

Application Seeking to Protect Integrity of Court – Priority of Over Challenge to Its Jurisdiction

In the Supreme Court of Nigeria
Holden at Abuja
On Friday, the 2nd Day of December, 2022

Before Their Lordships
Musa Dattijo Muhammad
Chima Centus Nweze
Uwani Musa Abba-Aji
Mohammed Lawal Garba
Helen Moronkeji Ogunwumiju
Justices, Supreme Court

SC/286/2013

Between

**BPS ENGINEERING AND CONSTRUCTION
COMPANY LTD**

APPELLANT

And

- 1. FEDERAL ROAD MAINTENANCE AGENCY**
- 2. CHIEF REGISTRAR, FCT HIGH COURT, ABUJA**
- 3. DEPUTY SHERIFF, FCT HIGH COURT, ABUJA**
- 4. CENTRAL BANK OF NIGERIA**

RESPONDENTS

“...HOWEVER, WHERE AN ACT (AS THE FACTS PRESENTED IN THE APPEAL) WHICH WOULD IMPUGN THE INTEGRITY/MAJESTY OF A COURT AND LIKELY TO BRING THE COURT TO ODIUM, RIDICULE AND DISRESPECT IS DONE, THEN IT IS NOT JUST DESIRABLE BUT ESSENTIAL THAT THE ISSUE OF JURISDICTION BE PUT ON HOLD AND THE OFFENDING ACT IMMEDIATELY THRASHED OUT AS THERE IS THE OVERRIDING DUTY OF THE COURT TO GUARD JEALOUSLY ITS POWERS.”

(Lead judgement delivered by Honourable Helen Moronkeji Ogunwumiju, JSC)

Facts

The Appellant filed a suit against the 1st Respondent, wherein it claimed the sum of ₦27,165,103.66 (Twenty-seven million, one hundred and sixty-five thousand, one hundred and three Naira, sixty-six kobo) as outstanding sums due to the Appellant in respect of two contracts it entered into with the 1st Respondent; interest at the rate of 30% per annum and the sum of ₦200million as damages. On 20th December 2011, the trial court delivered judgement in favour of the Appellant. In execution of the judgement, the Appellant obtained a Garnishee Order Nisi against the 4th Respondent and the Accountant-General of the Federation on 2nd July 2012. Thereafter, on 1st August 2012, the trial court, *per* Inyang J., made the Garnishee Order Absolute against the 4th Respondent and ordered the 4th Respondent to pay the sum of ₦460million being the judgement debt with accrued interest, into the account of the Appellant with Access Bank. Aggrieved, the 1st Respondent filed an appeal against the Garnishee Order Absolute at the Court of Appeal together with an application for Stay of Execution.

On 4th September 2012, the Vacation Judge - Yusuf J. of the High Court of the FCT, on the application of the 4th Respondent, made an Order varying the Order of Inyang J. and directing the 4th Respondent to pay the judgement sum into the account of the 2nd Respondent instead of the account of the Appellant as ordered by Inyang, J. The 2nd Respondent was also directed to keep custody of the judgement sum pending the determination of the application for Stay of Execution before the Court of Appeal.

Meanwhile, the 4th Respondent had transferred the judgement sum of ₦460million to the 2nd Respondent on 6th August 2012. However, on 19th September 2012, in spite of the subsisting Order of Yusuf J. directing that the judgement sum be kept in the custody of the 2nd Respondent pending the determination of the various processes to protect the *res* at the Court of Appeal, the 2nd Respondent paid the judgement sum to the Appellant. The 2nd Respondent claimed it had not been served with the Order of Yusuf J. by the time it paid the money to the Appellant.

Further to the above, the 1st Respondent filed an application at the Court of Appeal for an Order of Mandatory Restorative Injunction to compel the Appellant to pay the judgement sum already paid into its account by the 2nd Respondent, into an interest yielding account operated by the Chief Registrar of the Court of Appeal. In response to the application, the Appellant filed a Notice of Preliminary Objection in which it challenged the competence of the motion and the jurisdiction of the Court to Appeal to

hear the appeal. On 4th June 2013, the Court of Appeal delivered its ruling granting the Order of Restorative Mandatory Injunction against the Appellant, compelling it to pay the judgement sum into an interest yielding account operated by the Chief Registrar of the Court of Appeal. Aggrieved, the Appellant appealed to the Supreme Court.

Issues for Determination

The apex court considered the following issues which encapsulate the Appellant's 2nd and 3rd issues, in its determination of the appeal.

1. Whether the Court of Appeal had jurisdiction to hear the application for an Order of Mandatory Restorative Injunction in the face of two other pending applications before it which were challenging the jurisdiction of the court to hear the appeal and the competence of the application for Mandatory Injunction.
2. Whether the legal criteria for the grant of an Interlocutory Order of Restorative Mandatory Injunction had been met by the 1st Respondent before the Court of Appeal proceeded to grant the application.

Arguments

On the first issue, counsel for the Appellant argued that the court below was in error when it failed to consider the two applications challenging the jurisdiction of the Court before considering the application for Mandatory Injunction and that this had occasioned a miscarriage of justice. In response, counsel for the 1st Respondent cited the case of **JOHN EBODAGHE v MIKE OKOYE (2004) 18 NWLR (Pt. 905) 472** and argued that from the peculiar facts of this case, the motion for Restorative Mandatory Injunction is extrinsic to the substantive appeal because the conduct of the Chief Registrar of the High Court of FCT, in handing over the judgement sum to the Appellant in spite of a subsisting Order of court made by the vacation court of the FCT High Court, and the motion for Stay of Execution pending at the Court of Appeal, raised disciplinary issues extrinsic to the substantive appeal. On his part, counsel for the 4th Respondent submitted that the court has the inherent jurisdiction to defer a challenge to its specific jurisdiction and give priority to an application to restore, maintain and or ensure the dignity of a court of law. He argued further that generally, a court is enjoined to determine a challenge to its jurisdiction before entertaining further proceedings in a matter before it; however, there are exceptions to this rule in that the disciplinary jurisdiction of the court is paramount in order to

maintain the integrity and authority of the court to dispense justice in accordance with the mandate of the constitution.

Arguing the 2nd issue, counsel for the Appellant posited that the standard of proof required of an applicant for Restorative Injunction is higher than that required in a mere Interlocutory Injunction. He submitted that even if the Appellant did not file a counter-affidavit, the court below ought not to believe the bare assertions that the Appellant could not pay the judgment sum if it lost the appeal. Counsel for the 1st and 4th Respondents, respectively, argued similarly that the Appellant having not filed a Counter-affidavit in opposition to the Motion for Restorative Injunction is deemed to have admitted all the facts relied upon in support of the application. They argued further that the court below duly appreciated the nature of the application and the principles guiding the grant of an application of this nature, in that a Mandatory Injunction is granted under special circumstances, as in the instant case, which was to preserve the “*res*” which was then and up till now in the custody of the Appellant. Counsel cited **CBN v U.T.B. (NIG.) LTD (1996) 4 NWLR (Pt. 445) 694 at 702.**

Court’s Judgement and Rationale

Determining the first issue, the Supreme Court held that *as a general rule of law, where an issue of jurisdiction is raised, the court ought generally to take it first; however, where an act (as the facts presented in the appeal) which would impugn the integrity/majesty of a court and likely to bring the court to odium, ridicule and disrespect is done, then it is not just desirable but essential that the issue of jurisdiction be put on hold and the offending act immediately thrashed out as there is the overriding duty of the court to guard jealously its powers.* The court relied on its decision in **JOHN EBODAGHE v MIKE OKOYE (2004) 18 NWLR (Pt. 905) 472.**

Their Lordships reasoned that there would be no purpose or basis of the substantive appeal when the judgment sum has disappeared into the pockets of the Judgement Creditor and there is no guarantee that it would be in a position to return it at the end of the appeal if it loses. This was the reasoning that persuaded the lower court to deal with the Restorative Mandatory Injunction first and the court was right in so doing. The apex court held further that *in the circumstances of this case, the court below was right to protect the court’s dignity and authority by taking the motion for injunction first and deciding same on the merit instead of taking the motion challenging its jurisdiction to determine the substantive appeal.*

On the second issue, the court relied on its decision in *CBN v U.T.B. (NIG.) LTD (1996) 4 NWLR (Pt. 445) 694 at 70*, to hold that *the principles to aid and guide the courts in arriving at a correct decision judicially and judiciously where it is confronted by an application for Restorative Mandatory Injunction are: (1) Where the injury done to the Applicant cannot be estimated and sufficiently compensated by damages; (2) Where the injury is so serious and material that the restoration of things to their former condition is the only method whereby justice can be adequately done; (3) Where the injury complained of is in breach of an express agreement; (4) Where the act done is a simple and summary one that can be easily remedied; and (5) Where the Defendant attempts to steal a match on the Plaintiff.* The apex court held that from the uncontroverted averments in support of the 1st Respondent's application for Mandatory Injunction which was filed before the Court of Appeal, *there was no doubt that it was essential that the huge sum of money given over to the Appellant in the face of appeals and interlocutory Orders against that very eventuality should be retrieved expeditiously from it and kept in safe custody in order to protect the res.* The Court of Appeal took all these into consideration together with the competing rights of the parties and the exceptional circumstances of the case and exercised its discretion judicially and judiciously by granting the Interlocutory Order of Mandatory Injunction.

Appeal dismissed.

Representation

Chief Tochukwu Onwugbufor, SAN with Francis Onwe for the Appellant.

C.U. Ekomaru, SAN with J.U. Udoh for the 1st Respondent.

C. Nwaim, Esq. for the 2nd Respondent.

F.U. Ochefu, SAN for the 3rd Respondent.

Boniface Bassey, Esq. with Kenneth Iweka Esq. for the 4th Respondent.

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