with jurisdiction in disputes relating to mines and minerals including oil field, oil mining, etc. The jurisdiction, it was further contended, extends to the hearing and determination of all issues relating to, arising from or ancillary to the subject matter principally provided for by the aforementioned legislations. The learned Senior Counsel's argument was that the reliefs sought by the Respondents and concurrently granted by the Trial Court and the Lower Court all pertain to interests in oil field – the subject matter of the contract.

### Supreme Court's Decision

The majority of the Justices of the Supreme Court agreed that the bone of contention between the parties boiled down to a simple contract and as such is not within the jurisdiction of the Trial Court pursuant to Section 251(1) of the Constitution. In the lead judgment, Musa Dattijo Muhammad, J.S.C. states thus:

*"Again, by the numerous decisions of this Court, learned senior counsel rightly further agree, the exclusive jurisdiction vested in the trial Federal High Court by virtue of Section 251(1)(n) of the 1999 Constitution (as amended) and Section 7(1)(n) of the Federal High Court Act does not extend to simple contractual disputes... A plaintiff's claim as pleaded determines the*



10 (2009) 9 NWLR PT.1728 at 1

11 In *JEVORU NYAME v. F.R.N (2010) 7 NWLR (PT.193) 344* at 399 per Adekeye, J.S.C. held thus: "In the interpretation of the provision of a Statute or the Constitution where the language used is plain and unambiguous effect must of necessity be given to its plain and ordinary meaning." His lordship proceeds further that: "It is that clear and unambiguous language that best conveys the intention of the lawmaker. The lawmaker must be taken to have intended the meaning expressed in such clear and unambiguous language and the Court will not be at liberty to go outside the very provision in an attempt to ascertain the intent and purpose of the provision."

12 (2009) 9 NWLR PT.1728 at 1.

13 (2020) 8 NWLR (PT.1726) at 314.

*jurisdiction of the court that hears and determines the action. To ascertain whether the instant action comes within the jurisdiction conferred on the trial court, by Section 251 (1) (n) of the 1999 Constitution (as amended) and Section 7(1) (n) of the Federal High Court Act, therefore, it is the claim before the court that must be examined."*

According to his lordship, an examination of the amended statement of claim of the Respondents leaves no one in doubt that their claim is for the enforcement of an agreement, a contract, between the parties. His lordship distinguishes the instant case from that of *MOBIL PRODUCTION (NIG.) UNLIMITED v. SUFFOLK PETROLEUM SERVICES*<sup>10</sup> in that, unlike Mobil's case, this case is rooted in simple contract and holds that it is outside the jurisdiction of the Federal High Court pursuant to Section 251(1) (n) of the Constitution and Section 7 (1) (n) of the Federal High Court Act (as amended).

Nonetheless, the dissenting opinion of Emmanuel Akomaye Agim, J.S.C. is quite instructive, as he pronounced that the paramount consideration of the dispute is that it is related to or arises from the mining of oil from oil fields licensed or leased to the Appellant and once the subject matter is within the jurisdiction of the Trial Court, the nature of the agreement or contract is irrelevant.

### Our Analysis

It is trite that the main object of statutory interpretation is to discover the intention of the lawmaker, which is to be deduced from the language used. It is also well settled that the provisions of the Constitution or of a statute must be construed literally by giving the words in such Constitution or statute their ordinary grammatical meanings. Adjunct to this is that in ascertaining the real or true meaning or import of the provisions being construed or interpreted, the provisions of the Constitution or statute must be construed holistically<sup>11</sup>.

Such is the exercise undergone by Agim, J.S.C in the instant appeal. It is the writers' humble view that the reasoning of his lordship reflects the true desire of the lawmaker in drafting Section 251(1) of the Constitution and Section 7(1) of the Federal High Court Act (as amended). In other words, the test ought to be the "subject" of the dispute, not the nature of the dispute. Such reasoning, if adopted by courts, provides an assurance that the Court will always consider the subject of the dispute wherein such subject may border on taxation, admiralty matters or other matters within the ambit of Section 251(1).

This was the same position taken in the case of *MOBIL PRODUCTION (NIG.) UNLIMITED v. SUFFOLK PETROLEUM SERVICES*<sup>12</sup> when the Supreme Court held as follows:

*"From the tenor and context of the above provisions that is Section 251 (1) (c); (d); (e); (f); (g); (h); (i); (j); (k); (l); (m); (n), and (o) (supra), the drafts person would seem to leave no one in doubt that it is the subject matter of the claim of the plaintiff that would be determinative of the jurisdiction of the court. As such, in an action involving any of the above sub-paragraphs, the court's duty may, simply, be to find out if the plaintiff's claim could be pitch-forked into any of the items in the above sections. If it could be factored into any of them, then it is only the Federal High Court that has the jurisdiction..."*

The Supreme Court found in the above case that the Trial Court had jurisdiction for the following reasons:

*"However, from a perusal of the contract documents involved in this case, it is evident that this case transcends simple contracts, see, for example, paragraph 9 of the statement of claim, pages 8-9 of the records. The Contract Document can be found at pages 126-313 of the records. There is exhibit 'A' attached to the contract. It is titled Scope of Work. It states what the job undertaking under the MIPS Contract is all about. This can be found at page 313 of the record.*

*The said exhibit 'A' contains an armada of technical contracts pertaining to oil fields, oil mining etc, that fall outside the definition of simple contract".*

The import of the above decision is that once the contract can be traced to the subject matter of the Federal High Court's jurisdiction under Section 251 (1) (n) of the Constitution, then it is no longer a simple contract, but a 'technical contract' relating to, arising from, or ancillary to oil fields or oil mining or any other subject expressly reserved for adjudication by the Federal High Court. This further denotes the importance of the Courts delving into the nitty gritty of agreements brought before it in determining jurisdiction in relation to Section 251(1). Otherwise, a slippery slope effect could be created within the justice system wherein every contract, whether rooted in any of the provisions of Section 251(1), will be considered outside the scope of the Federal High Court.

The liberal approach was also adopted in *CBN v. RAHAMANIYYA G.R. LTD*<sup>13</sup>. In this case, even though the Supreme Court found that the High Court of Sokoto State had exclusive jurisdiction to entertain a matter involving the Central Bank of Nigeria, a Federal Government Agency, and overruled the jurisdiction of the Federal High Court, the decision was taken following a careful and ingenious interpretation of Section 251(1) of the 1999 Constitution and Section 39(1) of the Land Use Act as follows:

*"Applying the above position to the instant appeal, it does not seem to me that section 251(1) of the 1999 Constitution is a blanket provision which automatically confers jurisdiction on the Federal High Court once the Federal Government or any of its agencies is a party in any proceeding. It does appear that matters which do not relate to or affect the validity of any executive or administrative decision are outside the purview or contemplation of section 251(1) of the 1999 Constitution." (Underlining ours)*

In the above cited case, the claims of the Plaintiff/Appellant are for declaration of title to land, damages for trespass and injunction to protect its possession of land. Unfortunately, the Plaintiff was relying on Section 251(p) of the 1999 Constitution. This, in our view, is insufficient to place a claim for declaration of title to land within the jurisdiction of the Federal High Court. The executive and administrative action or decision of the Central Bank of Nigeria was not in any way the subject of the action. The implication of this is that the subject matter of the claim does not relate to, arise from, or ancillary to the administration or the management and control of the Federal Government or any of its agencies.

In the instant case under review, Muhammad, J.S.C. who gave the lead judgment holds the view that because the Respondent's claim is rooted in simple contract, it is outside the jurisdiction of the Federal High Court. Conversely, Agim, J.S.C. in his dissenting judgment expresses a different view that there is nothing in



Section 251(1)(n) and (s) of the 1999 Constitution and Section 7(1)(n) and (3) of the Federal High Court Act (as amended) that justifies the exclusion of a contractual dispute arising from mining oil from an oil field from the exclusive jurisdiction of the Federal High Court on the ground that it is a simple contract. After all, as rightly stated by his lordship Agim, J.S.C., jurisdiction that is expressly vested by the Constitution or statute can only be expressly ousted by the Constitution or statute.

Based on the above evaluation, it is our considered view that a plaintiff's claim must always be scrutinized, carefully to see if it can be pitch-forked into any of the eighteen enumerated exclusive jurisdictions of the Federal High Court.

### Conclusion

In the writers' opinion, the judgment is another indication of the existence of a lacuna in the evaluation and application of Section 251(1) of the Constitution. Perhaps it should be taken as another wake-up call to the legislature for an amendment to the Constitution. John Inyang Okoro, J.S.C. in the case of **CBN v. RAHAMANIYYA G.B LTD (SUPRA)** puts the conclusion of this debate succinctly in stating that the legislature should make a definite amendment of the Constitution streamlining in unmistakable terms the matters which should go to the Federal High Court and such matters which shall be entertained by the State High Court. Such an amendment would go a long way in guiding both litigants and the courts in mathematical clarity on which court has the jurisdiction to entertain which matter.

For more information on this briefing , please contact the dispute resolution team [disputeresolution@bloomfield-law.com](mailto:disputeresolution@bloomfield-law.com) or your usual contact at Bloomfield LP.



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