

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 24TH DAY FEBRUARY, 2021

BEFORE: HON. JUSTICE M. A. NASIR

COURT NO: 9

SUIT NO: CV/933/2020

BETWEEN:

1. OSYCHRIS INDUSTRIES NIG. LTD

2. COSCHARIS MOTORS LTD

CLAIMANTS/RESPONDENTS

AND

1. THE NIGERIA CORRECTIONAL SERVICE

2. COMPTROLLER GENERAL NIGERIAN

CORRECTIONAL SERVICE



DEFENDANTS/APPLICANTS

RULING

Before this Court is a notice of preliminary objection dated 10/8/2020 and brought pursuant to Order 43 of the Rules of this Court. The defendants are praying this Court for an order striking out this suit for lack of jurisdiction to entertain same. The application is supported by an affidavit of 7 paragraphs deposed to by one Mathias Simon. In

support is a written address duly adopted by **Unyime Ebuk Esq.**

Learned counsel submitted that jurisdiction is a threshold issue which must be disposed of as soon as it is raised and jurisdiction must be guided by the claimants claim. Upon discovering any deficiency in terms of jurisdictional competence to hear and determine any dispute presented before it, the Court must in declining jurisdiction, strike out the subject of the suit in its entirety. Counsel further argued that the Federal High Court has exclusive jurisdiction on issues pertaining to Federal government and its various agencies by virtue of Section 251(1)(p) of the 1999 Constitution (as amended). He added that the claimants claim which is strongly denied by the defendants falls under the exclusive jurisdiction of the Federal High Court. That the defendants never entered into a contractual relationship with the claimants and therefore this Court has no jurisdiction to entertain this suit. He

urged the Court to strike out this suit. He cited the following authorities:

- Bronik Motors vs. Wema B Ltd (1983) 1 SCNJLR
- Magaji vs. Maotori (2008) 8 NWLR (part 670) 772
- I.T.T.P Ltd vs. U.B.N (2000) 12 NWLR (part 995)
- Lakanmi vs. Adene (2003) 10 NWLR (part 828) 356 at 367
- NEPA vs. Mr. B. Edegbero & 15 ors (SC.37/2001)
- Socio Political Research Dev. Vs. F.C.T & 2 ors LPELR – 45708
- Universal Oil Ltd vs. NDIC (2008) 13 FWLR 437
- Albert Afegbai vs. A.G. Edo State & 1 or (SC.1111/96).

Learned counsel to the claimant **Prince Orji Nwafor – Orizu Esq** filed a reply to the preliminary objection dated 13/11/2020 and same was duly adopted by **S.N. Anichebe Esq.** Counsel submitted relying on the case of **Dec Oil & Gas vs. Shell (Nig) Gas Ltd (2019) LPELR – 49347 (SC)** to state that reference to the parties being Federal Government or

its agencies do not alone confer jurisdiction on the Federal High Court as it must also be shown further that the subject matter of the suit is within items contained in the list set out in paragraph 251(1) of the Constitution. He added that the claim before the Court is that of simple contract, thus only the state High Court can determine such cases. He urged the Court to dismiss the preliminary objection. Reference was made to the following authorities:

- PDP vs. Sylva (2012) 13 NWLR (part 1316) 85 at 138
- Onuorah vs. Kaduna Refining & Petrochemical (2005) LPELR – 2707 (SC)

The whole issue of jurisdiction which has been raised by the applicant is a threshold issue and it is the authority which a Court has to decide matters that are litigated before it, or to take cognizance of matters presented in a formal way for its decision. It goes to the root of adjudication and touches on the competence of the Court to entertain the matter. See Mobil Producing (Nig) Unlimited

vs. LASEPA (2002) 18 NWLR (part 798) page 1 at 32, State vs. Onagoruwa (1992) 2 NWLR (part 221) page 33 at 58 – 59 (SC), Katto vs. CBN (1991) 9 NWLR (part 214) page 126 at 149 (SC) Arjay Ltd vs. A.M.S. Ltd (2003) 7 NWLR (part 820) page 577,.

When it comes to jurisdiction of a Court it is the nature of the claim that determines the jurisdiction of the Court. This is the position of the Supreme Court in Gafar vs. Kwara State Govt. (2007) 29 NSCQLR page 71 it was held Per Ogbuagu JSC:

“Jurisdiction implies the power or authority of a Court, to adjudicate over a particular subject matter. As I already stated in this judgment, the nature of the claim determines the jurisdiction of the Court. Also to be always borne in mind, is that in this country, all the Courts without exception, have no power to prescribe jurisdiction to

themselves. Neither do they have the power to expand or reduce their area of jurisdiction”

The claim of the claimant before this Court is for the sum of N49 Million being the outstanding and unpaid sum for the supply of 1,160 number motorcycles supplied to the defendants, claim for loss of use of the amount, damages for breach of contract and cost as well as interest.

This Court is at one with the submission of learned counsel to the applicant that it is the Statement of Claim that confers jurisdiction on the Court and not the Statement of Defence as erroneously conceived by the applicant. It is the Statement of Claim and nothing else that the Court should concern itself with.

The question herein is whether the claim is one of simple contract to cloth this Court with jurisdiction.

The Federal High Court is a special Court with exclusive jurisdiction limited to those items specified under

Section 251 of the 1999 Constitution, and any other jurisdiction as may be conferred upon it by an Act of the National Assembly. The apex Court in Socio - Political Research Development vs. Ministry of FCT & ors (2018) LPELR - 45708 (SC) had this to say:

“A Court must not while interpreting the provisions of Section 251 of the Constitution, and any other statutes whose wordings are very clear and unambiguous import into them something which is not contained in them. Section 251, has clearly made provisions for actions against Federal Government or any of its agencies in any other Court in the proviso after sub - paragraph (s) which reads thus:- ‘provided that nothing in the provisions of paragraphs (p), (q) and (r) of this subsection shall prevent a person from seeking redress against the Federal Government or any of its agencies in an action for damages, injunction or

specific performance where the action is based on any enactment, law or equity.’ There is not any scintilla of doubt therefore, that since the claim of the plaintiff/appellant is based on simple contract, breach of which would involve damages, the High Court of the Federal Capital Territory and not the Federal High Court is the appropriate Court for the settlement of such disputes.”

It is my considered view therefore and I hold that the claim before the Court does not fall within the ambit of Section 251(1)(p) of the 1999 Constitution as it does not touch on the administration or the management and control of the defendant. It is a claim that borders on breach of contract and damages for same. It is a case of simple contract. In Onourah vs. K.R.P.C. Ltd (2005) 6 NWLR (part 921) 393 at 405 it was held that the jurisdiction of the Federal High Court does not admit of matters of simple contracts between parties.

In the circumstance, I hold that this Court has jurisdiction to entertain this suit and the preliminary objection is overruled and accordingly dismissed.

Signed
Honourable Judge

Appearances:

S.N. Anichebe Esq – for the claimant, with him C.O. Nwaka
(Miss)

Unyime Ebuk Esq – for the 1st and 2nd defendants