

IN THE SUPREME COURT OF NIGERIA

Suit No: SC170/2002

Petitioner: Chevron Nigeria Limited

And

Respondent: Lonestar Drilling Nigeria Limited

Date Delivered: 2007-07-13

Judge(s): Aloysius Iyorgyer Katsina-Alu, Ikechi Francis Ogbuagu, Mahmud Mohammed, Francis Fedode Tabai, Christopher M

Judgment Delivered

The respondent, (hereinafter referred to as the plaintiff) at the Warri High Court of Delta State brought a suit against the appellant (hereinafter referred to as the defendant) for special and general damages arising out of an alleged breach of contract for Ten million United States dollars. The parties filed and exchanged pleadings.

The defendant, after the exchange of pleadings, brought an application praying for the following orders:

"(1) An order of this Honourable Court setting down for hearing and determination the points of law raised in the Defendant's Statement of Defence particularly paragraphs 15-22.

(2) Based on prayer one above, an order dismissing the Plaintiffs action for disclosing no reasonable cause of action and for being incompetent, frivolous and vexatious in the circumstance.

(3) An order striking out this suit for lack of jurisdiction of this Honourable Court to entertain same."

The grounds relied upon for bringing the application was stated to be these:

"(a) That the matter being an admiralty matter is outside the jurisdiction and competence of this Court to entertain same.

(b) That by virtue of S.230 (g) and (o) of Decree No. 107 of 1993 and Decree No, 59 of 1991 the matter is within the exclusive jurisdiction of the Federal High Court."

The trial judge in his ruling on the defendant's application which was delivered on 3/12/99 reasoned that the plaintiff's suit disclosed a reasonable cause of action and that the writ of summons and statement of claim showed that the plaintiffs claim was for a breach of contract and not founded in admiralty.

The defendant was dissatisfied with the ruling. It brought an appeal before the Court of Appeal, Benin (hereinafter referred to as the court below). The court below on 4/4/01 dismissed the appeal. Still dissatisfied, the defendant has come on a final appeal before this Court. The defendant has in its appellant's brief formulated two issues for determination. The issues are:

'1. Whether or not the Court of Appeal was right in holding that the Plaintiffs action discloses a reasonable cause of action against the defendant/ appellant.

2. Whether the Court of Appeal was right in holding that the Plaintiffs claim is contract and not admiralty thereby vesting the Delta State High Court with jurisdiction as against the Federal High Court.'

The plaintiff in its respondent's brief formulated two issues which in substance are the same with the defendant/appellant's issues. I intend to take the two issues serially.

On issue 1, the appellant's contention was that Plaintiffs writ of summons when read along with the Statement of Claim did not disclose a reasonable cause of action. This issue brings into the fore a consideration of 'a cause of action'. I can do no more on the meaning of a 'cause of action' than call to mind the observation made by this Court per Karibi-Whyte, JSC in *Bello v Attorney-General of Oyo State* [1986] 5 N. W.L.R. (Part 45) 828 at 876 thus:

"I think a cause of action is constituted by the bundle or aggregate of facts which the law will recognize as giving the plaintiff a substantive right to make the claim for the relief or remedy being sought. Thus, the factual situation on which the plaintiff relies to support his claim must be recognized by the law as giving rise to a substantive right capable of being claimed or enforced against the defendant. In other words the factual situation relied upon must constitute the essential ingredients of an enforceable right or claim - see *Trower & Sons Ltd. v Ripstein* [1944] AC 254 at p.263; *Read v Brown* 22 Q.B.D. 128; *Cooke v Gill* [1873] L.R. 8 C.A. 107, *Sugden v Sugden* [1957] All ER 300; *Jackson v Spittal* [1870] L.R. 5C. P.547]. Concisely stated, an act on the part of the defendant which gives to the Plaintiff his cause of complaint is a cause of action."

See also *Akilo v Fawehinmi (No.2)* [1989] 2 N. W.L.R. (Part 102) 122 at 169.

In *Ibrahim v Osim* [1988] 1 N.S.C.C. 1184 at 1194, this Court per Uwais J.S.C. (as he then was) discussed the proper meaning of the expression 'reasonable cause of action' thus:

"The question therefore is what is a 'reasonable cause of action.' The words 'cause of action' without the adjective 'reasonable' had been defined by this Court. In *Savage & Ors v Uwechia*, 1972) 1 All N.L.R. (Part 1) 251 at p.256; (1972) 3 S.C. 24 at p.221, where Fatai-Williams, J.S.C. (as he then was) said:

"A cause of action is defined in Stroud's Judicial Dictionary as the entire set of circumstances giving rise to an enforceable claim. To our mind, it is, in effect, the fact or combination of facts, which give rise to a right to sue and it consists of two elements the wrongful act of the defendant which gives the plaintiff his cause of complaint and the consequent damage. As Lord Esher said in *Cooke v Gill*, (1873) L.R. 8 C.P. 107 and later in *Read v Brown* (1888) 22 Q.B.D. 128 (C.A.), it is every fact that it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. See *Kusada v Sokoto Native Authority*, (1968) 1 All N.L.R. 377 where the definition in *Read v Brown* (supra) was referred to with approval"

By the two elements in the foregoing definition of 'cause of action' there can be no doubt that as far as the respondent was concerned and as indicated in his statement of claim, the wrongful act of the appellant was that the appellant imported sardine with the import license issued to the respondent, made profit and refused to share the profit as agreed with the respondent. By this, if proved, the respondent would be entitled to damages for breach of contract.

However the definition of the words 'cause of action' is, for the purposes of the present case, incomplete without the meaning of the word or adjective 'reasonable' ascertained. In Black's Law Dictionary, Special deluxe, 5th Edition, the word has been defined to mean, 'fair, proper, just, moderate and suitable under the circumstances.' But the phrase 'reasonable cause of action' which is used in Order 18 rule 19 of the English Rules of the Supreme Court (See Volume 1 of the Supreme Court Practice (1979) had been defined in *Drummond-Jackson v British Medical Association & Ors.*, (1970) 1 W.L.R. 688 at p.696 C by Lord Pearson who observed -

"First there is in paragraph (1)(a) of the rule the expression 'reasonable cause of action', to which Lindley M.R. called attention to *Hubbuck & Sons Ltd. v. Wilkinson, Heywood & Clark Limited*, (1899) 1 Q.B. 86pp.90-91. No exact paraphrase can be given, but I think 'reasonable cause of action' means a cause of action with some chance of success, when (as required by paragraph (2) of the rule) only the allegations in the pleadings are considered. If when those allegations are examined it is found that the alleged cause of action is certain to fail, the statement of claim should be struck-out."

'This definition was approved by this Court in Chief (Dr.) Irene Thomas Ors. v. The Most Reverend Timothy Omotayo Olufosoye, (1986) 1 N. W.L.R. 669 at p.682 (per Obaseki, J.S. C.)'

The question that follows is: Looking at the facts pleaded by the Plaintiff in support of its claim, can it be said that the case at all events has no reasonable chance of success' It needs be said here that the proposition that a plaintiff has no reasonable cause of action can only be made upon an examination of the facts pleaded in the statement of claim. It has nothing to do with the nature of the defence which the defendant may have to the plaintiffs claim. The court must therefore confine itself only to the averments in the Statement of Claim in the assessment of whether or not the plaintiff has a reasonable cause of action: See Shell B.P. Petroleum Development Co. of Nigeria Ltd. & Ors. v. Onasanya [1976] 6 S.C.89, 94.

I should now examine the facts pleaded by the plaintiff/respondent in its Statement of Claim. The relevant facts pleaded by the plaintiff on pages 5-9 of the record read:

5. By a letter dated 17th September, 1996, the defendant solicited bid from the plaintiff for the supply of a Compact Mobile Land Drilling Unit of a particular rating and specification in respect of the defendant's proposed OML 53 Land Rig Campaign. The said bid was to be in two parts, viz: (1) Technical information and (2) Commercial. The said letter is hereby pleaded and shall be tendered during trial.

6. The plaintiff then informed the defendant that it did not have that particular type of land drilling rig and the parties agreed that the plaintiff should purchase the said Rig from India.

7. The plaintiff forwarded its bid to the defendant in two parts

- (i) Technical Information and
- (2) Commercial.

8. That on the 6th December, 1996, the defendant wrote a letter to the plaintiff stating inter alia that it was aware that the plaintiff was in the process of purchasing the rig. In the said letter, the defendant stated that the plaintiffs bid will be considered only if the plaintiff supplies the defendant sufficient information on the said drilling rig it was proposing to buy. The said letter is hereby pleaded and shall be tendered during trial.

9.

10. The defendant was fully aware that the plaintiff was to source loans from banks in Nigeria in order to purchase the said rig from India.

11. That the plaintiff obtained a loan of Three Hundred Million Naira (N300,000,000.00) from the Afribank Nigeria Plc to purchase the said Rig from Triveni Engineering And Industries Limited, New Delhi India. That all relevant documents in respect of the loan are hereby pleaded and shall be tendered during trial.

12.

13. That the defendant requested the plaintiff to keep it fully informed of the stage-by-stage arrangements or steps it took in the procurement of the rig, including financing, purchase, shipment and final arrival of the rig in Nigeria.

14.

15. That on the 20th December, 1996, the defendant wrote a letter to the plaintiff demanding an assurance from the plaintiff that it had purchased the rig. It also demanded proof of ownership of the rig. The said letter is hereby pleaded and shall be tendered during trial.

16. That by a letter dated 15th January, 1997; the plaintiff furnished the defendant evidence of purchase, owner'ship and date of arrival in Nigeria of the rig it purcha'sed from Triveni Engineering and Industries Limited, New Delhi, India. The said letter is hereby pleaded and shall be tendered during trial.

17. That plaintiff avers that by the said letter of 20th December, 1996, the defendant stated that if the plaintiff could furnish it by the 16th January, 1997, with proof of ownership of the rig, the defendant would consider plaintiffs bid stated in paragraph 5 above.
18. That the plaintiff furnished the defendant with proof of ownership of the land drilling rig on the 15th January, 1997, that is, one day before the 16th deadline stipulated by the defendant in their letter referred to in paragraph 17 above. The plaintiffs said letter is hereby pleaded and shall be tendered during trial.
19. That the plaintiff forwarded along with its letter of 15th January, 1997, to the defendant, a letter from Triveni Engineering And Industries Limited Of India who sold the said Land Drilling Rig to plaintiff. In the said letter, Triveni Engineering And Industries Ltd. enclosed another letter confirming that ownership of the Land Drilling Rig had passed from them to the plaintiff. The two letters are hereby pleaded and shall be tendered during trial.
20. That on the 17th January, 1997, the defendant wrote a letter to the plaintiff requesting it to make available for the defendant's sighting by 4p.m. (1600 hours) on Monday, 20th January, 1997, the originals of the following documents:-
- (i) The Contract of Sale of the Triveni Rig VI to the plaintiff;
 - (ii) The title documents of the Rig; the letter is hereby pleaded and shall be tendered during trial.
21. The plaintiff avers that it duly provided the defendant the necessary information requested under paragraph 20 above.
22. That the defendant was monitoring the purchasing transaction of the said Land Drilling Rig from India and its eventual shipment to Nigeria.
23. That the defendant was to send a representative to India to inspect the rig which the plaintiff had purchased from Triveni Engineering and Industries Ltd but later cancelled the arrangement on the ground that it would cost it 35,000 United States Dollars, which they did not want to expend.
24. That consequent upon the defendant's cancellation of the trip to India to inspect the said rig, there was delay in the shipment of the said rig to Nigeria.
25.
26. That Mallard Bay Drilling Nigeria Limited is wholly foreign-owned company.
27. The plaintiff is the only indigenous Company in Nigeria that performs oil drilling of similar capacity and magnitude as Mallard Bay Drilling Nigeria Limited.
28. That on the 19th December, 1996, the defendant wrote a letter to National Petroleum Investment Management Services (NAPIMS), a body under the Nigerian National Petroleum Corporation, in which the defendant stated inter alia that they did not believe that plaintiff could purchase the rig outfit to meet its bid requirements, clear the rig through Indian Customs, transport it to Nigeria, and clear it through the Nigerian Customs by April, 1997 the defendant then concluded that the plaintiff was not a qualified bidder.
29. Further to paragraph 28 above, the defendant also stated in the said letter that if the plaintiff could provide proof of ownership of the rig by the 16th January, 1996, it would open the commercial portion of the plaintiff's bids. The said letter of the defendant is hereby pleaded and shall be tendered during trial.
30. That the plaintiff paid to Triveni Engineering and Industries Limited India the sum of Three Million and Fifty Thousand United States Dollars (\$3,050,000 U.S.D) as cost of the said Rig.

31. The Proforma Invoice and other relevant documents are hereby pleaded and shall be tendered during trial.
32. That when the rig arrived in Nigeria plaintiff informed the defendant.
33. That the plaintiff spent the sum of Three Hundred and Fifty Thousand United States dollars (\$350,000 U.S.D) on freight charges of the said rig. The Proforma Invoice and other relevant documents in this regard are hereby pleaded and shall be tendered during trial.
34. That the defendant caused the plaintiff to expend the above stated amounts to purchase and ship the rig to Nigeria solely for the purpose and at the request of the defendant in consideration of the defendant opening the plaintiffs bids, [both (1) Technical Information and (2) Commercial] and for considering the bids.
35. That the defendant only opened the Technical Information of the plaintiffs bid, but kept foot-dragging with regard to the commercial Portion of the bid, despite the fact that the plaintiff had completely met its own obligation to provide the Land Drilling rig in consideration of the defendant's opening of the two sections of the bid.
36. That on the 20th March, 1997, the plaintiff wrote to the National Petroleum Investment Management Services (NAPIMS), (a body established by the Nigerian National Petroleum Corporation) complaining of the behaviours of the defendant in its refusal to inspect the rig in India as well as open the Commercial portion of plaintiff's bid. The said letter is hereby pleaded and shall be tendered during trial.
37. That on the 26th March, 1997, the defendant wrote a letter to the Nigerian National Petroleum Corporation (NAPIMS) intimating them of their plan to continue with the bidding process by opening the Commercial section of the Mallard Bay Drilling Nigeria Limited proposal and to return the technical and commercial sections of the plaintiffs bid. The defendant gave NAPIMS up to the 20th April, 1997, to respond to their plan, failing which the defendant would assume that NAPIMS had concurred with the proposal. The said letter is hereby pleaded and shall be tendered during trial.
38.
39. Further to paragraph 38 above, the Nigerian National Petroleum Corporation (NAPIMS) then advised the defendant not to return the technical and commercial bid package to the plaintiff, and to also exercise restraint till the end of April, 1997, when plaintiffs rig arrived Nigeria from India.
40. That the plaintiff and Mallard Bay Drilling Nigeria Limited were the only two Companies that qualified for the technical bid.
41. That on the 15th September, 1997, the defendant wrote to the plaintiff stating that, due to fiscal constraint of the Federal Government's 1997 budget it was rejecting all bids it received for the proposed 1997 OML 53 Land rig campaign. The defendant then returned only the commercial portion of the plaintiffs bid unopened; but assuring it of an intention to resubmit the bids when fiscal situation improves. The said letter is hereby pleaded and shall be tendered during trial.
42. On or about the 6th of May, 1998, the defendant sent out bid documents to Mallard Bay Drilling Nigeria Limited and other drilling companies but refused to send to the plaintiff.
43. That the defendant by its numerous correspondences with the plaintiff contracted with the plaintiff to purchase the said Triveni Rig VI from Triveni Engineering and Industries Limited on the consideration that the defendant will open and consider the plaintiffs Technical and Commercial bids.
44. That in spite of the breach of contract, the action of the defendant in opening and considering the commercial bid of Mallard Bay Drilling Nigeria Limited and refusing to open and consider the plaintiffs bid is highly tainted with

discrimination.

45. That the defendant caused the plaintiff to procure the said Land Drilling Rig but subsequently failed to pen the Commercial bid."

The above averments from the Statement of Claim clearly made the point that the defendant led the plaintiff to believe that it's (the plaintiffs) commercial bid would be accepted and considered. The plaintiff placed reliance on that representation and incurred an expenditure of millions of dollars to import a drilling rig into Nigeria. The defendant later failed and or neglected to allow the plaintiff to submit a bid for the said rig. It seems to me that on those facts pleaded, the plaintiff had shown that, its contract with the defendant had been unlawfully breached.

It was quite another matter whether those facts when set against the averments in defendants, Statement of Defence would succeed. But those facts in my humble view clearly entitled the plaintiff to a hearing on the merit of its case. The trial high Court was of the view that the facts disclosed by the plaintiff entitled it to a hearing to determine the merit of its case. In the same manner the court below per Tobi JCA (as he then was) in its lead judgment observed:

"I have thoroughly examined the action filed by the respondent (i.e. the plaintiff) and I do not agree with learned counsel for the appellant that there is no valid cause of action. There is. The action may succeed. It may fail. The court is not yet there. The court will decide at the end of the proceedings. For now there is a valid cause of action."

I am satisfied that the court below was right. The defendant, it would seem, was in too much a hurry to have the plaintiffs case terminated; and the plaintiff in the process driven away from the judgment seat before airing its case. That, it must be said, is not the way the court operates. A party ought not to be precluded from putting across his case in a full hearing except on the clearest indication that the action is denuded of all merits even on the supposition that the averments in the statement of claim are deemed as admitted by a defendant. Issue 1, therefore, fails.

Appellant's issue No. 2 raises the contention that the plaintiffs claim was an action in admiralty and that therefore, a State High Court has no jurisdiction to entertain same. The defendant would rather have the case heard by the Federal High Court. I reproduced above a substantial part of the averments in Plaintiffs Statement of Claim. These show that in its true essence, the claim was for a breach of contract. It has nothing to do with the admiralty jurisdiction of the Federal High Court. The court below decided the matter in these words:

"I have carefully examined the claim and I am of the view that it is a claim in contract and has nothing to do with admiralty. It is clearly stated in the claim that it is for the sum of \$ 10,000,000.00 (Ten million U.S. Dollar) as special and general damages. It is not an admiralty action. Whether the transaction is an invitation to treat or a contract will be decided by the Judge at the trial."

I agree with the views of the court below. This appeal has no merits. It is dismissed with N1 0,000.00 costs in favour of the Plaintiff/respondent.

Judgment 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 Oguntade JSC. I am in total agreement that the appeal has no merit.

By the averments in the Statement of Claim it is crystal clear that the action discloses a reasonable cause of action. It is also clear that it has nothing to do with the admiralty jurisdiction of the Federal High Court. I would also dismiss the appeal with N10, 000.00 costs in favour of the Plaintiff/Respondent.

Judgment delivered by
Mahmud Mohammed J.S.C

The Respondent in this appeal was the Plaintiff at the Delta State High Court of Justice sitting at Warri where it instituted a suit against the Appellant which was the Defendant claiming the sum of US\$10,000,000.00 as special and general damages for breach of contract of supply of Rig brought by sea from India to Nigeria. The break down of the claim is US\$1 .5 million cost of freight of the Rig; US\$1.5 million interest on Bank loan obtained for the purchase of the Rig; US\$2.5 million for loss of earnings on the Rig and US\$5 million as general damages.

After the exchange of pleadings between the parties at the trial court, the Defendant filed a motion on 1st March, 1999 under Order 24 Rules 2 and 3 of the Rules of the High Court of Bendel State 1988 then applicable in Delta State for an order -

1. Setting down for hearing and determination the points of law raised in the Defendant's Statement of Defence particularly paragraphs 15 - 22.
2. Based on prayer one above, an order dismissing the Plaintiff's action for disclosing no reasonable cause of action and for being incompetent, frivolous and vexatious in the circumstance. and/or
3. An order strike out this suit for lack of jurisdiction of this Honourable Court to entertain same,)"

This application was heard and dismissed by the trial court which held that the Plaintiffs action had disclosed reasonable cause of action which that Court has jurisdiction to entertain. The Defendant's appeal to the Court of Appeal against the ruling of the trial court was also dismissed. Aggrieved by the dismissal of the appeal, the Defendant has further appealed to this Court raising the following two issues for determination in the Defendant/Appellant's brief of argument.

1. Whether the Court of Appeal was right in holding that the Plaintiffs action discloses reasonable cause of action against the Defendant/ Appellant.
2. Whether the Court of Appeal was right in holding that the Plaintiffs claim is contract and not admiralty thereby vesting Delta State High Court with jurisdiction as against the Federal High Court"

These two issues were adopted in the Plaintiffs/Respondent's brief of argument.

On the first issue for determination, the law is indeed well settled that a cause of action is constituted by the bundle or aggregate of facts which the law will recognise as giving a Plaintiff a substantive right to make the claim against the relief or remedy being sought. In other words the factual situation on which the Plaintiff relied to support his claim must be recognised by the law as giving rise to a substantive right capable of being claimed or enforced against the Defendant. That is to say, the factual situation relied upon must constitute the essential ingredients of an enforceable right. See *Bello .v. Attorney General of Oyo State* (1986) 5 N.W.L.R. (PT. 45) 828 and *Ibrahim .v. Osim* (1988) 1 N.S.C.C. 1184 at 1194. From the facts averred by the Plaintiff in the statement of claim particularly paragraphs 6, 34, 43 and 46 thereof which referred and relied on several documents containing correspondence between the Plaintiff and the Defendant on the subject of bidding for the supply of a Compact Mobile Land Drilling Unit of a particular rating and specification in respect of the Defendant's proposed OML 53 Land Rig Campaign, I am of the firm view that essential ingredients of enforceable rights have been disclosed therein to justify the Plaintiffs action seeking redress in the trial High Court. With the statement of claim thus disclosing a right of action, whether or not the Plaintiff will succeed at end of the determination of the claims by the trial court; is totally irrelevant at this stage. The legal defences raised by the Defendant in its statement of defence mostly arose from the documents exchanged between the parties in the course of the bidding transaction between them which documents must be in evidence before they could be analysed and be given probative value in support of the Defendant's case that there was no valid contract between the parties to support

the action of the Plaintiff.

The second issue for determination is on the jurisdiction of the trial Court to entertain and determine the claims of the Plaintiff. The fact that the transaction between the parties giving rise to the Plaintiffs claim involves the conveyance of the Rig purchased from India to Nigeria by sea, does not give that transaction the character of an Admiralty action. The Court below is therefore right in its judgment now on appeal that reasonable cause of action has been disclosed in the Plaintiffs action which the trial Court has jurisdiction to hear and determine.

Having read the judgment of my learned brother Oguntade, JSC, I am entirely with him that this appeal has no merit. Accordingly, I also dismiss the appeal with N10, 000.00 costs against the Appellant.

Judgment delivered by
Francis Fedode Tabai JSC

I had preview of the lead judgment prepared by my learned brother Oguntade JSC wherein he narrated the facts and quoted copiously all the relevant paragraphs of the statement of claim. I shall not repeat them. He reasoned and concluded that the appeal lacks merit and dismissed it I agree with his reasoning and conclusion.

The application at the trial court which has given rise to the appeal to the Court below and to this court was dated and filed on the 1/8/99. It prayed for:

1. An order of this Honourable Court setting down for hearing and determination the points of law raised in the Defendant's Statement of Defence particularly paragraphs 15-22.
2. Based on prayer one above, an order dismissing the Plaintiff's action for disclosing no reasonable cause of action and for being incompetent, frivolous and vexatious in the circumstances; and/or
3. An order striking out this suit for lack of jurisdiction of this Honourable Court to entertain same.

In the considered ruling on the 3/12/99, the learned trial judge dismissed the application.

The appeal to the Court below was equally dismissed in its judgment on the 4th of April 2001. In the said judgment the court per Niki Tobi, JCA (as he then was) had this to say:-

"I have thoroughly examined the action filed by the Respondent and I do not agree with learned counsel for the appellant that there is no valid cause of action. There is. The action may succeed. It may fail. The court is not yet there. The court will decide at the end of the proceedings. For now there is a valid cause of action..."

(See page 74 of the record of proceedings) On the issue of jurisdiction he added:-

"I have carefully examined the claim and I am of the view that it is a claim in contract and has nothing to do with admiralty. It is clearly stated in the claim that it is for the sum of US\$10,000,000.00 or as special and general damages. It is not an admiralty action. Whether the transaction is an invitation to treat or a contract will be decided by the trial judge at the trial."

(See the same page 74 of the record of proceedings)

I cannot agree more with the lower court's opinion on the two issues of reasonable cause of action and the trial court's alleged lack of jurisdiction to entertain the claim. In the English case of Board Of Trade .v. Cayzer Irvine And Co. Ltd (1927) Ac 610 At Page 617 a cause of action was simply defined to mean "that which makes an action possible." And having regard to the settled principle that a cause of action is determined from the facts pleaded in the Statement of

Claim, I examined the Statement of Claim. I am satisfied beyond any doubt there is a reasonable cause of action.

Similarly the issue of jurisdiction can only be determined from the Plaintiffs claim. I do not think the court is bound to style the suit as an admiralty matter simply because the Defendant so asserts. Clearly the suit is not an admiralty matter within the exclusive jurisdiction of the Federal High Court. It is simply a claim in contract over which the trial High Court has jurisdiction.

For the foregoing and the fuller reasons in the lead judgment of Oguntade JSC, I also dismiss the appeal. I abide by the costs as assessed in the leading judgment.

Judgment delivered by
Christopher Mitchel Chukwuma -Eneh

In this matter commenced at the Delta State High Court Warri Judicial Division, the plaintiff claims against the defendant read as follows:

The sum of \$10,000,000 (Ten million U.S. dollars) being special and general damages for breach of contract. The particulars of damages

1. Cost of freight of Rig from India to Nigeria and Marine Insurance SI.5 US Dollars.
2. Interest on bank loan for purchase of the Rig SI million US Dollars.
3. Loss of earnings on the Rig S 2.5 Million USD
4. General Damages S5 Million USD Total Damages S10 Million USD"

Parties in this matter filed and exchanged their pleadings. The defendant in its Statement of Defence has taken points of law against paragraphs 16, 17, 18, 19, 20, 21 & 22 of the Statement of Claim. In furtherance of this act, the defendant filed an application under Order 24, Rules 2, 3 and 4 of the High Court (Civil Procedure) Rules of Bendel State 1988 as applicable to Delta State, praying the Court to set down for hearing the points of law raised in the Statement of Defence and an order dismissing the plaintiffs action for disclosing no reasonable cause of action as well as an order striking out the suit in its entirety for lack of jurisdiction to entertain it. The trial court granted the said order, set down the said points of law for hearing. After hearing" the parties on the application the trial court held that the plaintiffs claim disclosed a reasonable cause of action; furthermore that\ it. has jurisdiction to entertain the suit and dismissed the application. The defendant being aggrieved by the decision appealed to the Court of Appeal (court below) which also dismissed the appeal and affirmed the decision of the court below. The defendant (appellant in this court) has now appealed to this court by a Notice of Appeal dated 7/3/2002 and therein has raised 3 grounds of Appeal from which it has in its brief of argument tiled in this matter distilled 2 issues for determination as follows:

- (1) Whether the Court of Appeal was right in holding that the plaintiff's action discloses a reasonable cause of action against the defendant/appellant.
- (2) Whether the Court of Appeal was right in holding that the plaintiffs claim is contract and not admiralty thereby vesting the Delta State High Court with jurisdiction as against the Federal High Court.

The plaintiff (Respondent in this court) has in its brief of argument filed in this matter distilled 2 issues for determination as follows:

"Issue No 1:

Whether the Court of Appeal holding that the plaintiff's statement of claim discloses a cause of action against the defendant is not right in view of the circumstances surrounding the whole transaction Distilled from ground 1 of the grounds of appeal.

Issue No 2:

Whether the Court of Appeal finding that the plaintiffs claim against the defendant is not founded on admiralty jurisdiction but on contract thus conferring jurisdiction on the Delta State High Court is Right' (distilled from ground 2 of the Grounds of Appeal)."

The appellants having relied on a number of legal authorities has submitted that, the Statement of Claim as a matter of facts and law has not raised by the averments therein the ingredients to constitute a reasonable cause of action to sustain the instant suit nor any basis to suggest that the action is rightly founded in contract and not in admiralty. It is submitted that the action as presently constituted is outside the jurisdiction of the State High Court being a matter within the admiralty jurisdiction. The appellant relies on the cases of Orient Bank Nigeria Plc .v. Bilante International Ltd. (1997) 8 NWLR (pt.515) 80 and Innih .v. Ferado A& C Ltd (1990) 5 NWLR (pt.152) 604 to submit that the transaction reached by the parties as averred in the statement of claim can only amount to mere invitation to treat, meaning that there is no formal contract between them. In this respect, the appellant has referred to K.S.U.D.B. .v. Fanz Construction Ltd (1990) 4 NWLR (pt.142) 14 Adebajo v. Brown (1990) 3 NWLR (pt.141) 661 at 688-690 and U.B.N. Ltd v, SAX (1994) 8 NWLR (pt.361) 150 at 169.

On the question that the court below did not consider properly the question of cause of action and the finding that the action is rightly founded in contract; it has relied on 7up Bottling Co. Ltd .v. Abiola & Sons Bottling Co. Ltd (2001) FWLR (pt.70) 1611 at 1640-1642 to buttress the point. On the submission that no wrongful act of the defendant has been pleaded in the Statement of Claim a necessary ingredient of cause of action it has relied on Rinco Construction Co. Ltd .v. Veepee Industries Ltd (1992) 5 NWLR (pt.240) 248-, 255-256. On the definition of cause of action the appellant relies on Bello .v. Attorney-General Oyo State (1995) 5 NWLR 828 at 876 in expatiation. It re-echoes on the principles laid down in Nigeria Airways v. Lapile (1990) 3 NSCC (vol.21) 397 at 405 that is to say, the basis under which a court may dismiss an action in contract firstly, when there is no contract between the parties or no valid contract in law or the matter is already res judicata or the relief being asked is based on a ground which is not a ground for such a relief and Halbury's Laws of England 3rd edition vol. 1 page. 6, Article 9. This court is urged to dismiss the plaintiffs/respondent's claims as lacking in merit.

The respondent has submitted that the Statement of Claim has showed the wrongful acts of the defendant perpetuated on the plaintiff and the damage giving rise to a reasonable cause of action and damages. See: Halbury's Laws of England 3rd edition vol. 1 page 6 Article 6. Savage v. Uwaechie (1972) SC 213, Kusada v. Sokoto N.A, (1987) 4 ANLR 337. On the question that the court below dealt with all the issues submitted to it and rightly decided the matter and thus the respondent has in that regard distinguished this matter from the case of Carbolic Smoke Ball Co. v. Carlill (1893) 1 Q.H. 256. It is submitted that the court below has rightly held that prima facie the respondent has showed a good cause of action as averred in its Statement of Claim to sustain the instant action and that the court also rightly held that it has the jurisdiction over the matter as it is not an admiralty matter but one founded on contract. The court is urged to dismiss the appeal.

Because of the peculiar facts and circumstances of this matter I have given the case of each side of the divide some detail so as to make for understanding of the issues raised for determination in the matter. I start this discourse by firstly examining the definition of cause of action. It is in a way an issue concurrent with determining the jurisdiction of the trial court to entertain this matter. An elaborate definition has been given by the learned authors of Halsbury's Laws of England 3rd edition page 6 Article 9 and 1 have to resort to that for being very comprehensive and 1 quote:-

'9. Popular and strict meanings:

The popular meaning of the expression 'cause of action' is that particular act on the part of the defendant which gives

the plaintiff his cause of complaint (a). There may however, be more than one good and effective cause of action arising out of the same transaction (b) Strictly speaking, 'every fact which is material to be proved to entitle the plaintiff to succeed; every fact which, the defendant would have a right to traverse (c), forms an essential part of the cause of action. Which 'accrues' upon the happening of the latest of such facts (d)' Consequently, in any particular case, 'the cause of action' strictly so called can only be said to arise within a certain local area, when all such material facts arise within that area, in which case (as it is 'often stated somewhat tautologically) the 'whole' cause of action so arises.'" See *Afolayan .v. Ogunrinde* (1990) NWLR Part 127 at p.395-396; in which the above abstract has been applied with approval of this court.

It is therefore, settled that a cause of action constitutes a bundle of facts and circumstances giving rise to the plaintiffs enforceable claims against the defendant. The facts and circumstances have to be as pleaded in the Statement of Claim. *Seelbrahim .v. Osim* (1987) 4 NWLR (pt.67) 965. And so, it has to be ascertained by having recourse to the statement of claim. As can be seen from the definition, the proposition resolves into two crucial factors thus: - the defendant's wrongful act and the consequential damage to the plaintiff. These two factors must co-exist to constitute a cause of action before the court. It does not take account of whether the cause of action will succeed or fail. A cause of action is valid-irrespective of the strength or weakness of the plaintiff's case. See: *Eseigbe .v. Agholor* (1990) 7 NWLR (pt.161) 234.

In expounding further on the matter of the defendant's wrongful acts and the damage to the plaintiff in this matter I refer to paragraphs 6, 34, 43 and 46 of the Statement of Claim and I quote:-

"6. The plaintiff then informed the defendant that it did not have that particular type of land drilling Rig and the parties agreed that the plaintiff should purchase the Rig from India.

34. That the defendant caused the plaintiff to expend the above stated amounts to purchase and ship the rig to Nigeria solely for the purpose and at the request of the defendant in consideration of the defendant opening the plaintiffs bids, (both (1) Technical Information and (2) Commercial) and for considering the bids.

43. That the defendant by its numerous correspondences with the plaintiff contracted with the plaintiff to purchase the said Triveni Rig VI from Triveni Engineering Industries Limited on the consideration that the defendant will open and consider the plaintiffs Technical and Commercial bids,

46. That as a result of the action of the defendant the plaintiff has sustained substantial loss and thereby suffered damages."

To begin with, the foregoing averments bear out clearly the representations of facts is made to the plaintiff and estoppel establishing legal relationship between the parties so that if proved it will give rise to judgment for the plaintiff. There is in this sense a cause of action. See *Eastern Distributors .v. Goldring* (1957) 2 Q.B. 600 on Section 21 of the Sale of Goods Act 1893 also *Hopgood .v. Brown* (1955) 1 WLR 213 per Evershed M.R. and *Armstrong .v. Sheppard & Short Ltd* (1959) Ch. 384 at 399. These cases have taken their bearing from the classic case of *Low .v. Bouvrie* (1891) 3 Ch.82. The question of the plaintiff having raised a reasonable cause of action on the pleaded facts in the Statement of Claim on the backdrop of the cases cited above is beyond question. The paragraphs of the Statement of Claim reproduced above bear out clearly the wrongful act of the defendant and the consequential damages suffered by the plaintiff; whether or not the cause of action will succeed is entirely a different kettle of fish. At least, the parties are afforded the opportunity to prove their case and the court the duty to decide on the matter. In my view the Statement of Claim discloses a reasonable cause of action.

Issue one is therefore resolved in favour of the respondent.

I have also considered Issue 2 by recouring, again, to the Statement of Claim and there, can be no doubt that the claim for special and general damages-by the respondent flow directly from the alleged breach of the deal between the parties. The various sums claimed as per the Writ of Summons, clearly quantify in money terms the damages suffered

by the plaintiff in meeting his obligations under the deal. I also resolve issue 2 in favour of the respondents.

On the whole, I agree entirely with fuller reasoning and conclusions reached in the judgment prepared by my learned brother Oguntade. JSC that this appeal is without merit and should be dismissed. I also dismiss it and endorse the orders in the lead judgment.