

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT APO-ABUJA

ON THE 15TH DAY OF JULY 2020

BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI

PRESIDING JUDGE

SUIT NO: FCT/HC/CV/2088/19

BETWEEN:

JECKS GLOBAL COMPANY & GENERAL MERCHANT NIG LTD.....CLAIMANT

AND

1. SAMTRUST INVESTMENT

2. HABU MAGAJI

}

DEFENDANTS

J. C. PAUL ESQ. FOR THE CLAIMANT

DEFENDANTS ABSENT AND UNREPRESENTED

RULING

The Claimant sued the Defendants under the undefended list for the sum of N13, 200,000 being total cost of supply of 4 pieces of 300 KVA/33KVA transformers supplied by the Claimant to the Defendants for which the Defendants have failed to pay; and costs of N500,000.

The Defendants responded with a notice of preliminary objection and a “notice of intention to defend... and an affidavit...” filed on 21st January, 2020. I

observe that only the affidavit of the Defendants was indeed filed as no notice of intention to defend was filed, but that is not of importance for now.

In their notice of preliminary objection, the Defendants challenged the jurisdiction of the court to hear the Claimant's suit on the following grounds:

- (i) That the Defendants all reside in Jalingo Town, Jalingo Local Government Area of Taraba State, where they carry on their business activities out of the territorial jurisdiction of this Honourable Court.
- (ii) That the cause of action also aroused (sic) in Jalingo town, Jalingo Local Government Area of Taraba State.
- (iii) The property subject matter of the contract are all in Jalingo town, Jalingo local Government Area of Taraba State.
- (iv) That the contract subject matter of this action, the goods and the cheque in issue were all delivered in Jalingo town, Jalingo Local Government Area of Taraba State".

In support of the objection were filed a 14 paragraph affidavit of Habu Magaji, the 2nd Defendant's Applicant, and counsels written address wherein this sole issue for determination was identified;

"Whether the Honourable Court has the requisite jurisdiction to entertain the Claimant's action on the strength of the Applicant's affidavit if construed in community with the provisions of Order 3 Rule 3 and 4 of the High Court of the Federal Capital Territory, Abuja Civil Procedure Rules 2018?"

It was submitted that a careful perusal of their affidavit in support of the objection will reveal that the Defendants/Applicants reside and carry on their business in Jalingo Taraba State; that the cause of action arose in Jalingo town

where the contract was entered, executed and payments made and receipt issued.

Furthermore, delivery was made in Jalingo and the transformers are lying in Taraba State.

Therefore by the provisions of Order 3 Rules 3 & 4 of the Rules of this Honourable Court, this court lacks the jurisdiction to entertain this matter. The obvious result would be that the matter be struck out. Further Reliance was placed on **BASHIRU DALHATU V TURAKI (2003) 7 SC PART 1 AT PAGES 16-17 PARAGRAPHS 19-20; THOMPSON ORGANISATION LTD V UNIVERSITY OF CALABAR (2004) ALL FWLR PT 209 PAGE 1148 RATIO 5; OKAFOR V EZENWA (2002) FWLR (PART 112) 187**; and Claimant's affidavit in support of the writ.

The Claimant in response, filed a 14 paragraph counter affidavit deposed to by Chukwujekwu Anoliefo – Managing Director of the Claimant.

Accompanying same was counsel's written address which raised the issue:

“whether this Honourable Court can assume jurisdiction over the Claimant's suit”.

It was submitted that contrary to the argument of the Defendants, that the Defendants approached the Claimant in its Abuja office for the supply of the four transformers the subject matter of this suit and that delivery was taken from the Claimant's office in Abuja to Taraba State where installation was done.

It was therefore its contention that the High Court of FCT has jurisdiction to entertain this matter.

Reliance was placed in Order 3 Rule 3 of this Rules of this court, **RIVERS STATE GOVERNMENT OF NIGERIA & ANOR V SPECIALIST CONSULT (SWEDISH**

GROUP) (2005) 7 NWLR PT (923) 145 AT 171 – 172 per Niko Tobi JSC (of blessed memory).

The contest in this objection is whether this court has the territorial jurisdiction to entertain the Claimant's claim. While the Defendants maintains that the court lacks territorial jurisdiction, the Claimant affirms that the court has territorial jurisdiction. So who is right?

In **JOSHUA CHIBI DARIYE V THE FEDERAL REPUBLIC OF NIGERIA (2015) LPELR – 24398 (SC) AT PAGE 28-29 PARAGRAPHS F – D**, Ngwuta JSC held that:

“Jurisdiction as defined in Black’s Law Dictionary, 8th Edition page 867 is the court’s power to decide a case or issue a decree. See **A-G FEDERATION V A-G ABIA STATE & 35 ORS (2001) 7 SC (PT 1) 100** wherein the court held that the word “Jurisdiction” means the authority the court has to decide matters before it or to take cognizance of matter presented in a formal way for its decision. See also **NATIONAL BANK V SHOYOYE (1977) 5 SC 181**.

Territorial jurisdiction implies a geographic area within which the authority of the court may be exercised and outside which the court has no power to act. Jurisdiction, territorial or otherwise, is statutory and is conferred on the court by the law creating it”.

Section 255 (1) of the Constitution of the Federation 1999 as amended created the High Court of the Federal Capital Territory Abuja in the following terms-
“There shall be a High Court of the Federal Capital Territory Abuja”.

The boundaries of the Federal Capital Territory Abuja are clearly defined in the Part II the First Schedule to the Constitution and it does not include Jalingo and Taraba which are defined in Part I of the First Schedule.

S. 259 of the Constitution provides;

“Subject to the provisions of any Act of the National Assembly, the Chief Judge of the High Court of the Federal Capital Territory, Abuja may make rules for regulating the practice and procedure of the High Court of the Federal Capital Territory, Abuja.”

It was pursuant to S. 259 above that the Hon. Chief Judge of the FCT High court made the High Court of the Federal Capital Territory, Abuja Civil Procedure Rules 2018.

Order 3 Rule 3 of the said Rules provides:

“All suits for the specific performance, or upon the breach of any contract, may be commenced and determined in the judicial division in which such contract ought to have been performed or in which the Defendant resides or carries on business”. (Emphasis mine)

It is clear that the Claimant’s suit which is on breach of contract falls within the purview of Order 3 Rule 3 (supra).

It is also beyond dispute that it is the Claimant’s claim that determines the jurisdiction of the court and not the defence. See **AKPAMGBO OKADIGBO & ORS V CHIDI & ORS (2015) LPELR – 24565 (SC) P. 24 PARAGRAPHS A-C.**

Now, for this court to be vested with territorial jurisdiction to entertain the Claimant’s claim, it must be shown that the contract for the supply of the transformers must have been performed in the FCT or that the Defendant resides or carries on business in the FCT. That is what Order 3 Rule 3 stipulates – The words are clear and must be given their ordinary meaning, except where it will lead to absurdity which is not the case here. See **GABRIEL OLATUNDE V OBAFEMI AWOLowo UNIVERSITY (1998) LPELR – 2575 (SC); ADEYEMI – BERO V LAGOS DEVELOPMENT PROPERTY CORP. (2012) LPELR – 20615 (SC) PAGE 82-83 PARAGRAPHS G-A.**

I have carefully perused the Claimant's affidavit in support of the writ of summons. In paragraphs 3,4,5 & 9 thereof, it was deposed thus:

"3. Sometimes (sic) in 2017, I was engaged on behalf of the Claimant by the 2nd Defendant in the supply of four (4) pieces of 300KVA/33KV transformers (ABB brand) for the total of Thirteen Million, Two Thousand Hundred Naira (13,200,000.00).

4. The Claimant made delivery of the transformers with series No: LPL 633657, LPL 633651, LPL 333699 and LPL 6333650 respectively to the Defendants, by advancing its own resources in facilitating the supply of all the transformers.

5. That upon delivery of these transformers to the Defendants, the Claimant issued to the Defendant an invoice in anticipation of payment which the 2nd Defendant signed. A copy of the invoice is hereby attached and marked as Exhibit A"

9. Consequence (sic) upon the Defendant (sic) inability to pay the sum of Thirteen Million, Two Hundred Thousand Naira (13,200,000) owed to the Claimant, the Claimant through is (sic) counsel J.C Paul Esq wrote a demand letter on the 26th day of March 2019 demanding for the payment to be made into the account of the Claimant within seven (7) days which the Defendants (sis) has not yielded to. A copy of the letter is hereby attached and marked Exhibit A2".

(Emphasis mine)

It is evident from the above averments and indeed the entire length and breadth of the affidavit in support of the claim, that mention of where this contract was made or took place, or was executed was cleverly avoided by the deponent who is the managing director of the Claimant.

However, it is clear that the deponent was engaged to supply four transformers to the Defendants, and that he made delivery of the transformers. (Emphasis mine).

Exhibit A, the invoice issued to the Claimant reads the 2nd Defendant's address as Jalingo, Taraba State.

Exhibit A1, the 1st Defendant's Cheque issued by the 2nd Defendant to the Claimant in anticipation of payment also reads Jalingo branch. More importantly, Exhibit A2 the demand letter/ notice of the Claimant's counsel in the 2nd paragraph thereof confirms that the Defendant engaged the Claimant for the supply of the four transformers ABB Branch and that the Claimant made delivery of the transformers to "the Ministry of Rural Development Taraba State".

I am not in doubt therefore that the contract was performed at Taraba State.

On the 9th October 2019, J.C Paul Esq for the Claimant was granted an ex parte application for leave to issue and serve the writ of summons and other originating processes in the suit out of jurisdiction of this Honourable court and for same to be served at No 3 Nick Avenue Nick Vero Hotel, Jalingo - Taraba State.

In paragraph 3 (a) of the affidavit in support of that ex parte application, learned counsel had deposed "that the 1st Defendant has its corporate address at No 3, Nick Avenue beside Nick Vero Hotel, Jalingo Taraba State where the 2nd Defendant also resides outside the jurisdiction of this Honourable court".

On the authority of **RIVERS STATE GOVERNMENT OF NIGERIA & ANOR V SPECIALIST KNSULT (SWEDISH GROUP) (2005) LPELR – 2950** cited by learned

counsel for the Claimant, the contract having been executed in Jalingo Taraba State and the Defendants being resident and carrying on business in Jalingo Taraba State, the court with jurisdiction to entertain this case, is invariably, the High court in Jalingo, Taraba State.

It is therefore futile for the Claimant to depose in paragraphs 5 and 6 of his counter affidavit to the objection that the contract was entered into in Abuja and the delivery made in Abuja as that is clearly not the case. There is nothing in the affidavit in support of his writ to support the averment. I therefore uphold the objection.

In conclusion I hold that this court lacks the territorial jurisdiction to entertain the Claimant's claim. Same is accordingly struck out for want of jurisdiction.

Hon. Judge