

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 14

CASE NUMBER : SUIT NO: CV/1592/2020

DATE: : WEDNESDAY 13TH APRIL, 2022

BETWEEN

**RIVER DALE FINANCIAL SERVICE LTD. CLAIMANT/
RESPONDENT**

AND

**1. EKITI STATE GOVERNMENT
2. ATTORNEY GENERAL &
COMMISSIONER FOR JUSTICE,
EKITI STATE**

**DEFENDANTS/
APPLICANTS**

RULING

This Ruling is predicated on Motion on Notice dated the 25th of September, 2020 and filed the 16th of November, 2020, wherein the Defendants/Applicants sought for the following Orders:-

1. An Order of this Honourable Court striking out the Claimant's suit for lack of territorial jurisdiction.
2. And for such further Order or other Orders as this Honourable Court may deem fit to make in the circumstance.

In support of the Motion is 8 paragraph affidavit deposed to by Owoeye Opeyemi a litigation clerk in

the chambers of the Attorney General and commissioner for justice, Ekiti State.

It is the deposition of the Defendants/Applicants that this Honourable Court lacks territorial jurisdiction to entertain this suit.

The subject matter of the suit borders on the contract entered into in Ekiti State.

That the Defendants are resident in Ekiti State within the jurisdiction of Ekiti State High Court.

That only Ekiti State High Court has jurisdiction in respect of the matter of this suit.

In compliance with the Rules of this Court, the Defendants/Applicants filed a written address wherein a sole issue was raised for determination to wit:-

“Whether this Court has the Territorial jurisdiction to entertain this case.”

Learned counsel submits that it is trite that jurisdiction is the blood that gives life to an action and without it an action is lifeless.

CHIEF BERTHRANDE E. NNONYE VS D.N ANYICHIE & 2ORS (2005) 2 NWLR (Pt. 910) 623 at 655, paragraph H;

F.G.N VS OSHIOMHOLE (2004) 14 WRN VOL. 14, Page 110 particularly at page 123 lines 20 – 30 were cited.

Learned counsel further submits that a cursory perusal of the claims put up by the Claimant reveal that this court lacks the jurisdiction to entertain the claims. The subject matter of this suit, only concerns the funds of Ekiti State Government, the Claimant

resides in Ekiti State and the fund purportedly recovered by the Claimant constitutes the funds of Ekiti State Government. Thus, it is noted that a court derives its jurisdiction from the statute creating it.

OSSU S.C ODUKO VS GOVERNMENT OF EBONYI STATE OF NIGERIA & 3ORS (2009) 235 WRN at 11 – 11 lines 45 – 5;

APADI VS BAMISO (2007) 13 NWLR (Pt. 1103) 204 at 219.

Counsel finally urged the court to strike – out the suit for want of jurisdiction.

On their part, Claimant/Respondent filed a five paragraph counter affidavit deposed to by one Halima Balami a counsel in the law firm of Messrs Greenfields.

It is the deposition of the Claimant/Respondent that the entire averment in paragraphs 5 (a) to (d) of the Defendants/Applicants affidavit in support of their Motion on Notice are untrue.

That the cause of action in this suit is one arising from the breach of contract entered into by the parties vide a contract agreement dated 14th July, 2011.

That the 1st Defendant engaged the Claimant/Respondent, a financial consulting firm registered and doing business in Nigeria, to render consultancy services with the view to examine all loan agreements between the 1st Defendant and the Federal Government of Nigeria (FGN) and other external creditors, to verify the 1st Defendant's external debt position, establish the actual loan draw

down and deductions from the Debt Management Office of Nigeria (DMO).

That this Honourable Court has the jurisdiction to adjudicate over this suit, the afforested contract having been performed or ought to be performed at the (DMO) and (FMF) both in Abuja, all within the territorial jurisdiction of this court.

That the Defendants/Applicants mention a liaison office in Abuja which is within the jurisdiction of this court.

In line with the law, a written address was filed wherein a sole issue was raised for determination to wit:-

“Whether the court has Territorial jurisdiction to entertain this suit.”

Learned counsel submits that in determining whether a trial court has jurisdiction to entertain and determine an action filed before it, the court is duty bound to peruse the Claimant's writ of summons and the endorsement containing the reliefs claim on the originating summons. *AKINFOLARIN VS AKINOLA (1994) 4 SCNJ (Pt. 1) 30 at 43;*

MR. OVUZORIE MACAULARY & ORS. VS. MR. JOHN ATA & ORS (2013) LPELR/B/298/2005 were cited.

Counsel submits that it is elementary law to state that the territorial jurisdiction of a court in an action founded in a breach of contract is properly determined by 3 key factors each of which is sufficient, namely:

- a. Where the contract ought to have been performed.
- b. Where the Defendants resides;
- c. Where the Defendant carries on business.

INTERNATIONAL NIGER BUILDING CONSTRUCTION CO. LTD. VS. GIWA (2003) 13 NWLR (Pt. 836) 69 at page 76;

INTERNATIONAL TABACCO CO. LTD. & ANOR VS. SEA MOUNTAIN CO. (NIG). LTD. (2017) LPELR – CA/L/171/2012 were cited.

Learned counsel further submits that from the averments on the statement of claim, the place of performance of the contract initiated vide the contract agreement dated 14th July, 2011, the letters of appointment dated 20th December 2020, and

16th May, 2016 is at DMO, Abuja and the Federal Ministry of Finance in Abuja within the territorial jurisdiction of this Honourable Court saying the obvious is to state that the contract ought to and was performed within the jurisdiction of this Honourable Court. The Defendants having admitted paragraphs 5, 6, 7, 8, 9, 10, 11 and 29 of the Claimant/Respondent's statement of claims, they can no longer turn back to challenge the jurisdiction of this Honourable court.

Counsel concludes that prove of “*where the contract ought to have been performed*” is alone sufficient to cloth the court with the requisite jurisdiction to adjudicate over this suit counsel prayed the court to so hold.

My take off point would be to address the issue of jurisdiction frontally as same forms the kernel of Defendants application.

Jurisdiction, whether subject matter, parties or territorial, is a threshold issue.

Defendants counsel SBJ Bamise, Esq. filed the instant application challenging the territorial jurisdiction of this court wherein he contended that the subject matter of the suit borders on the contract entered into in Ekiti State. And that the Defendants are resident in Ekiti State within the jurisdiction of Ekiti State High Court.

The argument of Defendants' counsel clearly touches on territorial jurisdiction, and to that extent, I shall dwell on same. Undoubtedly and unquestionably, the importance and criticality of the

question of jurisdiction, with respect to an action in a court of law, cannot be taken for granted nor can it be overemphasized.

Being a threshold issue and fundamental to adjudication, the Court is under an obligation to determine it.

First, for where it does not possess the vires, the jurisdiction to entertain the matter before it and still goes ahead to hear and determine same, albeit in a well conducted proceedings, it will be a clear futile exercise as such proceedings remain a nullity.

See ***GOLDMALK VS. IBAFON (2012) 3 SCNJ (Pt. 11) 565 at 597;***

FEDERAL AIRPORT AUTHORITY OF NIG. VS. NWOYE (2012) 16 WRN 154 at 184.

The time-honoured golden rule of jurisdiction was succinctly laid-out in the case of *MADUKOLU VS. NKEMDILIM (1962) 1 ALL NWLR (Pt. 1) 587*, by Supreme Court of Nigeria, to the effect that a Court is competent when:

1. It is properly constituted as regards numbers and qualifications of the members of the bench and no member is disqualified for one reason or another;
2. 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
3. The case comes before the Court initiated by due process of the law and upon fulfillment of

any condition precedent to the exercise of jurisdiction.

Jurisdiction is the authority which a Court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision. Such authority is controlled or circumscribed by the statute which created the Court or by condition precedent created by a legislation which must be fulfilled before the Court can entertain the Suit.

See ***LAWAN VS. ZENON PETROLEUM & GAS LTD. & ORS (2014) LPELR - 23206 (CA).***

Just as the subject matter of a case has to come within the Court's jurisdiction, the Court's territorial jurisdiction is essential an aspect of jurisdiction.

It is indeed the nature of the subject matter or parties or the territorial limits over which the Court can exercise jurisdiction that restricts the exercise of jurisdiction of Courts.

See *DAIRO VS. U.B.N PLC. (2007)7 SC (Pt. 11) 94.*

MADUKOLU VS NKEMDILIM (1962) 1 ALL NLR 587.

The Court however, in determining whether it possesses the requisite jurisdiction to determine a matter shall only look at the Plaintiff's claims as per the Writ of Summons and Statement of Claim.

See *MECILL VS. WORLGATE (2012) 3 SCNJ (Pt. 11) 639 at 662;*

NIHA VS. LAVINA (2008) 7 SCNJ 72 at 85.

It is also settled, by plethora of judicial authorities that a Court would have the territorial jurisdictional competence to entertain a matter where any of the following factors exists, viz:-

1. Where the contract in question was made
2. Where the contract in question is to be performed
3. Where the Defendant reside.

See ***MEGATECH ENGINEERING LTD. VS. SKY VISION GLOBAL NETWORKS LLC (2014) LPELR – 22539 (CA)***

The Rules of this Court i.e Order 3 Rule 4 (1) is equally clear on when a Court shall have the competence, jurisdictionally speaking, to entertain a matter.

Above provision is on all fours with the decision in Megatech (Supra).

The said Order 3 Rule 4(1) of the Civil Procedure Rules of the FCT High Court, 2018, provides as follows:-

“All other Suits may be commenced and determined in the judicial division in which the Defendant resides or carries on business”.

It is instructive to note at this juncture that it is not just enough to say the court does not have jurisdiction, there has to be evidence and or facts to substantiate such argument. Any feature which is not patent enough but latent must be resolved by evidence.

Claimant who took out the writ against the Defendants has copiously stated that the

1stDefendant engaged the Claimant/Respondent to render consultancy services with the view to examining all loan agreements between the 1st Defendant and the Federal Government of Nigeria (FGN) and other external creditors, to verify the 1st Defendant's external debt position, establish the actual loan drawn down and deductions from the Debt Management Officer of Nigeria (DMO).

That this Honourable Court has the jurisdiction to adjudicate over this suit, the afore-stated contract having been performed or ought to be performed at the Debt Management Office of Nigeria (DMO) and Federal Ministry of Finance (FMF) both in Abuja, all within the territorial jurisdiction of this court.

Defendants' counsel who filed the present preliminary objection is therefore under an

obligation to show that the present suit is not the type that bothers on Breach of Contract and it does not have anything to do with Debt Management Office.

Order 3 Rule 3 of the Rules of this court, i.e High Court Civil Procedure Rules of FCT, Abuja allows for institution of action of this nature either where the Defendants resides or where the contract was performed. It is evident that the said contract was performed in Federal Capital Territory, Abuja.

I further wish to restate the fact that proceedings in Court must be done in obedience to standard Rules and Procedure. Proceedings in Court though presided-over by a Judge, shall be regulated by conscience, law, procedure and morality.

I agree with counsel for the Claimant that the present Preliminary Objection has to fail for being unmeritoriously argued.

An Order of this Court is hereby made dismissing Preliminary Objection No. **M/1139/2020** for the reasons advanced.

Same is hereby dismissed.

Justice Y. Halilu
Hon. Judge
13th April, 2022

APPEARANCES

A.C Nwosu, Esq. – for the Claimant.

Defendants not in court and not represented.