

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT MAITAMA – ABUJA**

BEFORE THEIR LORDSHIPS:

- (1). HON. JUSTICE C. N. OJI**
- (2). HON. JUSTICE S. U. BATURE**

**SUIT NO. FCT/HC/CV/174/19
APPEAL NO. CVA/648/2020**

ON THE 11TH DAY OF OCTOBER, 2021

BETWEEN:

MR. ISAAC KECHERE.....PLAINTIFF/RESPONDENT

AND

DR. JOSEPH E. OKONKWO.....DEFENDANT/APPELLANT

APPEARANCES:

Onyebuchi Obeta Esq for the Respondent.

Appellant Counsel Absent.

JUDGMENT

This is an appeal against the judgment of Senior District Court, Kubwa Abuja Federal Capital Territory presided over by his Worship Hon. Munirat Folashade Oyekan delivered on 29th day of September 2020.

The Defendant (now Appellant) is a medical practitioner and operates a hospital in the Plaintiff's (now Respondent's) property as a tenant at Plot 200 Gado Nasko Road, Kubwa Abuja. As a result of the Defendant's (now Appellant's) inability to pay the rent due on the property as per the parties' tenancy agreement, the Plaintiff (Respondent) brought an action against the Appellant (Defendant) by way of Plaint wherein he claimed as follows: -

- (a). immediate vacant possession of the premises known as Plot No. 200 Gado Nasko Road, Kubwa Abuja and the appurtenances thereto.
- (b). The Defendant to pay the Plaintiff mesne profit from January 2018 until possession is yielded up at the rate of N225, 000.00 only per month being at the rate of the rent for the premises per annum.
- (c). The Order of this Honourable Court compelling the Defendant to pay to the Plaintiff an amount equivalent to 10% of the Judgment sum monthly from the day of judgment until the entire judgment sum is liquidated.
- (d). The cost of action as shall be assessed by this Honourable Court.

The Defendant (Appellant) on the other hand filed his Statement of Defence and Counter Claim. He counter claimed against the Plaintiff (Respondent) as follows:

- (a). The sum of N13, 600, 000.00 being cost of improvement; fittings made and arrears of utility bills cleared by the Defendant/Counter Claimant.
- (b). The sum of N150, 000, 000.00 being damages for dislodgment and the resultant loss of clientele, income and great inconvenience caused by the Plaintiff.
- (c). The sum of N50, 000, 000.00 being damages for act of trespass and embarrassment carried out by the Plaintiff.

In a Ruling delivered on 17th June 2020, the trial Court declined jurisdiction to entertain the Defendant's Counter Claim on the ground that same is above the jurisdiction of the Court and struck out the Counter Claim for want of jurisdiction.

However, the Lower Court assumed jurisdiction and tried Plaintiff's case on its merit.

In a considered judgment delivered on 29th day of September 2020, the Lower Court entered judgment in favour of the Plaintiff/Respondent against the Defendant/Appellant.

Dissatisfied with the judgment of the Lower Court, the Defendant/Appellant filed a Notice of Appeal before this Court on the 12th day of October, 2020.

The appeal is predicated upon two grounds of appeal with the particulars of error contained in the additional grounds of appeal filed on 24th day of November 2020.

The grounds of appeal read as follows: -

GROUND 1. The Trial Court lacks jurisdiction to try the matter.

Particulars of Error.

- (a). The Honourable Lower Court held that the amount in the Defendant's now Appellant's Counter-Claim is beyond its jurisdiction but still went ahead to try and delivered judgment in the matter it held in had no monetary jurisdiction to hear.

GROUND 2. The trial is against the principle of fair hearing.

Particulars of Error.

- (a). The Honourable Lower Court severed the matter at the trial Court and declined to hear the Defendant's now Appellant's case but proceeded to hear only the Plaintiff's now Respondent's case solely and delivered judgment in the matter for the Plaintiff now Respondent only.

The parties filed and exchanged briefs of argument. The Appellant's brief of argument is dated the 23rd day of February, 2021 and filed on 15th day of March 2021. The Appellate therein did not formulate issue for determination but argued based on the grounds of appeal.

However, the Respondent's brief of argument is dated 16th day of March 2021 and filed on 18th day of March 2021. The Respondent therein formulated two issues for determination as follows: -

1. Whether the trial Court has the requisite power/jurisdiction to hear and determine Plaintiff's claim while declining jurisdiction over the Defendant's Counter Claim?
2. Whether the hearing and determination of the Plaintiff's claim and the declining of jurisdiction over the Defendant's Counter Claim by the trial Court amount to a breach of the principle of fair hearing.

At the hearing, learned Counsel for the Appellant adopted the submission in the Written Address and urged the Court to allow the appeal in the interest of justice. The Respondent on his part equally adopted the argument in the Written Address as their oral arguments and urged the Court to not only dismiss the appeal but to award substantial cost against the appellant as the appeal lacks merit.

The Appellant in his brief of argument argued on ground one that, it is trite law that a Court must have both subject matter and monetary jurisdiction over a matter before it can assume jurisdiction to adjudicate over the matter. He submitted therefore that the Lower Court being a District Court is not clothed with the authority as the subject matter of the suit brought before it is above its monetary jurisdiction. Reference was made to the District Court (increase in jurisdiction of District Judges Order 2014), Section 2(a and b) as well as reliefs A, B, and C of the Defendant/Counter Claimant.

Consequently, Appellant's Counsel submitted that from the statutory provision referred to above the trial Court ought to have declined and hands off the matter for want of monetary jurisdiction and urged the Court to so hold. Reference was equally made to pages 46 – 48 of the record of appeal.

Learned Counsel stated further that it is settled law that the question of jurisdiction is very fundamental that it should be determined first by the Courts before starting any proceedings.

It is the contention of the Appellant's Counsel that the trial Court ought not to have split the case by assuming jurisdiction only on the Plaintiff now Respondent's case and decline jurisdiction over that of the Defendant/Counter Claimant now Appellant. That the matter before the

Court is a single body of case which jurisdiction ought to have been considered and decided as a whole. In this respect Counsel cited the case of ***NSEFIK & ORS V MUNA & ORS (2007) LPELR – 3934 (CA)***.

Finally, Counsel submitted that the Lower Court lacks the jurisdiction and ought not to have assumed same.

In arguing ground two, Counsel submitted that the proceedings leading to judgment is manifestly flawed and that the Defendant/Counter Claimant now Appellant's right of fair hearing was breached. The learned Counsel stated moreso that the Appellant has a constitutionally guaranteed right to be heard and be allowed to conduct his case.

It is the contention of the Appellant that the trial Court erred in law by refusing to hear the Defendant/Counter Claimant where both parties have reliefs sought but heard only the Plaintiff thereby shutting out the Appellant.

Consequently, Counsel submitted that the justice of the matter would have been to allow parties to proceed to a higher Court where they both would be on an equal footing with none being prejudiced in any form.

To this end, Counsel urged this Court to set aside this judgment and allow this appeal.

On the part of the Respondent as stated earlier, they raised two issues for determination and canvassed argument as contained in the brief.

In arguing issue one which is whether the trial Court has the requisite power/jurisdiction to hear and determine Plaintiff's claim while declining jurisdiction over the Defendant's Counter Claim, the learned counsel referred the Court to the District Court Act Part IV, Section 13 and the provision of the FCT Increase in jurisdiction of (District Judges) Order 2014 and submitted that the Lower Court being a Chief District Court II has jurisdiction in all suits between landlord and tenant for possession of land or house claimed under agreement or refused to be delivered up, where the annual value of rent does not exceed N4, 000, 000.00 only. Reliance was placed on the case of ***MADUKOLU & ORS V. NKEMDILIM (1962)LPELR 24023; AG LAGOS STATE V EKO HOTELS LTD (2017) LPELR 43713(SC)***.

In his further submission, Counsel to the Respondent stated that the Court below was properly constituted, the subject matter which is landlord and tenant relationship is within the jurisdiction of the Court as shown by the District Court Act as Amended and the case was initiated by due process of law and upon fulfillment of all conditions precedent. Counsel referred the Court to Exhibit A5, A6 (Page 115-116) and the Plaintiff (CV/174/2019) at pages 1 – 19 of the Record of Appeal.

In another submission, Counsel stated that the original claim of the Respondent is a separate and independent action from the Counter Claim of the Appellant and each of the claims succeeds or fails on its own merit. And that the striking out for lack of jurisdiction of the Counter Claim of the Appellant has got absolutely nothing to do with the original claim of the Respondent at the Lower Court and urged the Court to so hold. Reference was made to the cases of ***OGBONNA V A.G. OF IMO STATE & ORS (1992) LPELR – 2287; EFFIOM V IRON BAR (2000) 1 NWLR (PT. 679) 341; OKONKWO V CCB (2003) FWLR (PT. 154) 457 at 508.***

Moreso, Counsel submitted that the hearing and determination of the claims of the Respondent by the Lower Court while declining jurisdiction to hear and determine the Appellant's Counter Claim is in consonance with all known law and does not by any averment translate to acting without jurisdiction and urged the Court to so hold.

Finally on issue one, Counsel urged the Court to resolve the issue in favour of the Respondent and against the Appellant by holding that the learned trial District Judge indeed had jurisdiction to hear and determine the Plaintiff's claim while declining jurisdiction over the Counter Claim of the Defendant.

On issue two which is whether the hearing and determination of the Plaintiff's claim and the declining of jurisdiction over the Defendant's Counter Claim by the trial Court amounts to a breach of the principles of fair hearing, the learned Counsel to the Respondent submitted that it is trite law that a trial is said to be fair if both parties are afforded equal opportunities to be heard and present their cases. In support of this Counsel cited the case of ***ACN V LAMIDO & ORS (2011) LPELR -9174 (CA).***

The learned Counsel pointed out that the Honourable District Judge before declining jurisdiction over the Appellant's Counter Claim ordered address by both Counsel. He referred the Court to pages 134 – 144 of Record of Appeal.

Consequently, Counsel further submitted that the declining of jurisdiction to hear and determine the Counter Claim of the Appellant by the Lower Court while assuming jurisdiction over the original claim of the Respondent does not amount to a breach of the principles of fair hearing.

It is the contention of the learned Counsel to the Respondent that the Appellant has failed to show this Court how the sacred principles of fair hearing was breached or violated at the Lower Court.

In that respect, Counsel prayed the Court to hold that the principles of fair hearing were duly observed by the Court below and that no fair hearing or fair trial principle was breached when the Court heard and determined the claims of the Respondent and declined jurisdiction over the Appellant's Counter Claim for lack of jurisdiction.

To this end, Counsel urged the Court to resolve issue two in favour of the Respondent and against the Appellant.

On the whole, Counsel urged the Court to uphold the decision of the Court below and dismiss this appeal with substantial cost in favour of the Respondent and against the Appellant. Reference was made to the case of ***NZE ALOYSIUS MADU V CHIEF FESTUS ANOZIE & ANOZIE & ANOR (2018) LPELR 45484.***

We have read meticulously the Record of Appeal, the brief of arguments filed by Counsel to both Appellant and Respondent and we hereby adopt the two issues for determination distilled by the Respondent in his brief of argument in resolving this appeal. The issues are namely: -

- (1). Whether the trial Court has the requisite power/jurisdiction to hear and determine Plaintiff's claim while declining jurisdiction over the Defendant's Counter Claim.

- (2). Whether the hearing and determination of the Plaintiff's claim and the declining of jurisdiction over the Defendant's Counter Claim by the trial Court amounts to a breach of the principles of fair hearing.

ISSUE 1.

Whether the trial Court has the requisite power/jurisdiction to hear and determine Plaintiff's claim while declining jurisdiction over the Defendant's Counter Claim.

We shall start by saying that the concept of jurisdiction is very fundamental hence, it should be determined first by the Court before taking any further steps in the proceedings. This is because, where the Court proceeds without jurisdiction, all proceedings however well conducted amount to a nullity.

It is equally trite law that, the issue of jurisdiction can be raised at any stage, by a party or the Court and even on appeal in the Supreme Court. In support of this, we refer to the case of **LUFTHANSA V ODIESE (2006) 7 NWLR (PT. 978) 34 at 72 Paras D – G**, where it was held thus: -

“It is now elementary that, the issue of jurisdiction being the threshold in judicial adjudication is so fundamental that, it can be raised at any stage of proceedings of an action before all the Courts.

Furthermore, once it is raised, it is required by expediency to be treated or determined first, because any proceedings or steps taken in the absence of jurisdiction are null and void abinitio no matter how well conducted.”

See also the case of **MADUKOLU & ORS V. NKEMDILIM (1962) 2 SCNLR; NDAYAKO V DANTORO (2004) 13 NWLR (PT. 889) 187.**

We have observed that this appeal as can be seen from the additional grounds of Appeal borders on jurisdiction and principles of fair hearing.

The contention of the Appellant even at the Lower Court is that the Appellant's Counter Claim is beyond the Lower Court's jurisdiction and as

such the Lower Court should decline jurisdiction to hear the entire suit including that of the Respondent.

Having pointed out from the record of appeal particularly at page 4, the claims of the Respondent before the trial Court among other things includes claim for vacant possession of the premises known as Plot No. 200 Gado Nasko Road, Kubwa Abuja and the appurtenances thereto. Mesne profit from January 2018 until possession is yielded up at the rate of N225, 000.00 only per month being rates of the rent for the premises per annum.

However, the Appellant's Counter Claim before the trial Court from the record of Appeal particularly at page 48 is among other things the sum of N13, 600. 000.00 being cost of improvement, fittings made and arrears of utility bills cleared by the Respondent and claim for damages.

Now, it is settled principle of law that what determines the jurisdiction of a Court is the claim before it. In other words, it is the Plaintiff's Claim before the Court that determines the Court's jurisdiction. This position of law was re-echoed in the case of ***AFRICAN PETROLEUM PLC V AKINNAWO (2012) 4 NWLR (PT. 1289) 100 at 115, Paras A – D***, where it was held thus: -

“Therefore in considering whether or not a Court has jurisdiction or competence to entertain an action, it has been settled that it is only the Plaintiff's claim as endorsed on the Writ of Summons and the Statement of Claim that need to be examined by the Court. In other words, the legal position as to competence or otherwise of a trial Court or tribunal to entertain a case is aimed at solely on facts disclosed in the Statement of Claim...”

Similarly it was held in the case of ***NAS V. ADESANYA (2003) 2 NWLR (PT. 803) 92 at 106, Paras F – G***, where it was held thus: -

“...At the risk of overemphasizing the point we repeat that it is a fundamental principle of law that it is the claim of the Plaintiff which determines the jurisdiction of a Court entertaining the same this is because only too often this point is lost sight of by Courts of trial, as has happened in the instant case”

In addition by the provision of the FCT INCREASE IN JURISDICITON OF (DISTRICT JUDGES) ORDER 2014, provision of Order 2(a) thereof read thus: -

“...In all personal suits whether coming from contract or from tort, or from both, where the debt or damages claimed, whether as balance claimed or otherwise, is not more than five million Naira in the case of Chief District Judge, four million Naira in the case of Chief District Judge II, three million Naira in the case of Senior District Judge I, two million Naira in the case of Senior District Judge II and one million Naira in the case of District Judge I”.

To this extent, the law is trite that where the wordings of a statute are clear and unambiguous same should be given their ordinary meaning.

In this respect, we refer to the case of ***OKOTIE EBOH V MANAGER (2005) 2 MJSC*** where the Supreme Court held thus: -

“Where the ordinary plain meanings of words used in a statute are very clear and unambiguous, effect must be given to those words without resorting to any intrusion or external aid.”

It is therefore crystal clear that from the unambiguous provision of Order 2(a) referred to above, the maximum monetary jurisdiction of Chief District Court is Five Million Naira. From the record of Appeal, the trial Court is Chief District Court 2 which means that it has maximum monetary jurisdiction of four million Naira.

Moreso, from the record of Appeal, a careful perusal of the Respondent’s claim before the trial Court as contained in the Plaintiff will show that the rental value of the property in question is within the monetary jurisdiction of the trial Court. To that extent, it is safe to say that the rental value of the premises determines the jurisdiction of the Court. We so hold.

At this juncture and at the risk of repetition, as stated supra, the law is trite that jurisdiction of the Court is determined by the Plaintiff’s claim as endorsed in the Writ of Summons and Statement of Claim (in the instant

case, the Plaintiff's Plaintiff before the trial Court). See **NWOBOSHI V STATE (1998) 10 NWLR (PT. 568) 131 at 139.**

From the foregoing, it is apparent that it is not the law that jurisdiction of Court is to be determined by a Counter Claim as submitted by the Appellant in his brief of argument particularly at paragraph 2.10 wherein he stated inter alia thus: -

“Having being confronted with the Counter Claim (as in pages 46-18 of the Record of Appeal) which its monetary value exceeds its jurisdiction, what the trial Court ought to have done is to decline jurisdiction...”

Consequently, it was held in the case of **ABDULLAHI V ZOKA & ANOR (2018) LPELR – 48264 (CA) per Abundaga, J.C.A (PP. 20-21), Paras D – D** thus:-

“...It is elementary law that a Counter Claim is an independent action which is usually appended to the main or principal claim for convenience of determination...”

The Court of Appeal also held in the case of **UKELERE V FBN (2011) LPELR-3869 (CA) PER ONYEMENAM JCA (PP. 31), Para C** that:-

“...The position of the law is that the fate of a Counter-Claim being an independent action, does not depend upon the outcome of the Plaintiff's case. In an action where there is a Counter Claim a Plaintiff's claim succeeds or fails on its own, vice versa the Defendant's Counter Claim. Accordingly, the trial Court would not be in error if it dismissed the Plaintiff's claim on gratuity and granted the Defendant's Counter Claim.”

To this end and in the light of the above, it is our considered opinion that the trial Court has unfettered jurisdiction to hear and determine the Plaintiff/Respondent's case as contained in his Plaintiff. We so hold.

In the circumstances therefore, we hereby resolve issue one in favour of the Respondent against the Appellant.

That takes us to issue two which is whether the hearing and determination of the Plaintiff's claim and the declining of jurisdiction over the Defendant's Counter Claim by the trial Court amounts to a breach of the principles of fair hearing.

It should be noted at the onset that the concept of fair hearing in a trial is very essential and integral to the validity of the trial because breach of same will render the whole trial null and void.

Having said this, the concept of fair hearing simply put means both parties should be given equal opportunity to be heard. It was held in the case of **ZI V CHUWAK (2019) LPELR 48004 (CA) per ONIYANGI, JCA at Pg. 60 - 63, Para D** thus: -

“Fair hearing is embodied in the natural justice principle of “Audi Alteram partem” meaning “hear the other side” that is to say that all parties to a suit must be given the reasonable and equal opportunity to ventilate their grievance on the issue before the Court...”

Similarly, in the case of **INEC V MUSA (2003) LPELR – 24927, the Supreme Court per JOBI JSC at page 94, Para A**, held that:

“Fair hearing in essence means giving equal opportunity to the parties to be heard in the litigation before the Court...”

Furthermore, it is settled principle of law that where a party is given opportunity to be heard, he cannot complain of breach of fair hearing principles. This position of law was reinstated in the case of **AGBA & ORS V JUBU (2019) LPELR – 47189 (CA) per OTISI JCA at pages 96 -97, Paras C** held thus: -

“...The principle of fair hearing is breached where parties are not given equal opportunity to be heard in the case before the Court. Where the case presented by one party is not adequately considered. The affected party can complain that he was denied fair hearing. Fair hearing is not an abstract term that a party can dangle in the judicial process but one which is real and which must be considered in the light of and circumstances of the case if a party who alleges that he was denied fair hearing must prove

specific act or acts of such denial and not a mere agglomeration of conducts which are merely cosmetic and vain.”

See also the case of ***PDP & ANOR V AMINU & ANOR (2019) LPELR – 47330 (CA)***.

At this juncture, it is pertinent to state that from the record of appeal particularly page 136 (which for ease of reference we shall reproduce hereunder) the relevant portion which reads thus: -

“...In view of the Counter Claim of the Defendant for the sum of N13.6million the Defendant’s Counsel contended that the sum is above the jurisdiction of this Court and urged the Court to decline jurisdiction. The Plaintiff Counsel on his part stated that so far their claim was within the jurisdiction of the Court, the Court is vested with power to proceed with the matter.

In view of the foregoing, the Court suo motu requested the parties to address it on whether or not the Court has jurisdiction to entertain the case by filing Written Addresses. The parties through their respective Counsel filed and exchanged Written Address which they both adopted before this Court as their oral submission...”

It is apparent from the scenario posed on page 136 of the record quoted above, that the trial Court before declining jurisdiction to hear the Defendant/Appellant’s Counter Claim and striking out same, parties addressed the Court in writing. In other words, parties were given equal opportunity to address the Court and as such given fair hearing.

Therefore, we do not see where and how the Defendant/Appellant was denied fair hearing by the trial Court. To this extent, it is trite law that a party who alleges that he was denied fair hearing, must prove specific act or acts of such denial. In support of this, we refer to the case of ***PDP & ANOR V AMINU & ANOR (supra) at pages 37 – 40, Paras F*** where it was held inter alia thus: -

“...Therefore for a party to allege that he was denied fair hearing. He must prove specific act or acts of such denial and not by a mere cluster of conducts which are insignificant”

Consequently, it is our firm view that from the record of appeal, the Defendant/Appellant has failed to prove to this Honourable Court as required by law, how he was denied fair hearing, and/or what act or acts of the trial Court constitute breach of fair hearing. We so hold.

To this end, having held supra that the trial Court has unfettered jurisdiction to hear and determine the Plaintiff's claim, We hold the view that, the trial Court's decision to decline jurisdiction to hear and determine the Defendant/Appellant's Counter claim for the reason clearly stated in the record of appeal, cannot by any stretch of the imagination amount to denial of fair hearing in breach of the Defendant's rights to same. We so hold.

In the final analysis, we equally resolve this issue two in favour of the Respondent against the Appellant. We agree with the reasoning of the trial Court in its Judgment and we see no reason to disturb same.

Consequently and without further ado, we uphold the judgment of the trial Court and dismiss this appeal in its entirety for lacking in merit.

No order as to cost. Parties shall bear their respective cost.

Hon. Judge:

Hon. Presiding Judge:

Hon. Justice S. U. BATURE

Hon. Justice C. N. OJI