

# IN THE SUPREME COURT OF NIGERIA

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Suit No: SC42/2009

**Petitioner:** Ports And Cargo Handlings Service Company Limited, Sifax Nigeria Limited Mr. Babatunde  
Olarenwaju Afolabi Otunba Michael Olatunde Olowu

And

**Respondent:** Migfo Nigeria Limited, Denga Services Limited

Date Delivered: 2012-06-08

**Judge(s):** Aloma Mariam Mukhtar ..... Justice, Supreme Court Francis Fedode Tabai ..... Justice, Suleiman Galadima, NW

## Judgment Delivered

This is an appeal against the judgment of the Court of Appeal Lagos Division delivered on 17th December, 2008. By the

Judgment, the Court below affirmed the decision of the Federal High Court wherein all the questions in the Plaintiffs' (now the Respondents) Originating Summons were resolved against the Defendants (now Appellants). Dissatisfied the Appellants further appealed to this Court vide their Notice of Appeal filed on 13

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December 2008, which was amended,

containing 23 Grounds of Appeal out of which the following 6 issues were distilled:

(i) Considering the clear provisions of Section 251(1)(g) of the 1999 Constitution which the trial High Court relied upon to assume jurisdiction in this matter, coupled with the claims submitted to the said trial High Court by the Plaintiffs, as well as binding decisions of both this Court and the lower High Court on the Federal High Court jurisdiction in similar circumstances, whether or not the lower court was not in grave error to have held as it did that the Federal High Court rightly assumed jurisdiction in this matter.

Grounds 1, 2, 3, 4, 5, 15, 16 and 17

(ii) Whether or not the lower Court was not wrong in affirming Plaintiffs/Respondents' reliefs 10, 11 and 12 under the cover of Section 251(1)(e) of the 1999 Constitution and relief 13 under the fact that Appellants are limited liability companies over which the Federal High Court has jurisdiction.

Ground 22

(iii) Having regard to the claims of the plaintiffs, the affidavit and documentary evidence submitted by parties before the trial High Court, as well as the binding decisions of the Supreme Court and even that of the Court of Appeal to the contrary, whether the lower Court was not in serious error in holding that the Respondents, suit was properly initiated by originating summons.

Grounds 7, 10, 11, 19, 21 and 23

(iv) Whether or not the lower Court did not fall into a serious error by holding that the non-joinder of both the Nigeria Ports Authority (NPA) and the Bureau of Public Enterprises (BPE) by the Plaintiffs is not fatal to the Plaintiffs' case, as well as the jurisdiction of the trial High court.

Grounds 6 & 18

(v) Considering the various and diverse reliefs granted by the trial court vis-a-vis the jurisdiction of the said court, the provisions of CAMA, as well as the Memorandum and Articles of Association of the Appellants, whether or not the lower court did not fall into various errors in affirming the said judgment and the reliefs.

Grounds 8, 9, 12, 13 and 14

(vi) Was the lower court not in gross error in its failure to consider and pronounce on several fundamental and pertinent issues placed before it by the Appellants'

Ground 2

It is instructive to note that in this appeal the Respondents filed and relied on their Notice of Preliminary Objection of 04/10/2011. It is that both the grounds of appeal numbered 3, 6, 7, 10 and 21 contained in the Appellants'/Respondents'

Amended Notice of Appeal dated 04/02/2010 and the issue raised by the Appellants/Respondents in their brief of

arguments dated 4/2/2010 to be arising for determination from the said grounds are incompetent and as such the grounds

should be struck out and the issues discountenanced or struck out. The grounds upon which the said preliminary objection

is based are as follows:

'(1) The Appellants/Respondents describe grounds of appeal numbered 3, 6, 7, 10 and 21 in the said Amended Notice of Appeal dated 4/2/10 as misdirection by the Court of Appeal, but the Appellants/Respondents did not specify the nature of the alleged misdirection complained of, with full particulars of the alleged misdirection and did not quote or reproduce with their full particulars as they appear in the record of appeal, the passage where the misdirection was alleged to have occurred.

(2) The incompetence of the aforesaid grounds of appeal can be taken up at any stage of the proceedings even when judgment is being written and the grounds will not become valid because they were not objected to.

(3) Since issues for determination in this appeal cannot be formulated from invalid or incompetent grounds of appeal, the issues formulated by the Appellants from the said incompetent and invalid grounds of appeal as arising for determination are also incompetent and should be struck out or discountenanced just like the incompetent grounds of appeal.

(4) Where grounds of appeal are struck out, issues for determination formulated therefrom and arguments canvassed in support thereof become irrelevant and would also be struck out by the court because they no longer have grounds to stand on.'

However, treading carefully with cautious optimism, but without prejudice to their objection above, the Respondents proposed the following 6 issues for determination:

'(1) Considering the clear provisions of Section 251(1)(g) of 1999 Constitution on which the trial High Court relied to assume jurisdiction in this matter, coupled with the claims submitted to the said trial High Court by the Respondents, as well as binding decisions of both this court and the lower Court on the Federal High Court's jurisdiction in similar circumstances, whether or not the lower Court was not in grave error to have held as it did that the Federal High Court rightly assumed jurisdiction in this matter'

Grounds 1, 3, 4, 5, 15, 16 and 17

(2) Whether the Respondents properly made out, (sic) were entitled to reliefs 10, 11, 12 and 13 and the lower Court was right in affirming their grant by the trial Court.

Ground 22

(3) Whether this suit should have been brought by a writ of summons and the lower court was wrong in holding that it was properly initiated by originating summons'

Grounds 7, 10, 11, 19, 21 and 23

(4) Whether the lower Court was wrong in not holding that the Bureau of Public Enterprises, and Nigerian Ports Authority were proper parties which should have been joined to this suit and that the trial Court lacked jurisdiction to entertain and determine it'

Grounds 6 and 18

(5) Considering the various and diverse reliefs granted by the trial High Court vis-a-vis the jurisdiction of the said Court, the provisions of CAMA, as well as the Memorandum and Articles of Association of the 1st Appellant, whether the lower court did fall into serious error in affirming the said judgment and the relief s.

Grounds 8, 9, 12, 13 and 14

(6) Whether the lower Court failed to consider and pronounce on several issues placed before it by the Appellants and if so, such failure occasioned a miscarriage of justice'

Ground 20'

On 13

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March, 2012 when this appeal was heard, learned senior counsel on both sides, of the divide duly adopted and relies on their respective briefs of argument. While the learned senior counsel for the Appellants urged the court to allow

the appeal, the learned senior counsel for the Respondents urged that the preliminary objection raised by the Respondents

be upheld and in the alternative appeal should be considered on its merit, and be dismissed for lacking in merit and be accordingly dismissed,

The said Respondents' Notice of Preliminary objection dated 2/10/2011 was filed on 4/10/2011 but served on the Appellants on 13/10/2011. The Appellants' Reply brief filed on 16/11/2010 was in response to the new issues raised in the

Respondents' Brief and reaction to the Respondents Notice of Preliminary objection under reference.

In their Preliminary Objection the Respondents argued that the grounds of appeal contained in the Appellants' Amended

Notice of Appeal and the issues raised in the Appellants' brief of argument in support of these grounds are incompetent.

The Appellants have submitted the following sole issue for the determination of the objection raised by the Respondents:

'Whether it is the current position of the law that once a ground of appeal alleges a misdirection or error in law, the Appellant must reproduce the passage of the judgment where the misdirection or error occurred and must also give full and substantial particulars of the alleged error or misdirection.'

The objection is challenging the competence of the Appellants' grounds 3, 6, 7, 10 and 21 contained in their amended Notice of Appeal. By extension the Respondents further contended that issues 1, 3 and 4 in the Appellants' Brief formulated from those grounds are incompetent. The Respondents cited and relied on the cases of *Faleye v Otapo* (1987) 4

NWLR (Part 64) Page 186; *Okwuagbala & Ors. v Ikwueme & Ors* (2010) 19 NWLR (Part 1226) page 54; and *Bank of The*

*North Ltd. v Bello* (2000) 7 NWLR (Part 664) Page 244 at 253.

The Respondents' objection that grounds 3, 6, 7 and 21 are incompetent simply because the passage of the judgment was

not quoted is misconceived. This submission does not represent the current and correct position of the law. The position of

the law has changed on the point canvassed by the Respondents in their objection. This has been noted and strongly held by

this Court in the case of *B.A.S.F. Ltd. v Faith Ent. Ltd.* (2010) 4 NWLR (Part 1183) Page 104 at 134 thus:

"... it is no longer the law that once a ground of appeal alleges error in law and/or misdirection the passage of the judgment concerning same must be quoted."

Quoting of the passage can be dispensed with once there is evidence stated in the particulars which disclose validity of the

complaint, or from where the complaint can be discerned or inferred. See *Ilori v Tella* (2006) 18 NWLR (Part 1011) Page

267 at 285, and *Funduk Engineering Ltd. v Mc Arthur* (1995) 4 NWLR (Part 392) Page 640. The whole exercise of a ground of appeal is to put the Respondents on notice so that they can appreciate the full intention of the Appellants without

any ambiguity. I shall illustrate this point by reproducing just ground 21 which is very similar with grounds 3, 6, 7 and 10 being objected to by the Respondents. Ground 21 reads (with the particulars) as follows:

'The lower Court misdirected itself in law and also came to a perverse decision when it construed page 37 of the Bid document (Exhibit A) to give judgment for the Respondents and went further to hold that the Appellants did not deny the existence of Exhibit A but only contested that 2

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Appellants' Consultants made a mistake by collaborating with the Plaintiffs for the Bid.'

Particulars of Misdirection

'iv. Appellants contested the genuineness of Exhibit A by stating that the consultants were under a mistaken belief that Appellants were collaborating with the plaintiffs.

v. Exhibit A is merely a Bid Document.

vi. It was also the case of the Appellants that they notified the BPE of the mistake in Exhibit 'A' leading to the BPE's letters of 4

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June, 2005 authorising only 2

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Appellant to bid for the concession of Terminal 'C' in the

name of Sifax Nigeria Ltd and not of Ports and Terminal Operations Nigeria Ltd.'

This requires careful reading of the Appellants' ground and particulars quoted above. The whole essence of the Appellants'

complaint is clear and unambiguous. The grounds objected to by the Respondents are not incompetent simply because the

passage of the judgment was not quoted.

In the light of the foregoing, the Respondents Preliminary Objection is overruled and same is dismissed.

I shall now comment briefly on the Briefs of argument of the respective parties before I proceed to consider same. I have

observed that the Respondents have complained and criticized the Appellants' brief as being too voluminous and wildly,

made up of 115 pages although the rules of this Court do not limit a party to a number of pages in a brief. This is a case of

pot calling kettle black. I am as well to criticize the Respondents, brief as unnecessarily voluminous containing repetitive

arguments of the issues settled, in the tiniest prints I have ever seen in a brief. A brief of argument has connotation of really concise and succinct expression of the appellant's complaint and the Respondents' reaction on the issue or issues

presented to this Court for consideration. Clarity, simplicity and directness of expression are the hallmarks of a good brief.

My candid opinion of the two briefs of argument, with due respect, fall short of the fundamental requirements of a brief as

the word connotes.

The fulcrum of the appeal is the perennially contentious issue of the jurisdiction of the Federal High Court. The subject matter has been tritely decided upon by this Court. It is needless presenting a treatise on it. Therefore, it is my respectful

opinion that the very first issue as in the Appellants' Brief of Argument suffices and can adequately determine this appeal.

For, if the trial court lacks jurisdiction to entertain the matter it would have laboured in vain and under delusion to grant the

Respondents the various reliefs they had claimed or sought for. The Appellants' issue that is apt and relevant to the determination of the appeal is their first issue duly adopted by the Respondents. It is as follows:-'Considering the clear provision of Section 251 (1) (g) of the 1999 constitution on which the trial High Court relied

upon to assume jurisdiction in this matter, coupled with the claims submitted to the said trial High Court by the plaintiffs, as well as building decisions of both this Court and the lower Court on the Federal High Court jurisdiction in similar circumstances, whether or not the lower Court was not in grave error to have held as it did that the Federal High Court rightly assumed jurisdiction in this matter.

Grounds 1, 2, 3, 4, 5, 15, 16 and 17'

The main complaint of the appellants is that the Court below wrongly affirmed the decision of the trial Federal High Court

which assumed jurisdiction in this matter. Learned senior counsel for the Appellants have placed reliance on quite a number of cases on this point viz: Madukolu v Nkemdilim (1962) 1 All NLR Page 587 at 597 and Cotecna International

Ltd. v I.M.B. Ltd. (2005) 9 NWLR (Part 985) Page 279 at 291.

It is argued that it is the Plaintiffs' claim that vests jurisdiction on the Court. Reliance was heavily placed on the case of Adeyemi v Opeyori (1976) 9 - 10 SC Page 31 and paragraphs 1, 2, 13, and 9 of the Respondents' claims.

It is further submitted that for the questions for determination on pages 6 to 8 of the volume 1 of the Record, the Respondents' claims clearly relate to intentions, declarations, understandings, agreements, commitments. Quoting paragraphs 1, 2, 3, 4, 6, 7 and 8 of the reliefs and issues contained in the Respondents' originating summons, it is contended

that there exists a purported contractual relationship between the Appellants and the Respondents, the specific performance

of which the Respondents had wanted the court to decree. Reliance was also placed on paragraphs 5, 6, 7, 9, 11, 12, 13, 14,

18, 19, 20, 21, and 22 of the affidavit in support of the originating summons. It is submitted that the substratum of these depositions is that there has been an existing contract between the Respondents and the 2nd Appellant in which the Respondents have performed their part but the 2nd Appellant with the support, connivance and assistance of the 2nd, 3rd, and 4th Appellants herein have reneged on the terms of the contract. In other words, that by the Respondents' showing and as expressly stated in the supporting affidavit to the Originating Summons, the Appellants have been alleged to be reaping quite surreptitiously from the proceeds of the contract whose terms and conditions they have neglected to comply with. Learned Senior Counsel then reproduced Section 251 (1) (g) of the 1999 Constitution and found support in the case of *Onuora v Kaduna Refinery And Petrochemical Co.* (2005) 6 NWLR (Part 921) Page 393 in which the provision of Section

239 (1) of the 1979 Constitution (as amended) considered in that case, as in *pari materia* with Section 251(1) (g) of the 1999 Constitution which vests exclusive jurisdiction on the Federal High Court on matters pertaining to the administration or the management and control of the Federal Government or any of its agencies. It is submitted however that this subsection has not conferred jurisdiction on the court where the plaintiff's claim is founded on contract. Other decisions of this Court relied upon on this point are - *Chevron Nigeria Limited v Lonestar Drilling (Nigeria Limited)* (2007) 7 SC. (Part II) Page 27; (2007) 15 NWLR (Part 1059) Page 168, *Tukur v Government Of Gongola State* (1989) 4 NWLR (Part 117) Page 51, *Omosowan v Chidozie* (1998) 9 NWLR (Part 556) Page 447, and *Hagemeyer (Nig.) Ltd. V. Roro Terminal Ltd.* (1988) 3 NSC Page 391.

It is finally urged that, in the light of numerous decisions of this Court and on the potency of the doctrine of *stare decisis*, this Court cannot overrule itself on this point. Premised on these foregoing submissions, the learned senior counsel has urged the Court to resolve this issue in favour of the Appellants.

The learned senior counsel for the Respondents, on the other hand has submitted that the jurisdiction of the Federal High Court to the exclusion of the State High Court is conferred by both Section 251 of the 1999 Constitution and by section 7 of the Federal High Court Act. More particularly relevant to this case, Section 251 (1)(g) of the said Constitution was the provisions the Court below applied in affirming the jurisdiction assumed by the Federal High Court to entertain and determine the suit. The subsection was reproduced. It is urged on this Court that since the subsection is a constitutional provision, the approach of this Court in interpreting and applying it should be liberal and it is the duty of the Court to construe same so as not to defeat the obvious ends the Constitution was designed to serve.

It is submitted that claim of the respondents in the suit relates to the management and operation of Terminal 'C', Tin Can Island Port, Apapa. In other words, that the disputes on the joint venture agreement between the 2nd Appellants and the Respondents to their joint bid for the concession and subsequent operation and management thereof are all ancillary to the

said port and arising therefrom. That the Appellants by their own showing at pages 23- 24 of their brief in the lower Court

(pages 740- 741 of the record) and paragraph 9.2 of their brief herein, defined the word "maritime" (synonym for admiralty) as:

- (1) connected with or situated near the sea;
- (2) of or relating to sea or navigation or commerce.

Therefore they have conceded that a Federal Port being connected with or situated near the sea relates to and comes within

the admiralty jurisdiction of the Federal High Court and the lower Court rightly affirmed the holding of the trial Court in that respect. Reliance was placed on the case of Owners of Baco Liner 3 v Adeniji (1993) 2 NWLR (Part 274) Page 195 at

201; Lekwot v Judicial Tribunal (1997) 8 NWLR (Part 515) 22 at 35.

It is argued, that since the reliefs sought by the Respondents determine the jurisdiction of the Court, the Court below rightly

affirmed the decision of the trial Court that the reliefs sought and the questions for determination posed by the Respondents

come readily within the jurisdiction of the Federal High Court. In other words, that the Court below rightly held that the dispute relates to the management and operation of Terminal 'C' Tin Can Island Port. It is contended that Section 1 (1) and

1(i) (g) of the Admiralty Jurisdiction Act which the Appellants used to support their arguments in paragraphs 517 to 518 of

their brief of argument, are just a part of the Admiralty Jurisdiction vested in the Federal High Court by Section 251 (1) (g)

of the 1999 Constitution, the latter of which is also in pari materia with Section 7 (1) (g) of the Federal High Court Act. It is contended however, that it is not correct as argued by the Appellants that for the Federal High Court to exercise jurisdiction, matters arising from a Federal Port must relate to claims for loss or damage to goods accruing between the offloading of goods across space from a ship or any aircraft and their delivery of consignee's premises or any aircraft and

their delivering of consignee's premises or during storage or transportation because by using the word 'including', the Legislature intends that there should be mere enlargements of matters arising within any Federal Port.

The learned senior counsel for the Respondents further submits that the jurisdiction of the Federal High Court, under section 251 (1) (e) of the 1999 Constitution is so exclusive and wide that once the claims or questions submitted to the Federal High Court for determination in a suit relate to or connect with a Federal Port, notwithstanding the nature of the claim in the action or whether it is an agreement in relation to or ancillary to a Federal Port, the Federal High Court has and

can assume jurisdiction to determine the suit, because the intentions and aims of the law makers and framers of the said

Section 251 (1) (g) were to take away from the jurisdiction of the State High Court and confer exclusively on the Federal High Court, jurisdiction in actions relating to or connected with a Federal property, which the said port is. Reliance was placed on the case of Nepa V. Edegero (2002) 18 NWLR (Part 798) 1 at pages 95 - 97.

The learned senior counsel also submits that the heavy weather the Appellants are making out of cases on disputes founded

on simple contract in relation to Respondents' claims and stare decisis is completely wrong and done out of context. It is

submitted that the Appellants in their brief misinterpreted and misapplied the purport and the decision in Onuorah v Kaduna Refinery's case (supra) relied on by them; in that the facts and issues in that case differ from those of the instant

case. It is argued that Judgment in Onuorah case filed in 1996 was delivered before the 1999 Constitution commenced.

That the case has to do with specific performance and damages for breach of a simple contract in relation to the purchase of

empty tins unlike the instant case that has to do with civil claims and issues arising from or relating to or ancillary to a Federal Ports, the management and operating of a Federal Port as included in the admiralty jurisdiction of the Federal

High

Court by Section 251 (1) (g) of the 1999 Constitution and Section 7 (1) and Section 7 (3) of the Federal High Court Act. It is further submitted that the claims in the *Onuorah and Gafar v Government of Kwara State* (2007) 4 NWLR (Part 1024)

Page 37 cases neither related to nor arose from nor were ancillary to nor were raised on a Federal Port, nor were they

decided on section 251 (1) (e) of the 1999 Constitution and Sections 7(1) (g) and 7 (3) of the Federal High Court Act. That

these cases are clearly distinguishable from the instant case.

Furthermore, the Respondents have contended that contrary to the Appellants' submissions in their Brief in paragraphs 5 .26

- 5.29 the decision of the Court below cannot be faulted. This is because on their proper construction, the reliefs numbered,

3, 4, 5, 10, 11, 13, 14 and 15 sought by the Respondents and the questions for determination 3, 4, 5, 6, 7, 9, 10 and 11 raised by the Respondents in their Originating Summons, also fall squarely within the jurisdiction of the Federal High Court. It is contended that these are causes or matters arising from the operation of the Companies and Allied Matters Act,

2004 (CAMA) regulating the operation of companies incorporated under the Act, which the 1

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Appellant is.

I shall mention the fact that the Appellants in their Reply Brief have reacted to some of the new issues or points raised by

the Respondents in their Brief. These points shall be considered anon, in this Judgment.

Now to the issue.

If I may recapitulate, in the course of the proceedings at the trial Federal High Court, the Appellants raised a preliminary

objection to the jurisdiction of that Court to entertain the Respondents' suit. It is clear that the fulcrum of the objection as

can be observed from the body of the Notice is that the subject matter or issues raised in the Respondents' originating summons is or are outside the jurisdiction of the trial Court both statutorily and constitutionally. The trial Court though held, however that in determining jurisdiction Courts are enjoined to look into plaintiffs' claim before the Court, but held the strongest view that the plaintiffs' claim relates to the management and operation of Terminal 'C' Tin Can Island Port,

and that the claim falls within the provision of Section 251 (1) (g) of the 1999 Constitution. For ease of reference, the Section is hereby reproduced:

'Any admiralty jurisdiction including shipping and navigation on the River Niger or River Benue and their affluences and on such other inland waterway as may be designated by any enactment to be an international waterway, at Federal Ports (including the constitution and powers of the ports authorities for Federal Ports and carriage by sea.'

It is difficult to appreciate the basis for the decision of the trial Judge above that the claims of the Respondents fall within

the provision of Section 251 (1) (g) of the Constitution set out above. While considering this fundamental issue of jurisdiction the lower Court agreed with the trial Court and went further to hold thus:-'Any question on admiralty jurisdiction calls for reference to the detailed stipulation of what is admiralty in the

Admiralty Jurisdiction Act 1991. Equally the subject matter called Federal ports is clear. The phrase; 'including the constitution and power of the ports authorities for Federal ports' is for emphasis on what is also included. Looking at the reliefs sought ..... the question arising is whether it is related or auxiliary to federal ports and whether the cause of complaint is a mere contract. First of all there is no claim for breach of contract. The Respondents sought declarative reliefs. The nature of a declarative relief is one which calls on the court to make a confirmation of what is already the state of the affairs or what is agreed or likely to be in connection with the subject matter of the declaration .... Furthermore, it is trite that to sue for specific performance is to assume that the contract is still subsisting and to insist that it should be performed.'

Earlier, the Court that had held that there was no claim for specific performance went further to hold at page 997 of the

Records that:

'Relief 9 is on specific performance of the contents of Exhibits 'A' and 'B' which calls for finding of the existence of an agreement and then order performance. This relief the High Court can entertain.'

Clearly from the judgment of the lower court quoted above there has been contradiction leading to the misapprehension of

the Appeal before it which is related to the issue of jurisdiction of the trial court vis-a-vis the plaintiffs' claim. If the Respondents' claim is not a 'mere claim of offer and acceptance' and 'the term transcended more contractual agreement'

as held by the lower court, then what different label has the Respondents given to their claim that does not make it a simple

'contract' or 'agreement'. Yet for the lower court to hold that what the Respondents sought was a declarative relief in respect of a purported or assumed agreement between them and the Appellants is to demonstrate a complete misapprehension of the nature of the claim of the Respondents. For there cannot be a question of specific performance of a

contract without the existence of a contract or agreement. Specific performance cannot be made abstractly in various situations.

I agree with the learned counsel for the Appellants in their brief that the lower Court committed a fundamental error in respect of admiralty jurisdiction it referred to. On this the Court erroneously placed reliance and interpretation of the phrase

'including the constitution and powers of the port authorities for Federal Ports' without juxtaposing the said phrase with the reliefs sought by the Respondents. The court actually imported into what is not intended in Section 251 (1) (g) of the Constitution of 1999. The Respondents were not challenging the constitution and powers of the ports authorities for Federal

Ports. The claim is not 'auxiliary' to the Respondents' reliefs. The lower Court has gone outside the Plaintiffs/Respondents'

claim to apply the said phrase.

It is trite law that it is the plaintiffs' claim that determines and vests jurisdiction in the court. The Respondents' claims as

can be seen on pages 3 to 6 of volume 1 of the Record, inter alia, are:

'1. A declaration that the intentions, declarations, understandings, joint venture agreement and irrevocable commitments expressed by the Plaintiffs and the 2

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Defendant and contained in the Technical Proposal/Bid

documents dated June, 2005 and their executed 'Memorandum of Understanding dated 27th July, 2005'

submitted to the Bureau of Public Enterprises in respect of their bidding for the management and operation of Terminal C, Tin Can Island Port, Apapa, Lagos in the name of the 2

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Defendant, are binding on the

Plaintiffs and the 2

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Defendant.

2. A declaration that by virtue of the intentions, declarations, understanding, joint venture agreement and irrevocable commitments expressed by the plaintiffs and the 2

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Defendant and contained in the Technical

Proposal/Bid documents dated June, 2005 and their executed Memorandum of Understanding dated 27

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July,

2005 submitted to the Bureau of Public Enterprises in the name of the 2

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Defendant in respect of their

bidding for the management and operation of Terminal C, Tin Can Island Port, Apapa, Lagos, the Plaintiffs

and the 2



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Defendant are joint bidders for and joint-venture partners in respect of the management/operation of, the said Terminal C, Tin Can Island Port, Apapa Lagos.

3. A declaration that pursuant to the intention, declarations, understanding, joint venture agreement and irrevocable commitments expressed by the Plaintiffs and the 2

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Defendant and contained in the Technical

Proposal/Bid documents dated June, 2005 and their executed Memorandum of Understanding dated 27

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July, 2005 submitted to the Bureau of Public Enterprises in respect of their bidding for the management and operation of Terminal C, Tin Can Island Port, Apapa, Lagos, the 2

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Defendant, the 1

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plaintiff and the 2

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Plaintiff are entitled to hold all the shares of the 1

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Defendant in the ratio of 40%, 30% and 30% respectively

and be entered in its Register of Members as holders of such shares.

4. A declaration that Plaintiffs are entitled to participate jointly with the 2

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Defendant in the business and

meetings of the 1

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Defendant and the Plaintiffs' Chief Executive Officers are entitled to be appointed co-directors of the 1

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Defendant and co-operate the 1

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Defendant's business as the manager/operator of

Terminal C, Tin Can Island Port, Apapa, Lagos.

9. An order directing the 2

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Defendant to specifically perform the intentions, understanding, joint venture agreement and irrevocable commitments expressed by the Plaintiffs and the 2

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Defendant and contained in

the said Technical proposal/Bid documents dated June, 2005 and their executed Memorandum of Understanding dated 27

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July, 2005 on the shareholding and management structures of the joint venture as

relating to the 1

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Defendant and its business as manager/operator of the said port.'

As for the questions raised for determination, particularly questions 1, 2, 3, 4, 6, 7 and 8 on pages 6 to 8 of volume 1 of the

Records set out under the Respondents' claims relate to intentions, declarations, understandings, agreements, commitments,

etc. These are as follows:-'1. Whether having expressed the intentions, declarations, understanding, joint venture agreement and

irrevocable commitments contained, in, the Technical proposal/Bid agreements dated June, 2005 submitted to the Bureau of Public Enterprises by the Plaintiffs and the 2

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Defendant in the name of the 2

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Defendant

in respect of their bidding for the management and operation of Terminal C Tin Can Island port, Apapa, Lagos, the plaintiffs and the 2

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Defendant are not bound by the said declarations, understanding, joint venture agreements and irrevocable commitments at law and in equity'

2. Whether on a proper interpretation of the intentions declarations understanding, joint venture agreement and irrevocable commitments reached and contained in the aforesaid Technical Proposal/Bid documents and Memorandum of Understanding submitted to the Bureau of Public Enterprises by the plaintiffs and the 2

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Defendant in the name of the 2

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Defendant, the Plaintiffs and the 2

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Defendant are joint-bidders and joint

venture partners for the Terminal C, Tin Can Island Port, Apapa, Lagos and in its subsequent-management/Operation'

3. Whether pursuant to the intentions, declarations, understanding, joint venture agreement and irrevocable commitments reached and contained in the aforesaid Technical Proposal/Bid documents and Memorandum of Understanding, the 2

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Defendant, the 1

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plaintiff and the 2

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Plaintiff are entitled to hold all the shares of

the 1

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Defendant in the ratio of 40%, 30% and 30% respectively and be Entered in its Register of Members as holders of such shares'

4. Whether the resolutions to allot all the shares in the 1

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Defendant in the ratio of 70% to 30% respectively to,

and appoint the 2

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and 3

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Defendants as the only directors of the 1

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Defendant, are contrary to the aforesaid

intentions declarations, understanding, joint venture agreement and irrevocable commitments expressed by the Plaintiffs and the 2

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Defendant and contained in the aforesaid Technical Proposal/Bid documents dated

June, 2005 and their executed Memorandum of Understanding dated 27

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July, 2005 in respect of the bid in

the name of the 2

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Defendant for and subsequent management of the aforesaid part'

6. Whether in equity and on a proper construction of the intentions, declarations, understanding, joint venture

agreement and irrevocable commitments expressed in the Technical Proposal/Bid documents and the Memorandum of understanding submitted to the Bureau of public Enterprises in the name of the 2

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Defendant, the 2

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and 3

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Defendants as the current shareholders of the 1st Defendant, are not holding 60%

of the shares in the 1st Defendant in implied or constructive trust for the plaintiffs in the proportion of 30% thereof for each plaintiff'

7. Whether in equity and on a proper construction of the intentions, declarations, understanding, joint venture agreement and irrevocable commitments expressed in the Technical proposal/Bid documents and Memorandum of understanding submitted to the Bureau of public of Enterprises in the name of the 2

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Defendant, the 2

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Defendant acted for itself alone or for itself and on behalf and as an implied or constructive trustee of the plaintiff in the said bid'

8. Whether having regard to the part performance of the aforesaid intentions, joint venture agreement, commitment and understanding by the Plaintiffs, the 2

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Defendant should not be compelled to fully perform

the joint venture agreement and irrevocable commitments and understanding it entered into with the Plaintiffs"

Clearly, from the foregoing reliefs and questions contained in the Originating Summons, the fulcrum of the Respondents'

case is that there exists a contractual relationship between them and the 2

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Defendants/Appellant, the specific performance

of which the Respondents want the court to decree. In Paragraphs 5, 6,7, 9, 11, 12, 13, 14, 18, 19, 20, 21 and 22 of the

affidavit in support of the Originating Summons, as can be seen on pages 9 - 14 of the Records, it was deposed to on behalf

of the Respondents as follows:

'5. For the specific purposes of bidding for, and eventual management of the port being concessioned by the Federal Government of Nigeria through the Bureau of Public Enterprises (hereafter called 'BPE') and inter alia feeding their bonded terminals with cargo; recognizing the technical, financial and human relationship with the Plaintiffs which were previously prequalified by BPE to bid for the management of the port..

6. Consequently, the Plaintiffs and the 2

nd

Defendant agreed to become joint venture partners, pool their

financial and business resources, managerial and tested key staff and technical capabilities together in order to win the bid for the said port and its subsequent management, outflank their competitors and better achieve greater efficiency and effectiveness in the management of the port.

7. The wishes, intentions, understanding, irrevocable commitments of the 2

nd

Defendant and the plaintiffs and

the terms of their agreed collaboration for bidding for the management/operation of the port and also for their subsequent management/operation of the port, which were initially oral but subsequently substantially embodied in the Technical Proposal/bid documents dated June, 2005 and the Memorandum of understanding dated 27/705 submitted to BPE are attached hereto and marked 'A' (which also contains all the relevant pre-bid and post-bid documents) and 'B' respectively and materially include...

9. In line with the above intentions, understanding, agreement and irrevocable commitment and with a view to

subsequently co-managing the said port with the 2  
nd

Defendant, the plaintiffs immensely contributed to the  
success of the bid,...

11. At very critical times when money was needed for the success of the bid, the 4  
th

Defendant sent his hand-written letters dated 17/5/05 and 8/8/05 to me and I accordingly obliged him. Attached hereto  
and marked

'E' and 'F-F1\" respectively are copies of the said letters and the 1st plaintiffs cheque for N300,000.00 in  
response to some of the requests.

12. The above quotations which the Plaintiffs made to the joint substantially paved way for the success of the  
said bid in the name of the 2

nd

Defendant and for the benefit of the joint venture partners.

13. Upon the bid succeeding, the 4

th

Defendant sent me his hand-written letter dated 5/9/05 (a copy of which is  
attached hereto and marked 'H'), called and invited the 1

st

Plaintiff to a meeting of the joint venture partners

were inter alia progress report on the concluded bidding on the said port was given.

14. Whilst waiting for the 2

nd

and 4

th

Defendants to send us the documents for the incorporation of the agreed

joint venture company of execute and to give us progress report on the negotiation of the lease of the port  
with BPE/NPA and the dates of the handover of the said port, unknown to the Plaintiffs, the 2

nd

, 3

rd

and 4

th

Defendants were secretly promoting and incorporating the 1

st

Defendant as a vehicle to be used by them for

the management of the said port.

15. It was when the Plaintiffs learnt that the said port had been handed over to the 1

st

Defendant by NPA/BPE

and that the 2

nd

, 3

rd

and 4

th

Defendants were responsible for the 1

st

Defendant that we caused our lawyers to

conduct a search on the 1

st

Defendant at the Corporate Affairs Commission, Abuja and obtain certified true

copies of its incorporation documents which to our chagrin, revealed that contrary to the joint venture

agreement, only the 2

nd

and 3

rd

Defendants are the shareholders and directors of the 1

st

Defendant and that the

2

nd

, 3

rd

and 4

th

Defendants are wrongly using the 1

st

Defendant to wrongly cheat the Plaintiffs out of what

they labored for. Attached hereto and marked 'I', 'J' and 'K' are the certified true copies of the

Memorandum and Articles of Association, Particulars of Directors and Return of Allotment of Share Capital

to the 1

st

Defendant.

18. Since the port was handed over to the 1

st

Defendant by BPE and NPA, the Defendants had been managing it

and collecting operation rates including... charges for cargo delivery, terminal handling, inland container

depot transfers, storage, and penalties for violation of applicable rules by consignees and paying same into

unknown bank accounts and using same for their benefits including a massive building on Warehouse Road,

Apapa, Lagos, without involving the Plaintiffs.

19. Contrary to the terms of the joint venture, intentions, understanding and irrevocable commitments in Exhibits

A and B, the 2

nd

Defendant as the majority shareholder of the 1

st

Defendant hides the business activities at the

said port from the Plaintiffs and manipulates the Defendants into sending all the cargoes from ships berthing

at the said port to only its bonded terminal thereby starving Plaintiffs' terminals of cargo and exposing the

Plaintiffs 950-man staff and stevedores to the risk of redundancy and job termination.

20. The Plaintiffs/Applicants' terminals have been so starved of cargo in the face of the concessioning of all the

ports in Lagos by NPA, that unless the Defendants/Respondents quickly honour the agreement on the sharing

and distribution of cargo from ships berthing at the said port, the said bonded terminals would be closed

down and their staff sacked for a lack of business and their multi-billion naira cargo handling equipment

financed by banks would rot to their financial document.

21. In the process of managing the port through the 1

st

Defendant and with the support of the 3

rd

and 4

th

Defendants had been secretly making profits (the amount of which is yet unknown to the Plaintiffs) which

they have not paid over to the Plaintiffs.

22. If this Honourable Court does not intervene by granting the relief sought, the Defendants would have

succeeded in their plot of using the Plaintiffs' credibility, technical, financial and material support to win the

bid and subsequently stealing a match on the Plaintiffs on the management of the said port to the Plaintiffs'

detriment."

I have gone the whole hog to produce the above depositions to show that there is an existing contract between the Respondents and the 2

nd

Appellant in which the Respondents have part-performed but the 1

st

Appellant with the support,

connivance and assistance of 2

nd

, 3

rd

and 4

th

Appellants have reneged on the terms of the Contract. In sum, by the

Respondents showing and as expressly stated in the supporting affidavit to the Originating Summons the appellants have

been alleged to be "secretly" reaping from the proceeds of the contract which terms and conditions they have

neglected to

comply with.

Section 251, (1) (g) of the 1999 Constitution earlier reproduced above is quite clear, when it is carefully juxtaposed

against

the Respondents' claim and one is puzzled to appreciate how these claims can be properly 'pigeon-holed' or situated

within the very narrow purview of the said Section of the Constitution. No wonder the lower court wriggled out of the

quagmire when it later veered to Section 251 (1) (c) of the Constitution in its judgment whereas the trial High Court

restricted itself in assuming jurisdiction under Section 251 (1) (g) and there was no cross-appeal or Respondents'

Notice

against that judgment before the lower court.

Now to the examination and consideration of a plethora of cases of this Court and the court below where there have

been

pronouncement on the lack of jurisdiction of the Federal High Court on the type of the case of simple contract.

In *Onuorah v Kaduna Refinery And Petrochemical Company* (supra), the provision of 239 (1) of the 1979 Constitution

(as

amended), in *pari materia* with Section 251 (1) (g) of the 1999 Constitution, which vests exclusive jurisdiction on the

Federal High Court on matters pertaining to the administration or the management and control of the Federal

Government

or any of its agencies was considered. Nonetheless, the subsection quoted above has not conferred jurisdiction on the

court

where the Plaintiff's claim is founded on contract. The facts of this case are not disputed by the parties. The decision of

this

Court is clear, cut and unambiguous. It held that the trial Court lacked jurisdiction to entertain the Appellant's suit,

because

it was based on simple contract and that only a State High Court has jurisdiction to entertain such claim. The lower

court

sought to distinguish *Onuorah's* case from the instant case on page 998 of the Record on the ground that the

provision of

Section 239(1) of the 1979 Constitution is not *in pari materia* with Section 251(1) (g) of the 1999 Constitution. With

due

respect, the distinction sought to be made in this instance is erroneous because Section 230 (1) of the 1979

Constitution as

amended by Decree No 107 of 1993 is indeed *in pari materia* with the provision of Section 251 (1) of the 1999

Constitution. The Decree amended Section 230 (1) of the 1979 Constitution. The Court of Appeal in that case acted

rightly

when it held that the trial court lacked jurisdiction to entertain the Appellant's claim relying on earlier decisions in cases

of  
Seven-Up Bottling Company v Abiola & Sons (Supra); Trade Bank Plc v Benilux (Nig.) Ltd. (2003) 9 NWLR (Part 825)

Page 416.

The lower Court wrongly relied on the case of Brawal Shipping (Nig.) Ltd. v Extraction And Commodities Services Ltd. (2001) 14 FWLR (Part 732) Page 72 in holding that Section 251 (1) (g) of the (1999) Constitution applies and that the Respondents' action falls within the Admiralty Jurisdiction Act. Apart from the fact that the case was wrongly applied, the

Admiralty Jurisdiction Act was not also the bone of contention. The Brawal Shipping (Nig.) case is clearly a maritime matter and the judgment of my brothers, Oguntade JCA and Chukwuma-Eneh (as they were then), is very clear. It was held

thus:

'A close scrutiny of the Plaintiffs/Respondents' statement of claim amply reveals that the foundation of Plaintiff/Respondents' case is a carriage of goods by sea contract. It is therefore a matter which falls within the exclusive admiralty jurisdiction of the Federal High Court...'

Subsection 1 (1) (e) and (i) of the Admiralty Jurisdiction Act Cap. 5. Laws of the Federation of Nigeria 2004, relied upon by the lower court, do not support the court's position with regard to the admiralty jurisdiction of the Federal High Court as

it affects the Federal Ports. The position is cleared by the unambiguous provision of that section as reproduced below:

'1(1) The admiralty jurisdiction of the Federal High Court (in this Act referred to as 'the Court') includes the following':

(g) Any matter arising within a Federal port or national airport and its precincts, including claims for loss of or damage to goods occurring between the off-loading of goods across space from a ship or any aircraft and their delivery at the consignee's premises, or during storage or transportation before delivery to the consignee.

(h) .....

(i) Any cause or matter arising from the constitution and powers of all ports authorities, airport authority and the National Maritime Authority.'

I agree with the learned Senior Counsel for the Appellants that the phrase, 'any matters arising within a Federal Port' is further qualified to the extent that such matters must relate to claims for loss of or damage to goods occurring between the

offloading of goods across space from a ship or any aircraft and their delivery at the Consignee's premises or during Storage or transportation before delivery of the consignment. Applying the ejusdem generis rule of construction, such matters 'arising within a federal port' can only include other similar matters. In other words, the matters arising within a Federal Port to fall under the admiralty jurisdiction of the Federal High Court, such matters must be marine-related. It certainly has nothing to do with the management and operation of the port as the lower Court has held.

The Respondents, with particular reference to Section 7(3) of the Admiralty Jurisdiction Act have contended that the Federal High Court has jurisdiction of the suit under reference on the ground that the word 'includes' in any enactment enlarges the meaning of those words or phrases occurring in the body of the statute and is construed as comprehending not

only such things as they signify according to their natural import but also extending to those things which the section declares that they 'include'.

The word 'includes' when used in a statute or written enactment can enlarge the scope of the subject matter it qualifies or

tends to qualify, only to an extent permitted by law. Section 7 (3) of the Federal High Court Act reproduced hereunder clearly illustrates this point:

'7. (3) where jurisdiction is conferred upon the Court under Subsections (1), (2) and (3) of this section, such jurisdiction shall be construed to include jurisdiction to hear and determine all issues relating to arising from, or ancillary to such subject matter (underlining for emphasis).'

From the above, it is clear that the relevant operative phrase is 'include jurisdiction to hear and determine all issues relating

to arising from or ancillary to such subject matter', in determining the relevance of the phrase under reference, it is

imperative to determine what the sub-phrase 'such subject matter' refers to. From the clear provision of the Act, the only natural interpretation of the phrase 'such subject-matter' are those subject matter(s) identified in subsections (1), (2) and (3) of the Federal High Court Act; which is in pari materia with the provisions of Section 251 (1) (g) of the Constitution of the Federal Republic of Nigeria (1999 (as amended)).

From the provisions of Section 7 (1), (2) and (3) of the Federal High Court, the admiralty causes identified therein has to do with 'any admiralty jurisdiction, including shipping and navigation and the Rivers Niger, Benue and their affluent and on such other inland waterway as may be designated by any enactment to be an international waterway, all Federal ports, (including the Constitution and powers of the ports authorities for Federal ports) and carriage by Sea' (underlined sentences for emphasis).

The instant suit has nothing to do with shipping and navigation on the Rivers Niger, Benue and their affluent or any inland waterway. It is neither connected with or challenging the constitution and power of the ports authorities for any Federal Ports, nor does it invoke any dispute arising from a carriage by Sea.

Considering the provision of Section 1(3) of the Admiralty Jurisdiction Act, it is clear that to determine and give effect to its true meaning the 'expression unius est exclusion alterius' maxim of interpretation must be applied. It is trite rule that

where a statute mentions specific things, those things not mentioned are not intended to be included. See *S.E.C v Kasumu*

(2001) 10 NWLR (Part 1150) Page 509. Despite the wide admiralty jurisdiction of the Federal High Court, under Section

1(1) of the Act, the Expression "includes" does not leave the ambit of the Court Jurisdiction open-ended. It is trite that the

jurisdiction of a Court cannot be expanded, especially where same has been clearly defined and prescribed by a Statute. See

*Tukur v Governor Of Gongola State* (1989) 4 NWLR (Part 117) Page 517. *Onuora v K.R.P.C.* (Supra): *Onwudiwe v F.R.N.*

(2006) 10 NWLR (Part 988) Page 382 and *Gafar v Governor Of Kwara State* (Supra).

Having come to the conclusion that the Federal High Court lacked jurisdiction to assume jurisdiction to try this suit, it will be futile and mere academic exercise to proceed to consider the remaining issues raised by the parties in the appeal and I

accordingly so decline to do so.

In the light of the foregoing, the Appeal succeeds and is allowed. It follows therefore that the Federal High Court wrongly

assumed jurisdiction on this Suit and the decision of the court below affirming that decision is set aside. The said Suit is struck out with costs of N50,000 awarded in favour of the Appellants.

Judgment delivered by

Aloma Mariam Mukhtar. JSC

I have read in advance the lead judgment delivered by my learned brother Galadima JSC. I am in full agreement with his

reasoning and conclusion. I abide by the consequential orders made in the lead judgment.

Judgment delivered by

Francis Fedode Tabai. JSC

I had the benefit of reading in draft the lead judgment of my learned brother Galadima JSC. With respect to the preliminary

objection raised by the respondents, it is my view that there is no substance in it and I also dismiss it. As respects the appeal

itself I am in full agreement with the reasoning and conclusion that there is merit in the appeal which should therefore be

allowed. For purposes of emphasis however I shall briefly comment on the issue of jurisdiction.



In their respective briefs of argument both parties' formulated six issues which in their view effectively determines the appeal. However upon a careful examination of the grounds of appeal it is clear that the sole issue is that of jurisdiction. It

is the Appellants as the Respondents' first issue. It is couched as follows:

'Considering the clear provisions of Section 251 (1) (g) of the 1999 constitution on which the trial High Court relied upon to assume jurisdiction in this matter coupled with the claims submitted to the said trial High Court by the plaintiffs, as well as binding decisions of both this Court and the Lower Court on the Federal High Court jurisdiction in similar circumstances. whether or not the Lower Court was not in grave error to have held as it did that the Federal High Court rightly assumed jurisdiction in this in this matter.'

As a starting point it is necessary to re-emphasise that jurisdiction in a creation of the Constitution and/or Statute. See *Erogoro v Govt. Cross-River State* (1991) 4 NWLR (Part 185) 322. In this case it is Section 251 (1) (g) of the 1999 Constitution that has circumscribed the jurisdiction of the Federal High Court. The said section provides.

'Section 251 (1) (g) Any admiralty jurisdiction including shipping and navigation on the River Niger or River Benue and their affluences and on such other inland waterway as may be designated by any enactment to be an international waterway, all Federal Ports (including the constitution and powers of the ports authorities for Federal Ports) and carriage by sea.'

It is also settled law that it is the claim any particular case that determines the Court in which jurisdiction is vested. See *Baba v Baba* (1991) 9 NWLR (Part 214) 248 and *Tukur v Government of Gongola State* (1989) 4 NWLR (Part 117) 517.

What then is the claim in this case' This action was commenced by way of an originating summons issued on the 9<sup>th</sup> of

August, 2006, It contains the following reliefs:-1. A declaration that the intention, declarations, understanding, joint venture agreement and irrevocable commitments expressed by the Plaintiffs and the 2<sup>nd</sup>

Defendant and contained in the Technical Proposal/Bid documents dated June, 2005 and their executed 'Memorandum of Understanding dated 27<sup>th</sup> July, 2005'

submitted to the Bureau of Public Enterprises in respect of their bidding for the management and operation of Terminal C. Tin Can Island Port, Apapa, Lagos in the name of the 2<sup>nd</sup>

Defendant are binding on the Plaintiffs and the 2<sup>nd</sup> Defendant.

2. A declaration that by virtue of the intentions, declarations, understanding, joint venture agreement and irrevocable commitments expressed by the Plaintiffs and the 2<sup>nd</sup>

Defendant and contained in the Technical Proposal/Bid document dated June, 2005 and their executed Memorandum of Understanding dated 27<sup>th</sup> July,

2005 submitted to the Bureau of the Public Enterprises in the name of the 2<sup>nd</sup> Defendant in respect of their

bidding for the management and operation of Terminal C, Tin Can Island Port, Apapa, Lagos, the Plaintiffs and the 2<sup>nd</sup>

Defendant are joint- bidders for and joint-venture partners in respect of the management/operation of the said Terminal C, Tin Can Island Port, Apapa, Lagos,

3. A declaration that pursuant to the intentions, declarations, understanding, joint venture agreement and irrevocable commitments expressed by the Plaintiffs and the 2<sup>nd</sup>

nd  
Defendant and contained in the Technical  
Proposal/Bid documents dated June, 2005 and their executed memorandum of understanding dated 27  
th  
July,

2005 submitted to the bureau of Public Enterprises in respect of their bidding for the management and  
operation of Terminal C, Tin Can Island Port, Apapa, Lagos, the 2

nd  
Defendant, the 1

st  
Plaintiff and the 2

nd  
Plaintiff are entitled to hold all the shares of the 1

st  
defendant in the ratio of 40%, 30% and 30% respectively  
and be entered in its Register of Members as holders of such shares.

4. A declaration that Plaintiffs are entitled to participate jointly with the 2

nd  
Defendant in the business and  
meetings of the 1

st  
Defendant and the Plaintiffs' chief executive officers are entitled to be appointed co-directors the 1

st  
Defendant's business as the manager/operator of Terminal C, Tin Can Island Port, Apapa,  
Lagos.

5. A declaration that the resolutions to allot all the shares in the 1

st  
Defendant in the ratio of 70% respectively to  
and appoint the 2

nd  
and 3  
rd  
Defendants as the only directors of the 1

st  
Defendant, are contrary to the aforesaid  
intentions, declarations, understanding joint venture agreement and irrevocable commitments expressed by  
the Plaintiffs and the 2

nd  
Defendant and contained in the aforesaid Technical Proposal/Bid documents dated  
June, 2005 and their executed Memorandum of understanding dated 27

th  
July, 2005 in respect of the bid in  
the name of the 2

nd  
Defendant for and subsequent management of the aforesaid port.

6. A declaration that the 2

nd  
and 3  
rd  
Defendants as the current shareholders of the 1

st  
Defendant hold, 60% of  
the shares in the 1

st  
Defendant in implied or constructive trust for the Plaintiffs in the proportion of 30% thereof for each Plaintiff.

7. A declaration that on a proper construction of the said Technical Proposal/Bid documents and the Memorandum of Understanding submitted to the Bureau of Public Enterprises, the 2  
nd  
defendant did not act  
for itself alone in the bid and the conclusion of the conclusion of the bid for and for the subsequent management of the said port but acted for itself and as the agent of and in implied or constructive trust for the Plaintiffs.

8. A declaration that the Defendants are liable to render a true, fair and accurate account of the operation/management of Terminal C, Tin Can Island Port Apapa, Lagos including all funds, earnings, expenses, profit and losses that have accrued to or are incurred by the 1

st  
Defendant relating to their direction  
and management of the business of the 1  
st  
and 2  
nd  
Defendants and the said port with effect from the date of  
the handing over of the said port to the Defendants by the Nigerian Ports Authority and/or the Bureau of Public Enterprises.

9. An order directing the 2  
nd  
Defendant to specifically perform the intentions, understanding, joint venture agreement and irrevocable commitments expressed by the Plaintiffs and the 2  
nd  
Defendant and contained in  
the said Technical Proposal/Bid documents dated June, 2005 and their executed Memorandum of understanding dated 27

th  
July, 2005 on the shareholding and management structures of the joint venture as  
relating to the 1  
st  
Defendant and its business as manager/operator of the said port.

10. An order directing that the Defendants do (or cause to be done) all such acts, obtain (or cause to be executed). All such documents as may be necessary to transfer from the 2

nd  
and 3  
rd  
Defendants to each of the Plaintiffs,  
30% (60% combined) of the shares of the 1

st  
Defendant in return for the payment of the sum of ₦358.3m (Three Million Naira) by each of the Plaintiffs (being the value of the said shares), and that the Defendants do enter the names of the Plaintiffs in the Register of Members of the 1

st  
Defendant as the holders of the shares.

11. An order directing that the Defendants do all such acts and execute all such documents as may necessary to appoint Plaintiffs' Chief Executive Officer or nominees as (additional) directors of the 1

st  
Defendant.

12. An order directing the Defendants to rectify all the incorporation, lease, operation, banking and other

documents of and relating to the 1st

Defendant and the said Terminal C Port (and obtaining all necessary consents) in order to reflect the shareholding and directorship of the Plaintiffs in line with the aforesaid intentions, declarations, joint venture agreement and Memorandum of Understanding.

13. An order directing the Defendants to render a true, fair and accurate account of the operation/management of Terminal C, Tin Can Island Port, Apapa, Lagos, including all funds earnings, expenses, profit and losses that have accrued to or are incurred by the 1st

Defendant relating to their direction and management of business of the 1st

and 2nd

Defendants and the said port with effect from the date of the handing over of the said port to the Defendants by the Nigerian Ports Authority and/or of Bureau of Public Enterprises.

14. An order of perpetual injunction restraining the Defendants whether by themselves, their directors, agents, privies or servants or otherwise howsoever, from further managing/operating the said port without including the Plaintiffs as holders of the agreed ratio of shares and appointing their Chief Executive officers or nominees as directors of the 1st

Defendant and involving them in the management of the said port.

15. An order of perpetual injunction restraining the Defendants whether by themselves, howsoever, from excluding the Plaintiffs from their shares, meetings, management, profits/loss sharing dividends, remunerations and all other rights and privileges accruing to them as shareholders, directors and managers of the 1st

Defendant and in the 1st

Defendant's management/operation of the said Terminal C. Tin Can Island Port, Apapa, Lagos port.

I have carefully gone through the fifteen reliefs claimed.

The totality of the reliefs claimed is for a declaration that there is a valid and subsisting joint venture partnership agreement

between the Plaintiffs/Respondents and the 2nd

Defendant/Appellant for their joint management and control of Terminal C Tin Can Island Port, Apapa through the 1st

Defendant company but which agreement is in the name of the 2nd

Defendant/Appellant. There is claim for a further declaration that by virtue of the said joint venture partnership agreement

and the intentions of the parties therein and the intentions further expressed in the Technical Proposal/Bid Documents dated

June, 2005 and the ensuing Memorandum of Understanding dated the 27th

of July, 2005, the 2nd

Defendant/Appellant, the 1st

Plaintiff/Respondent and the 2nd

nd

Plaintiff/Respondent are entitled to hold the shares of the 1

st

defendant in the ratio of

40%, 30% and 30% respectively. And it is for the due performance of the aforesaid joint venture partnership agreement that

the Plaintiffs/Respondents have also claimed specific performance and the injunctive reliefs.

In my view there is nothing in the claim which invokes the admiralty jurisdiction of the Federal High Court as provided for

in Section 251 (1) (g) of the 1999 Constitution. It is simply a partnership agreement which due enforcement is being sought

in the claim.

The mere fact that the agreement relates to the management and operation of Terminal C Tin Can Island Port, Apapa does

not make it a maritime matter within the exclusive jurisdiction of the Federal High Court.

I have no doubt in my mind that the dispute is simply on the alleged joint partnership contract and the claim is founded on

that alleged contract. It is settled law that the Federal Court lacks jurisdiction in matters of simple contract. On the Federal

High Court lack of jurisdiction in matters of simple contract such as the instant case. I agree entirely with Learned Senior

Counsel for the appellant that Onuoha v Kaduna Refinery and Petro Chemical Company (2005) 6 NWLR (Part 921) 391 is

quite apposite. At Page 405 this Court stated:-'A close examination of the additional jurisdiction conferred on the Federal High Court in the section by the 1999

Constitution clearly shows that the Court was not conferred with jurisdiction to entertain claims founded on contract

u' in the instant case. In the instant case since the dispute founded on contracts are not among those included in the additional jurisdiction conferred on the Federal High Court that Court therefore had no jurisdiction to entertain the Appellant's claim.'

As I said, this authority is quite apposite to the facts of this case. The Federal High Court clearly had no jurisdiction to entertain the claim.

For the foregoing reasons and fuller reasons very ably articulated in the lead judgment of my learned brother I also allow

the appeal.

I abide by the consequential orders contained in the lead judgment.

Judgment delivered by

Nwali Sylvester Ngwuta. JSC

I had the advantage of reading in draft the lead judgment just delivered by My Noble Lord, Galadima, JSC. I entirely agree

with the reasoning and conclusion therein contained and in addition I make the following contribution.

In their Originating Summons, the respondents, as plaintiffs in the trial Court raised the following questions for that Court

to determine:

'1. Whether having expressed the intentions, declaration, understanding, joint venture agreement and irrevocable commitments contained in the Technical Proposal/Bid agreements dated June 2005 submitted to the Bureau of Public Enterprises by the plaintiffs and the 2

nd

defendant in the name of the 2

nd

defendant in respect of

their bidding for the management and operation of Terminal C Tin Can Island Port, Apapa, Lagos, the plaintiffs and the 2

nd

defendant are not bound by the said declarations, understanding, joint venture agreements and irrevocable commitments at law and in equity'

2. Whether on a proper interpretation of the intention, declarations, understanding, joint venture agreements and irrevocable commitments reached and contained in the aforesaid Technical Proposal/Bid documents and Memorandum of Understanding submitted to the Bureau of Public Enterprises by the plaintiffs and the 2

nd  
defendant and in the name of the 2

nd  
defendant the plaintiffs and the 2

nd  
defendant are joint bidders and joint  
venture partners for the Terminal C, Tin Can Island Port, Apapa, Lagos and in its subsequent management  
operation'

3. Whether pursuant to the intentions, declarations, understanding, joint venture agreement and irrevocable  
commitments reached and contained in the aforesaid Technical Proposal/Bid documents and Memorandum  
of Understanding, the 2

nd  
defendant, the 1

st  
plaintiff and the 2

nd  
plaintiff are entitled hold all the shares of the

1  
st  
defendants in the ratio of 40%, 30% and 30% respectively and be entered in its Register of Members as  
holders of such shares.

4. Whether the resolutions to allot the shares in the 1  
st  
defendant in the ratio of 20% to 30% respectively to and  
appoint the 2

nd  
and 3  
rd  
defendants as the only directors of the 1

st  
defendant are contrary to the aforesaid  
intentions, declarations, understanding, joint venture agreement and irrevocable commitments expressed by  
the plaintiffs and the 2

nd  
defendant and contained in the aforesaid Technical Proposal/Bid documents dated  
June, 2005 and their executed Memorandum of Understanding dated 27

th  
July, 2005 in respect of the bid in  
the name of the 2

nd  
defendant for and subsequent management of the aforesaid Port'

5. Whether in equity and on a proper construction of the intentions, declarations, understanding, joint venture  
agreement and irrevocable commitments, expressed in the Technical Proposal/Bid documents and  
Memorandum of Understanding submitted to the Bureau of Public Enterprises in the name of the 2

nd  
defendant the 2

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and 3

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defendants as the current shareholders of the 1  
st  
defendant are not holding 60% of  
the shares in the 1  
st  
defendant on implied or constructive trust for the plaintiffs in the proportion of 30%  
thereof for each plaintiff'

6. Whether in equity and on a proper construction of the intentions, declarations, understanding, joint venture agreement and irrevocable commitments expressed in the Technical Proposal/Bid documents and Memorandum of Understanding submitted to the Bureau of Public Enterprises in the name of the 2  
nd  
defendant, the 2

nd  
defendant acted for itself alone or for itself and on behalf and as implied or constructive trustee of the plaintiffs in the said bid'

7. Whether having regard to the part performance of the aforesaid intentions, joint venture agreement, commitments and understanding by the plaintiffs, the 2

nd  
defendant should not be compelled to fully perform  
the joint venture agreement and irrevocable commitments and unde rstanding if entered into with the  
plaintiffs"

Consequent upon the answers to the questions reproduced above, the plaintiffs/respondents sought the following reliefs,

among others:

'1. A declaration that the intentions, declarations, understanding, joint venture agreement and irrevocable commitments expressed by the plaintiffs and the 2

nd  
defendant and contained in the Technical Proposal/Bid  
documents dated June, 2005 and their executed Memorandum of Understanding dated 27

th  
July, 2005

submitted to the Bureau of Public Enterprises in respect of their bidding for the management and operation of Terminal C, Tin Can Island Port, Apapa, Lagos in the name of the 2

nd  
defendant, are binding on the plaintiffs  
and the 2

nd  
defendant.

2. A declaration that by virtue of the intentions, declarations, understanding, joint venture agreement and irrevocable commitments expressed by the plaintiffs and the 2

nd  
defendant and contained in the Technical  
Proposal/Bid documents dated June 2005 and their executed Memorandum of Understanding dated 27

th  
July,  
2005 submitted to the Bureau of Public Enterprises in the name of the 2

nd  
defendant in respect of their  
bidding for the management and operation of Terminal C, Tin Can Island Port, Apapa, Lagos, the plaintiffs  
and the 2

nd  
defendant are joint bidders for and joint venture partners in respect of the management/operation

of the said Terminal C, Tin Can Island Port, Apapa, Lagos.

3. A declaration pursuant to the intention declarations, understanding, joint venture agreement and irrevocable commitments expressed by the plaintiffs and the 2

nd  
defendant and contained in the Technical Proposal/Bid  
documents dated June, 2005 and their executed Memorandum of Understanding dated 27

th  
July 2005  
submitted to the Bureau of Public Enterprises in respect of their bidding for the management and operation of  
Terminal C, Tin Can Island Port, Apapa, Lagos, the 2

nd  
defendant, the 1  
st  
plaintiff and the 2

nd  
plaintiff are  
entitled to hold all the shares of the 1

st  
defendant in the ratio 40%, 30% and 30% respectively and be entered  
in its Register of Members as holders of such shares.

4. A declaration that plaintiffs are entitled to participate jointly with the 2

nd  
defendant in the business and  
meetings of the 1

st  
defendant and the plaintiffs\ Chief Executive Officers are entitled to be appointed co-Directors of the 1  
st

of the 1  
st  
defendant and co-operate the 1

st  
defendant's business as the Manager/Operator of  
Terminal C, Tin Can Island Port, Apapa, Lagos.

9. An order directing the 2

nd  
defendant to specifically perform the intentions, understanding, joint venture  
agreement and irrevocable commitments expressed by the plaintiffs and the 2

nd  
defendant and contained in  
the said Technical Proposal/Bid documents dated June, 2005 and their executed Memorandum of  
Understanding dated 27

th  
July 2005, on the share holding and management structures of the joint venture as  
relating to the 1

st  
defendant and its business as Manager/Operator of the said Port.'

In my humble view, the sum total of the 'intention, understanding, joint venture agreement and irrevocable commitments" which form the basis of the questions raised in the originating summons and the reliefs sought speaks of contract sought to be declared binding on the parties and to be enforced, as well as specific performance of the contract.

The questions raised and the declaration and orders sought are predicated on contract between the parties. The mere fact

that the intentions, declaration, understanding, joint venture agreement and irrevocable Technical Proposal/Bid



documents

and Memorandum of Understanding all refer to and relate to the management and operation of Terminal C, Tin Can Island

Port, Apapa, a maritime structure for maritime operation, does not make the transaction between the parties less of a contractual relationship.

The decisive issue in the appeal, as is apparent from the lead judgment, is whether on the questions raised, the declaration

and orders sought in the originating summons and the accompanying affidavit, the respondents as plaintiffs can properly

ignite the admiralty jurisdiction of the Federal High Court, bearing in mind the well settled principle that jurisdiction is the

main pillar upon which litigation stands. See *Alhaji Muhammad Maigari Dingyadi & Anor v INEC & Ors* (2011) 4 SCNJI and that it is the plaintiff's claim that clothes the Court with, or denies it, the jurisdiction to adjudicate on a matter before it.

See *Chief Numogun Sam Adeyemi & Ors v Emmanuel Opeyori* (1976) 9 & 10 SC 31 at 51-52.

The admiralty jurisdiction of the Federal High Court is contained in Section 251 (1) (a) of the 1999 Constitution of the Federal Republic of Nigeria, hereunder reproduced:

'Section 251 (1) (g): Any admiralty jurisdiction including shipping and navigation on the River Niger or Benue and their effluents and on such other Inland Waterway as may be designated by any enactment to be an international waterway, all Federal Ports (including the constitution and powers of the Port, authorities for Federal Ports) and carriage by sea.'

The contract entered into by the parties, evidenced by the intention, declarations, understanding, joint venture agreement

and irrevocable commitments, the sanctity and enforcement of which contract, the respondent as plaintiff approached the

Federal High Court by invoking that Court's admiralty jurisdiction is not within the intendment of Section 251 (1) (g) of the

Constitution. It has nothing to do with shipping and/or navigation on any inland waterway or international waterway or Federal Ports or the Constitution and powers of the ports, authorities for Federal Ports or carriage by sea.

Also Section 1 (1) of the Admiralty Jurisdiction Act Cap 5 Laws of the Federation 2004, upon which the lower Court placed

reliance provides:

'1. (1): The admiralty jurisdiction of the Federal High Court (in the Act referred to as the Court) includes the following:

(g) Any matter, arising within a Federal Port or a national Airport and its precincts, including claims for loss of or damage to goods occurring between off-loading of goods across space from a ship or any aircraft and their delivery at the consignee's premises, or during storage or transportation before delivery to the consignee.

(i) Any cause or matter arising from the constitution and powers of all port authorities, airport authority and the National Maritime Authority. '

Here again, the dispute between the parties does not fall within the embrace of the provision reproduced above. I do not see

how the lower Court could have relied on the above provision to affirm the jurisdiction wrongly assumed by the Federal High Court to determine the respondent's case before it.

The jurisdiction of the Federal High Court is wide but it is by no means unlimited and while that Court, as any other Court,

can expound its jurisdiction, it cannot expand it to include any matters over which the law creating it did not vest it with powers to determine. This Court, the apex Court, cannot afford to hide under the canopy of concurrent findings of the two

lower Courts to give its sacred sanction to decisions arrived at by misinterpretation of the relevant statutes.

It is manifest that the concurrent findings were predicated on wrong premises and this Court has a right and a duty to interfere with the decisions. See *Ebba v Ogodu* (1984) 4 SC 84.

For the above and the fuller reasons adumbrated in the lead judgment, I also allow the appeal. Consequently, I set aside the

judgment of the Court below as well as the judgment of the Federal High Court which it affirmed. In place of the said judgment of the Federal High Court, I enter an order striking out the respondents' claim for want of jurisdiction on the part of the Federal High Court to entertain the matter. I adopt the order for costs in the lead judgment in favour of the appellants.