

# IN THE SUPREME COURT OF NIGERIA

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Suit No: SC342/2001

**Petitioner:** Integrated Timber and Plywood Products Ltd

And

**Respondent:** Union Bank Nigeria Plc

Date Delivered: 2006-05-19

**Judge(s):** Salihu Modibbo Alfa Belgore , Umaru Atu Kalgo , Niki Tobi , George Adesola Oguntade , Ikechi Francis Ogbuagu

## Judgment Delivered

This is an appeal by the Plaintiff/Appellant against the judgment of the Court of Appeal, Benin Division, delivered on 12th July, 2000 setting aside, the Ruling of Abutu, J. of the Federal High Court and ordered the transfer of the substantive suit, to the Delta State High Court for hearing and determination.

The Appellant claimed in the Writ of Summons taken out on 10th October, 1996, as follows:

'The Defendant which carries on banking business nationwide has offices in Benin within the jurisdiction of this Honourable Court.

Sometime in 1990, the Defendant while carrying on its Banking business forwarded to the Plaintiff an irrevocable documentary letter of Credit No. K16167/65626 established in Belgium and by a letter dated 12/10/90 the Defendant advised and confirmed the authenticity of the letter of Credit. Pursuant to the Defendant's advice and confirmation the Plaintiff adopted the letter of Credit and exported Iroko furniture Component's worth M28527 to one C.J.E. Dubois Stockmanivs in Belgium. In spite of repeated demand (sic) Plaintiff has received no payment for its goods.

Wherefore the Plaintiff claims against the Defendant the sum of N120, 000, 000. 00 (One Hundred and Twenty Million Naira) as special and general damages for breach of contract and or negligent misstatement'.

(The underlining mine)

I note that the Appellant, in reproducing the above claim in the Brief of Argument, 'deliberately' or 'inadvertently' omitted the concluding words - i.e. 'for breach of contract and or negligent misstatement'. In the Respondent's Brief, the whole claim was correctly reproduced except the word 'demand' which both parties typed as 'demands'.

The Appellant later filed a Statement of Claim on 18th February, 1997. The Respondent upon being served with the same, filed a motion on Notice on 24th March, 1997, praying for,

'An order dismissing and or striking out the suit on the grounds (sic) that the Court lacks jurisdiction to entertain the suit'.

The learned trial Judge, after hearing arguments from both learned counsel for the parties, in a considered Ruling delivered on 7th July, 1997, dismissed the said motion, and held that the suit, was/is one within the Admiralty jurisdiction of the court. Said he: in his conclusion,

'In the result I hold that the suit is one within the admiralty jurisdiction of this Court. The Court therefore has jurisdiction to entertain the suit. The objection is overruled and the motion is hereby dismissed'.

Dissatisfied, the Respondent successfully appealed to the Court of Appeal (hereinafter called 'the Court below') which on 12th July, 2000, unanimously allowed the appeal. The Appellant being aggrieved by the said decision has now appealed to this Court on two (2) grounds of appeal. Without their particulars, they read as follows:

'1. The learned Justices having rightly referred to the claim and Statement of Claim erred in Law in holding:

'Taking into consideration the two definition above, it cannot be disputed that the dispute that gave rise to this action falls within the confine of the relationship between a bank and customer in which case, the jurisdiction of the Federal High Court has been ousted by the proviso to paragraph (d) of Section 230 (1) of the 1979 Constitution as amended by Decree 107 of 1993'.

2. The learned Justices erred in law when they held:

'With the greatest respect to the learned trial Judge, I disagree with him, that Section 1(1) (h) of the Admiralty Jurisdiction of Decree No. 59 of 1991 has conferred jurisdiction on the trial court when the said Section ceases to have effect by virtue of the modification of the Constitution by Decree No. 107 of 1993. See Bizzee Bee Hotels Limited v. Allied Bank (Nigeria) Limited 1996 2 NWLR (pt.465) 376.....''

The Appellant has formulated one (1) issue for determination, namely,

'Whether the learned Justices were right in holding that the Federal High Court lacked the jurisdiction to entertain the claim of the Plaintiff''

The Respondent has adopted the above issue.

In my respectful view, what appears clear and plain to me, is that while the trial court, held that the suit was one within the Admiralty jurisdiction of that court, the court below, held that the action falls within the confine of the relationship between a bank and customer in which case, the jurisdiction of the Federal High Court, has/had been ousted by the proviso to paragraph (d) of Section 230(1) of the 1979 Constitution as amended by Decree 107 of 1993.

The court below - per Ba'aba, JCA, at page 75 of the Records, stated inter alia, as follows:

'With the greatest respects to the learned trial Judge, I disagree with him, that Section 1(1) (h) of the Admiralty Jurisdiction Decree No. 59 of 1991 has conferred jurisdiction on the trial court when the said section ceases to have effect by virtue of the modification of the Constitution by Decree 107 of 1993. See Bizzee Bee Hotels Ltd, v Allied Bank (Nig.) Ltd(1996) 8 NWLR (Pt. 465) 170, 181'.

In his concurring Judgment, Akintan, J.C.A, (as he then was), at page 77 of the Records, had this to say, inter alia:

'..... I also agree that the Plaintiff's claim in the instant case could not be said to be one covered by the admiralty Jurisdiction of the Federal High Court. In fact, I believe that the claim has nothing to do with admiralty matters. ....'.

The Respondent, has in its Brief, also submitted that the claim of the Appellant, has nothing to do with Admiralty matters. I too, say so. This is because firstly, as rightly stated in the Respondent's Brief, in the Appellant's Statement of Claim at page 8 of the Records (not in paragraph 13 as stated in the Respondent's Brief as there is no paragraph 13 therein) the claims of the Appellant are as follows:

'(a) Special damages of DM28, 527.70 being value of the Iroko Furniture component exported to Belgium under the L C No. K16167/65626 or the Naira equivalent of N1, 478,279.80.

(b) Loss of earnings on investment of DM 28527.70 at the rate of 15% per annum at the Commercial Bank Savings rate of interest of 15% per annum for the period 1st January, 1991 to the day of judgment, and or

(c) N60, 000,000.00 as general damages for negligence.'

As can be seen as rightly submitted in the Respondent's Brief, the above claims have nothing to do with Admiralty and

are not in any way, making any attempt to enforce or enforcing the said letter of credit.

Secondly, as reproduced and noted by me hereinabove, the sum of N60, 000.000.00 (sixty million naira) claimed in the Writ of Summons, were for 'special and general damages for breach of contract and or negligent misstatement'.

Yes, now that it is settled that a Statement of Claim supercedes the Writ. See Chief Lahan & ors. v. Lajoyetan & ors. (1972) NSCC 460 @ 461, (1972) 6 S.C. 106; Nta v. Aniqbo (1972) 5 S.C. 156; Enigbokan v. American International Insurance Co. Ltd. (1994) 4 NWLR (Pt 348) 1 @ 19; (1994) 6 SCNJ. 168 and recently, Alhaji Arowolo v. Akapo & 2 ors. (2003) 8 NWLR (Pt 823) 451 @ 469 - 470 C.A. citing several cases therein, just to mention but a few, the court, will then confine itself, to the said claim in the Statement of Claim. Significantly and remarkably, in the Appellant's Brief, paragraphs 4, 5, 6, 7 and 8 of the Statement of Claim, have been reproduced therein. In the Respondent's Brief, paragraphs 4 and 5 of the said Statement of Claim have also been reproduced therein. The paragraphs read as follows:

'4. Sometime in 1990, the plaintiff received through its Bankers, the New Nigeria Bank Plc, a telex of an Irrevocable Documentary Letter Of Credit No. 16167/65626 from the Defendant which said letter of credit has as it's applicant, C.I.E. Dubois Stockmanns of Belgium as the foreign Bank which purportedly issued same. The Plaintiff shall find on a copy of the telex letter of credit for its full terms and effect.

5. By a letter Reference IDC0090/90 dated 12/10/90 addressed to the Plaintiff's said Bankers, and a copy to the Plaintiff, the Defendant advised on and confirmed the authenticity of telex establishing the letter of credit and requested for the sum of N25.00 advising commission. The Plaintiff upon receipt of a copy of the Defendant's letter paid the commission of N25.00 to the Defendant with a N.N.B. Limited draft No. 602092 of 19/11/90 and acted on the Defendant's advice and confirmation by exporting Ireko furniture components to C.I.E. Dubois Stockmanns in Belgium between the 30th November, 1990 and 30th December 1990 (both days inclusive). The Plaintiff shall find on NNB letter of 14/11/90, Plaintiff's letter of 21/11/90 addressed to the NNB Limited, Warri, Plaintiff's invoices No 007, 008 and 009 for the export in the value of DM 28,527.70 delivered to the Defendant.

6. By the terms of the letter of credit, the Plaintiff's drafts for the value of the goods were to be paid on presentation of the relevant shipping documents to the Defendant which the Plaintiff duly submitted to the Defendant and up till now the Plaintiff has received no draft or payment for the value of the goods exported under the said letter of credit.

7. At the time the defendant forwarded to the Plaintiff the said letter of credit and the letter of confirmation dated 12/10/90, the Defendant intended and it well knew or ought to have known that the Plaintiff would rely on them and would be induced thereby to export its goods upon the terms contained therein. In the premises, the Defendant was under a duty to take care in the making of the said representation to the Plaintiff so as to cause Plaintiff any financial loss or damage.

8. Acting on the faith of the Defendant's representations and induced thereby, the Plaintiff exported Iroko furniture components in the value of DM 28,527.70 to C.I.E. Dubois Stockmanns in Belgium and for which no payment has been received.'

I agree with the submission of the learned counsel for the Appellant, in paragraph 1-11 of the Appellant's Brief that,

'The Claim as endorsed on the Writ of Summons and further elaborated in the Statement of Claim remains the basis for determination whether the court has jurisdiction to entertain the suit. See Adeyemi & ors. v. Opeyori 1976 1 F.M.L.R. 149 @ 158'

Comment: The above however, does not detract from the settled law, that a Statement of Claim supersedes the Writ of Summons.

Note: The case is also reported in (1976) 9 - 10 S.C. 31 @ 51. See also the cases of Oba Aromolaran & anor. v. Oladele & 2 ors. (1990) 7 NWLR (Pt.162) 359 @ 375 C.A citing the cases of The Administrator ' General & Public Trustees v. Asika Ilobi (1972) ESCLR 587 @ 593; and Onitolo v. Bello (1958) 3 FSC 53, (1958) SCNLR 49. See also the

case of *Obiteh v. Obiki* (1992) 5 NWLR (Pt. 243) 599 (5) 641 and many others.

Thirdly, the averment in paragraph 4 of the Statement of Claim shows that the Bankers of the Appellants, as far as the Irrevocable Documentary Letter of Credit No. 16167/65626 is concerned, is/are New Nigeria Bank which forwarded the said letter of Credit, to the Appellant.

Fourthly, from the averment in paragraph 5 of the Statement of Claim, there was no, transaction in respect of the issuance of letter of Credit between the Appellant and the Respondent. The transaction between the Appellant and the Respondent, I hold, was not even that of a Banker and Customer as was erroneously, with respect, held by the court below. What the Appellant has stated from the averments, in my respectful view, was the confirmation of the authenticity of the Telex establishing the letter of credit and not the letter of credit itself. Period! The payment of N25.00 (twenty-five Naira), was for the said confirmation or in other words, the consideration paid by the Appellant for the said confirmation. I repeat, there was no other transaction of issuance of a letter of credit, between the Appellant and the Respondent.

Fifthly and lastly, the said confirmation for the consideration or payment of N25.00 (twenty-five Naira), amount in my humble but firm views, to a simple contract. I hold that the issue and argument on Admiralty, is completely and absolutely misconceived. As a matter of fact, the issue does not arise. It is a non-issue in all the circumstances having regard to the claims of the Appellant hereinabove reproduced by me.

Let me therefore, stress here and reproduce the principle enunciated by this Court - per Obaseki, JSC, which is now firmly settled, in the case of *Alhaji Tukur v. The Government of Gongola State* (1989) 4 NWLR (Pt. 117)517@ 549; (1989) 9 SCNJ.1. It is as follows:

'It is a fundamental principle that jurisdiction is determined by the Plaintiff's claim (*Izenkwo (sic) v. Nnadozie*) 14 W.A.C.A. 361 at 363 ' per Coussey, J.A; *Adeyemi v. Opeyori (sic)* (1976) 9 - 10 S.C. 31 at 51). In other words, 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 *Western Steel Works v. Iron & Steel Workers* (1987) 1 NWLR (Pt. 49) 284). Judges have no duty and indeed no power to expand the jurisdiction conferred on them but they have a duty and indeed jurisdiction to expound the jurisdiction conferred on them. See *The African Newspapers of Nigeria & ors. v. The Federal Republic of Nigeria* (1985) 1 All NLR 50 at 175; (1985) 2 NWLR (Pt. 6) 137 at 165'.

(The underlining mine)

Assuming that the relationship between the Appellant and the Respondent is that of Customer and Banker (which is not conceded by me), the case of *ND1C v. Okem Enterprises Ltd. & anor.* (2004) 10 NWLR (Pt. 880) 107; (2004) 4 S.C. (Pt. II) 77 cited and relied on by the learned Counsel for the Appellant as an Additional Authority in respect of his submissions in paragraph 2. 02 of the Appellant's Brief, has made it abundantly clear, that the Federal High Court, does not have exclusive jurisdiction in banking and customer banker relationships. At least, the learned counsel concedes this fact or the said decision of this Court.

Let me quickly state that the case of *Federal Mortgage Bank of Nigeria v. NDIC (Nigeria Deposit Insurance Corporation)* (1999) 2 NWLR (Pt. 591) 333 @ 362 - 363. (1999) 2 SCNJ. 57 - per Ogundare, JSC, (of blessed memory), dealt substantially, with the issue of the status of Banker/Banker relationship. In other words, the status of a or one Bank, when dealing with another Bank as a customer - like a Bank interested in earning interest from another Bank through say, where that Bank, made a deposit in/with the other Bank. In that case or circumstance, where a dispute arises from such transaction, then, the relationship of individual customer and banker is established. Then of course, such dispute or any dispute arising from that transaction is triable in the State High Court as well as in the Federal High Court.

Said the learned Jurist:

'..... with respect to the learned counsel for the respondent, I do not share the view that the proviso in Section 230 (1) (d) would not apply where in a customer/banker relationship, the customer is a bank. To say that where there is a dispute between two banks, the forum for resolution of the dispute is the Federal High Court is to read into S.

230 (l)(d) what is not there..... In the absence of any evidence to the contrary about the custom in the industry, I must hold that it is a simple customer/banker relationship which the proviso in Section 230 (1) (d) exempts from the exclusive jurisdiction of the Federal High Court.'

As can be seen from the above discuss reliance on these cases by the learned counsel for the Appellant, is hopelessly, with respect, and grossly misconceived. By no stretch of imagination, are they relevant or applicable to the simple contract transaction between the Appellant and the Respondent. The intendment of the proviso to Section 230(1) (d) of the Constitution 1979 was certainly and surely, to give concurrent jurisdiction to both the Federal High Court and State High Court. If the Decree meant that it would include matters between an individual customer and his bank, it should have said so. The customer and Banker relationship is certainly contractual.

In the case of Bizee Bee Hotels Ltd, v. Allied Bank (Nig.) Ltd. (1996) 8 NWLR (Pt. 465) 176 @ 185 C.A, the jurisdiction of the Federal High Court, was held to have been ousted.

In Afribank (Nig.) PLC v. K.C.G. (Nig.) Ltd. (2001) FWLR (Pt.67) 1042 C.A., His Lordship, Ba'aba, JCA, Benin Division, departed from the decision in the instant appeal. With the greatest respect, the Learned Justice, was in effect, reviewing the decision in Bizee Bee Hotels Ltd, v. Allied Bank (Nig.) Ltd, (supra). In this wise, let me refer to the case of Archibong Jatau v. Alhaji Ahmed (2003) FWLR (Pt. 151) 1887 @ 1896; (it is also reported in, (2003) 1 SCNJ. 382), also cited and relied on by the Respondent in its Brief, where this Court, - per Kalgo, JSC, frowned at the attitude of the Court of Appeal, setting aside or reviewing its own decision in another Division. It was/is stated that, that court, can do so, only, where the decision is a Nullity. The Court of Appeal as I know it is proudly known as 'the Court'.

Coming back to the issue in this appeal, it is now firmly established, that in a simple contract (as in the instant case between the parties), it is the High Court and not the Federal High Court that has jurisdiction to entertain and determine it. See the case of Omosowan & 2 ors. v. Chiedozie (1998) 9 NWLR (Pt. 566) 477 @ 484 C.A.

I therefore, hold that the court below was right, when it held that, the Federal High Court, lacked jurisdiction to entertain the Appellant's suit and consequently, transferred it to the Delta State High Court for hearing and determination. I however, hold that its reason for so holding, was erroneous, but yet, it came to a correct decision. It is now firmly settled that an Appellate Court, looks and bases its decision, at the correctness of the decision and not necessarily, at the reason for the decision. In other words, an Appellate Court will not set aside the decision of a lower court which is right and just, merely because the trial Judge or the court below, gave wrong reasons for the decision. The paramount consideration for the Appellate Court is whether the decision is right and not necessarily whether the reasons are right. See Sowemimo v. Alhaji Somisi & ors. (1982) 1 ANLR (Pt.1) 49; United Bank for Africa Ltd. & anor. v. Mrs. Nqozi Achoru (1990) 6 NWLR (Pt. 156) 254; (1990) 10 SCNJ. 17 @ 26; Ayeni & ors. v. Sowemimo (1992) 5 S.C. 60 @ 74; and recently, Alhaji Ndayako v. Alhaji Dantoro & 6 ors. (2004) 5 SCNJ. 152 @ 172, 177.

In the end result or analysis, this appeal, is most frivolous. It fails and it is accordingly dismissed.

I hereby affirm (on a different ground), the decision of the court below. Costs follow the event. The Respondent is entitled to costs of N10, 000.00 (ten thousand naira) payable to it, by the Appellant.

Judgment delivered by  
Saliyu Modibbo Alfa Belgore, J.S.C

I agree that this appeal has no merit. For the reasons fully set out in the judgment of Ogbuagu JSC I also dismiss it with same orders as to costs.

Judgement delivered by  
Umaru Atu Kalgo, J.S.C

I have had the opportunity of reading in advance the judgment of my learned brother Ogbuagu JSC just delivered. I agree with his reasoning and conclusions reached therein which I adopt as mine. I therefore find no merit in the appeal. I dismiss it with costs as assessed in the leading judgment. I affirm the decision of the Court of Appeal.

Judgement delivered by  
Niki Tobi, J.S.C

This appeal falls into a very narrow compass. It is whether the matter has anything to do with admiralty, and therefore subject to the jurisdiction of the Federal High Court. The struggle for jurisdiction between the Federal High Court and the High Court of the States became more pronounced and troublesome when the Federal Military Government promulgated the Admiralty Jurisdiction Decree No. 59 of 1991 adding to the traditional jurisdiction in admiralty matters way back to the English Administration of Justice Act, 1956. See section 24 of the Federal High Court Act, Cap. 134, Laws of the Federation of Nigeria, 1990.

The plaintiff's claim at the Federal High Court reads:

'Sometime in 1990, the Defendant while carrying on its banking business forwarded to the Plaintiff an irrevocable documentary letter of credit No. 16167/65626 established in Belgium and by a letter dated 12/10/90 the Defendant confirmed the authenticity of the letter of credit. Pursuant to the Defendant's advice and confirmation the Plaintiff adopted the letter of credit and exported Iroko furniture components worth DM28,527 to one C. I. E. Dubois Stockmanns in Belgium. In spite of repeated demands the Plaintiff has received no payment of its goods. Wherefore the Plaintiff's claim against the Defendant the sum of N120, 000,000 special and general damages.'

The defendant, in a motion dated 23rd March 1997, prayed the Federal High Court to dismiss the suit or in the alternative to strike it out on the ground that the court lacked the jurisdiction to entertain the suit. The learned trial Judge thought differently. He held that he has jurisdiction to hear the matter. In his Ruling of 7th July, 1997, Abutu, J, said at page 16 of the Record:

'Having regard to the provision of Section 1(1)(h) of the Decree above set out the crucial question in this application is whether the banking transaction in relation to which this action has been commenced is a letter of credit transaction involving the importation or exportation of goods to and from Nigeria in a ship or an aircraft. The averments in paragraphs 4-9 of the Statement of Claim already filed shows beyond question that the dispute between the parties is in connection with a letter of credit transaction for exportation of goods out of Nigeria. The affidavit evidence and the averments in the Statement of Claim do not show that the transaction is one between a bank and it (sic) customer. Therefore it is my respectful conclusion that the proviso to section 230(1)(h) of the 1979 Constitution as modified by Decree No. 107 of 1993 does not apply to this case. In the result I hold that the suit is one within the admiralty jurisdiction of this court. The court therefore has jurisdiction to entertain the suit. The objection is overruled and the motion is hereby dismissed.'

The appeal to the Court of Appeal succeeded. Ba'aba, JCA and his other two brothers did not agree with the learned trial Judge. To them, the suit did not involve admiralty. Ba'aba, JCA was pungent. He said:

'With the greatest respects to the learned trial Judge, I disagree with him, that Section 1(1) (h) of the Admiralty Jurisdiction Decree No. 59 of 1991 has conferred jurisdiction on the trial court when the said section ceases to have effect by virtue of the modification of the Constitution by Decree No. 107 of 1993. See Bee Hotels Ltd. V. Allied Bank (Nig.) (1996) 8 NWLR (Pt. 465) 176, 181... My answer to the sole issue is therefore in the affirmative in that the learned trial Judge, in my opinion was wrong to have held that he had jurisdiction to entertain the claim of the Plaintiff/Respondent. In the result, the appeal succeeds and is hereby allowed. I hold that the learned trial Judge lacks

the jurisdiction to entertain the action having regards to the proviso to paragraph (d) of Section 230(1) of the 1979 Constitution (as amended).'

Ba'aba, JCA accordingly ordered that the suit be transferred to the Delta State High Court.

Aggrieved by that judgment, the Appellant has come to this court. Briefs were filed and duly exchanged. The pith of the argument of learned counsel for the appellant is that the matter involves admiralty and therefore within the jurisdiction of the Federal High court. Counsel for the respondent takes the opposite position and it is that by virtue of the proviso to section 230(1) (d) of the 1979 Constitution of the Federal Republic of Nigeria as amended by the Constitution (Suspension and Modification) Decree No. 107 of 1993, the jurisdiction of the Federal High Court is ousted from determining the claim of the appellant. Counsel did not quite like the position taken by the Court of Appeal in the case of *Afribank. v. K.C.G. Nig. Ltd.* (2001) FWLR (Pt. 67) 1042, which he regarded as reviewing the decision, a situation which counsel said amounted to reopening the decision.

Admiralty has so much affinity with maritime law, so much so that the words are used interchangeably in marine practice. It has not that affinity with the law of the sea. Admiralty refers to the law of marine commerce and marine navigation. It entails the transportation at sea of persons and property and marine affairs in general.

The position of the law before 1991 and from 1979 was that the Federal High Court and the State High Courts had concurrent jurisdiction on admiralty matters. This arose from the unlimited jurisdiction conferred on the State High Courts by section 236 of the 1979 Constitution. See *Savannah Bank of Nigeria Ltd. V. Pan Atlantic Shipping and Transport Agencies Ltd.* (1987) 1 NWLR (Pt. 49) 212; *Omisade v. New African Development Co. Ltd.* (1987) 2 NWLR (Pt. 55) 158; *Nigerian National Supply Co. Ltd, v. Alhaji Hamadjoda Sabana and Co. Ltd.* (1987) 2 NWLR (Pt. 56) 285. The above is useful only as an historical stuff.

The admiralty jurisdiction of the Federal High Court is now clearly set out in the Admiralty Jurisdiction Decree No. 59 of 1991 and the case law is in great proliferation. See *Brawal Shipping Nig. Ltd, v. Extraction and Commodity Services Ltd.* (2001) 14 NWLR (Pt. 732) 172; *Alraine Shipping Nigeria Ltd, v. Endura Auto Chemicals* (2001) 12 NWLR (Pt. 728) 759; *Crownstar and Company Limited v. The Vessel MV Valip* (2000) 1 NWLR (Pt. 639); *Shell Petroleum Company (Nigeria) Limited v. Isaiah* (1997) 6 NWLR (Pt. 508) 236; *Tigris International Corporation v. Ege Shipping and Trading Incorporation* (1989) 6 NWLR (Pt. 608) 701; *Pacers Multi-Dynamic Limited v. MV Dancing Sister* (2000) 3 NWLR (Pt. 648) 241.

The contention of learned counsel for the appellant is that the admiralty jurisdiction in this matter is conferred on the Federal High Court by sections 1(1)(h) and 19 of the Admiralty Jurisdiction Decree No. 59 of 1991. Let me quickly read the provisions:

1. (l) The admiralty jurisdiction of the Federal High Court (in this Decree referred to as \"the Court\") includes the following, that is-

.....

(h) any banking or letter of credit transaction involving the importation or exportation of goods to and from Nigeria in a ship or an aircraft, whether the importation is carried out or not and notwithstanding that the transaction is between a bank and its customer.

19. Notwithstanding the provisions of any other enactment or law, the Court shall, as from the commencement of this Decree, exercise exclusive Jurisdiction in admiralty causes or matters, whether civil or criminal.

The above provision will not make any meaning if it is read in vacuo or in isolation. It can only make the desired meaning if it is read together and along with the claim, which I have already set out above. I will not repeat it, but I will only refer to relevant aspect of it. The relevant aspect reads:

'Sometime in 1990, the Defendant while carrying on its banking business forwarded to the Plaintiff an irrevocable documentary letter of credit No. 16167/65626 established in Belgium and by a letter dated 12/10/90 the defendant confirmed the authenticity of the letter of credit.'

I think I can stop here. I have got what I want. All that the defendant did was the confirmation of the authenticity of the plaintiff's letter of credit No. 16167/65626. This was done by the defendant's letter dated 12/10/90. The million-naira question is how can a mere act of confirmation of the authenticity of a letter of credit suddenly ripen or metamorphose into an admiralty matter' What is the content of admiralty in the letter of confirmation dated 12/10/90' Has the letter anything to do with shipping, air crafting, and transportation of property at sea and marine commerce and marine navigation in typical marine affairs'

Section 1(1) (h) talks about banking or letter of credit transaction involving the importation or exportation of goods. Does the letter of credit No. 16167/65626 qualify as goods within the meaning of section 1(1) (h) of the Decree' What did the defendant do to reduce its actions to the meaning of section 1(1) (h) of the Decree'

In my effort and anxiety to obtain a positive answer, I read paragraph 5 of the Statement of Claim:

'By a letter Reference IDC0090/90 dated 12/10/90 addressed to the Plaintiff's said Bankers, and a copy to the Plaintiff, the Defendant advised on and confirmed the authenticity of telex establishing the letter of credit and requested for the sum of N25.00 as advising commission. The Plaintiff upon receipt of a copy of Defendant's letter paid the commission of N25.00 to the Defendant with an NNB Limited draft No. 602092 of 19/11/90 and acted on the Defendant's advice and confirmation by exporting Iroko furniture components to C.I.E. Dubois Stockmanns in Belgium between the 30th November, 1990 and 30th December, 1990 (both days inclusive). The Plaintiff shall find on NNB letter of 14/11/90, Plaintiff's letter of 21/11/90 addressed to the NNB Limited, Warri; Plaintiff's invoices No. 007, 008 and 009 for the export in the value of DM 38,527.70 delivered to the Defendant.'

My action smacks of a repetition as I had earlier reproduced the claim. I do not regret the repetition. It is to make the position doubly sure. The appellant's averment in paragraph 5, if anything at all, could be a contractual relationship and breach of that relationship. How can a contractual matter be an admiralty matter which must be foisted on the Federal High Court' And the respondent has to suffer all these for the sum of N25.00, the advising commission' Really, I feel bad for the respondent.

Learned counsel for the appellant submitted that the proviso to section 230(1) (d) of the 1979 Constitution of the Federal Republic of Nigeria as amended by the Constitution (Suspension and Modification) Decree No. 107 of 1993 vests in both the High Court of a State and the Federal High Court concurrent jurisdiction to entertain claims between a customer and the Banker. He cited Federal Mortgage Bank of Nigeria v. Nigeria Deposit Insurance Corporation (1999) 2 NWLR (Pt. 591). 333 and Nigeria Deposit Insurance Co. v. Okan Ent. Ltd. (2004) 10 NWLR (Pt. 880) 107.

I do not agree with learned counsel that there exists or existed banker and customer relationship in this matter. Paragraph 4 of the Statement of Claim falsifies the submission of a banker and customer relationship. The opening sentence of paragraph 4 reads:

'Sometime in 1990 the Plaintiff received through its Bankers, the New Nigerian Bank Plc, a telex of an Irrevocable Documentary Letter of Credit...'

Paragraph 5 is also relevant here. I had earlier quoted it. Let me just confine myself to part of the first sentence and I will be done:

'By a letter Reference IDC00901/90 dated 12/10/90 addressed to the plaintiff's said Bankers and a copy to the Plaintiff...'

While paragraph 4 of the Statement of Claim is clear on the issue, a community reading of the first sentence in paragraphs 4 and 5 also makes me to come to the conclusion that the Banker of the appellant at the material time was New Nigeria Bank Plc. While paragraph 4 specifically so averred, paragraph 5 used the verb 'said' before the word



'Bankers' to relate it to the New Nigeria Bank Plc. In the circumstances, I cannot consider the two cases cited by counsel because they are not relevant to this case.

Although the jurisdictional struggle between the Federal High Court and the High court of a State came to the height by the most ambitious, and to some extent, unwarranted amendments introduced into the 1979 Constitution by Decrees Nos. 59 and 60 of 1991, and 107 of 1993, counsel (and here it is not confined to the one doing this case), have played some role in fomenting the struggle for hegemony. While raising the issue of jurisdiction is part of the trade of counsel and they relish in it, they are well advised not to raise it in obvious cases. It is not good to raise the issue of jurisdiction merely to test the ground and see how the courts will react. In my view, this is a clear case of contract and whether the contract was breached or not is beyond me to say. All that is not beyond me to say is that there is not the slightest admiralty content in the matter. I therefore dismiss the appeal. I award costs as in the judgment of my learned brother, Ogbuagu, JSC.

Judgment delivered by  
George Adesola Oguntade, J.S.C

The appellant was the plaintiff at the Federal High Court, Benin where it brought a claim against the respondent, as the defendant claiming for:

'The Defendant which carries on banking business nationwide has offices in Benin within the jurisdiction of this Honourable Court.

Sometime in 1990, the Defendant while carrying on its Banking business forwarded to the Plaintiff an irrevocable documentary letter of Credit No. K16167/65626 established in Belgium and by a letter dated 12/10/90 the Defendant advised and confirmed the authority of the letter of Credit. Pursuant to the Defendant's advice and confirmation the Plaintiff adopted the letter of Credit and exported Iroko furniture Components worth M28527 to one C.J.E. Dubois Stockmanns in Belgium. In spite of repeated demand (sic) Plaintiff has received no payment for its goods.

Wherefore the Plaintiff claims against the Defendant the sum of N120, 000,000.00 (One hundred and twenty Million Naira) as special and....'

Later, the plaintiff filed its statement of claim. The defendant, which had not filed a Statement of defence, brought an application praying that plaintiff's suit be dismissed or struck out on the ground that the Federal High Court lacked the jurisdiction to entertain the suit. Paragraphs 3 to 5 of the affidavit in support of the defendant's motion read:

'3. That I know as a fact that by virtue of Exhibit 'A' i.e. Plaintiff/Respondent's statement of claim, this Honourable Court lacks jurisdiction to entertain this suit.

4. That such claim as per Exhibit 'A' does not fall within the purview of this Honourable Court's power to determine.

5. That this Honourable Court should dismiss or strike out this suit.'

The trial judge Abutu J. heard arguments on the defendant's application. In his ruling on 7-7-97, he came to the conclusion that the plaintiff's suit was within the Admiralty jurisdiction of the Federal High Court. Dissatisfied, the defendant brought an appeal against the ruling before the Court of Appeal, Benin Division (hereinafter referred to as the 'court below'). The court below, on 12-7-2000, allowed the appeal and held that the Federal High Court lacked the jurisdiction to hear the suit. The suit was accordingly transferred to the Delta State High Court for determination.

The plaintiff has come on a final appeal before this Court. In its appellant's brief, it was queried whether the court below was right in holding that the Federal High Court lacked the jurisdiction to entertain plaintiff's suit.

Now section 230 of the 1979 Constitution as amended by section 1(3) of the Constitution (Suspension and Modification) Decree No. 107, 1993 provides:

'230. Notwithstanding any thing to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly or a Decree, the Federal high Court shall have an exercise jurisdiction to the exclusion of any other court in civil causes and matters arising from -(g) any admiralty jurisdiction including shipping and navigation on the River Niger or 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.'

Under Act No. 59 of 1991, titled 'The Admiralty Jurisdiction Act, the admiralty jurisdiction of the Federal High Court is set out in sections 1(1) and 19, the sections provide:

1. (l) The admiralty jurisdiction of the Federal High Court (in this Decree referred to as 'the Court') includes the following, that is-

.....

(h) any banking or letter of credit transaction involving the importation or exportation of goods to and from Nigeria in a ship or an aircraft, whether the importation is carried out or not and notwithstanding that the transaction is between a bank and its customer.

19. Notwithstanding the provisions of any other enactment or law, the Court shall, as from the commencement of this Decree, exercise exclusive Jurisdiction in admiralty causes or matters, whether civil or criminal.

There is no doubt that the Federal High Court under the provision of Act No. 59 of 1991 had its jurisdiction extended beyond the scope given under Act. No. 107 of 1999 Constitution above. The question, whether or not a court has jurisdiction to entertain a class of action is to be decided on the basis of the averments contained in the statement of claim filed by the plaintiff. See-Adeyemi .v. Opeyori [1976] 9-10 SC. 31. The plaintiff in paragraphs 3-10 of its statement of claim had pleaded:

'3. As part of Defendant's business structure, Defendant has International Banking Department, Export Unit, which renders professional Banking advice and Export Banking services to members of the business public on letters of Credit, Export on foreign trade and allied matters on commission basis.

4. Sometime in 1990 the Plaintiff received through its Bankers, the New Nigeria Bank Plc., a telex on an IRREVOCABLE DOCUMENTARY LETTER OF CREDIT NO. 16167/65626 from the Defendant which said letter of credit has as its applicant, C.I.E. DUBOIS - STOCKMANN'S of Belgium, the Plaintiff as the beneficiary and KREDIET BANK N.V. of Belgium as the foreign Bank which purportedly issued same. The Plaintiff shall found on a copy of the said telex letter of credit for its full terms and effects.

5. By a letter Reference IDC0090/90 dated 12/10/90 addressed to the Plaintiffs said Bankers, and a copy to the Plaintiff, the Defendant advised on and confirmed the authenticity of telex establishing the letter of credit and requested for the sum of N25.00 as advising commission. The Plaintiff upon receipt of a copy of Defendant's letter paid the commission of N25.00 to the Defendant with a NNB Limited draft No. 602092 of 19/11/90 and acted on the Defendant's advice and confirmation by exporting Iroko furniture components to C.I.E. DUBOIS STOCK-MANN'S in Belgium between the 30th November, 1990 and 30th December, 1990 (both days inclusive). The Plaintiff shall found on NNB letter of 14/11/90, Plaintiffs letter of 21/11/90 addressed to -the NNB Limited, Warri, Plaintiffs invoices No. 007, 008 and 009 for the export in the value of DM 28,527.70 delivered to the Defendant.

6. By the terms of the letter of Credit, the Plaintiffs drafts for the value of the goods were to be paid on presentation of the relevant shipping documents to the Defendant which the Plaintiff duly submitted to the Defendant and up till now the Plaintiff has received no draft or payment for the value of the goods exported under the said letter of credit.

7. At the time the Defendant forwarded to the Plaintiff the said letter of credit and the letter of confirmation dated 12/10/90, the Defendant intended and it well knew or ought to have known that the Plaintiff would rely on them and would be induced thereby to export its goods upon the terms contained therein. In the premises, the Defendant was under a duty to take care in the making of the said representations to the Plaintiff so as not (sic) cause Plaintiff any financial loss or damage.

8. Acting on the faith of the Defendant's representations and induced thereby, the Plaintiff exported Iroko furniture components in the value of DM 28,527.70 to C.I.E. DUBOIS STOCKMANNNS in Belgium and for which no payment has been received.

9. In breach of the said duty, the Defendant was guilty of negligence in making the said representation.

#### Particulars

(a) Failing to ascertain the authenticity of the letter of Credit to the terms of the letter of Credit.

(b) Failing to have at sight the Plaintiffs (beneficiary) draft before accepting the export documents.

(c) Failing to ensure that the-beneficiary's draft is at sight of the Foreign Bank before advising and or confirming the letter of credit.

(d) Failing to advise the Plaintiff not to deal with the beneficiary in the circumstance.

(e) Failing to advise the Plaintiff not to deal with the foreign Bank in the absence of any draft at sight.

10. In truth and in fact, the said representations were false, untrue inaccurate and misleading.'

The above averments from plaintiff's statement of claim show that the basis of the claim made against defendant was in negligence in that the defendant had not exercised due care and diligence in advising the plaintiff that the telex by which a letter of credit was established in the plaintiffs favour was genuine. It was not pleaded that the defendant issued the said letters of credit or that the Iroko Furniture shipped by the plaintiff was sent to the defendant's principals. Nothing in the statement of claim conveyed that a shipping transaction was contemplated between the plaintiff and the defendant.

The court below at pages 74-75 in coming to the conclusion that the Federal High Court has no jurisdiction to entertain plaintiff's suit reasoned thus:

'The position on the question of the criterium to be followed in determining jurisdiction has long been settled. The position is that it is the plaintiffs demand or claim that determines the jurisdiction of a Court. Therefore, in order to ascertain whether or not a Court has jurisdiction to try a case, one only needs to look at the plaintiff's claim: See *Izenkwe v. Nnadozie* (1953) 14 WACA 361; *Adeyemi & Others v. Opeyori* (1976) 9 & 10 S.C. 31 at 5.1; *Egbuziem v. N.R.C.* (1994) 2NWLR (Pt.330) 23; *Tukurv. Government of Gongola State* (1989) 4 NWLR (Pt.117) 517 at 549 and *Western Steel Works v. Iron & Steel Workers* (1987) 1 NWLR (Pt.49) 284. In *New Nigeria Bank Limited v. Boardman Odiase* (1993) 8 NWLR (PL 310) 238 at 243, a bank customer had been defined as follows:-

'..... Generally a customer is someone who has an account with a bank, or without having an account the relationship of banker and customers exists.

In the latter case some money transaction must connect banker and customer, but must arise from the nature of a contract.'

The definition of a Customer also at page 386 of Black's Law Dictionary 6th Edition in relation to a bank is as follows:-

'In banking, any person having an account with a bank or for whom a bank has agreed to collect items and includes a bank carrying an account with another bank. As to letters of credit, a buyer or other person who causes an issuer to issue credit or a bank which procures issuance or confirmation on behalf of that bank's customer.'

In my view from a careful examination of the respondent's claims contained in the respondent's statement of claim, herein reproduced and taking into consideration the two definitions above, it cannot be disputed that the dispute that gave rise to this action falls within the confine of the relationship between a bank and Customer in which case, the jurisdiction of the Federal High Court, has been ousted by the proviso to paragraph (d) of section 230(1) of the 1979 Constitution as amended by Decree 107 of 1993.'

From the above passage, the court below reasoned that plaintiffs' action was in the nature of a dispute between an individual customer and his bank, in which case, the Federal High Court had no jurisdiction. I am with respect, unable to agree that the plaintiffs' statement of claim revealed a bank/customer relationship between the plaintiff and the defendant. The nearest the plaintiff went in showing a bank/customer relationship was in its paragraph 5 wherein it averred that it paid N25.00 for plaintiffs services. The court below in its judgment relied on the definition of bank/customer relationship as given in *New Nigeria Bank Ltd. V. Boardman Odiase (supra)*. The plaintiff averred in paragraph 4 of its statement of claim that its bankers were 'The New Nigeria Bank plc.' The relationship between the plaintiff and the defendant shown as it were, to be a one-off transaction, would not qualify in my view to be a bank/customer relationship. Certainly, that was not the nature of the case pleaded by the plaintiff. Were it so, the plaintiff would not need to plead specifically that its bankers were 'The New Nigeria Bank Plc.'

My learned brother Ogbuagu J.S.C, has in the lead judgment, with which I agree, shown the reasons why this appeal must be dismissed. It is my view that decision of this Court in *NDIC V. Okem Enterprises Ltd. & Anor. [2004] 10 NWLR (Pt.880) 107* does not apply to the facts of this case since, in my view; the plaintiff was not a customer to the defendant. I also do not think that plaintiff's suit has any relationship with the admiralty jurisdiction of the Federal High Court.

I would also dismiss this appeal as in the lead judgment. I also award N10, 000.00 costs in favour of the defendant against the plaintiff.