

Qualification as an Agency of the Federal Government Nigeria: Test for Determining

In the Supreme Court of Nigeria
Holden at Abuja
On Friday, the 13th Day of June, 2025

Before Their Lordships
Mohammed Lawal Garba
Adamu Jauro
Moore Aseimo Abraham Adumein
Obande Festus Ogbuinya
Abubakar Sadiq Umar
Justices, Supreme Court

SC/66/2010

Between

WEST AFRICAN EXAMINATION COUNCIL

APPELLANT

AND

CALEB FOLORUNSHO ...

RESPONDENTS

(Lead judgement delivered by Honourable Moore Aseimo Abraham Adumein, JSC)

Facts

This appeal arose from a judgment of the Court of Appeal sitting at Ilorin. The Respondent, who was the Plaintiff at the trial court, had his employment with the Appellant terminated after working for over 14 years. Accordingly, the Respondent was paid his severance benefits, but without pension. This informed the filing of the suit at the Federal High Court, Ilorin, *via* originating summons.

At the trial court, the Respondent claimed that having worked in the Appellant's employment for more than fourteen years, he was entitled to pension. In his reliefs before the court, the Respondent sought *inter alia*, a declaration that the action of the Appellant in denying his entitlement to pension as stated in in the letter of termination, is

unconstitutional, illegal, null and void. He also prayed the court for an order compelling the payment of his pension with effect from February 2002. At the conclusion of the hearing, the trial court held that the Respondent was not entitled to the reliefs and consequently dismissed his case. Dissatisfied with the judgement of the trial court, the Respondent successfully appealed the decision at Court of Appeal. The lower court found merit in the Respondent's appeal, holding that he was unlawfully denied his pension, and ordering the full payment of his entitlements. The court equally regarded the termination of his employment as a retirement, having put in over fourteen years of permanent and pensionable service.

Now displeased with the decision of the Court of Appeal, the Appellant appealed to the Supreme Court on 12 grounds and distilled five issues for determination therefrom. In issue one of its brief of argument, the Appellant raised the issues of the jurisdiction of the trial court to determine the suit, and limitation of action.

Issue for Determination

Based on the issue of jurisdiction distilled by the parties, the Supreme Court identified one issue for determination, to wit:

Whether the West African Examinations Council (the Appellant) is an agency of the Federal Government pursuant to the provisions of Section 251 (1)(p), (q) and (r) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Arguments

On the issue of jurisdiction, the Appellant argued that the Federal High Court lacked jurisdiction to hear the suit in the first instance, as it can only assume jurisdiction in matters where any of the parties is the Federal Government or any of its agencies, relying on Section 251(1)(p), (q), and (r) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The Appellant argued that in the instant case, it is neither the Federal Government nor an agency of the Federal Government.

In response, the Respondent contended that the Appellant is an agency of the Federal Government by virtue of the West African Examinations Council Act, Cap 648, Laws of the Federation of Nigeria 1990. By this enactment, the Federal Government can effectively exercise control over the Appellant and its operations with regard to the conduct of public examinations in Nigeria, particularly in instances where there is a change in the Federal Government's policy on such examinations. The Respondent drew the attention of the court to the fact that, by Sections 1, 2, 14, and 24 of the West African Examinations Council

Act, the Federal Government exercises control over the operations of the Appellant in Nigeria. The Respondent emphasised that it is immaterial whether or not the Federal Government fully, partly, or jointly controls the Appellant with other West African countries. This, according to the Respondent, establishes that the Federal Government is a “co-owner” and active stakeholder in the Appellant, and indeed participates in the Council’s decision-making process.

The Respondent, however, further prayed in the alternative that if the Supreme Court finds that the Appellant is not a Federal Government agency, the Court should invoke the provisions of **SECTION 22 OF THE SUPREME COURT ACT** and accordingly transfer the case to the National Industrial Court, Akure, which is entertaining employment matters emanating from Ilorin, relying also on **SECTION 22 OF THE FEDERAL HIGH COURT ACT**. The latter provides that where the Federal High Court lacks jurisdiction to entertain a matter before it, it should not strike it out, but rather transfer it to the appropriate court with jurisdiction.

Court’s Judgement and Rationale

The Supreme Court noted that the courts have consistently held that jurisdiction is determined by the Claimant’s originating claim, relying on its decision in **ANYA v LYAYI (1993) 7 NWLR (PT. 306) 290; AKINFOLARI v AKINNOLA (1994) 4 SCNJ 30**. Their Lordships reiterated that the issue of jurisdiction can be raised at any stage of proceedings, even without the leave of court, as it is the foundation of any litigation exercise, relying on **ISAAC GAJI v EMMANUEL PAYE (2003) 8 NWLR (PT. 823) 583; UNIVERSITY OF ILORIN v RASHEEDAT ADESINA (2014) 10 NWLR (PT. 1414) 158**. A trial court is empowered to first determine whether it has jurisdiction before proceeding with a case, relying on **NIGERIAN DEPOSIT INSURANCE CORPORATION v CENTRAL BANK OF NIGERIA (2002) 7 NWLR (PT. 766) 272 AT 296**.

Importantly, the Court noted that a clear distinction exists between jurisdiction and judicial power. Relying on the decision of the Supreme Court in **H. TAI AJOMALE v JOHN ETHAKPEMI YADUAT (NO.1) (1991) 5 SCNJ 172; (1991) 5 NWLR (PT. 189) 257 AT 264**; the Court clarified that jurisdiction is the authority of a court to hear and determine a matter, while power of a court refers to the ability of the court to make orders. Without jurisdiction, a court cannot validly exercise any power. Further, where a trial court lacks jurisdiction, its proceedings are null and void *ab initio*, and any appeal arising from such proceedings is equally incompetent - **SLB CONSORTIUM LTD v NIGERIA**

NATIONAL PETROLEUM CORPORATION (2011) 9 NWLR (PT. 1252) 317; C.G.C. (NIG.) LTD. v ALH. MUSTAPHA ISA (2023) 9 NWLR (PT. 1888) 129.

On the question raised for its determination, the Supreme Court held that the words used in Section 251(1)(p)(q)(r) of the constitution are clear, plain and unambiguous. *The term “Federal Government” in Section 251(1)(p), (q), and (r) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) must be read holistically with other constitutional provisions, such as Sections 1(1), 1(2), 2, 4(1), 130(2), and 318. By the referenced provisions, the term “Federal Government” means the “Government of the Federal Republic of Nigeria.” Therefore, if the Government of the Federal Republic of Nigeria acts in conjunction with the Federal Government of The Gambia, Ghana, Sierra Leone, which are appointors of the “governing body” of the Council, in the proportions specified by paragraph 1(1) of the Schedule to the West African Examinations Council Act, then the Appellant cannot be an agency of the Federal Government of Nigeria.*

Further, the Supreme Court referred to Sections 1(2), 14(1), 15, and 16 of the West African Examination Council Act and held that the Appellant is not an agency of the Federal Government, but a regional, supranational body established by multiple West African states, with independent legal personality and not subject to the control of the Federal Government of Nigeria.

Relying on Encarta World English Dictionary; Black’s Law Dictionary (Deluxe Ninth Edition); and Bouvier Law Dictionary (Compact Edition), the Supreme Court noted that a “government agency” is generally understood as a division of government responsible for carrying out administrative functions, a department or instrumentality of the executive branch, or any governmental unit to which authority has been delegated by the legislature, executive, or judiciary to formulate and enforce policies. Their Lordships noted further that such agencies operate under government control and within constitutionally defined limits. Applying these definitions, the Supreme Court concluded that the Appellant does not qualify as an agency of the Federal Government of Nigeria.

More importantly, the Supreme Court reaffirmed the trite principle of law that, for the Federal High Court to assume jurisdiction under Section 251 of the Constitution, the Federal Government or its agency and the subject matter must fall within the constitutional provisions. In this case, neither requirement was satisfied. The court relied on the case of **NATIONAL ELECTRIC POWER AUTHORITY v EDEGBERO (2002) 18**

NWLR (PT. 798) 79 AT 100 in emphasizing that jurisdiction depends on both parties and subject matter.

Notably, the Supreme Court acknowledged that, after the delivery of the decision, subject of this appeal, by the Court of Appeal, subsequent decisions of the Court of Appeal, such as **WAEC v ALADE (2012) ALL FWLR (PT. 656) 526 AND WAEC v UZOWURU (2014) ALL FWLR (PT. 732) 1768**, correctly held that the Appellant is not an agency of the Federal Government of Nigeria.

Ultimately, the Supreme Court unanimously resolved the issue of jurisdiction in favour of the Appellant, holding that the Federal High Court lacked the jurisdiction of determine the suit. The court, thereby, ordered the transfer of the case to the National Industrial Court, Akure Judicial Division, as the appropriate court for employment disputes, to be heard and determined expeditiously.

Appeal allowed.

Representation

T.S. Olaosebikan, Esq. with O.N. Zaid, Esq. for the Appellant.

Chief R.O. Balogun (SAN) with Umar Abdulhameed, Esq. and Folafemi B. Adeyeye, Esq. for the Respondent.

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