

OLUSHOLA & ANOR

V.

FRIDAY

COURT OF APPEAL · CA/B/266B/2017 · 19 NOV 2021 · NIGERIA

CORAM

**BIOBELE ABRAHAM GEORGEWILL, JCA JOSEPH EYO EKANEM, JCA
ABIMBOLA OSARUGUE OBASEKI-ADEJUMO, JCA**

Summary of Facts

The Respondent, a security officer formerly employed by the 2nd Appellant, was prosecuted (and discharged) for theft of employer's property; he subsequently brought claims in the High Court for malicious prosecution, loss of income, and general damages.

The Appellants challenged the High Court's jurisdiction, arguing that by virtue of Section 254C(1)(a) of the 1999 Constitution (as amended) and Section 7(1)(a) of the National Industrial Court Act, only the National Industrial Court (NIC) had jurisdiction because the claims related to employment.

The High Court overruled the preliminary objection, holding that the gravamen of the action—malicious prosecution—was not an employment matter within the exclusive purview of the NIC.

On appeal, the Court of Appeal held that jurisdiction is determined by the main claim, not ancillary reliefs; since malicious prosecution is a tort within the jurisdiction of the State High Court (Section 272(1) CFRN 1999), the NIC's exclusive jurisdiction was not triggered.

The ancillary relief of loss of income was deemed consequential to the main claim for malicious prosecution, and the High Court was competent to hear both, avoiding a severance of claims and multiplicity of proceedings.

Appeal dismissed; the decision of the High Court affirmed, with direction for accelerated hearing and costs awarded to the Respondent.

ABIMBOLA OSARUGUE OBASEKI-ADEJUMO, J.C.A. (Delivering the Leading Judgment): This appeal stems from the ruling of *Hon. Justice P. A. Akhiehiero* of the High Court of Edo State, Agenebode Judicial Division delivered

on the 24th day of April, 2017 in Suit No. HAG/18/2016 wherein the Respondent claimed against the Appellants the following reliefs;

(a) A Declaration that the prosecution of the Respondent at Magistrate's Court, Okpella in Suit No. MCO/19C/2014 at the instance of the Appellants is malicious.

(b) The sum of N117,229.42 as loss of income per month from the 1st January, 2015 until judgment is delivered.

(c) N50,000,000. 00 (Fifty Million Naira) being general damages for the malicious prosecution at the Chief Magistrate's Court, Okpella in MCO/19C/2014.

SUMMARY OF FACTS

The 2nd Appellant was/is the employer of the following people;

1. Adeniyi Olushola (1st Appellant) 2. Eshieshi Andrew (Respondent) 3. Giwa Friday 4. Billa Saliu 5. Adolphus Yakubu who worked as Security officers for the 2nd Appellant.

There was an incident of stealing of 40 pieces of Perry wood belonging to the 2nd Appellant. Policemen were invited to investigate the matter, and the above employees were involved and subsequently arraigned by the Police before the Chief Magistrate's Court, Okpella, in Etsakor East Local Government Area of Edo State in charge No. MCO/19C/2014. At the end of the trial, the said persons were discharged and acquitted.

By a statement of claim dated 21st day of October, 2016, the Claimants in their actions consolidated by trial Court on Monday the 28th day of February, 2017 as Suits No. HAG/18/2016, HAG/19/2016 and HAG/20/2016 claimed three reliefs against the Defendants, namely Malicious Prosecution, Loss of Income and Damages.

The Appellants/Defendant filed a preliminary objection challenging the jurisdiction of the High Court of Justice, Agenebode to entertain the suit based on Section 254C (1) (a) of the 1999 Constitution of the Federal Republic of Nigeria. The trial Court after receiving argument from both parties held that it has jurisdiction.

Aggrieved with the lower Court's judgment, the Appellants filed their notice of appeal dated 3rd May, 2017 and their brief of argument on 10th July, 2017 settled by Oluleye Sokale Esq of DOTUN SOKALE and CO wherein a sole issue was formulated for determination;

“Whether the learned trial Judge was right when he held that he has jurisdiction to entertain the claims of the Respondent which are connected to his employment in a matter which arose from his work place.”

In like manner, the Respondent filed their brief on 16th November, 2017 settled by A. R. Bello Esq of ODIFIRIS, ODIFIRIS LAW HOUSE wherein the sole issue formulated by the Appellants was adopted.

APPELLANTS’ SUBMISSIONS

Counsel to the Appellants submits that the sole issue borders on jurisdiction and the law mandatorily commands that a Court prime attention to jurisdictional question when raised. Jurisdiction which connotes the authority of a Court to entertain a matter placed before it, is very fundamental to adjudication because where a Court is robbed of jurisdiction, decides a matter, its proceedings, no matter the quantum of brilliance, industry, diligence or dexterity, exhibited and invested in it, it amounts to a nullity; **NUHU v. OGELE (2004) FWLR PART (193) 362 @ 385 para A; OLUTOLA v. UNIVERSITY OF ILORIN (2005) ALL FWLR Part (2450 1151 @ 1169 paras C–E; BILJA v. JIME (2017) ALL FWLR (Part 86) 323 at 334–335 paras E–A.**

Counsel further submitted that a Court is guided by the claim before it in considering whether a Court has jurisdiction to entertain any matter, by critically looking at the writ summons and the statement of claim, **ADEYEMI v. OPEYORI (1976) 9–10 SC. 31; UWAZURIKE v. NWACHUKWU (2013) ALL FWLR (Part 680) 1205 @ 1222 paras G–H; DICKSON v. SYLVA (2017) ALL FWLR (PART 874) 1857 at 1894 para G; GOVERNOR AKWA IBOM STATE v. AKPAN (2017) ALL FWLR (Part 874) 1916 at 1945 para D.**

That the monthly salary is detached from malicious prosecution and the consequential general damages claimed and the subject matter of the suit filed by the Respondent relates to labour, that is, the employment and entitlement.

Counsel contends that from the statement of claim, the subject matter of the suit falls within the exclusive jurisdiction of the National Industrial Court and not the High Court. He cited Section 254 C (1) (a) & 3 of the 1999 Constitution (Third Alteration Act, 2010); **COCA–COLA NIG. LTD v. AKINSANYA (2013) 18 NWLR Part 1386, part 2** Section 7 (1) (a) of the National Industrial Court Act, 2006 in submitting that it is the National Industrial Court that has exclusive jurisdiction on the matters arising from workplace and matters incidental thereto or connected therewith.

Counsel further submits that no litigant can confer jurisdiction in the Court where the constitution or statute or any provision of the common law says that the Court

shall have no jurisdiction; **OWNERS OF MY GRANDE ATLANTICO v. EZEANOCHIKA (2013) ALL FWLR PART (680) 1414 AT 1424 PARA D.**

In conclusion, Counsel opines that where a Court is divested of the jurisdiction to determine a matter on appeal, the order to make is one of striking out the matter; **BIJIA v. JIME (SUPRA); FEDERAL POLY, MUBI v. DINGOLI (2014) 16 NWLR (PART 1433) 371 AT 391 PARA G.**

RESPONDENT'S SUBMISSIONS

Respondent's Counsel submits that the Appellants misconstrued the judicial and statutory authorities on the exclusive jurisdiction of the National Industrial Court.

Counsel further submits that the jurisdiction of the Court can be deduced from the facts of the case, and the National Industrial Court can only have exclusive jurisdiction in trade disputes and the subject matter of the cause of action relates to the terms of employment of the worker. **NATIONAL UNION OF ROAD TRANSPORT WORKERS v. OGBODO and ORS (1998) 2 NWLR (PT. 537) 189 AT 197; NATIONAL UNION OF ELECTRICITY EMPLOYEES and ANOR v. BUREAU OF PUBLIC ENTERPRISE (2010) 2 NMLR 291.**

Counsel contends that the claim is for malicious prosecution and the use of words like "employment" "remuneration" and "loss of income" does not automatically oust the jurisdiction of this Court. That in order to ground the jurisdiction of the National industrial Court it must be established that the subject matter comes within the provisions of Section 47 (1) of the Trade Dispute (Amendment) Act, 1992. It must be strictly constructed as these provisions seemly impinge on the unlimited jurisdiction of the state High Court; **OSOH v. UNITY BANK PLC (2015) EJSC VOL. 7 PG 108 AT 117; CA/B/401/2013 MEDICAL AND HEALTH WORKERS UNION OF NIGERIA (MAHWUN) v. DR. ALFRED EHIGIEGBA** were cited in aid and in further submitting that the case of malicious prosecution pending before this Court cannot be said to be related/connected with the issues of employment.

In conclusion, Counsel urged that issue(s) be resolved against the Appellant because the tort of malicious prosecution is not connected to the employment of the Respondent within the meaning of Section 254 C of the Alteration Act to the Constitution of the Federal Republic of Nigeria, 1999.

RESOLUTION

The contention in this suit is whether the lower Court has the requisite jurisdiction to hear and determine this suit?

The jurisdiction of a Court is a fundamental and pivotal issue of any proceedings or matter, it goes to the root. It has been described as the lifeblood of any adjudication. It is the fiat, the stamp of authority to adjudicate, see **THE SHELL**

PETROLEUM DEVELOPMENT COMPANY OF NIGERIA v. CHIEF. ANARO and ORS (2015) 12 NWLR (1472) P. 122, where KEKERE-EKUN, JSC held that;

“The issue of jurisdiction is the lifeblood of any adjudication; it is so fundamental that it must be resolved before any other step is taken in the proceedings. Jurisdiction goes to the competence of the Court or Tribunal to entertain a cause or matter. Any proceedings conducted without jurisdiction would amount to a nullity and any decision reached therein is liable to be set aside.”

See also: **EZE v. PDP and ORS (2018) LPELR-44907 (SC); NDUUL v. WAYO and ORS (2018) LPELR-45151 (SC); AG FEDERATION v. AG ANAMBRA STATE (2017) LPELR-43491 (SC).**

In determining jurisdiction of a Court recourse would be had to the Claimant’s originating processes, see **OLUGBEMI v. LAWERENCE and ORS (2017) LPELR – 42361 (SC);**

“It is settled that jurisdiction of a Court is determined by the Plaintiff’s claims rather than a Defendant’s Statement of Defence. In other words, it is the claim before the Court that is examined to see whether it comes within the jurisdiction conferred on it...”

This honourable Court in **DR. LOUIS NONYE OBODO v. PEOPLES DEMOCRATIC PARTY and ORS (2014) LPELR-22828 (CA)** also held that;

“The law remains settled that it is the claim of the Plaintiff that determines the jurisdiction and since this matter was commenced by originating summons, it is the endorsements therein and the Affidavit in support that will determine the jurisdiction of the Court. See 1. ABIA STATE INDEPENDENT COMMISSION v. CHIEF OKECHI KANU and ORS (2013) 12 SCM 46 at 52 G–H per I. T MUHAMMED, JSC 2. PEOPLES DEMOCRATIC PARTY v. TIMIPRE SYLVA and ORS 13 NWLR (Pt. 1316) 85 at 127 E per RHODES-VIVOUR, JSC who held:

“Jurisdiction of a Court to entertain a suit is resolved by scrupulous examination for the writ of summons, the statement claim and the reliefs claimed. No other document should be examined, where the originating process is an originating summons serves as the plaintiff’s pleadings (statement of claim). Jurisdiction would be resolved by originating summons, the reliefs contained therein and the affidavit filed in support.” per IGE, JCA (PP. 20-21; PARAS C–B).

See also; **OHAKIM v. AGBASO (2010) 19 NWLR (PT. 1226) 172 SC; ELELU-HABEEB v. AG FED. (2012) 13 NWLR (Pt. 1318) 423 SC; EMEKA v. OKOROAFOR and ORS (2017) LPELR-41738 (SC); LAU v. PDP and ORS (2017) LPELR-42800 (SC).**

The Respondent/Claimant in his statement of claim claimed the following;

18. WHEREFORE, the Claimant claims against the Defendants jointly and severally as follows:

(a) A DECLARATION that the prosecution of the Claimant herein at Magistrate's Court, Okpella in MCO/19C/2014 at the instance of the Defendants is malicious.

(b) SPECIAL DAMAGES of N117,229.42 (One Hundred and Seventeen Thousand, Two Hundred and Twenty-Nine Naira, Forty-two Kobo) only being lost of income per month until judgment is delivered.

PARTICULARS OF SPECIAL DAMAGES

(i) N117,229.42 as Claimant's loss income of income per month from the 1/1/2015 until judgment is delivered.

(c) N50,000,000. 00 (Fifty Million Naira) being general damages for the malicious prosecution of the Claimants at the Magistrate's Court, Okpella in MCO/19C/2014.

See pages 172–173 of the record.

From the facts of the case as gleaned from the record before this Court, the Respondent with other security officers in the employ of the 2nd Appellant was arrested and arraigned in the suit MCO/19c/2014 for the theft of 40 pieces of Perry wood. The Respondent and the others at the end of trial were discharged and acquitted.

The Respondent's case is that the lower Court; High Court; Agenebode Judicial division is that his arraignment and prosecution at the Magistrate Court, Okpella was stimulated by malice ventilated on him by the 1st Appellant as a result of tribal rivalry.

The Respondent/Claimant in his statement of claim stated that;

8. The Claimant avers that the charge against him in Charge No. MCO/19C/2014 was actuated by malice by the Defendants.

PARTICULARS OF MALICE

i. That the allegations against him leading to Charge No. MCO/19C/2014 was groundless and false.

ii. That the 1st Defendant maliciously concocted the facts and made false allegations in the name of the 2nd Defendant leading to the charge against him.

iii. That the charge is as a product of the tribal superiority tussle between Claimant and the 1st Defendant in which the 2nd Defendant allow itself to be used to maliciously prosecute claimant.

iv. That the charges are groundless without modicum of truth

9. The Claimant avers that the 1st Defendant who is of the Yoruba tribe pride himself of his connection within the Nigeria Police Force and that he will use the connection to get the claimant prosecuted and convicted.

10. The Claimant avers that in fulfilment of the threat the 1st defendant even though knows Claimant was innocent ensured that he used his connection in the police force to get him arrested and prosecuted on groundless allegations.

11. The Claimant avers that the facts concocted and supplied to the police by the 1st defendant to influence the police to prosecute him are malicious falsehood and designed to make him undergo the harrowing experience of a prosecution...

13. The Claimants avers that immediately they were arraigned, the 1st Defendants as Chief security officer prevented him from gaining entrance to 2nd defendant's yard at okpella being the place of his employment.

14. The claimant avers that the defendants also stopped payment of his entitlements and monthly salary of N117,229.42 (One Hundred and Seventeen Thousand Two Hundred and Twenty-Nine Naira, Forty-two Kobo) only. An electronic print out evidencing Claimant's payment is here by pleaded."

See pages 171–172 of the record.

It is noteworthy to state that there are certain types of damages required to sustain an action for malicious prosecution;

i. Damage to his fame if the matter whereof he be accused be scandalous

ii. Damage to his person, whereby he is imprisoned

iii. Damage to his property, whereby he is put to charges and expenses. See MOHAMMED HAMZA MODDIBO v. MISS HADIZA ABDULMALIK (2016) LPELR–41614 (CA).

The Respondent claim was for malicious prosecution and from his writ of summons and statement of claim, the Respondent is stating that the institution of the suit MCO/19c/2014 led to the loss of his salary, entry to his place of work and basically employment.

Furthermore, it is settled law that it is the statute creating the Court that determines the jurisdiction of that Court.

In **OSI v. ACCORD PARTY and ORS (2016) LPELR–41388 (SC)** on what confers jurisdiction on a Court, it was held;

“...Jurisdiction is generally a creature of Statutes, Constitution or otherwise jurisdiction to conduct cases/appeals are donated or conferred by Statutes or the Constitution. Failure to comply with any statutory or constitution

provisions or the requirement prescribed by the relevant law under which an appeal may be competent and properly brought before the Court, will deprive such appellate Court of Jurisdiction to adjudicate on the appeal.

...It goes without saying therefore, that no Court has the power to confer or donate jurisdiction to itself. It must act within the preview or confines of the law. Similarly, jurisdiction can not be conferred on the Court by the parties. Jurisdiction of the Court is conferred, and cannot be circumvented. It is always governed by the Constitution or Statute creating it..." per SANUSI, JSC (PP. 15–16, PARA E).

Also in AZUBUOGU v. ORANEZI and ORS (2017) LPELR–42669 (SC) it was held;

“Firstly, jurisdiction of a Court is generally provided by a statute and/or the constitution. Any challenge to a Court’s jurisdiction, therefore, is resolved within the purview of the legislation that donates the jurisdiction to the Court...” per MUHAMMED, JSC (P. 13, PARAS. B – D).

See; AG LAGOS STATE v. AG OF FEDERATION (2014) 9 NWLR (pt 1412) 217–254; TIZA v. BEGHA (2006) 6 SC (PT. 11) 1 PAGE 1; GALADIMA v. TAMBAL (2000) 6 SC (PT. 1) 196.

The Appellants heavily contended that the subject matter of the suit relates to and is connected to labour (employment and entitlement) and the monthly salary is connected to his employment and they relied on Section 254 C (1) (a) of the 1999 Constitution (Third Alteration) Act, 2010 No. 3 which provides thus:

“Notwithstanding the provisions of Sections 251, 257, 272 and anything contained in the 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 cases and matters:

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

Part 2: Section 7 (1) (a) of the National Industrial Court Act, 2006 which provides thus:

“The Court shall have and exercise exclusive jurisdiction in civil cases and matters –

(a) relating to –

(ii) environment and conditions of work, health, safety and welfare of labour and matters incidental thereto.”

From the above provisions, it can rightly be deduced/concluded that the National Industrial Court have the exclusive jurisdiction on matters related to/connected with any labour, employment, trade union, industrial relation and matters arising from work place, the condition of service including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith.

While the High Court is vested with jurisdiction to hear and determine *any civil proceeding in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person*, see Section 272 (1) of the 1999 Constitution as amended.

To interpret the phrases; “matters arising from workplace”; “matters incidental thereto” and “or connected therewith to mean any matter arising from the work place or incidental to the work place or connected to the workplace can only be litigated upon at the National Industrial Court is a profligate interpretation and negate the principle of main claim determining the jurisdiction of the Court. This would invariable vest the National Industrial Court with a very wide and almost limitless exclusive jurisdiction in respect of civil matters that arise from the work place within any claim which are ancillary and stand on a determination of the main claim. This cannot be the intendment of the provisions. It will lead to severance of claims. This action has been couched in a manner that makes the main claim stand out and the other ancillary claims/reliefs stand or fall with it.

I am in agreement with the lower Court where it held that;

"...It will be stretching the interpretation of the statutes too far to hold that the jurisdiction of the lower Court has been ousted in a case of malicious prosecution simply because the Claimant is under the employment of the Defendants. I agree with the submissions of the learned counsel for the Claimant that the mere use of the words “employment” “remuneration” and “loss of income” does not automatically oust the jurisdiction of this Court”

See page 65 of the record.

The Respondent/Claimant’s grievance was not the loss of employment per se but for the action that lead to the loss, which was the suit at the Magistrate Court which he believed to be laced with malice. Whether or not the prosecution was malicious is for the lower Court to decide.

It is trite that the main claim decides the jurisdiction of a claim, it is in this vein that the apex Court has decided on whether a Court has jurisdiction to adjudicate over ancillary claims where it has no jurisdiction over the main claims.

In **ALHAJI ABDUL GAFAR v. THE GOVT OF KWARA STATE and ORS 2007 LPELR-8073 (SC)**;

“The law in this respect is also trite that where ancillary or incidental or accessory claim or claims are so inextricably tied to or bound up with the claims before the Court in a suit, a Court cannot adjudicate over them where it has no jurisdiction to entertain the main claims if such incidental or ancillary claims cannot be determined without a determination at the same time of the main claims or where the determination of such incidental or ancillary claims must necessarily involve a consideration or determination of the main claims. See TUKUR v. GOVT OF GONGOLA STATE (1989) 4 NWLR (PT117) 517 AT 546.” per MOHAMMED JSC.

In **BASIL EGBUONU v. BORNU RADIO TELEVISION CORPORATION (1997) LPELR-1040 (SC)**;

“It is pertinent to emphasise that it is the claim before the Court that has to be looked at or examined to ascertain whether it comes within the jurisdiction conferred on the Court. See Izenkwe v. Nnadozie 14 WACA 361 at 363; Adeyemi and amp; Ors. v. Opeyori (1976) 9-10 S.C. 31 at 51 and Tukur v. Government of Gongola State (1989) 4 NWLR (Pt.117) 517; (1989) All NLR 575 at 599.” per OGWUEGBU, J.S.C (PP. 19-20 PARAS. F) Therefore, in this matter the main claim is whether the action in Suit MCO/19C/2014 was Malicious; it is upon the successful proof of this main claim that the other claims which are incidentals to the main claim, and the damages upon the success sought for are the special and general damages.

In **PDP and ORS v. SEBASTINE and ORS (2014) LPELR -23364 (CA)**;

“The main or principal claim in the originating summons determines the jurisdiction of the Court to hear and determine the claims of plaintiff. See Raymond S. Dongtoe v. Civil Service Commission, Plateau State (2001) 4 SC (Pt.1) 43 at 46; Din v. Attorney-General of the Federation (1988) 4 NWLR (Pt.83) 147 and Borno Radio TV Corporation v. Basil Egbuonu (1991) 2 NWLR (Pt.171) 81 at 89.” per TUR, J.C.A (PP. 14 PARAS. B)

See also **PDP and ANOR v. SYLVA and ORS (2012) LPELR-7814 (SC)**, Rhodes-Vivour JSC held;

“A Court cannot hear and determine ancillary claim claims if it has no jurisdiction to entertain the main claims and if the ancillary claims will clearly involve substantial discussion of the main claims, Tukur v. Govt State of Gongola state 1989 4 NWLR pt 117 p517”

This matter is one of malicious prosecution and the Respondent’s loss of income which was stopped as a result of the prosecution is the consequential damages. The lower Court has jurisdiction over the main claim and the last ancillary therefore to suggest that the National industrial Court has jurisdiction over the issue of income from date of stoppage is to say that there should be severance of

claims, which cannot be inferred herein; should this claim be moved to the NIC. It is obvious that they cannot have jurisdiction over the main claim which is malicious persecution, this falls entirely under the purview of the High Courts and would lack jurisdiction to hear the claim in the first place.

From the cases cited and principles enunciated, it is without an iota of doubt that a Court with jurisdiction to hear the main claim here would determine the ancillary claim. Again, it would make nonsense of the jurisprudence of jurisdiction and Court's structure thereby casting a heavy financial burden and waste of time on the litigants in seeking justice, multiplicity of claims would arise and the justice system will be overburdened,

In addition, the ancillary reliefs are damages, special and general damages which follow the main claim if it succeeds; it has nothing to do with the intricacies of labour law.

I am of the firm view and agree with the lower Court that the High Court has jurisdiction to hear the entire claim and deal accordingly with the ancillary claims. This falls under the purview and jurisdiction of the State High Court.

Therefore, I resolve the sole issue in this appeal against the Appellants.

Having resolved the issues in this appeal in favour of the Respondent, this appeal lacks merit and is hereby dismissed.

The ruling of Hon. Justice P. A. Akhiero of the High Court of Edo State, Agenebode Judicial division delivered on the 24th day of April, 2017 is hereby affirmed.

The suit HAG/18/2016 is directed to be assigned to the Court of origin for accelerated hearing thereto.

Cost of N200,000 is awarded in favour of the Respondent.

BIOBELE ABRAHAM GEORGEWILL, J.C.A.: I have been privileged to read in advance, a copy of the draft of the leading judgment just delivered by my lord Abimbola Osarugue Obaseki-Adejumo, JCA., and I am in complete agreement with the lucid reasoning and impeccable conclusions reached therein which I hereby adopt as mine.

My lords, there are two aspects of this appeal that I thought I should say a word or two by way of contribution to the rich analysis in the leading judgment. Firstly, when an allegation of malicious prosecution is made by one party against the other, one of the most difficult to construe is the requirement of malice because of its often times subtle and latent nature and thus not easy to discern on the face

of a party. The word 'malice' is generally an emotive term, but in relation to the tort of malicious prosecution it means that the complaint leading to the arrest and prosecution of the party alleging malicious prosecution against the other party, and which prosecution had ended in his favor, was instituted or made primarily by the other party because of a purpose other than that of bringing an offender to the justice which he justly deserves.

It is thus the intentional doing of a wrongful act without legal justification and may in most cases be inferred from the absence of probable and reasonable cause. A note of caution, though, it does not necessarily mean and cannot necessarily be equated with hatred or ill will. See **Emonena and Anor v. IGP and Ors (2016) LPELR – 41489(CA)** per Georgewill, JCA. See also Black's Law Dictionary 8th Edition @ p. 958.

Secondly, the issue of whether or not the subject matter is within the jurisdiction of the Court below is a threshold question and in law jurisdiction is fundamental to adjudication because it goes to the foundational competence of any cause or matter or action before the Court. It is indeed the epicenter of the entire litigation process and thus, without it there can be no validity in any proceedings or resultant judgment or ruling of the Court. It is thus, the law that once an issue of jurisdiction is raised, it must be determined first one way or the other by the Court before proceeding if need be to determining the substantive claim. This is so because jurisdiction is radical and sine quo non to adjudication of any matter or action or cause in a Court of law and thus, without jurisdiction there can be no competence in the Court to exercise its adjudicatory powers. See **Shuaibu and Anor v. Koleosho (2021) LPELR 53435(CA)** per Georgewill, JCA. See also **Madukolu v. Nkemdilim (1962) SCNLR 341; Tukur v. Gongola State Government (No. 2) (1989) 4 NWLR (Pt. 117) 517.**

The corollary to the above settled position of the law is that once there is absence of jurisdiction there can be no competence in any action to be heard and determined on the merit, since jurisdiction is the life blood of every cause or action. Thus, where the requisite jurisdiction is found to be lacking, that is indeed the end of the matter and therefore, a Court would only be competent to exercise and carry out its adjudicatory duties when the matter before it and within its jurisdiction. **AG. Lagos State v. Dosunmu (1989) 3 NWLR (Pt. 111) 552**, where the Supreme Court per Kayode Eso, JSC, (God bless his soul) had put it so poetically thus:

“Without jurisdiction, the laborers that is the litigant and counsel on the one hand and the Court on the hand labor in vain”

In my finding therefore, the principal claim of the Respondent was squarely within the jurisdiction of the Court below to adjudicate upon between the parties to this appeal. It is for the above few words of mine but for the fuller reasons lucidly marshaled out in the leading judgment that I too hold that the appeal lacks

merit and ought to be dismissed. I shall abide by the consequential orders made in the leading judgment, including the order as to cost.

JOSEPH EYO EKANEM, J.C.A.: I had the privilege of reading before now, the lead judgment of my learned brother, OBASEKI-ADEJUMO, JCA, which has just been delivered. I agree with the reasoning and conclusion therein that the appeal lacks merit.

In determining the jurisdiction of a Court, the Court is to consider the claim of the plaintiff in the light of the enabling law vesting jurisdiction in the Court. Where the claim falls within the jurisdiction of the Court as donated by the enabling law, the Court must assume jurisdiction but where it falls outside the jurisdiction of the Court, the Court must decline jurisdiction. See **Bob v. Akpan (2008) 7 NWLR (pt. 1087) 449** and **Attorney-General of Lagos State v. Attorney-General of the Federation (2014) 9 NWLR (pt. 1412) 217**

The claim of the respondent is founded on the tort of malicious prosecution which falls within the wide jurisdiction of the High Court of the State in Section 272 (1) of the Constitution as amended. It falls outside the narrow or limited jurisdiction of the National Industrial Court donated by Section 254 C of the said Constitution. In the case of **Hallmark Bank Plc v. Obasanjo (2014) 4 NWLR (pt. 1397) 209, 222** this Court held that:-

“It is no gainsaying that conversion is a tort and same is actionable in the High Court of a State.”

Counsel for the Appellants sought refuge in relief No. (b) which is for the sum of N117,229.42 as loss of income per month from the 1st January, 2015 until judgment is delivered.

The relief above is ancillary and is inextricably tied to the main claim (the tort of malicious prosecution). Since the National Industrial Court has no jurisdiction to entertain the main claim, it cannot adjudicate over it since the ancillary claim cannot be determined without at the same time determining the main claim. See **Gafar v. Government of Kwara State (2007) 4 NWLR (pt. 1024) 375**.

I therefore agree with my learned brother that the appeal lacks merit and I also dismiss the same.

I abide by the order as to costs made in the lead judgment.

APPEARANCES

OLOLEYE SOKALE FOR THE APPELLANT; D. L. AIMOFUMED, WITH HIM, E. E. IHENSEKREN AND J. I. OMOROGBE FOR THE RESPONDENT