

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT APO**

CLERK: CHARITY  
COURT NO. 16

FCT/HC/CV/2631/19  
M/5668/2020  
Date: 01/06/2020

BETWEEN

MUNNELLEYS ASSOCIATES LTD .....} PLAINTIFF/RESPONDENT

AND

NATIONAL LIBRARY BOARD .....} DEFENDANT/APPLICANT

**RULING**

**(DELIVERED BY HON. JUSTICE S. B. BELGORE)**

By way of a preliminary objection vide a motion on Notice Number **M/5668/2020**, the Defendant/applicant-National Library Board prayed for an order of this Honourable court striking out this suit against the Defendant for being a Nullity because the Honourable court lacks jurisdiction to hear it.

The grounds for so praying the court for the foregone sole relief are two, to wit:

- (1) That the matter is wrongly commenced in this Honourable Court.
- (2) Pursuant to the constitution of the Federal Republic of Nigeria 1999, the claims made by the plaintiff are within the exclusive

jurisdiction of the Federal High Court and outside the jurisdiction of the Federal capital Territory.

The motion under reference is dated **18/2/20** and filed on **24/2/20**.

In support of the motion is a 4 paragraphs affidavit deposed to by one Pauline Ogbu, a female and legal officer in the Defendant company. The affidavit is dated 24-2-20. There is also a written address in support of the objection. The address is dated 18-2-20.

Upon service of the preliminary objection motion on the plaintiff, they quickly reacted to it. They filed the counter affidavit of 10 paragraphs. It is dated 2-3-20 and filed same day.

The counter –affidavit was deposed to by one Mr. E.Ojeka, who is the managing Director of the Plaintiff company.

Today, 1-6-20, the application was moved and argued in court. That was actually some few minutes ago.

Learned counsel to the Defendant/Application Mr. Ikeazo, Igbokwe now –set the ball rolling. He referred to all the processes filed and adopted the written address he filed as his oral argument in support of the application. He urged me to grant it and decline jurisdiction.

His written argument vide paragraphs 4.1-4.7 essentially dealt with the submission that since the claim of the plaintiff rest squarely on a declaration that the purported termination of the award of contract by the Defendant, amounted to an administrative action of the Defendant who happens to be an agency of Federal Government and therefore it is only the Federal High Court that has exclusive jurisdiction. The learned counsel argued that what the plaintiff is seeking in this court is a

declaration of executive action or decision of a Government action as null and void. And that by virtue of **section 251(1) (r) of the 1999 constitution** (as amended) it is only Federal High court that has the Jurisdiction to hear the case.

For all his argument Mr. Igbokwe cited the cases of **FEDERAL MORTGAGE BANK OF NIGERIA VS LAGOS STATE GOVERNMENT (2010) 5 NWLR (PT. 1188) 570, OBIUWEBI VS CBN (2011) 7 NWLR (PT. 1247) 465, SLB CONSORTIUM LTD VS NNPC (2011)9NWRL(P.T. 1252) 317, OKOROCHA VS U.B.A PLC (2011) 1 NWLR(P.T. 1228) 348, O.H.M.B VS GARBA(2002)14 NWLR (PT.788) 538; OKOLO VS U.B.N LTD (2004) 3 NWLR(P.T. 859) 87 AND N.D.I.C VS CBN (2002) 2 NWLR (PT.766) 857.**

In a very brief reply, Miss E.R. Otaru of counsel to the plaintiff/Respondent, referred to their 10 – paragraphs counter – affidavit and a 6-page written address which she had filed in opposition to the grant of the preliminary objection. Miss Otaru adopted and relied on the deposition in the counter affidavit and adopted the contents of the written address as her argument in this case. She framed a lone issue for determination which is whether or not this court lacks jurisdiction having regard to the issue of this case as made out in the writ of Summons and the statement of claim. She answered the question in the negative. Referring to the provision of **Order 3 Rule 3 and Order 23 Rule 2(1) of the High Court of the Federal Capital Territory (Civil procedure) Rules 2018**, learned counsel submitted that since the contract between the parties is a simple contract to be performed in the FCT, then this Court has jurisdiction to entertain the matter. He cited with relish the following case Law authorities in support of his submission;

- (1) CAPTAIN HON. OTIKI AND ANOR VS ALHAJI MOMO BAJEHSAN (2005) LPELR -11347.
- (2) KRAUS THOMPSON ORGANISATION LTD VS UNIVERSITY OF CALABAR (2004) LPELR-1715.
- (3) SOCIETY INTERNATIONAL DE- TELE COMMUNICATION AERONAUTIQUE (SITA) 2014 LPELR – 24157.
- (4) CONOIL PLC VS VITOL S.A (2011) LPELR-19951.
- (5) FEDERAL STAFF HOSPITAL JABI AND ANOR VS MR CHJIOKE OHAMAKA AND ANOR (2018) LPELR-45830
- (6) PORT AND CARGO HANDLING SERVICES COMPANY LTD VS MIGFOR NIGERIA LTD (2012) 18 NWLR (PT. 1333) 555,
- (7) MATHEW IKPEKPE VS WARRI REFINERY AND PETROCHEMICAL COMPANY LTD (2018) LPELR-44471.
- (8) ONUOHA VS KRPC LTD (2005) 6 NWLR (PT. 921) 393
- (9) MR VICTOR ADELEKAN VS ECU-LINE(2006) LPELR-113.

Learned counsel to the plaintiff/Respondent finally urged me to award a sum of **₦500,000** in favour of the plaintiff as cost and to also order for accelerated hearing of the suit.

I have reflected deeply on the simple issue for determination in this preliminary objection. It is a simple and straight forward matter.

Do, I have jurisdiction to entertain the complaint of plaintiff against the Defendant as made out in their statement of claim?

The point is long settled in this country that it is the statement of claim that the court should reflect upon when the jurisdictional competency of the court is called into question. See **OKOROCHA Vs U.B.A** (supra) etc. So, the question is what is the Claim of the plaintiff and what are the facts upon which the claims rested? The answer should and it is infact found in the plaintiff statement of the claim. The parties i.e. the plaintiff and the Defendant entered into a contract by which the plaintiff is to supply 40 copies of latest edition of Harold librarian Glossary; 10 copies of latest edition of library of congress subject heading and 10 copies of latest edition of library of congress classification schedule A-Z 41 vols; to the Defendant at a cost of ~~₦6,947,850~~:**(six Million, Nine Hundred and forty seven Thousand, Eight Hundred and fifty Naira) only.**

The plaintiff swung into action and procured and supplied the items according to him. The Defendant by the plaintiff's statement of Claims failed to honour their own side of the agreement by failing to make payment. See paragraphs 3-15 of the statement of Claim. The plaintiff further averred in the paragraph 16 that by a letter dated 13<sup>th</sup> May 2019, the Defendant purported to have terminated the contract. This according to them was after completion of the contract.

For the above reasons, the plaintiffs approached this court claiming in paragraph 24 of the statement of Claim four (4) reliefs. They are;

A Declaration that the terminating of the contract is unlawful, arbitrary, null and void and amounts to breach of contract; **₦300,000,000-(Three Hundred Million ) Naira** exemplary and

general damages, an order directing the Defendant to pay the contract sum and lastly 10% post Judgment Sum. The above in brief is what the Claim of the Plaintiff is before this Court.

Now, do I have jurisdiction to entertain this case? The Defendant has placed heavy reliance of **S.251(1)(r)** of the 1999 constitution (as amended) in saying, this court not being a Federal High Court has no Jurisdiction ? Is that correct?

Before we examine, the provision of the constitution dealing with the Jurisdiction of the Federal High Court I deem it imperative and proper to say by way of Clarity, that this suit as presented by the plaintiff relates to matter of simple contract the breach of which is alleged. That is the pith and substance of this case. A contract is in existence. The plaintiff has supplied all the items required. This, I know is a matter of evidence, but for now, that is the case of the plaintiff. The allegation is in performance of the other side of the bargain by the Defendant as required by the contract claimed to be existence.

Being a matter of simple, ordinary contract of supply, does this court a High Court of FCT, has jurisdiction to look into the claim of the parties?

We also, must not forget, that the Defendant is an agency of Federal Government of Nigeria. Does that fact, *ipso facto*, confer exclusive jurisdiction on the Federal High Court even where the Claim is based on a simple contract?

**Section 251(1) (r) of the 1999 constitution** (as amended) provides;

*“ Notwithstanding anything to the contrary contained in this constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction exclusive to any other court in civil causes and matters:-*

*(r) any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies’.*

The above is the provision the Defendant/Applicant are relying upon to say this court has no jurisdiction.

Happily for me, I don't have to sweat so much because the provision has come severally under the binocular or prism of the court of Appeal and Supreme Court in several cases. And both higher Courts have decided point blanks that the extant provision of **Section 251(1) (r)** of the 1999 constitution do not apply to matters of simple contracts. For instance, in the case of **Federal Staff Hospital Jabi and anor Vs Mr Chijioke Ohanmaka and anor** (supra), cited by the Respondent's counsel and which I have read from electronic law pavillion, the court of Appeal held:

*“Actions on simple contracts and tort of negligence are not included in those itemised matters under section 251(1)(q)-(s) of the*

*Constitution of Federal Republic of Nigeria. There is also no Act of National Assembly conferring jurisdiction on the Federal High court in actions of simple contract. Therefore, the Federal High Court cannot arrogate to itself a jurisdiction only exercisable by the state High Courts-----.*

*The fact that an action is against agents of the Federal Government of Nigeria does not ipso facto bring the case within the jurisdiction of the Federal High Court unless the subject matter of action falls within jurisdiction of the Federal High court.....’*

See. **ONUOHA VS KRPC** (supra).

The Supreme Court in **Adeleka Vs Ecu-line**(supra) held:

*“ The provision of section 251 of the constitution of the Federal Republic of Nigeria 1999----- are very clear and unambiguous. It is the section that confer jurisdiction on the Federal High Court which Jurisdiction clearly does not include dealing with any case of simple contract--  
-----“*

Lastly on the relevant authorities, the Court of Appeal in the case of **AVIATION LOGISTIC AND MANAGEMENT LIMITED VS UNITED BANK FOR AFRICA CAPITAL PLC AND ORS (2018) LPELR-44790** held that the Federal High Court has no jurisdiction over action founded merely on simple contract or for recovery of debt. The Court of Appeal said this remain the situation or law no matter how ingenious a claimant couched his claim to cleverly or forcefully or craftily bring it within the scope of an ambit of any paragraphs of **section 251(1)** of the 1999 constitution. Good enough, this plaintiff has approached the right court. And no matter the force in the argument of the Applicant counsel, this court remains the proper court to entertain this. **FEDERAL COLLEGE OF EDUCATION OYO VS CHIEF AKINYEMI (2008) NWLR(PT. 1109) 52** the learned counsel to the applicant, craftily using the words of the learned justice of the court of Appeal, argued that the decision to terminate the contract is an administrative action of the Defendant which only the Federal High Court can question. Yes that may be so. I used the word “may” advisedly and cautiously. But the clear point is that the plaintiff has not in their claim before this court, questioned the propriety of any meeting of the Defendant nor any administrative instrument or action or decision. Their focus is on the contract they have and validly entered into with the Defendant. That is my focus too. See the case **FEDERAL COLLEGE OF EDUCATION OYO VS CHIEF AKINYEMI (2008) NWLR (PT. 1109) 52.**

In essence, there is no merit in this preliminary objection. This is a simple contracts matter which this court by virtue of **section 254 of the 1999 constitution** (as amended) and the provision of the FCT High Court (Civil Procedure) Rules 2018 vide Order 3 Rule 3 and

Order 23 Rule 2(i) has jurisdiction to entertain and determine. This preliminary objection is therefore refused.

I made no order to cost.

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S.B.Belgore

Judge (01/06/2020)