

Jurisdiction of Federal High Court – Whether Restricted to Matters Listed in Section 251(1) of the 1999 Constitution

In The Court of Appeal of Nigeria
In the Abuja Judicial Division
Holden at Abuja
On Friday, the 25th Day of April, 2025

Before Their Lordships:

Abba Bello Mohammed
Okon Efreti Abang
Donatus Uwaezuoke Okorowo
Justices, Court of Appeal

CA/ABJ/CV/1300/2023

Between:

Central Bank of Nigeria

Appellant

And

Adani Mega System Limited

Respondent

(Lead judgement delivered by Honourable Okon Efreti Abang, JCA)

Facts

The Appellant had engaged the services of the Respondent for the provision of scanning services infrastructure required for all in bound and out bound cargo as required by law in Nigeria. This service engagement was done through the Appellant’s Technical Committee on Comprehensive Import Supervision Scheme (CISS), which was set up for this purpose. The committee proceeded to execute a project mandate dated 16/02/2017 and a build, operate and own agreement dated 20/03/2017 with the Respondent on behalf of the Federal Government of Nigeria as the service provider/vendor for the enterprise screening platform for the inspection of all inbound and outbound cargo. In compliance with the applicable law, the Appellant sought and obtained a “letter of no objection” from the Bureau of Public Procurement regarding the contract. The Respondent set to

work by expanding its capital, inclusive of borrowed capital running into millions of United States Dollar, to conclude extensive work on the project.

When the Respondent had substantially performed the contract, the Appellant suspended the contract and subsequently terminated the contract by its letter dated 18/09/2017, on ground of outsourcing the Respondent's rights under the contract to a third party in the United Kingdom without the requisite authorization by the CISS. By the Respondent's letter of 22/09/2017, it established that the contract was not outsourced to a third party and advised the committee on the severe losses the federal government will incur if the contract is frustrated. The Respondent stated that the Appellant sought to secretly award the same contract to other companies, further to which the Respondent instructed its solicitors to write to the Ministry of Finance and the Managing Director of the Nigerian Sovereign Investment Authority and the Director-General of the Bureau of Public Procurement informing them of the existing contract with the Appellant. Despite the notification, the Appellant continued with engaging the services of other companies in respect of the contract. Hence, the Respondent took out an Originating Summons against the Appellant, seeking various declaratory reliefs. The trial court directed a conversion to Writ of Summons and pleadings were ordered. In line with the agreement, the trial court referred parties to arbitration at the International Dispute Resolution for mediation and/or arbitration. Given the high costs of arbitration, parties resolved to explore mediation before the Attorney-General of the Federation (AGF). The AGF published an award on 22/05/2022.

The Respondent, who was not satisfied with the award, returned to the trial court to continue the case and amend its originating processes to state that the contract entered into with the Appellant was on an exclusive basis and that it had substantially performed the contract. The Appellant filed a Notice of Preliminary Objection praying the court to decline jurisdiction. Parties opened their case and called evidence. The trial court delivered judgement granting the Respondent's claims in part. Dissatisfied with the decision, the Appellant filed an appeal to the Court of Appeal.

Issues for Determination

Eight issues were raised for determination, thus:

1. Whether the trial court denied the Appellant's constitutional right to fair hearing under Section 36(1) of 1999 Constitution (as amended) when the

trial court did not consider all the material the Appellant placed before it arising from its pleadings, evidence led and final written address.

2. Whether the trial court denied the Appellant's constitutional right to fair hearing under Section 36(1) of 1999 Constitution (as amended) when it reframed the issues raised by the Appellant and did not consider and determine all the issues raised by the Appellant in its final written address.
3. Whether the trial court lacked the competence and jurisdiction to hear and determine the Respondent's suit which was based on simple contract.
4. Whether the trial court was right in entering judgement in favour of the Respondent when the documents it tendered were dumped on the trial court without their being linked to the pleadings and evidence of the Respondent's witness.
5. Whether the Respondent had completed execution of the contract awarded to it by the Appellant prior to its cancellation and if not, whether the trial court was right to have based its judgement on these wrong assumption/findings including that of non-denial of completion of the contract by the Appellant.
6. Whether the Respondent proved any entitlement and monies that accrued to it under the contract and proved its case against the Appellant on the balance of probabilities.
7. Whether the trial court was wrong to have agreed with the advice of the mediator i.e. the Attorney-General of the Federation to the parties that recommendation of the mediator did not extinguish the right of parties to go back to court to settle their dispute.
8. Whether the Respondent breached the contract between it and the Appellant and therefore not entitled to judgement based on the same contract.

Arguments

The Appellant argued that the trial court did not properly considered its Statement of Defence, witness statement on oath and final written address, especially its issues 1,2,3,4,5, and 6. Had the court considered the Respondent's

Amended Statement of Claim holistically, it would have found that the suit did not relate to enforcement of Pre-shipment Inspection of Export Act and the Infrastructure Concession Establishment Act. Also, that due consideration of the Statement of Claim would have shown that the Respondent had not completed execution of the contract, and the failure to consider all these facts and evidence constituted a denial of the Appellant's right to fair hearing, resulting in miscarriage of justice. Appellant argued further that jurisdiction is a strict matter of law conferred by either the constitution or statute. The Federal High Court lacks jurisdiction over simple contracts by virtue of Section 7 of the Federal High Court Act and that the aim of Section 251(1)(q),(r),(s) of the 1999 constitution (as amended) is to vest exclusive jurisdiction in the Federal High Court in matters in which the federal government or any its agencies was a party. It is not enough for the Appellant to be an agency of the federal government to confer jurisdiction, as the claim of the Respondent was predicated on simple contract and only two of the twelve reliefs sought mentioned the Preshipment and Inspection of Import/Export Act and they are ancillary reliefs. Appellant argued further that the Respondent's witness at the trial court did not link the documents in evidence to each aspect of its case as the witness bound the nineteen documents as a single document and dumped same on the court, contrary to law. Counsel submitted that the court should have expunged the evidence for lack of probative value. Submitting on the order for release an payment of the Respondent's entitlements and monies which accrued to it under the contract, counsel argued that the fee due to the Respondent was agreed as fifty percent of the one percent of the committee of CISS's levy collection and payable upon issuance and service of invoice by the Respondent. That the Respondent did not plead any invoice issued or any entitlement or money due, but the trial court granted the alleged entitlement under the contract. Regarding the mediation before the Attorney-General of the Federation and the statement that parties could go back to court for determination of their case instead of the arbitration as previously prescribed, counsel opined that the trial court fell into the same error as the mediator by following his advice as the contract (Exhibit PL 3) provides for referring dispute to arbitration before resorting to court. Lastly, counsel argued that the rights to design, manufacture, deploy, operate and maintain the entire scanning infrastructural needs of Nigeria was given to the Respondent and the power to outsource the contract is subject to the consent of the Appellant. He submitted that the Respondent outsourced the contract to Adani System, UK and Adani Mega System International UK without its consent and approval, contrary to the terms of the contract.

The Respondent adopted the issues formulated by the Appellant and argued contrary to the submissions of the Appellant above. The Respondent emphasized that jurisdiction of court is determined by the Plaintiff's case and not the defence of the Defendant. And by Section 251(1)(r) of the 1999 constitution, the trial court has jurisdiction to determine the suit which rose from the enforcement of the provisions of the Pre-shipment Inspection of Import/Export Act and the Infrastructure Concession Establishment Act, by virtue of Sections 1(1)&(2), 2(3)&(4), 4(1), 7(3)&(4), 8 and 20 of the Act.

Court's Judgement and Rationale

The Court of Appeal considered and determined the third issue relating to jurisdiction first, given that the issue goes to the root of adjudication, absence of which nullifies the entire proceedings no matter how well conducted. The court considered the facts of the case, the reliefs sought by the Respondent and interpretation of the various statutory provisions relied on by parties, in coming to the conclusion that going by the agreement of parties which led to the execution of Exhibit PL 3, the contract is not an ordinary simple contract. It is a contract regulated by statutes and the statutes determine the forum where an aggrieved party will ventilate his grievance where dispute arises therefrom. In this case, it is the Pre-shipment Inspection of Export Act, Cap 26 Laws of the Federation of Nigeria, 2004 which confers jurisdiction on the Federal High Court to entertain every proceeding under the Act. Even the letter of award of contract in this case (Exhibit PL 1) relied solely on the provisions of Sections 5, 13(1) and 15(1) of the Pre-shipment Inspection of Export and Import Act as the basis, power and authority to award the contract. The certificate of no objection issued by the Bureau of Public Procurement to the Appellant (Exhibit PL 4) stated that it was issued pursuant to the referenced Acts. All the above are in addition to the provisions of Section 251(1) of the 1999 constitution which confers exclusive jurisdiction on the Federal High Court on the eighteen items mentioned therein. Relying on decision in **UMAR KAMBA & ANOR. v GARBA KAMBA & ORS. (2023) LPELR 61546**, the court held that statutory provisions are sacrosanct and mandatory. *No court or tribunal can override statutory provisions of the law. Where a court stray from its path and went on to give effect to statutory provisions in a manner not provided for, the court has failed in its duty.* The court distinguished the present case from those relied on by the Appellant in submitting that the suit is a simple contract, where there were no specific provisions in the enabling law conferring jurisdiction on the Federal High Court. *The implication of Section 251(1) of the 1999 constitution (as amended) is that it is not only the said section that confers jurisdiction on the Federal High Court to entertain proceedings on eighteen matters listed therein. An Act of the National Assembly can confer additional*

jurisdiction on the Federal High Court to entertain any matter that is not mentioned in Section 251(1). In this regard, Section 20(3) of the Pre-shipment Inspection of Export Act confers additional jurisdiction on Federal High Court to entertain proceedings relating to the enforcement of the provisions of the Act as it affects contract regulated by statute.

Deciding issues one and two relating to denial of fair hearing by failure of the trial court to consider all materials placed before it by the Appellant, the appellate court considered the proceedings of the trial court and came to the conclusion that the Appellant's right to fair hearing was not breached in anyway. The mere fact that the trial court reduced all the issues raised by party to a lone issue for effective determination of the dispute cannot amount to breach of fair hearing, as courts are allowed to reframe issues for the purpose of determining the real issue(s) in the case. The other issues alleged not to have been considered by the trial court were already pronounced upon in the determination of the Preliminary objection by the Appellant and require no fresh pronouncement thereon.

Regarding the other issues before it, on issue four relating to dumping of evidence, the court held that the argument was inapt as the provisions of the Federal High Court (Civil Procedure) Rules are different from those of the Election Petition Tribunal relied on by the Appellant. Deciding issue five bordering on whether the Respondent completed execution of the contract awarded to it prior to the cancellation by the Appellant, the Court of Appeal examined the records of appeal and found that the Respondent led evidence on completion of the contract and the Appellant did not deny or rebut the evidence, thereby establishing same. The court also held on issue six that from the evidence led, the Respondent proved its entitlement and monies which accrued to it under the contract on a balance of probabilities in line with Section 133(1) and (2) of the Evidence Act, 2011. On issue seven relating to the advice by the mediator, Their Lordships agreed with the court below who yielded the advice of the mediator. Deciding the last issue, the court held that the Respondent did not breach any provision of the contract prior to the cancellation by the Appellant. The allegation of sub-contracting was not established by the Appellant; rather, the Appellant unilaterally breached the contract in disregard of the provisions of Section 15(4) of the Act by suspending or cancelling the contract. The action of the Appellant is invalid as the Appellant cannot cancel a contract that has been executed.

All the issues were thereby resolved against the Appellant.

Appeal dismissed with costs of N2million Naira against the Appellant.

Representation:

S.K. Abdul Salem with Dayo Agilara and K. Ajana for the Appellant.

Taiwo Ade for the Respondent.

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