IN THE SUPREME COURT OF NIGERIA

Suit No: SC289/2002

Petitioner: Associated Discount House Ltd
And
Respondent: Amalgamated Trustees Ltd

Date Delivered: 2006-05-05

Judge(s): Idris Legbo Kutigi , Aloysius Iyorgyer Katsina-Alu , Ignatius Chukwudi Pats Acholonu , Sunday Akinola Akintan , Alo

Judgment Delivered

This appeal arose from an action filed by the Appellant against the Respondent. The parties had entered into an agreement whereby the Appellant advanced by way a commercial paper facility the sum of N120 m to the Respondent\'s company for 90 days only subject to an interest payable on the commercial paper. The facility was completely drawn. The security for the facility was a house, property of the Respondent situate at 24A Campbell Street, Lagos, and the parties covenanted that the documents shall be deposited with the Appellant. At the expiration of 90 days, the money so invested was not paid back and worse still, the Respondent caused the sum to be rolled over without the express consent or permission of the Appellant. When the Appellant made several demands for the repayment of the facility and the interest due, and the Respondent refused or failed to pay, the Appellant was forced to institute an action in the Federal High Court. The Respondent raised a preliminary objection on the ground that the Federal High Court has no jurisdiction to entertain the case. The objection succeeded and the Federal High Court transferred the case to the Lagos High Court pursuant to section 22(2) of the Federal High Court Act which now became seised of the case. When the Lagos State High Court now seised of the matter proceeded with the case the Respondent once again raised a preliminary objection on the ground that the Lagos High Court cannot entertain the action as it lacks the requisite jurisdiction. This objection was refused, and dismissed. Piqued by the ruling of the High Court, the Respondent filed a notice of appeal. The Court of appeal allowed the appeal and held that the Lagos High Court lacked the jurisdiction to adjudicate on the matter. The Appellant as a losing patty in the Court of Appeal appealed to this Court and framed three issues for determination which are as follows:-

1. Did the Court of Appeal have jurisdiction to overrule the decision of the Lagos High Court dated 12/1/01, and consequently hold that it is the federal High Court that is vested with exclusive jurisdiction to entertain the Appellant\'s claim in this action against the Respondent,, whereas the second or later of the two reasons or ratio which the Lagos High Court relied upon in support of its said decision was not appealed against by the Respondent, and the Court of Appeal too did not consider, reverse or overturn the second reason or ratio relied upon in the overturned decision of the Lagos High Court'.

2. Does the Appellant qualify to be described as a bank within the meaning of section 251(l)(d) of the 1999 Constitution in the manner that would vest the Lagos High Court with jurisdiction to entertain the Appellant\'s claim against the Respondent in this action as was held by the Lagos High Court decision of 12/1/01'

3. Is it right in law, as was held in the judgment of the Court of Appeal delivered on 16/9/02, that the Lagos State High Court does not have the power, under section 22(3) of the Federal High Court Act, to transfer a matter in which the Lagos State High Court lacks jurisdiction to the Federal High Court for hearing and determination'

The Respondent contrariwise formulated only 2 issues which are follows :-

(i) Whether the Court of Appeal was correct when it held that the High Court of Lagos State does not have jurisdiction to entertain the suit of the Appellant.

(ii) Whether the Court of Appeal was correct when it held that the High Court of Lagos State does not have the

power to transfer a matter in respect of which it lacks jurisdiction to the federal High Court.

Now the Court of Appeal in resolving the matter before it which resulted in allowing the appeal and striking out the action, held as follows:-

\"The main plank of the Respondent\'s resistance to the appeal brought before us by the Appellant was that it did banking business and that in line with the decision in FMBN v. NDIC (supra), it should be acknowledged as a bank. With respect to Respondent\'s Counsel, I think his contention is unsustainable. All that the Respondent needed to show pursuant to section 2 of BOFID was the licence given it to operate as a bank. It would be wrong to assume that because the respondent did banking business, it was a bank even if it was not so registered under BOFID. The argument of Respondent\'s Counsel overlooks the fact that whereas in FMBN v. NDIC (supra), the law setting up Federal Mortgage Bank and the functions assigned to it makes it abundantly clear that it was set up to operate as a bank, the Respondent in this case can be seen as no more than a financial institution under section 57 of BOFID. This conclusion flows from the fact that the Respondent itself pleaded in paragraph 1 of its statement of claim that it was duly licensed to carry on business as a discount house.\"

The lower Court concluded the judgment which it delivered this way, \"Once it is determined that the Respondent is not a Bank within the meaning of section 251(l)(d) of the 1999 Constitution the question whether or not the Appellant was an individual customer of the Respondent within the meaning of section 251(l)(d) becomes a moot point and therefore inconsequential.\"

What was behind the decision of the Court of Appeal to take a contrary view to that of the lower Court is the definition or rather the interpretation the Court of first instance ascribed to the status of the Appellant. The learned trial judge had held as follows:-

\"The Supreme Court described a Bank in Federal Mortgage Bank y. NDIC (1999) 2 N.W.L.R. (Pt. 591) 333 as follows, \"The word bank is not defined in the Constitution as in the interpretation Act. However in the ordinary grammatical meaning, it means an organization that provides financial services\". Surprisingly the syllogism drawn by the High Court from this is \"It is not in dispute that a discount house is an organization that provides financial service. It is not in dispute that a discount house is an organization or place that renders financial services. Accordingly, can it then be subsumed as well to that extent that a discount house is a bank of some sort. I think it is logical and reasonable to do so. A perusal of relevant legislation will also lend credence to my view that a discount house being a financial institution can safely be called a Bank\". The deduction drawn by the Court of first instance is not only strange but traduced all norms known in the financial world as we are by this conclusion being told to ascribe to companies dealing as brokers or stock and shares and other securities as Banks. Such description would be offensive in the financial world and do violence to what a Bank or a financial institution is in our law. A financial institution can never be a Bank.

To me this is a case of a simple loan facility granted to a \'person\' which as described in the statement of claim is a mere company and is neither a Bank nor a financial institution. The Appellant which is a discount house granted a facility to the corporate body, that is the Respondent intending that after the expiration of 90 days, it would get its principal and accrued interest from the Respondent. Unfortunately nothing of that happened as the parties in the Court seemed mired in the miasma of insidious and patently unnecessary polemics of jurisdiction of the court leaving aside all the issues in respect of the simple agreement they both entered. The transaction that gave rise to the dispute was a simple contract which the parties readily understood what it was all about. There is something seemingly obscene and unethical in this case. It is instructive that the Respondent before it filed the preliminary objection in the two Courts seised of the matter at one time or the other, did not file any pleadings. The Respondent did not provide the High Court with the opportunity to see or read its pleadings so as to have a proper birds eye view of the real issues in controversy. Therefore this Court has not been enabled to know what in the financial world or in law the Respondent can be described as. It therefore boils down to the case of a mere customer which is a financial institution and a body that accepts loans from individuals to do business. The Respondent more or less strove to convert the Court to a vaudeville of legal playhouse by using or relying and embarking on all sorts of subtleties and merry go round proceedings to circumvent the real issue before the High Court which is as to whether or not the Appellant\'s money is locked up in the Respondent\'s company. The legal gymnastics employed by the Respondent to have a roller coaster

ride and its seeking to use the processes of the Court to put the Appellant in the woods though ingenious it may appear, is to my mind both unethical, inconsiderate as it failed to respond to the Appellant\'s case or attend to the matter in issue. If the Appellant cannot sue in the Federal High Court and at the same time cannot equally sue in the Lagos High Court, which court would the action be then commenced. It is a case of \"such welcome and unwelcome news at once. It is too hard to reconcile\"(Shakespeare (in Macbeth).

There comes a time in the difficult but challenging art or science of adjudication and administration of justice when a Court is faced with consideration of pure justice, and of course abstract law that seeks to shroud itself in concepts, dreariness and the theory of law. It is then that a Court should dig deep into its reservoir of knowledge of its forensic arsenal borne out of experience and mete out justice that can easily be understood and appreciated by the common man in the street and the litigants. The Courts are the products of the society. They are established to solve and give remedies to people who complain of having been shortchanged or wronged somehow. Therefore it should not allow undue technicalities likely to wreak havoc in the other party\'s case to be introduced in an otherwise situations that do not admit of cloudiness or woolliness.

The learned Counsel for the Appellant has urged this Court to hold that the Lagos High Court had acted properly when it considered the intention or fiscal policy of section 251(l)(d) of the Constitution in determining whether or not that Court has the jurisdiction to entertain the Appellant\'s claim. The consideration by the Lagos High Court in respect of the fiscal policy referred to in this case is to my mind way off the mark. It is of no relevance here. Another point canvassed is that even if the High Court does not have the jurisdiction to adjudicate on the matter it necessarily should have the ability to cause a transfer of a case to be made from its Court and that a Court that has no jurisdiction to entertain a case can make an order of transfer. The Supreme Court of the United States referring to the case of United States v. Shipp (208) U.S. 563, 51 L. ed 319, 27 S. Ct. 165, 8 Ann Cas 265 (1906) in United States v. United Mine Workers of America U.S.S.C.R. 91 L. ed 884 at 911, said as follows:-

\"The purport of the judgment of the Court here is that Court which on its face value may not have jurisdiction could still make a preservative order to keep the res. In other words it can make an order transferring a matter of which Constitutionally it is not vested with powers to adjudicate upon.\"

Let us examine the issue as to whether the High Court here can make an order of transfer of a case before it when it has no jurisdiction to entertain the main case. In the case of Oloba v. Akereja (1988) 3 N.W.L.R. (Pt. 84) 508 this Court held thus at 520:

\"The issue of jurisdiction is very fundamental as it goes to the competence of the Court or Tribunal. If a Court or Tribunal is not competent to entertain a matter or claim or suit, it is a waste of valuable time for the Court to embark on the hearing and determination of the case.\"

In other words it will be fortuitous for such a court to make an order of transfer. In this case the Respondent used the issue of jurisdiction or competence of the Court to literally run riot, and seeks to obfuscate the real issue in controversy by resorting to inanities. It is the duty of this Court of justice to remove the chaff from the wheat. The resort to the use of the procedures of the court to bamboozle the Court or truncate the claim of the Appellant is not noble. I can only say that the method being adopted by the Respondent appears in my view to be a red herring to obscure the facts in issue.

The lower court had said that there is no law empowering the State High Court to transfer a case to the Federal High Court. With greatest respect I beg to disagree. Section 22(3) of the Federal High Court Act states as follows:-

\"Notwithstanding anything to the contrary in any law, no cause or matter shall be struck out by the High Court of a State or of the Federal Capital Territory, Abuja on the ground that such cause or matter was taken in the High Court instead of the Court, and the Judge before whom such cause or matter is brought may cause such cause or matter to be transferred to the appropriate Judicial Division of the Court in accordance with such rules of court as may be in force in that High Court or made under any enactment or law empowering the making of rules of court generally which enactment or law shall by virtue of this subsection be deem also to include power to make rules of court for the purpose of this subsection.\"

The tenor and intendment of this subsection is that the State High Court can validly make an order of a transfer of a case from itself to a court of different jurisdiction. The wordings of this subsection is suffused with alliterations, use of cryptic words which concealed and veiled the meaning intended thereby making it seemingly difficult to decipher. I would here refer to what Thomas Jefferson said of boundless tautology in the wording of statutes generally.

\"Statutes which from their verbosity their endless tautologies, their involutions of case within parenthesis, and their multiplied efforts at certainty by saids, afore-saids, by or and, and to make them more plain, do really render them incomprehensible not only to common readers but to the lawyers themselves\",

(courtesy of Thomas Jefferson Autobiography (1982) by Paul L. Ford).

The dictates of the principle or the doctrine of Golden Rule in statutory interpretation imposes on the court the duty to give a construction that seeks to liberate and expound the horizon of the law to make it a living law that would cater for the future. I believe that where a provision in a statute is liable to be construed either in the positive or in the negative form or connotation, then it is definitely more beneficial to adopt the interpretation that is more in tune with the public weal and benefit. In appropriate cases it is my view that the High Court can make an order of transfer of a case but that is not relevant in the case here. This is a simple contract between a financial institution and a legal person that took a loan. Therefore the Lagos High Court can exercise jurisdiction.

In my view the parties must go back squarely to the Lagos State High Court where the Respondent should file its pleadings and respond to what is contained in the Appellants claim. I allow the appeal, set aside the judgment of the Court below and affirm the ruling of the high Court. There shall be costs to the Appellant assessed in this Court at N10,000.00 and the Court of Appeal for N5,000.00.

Judgement delivered by
Idris Legbo Kutigi, J.S.C

I have had the privilege of reading in advance the judgment just delivered by my learned brother Pats-Acholonu, JSC. I agree with him to allow the appeal, set aside the judgment of the Court of Appeal and restore the Ruling of the Lagos High Court which has jurisdiction over the matter in dispute. I endorse the order for costs.

Judgement delivered by
Aloysius Iyorgyer Katsina-Alu, J.S.C

I have had the advantage of reading in draft the judgment delivered by my learned brother Pats-Acholonu, JSC. in this appeal. I agree entirely with his reasoning and conclusion. There is nothing I can usefully add.

Judgement delivered by
Sunday Akinola Akintan, J.S.C

The dispute that led the appellant to commence the present case, originally at the Federal High Court, Lagos, arose over its effort to recover a N120 million loan granted to the respondent and for which the property at 24A Campbell Street Lagos was given as security. The respondent filed a motion objecting to the jurisdiction of the Federal High Court. The objection was upheld by the Federal High Court and the case was transferred to the Lagos High Court. At the Lagos High Court, the respondent again objected to the jurisdiction of the Lagos High Court. The objection was over-ruled. An appeal against that ruling to the Court of Appeal was allowed. The present appeal is against the decision of the Court of Appeal allowing the appeal.

The main issue in controversy is which of the two courts have jurisdiction to entertain the claim. The resolution of this

question would involve the interpretation of the provisions of section 251(l)(d) of the 1999 Constitution which provides thus:

\"251 (l) Notwithstanding anything 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, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters '

"""""""""..

(d) connected with or pertaining to banking, banks, other financial institutions, including any action between one bank and another, any action by or against the Central Bank of Nigeria arising from banking, foreign exchange, coinage, legal tender, bills of exchange, letters of credit, promissory notes and other fiscal measures:

Providing that this paragraph shall not apply to any dispute between an individual customer and his bank\' in respect of transactions between the individual customer and the bank.\"

The law is settled that jurisdiction of a court is determined by the plaintiffs claim before the court: See Onuorah v. Kaduna Refining & Petrochemical Co. Ltd. (2005) 6 NWLR (Pt. 921) 393; Tukur v. Government of Gongola State (1989) 4 NWLR (Pt. 117) 517; and Orthopaedic Hospital Management Board v. Garba 14 NWLR (Pt. 788) 538.

In the instant case, the plaintiffs claim before the court is for recovery of the N20 million advanced or lent by the appellant to the respondent. It is therefore a case that falls within that of a dispute between an individual customer of a bank or discount house and his bank or discount house. Although discount houses are not per se banks, but they come within the definition of \"other financial institutions\" defined in section 66 of the Banks and Other Financial Institutions Act. They are required in section 58(2) of that Act to be licensed by the Central Bank of Nigeria like the banks and they are also subjected to the same controls as the other banks under section 30(2) of the said Act.

The word \"bank\" is not defined in the Constitution and in the Interpretation Act. It is therefore appropriate to ascribe its ordinary grammatical meaning which is, according to Ogundare, JSC in Federal Mortgage Bank of Nigeria v. NDIC (1999) 2 NWLR (Pt. 591) 333 at 361, as: \"an organization or place that provides financial services.\" As I have stated earlier above, the plaintiffs claim in the instant case is a dispute over money lent to a customer by a financial house. It is therefore not one coming within those specified in section 251(l)(d) of the 1999 Constitution over which the Federal High Court has exclusive jurisdiction. On the other hand, it comes within those excluded from the jurisdiction of the Federal High Court in the proviso to sub-section 251(I) (d) of the Constitution. The Court of Appeal was therefore in error when it held that the Federal High Court had jurisdiction in the matter. Sec Federal Mortgage Bank of Nigeria v. NDIC, supra.

I had the privilege of reading the draft of the leading judgment written by my learned brother, Pats-Acholonu, JSC which has just been delivered. For the above reasons, and the fuller reasons given in the said leading judgment, I also allow the appeal and hold that the trial of the case should proceed at the High Court of Lagos. I also abide by the other consequential orders made in the leading judgment, including that on costs.

Judgement delivered by
Aloma Mariam Mukhtar, J.S.C

I have had a preview of the judgment of my learned brother Acholonu, JSC. I am in full agreement that this is a simple contract between the parties, which the Lagos High Court has jurisdiction to hear. I agree with the reasoning and conclusion reached and also allow the appeal. I abide by the orders made in the lead judgment.