

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT HIGH COURT 27 GUDU – ABUJA

DELIVERED ON THURSDAY THE 24TH DAY OF JUNE, 2021

BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE.R. OSHO-ADEBIYI

SUIT NO. CV/1736/2020

MOTION NO:M/13088/2020

BETWEEN:

1. HALLEN NIG LTD ----- CLAIMANTS/RESPONDENTS

2. ENGR. THEO CHUDDY EGBE

AND

**TOTAL ADVANCED ENGINEERING----- DEFENDANT/RESPONDENT
SERVICES LTD**

RULING

Learned Counsel for the Defendant filed a preliminary objection dated the 16th day of December, 2020 under the inherent jurisdiction of this Court seeking for:

1. An order striking out this suit for lack of territorial jurisdiction.
2. Any further order(s) this court may deem fit to make in the circumstances of this suit.

In support of the objection is a 13-paragraph affidavit, deposed to by Alh. Sidi Ibrahim a director of the defendant and a written address. The deponent averred that the defendant/Applicant's head office is at No. 3, Buoke Close, Off Morovia Street, Wuse 11 Abuja and its branch office at Ikot Akoide Ikot, Okoro Ikot Ibritan Road in Oruk Anam Local

Government Area, Akwa Ibom State. That the Defendant/Applicant and the Claimant entered into a construction contract agreement in the branch office of the Defendant/Applicant where the contract was signed. That it was the letter head paper of the head office that was in use at the branch office as the branch offices were still newly established. That the act to be performed in lieu of the contract was at the branch office of the defendant in Ikot Akoide Ikot, Okoro Ikot Ibritan Road in Oruk Anam Local Government Area, Akwa Ibom State outside the territorial jurisdiction of this Honourable Court. That the alleged cause of action took place at the branch office. That it will serve the best interest of justice to grant this application. Learned Counsel to the Defendant adopted the said Written Address. He raised one issue for determination which is

“whether or not, this Honourable Court has a territorial jurisdiction to try this matter having regards to the facts deposed to in the affidavit in support of the motion”.

Summarily learned counsel submitted that it is trite law that the jurisdiction of a court to entertain a matter is determined by three (3) elements, thus:

- a. If the court is properly constituted as regards member, qualification of members of the bench and no member is disqualified for one reason or the other.
- b. The subject matter of the case is within its jurisdiction there is no fracture in the case which prevent the court from exercising its jurisdiction.
- c. The case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of it

jurisdiction. He cited **NWAOGWUGWU V. PRESIDENT FRN (2007) 6 NWLR (PT. 1030) 237 CA** and **EGWUMI V. THE STATE (2013) 13 NWLR PT. 1372 PG. 525 @553 PARAS F-H.**

Counsel also submitted that it is trite law that in determining the residence of a person, natural person, corporation or juristic person carrying on business in two or more places is the residence of a particular place where the commercial transaction culminated in the breach of the contract between the parties took place, he relied on **AFRI-BANK PLC V. BONIK INDUSTRIES LTD (2005) 48 WRN PT 113 RATIO 11 C.A.** Counsel further submitted that for a court to be competent to entertain a case, the suit must be initiated by the due process of the applicable law before a panel that is properly constituted and there is no feature in the case which prevent the court from exercising its jurisdiction, he cited **MADUKOLI V. NKEM CHILIM (1962) ALL NLR 116-191** and **OLABA V. AKEREJA (1988) NWLR (PT. 84) 508.** That it is trite law that the issue of jurisdiction is very fundamental and radical, it shall be determined at the earlier opportunity when it is raised, he cited **OGUNDIPE V. AKINLEYE (2000) 10 NWLR (PT. 775) 312** and **OGUNJOBI V. FRN (2012) LPELR-15537 SC PT. 13-14 PARAS G-C** and urged the court to grant their application.

The claimant filed a written address dated the 9th day of February, 2021. Learned Counsel to the Claimant adopted his Written Address wherein he raised a sole issue for determination to wit; “whether the honourable court has jurisdiction to hear and determine the suit of the Claimants”. He submitted that by the combine reading of the provisions **Sections 255, 257 and 259 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)** this court has the jurisdiction to hear and determine this suit especially having regards to the facts deposed to in paragraph 4 of the defendant’s affidavit in support as well as the statement of claim which is the main factor that determines jurisdiction. Counsel submitted that on territorial jurisdiction, the Federal High Court enjoys nationwide jurisdiction whereas a State High Court is confined to the Territory of the State and that of the Federal Capital Territory especially on land matters. That on subject matter jurisdiction such as contract, the High Court of a State, the provision of section 236 of the 1999 constitution (as amended), enjoys unlimited jurisdiction, he cited **ADETONA V. I. G. ENT. LTD (2011) 7 NWLR (PT. 1247) 535**. Counsel submitted that it is crystal clear that by virtue of **Sections 257 of the Constitution** which is subject to **Section 251 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)** the High Court of the Federal Capital Territory has an unlimited substantive law jurisdiction as well as procedural law. Counsel further submitted that the only exception where the jurisdiction of the High Court of the FCT is limited is on land that is situates outside the FCT. He also submitted that on the issue of breach of contract or specific performance, the High Court of the FCT will have jurisdiction if either the contract ought to have been performed in the FCT or the defendant resides or carries on business in the FCT. He cited **OBIUWEUBI V. C.B.N (2011)**

7 NWLR (Pt. 1247) 465; MADUKOLU V. NKEMDILIM (1962) 2 SCNLR 341; OLORIODE V. OYEBI (1984) 1 SCNLR 390; EZOMO V. OYAKHIRE (1985) 1 NWLR (PT. 2) 195 and N.D.I.C V. C.B.N (2002) 7 NWLR (PT. 766) 272. Counsel submitted that it is settled that jurisdiction is determined by the Plaintiff's claim and not the defendant's defence, he cited BABINGTON-ASHAYE V. E.M.A.G ENT (NIG) LTD (2011) 10 NWLR (PT. 1256) 479. Claimants urged the court to discountenance the argument of the defendant and dismiss the preliminary objection on the strength of the arguments canvassed based on the judicial and statutory authorities well cited and which are applicable to this suit.

The Applicant in their oral reply on points of law opined that their affidavit is unchallenged and uncontroverted. Counsel also submitted that they are not challenging the subject matter as canvassed in the Claimant's written address but on territorial jurisdiction.

It is the law and it is sacrosanct that it is the claim of the Claimant which determines the jurisdiction of the Court. In other words, the Court is to look at the statement of claim in order to determine jurisdiction of the Court as in this case, territorial jurisdiction. Defendant in this suit has based his preliminary Objection on the following facts;

1. That defendant has a branch office in Akwa Ibom State and the said contract agreement was entered into by both parties at the branch office where both parties signed the contract.
2. That the act to be performed in lieu of the contract was at the branch office in Akwa Ibom State.
3. That as at the time the Defendant/Applicant signed the contract agreement at the branch office, it was the letter head paper of the

head office that was in use at the branch office as the branch office were still newly established.

4. In view of the above, the alleged cause of action necessitating this suit took place in the branch office outside the territorial jurisdiction of this court while this Court does not have jurisdiction to entertain this suit.

Both parties rely heavily on the contract agreement hence existence of the duly executed contract attached to the writ of summons is unchallenged and uncontroverted.

In the words of Onu JSC (as he then was) in the case of ARJAY LTD & ORS V. AIRLINE MANAGEMENT SERVICES LTD (2003) LPELR-555 (SC) (Pg. 24 Paragraphs E-F)

“Territorial Jurisdiction of a Court can be determined by the following;

1. Where the contract in question is made
2. Where the contract is to be performed
3. Where the defendant resides”

It was further held in ARJAY LTD (supra) that a defendant who contends that the forum of the trial court is not convenient for the determination of the issue raised in the writ of summons must show:

- a. That the defendant does not reside in or carry out business within the geographical area of the court.
- b. That the cause of action did not arise within the geographical area of the court.
- c. That the contract is not to be performed within the geographical area of the court.

Hence onus lies on the Defendant/Applicant to prove Numbers (a) (b) & (c) as elucidated above. As earlier stated in determining whether or not a court has territorial jurisdiction to entertain an action it is the statement of claim that would be considered and the processes filed by the claimant i.e the writ of summons, statement of claim and exhibits attached.

From processes before me which has the unchallenged and uncontroverted copy of the agreement attached, contract agreement between parties is dated 18th September, 2019. Contract is written on the letter head of the defendant which has head office of defendant as No. 3, Buoke Close, Off Morovia Street Wuse 2, Abuja. Apart from the letter head, the introduction part of the contract introduces defendant as “Total Advance Engineering Source Ltd of No. 3, Buoke Close, Off Morovia Street, Wuse 2, Abuja (hereinafter referred to as the Sub-contractor). It also has Akwa Ibom as the site for the proposed contract which includes construction of damages and excavation amongst other things.

From processes before me, it is obvious that defendant is based in Abuja, that defendant entered into the contract with the Plaintiff in Abuja, that parties executed the contract in Abuja although site of contract/job to be done is based in Akwa Ibom State. It is not in doubt that from processes before this court the cause of action arose in Abuja. Defendant therefore has the onus to prove to that:

- a. Defendant does not reside or carry out business in Abuja.
- b. That the cause of action did not arise in Abuja.
- c. That the contract is not to be performed within the geographical area of the court. See ARJAY LTD & ORS (supra).

Defendant/Applicant in this case has not been able to discharge its burden of proof on numbers (a) & (b) above however it is clear that contract to be

performed is not within the geographical jurisdiction of this court. Defendant in proof of (a) & (b) above stated that the signing of the contract actually took place in the branch office of the Defendant in Akwa Ibom State but gave a weak and unsubstantiated excuse that Defendant had no choice but to use the letter head which had the address of the head office in Abuja because the branch office in Akwa Ibom as at then was a new office. It is trite that contracts voluntarily entered into by parties are binding on them and a court of law will not sanction an unwarranted departure from them. See FGN VS. ZEBRA ENERGY LTD (2002) 3 NWLR (Pt. 754) Pg. 471 @ Pg 491 Paras E-F per Musdapher JCA. The contract before the court states the address of the Defendant as Abuja and not Akwa Ibom. The said Abuja address of the defendant appears twice on the contract, the first is on the letter head used in drafting the contract and the second is on the introduction clause of the contract where defendant had the same Abuja address being No. 3, Buoke Close, Off Morovia Street, Wuse 2, Abuja as defendant's address. Defendant/Applicant excuse that it inadvertently used the letter head of the Abuja head office address because it had yet to get a letter head detailing the address of the branch office in Akwa Ibom without any cogent proof is flimsy, unsubstantiated, unconvincing and not tenable in law. A mere statement that contract was signed at the new branch of defendant in Akwa Ibom without providing further proof cannot alter the Contents of a written contract duly executed by both parties. The courts cannot legally or properly read into an agreement, the terms the parties have not agreed. Defendant/Applicant tried albeit woefully by merely stating that the agreement had the letter head of the head office in Abuja because the branch office was new and was yet to produce its letter head. The said Excuse/reasoning of the

Defendant/Applicant does not in any way explain to the court why Defendant/Applicant in the body of the contract introduced Defendant with address @ No 3, Buoake close off Manrova street Wuse 2. In essence, Defendant/Applicant had only made a woeful effort at denying the address of the letter head but has failed to challenge nor controvert nor profer a reason as to why the defendant repeated the same Abuja address in its introduction clause.

This court has the duty to interpret the Contract before me in the simple language it embodies and from the simple and unambiguous language defendant has the Abuja address as not only its head office but also the address, where parties signed and executed the contract See **LARMIE VS D.P.M & SERVICES LTD (2005) 18 NWLR (Pt. 958) Pg 88 SC @ Pg 459 Para. E per Onnoghen JSC; Page 467 Para E per Tobi JSC page 476 - 977 Paras H-C per Mohammed JSC where the Learned Jurist(s) held that where parties have embodied the terms of their contract in a written agreement extrinsic evidence is not admissible to add to, Vary, subtract from or contradict the terms of the written instrument. Moreover Section 128 (1) Evidence Act, 2011 states that the only admissible evidence of a Contract is the contract itself.** From the above, defendant has not been able to prove that contract was entered into and signed/executed in Akwa Ibom, defendant has likewise not succeeded in proving that defendant does not, reside within Abuja as defendant used the said Abuja address as its official address in the introduction clause of the agreement.

However, it is unchallenging that the Contract/project site where the contract is to be performed is in Akwa Ibom. Civil Cases are determined on a preponderance of evidence. See Section 134 Evidence Act which states

that a “burden of proof shall be discharged on the balance of probabilities in all civil cases”. Having proved that the cause of action arose in Abuja, that the defendant resides in Abuja and the contract was signed in Abuja. Consequently, this Court has a duty to put the totality of the evidence in respect of this Preliminary Objection on an imaginary scale, the claimant on one side and the defendant on another and it is my view and I so hold that the scale tilts in favour of the Claimants. Consequently, this court has jurisdiction to entertain this suit on the reasons adduced above. Preliminary Objection dated 11th December, 2020 is consequently struck out. Cost of N100,000.00 is hereby awarded in favour of the Claimants.

Parties: Absent

Appearances: F. I. Nnaba for the Claimants. Zabairu Shuaibu for the Defendant

HON. JUSTICE MODUPE R. OSHO-ADEBIYI

JUDGE

24TH JUNE, 2021

