

IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIERO,
ON THURSDAY THE
25TH DAY OF JULY, 2024.

BETWEEN: **SUIT NO. B/65/2023**
GINIKANWA NKECHI OYEKA-AGBONTAEN - CLAIMANT/RESPONDENT
AND
UNITY BANK PLC -----DEFENDANT/APPLICANT

RULING

This is a Ruling on a Motion on Notice brought pursuant to ***Order 40 Rule 2 of the Edo State High Court (Civil Procedure) Rules 2018*** and under the inherent jurisdiction of this court praying this court for an order striking out/dismissing this suit for lack of jurisdiction to hear and determine the cause of action as stated in the Claimant/Respondent's Writ of Summons and Statement of Claim.

The ground for this application is that this Court lacks the jurisdiction to entertain this suit as the cause of action is predicated on employee/employer work place relationship which said matter is vested exclusively on the National Industrial Court of Nigeria under ***section 254(c) of the 1999 Constitution of the Federal Republic of Nigeria as amended.***

The application is supported by an affidavit of 7 paragraphs and the written address of the learned counsel for the Defendant/Applicant.

Succinctly put, the facts of this case are that the Claimant/Respondent was an employee of the Defendant/Applicant. She filed this suit before this court on January 27, 2023 alleging that on July 31st, 2018 her appointment with the Defendant/Applicant was terminated without any justifiable ground and her severance benefits were not paid.

She alleged that on February 26th, 2021 several debits were passed into her salary account which said debits has plunged her salary account into debit and made it difficult for her to access credit facilities from other banks.

Upon receipt of the Claimant's Writ of Summons and Statement of Claim, the Defendant/Applicant filed their Memorandum of Appearance and Statement of Defence. In paragraph 10 of their Statement of Defence, the Defendant/Applicant contended that this Court lacks the jurisdiction to entertain this suit as the exclusive jurisdiction to entertain same is vested in the National Industrial Court.

That point of law on the jurisdiction of this Court to entertain this suit is the subject matter of this application.

In his written address, the learned counsel for the Defendant/Applicant, *S.O.Onokpachere Esq.* formulated a sole issue for determination as follows:

“Whether taking into consideration the provisions of Section 254(c) of the 1999 Constitution of the Federal Republic of Nigeria as amended this court has jurisdiction to entertain this suit.”

Arguing the sole issue for determination, the learned counsel posited that the power of this court to exercise jurisdiction is clearly stated in *Section 272 of the 1999 Constitution of the Federal Republic of Nigeria as amended*, while the jurisdiction of the National Industrial Court is stated in *Section 254C of the 1999 Constitution*. He maintained that the jurisdiction of the National Industrial Court is exclusive and cannot be exercised by any other court in Nigeria.

He said that the said *section 254C* states as follows:

“[1]Notwithstanding the provisions of sections 251, 257, 272 and anything contained in this Constitution and in addition to such other jurisdictions as may be conferred upon it by an act of the National Assembly, the National Industrial

Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters:

[a] relating to or connected with any labour employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith”.

He said that a look at the pleadings of the Claimant/Respondent as stated in her Statement of Claim clearly shows that she was an employee of the Defendant/Applicant and that she maintained a salary account from which some sums were debited by the Defendant/Applicant after her disengagement from the services of the Defendant/Applicant. He said that the cause of action is clearly one that is work place related/connected by reason of her employment in the services of the Defendant/Applicant, thus, the cause of action is employment related.

Counsel submitted that it is the cause of action presented by the Claimant/Respondent in her Writ of Summons and Statement of Claim that determines whether or not the court has jurisdiction to try the case and he relied on the following cases: ***GOLDMARK NIG LTD V. IBAFON CO. LTD [2012] 10 NWLR 291 [SC]; TRADE BANK PLC V. BENILUX NIG LTD [2003] 9 NWLR [PT. 825] 416; and ONUORAH V. K.R.P.C LTD [2005] 6 NWLR [PT.921] 393.***

He submitted that jurisdiction is crucial to every proceeding and if a court decides a case without jurisdiction, it would have embarked on an abortive exercise. He said that the issue of jurisdiction must be resolved at the earliest opportunity See ***ODEH V. AMEH [2004] 4 NWLR [PT.863] 309;***and ***SHITTA-BEY V. A.G FEDERATION [1998] 10 NWLR [PT.570] 392.***

He posited that for a court to competently assume jurisdiction over a matter, there are three vital elements that must be present:

- 1) It must be properly constituted as regards members of the bench none of which is for any reason disqualified;
- 2) The subject matter of the case is within the court’s jurisdiction and there is no feature in the case which prevents the court exercising its jurisdiction;

- 3) The case before the court must be initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.

See *MADUKOLU V. NKEMDILIM [1962] 1 ALL NLR [PT 4] 587; UCHENNA AMAKEZE V. NZE PET COMPANY NIG. LTD & ANOR. [2021] ALL FWLR [PT 1076] 180.*

He posited that from the averments in the Statement of Claim, it is very clear that the dispute or grievance arose from an employer/employee relationship. That being the case, the competent court to hear this case is the National Industrial Court. He referred the Court to the case of *MEDICAL AND HEALTH WORKERS V. EHIGIEGBA [2019] ALL FWLR [PT 997] 37* where the Court of Appeal held that defamation in a work place fell within the exclusive jurisdiction of the National Industrial Court by reason of the provision of *section 254 of the 1999 Constitution as amended.*

In conclusion, he urged the Court to hold that this case relates to dispute from a work place relationship and consequently decline jurisdiction to entertain it and to strike out the suit.

In opposition to this motion, the Claimant/Respondent filed a Counter-Affidavit of 9 paragraphs and a written address of her counsel.

In his written address, the learned counsel for the Claimant/Respondent, *P.O. Ogun Esq.* formulated four issues for determination as follows:

- 1) *Whether the Defendant's motion of 24/10/2023 is not incompetent;*
- 2) *Whether there is merit in the defendant's application before this Honourable Court;*
- 3) *Whether the Defendant's application is valid in view of the Claimant's amendment of her processes; and*
- 4) *Whether the Court is not vested with jurisdiction.*

Arguing the four issues together, the learned counsel submitted that the Defendant's motion dated 16/10/2023 but filed on the 24/10/2023 is incompetent for non-compliance with the rules of this Honourable Court.

He said that *Order 40 Rule 2 (4) of the High Court (Civil Procedure) Rules 2018* expressly provides as follows:

“Every application shall be served within Five days of filing. Failure to serve the application by person under Order 7 Rule 1(3) within the stipulated period shall attract a penalty of N500 for each day of default”

He alleged that the Defendant's filed the said motion on notice on the 24/10/2023 but failed to serve it on the Claimant within the time prescribed by law, as the motion was served on the Claimant on the 8/11/2023, by virtue of which the defendant was in default of 10 days which attract a default fee of N5, 000 which default the Defendant is yet to pay.

He therefore urged the Court to dismiss the Defendant's application for being incompetent.

Furthermore, learned counsel submitted that the Claimant's claim in her amended statement of claim and Writ of Summons is against the Defendant's defamatory action/fraudulent transaction against the Claimant which portrays the Claimant falsely as a debtor when in actual fact she is not in any way indebted to the Defendant.

He submitted that the Claimant's case against the Defendant is not labour related because the Claimant is no longer in the employment of the Defendant nor is she asking for any benefit/remuneration from the Defendant in her amended Writ/Statement of claim, pending before this Court, Rather, she is aggrieved that the Defendant has tarnished her image by virtue of its defamatory transaction/report which Defendant made available to the Credit Bureau maliciously denting her image as someone who is not loan worthy.

He submitted that the Claimant's case falls within the realm of tort and it is a well-established principle of law that it is not mandatory for litigants to bring their action under a known head of tort. They only have a duty to show that a wrongful

act was committed. See *OKEKE V PETMAG NIG LTD (2005) 4 NWLR (PT915) PG 245*.

He submitted that a wrong must not necessarily be remediable under a known head of tort before it is justifiable and he cited the case of *LABODE V OTUBU (2001) 7 NWLR (PT 712)256*.

In the light of the above, counsel submitted that *Section 254C of the 1999 Constitution as amended* which the Defendant is relying on is not applicable to the Claimant's cause of action/reliefs which is anchored on the defamatory action of the Defendant against the Claimant as expressed in the amended Writ of summons and Statement of Claim.

Finally, counsel submitted that by virtue of the provisions of *Section 272 (1) of the Constitution of the Federal Republic of Nigeria*, this court is vested with the requisite jurisdiction to try this case, which is founded on Tort. He therefore urged the Court to dismiss this motion.

I have carefully considered all the processes filed in this application, together with the arguments of the learned counsel for the parties. The sole issue for determination in this application is: *Whether this Court has Jurisdiction to entertain this Suit?*

Essentially, this issue is concerned with whether the High Court or the National Industrial Court has jurisdiction over the substantive suit.

The issue of jurisdiction is fundamental and pivotal to any proceedings. It has been described as the life blood of any adjudication. It is the fiat, the stamp of authority to adjudicate. See: *Katto vs. C.B.N (1991) 11-12 S.C 176*.

A Court can claim to have jurisdiction in respect of a matter if:

- 1) It is properly constituted as regards members and qualifications of the members of the Bench and no member is disqualified for one reason or another;*
- 2) The subject matter of the case is within its jurisdiction and there is no feature of the case which prevents the Court from exercising its jurisdiction; and*

3) *The case comes up before the Court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of the jurisdiction.*

In support of the foregoing, see the following decisions on the point:

Madukolu vs. Nkemdilim (1962) 1 All NLR 587; Dangana & Anor vs. Usman & 4 Ors (2012) 2 S.C. (Pt.111) 103; and WESTERN STEEL WORKS LTD vs. IRON STEEL WORKERS UNION (1986) 3 NWLR Part 30d Pg. 617 D-H, 628.

It is an elementary principle of law that the issue of jurisdiction can be raised at any stage of the proceedings. It can even be raised by the Court *suo motu*. See: *SLB Consortium Ltd. vs. NNPC (2011) 9 NWLR (Pt.1252) 317 at 335.*

In determining the issue of jurisdiction, it is the Claimant's originating processes that are to be considered. See: *Okorochoa vs. UBA Plc. (2011) 1NWLR (Pt.1228) 348 at 373; and A.G. Federation vs. A.G.Abia (2001) 11NWLR (Pt.725) 689 at 740.*

Furthermore, it is settled law that it is the statute creating the Court that determines the jurisdiction of that court. See: *Chief Daniel Awodele Oloba vs. Isaac Olubodu Akereja (1998) 7 S.C.(Pt.1) 1 at 21.*

In the instant case the learned counsel for the Defendant/Applicant, relying heavily on the provisions of the relevant statutes creating the National Industrial Court, has contended that the said Court has exclusive jurisdiction over this matter.

As earlier stated, in determining the issue of jurisdiction, it is the Claimant's originating processes that are to be considered. See: *Okorochoa vs. UBA Plc. (2011) 1NWLR (Pt.1228) 348 at 373; and A.G. Federation vs. A.G. Abia (2001) 11NWLR (Pt.725) 689 at 740.*

The learned counsel for the Defendant/Applicant has submitted that the claims as presently constituted falls within the provisions of *Section 254 C*, so this Court lacks jurisdiction as same has been expressly taken away by the aforesaid section.

Specifically the jurisdiction of the National Industrial Court is as enshrined in *Section 254 C of the 1999 Nigerian Constitution (Third Alteration) Act, 2010 No. 3.*

For the avoidance of doubt, *section 254 C(1) (a)* provides as follows:

“254. (1) Notwithstanding the provisions of sections 251, 257, 272 and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters-

a) relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith;”

In order to determine whether the Claimant’s claims fall within the provisions of *Section 254 C (1)*, we need to examine them closely. For the avoidance of doubt, the Claimant’s claims against the Defendant are as *inter-alia* follows:

“a. A declaration of the Court that the Defendant’s action was done in bad faith is illegal and has grossly affected the Claimant’s financial interest negatively;

b. A declaration of the Court that the Claimant having served in the Defendant’s establishment without blemish and consequently relieved of her employment is entitled to severance benefits...”

Essentially, in the substantive suit, the Claimant is seeking some reliefs in respect of some amounts deducted from her account arising from her employment with the Defendant. A careful examination of the above claims will reveal that they are in respect of some of the Claimant’s entitlement due to her from the Defendant such as her severance benefits.

The learned counsel for the Claimant has forcefully contended that that this court has the jurisdiction to entertain this suit because the Claimant was no longer an employee of the Defendant as at the time this suit was filed and that the subject matter of the suit is simply in Tort. Upon a careful examination of the Claims as contained in the Statement of Claim, I think the subject matter of the substantive suit is more of contract of employment than in the alleged tort of defamation. The substantive suit is basically an off-shoot of the Claimant’s contract of employment

with the Defendant. In essence the matters to be decided in the substantive suit are matters arising from the work place as envisaged by the provisions of **section 254 C(1) (a) of the Constitution** which falls within the exclusive jurisdiction of the National Industrial Court.

Incidentally, in the case of the case of **MEDICAL AND HEALTH WORKERS V. EHIGIEGBA [2019] ALL FWLR [PT 997] 37** aptly cited by the learned counsel for the Defendant/Applicant, the Court of Appeal held that defamation in a work place fell within the exclusive jurisdiction of the National Industrial Court by virtue of the provisions of **section 254 of the 1999 Constitution as amended**.

While opposing this application, the learned counsel for the Claimant/Respondent challenged the competence of this application on the ground that the Defendant is having an outstanding default fees of N5, 000.00 (Five Thousand Naira) in respect of this motion.

The courts have divergent views on the implications on non-payment of default fees. Some courts hold the view that once filing fees are not paid, the Court cannot countenance such process. See the case of **Onwugbufor v. Okoye (1996) 1 NWLR (Pt.424) 252**.

There is however another opinion which views processes in which filing fees have not fully been paid as being a mere irregularity. In the case of **Akpaji vs. Udemba (2009) 2-3 SC (PT 11) 1, (2009) 6 NWLR (PT 1138) 545** the Supreme Court, per **Ogbuagu, JSC** described the non-payment in full of the prescribed fees as a mere irregularity and that it did not vitiate the proceedings, having nothing to do with the jurisdiction of the trial Court. That all that the trial judge ought to have done in the circumstance was to direct and allow the Appellant time to pay the balance of the appropriate penalty fees. This approach emphasizes that inadequate filing fees have been paid. See also: **Lawal vs. Odejimi (1963) All NLR 569; ACB vs. Henshaw (1990) 1 NWLR (PT 129) 646 at 659**.

I will follow the liberal approach and direct that the Defendant/Applicant should pay the outstanding default fees if any.

In conclusion, I am of the view that the instant suit falls within the provision of **Section 254 C of the Constitution** which vests exclusive jurisdiction on the

National Industrial Court. *This Court lacks the jurisdiction to entertain the substantive suit. In the event, I resolve the sole Issue for Determination in favour of the Defendant/Applicant. This suit is accordingly struck out with N50, 000.00 (Fifty Thousand Naira) costs in favour of the Defendant/Applicant.*

P.A.AKHIHIRO
JUDGE
25/7/2024

COUNSEL:

S.O. ONOKPACHERE ESQ.....DEFENDANT/APPLICANT

P.O. OGUN ESQ.....CLAIMANT/RESPONDENT