

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

(APPEAL DIVISION)

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

BEFORE THEIR LORDSHIPS:

HON. JUSTICE Y. HALILU - PRESIDING

HON. JUSTICE H. MU'AZU - MEMBER

APPEALNO.:CVA/184/2019

SUIT NO.: CV/136/2018

BETWEEN:

MR. VINCENT APPELLANT

AND

DIAMOND BANK PLC.

RESPONDENT

JUDGMENT

This is an Appeal against the Judgment the District Court of the Federal Capital Territory Abuja, holden at Wuse Zone 2, Abuja, Coram Musa Ibrahim Jobbo delivered on the 26th day of June, 2019.

The Appellant as Plaintiff in the Lower Court by way of plaint filed Suit No. CV/136/2018 in which it claimed against the Respondent, jointly and severally the following reliefs;

- a. The sum of N560,000.00 (Five Hundred and Sixty Thousand Naira) only being the sum the Defendant deducted from the Plaintiff's account.
- b. The sum of N800,000.00 (Eight Hundred Thousand Naira) only being the Solicitors fees.

On the 26th day of June, 2019 Judgment was entered where by the Court declined jurisdiction to entertain the matter bothering on individual and his Bank relationship. Subsequently the plaint was struck out.

The Appellant being dissatisfied with the decision of the Lower Court filed an appeal to this Honourable Court and raised the following grounds of Appeal;

GROUND 1: The learned Trial Magistrate erred in law when he declined jurisdiction to hear and entertain matter relating to individual and banker.

Appellant filed brief of argument wherein two issues were formulated for determination to wit;

a. Whether the Trial Court gave a fair consideration to the Appellant's case when it declined jurisdiction to entertain this matter

relating to individual and his banker relationship.

b. Whether having regard to the state of pleading as contained in the particulars of claim filed alongside Default summons, the Trial Court was right in its conclusion to transfer this case to the general cause list when there are no triable issues raised by the Respondent.

On issue one, *whether the Trial Court gave a fair consideration to the Appellant's case when it declined jurisdiction to entertain this matter relating to individual and his banker relationship (Ground one of appeal).*

Learned counsel submits, that this issue deals with the validity or otherwise of the Appellant taking his

bank as an individual to Court to ventilate his grievance against his bank.

Learned counsel contended, that going through the gamut of the provisions of Section 251(i)(d) of the 1999 Constitution (as amended), the Trial Court has jurisdiction to entertain this matter as it relates to the Appellant and the Respondent. The Respondent's defence was based on the judgment contained in (pages 62-71 of the records) which is overreaching and the law is trite that ignorance of the law by the judge is calamity to the innocent from the latin maxim **“ignorantia judexes excalamitas innocentis”**. Counsel submits that this is a clear deviation from the provision as enshrined in the Constitution of the Federal Republic of Nigeria 1999 (as amended) being our grundnorm.

Learned counsel referred this Honourable Court to the provisions of the District Courts increase of jurisdiction of District Judges to assume jurisdiction and entertain matters such as this especially where the Constitution of the Federal Republic of Nigeria (FRN) has empowered them to act shying away from responsibility and shifting it to the Federal High Court to entertain matters far below them will make great mockery of the hallowed chambers of Judges sitting in Federal High Court to entertain monetary matters less than N1,000,000.00 (One Million Naira).

Learned Counsel submits, that the counter affidavit in opposition to the Motion on Notice filed by the Respondent was not taken into consideration by the Trial Court in arriving at a just decision on the issue of jurisdiction. A Court is under statutory obligation

to pronounce on issues canvassed before it by the parties, as it is only by so doing that it would have satisfied its Constitutional role under Section 6 of the 1999 Constitution (as amended). Whereas in the instant case, the Trial Court failed to make findings in respect to fundamental issues joined and addressed before it by parties, an Appellate Court has the burden duty to allow an appeal on that ground.

KAROBO VS. GREND (1992) 3 NWLR (Pt. 230) 426 at 441 was cited.

On issue two, ***whether having regard to the state of pleading as contained in the particulars of claim filed alongside Default summons, the Trial Court was right in its conclusion to transfer this case to the general cause list when there are no triable***

issues raised by the Respondent (Ground 2 from the additional ground of appeal).

On how matters brought under Default Summons should be handled by the Trial Judge, learned counsel referred to Form 13 of the District Court Rules and District Court Laws of Northern Nigeria applicable to Federal Capital Territory. The Defendant on filing Notice of Intention to defend does not automatically qualify that the matter must be transferred to the general cause list. That there are three (3) determinant factors that the Court should put into consideration before arriving at a just decision. These factors are provided in Form 13 of the Rules;-

- a. State shortly the facts relied upon to support this defence

b. Admissions. State why you cannot pay at once

c. Counter-claim

Going through the process filed by the Respondent, these issues were not captured and the Trial Judge has no other option than to give Judgment in favour of the Appellant and it was not done, rather, Trial Judge transferred the matter to the general cause list and ordered that parties file their respective pleadings.

Learned counsel further submits, that the Appellant filed his pleading and served on the Respondent and the Respondent filed an objection challenging jurisdiction of the Trial Court, and the Trial Court upheld the objection and struck out the case of the Appellant hence this appeal to put the record straight. It is not enough for the Defendant merely to

deny the claim or aver that some payments he made were not taken into account. He must set out the details and particulars of the defence.

OBITUNDE VS. OYESOM COMMERCIAL BANK (2014) Vol. 36 WRN P.6

In the instant case, the Respondent was not able to set out the particulars of his defence in his Notice of Intention to defend that will warrant the Trial Court to transfer this matter to the general cause list and thereby depriving the Appellant his Judgment. The Respondent did not deny the fact that he is in custody of the cheque issued to the Appellant. The Respondent did not also deny the fact that he liquidated the account of the Appellant to the extent of the value of that cheque lodged by the Appellant

and no justifiable reason will warrant such treatment on the Appellant by the Respondent.

Learned counsel concludes by urging this Honourable Court to allow this Appeal and grant the reliefs as contained in the Appellant's statement of claim for the following reasons:-

1. That this is an individual customer and banker relationship where the Trial Court by virtue of Section 251 of the 1999 Constitution (as amended) has jurisdiction to entertain a simple contract.
2. That there is no triable issue contained in the Notice of Intention to defend filed by the Respondent in the Trial Court that will warrant the Trial Judge to transfer the suit to general cause list.

3. The Appeal is meritorious and worthy of being allowed.

Upon service, the Respondent filed its brief of argument and adopted the following as issues for determination to wit;

- a. *Whether the Learned Trial Magistrate was right when he declined jurisdiction to hear and entertain this matter (Distilled from ground one of the Notice of Appeal).*
- b. *Whether the Learned Trial Magistrate was right when he transferred this matter to the general cause list (Distilled from the additional ground).*

On issue one, *Whether the Learned Trial Magistrate was right when he declined jurisdiction*

to hear and entertain this matter (Distilled from ground one of the Notice of Appeal).

Learned Counsel submits, that the learned Trial Magistrate was right when he declined jurisdiction to hear and entertain this matter considering the decision of the Lagos State Magistrate Court and the Appellate Court (High Court of Lagos State) in this matter. The Appellant had prior to this instant case, instituted this same suit against the Respondent in Lagos State Magistrate Court, to wit, **VINCENT NWEKEME VS. DIAMOND BANK PLC. MCL/290/2015**. The Appellant was dissatisfied with the decision of the Lagos State Magistrate Court and he appealed to the Lagos State High Court.

Learned Counsel further submits, that there is always a presumption of correctness in favour of a

Court's Judgment. And until that presumption is rebutted and the Judgment is set aside, it subsists and must be obeyed. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an Order believes it to be irregular or even void. It would at least be against public policy for persons, without the backing of the Court, to pronounce a Court decision a nullity, act in breach of the decision or whereas, others may set out to obey it. It is not only desirable but necessary to have such decisions set aside firstly by another Court before any act is built upon it.

NDAYA KO. & ORS VS. DANTORO & ORS
(2004) LPELR – 1968 (SC was cited.

It is the submission of learned counsel, that in this instant case, both the Trial Magistrate Court and the Appellate Court, High Court of Lagos State held that the Magistrate Court has no jurisdiction to entertain the Appellant's case and the Appellate Court (Lagos State High Court) directed in its Judgment that the matter should be instituted at the High Court. The Appellant in total disobedience to the Judgment commenced the matter at the Magistrate Court, Abuja when the decision of the Magistrate Court, Lagos State and the Appellate Court, High Court of Lagos State are still subsisting. The Appellant is bound by the decision of the Lagos State Magistrate Court and the Appellate Court, High Court of Lagos State. There is always a presumption of correctness in favour of a Court's Judgment. And until that presumption is rebutted and the Judgment is set

aside, it subsists and must be obeyed. In the absence of a Court Order setting aside the above decision, the Appellant is bound by the decisions.

Learned counsel also submits, that the law does not allow the decision already made by a Trial Magistrate Court and Appellate Court (High Court sitting on Appeal from the decision of the Trial Magistrate Court) to be referred to another Trial Magistrate Court for another decision on the same or similar question. The only way to obtain a review of the decision is by way of an Appeal to the Court of Appeal that has that jurisdiction, to the exclusion of any other Court, conferred on it by the Constitution.

***CUSTOMARY COURT OF APPEAL EDO STATE
VS. AGUELE & ORS (2017) LPELR - 44632 (SC)
at 21 – 23*** was cited.

The Appellate Court having held that the High Court had the jurisdiction to entertain the suit and Ordered the Plaintiff to file new processes at the High Court, is an abuse of Court process for the Plaintiff to have filed this matter at the Magistrate Court, Abuja instead of the High Court as directed by the Appellate Court.

OSUN STATE INEC & ANOR VS. NATIONAL CONSCIENCE PARTY & ORS (2012) LPELR – 44632 (SC) 34 – 35 was cited.

Learned counsel contends, that the Respondent's objection was that the Appellant cannot institute this suit at the District Court, Abuja considering the decision of the Lagos State Magistrate Court, and the High Court of Lagos sitting on Appeal in this matter. The Appellant in his written address in

opposition of the preliminary objection admitted that they were not saying that the Judgment is falsified. The Appellant's counsel before Lagos State High Court raised the same issue being raised by the Plaintiff's counsel before the Trial Court and in its brief before the Honourable Court.

In the Judgment of the High Court of Lagos State sitting on Appeal, the Appellant's counsel argued that the High Court has jurisdiction in banker/customer relationship, such confinement of jurisdiction is not exclusive, reading sections 251(i)(d) and 272(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) with Section 28(i)(a) of the Magistrate Court law of Lagos State 2009 which provides that a Magistrate Court is vested with the jurisdiction to entertain civil matters in all personal actions arising from contract,

tort or both, where the debt or damage claim is not more than N10,000,000.00 (Ten Million Naira) only.

Learned counsel submits, that the Appellant's Counsel in Lagos State High Court sitting on Appeal in this matter before the Court also argued that the subject matter of the suit presently on appeal is that of a contract and breach of fiduciary duty involving the Plaintiff and that the amount involved falls under the financial and competent jurisdiction of the Magistrate Court. The High Court of Lagos State sitting on Appeal rejected the argument of the Appellant and dismissed the appeal filed by the Appellant on the ground that the nature of the cause is based on banker/customer relationship and not the sum which is below N10,000,000.00 (Ten Million Naira) only and directed that the suit should be filed in the High Court.

Furthermore, learned counsel submits that in the instant case, the Appellant did not appeal the judgment and the findings made by the Lagos State High Court regarding Section 251(1) of the 1999 Constitution and the monetary jurisdiction of the Magistrate Court in this matter. The issues raised by Appellant in paragraphs 4.11 to 4.19 of the Appellant brief of argument are incompetent as same does not flow from the ground of Appeal otherwise they are of no moment and should be discountenanced.

OFUNWA VS. AGBABIAKA (215) LPELR – 25595 (CA) at 31 – 33 was cited.

It is the argument of respondent that the Appellant is not challenging the authenticity of the judgment. In fact, he admitted that they were not saying that

Judgment was falsified. Therefore, the complaint that the Judgment did not achieve the justice they desire should not be the basis for them to disobey the Judgment. Rather, that should form the ground of Appeal against the Defendant. Counsel urge the court to resolve issue 1 in their favour.

On issue two, *whether the Learned Trial Magistrate was right when he transferred this matter to the general cause list (Distilled from the additional ground).*

Learned counsel submits that additional ground relate to the Ruling delivered by the Trial Court on the 15th day of October, 2018. The Judgment in issue in this appeal is the Ruling of 26th June, 2019 and there is no ratio decidendi or obiter dictum in the Ruling on appeal issue on the transfer of the matter

to the general cause list mentioned. The Notice of Appeal clearly stated in paragraph 1 that the Judgment appealed against is the decision delivered on 26th June, 2019. This ground that complained that the matter was transferred to the general cause list without recourse to the rules governing default summons is incompetent. The ground does not arise or flow from the Judgment of the Court appealed against.

JOHN ENEH VS. KEVIN OZOR & ANOR (2016) LPELR – 40830 (SC) at Page 11 was cited.

Default Summons is like undefended list procedure; and decision of the Trial Court transferring the matter to the general cause list for hearing on the merit gave the Defendant right to defend the action and there was no condition attached to it. **There is**

no right to appeal against such decision and the appeal is for that reason null and void.

Learned counsel further submits, that since Ruling of 15th October, 2018, complained of in this ground is still subsisting and has not been appealed against or set aside, this ground is merely academic. It has no real relevance or effect. Any decision on this ground will not serve any purpose. Until the presumption of correctness of the Ruling is rebutted and the Judgment is set aside, it subsists and must be obeyed. In law, there is no duty no Court to consider and resolve academic issues. In law, when a particular point is said to be merely academic, it means that it has no real relevance or effect. In the instant case, the learned Trial Judge was right when he transferred the matter to the general cause list.

Upon being served with the Default Summons, the Respondent filed a Notice of Intention to Defend and affidavit. The position of the law is that the affidavit in support of Notice of Intention to defend the suit should contain enough fact and particulars to satisfy a reasonable tribunal to remove the case from Default Summons to the general cause list.

PAN ATLANTIC SHIPPING & TRANSPORT AGENCIES LTD. VS. RHEIN MASS UND SEE SCHIFFARTS KONTOR GMBH (1997) LPELR – 2899 (SC) at 13.

Learned counsel concludes by urging this Honourable Court to dismiss the Appeal with substantial cost because the Appeal lacks merit and the Trial Court was right to decline jurisdiction.

COURT:-

We have gone through the argument of both the Appellant and Respondent as presented in their respective briefs of argument.

The issue No. 1 so formulated by both parties on jurisdiction are apposite.

We feel compelled to adopt the said issue 1 for determination touching on jurisdiction as that of court and which will automatically dispose of this Appeal once it is resolved against the Appellant.

Issue 1 of both the Appellant and Respondent, inter-alia, is; *whether the Trial Magistrate was right when he declined jurisdiction to hear and determine this matter.*

Our take off point shall be to define Banker/Customer relationship before considering the provision of section 251 of the 1999 constitution on

the issue of jurisdiction of court on Banker/Customer relationship.

We need mention, here, that the definition of Banker/Customer becomes necessary for proper grasp of the issue.

Firstly, in ***D STEPHENS INDUSTRIES LTD VS BANK OF CREDIT AND COMMERCE (NIG) LTD (1999) 7 SC (PT III) 27 on (1999) 11 NWLR (PT 625) 29.*** The Apex Court held that:-

The relationship of banker and customer depends basically on the ordinary principles of contract and it could, at least in theory, be brought to an end in any of the ways a contract may be determined.

In ***ALLIED BANK (NIG) VS AKUBUEZE (1997) 6 NWLR (PT 509)*** also reported in ***(1997) LPERL (429) SC*** the Supreme Court at page 28 held that:-

When a banker credits the current account of its customer with some money, the banker becomes a debtor to the customer in that sum. Conversely, when a banker debits the current account of its customer with a certain sum, the customer becomes a debtor to the bank in that sum. Whichever party is a creditor is entitled to sue the other, if demand for payment was made, but not honoured.

In the case of ***INTERGRATED TIMBER AND PLYWOOD PRODUCTS LTD VS UNION BANK OF NIGERIA PLC (2006) 12 NWLR (Pt. 995) 483***, it was held that where even a bank interested in earning interest deposits money in another bank as a customer in that case, if a dispute arises from such transaction a banker/customer relationship is established.

The legal summation here is that the relationship of a bank customer and a bank is contractual in nature whereby a customer who deposits money with a bank is the creditor and is a vice versa where the bank lends money to a customer. *Per OSEJI, J.C.A. (Pp. 34-35) Paragraphs. C-E).*

Which court then has the jurisdiction to determine any such dispute when they so arise!

It is common knowledge that the scope and extent of the jurisdiction of the Federal High Court is enumerated under Section 251(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended). As it relates to the instant case, it is the provision of Section 251(1) (d) that is applicable. In particular, the proviso to Section 251(1) (d) has since been construed that where a dispute relates to

an individual customer and a bank, the Federal High Court and the State High Court exercises concurrent jurisdiction.

See the case of *EQUITORIAL TRUST BANK LTD VS AGADA (2016) LPELR - 40792 (CA) PER OKORO, JCA* where this Court relying on the case of *NDIC VS OKEM ENT. LTD & ANOR (2004) 10 NWLR (Pt. 880) 107* held as follows:

"The Jurisdiction of State High Courts in bank-customer relationship, apart from the constitutional provision has been pronounced upon by the Apex Court. In NDIC VS OKEM ENT. LTD & ANOR PER NWAIFO, JSC, it was held as follows: proper view of the provision in Section 251 (1)(d) of the 1999 Constitution (as amended) is that the main provision having used the Language of

exclusive jurisdiction, the provision then relaxes that exclusiveness given to the Federal High Court therein in a situation in which the issue is a dispute between an individual customer and his bank in respect of transactions between the individual and the bank. In that regard, a State High Court will also have to continue to exercise Jurisdiction and this it does concurrently with the Federal High Court."

See also the cases of ***GABISAL NIG. LTD & ANOR VS NDIC (2008) LPELR - 4177 (CA);***

F.M.B.N VS NDIC (1999) 2 NWLR (Pt. 591) 333.

It is Section 251(1) (d) that confers exclusive jurisdiction on the Federal High Court in matters connected with or pertaining to banking, banks, other financial institutions, including where the

action is between one bank and another, by or against the Central Bank of Nigeria arising from any fiscal measures including banking, foreign exchange, coinage, legal tender, bills of exchange, letters of credit, promissory notes. The proviso to Section 251(1) (d) of the Constitution clearly state that the provision that the Federal High Court shall have exclusive jurisdiction in matters connected with banking does not apply where the dispute is between an individual customer and his bank in respect of transactions between the individual customer and the bank. Without engaging in an unnecessary voyage of discovery, it is undisputed that the subject matter of the instant suits revolves around the deduction from Plaintiff's account.

Plaintiff/Appellant is claiming the sum of N560,000.00 being sum Defendant (Diamond Bank)

deducted from its account and the sum of N800,000.00 on solicitors fees.

This is clearly Banker/Customer issue, for all intents and purposes. The Constitution of FRN 1999 has made such provision with respect to which court to go to in an action where the relationship between Banker/Customer is amidst.

There is no mention of Magistrate Court under section 251 of the 1999 Constitution being conferred with such jurisdiction to entertain Banker/Customer relationship matter concurrently with the Federal High Court or State High Court.

Any such law, so called, that is incompetent with the provisions of the 1999 Constitution on the jurisdiction of Federal High Court and State High

Court on the issue, to the extent of the inconsistency is unconstitutional, and null and void.

The Trial Magistrate was therefore most at home when he declined jurisdiction to entertain the said suit of the Plaintiff, and rightly so.

On the other hand, supposing the Trial Magistrate had jurisdiction to try the said suit, could he have had the competence jurisdictionally speaking to proceed with hearing faced with the judgment of the Magistrate Court Lagos State and the Appellate Court (High Court of Lagos State) as argued by Respondent in its issue one touching on jurisdiction as distilled from ground one of the Notice of Appeal?

We have seen copy of the judgments at pages 48 – 50 and 62 – 64 of the Record of Appeal.

The Appeal filed by the present Appellant at the Magistrate Court of Lagos State and High Court of Lagos State (Appellate decision) was dismissed for want of merit at pages 65 – 71 of the Records.

Both the Magistrate Court of Lagos State and the appellate decision of the High Court declined jurisdiction for want of same. Appellant denied notice of the fact that Appeal was lodged against the said decision of the Lagos State Magistrate Court until when he was faced with the said facts before this court.

See pages 88 – 89 of the Records. This is an admission against interest.

The decision of the Appellate Division of the Lagos State High Court is still valid. The step taken by the Appellant to have commenced yet another suit in the

FCT Magistrate Court which has now come before the Appellate Division of the High Court is clearly in frontal violation of the provision of the 1999 Constitution, Rules of Professional conduct, equity and good conscience.

We do not blame the Appellant but those lawyers who would jump at every given opportunity to come to court. This practice must stop.

Appellant is using the process of court to the irritation and annoyance of the Respondent.. this is the mother of all abuse of process known to law.

See ***OGBORU & ANOR VS UDUAGHAN & ORS (2013) LPELR – 20805 (SC).***

We agree with the Respondent's argument on issue (1) afore-formulated.

We resolve the said issue in favour of the Respondent.

We wish to further note that where a trial court has no jurisdiction to determine a matter as in this case, an Appellate court will not equally have the competence jurisdictionally speaking to decide such appeal emanating from such null proceedings, if any.

The submission of counsel for the Appellant that the learned trial Magistrate was ignorant of the law as it relates to the provisions of section 251 (i)(d) of the 1999 Constitution when he declined jurisdiction to entertain the said suit for want of jurisdiction and which he expressed in the maxim “ignorantia judexes ex calamitas innocentis” is totally misconceived and misapplied.

The Appeal is liable to be struck – out for above reason.

See ***SULEJA VS ABUBAKAR & ORS (2019)***

For the reason afore given, this Appeal clearly lacks merit and is hereby struck – out.

<i>HON. JUSTICE Y. HALILU</i>	<i>HON. JUSTICE H. MU'AZU</i>
<i>Presiding Judge</i>	<i>Hon. Judge</i>
<i>2nd February, 2022</i>	<i>2nd February, 2022</i>