IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

(APPELLATE DIVISION)

HOLDEN AT HIGH COURT NO. 8, MAITAMA, ABUJA

ON THURSDAY, 14TH DECEMBER, 2023

BEFORE THEIR LORDSHIPS:

HON. JUSTICE OLUKAYODE A. ADENIYI:PRESIDING JUDGE

HON. JUSTICE BABANGIDA HASSAN: HON. JUDGE

SUIT NO: CV/101/2017

APPEAL NO: CVA/847/2021

BETWEEN:

1. MR UGOCHUKWU AGBAFUNA
2. MR SUNDAY AGBAFUNA — APPELLANTS
3. SUNFANAC NIG. LTD
4. UGOSUNFANAC NIG. LTD.

AND

PEACE MICRO FINANCE BANK LTD. … … … … RESPONDENT

JUDGMENT

This is an Appeal against the Judgment of His Worship, **Hon. Musa Ibrahim Jobbo,** of the Senior District Court of

the FCT, Holden at Wuse Zone 2, Abuja, delivered on the 7th July, 2021.

The Respondent herein, as the Claimant at the lower Court, filed a Plaint on 26th September, 2017, whereby she sought to recover the loan facility granted to the4thDefendant/Appellant, with interests.The loan was guaranteed by the 1st – 3rd Defendants/Appellants. At the end of the day, the learned trial Magistrate entered judgment in favour of the Claimant/Respondent in the sum of **₦1,410,500.00**, as the outstanding balance of the loan which the Court arrived at by deducting the sum of**₦589,500.00**that the 4thDefendant was established to have repaid from the facility sum of **₦2,000,000.00**.

The Appellants, being dissatisfied with the judgment of the trial Magistrate, filed the instant appeal, on grounds set out as follows:

1. *The learned trial Senior District Judge II erred in law when he proceeded to hear the matter and enter*

judgment in the absence of requisite monetary jurisdiction.

2. *The lower Court erred in law when it based its judgment on oral evidence of PW1 which was at variance with other pieces of documentary evidence on the record.*
3. *The lower Court erred in law when it unilaterally computed and awarded the Respondent the sum of ₦1,410,000.*
4. *The lower Court erred when it shifted the burden to the Appellants to prove that they had repaid the loan even when the Respondent had not established the precise amount allegedly outstanding on the loan.*

SUMMARY OF THE APPELLANTS' ARGUMENTS

The Appellants submitted two issues as having arisen for determination by this Court, namely:

1. *Whether the lower Court was seized (sic) of jurisdiction to entertain this matter. (From Ground 1 of the Notice of Appeal).*

2. *Whether the lower Court rightly evaluated the evidence in coming to the monetary award it made.*

On the first issue, learned counsel for the Appellants submitted that the learned Senior District Judge II lacked the requisite monetary jurisdiction to hear and determine the suit, by virtue of the **District Court Act (Cap 495) LFN 1990** and the **District Courts (Increase of Jurisdiction of District Judges) Order 2014**. Learned counsel also relied on the cases of *Gbagbarighavs Toruemi[2013] 6 NWLR (Pt. 1350) 289; Prime West Properties Ltd vs Rot Ultimate Properties Ltd. with Appeal No. CA/A/28/18*,reported on the FCT High Court website.

Learned counsel submitted that the Respondent/Plaintiff's case before the lower Court was for the sum of **₦2,821,530.27** in addition to a cost of **₦300,000.00**; whereas the lower Court presided over by a District Judge II, has a maximum monetary limit of **₦2,000,000**.

On the second issue, learned counsel submitted that the trial judge who had the privilege of seeing and listening

to witnesses is in the best position to evaluate evidence, and where the Court fails to do that, the appellate Court has the competence to evaluate such evidence, relying on the authorities of *Ukejevs Ukeje[2014] All FWLR(Pt. 730) 1339 Para D-F* and *Adedaravs Arowolo[2014] All FWLR(Pt. 761) 1560-1561 Paras E-F.*

Learned counsel submitted that the trial Court made an error in evaluating **Exhibit XXD,** as the Court failed to note that **Exhibit XXD** put the total repayment made thus far at **₦511,500.00(page 132 of the Record);** that the trial Court, in evaluating the evidence of **PW1** should have noticed a contradiction between the oral evidence of **PW1,** who testified that a repayment of **₦589,500.00** had been made and the documentary evidence of **Exhibit XXD,** in which it is stated that the 2nd Defendant had paid the sum of **₦511,500.00,** without any further explanation as to this apparent contradictory pieces of evidence.

Learned Appellants' counsel therefore submitted that the trial judge was in error to simply proceed to

deduct **₦589,500.00** from **₦2,000,000.00** to arrive at the outstanding debt. On this, counsel submits that it is not the role of the judge to choose and pick between the conflicting pieces of evidence. More so, when the amount awarded is at variance with the pleadings, relying strongly on the authority of *Olufosoyevs Fakorede[1993] 1 NWLR (Pt. 272) 747*.

On the issue as to whether the lower Court had the discretion to *suo motu* compute and grant relief not sought for by parties, learned counsel argued that none of the parties argued that the outstanding loan amount was **₦1,410,000.00**; that a Court cannot grant a relief not sought by parties as this will amount to the Court making an order on an issue not raised by parties. Learned counsel relied, for his submissions, on the cases of*Fasikum II &Orsvs Oluronice II &Ors.[1999] 1 SC 16* and *Funduk Engineering Ltd. vs James Macarthur &Ors[1999] 7 NWLR (Pt 459) 153.*

Learned counsel again argued that the Respondent/Plaintiff claimed the specific sum of **₦2,821,530.27** and the onus to establish that the Defendants/Appellants owed this figure rested on them, and it is only after this that the onus would shift to the Defendants/Appellants to prove that they had repaid the loan.

SUMMARY OF THE RESPONDENT'S ARGUMENT

The Respondent's learned counsel submitted two issues for determination in this appeal, set out as follows:

1. *Whether the Appellate Court can assume jurisdiction to hear this appeal in the face of the latent defect touching its competence.*
2. *Whether the Appellants has shown that it's claimed perversity in evaluation of evidence by the trial Court is in any way detrimental or prejudicial to its interest to warrant setting aside of the decision.*

On the first issue, learned Respondent's counsel contended that the Notice of Appeal in this appeal was not served in accordance with law, in that, being an originating process, ought to be served personally on the other party except the Court orders otherwise, citing in aid, the authority of*Odey vs Alaga[2021] 5 SCM 28*.

Learned counsel argued that failure to serve the Notice of Appeal personally on the Respondent constitutes an incurable defect that impugns on the exercise of the Court's jurisdiction to entertain the suit.

Learned counsel further submitted that the ground of appeal questioning the monetary jurisdiction of the learned trial judge is a ground of mixed law and fact requiring further evidence to ascertain that as at the time the case was assigned to the learned trial judge, he had no jurisdiction to entertain the case; that unless that evidence is brought in, the submission of the Appellant's learned counsel on this point remains speculative. Learned counsel relied on the provision of**s. 168(1)** of the

Evidence Act to submit that evidence must be led to discharge the presumption of regularity on the assignment and trial of the case; and that an Appellate Court will not permit a party to raise fresh issue not raised at the trial Court, except with the leave of Court, relying on the authorities of*Ezeonwukavs Ezeononuju&Ors. [2018] 6 SCM, 62; Obi vs Uzoewulu[2021] 1 SCM 119 at 139.*

Although learned counsel for the Respondent has admitted that a ground of appeal bothering on jurisdiction can be raised for the first time on appeal, he argued that where evidence is required to establish such ground, leave ought to be first sought and obtained. Learned counsel argued that in the instant case, the Appellants cannot establish the qualification of the trial District Judge and that he is not qualified to handle the suit at the time the matter was assigned to him, except he led evidence.

Learned counsel also vehemently argued that the Grounds of Appeal filed by the Appellants are all grounds of facts and mixed law and facts for which leave of the Court

ought to be first sought; that those purported grounds of appeal are incompetent and liable to be struck out, relying on the authorities of *Nikagbatevs. Opaye[2018] 3 SCM at 163; B. A. S. F. Nigeria Ltd vs Faith Enterprises Ltd.[2010]NWLR (Pt. 1183) at 104.*Learned counsel further argued that a ground of appeal for which no issue is distilled is deemed abandoned and liable to be struck out.

With respect to the second issue, learned counsel for the Respondent submitted that the Appellantsfailed to show the injury it suffered by the improper evaluation of evidence alleged; that the Appellate Court does not waste its time on how the trial Court arrives at its decision; that the Appellants have not particularized any error from the improper evaluation of evidence by the trial Court, citing the authority of *MTN Nig. vs Corporate Communication Investment Ltd[2019] 6 SCM 100 @ 117; Alikorvs Ogwo&Ors[2019] 8 SCM 1.*

Learned counsel further argued that the difference in **Exhibit XXD** (a document before the lower Court) and the testimony of **PW1**(Respondent's witness) is that **Exhibit XXD** is a document which speaks for itself.

Learned counsel further submitted that the Court has the discretion to award the sum claimed or any other sum it deems appropriate to serve the justice of the case; that the Respondent claimed the sum of**₦2,821,530.27** and the Court awarded the sum of **₦1,410,000.00**; that the Appellants cannot be heard to make such complain in the Appellate Court.

Counsel also submitted that the arguments proffered by the Appellants/Defendants in paragraphs 4.29 and 4.30 in its brief of argument are arguments proffered on a non-issue as they are not supported by any ground of appeal. He argued that even though these arguments appeared to be in favour of ground 4, but no issue was distilled from that ground of appeal. Learned counsel relied on *Patrick vs State[2018] 7 SCM, 174*. On that

argument, which is whether the lower Court was right in shifting the burden of proof to the Appellants, counsel referred**s. 133** of**the Evidence Act**, which places the burden of establishing a fact onwho will lose if no evidence was adduced by both sides. He also referred the Court to the case of *Universityof Ilorinvs.Obayan[2018] 4 SCM 188 at 198.*

APPELLANTS' REPLY SUBMISSIONS

Learned counsel for the Appellants argued that the issues raised by the Respondent neither align with the Appellants' issues nor has the Respondent shown which grounds of appeal it formulated its issues from, thus, making it incompetent; that the only exception to this, is when the Respondent/Plaintiff files a Cross Appeal or a Respondent's Notice, making reference to the provision of **Order 50(16),** of the **Rules** of this Court, and the authority of *Umana Vs. Attah[2004] 7 NWLR (Pt. 871)63*. Learned counsel therefore argued that the Appellants' issue one is incompetent and urged the Court to strike out same.

Learned counselfurther submitted that the Respondent/Plaintiff raised some preliminary issues in its brief as issues to be determined by the Court instead of filing a Notice of Preliminary Objection or incorporating the Preliminary Objection in its brief, calling in aid the authority of *Olorunfemi vs NEB Ltd. [2005]NWLR (Pt. 812)1.*

Learned counsel proceeded to respond to the issues raised by the Appellants/Defendants in its first issue. In response to these issues, counsel argued that the Appellants on receipt of the Respondent's Brief caused the Registry of this Court to proceed to serve the Notice of Appeal on the Respondent on 18th May, 2022, and this cures whatever defect existed; arguing further that the Respondent/Plaintiff in commencing their matter before the lower Court through a Plaint indicated only the address of her learned counsel as the address for service.

On the issue of the jurisdiction of the lower Court, learned counsel for the Respondent/Plaintiff argued that from the

time the matter came up for mention at the lower Court, to the time judgement was delivered, the learned trial District Judge always signed as SDJ II, referring to **page 153**of the **Records;** thatthe District Court being part of the Hierarchy of this Court created by law; that this Court must take judicial notice of the rank of the Learned Trial District Judge. Learned counsel further referred to the provision of **s. 122** of the **Evidence Act** and the decision of this Court delivered on 24/03/2021 in *Noah AjareEsq. vs. Etha Ventures Ltd Appeal Nos CVA/402/2019 & CVA/712/2021.*

On the issue of invalidity of some grounds of Appeal, relying on **s. 73** of the **District Court Act** and **s. 46**of the**High Court of the Federal Capital Territory Act,** learned counsel submitted that leave is not required.

On the Respondent's argument that Ground 4 raises an issue of burden of proof and has no correlation with evaluation of evidence, the Appellant Counsel submitted

otherwise, relying on *Nagedu Co. (Nig) Ltd vs Unity Bank Plc[2014] 7 NWLR (Pt. 1405) 42.*

Learned counsel further submitted that the Respondent/Plaintiff never established a specific amount at the lower Court and the Appellants/Defendants are not expected to prove that they repaid an unspecified amount of money as it is only when the exact amount of the alleged debt is proved that the burden of proving repayment can arise.

RESOLUTION OF ISSUES

Both parties in this Appeal have raised the issue of jurisdiction. It is trite that the issue of jurisdiction is fundamental to the adjudication of the matter before the Court. It is a threshold issue that forms the foundation of adjudication. The jurisdiction of the Court is circumscribed by the Statute creating the Court itself or by a condition precedent created by legislation which must be fulfilled before the Court can entertain the suit. If a Court lacks jurisdiction, then it lacks the necessary competence to

entertain the claim before it. *Julius Berger (Nig) Plc vs Anizzeal Eng. Projects Ltd (2013) LPELR – 20694 CA.*

The point must be made that the issue of jurisdiction being a threshold issue can be raised for the first time on appeal. See *Owievs. Ighiwi[2005]LPELR – 2846 (SC); Oliyide& Sons Ltd.vs. OAU, Ile – Ife[2018]LPELR – 43711 (SC).*

The rationale behind this principle lies in the fact that jurisdiction remains the fulcrum of any valid adjudication as without it the entire proceedings of the Court, no matter how well conducted, is an exercise in futility being a total nullity.

Learned counsel for the Respondent has argued that the notice of appeal being an originating process ought to be served personally, and that the failure to do so impugns on the Courts exercise of jurisdiction.

Respectfully, the **Rules** of this Court do not stipulate personal service of a notice of Appeal on the parties. However, it has been held in a plethora of cases that a

Notice of Appeal being an originating process ought to be served personally on the Respondent, and failure to do so constitute a fundamental vice which robs the Court of the jurisdiction to entertain the Appeal. See *Odey vs Alaga &Ors. [2021] SC; Adegbola vs Osiyi&Ors. [2018] 4 NWLR (Pt. 1608) 1.*

It is trite that the true essence of personal service of an originating process is to bring to the notice of the adverse party the content of the process and to enable the response of the adverse party.Service is a requirement of the constitutional right to fair hearing of the party. Thus, it has been held that reasonable knowledge of a process by a party who is contending that he is not personally served is sufficient proof of notice of the service of the process that is being disputed. See *Timkukvs INEC&Ors. (Pp. 10-12 paras. F); Amaechi vs Gov. of Rivers State[2022] 17 NWLR (Pt. 1858)1;Akintola vs Akintola&Ors.[2022]LPELR-57231.*

In the instant case, the parties have already joined issues by exchanging briefs of argument. This, in our view, is evidence that the Respondent is aware of the pendency of this Appeal. Hence the Respondents' protest of non-service lacks merit and we so hold.

Learned counsel for the Respondent also raised the issue of monetary jurisdiction; that the learned Senior District Judge II lacked the requisite monetary jurisdiction to hear and determine the suit, by virtue of the **District Court Act (Cap 495) LFN 1990** and the **District Courts (Increase of Jurisdiction of District Judges) Order, 2014**.

In our civil jurisprudence, where the question arises as to whether or not a Court can entertain a suit, it is the claim filed by the Plaintiff that the Court will refer to and not the statement of defence.

The **District Courts (Increase of Jurisdiction of District Judges) Order, 2014,** is the law that regulates the monetary jurisdiction of the Chief District Courts, Abuja.

The provisions of **Orders 2**and **4** is relevant to the present case, hence, we will reproduce it below;

> ***"2. Subject to the provisions of the District Courts Act (Cap. 495) 1990 and any other written law, a Chief District Judge I and II, and Senior District Judge I and II as well as District Judge I shall have an exercise jurisdiction in civil cases or matters:***
>
> ***a. In all personnel suits, whether arising from contract, or from tort, or from both, where the debt or damage claimed, whether as balance claimed or otherwise, is not more than Five Million (N5,000,000:00) Naira in the case of Chief District Judge I; Four Million (N4,000,000:00) Naira in the case of Chief District Judge II; Three Million (N3,000,000:00) Naira in the case of Senior District Judge I; Two Million Naira (N2,000,000:00) Naira in the case of Senior District Judge II; and One Million (N1,000,000:00) Naira in the case of District Judge I.***
>
> ***3….***
>
> ***4.Where in any action, the debt or demand consists of a balance not exceeding Five Million (N ,000,000:00)***

Naira in the case of Chief District Judge I; Four Million (N4,000,000:00) Naira in the case of Chief District Judge II; Three Million (N3,000,000:00) Naira in the case of Senior District Judge I; Two Million (N2,000,000:00) Naira in the case of Senior District Judge II; and One Million (N1,000,000:00) Naira in the case of District Judge I as the case may be after an admitted counterclaim or set-off of a debt or demand claimed or recoverable by the defendant from the plaintiff, a district Court Judge shall have jurisdiction and power to hear and determine such action within the limits of his personal jurisdiction and power."

It is not in doubt that suit at the lower Court was heard by a Senior District Judge II and the judgment by the lower Court was signed off by Senior District Judge II.The implication of the above **Order** is that the Senor District Judge II has jurisdiction over civil cases arising from contract/tort where the debt or/and damages claimed do not exceed the sum of **₦2,000,000.00** (**Two Million Naira**). only.

In the Instant case, the Respondent'sprincipal claim at the trial Court was for:

> ***"The sum of ₦2,821,530.27 (Two Million, Eight Hundred and Twenty-One Thousand, Five Hundred and Thirty Naira, Twenty-Seven Kobo) being the outstanding balance on the account of the 4th Defendant as at 27th July, 2017…."***

By virtue of the foregoing, it is apparent that the lower Court being presided over by the Senior District Judge II, lacked the requisite jurisdiction to have entertained and determined the matter, in that the amount claimed by the Respondent exceeded the threshold allowed the trial Senior District Judge II.

This being so, the totality of the proceedings in the suit at the trial Court, including the decision arrived at became tainted and invalid in law on grounds of defect in the Court's jurisdiction to entertain the suit. It thus becomes needless to discuss the other issues raised by parties in this appeal.

In the final analysis, this appeal hereby succeeds. The proceedings with respect to *suit*No. *AB/SDC/CV/101/2017* *Peace Micro Finance Bank Ltd. Vs. Mr. UgichukwuAgbafuna& 3 Ors*. and the judgment rendered thereupon are hereby accordingly set aside. The suit is hereby remitted back to the Lower Court to be assigned to a District Judge having jurisdiction to try same de novo.

We make no orders to costs.

HON. JUSTICE OLUKAYODE A. ADENIYI
(Presiding Judge)
14/12/2023

HON. JUSTICE BABANGIDA HASSAN
(Hon. Judge)
14/12/2023

***Legal representation*:**

Marx Ikongbeh, Esq. (with – **Chidinma Okafor (Miss)**)– *for the Appellants*

Respondent unrepresented