

# MOMENTOUS DECISIONS OF COURTS IN 2025

The Scope of Power of Appellate Courts to Transfer Suits: A Case Review of the Supreme Court decision in *Haruna S. Usman v. Nigerian Unity Line Plc.* (2025) 15 NWLR (Pt. 2008) 267.



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## **Facts and Background**

On 2<sup>nd</sup> February 2006, the Federal High Court, Kaduna Judicial Division (the “*trial court*”) granted the appellant leave to file his suit under the undefended list. The Appellant claimed against the respondent the sum of \$2,663,720 (*two million, six hundred and sixty-three thousand, seven hundred and twenty United States Dollars*) or its Naira equivalent in the sum of N34,172,839.60 (*thirty-four million, one hundred and seventy-two thousand, eight hundred and thirty-nine Naira, sixty Kobo*) being the appellant’s legal fees for legal services he rendered to the respondent and for the estacode allowance. The appellant also sought interest of the legal fees with effect from the date of the judgement until the entire sum is liquidated.

The respondent, despite being served with the originating process, did not file a notice of intention to defend at all times when the suit came up for hearing. Consequently, the trial court entered judgement for the appellant and against the respondent.

The respondent, who was aggrieved by the decision of the trial court, appealed to the Court of Appeal (the “*lower court*”) on the ground that the trial court lacked the jurisdiction to entertain the suit since it was one for recovery of professional fees. On 12<sup>th</sup> July 2006, the lower court held that the trial court lacked jurisdiction to determine the case and, thereafter, nullified the entire proceedings before the trial court.

The decision informed the appeal by the appellant to the Supreme Court on 23<sup>rd</sup> November 2017.

## **Issues for Determination**

The appellant and respondent formulated similar issues for determination in their briefs of argument. The two issues raised for determination are:

- (a) whether having regard to s. 251(1)(p) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) (the “*Constitution*”) the trial court lacked jurisdiction to entertain the suit?; and
- (b) if the trial court lacked jurisdiction to hear and determine the Appellant’s suit, whether the lower court was right in refusing and/or failing to transfer the suit to the appropriate court for determination?

## **Arguments of Counsel**

In his submission on the first issue, the appellant stated that s. 251(1)(p) of the constitution relates to the exclusive jurisdiction of the Federal High Court over matters pertaining to the administration or the management and control of the Federal Government or any of its agencies. The appellant contended that his suit before the trial court was for payment for services rendered to secure and release the respondent’s vessel MV Abuja which was arrested in Colombo, Sri Lanka, and that the respondent is an agency of the Federal Government, which was therefore a matter to be solely heard and determined by the Federal High Court. On the second issue, the appellant argued that from the provision of s. 22 of the Federal High Court Act 2004, the Federal High Court has power to transfer any cause or matter it has no jurisdiction to try to the court with competent jurisdiction.

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16 S. 57(1)

17 S. 58(1)

18 S. 91, AMA, equivalent to S. 57 of ACA.

He canvassed the point that the lower court was wrong to have refused to transfer the suit to the High Court despite the general power of the Court of Appeal under s. 15 of the Court of Appeal Act 2004, which empowers the Court of Appeal to transfer cases filed at the Federal High Court which ought to have been brought before the High Court of a State or the Federal Capital Territory, Abuja. The appellant relied on ***Mokelu v. Federal Commissioner for Works and Housing***<sup>19</sup> on the point that the power to transfer the suit to a court with jurisdiction is obligatory and not discretionary.

In reaction, counsel for the respondent argued on the first issue that from paragraph 2 of the appellant's affidavit in support of the writ on the undefended list, the appellant confirmed the status of the respondent as "a public limited company" and not a Federal Government Agency; therefore, not falling under s. 251(1)(p) of the Constitution. It was argued for the respondent that by the provisions of s. 16(1) of the Legal Practitioners Act 1975 (as amended 2014), the High Court of a State is the court with jurisdiction to entertain claims for debt arising from a simple contract, and the mere fact that an agency of the Federal Government is a party to a suit, without more, is not sufficient to confer jurisdiction on the Federal High Court, since the subject matter of the suit must be taken into consideration: ***Oduah v. Okadigbo***.<sup>20</sup> On the second issue, it was submitted that the lower court was not obliged to transfer the matter to the State High Court, and that the appellant had not met any of the conditions required to warrant the invocation of s. 22 of the Supreme Court Act, as prayed by the appellant.

### **Decision and Rationale of Court**

In determining the appeal, the Supreme Court relied on the record of appeal which already put in perspective that the subject matter of the appellant's suit was for payment for services rendered to secure the release of the respondent's vessel MV Abuja which was under arrest in Colombo, Sri Lanka. The Supreme Court held that the claim was therefore one in the nature of a simple contract, and relied on its decision in ***Onuorah v. K.R.P.C. Ltd***<sup>21</sup> in holding that the Federal High Court lacks jurisdiction in matters involving simple contract; rather, it is the State High Court that has jurisdiction to hear and determine such claims.

Regarding the issue of the Court of Appeal's refusal to transfer the appellant's suit to the appropriate court, the Supreme Court reproduced the reasoning of the lower court, thus:

***"...it is agreed that the submission of the learned silk for the appellant that the Federal High Court lacks the jurisdiction***

***to entertain any matter bordering on a simple contract is correct. It is the State High Court that has jurisdiction to entertain the respondents (sic) claim in the circumstance.***

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<sup>19</sup> (1976) 1 NMLR 329 at 333

<sup>20</sup> (2019) NWLR (Pt. 1660) 433 at 462

<sup>21</sup> (2005) 6 NWLR (Pt. 921) 393

***We are urged in the respondent's brief to allow the appeal on this ground of jurisdiction and to exercise our powers under s. 15 of the Court of Appeal Act, 2004 to transfer this matter to the appropriate division of the State High Court as the lower Court ought to have under s. 22(2) of the Federal High Court Act or retrial.***

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***With this concession in the respondent's brief that it is the State High Court that has the requisite jurisdiction to try or entertain the case, my duty has been simplified. Since the Federal High Court has no jurisdiction to entertain the case as it did, the whole proceeding is a nullity..... I will strike out the appeal as incompetent based on the issue of jurisdiction.....”***

Their Lordships, agreeing with the lower court, held that *in the exercise of the powers conferred by s. 15 of the Court of Appeal Act 2004, the Court of Appeal can only make orders which the court of first instance ought to have made legally but failed.* The Supreme Court held that the lower court has no jurisdiction to make an order for the transfer of the case to the appropriate court since the trial court itself acted without jurisdiction. The apex court concluded that the appeal was devoid of merit and dismissed same.

Legal Commentaries and Conclusion

The sections considered in this judicial decision were s. 15 of the Court of Appeal Act 2004 (*similar provision to s. 22 of the Supreme Court Act*) and s. 22 of the Federal High Court Act 2004. For ease of reference, the sections will be reproduced below:

***S. 22 of the Federal High Court Act, 2004***

***A Judge of the Court may at any time or at any stage of the proceedings in any cause or matter before final judgement, either with or without application from any of the parties***

***thereto, transfer such cause or matter before him to any other Judge of the Court.***

**(2) No cause or matter shall be struck out by the Court merely on the ground that such cause or matter was taken in the Court instead of the High Court of a State or of the Federal Capital Territory, Abuja in which it ought to have been brought, and the Judge of the Court before whom such cause or matter is brought may cause such cause or matter to be transferred to the appropriate High Court of a State or the Federal Capital Territory, Abuja in accordance with Rules of Court to be made under s. 44 of this Act. (Emphasis supplied)**

**S. 15 of the Court of Appeal Act, 2004**

**“The Court of Appeal may, from time to time, make any order necessary for determining the real question in controversy in the appeal, and may amend any defect or error in the record of appeal, and may direct the court below to inquire into and certify its findings on any question which the Court of Appeal thinks fit to determine before final judgement in the appeal, and may make an interim order or grant any injunction which the court below is authorised to make or grant and may direct any necessary inquiries or accounts to be made or taken, and, generally shall have full jurisdiction over the whole proceedings as if the proceedings has been instituted in the Court of Appeal as court of first instance and may re-hear the case in whole or in part or may remit it to the court below for the purposes of such rehearing or may give such other directions as to the manner in which the court below shall deal with the case in accordance with the powers of that court, or, in the case of an appeal from the court below, in that court’s appellate jurisdiction, order the case to be re-heard by a court of competent jurisdiction”.**  
(Emphasis supplied)

S. 22(2) of the Federal High Court Act 2004 clearly confers power on the Federal High Court to transfer a matter to the appropriate court where the Federal High Court lacks jurisdiction to entertain the suit. This section was made for the preservation of cases that have been instituted in wrong courts. As a saving provision, the Federal High Court is given power to transfer cases when it lacks the jurisdiction. This saving provision, pursuant to s. 44 of the Federal High Court Act 2004, promulgated the Federal High Court (Civil Procedure) Rules 2019 (the “Rules”). Order 49 rule 5 of the rules vests obligations on the Federal High Court to transfer a suit to the appropriate court where the Federal High Court lacks jurisdiction.

It is noted that neither s. 22 of the Federal High Court Act nor Order 49 rule 5 of the Rules stated that the only time it is possible to exercise this power of transfer is at the stage before the Federal High Court hears the matter on the merit or delivers judgement. This was put to a test in the Supreme Court case of **Dec Oil and Gas Ltd v. Shell Nig. Gas Ltd**<sup>22</sup> and in that case, it was held that there was nothing in the Federal High Court Act or the Federal High Court (Civil Procedure) Rules 2009 (*impari materia with the 2019 Rules*) that says a judge must decline jurisdiction before the order of transfer is made. The Supreme Court, in that case, stated thus: **“I have also not come across any provision that says where a Judge wrongly assumes jurisdiction and determines a case to finality, an order of transfer under s. 22(2) of the Federal High Court (sic) cannot be made”**. Here, the Supreme Court, interpreted s. 15 of the Court of Appeal Act to vest powers in the Court of Appeal to make positive orders of transfer to the High Court notwithstanding that the Federal High Court wrongfully heard and determined the suit on the merit.

It would appear that the Supreme Court, in **Usman v. Nig. Unity Line Plc (supra)**, makes the point that the Court of Appeal cannot make an order of transfer when the Federal High Court had gone ahead to determine a suit for which the Federal High Court ordinarily had no jurisdiction to try. In other words, the Court of Appeal may only transfer a suit, as though a court of first instance, if it was a situation where the Federal High Court struck out the suit rather than determine same.

It may be argued that the Supreme Court’s decision is apt, given that the request for a transfer of the suit to the appropriate court was an impracticable because an appellate court could only do what the trial court could lawfully do but failed to do. The reasoning is that the trial court is to either (a) transfer a suit where it lacks jurisdiction; or (b) hear the suit on the merit. As a result, the trial court cannot do both at the same time. Thus, an appellate court, when sitting as the court of first instance, cannot possibly be seen to make a direction, as though it was the trial Federal High Court, that the matter be transferred after the matter has been determined on the merit. This is a non-starter.

It is however observed that neither the Federal High Court Act, the Rules nor the Court of Appeal Act limited the circumstance upon which a transfer could be possible. In fact, in the case of **Dec Oil and Gas Ltd v. Shell Nig. Gas Ltd (supra)** it was held thus: **“the argument that the court assumed jurisdiction, albeit wrongly cannot be factored into the case as to deprive an appellate court from giving appropriate directive or order”**. In essence, the Court of Appeal has been held to have powers to make directions to transfer a matter to the appropriate court, after making an order nullifying proceedings at the trial court. The position in **Dec Oil and Gas Ltd v. Shell Nig. Gas Ltd (supra)** was followed in the Supreme Court case of **Maigana v. I.T.F.**<sup>23</sup>

As much as the law is to the effect that the latest decision of the Supreme Court is the position of the court, the clamour is for the Supreme Court to revisit its position on the issue of transfer of cases, in view of earlier decisions of the court, which appeals to value judgement and seem to uphold the saving provision under s. 22(2) of the Federal High Court Act. While the Supreme Court in **Usman v Nig. Unity Line Plc (supra)** correctly agreed with the Court of Appeal in nullifying the proceedings of the trial court, s. 15 of the Court of Appeal Act, in fact, gave the Court of Appeal the power to act like the court of first instance in giving such directions as to manner in which the Federal High Court should have dealt with the matter. In effect, it may be good logic that since a null proceeding means the undoing of all things in a matter (including the undoing of the order placing the suit under the undefended list), the Court of Appeal could, in clean slate, act in accordance with powers conferred

on the Federal High Court vide Order 49 rule 5 of the Rules and s. 22(2) of the Federal High Court Act 2004, in ordering a transfer of the suit to the appropriate court.

The foregoing notwithstanding, until there is a dep<sup>22</sup>arture from ***Usman v Nig. Unity Line Plc (supra)***, the reasoning of the Supreme Court there, reflects the position of the court/law on the exercise of the general powers of the appellate courts to transfer cases after the Federal High Court already determined a matter it ordinarily lacked the jurisdiction to hear.

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23 (2008) 8 NWLR (Pt. 1777) 1.



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