

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT HIGH COURT 21 GUDU – ABUJA

DELIVERED ON TUESDAY THE 13TH DAY OF JULY, 2021

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

SUIT NO. CV/235/2020

MOTION NO:M/914/2021

BETWEEN:

ADETOLA OGUNNUBI ----- CLAIMANT/RESPONDENT

AND

HERITAGE BANK PLC ----- DEFENDANT/RESPONDENT

RULING

Learned Counsel for the Defendant filed a preliminary objection dated the 3rd day of February, 2021 praying this Honourable Court for:

1. An Order striking out this suit for want of subject matter jurisdiction.
2. Such other or further Orders as this Court may deem necessary in the circumstance.

GROUUD for the Preliminary Objection:

The subject matter of this suit is within the exclusive jurisdiction of the National Industrial Court of Nigeria.

In support of the objection is a written address. Learned Counsel to the Defendant adopted the said Written Address. He raised one issue for determination which is

“whether the subject matter of this suit is within the jurisdiction of this Honourable Court?”

Summarily learned counsel submitted that a court of law is competent to exercise its jurisdiction to determine a suit when:

- i. it is properly constituted as regards members and qualification of the members of the bench and no member is disqualified for one reason or the other;
- ii. the subject-matter of the case is within its jurisdiction, and there is no feature in the case which prevents the Court from exercising its jurisdiction; and
- iii. the case comes before the Court by due process of law and upon the fulfillment of any condition precedent to the exercise of jurisdiction.

Counsel also submitted that these pre-conditions are conjunctive and the non-fulfilment or absence of any of them automatically robs the court of jurisdiction to hear and determine the suit. He refers this Honourable Court to **Savannah Bank (Nig.) Plc v Saba (2018) 14 NWLR (Pt. 1638) 56 at 90-91 para G-B; Korea Nat. Oil Corp. v O.P.S (Nig.) Ltd. (2018) 2 (Pt. i604) at 474 para 0-11. Emeka v Okoroafor I 1 NWLR (Pt. 1577) 410 at 478 para C-F; Petgas Resources Ltd. v Mbanefo (2018) 1 NWLR (Pt. 1601) 442**

at 469 paras. A-B. Learned counsel submitted that it has been judicially endorsed in a plethora of judicial authorities that all civil causes or matters in respect of the items listed in section 254C (1) of the 1999 Nigerian Constitution (as amended) are within the exclusive jurisdiction of the National Industrial Court and as such, no other Court has the jurisdiction to hear and determine them. He cited **N.U.T., Niger State v. COSST, Niger State (2012) 10 NWLR (Pt. 1307) 89 at 112-113, paras B-E; S.C.C. (Nig.) Ltd. v. Sedi (2013) 1 NWLR (Pt. 1335) 230 at 247 - 248, paras. G-C and John v. Igbo-Etiti LGA (2013) 7 NWLR (Pt. 1352) 1 at 17, paras. A-B.** Counsel submitted that the clear and express purport of this constitutional provision is that any suit having a subject matter that is in any way connected to or incidental to an employment issue or subject is within the exclusive jurisdiction of the National Industrial Court and no other. Counsel further submitted that the law is long settled that in order to determine the issue of a challenge to a Court's jurisdiction, all the Court needs to consider is the Statement of Claim. He referred to the cases of **Azubuogu v Oranezi (2018) 5 NWLR (Pt. 1613) 447 at 459 paras. B-C and F.U.T., Minna v. Olutayo (2018) 7 NWLR (Pt. 1617) 176 at 195, para. A.**

Counsel submitted that it is clear from the averments in the statement of claim that the factual situation upon which the Claimant has anchored his claims in this suit consists of the issue of the alleged delayed payment of the Claimant's employment terminal benefits/entitlements by the Objector as this issue forms part of the factual state of affairs which the Claimant is relying on in support of his claims. Without any doubt, the subject of the alleged delayed payment of employment terminal benefits/entitlements is an employment/labour related issue. That it follows therefore that the

Claimant's claims in this suit are related to and connected with an employment/labour issue/matter and as such. this suit is within the exclusive jurisdiction of the National Industrial Court by virtue of the extensive provision of section 254C (D) (a) of the 1999 Nigerian Constitution (as amended) and as consecrated by the Court Appeal in the above cited judicial authorities. Counsel then submitted that in determining this suit. this Honourable Court will be required to resolve or at the very least, consider the Claimant's allegations of fact in respect of the alleged deliberate delayed payment of employment terminal benefits/entitlements by the Objector. That it would lure this Court into the unseemly position of considering issues/matters that are within the constitutional exclusive preserve of the National Industrial Court and outside this Court's jurisdiction. Counsel further submitted that even though the Claimant has couched his reliefs as though arising from a Loan Agreement, the tissue of facts upon which the Claimant has based his claims in this suit involve the issue of alleged delayed payment and nonapplication of employment terminal benefits/entitlements which has clearly tainted this suit with an employment/labour related issue. Counsel therefore submitted that since this Honourable Court lacks the jurisdiction to hear and determine this suit, the proper and indeed the only step this Court is allowed to take in law is to make an Order striking out this suit for want of subject-matter jurisdiction and urged this Honourable Court to so hold.

The Defendant/Applicant filed a reply on points of law dated 10/3/2021. In response to

the contention of the Respondent that the Objector's Preliminary Objection amounts to Demurrer, relying on the provision of Order 23 of the High Court Federal Capital Territory, Abuja (Civil Procedure) Rules 2018, Counsel submitted that the instant objection is challenging the jurisdiction of this Honourable Court and does not amount to demurrer; as such, this objection can be raised at this stage of the trial by the Objector even without filing a statement of defense. On this he referred this Honourable Court to the holding of the Supreme Court in **Ajayi v. Adebisi & Ors (2012) LPELR-7811(SC)(P50.Paras B-G) -Per ADEK'EYE J.S.C and A.G Federation v. A.G Anambra State (2017) LPELR-43491 (SC)**. He further submitted that assuming without conceding that filing a statement of defense is a condition precedent to raise the instant objection, it goes without saying that the Objector has fulfilled the pre-condition thus, the instant objection is not a demurrer as erroneously submitted by the Respondent and urged this Honourable Court to so hold. Counsel further submitted that the Respondent filed an 11-Paragraph counter affidavit in response to the Defendant's preliminary objection, that the said Counter Affidavit is in breach of the Rules of this Honourable Court as the Objector did not file any Affidavit to warrant a Counter-Affidavit from the Respondent. On this score, he referred the court to the provisions of **Order 43 Rule (1) and (3) of the High Court of the Federal Capital Territory Abuja (Civil Procedures) Rules 2018** and urged this Honourable Court to discountenance and strike out the purported Counter Affidavit filed by the Respondent and likewise strike out this case for want of jurisdiction.

The claimant filed an 11-paragraph counter affidavit deposed to by Adetola Ogunnubithe Claimant/ Respondent in this suit and a written address dated the 4th day of March 2021. First and foremost, this application was brought under law and not law and facts hence there's no need for counter affidavit, the court will dispense with the counter affidavit. On the written address counsel raised two issues for determination to wit;

1. Whether or not the defendant preliminary objection amounts to demurrer.
2. Whether or not this court has jurisdiction to entertain this suit.

On the first issue, counsel referred the Court to Order 23 (1) of the rules of court and submitted that demurrer has been abolished, and Rules 2 and 3 provides an avenue where proceedings in lieu of demurrer can be sustained. That this should be done by parties incorporating and raising such a point of Law in their pleadings hence the defendant ought to file a statement of Defense raising points of Law. He cited **Celestine Anthony Onokomma v. Union Bank of Nigeria PLC (2017) LPELR • 42 748(CA) and MOBILE OIL (NIGERIA) PLC VS IAL 36 INC (2000) 6 NWLR (Part 659) 146 at 1 75-1 76**. He submitted that the Defendant ought to have filed a statement of defense, incorporating the points of law he so desires to be raised in the preliminary objection before the preliminary issue can be regarded as properly raised. Counsel further submitted that at this stage of the proceedings, it will be rather premature for the Defendant to raise an issue of law without first filing their statement of defense which they have been mandated by the rules to file first before raising the notice of

preliminary objection. He submitted also that the rules of court are meant to be obeyed and they must be strictly complied with. He referred the court to these cases **PETKEV NIG LTD & ANOR V. ELDER OBUMANYI & ANOR (CA/L/242/2012)**; **DISU V. AJILOWURA (2006) 14 NWLR (Pt. 1000) 783**; **SOLANKE V. SOMEFUN (1974) 1 SC 141**; **DAMBAM V. LELE (2000) 11 NWLR (Pt. 678)413** and **OFOKIRE & ANOR VS, MADUIKE (2003) LPELR 2269 (SC)**. Counsel submitted that the failure by the Claimant to comply with the rules of this Honourable Court is fatal to his case and urged the court to discountenance the notice of preliminary objection and dismiss same as offending the extant provisions of the Rules of this Honourable court. On the second issue, learned counsel submitted that for a Court to have jurisdiction, the following conditions must be present: (1) The Proper Parties must be before the Court. (2) The Subject Matter falls within the jurisdiction of the Court. (3) The Composition of the Court as to members and qualification. (4) The suit commenced by the full process of law and upon fulfilment of any conditions precedent to assumption. He cited **C.B.N V S.A.P. Nig. Ltd (2005) 3 NWLR (pt 91 1) p,152 Ratio 2**; **Madukolu V Nkemdilim (1962) 2 SCNLR 341** and **Ajao V Obele (2005) 5 NWLR (pt 918) 400@ pp 414-415paras H-C Ratio 1**. Counsel submitted that by virtue of the Courts decisions, in order to determine if a court has Jurisdiction, the totality of the Statement of Claim should be examined, as it is the Statement of Claim that determines if the subject matter can be validly entertained by the Court. He relied on **Attorney General of the Federation v. Guardian Newspapers Ltd (1999) 9 IVWLR (Pt. 618) 187 at 233**. Counsel further submitted that a careful reading of the whole Statement of Claim reveals that the foundation of the Claim has nothing to do with Employee/ Employer

relationship but a Loan facility which the Claimant accessed from the defendant. That it must be clear that the Loan was available to everyone who applied for it and not restricted to the employees of the bank thus, a dispute arising from that facility does not in any way give the transaction a coloration of an employer/employee relationship to oust the Jurisdiction of this Court to entertain same. He submitted therefore that for the Defendant to argue that the crux Claim of the Claimant is an Employer/Employee relationship is mischievous and a snark of a calculated attempt to mislead this Honourable Court. Counsel submitted that the Defendant's application lacks merit, is incompetent and should be struck out.

Having gone through the processes before this court and the submissions of counsel, the issue for determination is;

“whether the subject matter of this suit is within the jurisdiction of this Honourable Court”.

The Claimant/Respondent in his written address has raised the issue of demurrer. That **Order 23 Rules 2 and 3 of the Rules of this Honourable Court** provides an avenue where proceedings in lieu of demurrer can be sustained which is by parties incorporating and raising such a point of law in their pleadings. The said order states that No demurrer shall be allowed. A challenge to the jurisdiction of a court is not a demurrer as it is the general rule of practice that issues of jurisdiction can be raised at any stage of the proceedings even on appeal. See **ARJAY LTD V. APRLINE MANAGEMENT SUPPORT LTD (2003) 7 NWLR (Pt. 820) Pg 577 @ 602, Para H to Page 603 Per Onu JSC** where the learned Jurist held that the issue of jurisdiction is not a matter of Demurrer proceedings hence the defendant does not therefore need to plead first in order to raise the issue

of jurisdiction. The Defendant has however filed their statement of defense which is in the court file and same has been served on the Claimant on 5/3/2021 as seen on the endorsement and return. The Defendant in this suit has based his preliminary Objection on the fact that the subject matter of this suit is within the exclusive jurisdiction of the National Industrial Court as entrenched in **Section 254C (1) of the 1999 Constitution (as amended)**. Defendant submitted that it is clear from the statement of claim that the Claimant's complaint in this suit is the Defendant's failure to apply Claimant's terminal benefits and entitlements to liquidate the personal loan taken by the Claimant from the Defendant whilst the Claimant was in their employment immediately upon termination of the Claimant's employment with the Defendant as he inferred from paragraphs 4-21 of the statement of claim.

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. The Claimant is claiming for;

- a. A declaration that the defendant cannot unilaterally increase the interest rates on the loan granted to the Claimant.
- b. A declaration that the defendant was negligent by failing to apply the severance package of the Claimant to offset the loan when express instructions were given by the Claimant to that effect.
- c. An order of this Honourable Court for the Claimant to pay the Defendant loan sums calculated by an independent accountant to include the Claimant's severance package and not exceeding the balance as at the date the Claimant authorized the application of the severance package to the loan.

- d. The cost of filing and prosecuting this case, which is place at 10,000,000.00 (Ten Million Naira) only.

The Claimant in his statement of claim particularly in paragraphs 7, 8, 9, 11 and 21 stated thus;

7. in June 2014, the Claimant's appointment with the Bank was terminated with a promise that his exit entitlements shall be calculated to enable him reduce his liability on the loan.

8. despite the termination of contract by the Defendant Bank the Claimant was still servicing the loan. The loan balance stood at N1,074,439,19 on the final day of the Claimant in the Bank.

9. the Claimant avers that the Defendant Bank delayed in the calculations of his entitlements for years despite several request to the Bank to calculate his entitlement for the purpose of reducing his exposure and paying off the loan. Heritage Bank deliberately decided to leave the calculation of his entitlement unpaid till 28th of September, 2017 when the liability was then over N3,000,000.00 (Three Million Naira) only.

11. The Plaintiff avers that he was surprised at the attitude of the Bank to deliberately stretched the calculation of his severance package for the sole purpose of charging interest on the loan particularly taking into account the fact that he had just lost his job.

21. the issue of interest on the delayed payment of the entitlement should be exhaustively discussed so that the unwanted and penal interests' elements will be eliminated.

These are facts on which the Court will consider in granting the reliefs sought by the Claimant. **Section 254 C (1) (a) of the 1999 Constitution (as amended)** which is the base of this objection to jurisdiction provides as follows;

“1. Notwithstanding the provisions of sections 251, 257, 272 and anything 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 National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters—

a. relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith;

From the reliefs sought in the Writ of summons and statement of claim particularly the excerpts as reproduced above, it is my considered view that the facts to be considered in resolving the suit is entrenched in the Claimant's payment of his entitlement after his termination of contract by the Defendant. This was also captured by the Claimant in paragraph 22 of his witness statement on oath to wit “that the issue of interest on the

delayed payment of his entitlement should be exhaustively discussed so that the unwanted and penal interest's elements will be eliminated" and paragraph (b) of the Claimant's claim "A declaration that the defendant was negligent by failing to apply the severance package of the Claimant to offset the loan when express instructions were given by the Claimant to that effect".It is therefore obvious that the court in determining the claim of the claimant will be delving into the issue of the Claimants terms of employment, terms of loan granted to him during the pendency of his employment with Defendant; Defendant's loan policy to employees, claimant's entitlement due from Defendant and the delay in payment of the Claimant's entitlement (severance package) which the Claimant claimed was the cause of his non liquidation of the loan in other to stop interest from accruing. **Section 254C (1) (a) of the 1999 Constitution (as amended)** gives the National Industrial Court exclusive jurisdiction to the exclusion of any other court in civil causes and matters relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith.

Hence, this court lacks jurisdiction as the subject matter of this suit falls within the exclusive jurisdiction of the National Industrial Court as provided under **Section 254C (1) (a) of the 1999 Constitution (as amended)**. This suit is hereby struck out for want of jurisdiction.

Parties: Absent

Appearances: James Okwe for the Claimant. Defendant is not represented.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI

JUDGE

13TH JULY, 2021