

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT HIGH COURT MAITAMA –ABUJA**

**BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE**

**COURT CLERKS: JAMILA OMEKE & ORS**  
**COURT NUMBER: HIGH COURT NO. 34**  
**CASE NUMBER: SUIT NO. FCT/HC/CV/2279/18**  
**DATE: 15<sup>TH</sup> JANUARY, 2020**

**BETWEEN:**

**AMBASSADOR MOHAMMED DAUDA.....APPLICANT**

**AND**

**NIGERIAN IMMIGRATION SERVICE & 2 ORS.....RESPONDENTS**

**APPEARANCE**

Peter e. with Etoteh with Damisa for the Applicant.

**JUDGMENT**

The Applicant herein has filed this Suit with No. FCT/HC/CV/2279/19 on the 26<sup>th</sup> of June, 2019 through his counsel Susan .O. Agun Esq, of P. O. Oriwode & Co, seeking for enforcement of his Fundamental Human Rights.

However, by a Notice of Preliminary objection dated and filed on 23/10/19, brought pursuant to order viii Rules 1, 2, 3 and 5 of the fundamental Rights (Enforcement Procedure) Rules 2009, and the inherent Jurisdiction of this court,

the 3<sup>rd</sup> Respondent (herein referred to as the 3<sup>rd</sup> Respondent/Objector) herein prayed this Honourable Court for the following orders:-

- (i) An order of this Honourable Court striking out this Suit for lack of Jurisdiction.
- (ii) And for such further or other orders as this Honourable court may deem fit to make in the circumstances.

The grounds for the objection are:-

- (1) That the 3<sup>rd</sup> Respondent in this Suit is an Agency of the Federal Government, and.
- (2) That a state High Court does not have Jurisdiction to entertain a Suit such as this against an Agency of the Federal Government.

In support of the Notice of Preliminary objection, is a written address dated 23<sup>rd</sup> Day of October, 2019.

In the said written address of the 3<sup>rd</sup> Respondent/Applicants a sole issue for determination was formulated thus:-

***“whether or not this Honourable Court has Jurisdiction to entertain a Suit filed against an Agency of the Federal Government on civil causes and matters such as this.”***

It is submitted for the 3<sup>rd</sup> Respondent/Applicant that by the provisions of Section 251 (1) of the 1999 Constitution (as amended) the Federal High Court has exclusive Jurisdiction in civil matter and causes inter-alia for declaration and injunction. Reference was made to the case of NEPA VS EDEGBERO (2002) 18 NWLR (PT. 798) 79, per Uwais CJN at 97, paragraph E-G; DGSS VS OJUKWU (2006) 13 NWLR (PT. 998)575.

It is submitted further that in the instant case, it is obvious that the reliefs sought by the Applicant against the 3<sup>rd</sup> Respondent fall under Section 251 (1) (a), (r) and (s) of the Constitution. That no matter how good his case may sound, he cannot adorn this court with a garment of Jurisdiction when the Constitution has taken away such Jurisdiction and vests same exclusively on the federal High Court. Reference was made to the case of NEPA VS ADEGBERO (Supra).

Learned counsel further submits that it was held in the case cited above that the proviso to Section 251 does not wittle down the exclusive Jurisdiction. That it applies to the right of a person seeking redress in an action for damages, injunction or specific performance but does not extend to the exclusive Jurisdiction conferred on the Federal High to the state High Court. That a critical look at the Fundamental Rights enforcement Procedure Rules 2009 will show that the drafters did not intend to take away that exclusive Jurisdiction from the Federal High Court. Reference was made to order 11 of the Fundamental Rights Enforcement Procedure Rules 2009.

It is submitted on this premise, that the drafters of the Rules have premised the provision on the ground that a good number of alleged breaches of fundamental rights are by Agencies of the Federal government. Hence, they provide for few cases where the offender is not an agency of the Federal Government. That in this regard, the person may approach a court in the state where the infringement occurred.

That going further to the provision, it provides “where the infringement occurs in a state which has no Division of the Federal High Court, the Division of the Federal High Court administratively responsible for the state shall have jurisdiction.

That if the intendment was for the state High Court to have Jurisdiction, it would have been so stated by the Drafter. Reference was also made to the case of ANIAKOR VS NIGERIA POLICE FORCE (2014) 15 NWLR PT 1429 PAGE 155 (A) PP170-171 paragraphs C-C 172, paragraphs D-E.

The court is finally urged to resolve the issue in the 3<sup>rd</sup> Respondent/Applicant's favour and hold this suit to be incompetent and dismiss same accordingly, as the court lacks Jurisdiction to entertain same.

In opposition to this Notice of Preliminary objection, the Applicant/Respondent filed a Counter -Affidavit of 13 paragraphs deposed to by one Susan .O. Agun, a legal Practitioner in the law firm of P. O. Erivwode & co, counsel to the Applicant/Respondent, it is dated and filed 5/11/19.

Equally filed in support of the Counter-Affidavit is a written address dated 5/11/19, wherein a sole issue for determination is formulated that is whether this Honourable Court has Jurisdiction to entertain this Suit regards being had to Section 46 (1) (2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Fundamental Rights Enforcement Procedure Rules 2009

In arguing the issue formulated, it is submitted for the Applicant that this court is seized with the requisite Jurisdiction to entertain an application for enforcement of fundamental rights not withstanding that a party or parties named in the suit are agency or agencies of the Federal Government. That it is the nature of the claim or subject matter that determines Jurisdiction and not a mere posture of being an agency of the Federal Government. Reference was made to Section 46 (1) and (2) of the CFRN 1999 (as amended) and order 2 rule 1 of the fundamental rights enforcement procedure Rules 2009.

That by the interpretation Section i.e order 1 Rule 2 of the Fundamental rights enforcement procedure Rules 2009, the definition given to “Court” means the Federal High Court or the High Court of a State or the High Court of the Federal Capital Territory.

It is submitted that the above provision clearly defeats the misconceived Notion of the 3<sup>rd</sup> Respondent/Applicant that the Federal High Court is vested with the exclusive Jurisdiction to handle such matters. That both Courts have concurrent Jurisdiction to entertain matters relating to enforcement of fundamental rights. Reference was made to the case of GRACE JACK VS UNIVERSITY OF AGRICULTURE MAKURDI (2004) 5 NWLR (PT. 865) P 208.

It is further submitted that the issue to be considered should not be determined merely by the provisions of Section 251 of the Constitution of the Federal Republic of Nigeria which provides for the exclusive Jurisdiction of the Federal High Court on specific matters, but the subject matter which in this case is Violation of the right of the Applicant. That since the Constitution has empowered both the state high court and the Federal High Court to entertain same, it immaterial that a party is a Federal agency and it goes to no issue.

It is submitted that flowing from the above, this Honourable Court has the Jurisdiction to entertain this Suit. This court is then urged to dismiss the 3<sup>rd</sup> Respondent/Applicant’s preliminary objection for want of substance and merit.

Finally, it is submitted that the case before this court is one that not only seeks to provide justice to the applicant for the denial of his fundamental rights, but it also seeks to advance the cause of rule of law and compliance with laid down procedure. The court is again urged to dismiss the 3<sup>rd</sup> Respondent/Applicant’s application, and proceed to hear the matter.

Now, I have carefully considered this preliminary objection, and the address in support of it, the counter affidavit and address in opposition to the preliminary objection.

First of all, it is instructive to note that by virtue of Section 46 (1) and (2) of the 1999 Constitution (as amended) both the Federal High Court and the State High Court have concurrent Jurisdiction in the enforcement of fundamental human rights encapsulated in chapter iv of the 1999 Constitution (as amended). Section 46 (1) (2) provides as follows:-

- (a) Any person who alleges that any of the provisions of this chapter has been, is being or is likely to be contravened in any state in relation to him may apply to a High Court for redress.
- (b) Subject to the provisions of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of the provisions of this Section and may make such orders, issue such writs and give such directions as it may consider appropriate within that state of any right to which the person who makes the application may be entitled under this chapter.

Again by the provision of order 1 Rule 2 of the Fundamental Rights Enforcement Procedure Rules 2009, the meaning of "Court" was given as:-

"Court" means the Federal High Court or the High Court of a state or the High Court of the Federal Capital Territory, Abuja."

Likewise in the case of TUKUR VS GOVERNMENT OF GONGOLA 1984 NWLR (PT. 1171) P 517. Supreme Court held that both the State and Federal High Court can entertain fundamental rights enforcement cases. But held, however, that the federal High Court can entertain fundamental rights cases only with regard to the

matters over which it has Jurisdiction under Section 230 of the 1979 Constitution(which now is Section 251 of the 1999 Constitution(as amended)). That is the Federal High Court in that case had no jurisdiction to entertain chieftaincy matters.

However, in the case of GRACE JACK VS UNIVERSITY OF AGRICULTURE MAKURDI (Supra) cited by the Applicants/Respondents, it was held by the Supreme court that both the Federal and State High Courts have concurrent Jurisdiction in all cases of fundamental human rights enforcement regardless of subject matter.

Some latter decisions have followed Tukur's case whole some have followed Grace Jack's case.

For instance the case of GAFAR VS GOVERNMENT OF KWARA (2007) ALL FWLR (PT. 350) P145, followed the Grace Jack case. While the Court of Appeal in NDLEA VS BABATUNDE OMIDINA (2013)16 NWLR, (pt. 1381) 589. Followed Tukur's case.

On actions involving the Federal Government and its agencies it was held in NEPA VS ADEGBERO (Supra) cited by the 3<sup>rd</sup> Respondents, that once the Federal Government or its agency is a party in an action, that it is the Federal High Court that has Jurisdiction over the action.

In the concurring Judgment, however, his lordship NIKI TOBI JSC, was of the view that subject matter should also be considered. He states in page 100 of the report thus:-

***“In construing Section 230 (1) of the 1979 Constitution as amended, two important matters arise. They are the parties to the litigation as well as the subject matter of the litigation. The court must consider both.”***

Therefore, looking at the above cited authorities and in particular Subsection 2 of Section 49 of the Constitution 1999 (as amended) reproduced earlier, makes the Jurisdiction of both Courts. **“subject to the provisions of the Constitution.”**

(underlining mine)

Although it is deposed in paragraphs 4, 7, 8, 9 and 10 of the counter affidavit of the applicant among other things, that contrary to the arguments of the 3<sup>rd</sup> Respondent, the High Court of the Federal Capital Territory is a proper venue for instituting this action.

However, in my humble view, since the 1<sup>st</sup> and 3<sup>rd</sup> Respondents in this case are agencies of the Federal Government and in treating the issues of the fundamental rights enforcement of the applicant, issues such as that touching on immigration are likely to come up. And such issues no doubt fall within the exclusive Jurisdiction of the Federal High Court under Section 251 of the 1999 Constitution as amended.

Now, although arguments and submissions of both sides in this application is greatly appreciated, it will be in the best interest of the Applicant for Justice to be served by approaching the appropriate Court.

On this I refer to the case of ADETONA & ORS VS IGELE GENERAL ENTERPRISES LTD (Supra) cited by the 3<sup>rd</sup> respondents in their address where the Supreme Court held that:-

***“where a person’s fundamental rights is breached, being breached or about to be breached, that person may apply under Section 46 (1) to the Judicial division of the Federal High Court in the State or the High Court of the State or that of the Federal Capital Territory in which the breach***



***occurred or is occurring or about to occur. This is irrespective of whether the right involved comes within the legislative competence of the Federation or the State or the Federal Capital Territory. It has to however be noted that the exercise of this Jurisdiction by the Federal High Court is where the Fundamental Right threatened or breached falls within the enumerated matters on which the court has Jurisdiction. Thus Fundamental rights arising from matters outside its Jurisdiction cannot be enforced by the Federal High Court. Equally, a High Court of a state shall lack Jurisdiction to entertain matters of Fundamental rights although brought under Section 46 of the Constitution where the alleged breach of such matters arise from a transaction or subject matter which fall within the exclusive Jurisdiction of the Federal High Court as provided by Section 251 of the Constitution.***

Therefore, flowing from the above and with the reasons given earlier, I find that this Court lacks Jurisdiction to entertain this suit which touches on matters within the exclusive Jurisdiction of the Federal High Court by virtue of Section 251 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

Consequently, the preliminary objection has merit, same is Accordingly sustained.

Therefore, this suit with No. FCT/HC/CV/2279/19 be and is hereby struck out for want of Jurisdiction.

Signed

***Hon. Justice Samirah Umar Bature***

15/01/2020

Counsel: we are grateful for a well considered Ruling.