

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 V. S. GABA - MEMBER

APPEAL NO.:CVA/212/2018

SUIT NO.: CV/126/2014

BETWEEN:

ALH. ISA KOKO APPELLANT

AND

1. MOHAMMED YUSUF
2. ABDULLAHI SARKI ZANGO
3. MALLAM IDRIS } **RESPONDENTS**

JUDGMENT

This is an Appeal against the Judgment of the Chief District Court 1 of the FCT, Wuse Zone II, Abuja Coram: Hon. Ahmed Shuaibu delivered on the 5th April, 2017.

Being dissatisfied with the aforesaid Judgment in which all the relief of the Respondents were granted, the Appellant filed a Notice of Appeal on the 30th July, 2018.

The said Notice of Appeal which contains 6 (Six) grounds of Appeal are hereby reproduced;

GROUND ONE:

Error in Law

The learned trial Judge erred in law when he assumed jurisdiction over the subject matter thereby occasioning miscarriage of justice.

PARTICULARS OF ERROR:

- i. The monetary jurisdiction of the lower Court is five Million (N5,000,000.00) only.
- ii. The subject matter of the alleged transaction is Railway tracks metal valued at Sixty Nine Million

(N69,000,000.00) only above the monetary jurisdiction of the lower court.

iii. No part of the transactions occurred in Abuja within the jurisdiction of the lower court.

GROUND TWO:

Error in law

The lower Court erred in law when he ordered the sum of Three Million, Four Hundred and Fifty Thousand (N3,450,000.00) only against the Appellant as agency commission in the absence of any agency agreement thereby occasioning a miscarriage of justice.

PARTICULARS OF ERROR

- a. Agency agreement may be created in writing or orally
- b. Evidence of PW1 & PW2 were not sufficient to establish agency relationship between the parties.

- c. No evidence to corroborate the existence of the alleged agency relationship between the parties.
- d. The Respondents admitted not having any document evidencing agency.
- e. The Court cannot make contract for parties before it.

GROUND THREE:

Error in Law

The Lower Court erred in law when it awarded the sum of one hundred and fifty thousand (150,000.00) only as cost of action contrary to the principle in *DIVINE IDEAS LTD VS UMORU (2007) ALL FWLR (Pt. 380) 1468 @ 1509, Paras. A-D.*

PARTICULARS OF ERROR

1. Cost of action is in the realm of special damages in civil litigation.

2. Cost of action must be specifically and strictly proved.

3. The award N150,000 as cost of action is outrageous by being far and above the sum endorsed on the process filed in court on 23rd September, 2014 which was only Two Hundred and Fifty Naira (N250.00) only on receipt No. 0217754.

4. There was no evidence before the Court showing how the Respondent incurred the total sum of N150,000.00 only awarded at the Registry of the Lower Court.

GROUND FOUR:

Error of Misdirection

The Lower Court misdirected itself when it awarded 10% interest on the Judgment sum till whole purported debt is liquidated in breach of the principle in *EKWENIFE VS*

WAYNE (W/A) LTD (1989) 5 NWLR (Pt. 122) 422 @ 445, Paragraph C.

PARTICULARS OF MISDIRECTION

- i. There is no evidence of Agency relationship between the Appellant and the Respondent in the first place.
- ii. No interest was in consequence agreed upon accruing to the Respondents from the Appellant.
- iii. There was no fiduciary relationship which existed between the parties.
- iv. There was no commercial transaction between the parties leading to agency commission claimed by the Respondents.

GROUND FIVE:

Error in Law

The learned trial District Court Judge erred in law when he held that the evidence of the Plaintiff (Respondents)

are unchallenged and controverted when in fact the evidence of parties was not evaluated.

PARTICULARS OF ERROR

1. Summary of evidence of witnesses is not equivalent to evaluation of evidence.
2. The Court below only summarized and went straight to hold that the evidence of Plaintiff/Respondents in this appeal was not controverted.
3. The evidence of a party must not be acted upon even if unchallenged where such piece of evidence is not believable or facts below the standard required in law.
4. The evidence of Respondents on Agency agreement is hollow and ought not to be acted upon.
5. The Court took into account irrelevant materials in reaching its decision.

GROUND SIX

Error in Law

The trial court erred in law when it entertained the suit despite the absence of proper parties before it thereby occasioning miscarriage of justice.

PARTICULARS OF ERROR

1. The Appellant did not transact with the Respondents.
2. The transaction over the subject matter was between the Respondents and one Alh. AtikuHaske Nigeria Ltd.
3. The Appellant does not have any interest in Alh. AtikuHaske Nigeria Ltd.
4. The action was not commenced with proper parties before it.
5. The action was not properly constituted.

The Appellant formulated two (2) issues for determination to wit;

- (1) *Whether considering the facts and circumstances of this case, the Trial Court did have the Power or Jurisdiction to entertain and grant the reliefs of the Respondents (Distilled from ground 1,2,3,4 & 6).*
- (2) *Whether the Trial Court was correct in holding that the evidence of the Respondents were unchallenged and or uncontroverted despite non evaluation of evidence and therefore not perverse (Distilled from ground 5).*

On issue 1 *whether considering the facts and circumstances of this case, the Trial Court did have the Power or Jurisdiction to entertain and grant the reliefs of the Respondents (Distilled from ground 1,2,3,4 & 6),* Learned Counsel for the Appellant submitted that jurisdiction has been accepted as the authority which a Court or Tribunal has to decide a matter presented in a

formal way for its decision. Where a Court does not have jurisdiction, there is nothing before it to adjudicate. The limits of its authority as in the present case may be prescribed, as it has been prescribed by statute under which the Court of Tribunal was created. ***SARAKI VS FRN (2016) ALL FWLR (Pt. 836)396 at 463.***

It is the contention of the Appellant that the limits of the Court below is as set by the ***District Court Act Cap 495 LFN 1990*** under which it was created in Section 4 of the Act and by virtue of Section 3(a)(b)(c) and (d) of the said Act.

It is the argument of the Appellant that the Trial Court has no Power over persons who do not ordinarily reside in Abuja or transactions not began or concluded within the Federal Capital Territory. It is evidence that no part of the alleged transaction took place in the Federal Capital Territory for the Court below to have assumed jurisdiction in the matter it did. That the Court below is bound by the

Provisions of Section 40(1)(a)(b)(c) of the District Courts Act and cannot expand its jurisdiction.

Learned Counsel maintained that the entire Proceedings run contrary to known principles of jurisdiction as the taking of the Suit arising from another jurisdiction into Abuja as in the case is null and void as Abuja District Court should not have assumed jurisdiction. *F.B.N VS TSOKWA (2004)5 NWLR (Pt. 866)271.*

Counsel submit that the condition precedent for the Court to assume jurisdiction in this matter was not met as the matter is clearly outside its jurisdiction.

It is the further submission of the Learned Counsel that the Lower Court erred in holding as it did that the Appellant was liable to the Respondents on their claims based on a non-existent speculative agreement. The law is that, the Court has no business with speculating on any situation, but deals with hardcore facts in its adjudicatory

exercise. ***OLUFEAGBE VS ABDUR-RAHEEM (2010) ALL FWLR (Pt. 512) 1033 at 1074 Paragraph – C.***

On issue 2 *whether the Trial Court was correct in holding that the evidence of the Respondents were unchallenged and uncontroverted despite non evaluation of the evidence and therefore not perverse. (Distilled from ground 5).*

Counsel contended that before a Court can come to the conclusion that a piece of evidence is unchallenged, it must be a piece that is clearly so that no reviewing Court would be in doubt as to that fact.

MINI LODGE LTD VS NGEL (2010) ALL FWLR (Pt. 506) 1806 at 1820 – 1821 Paragraph E – A.

It was counsel further argument that where there is failure of Trial Court to properly appraise the evidence before it, the resultant findings and conclusion would be perverse. ***TALBA VS TALBA (2010) ALL FWLR (Pt. 522) 1780.***

It is the submission of the Learned Counsel that a finding of fact is said to be perverse when:

- a. Where it runs contrary to evidence and pleading.
- b. Where it has been shown that the Trial took into account matters which it ought not to have taken into account.
- c. Where the Trial Court shuts its eyes to the obvious.
- d. Where the decision has occasioned a miscarriage of Justice.

Learned Counsel for the Appellant then urge the Court to uphold the Appeal and set aside the Judgment of the Lower Court.

Upon service, the Respondent filed it brief of argument and formulated two issues for determination to wit;

- a. *Whether the Trial Court acted within its monetary jurisdiction by granting the reliefs sought by the Respondent.*
- b. *Whether the Trial Court properly evaluated evidence presented before it by holding that the Respondents established their case on the balance of probability and preponderance of evidence.*

On issue one, *whether the Trial Court acted within its monetary jurisdiction by granting the reliefs sought by the Respondent.*

Learned Counsel submitted that the Trial Court acted within its jurisdiction. That the Respondents claims before the Lower Court was within the monetary jurisdiction of the Trial Court and that it was misleading to state that the subject matter before the Trial Court was for the sum of ₦69,000,000 (Sixty Nine Million Naira) as stated by the Appellant's Counsel. And that the Trial Court acted within its jurisdiction and that the law presumes that the

Judgment delivered by the Trial Court as correct unless proven contrary by the Appellant ***NIKAGBATSE VS SLATER (2016) ALL FWLR (Pt. 835) Page 250 at 270.***

On the issue of jurisdiction, the Learned Counsel to the Appellant misinformed the Court that the Appellant and the Respondent resides in Suleja Niger State and the transaction between the Appellant and the Respondent was also conducted in Niger State.

It is the submission of Learned Counsel for the Respondent that the cause of action arose within the jurisdiction of the Honourable Court. ***EJIMOFOR VS NITEL (2007)1 NWLR (Pt. 1014) Page 153 at PP 193.***

On the second issue that is ***whether the Trial Court properly evaluated evidence presented before it by holding that the Respondent established their case on the balance of probability and preponderance of evidence.***

Learned Counsel submitted that the Respondent have been able to prove their case on the balance of probability and preponderance of evidence. That the Trial Court has properly evaluated the evidence presented before it by both parties. *FATUGA VS ANNA (2007)3 FWLR (Pt. 374) Page 3714 at 3723 Paragraph E.G.*

It is the submission of Learned Counsel for the Respondent that the primary duty of a Trial Court is to fully and consciously consider the totality of evidence preferred by all parties and ascribe probative value to them and put same on an imaginary scale of justice so as to determine the party in whose favour the balance tilts. Where this has been credibly done the presumption is that the findings of facts by the Trial Judge are right and no Appeal Court should temper with such evaluation. *FATUGA VS ANNA (Supra).*

It is further the submission of the Learned Counsel for the Respondent that the function of evaluation of evidence is

essentially that of the Trial Court, when it satisfactorily performs this, an Appellate Court cannot interfere. In the instant case, where the Trial Court properly evaluated the evidence before it, the Court of Appeal did not interfere with its decision.

NIKAGBATSE VS SLATER (2016) ALL FWLR (Pt. 835) Page 250.

Court was urged to dismiss the Appeal of the Appellant and allow the Judgment of the Lower Court to stand.

On the part of court, we have gone through the respective briefs of argument of the Appellant and Respondent. In our view, two issues call for determination to wit;

- (1) ***Whether the lower court has jurisdiction to entertain the suit before it.***
- (2) ***Whether the Trial Court was correct in holding that the evidence of the Respondents were unchallenged***

and uncontroverted despite none evaluation of the evidence and therefore not perverse.

On issue one, whether the lower court has jurisdiction to entertain the suit before it.

It is trite that the inherent jurisdiction of the court is not exercisable when the court lacks jurisdiction. What this means is that the inherent jurisdiction of a court only comes in where it has jurisdiction, and where its jurisdiction is being challenged as in the present case, it has to determine first whether it has jurisdiction before being called upon to exercise its inherent jurisdiction as the appellant is requesting in this present case. ***IWUJI & ORS VS GOVERNOR OF IMO STATE & ORS (2014) LPELR 22824 (CA).***

Indeed, it is the claims of the Plaintiff as contained in the writ of summons and statement of claim that determines

the jurisdiction of court. The enabling statutes vesting the jurisdiction has to be considered in the light of the reliefs sought. Once the claims fall within the jurisdiction of the court as donated by the statute as determined by the fact, the court is vested with jurisdiction. ***LAWAN VS ZENON PETROLEUM & GAS LTD & ORS (2014) LPELR 23206 (CA).***

It is instructive to state here that the district court of the Federal Capital Territory was created by the District Court Act, Cap 498 (Pt.11) section 5 of the said Act creates the jurisdiction of District Court.

For avoidance of doubt section 5 provides as thus;

- i. A District Court shall have such jurisdiction as is conferred on it by this act or any other written law.
- ii. No District judge shall exercise jurisdiction and power in excess of those conferred upon him by his appointment.

Qst..from above, can it be said that the trial district judge was clothed with jurisdiction?

In answering above question, the proper document to look at is the Plaintiff which is contained in Page 2 of the Record of Proceedings before the Lower Court.

For clarity purposes, we shall reproduce relevant paragraphs of the Plaintiff before the Lower Court.

Paragraph 3:

“The Plaintiffs state that sometimes around July 2013 they rendered agency services to the Defendant in respect of sale of old railway tracks (metals) which the Defendant realized the sum of N69,000,000 (Sixty Nine Million Naira) only as proceed.”

Paragraph 4:

“The Plaintiffs state that they had an initial verbal agreement with the Defendant to the effect that they

will be entitled to only 10% of the total amount realized as proceeds from the sale of the said metals.”

Paragraph 7:

“The Plaintiffs states that when they contacted the Defendant sometimes in February 2014 over their entitlement (which is the sum of N3,450,000.00). The Defendant ridiculously mustered the sum of N1,000,000 (One Million Naira) Only which they refused.”

From above, can it be said that the amount under contention is ~~N~~69,000,000 as argued by the Learned Counsel for the Appellant to rub the Lower Court of jurisdiction?

It is trite that, where the language, terms intent or words to any part or section of a written contract, document or enactment are clear and unambiguous as in the instant

case, they must be given their ordinary and actual meaning as such terms or words used best declare the intention of law maker unless this would lead to absurdity or be in conflict with some other provision thereof.

It therefore presupposes that where the language and intent of an enactment or contract is apparent, a trial court must not distort their meaning. ***OLATUNDE VS OBAFEMI AWOLOWO UNWERSITY (1998) 5 NWLR (Pt. 549) 178.***

A judge is not a law maker, but an interpreter of law made by a law maker. The objective of any interpretation is to unravel the intention of the law maker which often, can be deduced from the usage of language.

We make bold to say that after careful consideration of the record of proceedings, it is clear the amount under contention is ₦3,450,000 and not ₦69,000,000. We so hold.

On the Territorial Jurisdiction of this Court, as stated earlier in the preceeding part of this Judgment, the claims of Plaintiff as contained in the writ of summons and the statement of claim determines the jurisdiction of court and not the statement of defence. The enabling statute has to be considered in the light of the reliefs sought.

Once the claims fall within the jurisdiction of the court, as donated by the enabling statute, as determined by the facts, the court is vested with jurisdiction. On the other hand, once the reverse is the case, the court cannot assume jurisdiction as it is not vested with it. See ***ODEYEMI VS OPAYORI (1976) 9 – 11 S C 31, LKINE VS EDJORODE (2001) 92 LRCN 3288, 3310, ABDULRAHAMAN VS AKAR (2006) 13 NWLR (1996) 127, EMEKA VS OKADIGBO (2012) 18 NWLR (1331) 55 at 89.***

It is instructive to state at this juncture that it is not the rules of court that vest jurisdiction in the court but rather the statute creating that court... it therefore presupposes the fact that it is the District Court Rules as it relates to FCT District Courts that is applicable.

The limits of the court below is as set by the District Court Act Cap 495 LFN 1990 under which it was created in section 4 of the Act and by virtue of section 3(a)(b)(c) and (d) and 40 of the said Act, all District Courts of the Federal Capital Territory, Abuja shall have jurisdiction only within its district.

We shall again revert back to the Record of Proceeding of the Lower Court to ascertain whether the Lower Court has the Territorial Jurisdiction to have entertained the Suit.

For clarity purposes, relevant Paragraph of the Plaintiff in Pages 1 & 2 of the Record of Proceeding are hereby reproduced;

Paragraph 1 *“the Plaintiffs are businessmen and resides at Bassa-Jiwa (around NnamdiAzikwe International Airport, Abuja) within the jurisdiction of the Honourable Court.”*

Paragraph 2 *“the Defendant is a Civil Servant and work with Federal Airport Authority of Nigeria (FAAN) within the jurisdiction of this Honourable Court.”*

Indeed jurisdiction is blood that gives life to the survival of an action in a court of law, and without jurisdiction, the action will be like an animal drained of its blood..it will cease to have life and any attempt to resuscitate it without infusing blood into it will be abortive exercise. See ***OKEKE VS SECURITIES & EXCHANGE COMMISSION & ORS (2013) LPELR – 20355.***

Jurisdiction can also be likened to the foetus and placenta. Once the placenta is severed, the foetus’ source of oxygen terminates and the resultant effect is suffocation with eminent looming danger of death.

From the Complaint as quoted above, it is obvious that the Lower Court has inherent jurisdiction to have entertained this Suit. We so hold.

On whether the Trial Court was correct in holding that the evidence of the Respondents were unchallenged and uncontroverted despite none evaluation of the evidence and therefore not perverse.

It is the law that Trial Court alone has the primary function of fully considering the totality of evidence placed before it, ascribe probative value to it, put same on the imaginary scale of justice to determine the party in whose favour the balance tilts, make the necessary findings of fact flowing there from, apply the relevant law to the findings and come to a logical conclusion. The evaluation of evidence remains the exclusive preserve of the Trial Court because of its singular opportunity of hearing and watching the demeanor of witnesses as they

testify and thus, it is the Court at is best suited to access their credibility.

MINI LODGE LTD VS NGEI (2010) ALL FWLR (Pt. 506) 1806 at 1820 – 1821 Paragraph. E – A.

From the records of proceedings before us, the Learned Trial Judge evaluated the evidence of witness before him at Pages 33 – 39 of the records.

At Pages 33 – 35, the Learned Trial Judge evaluated the evidence of PW1 (Abdullahi Sarki Zangu) and also evaluated the cross examination by the Learned Counsel for the Defendant now the Appellant.

At page 35 the Trial Judge evaluated the evidence of PW2 (Umar Farouk Musa).

Indeed, in the evaluation of evidence, the central focus expected of a Trial Court is to see whether it made proper findings upon the facts pleaded before it. It is also expected of the court to consider the totality of the entire

evidence and the case before it to arrive at the just determination of the issues in contention.

From the above therefore, it is our Judgment that the Trial Court properly evaluated evidence placed before it.

Clearly, Appellant embarked on a frolic of conjecturing how evaluation ought to be made.

Appellant's understanding is most misconceived and hallucinating..lacken in merit, this appeal is bound to fail and be dismissed.

It is accordingly so dismissed.

HON JUSTICE Y. HALILU
Presiding Judge
5th December, 2019

HON JUSTICE V.S GABA
Hon. Judge
5th December, 2019