

IN THE SUPREME COURT OF NIGERIA

Suit No: SC27/2000

Petitioner: Capital Bancorp Limited

And

Respondent: Shelter Savings and Loans Limited, Dr. Chris Ngige

Date Delivered: 2007-01-12

Judge(s): Sylvester Umaru Onu, Dahiru Musdapher, Aloma Mariam Mukhtar, Walter Samel Nkanu Onnoghen, Francis Fedod

Judgment Delivered

In the High Court of Lagos State, the Plaintiff, who is the Appellant in this Court instituted an action against the Defendants jointly and severally for wilful and wrongful detention of a 60 KVA Perkins unused generating set. The Plaintiff is a limited liability Company doing business of stock broking and finance, the 1st Defendant is also a limited liability Company and does business of finance, and the 2nd Defendant is a creditor of the 1st Defendant. The Plaintiff and the 1st Defendant entered into a finance lease agreement for the sum of N2, 700, 000.00 disbursed to the 1st Defendant for purchase of various equipments amongst which was one unit of 60 KVA sound-proof Perkins Generating set model 6, 3544 with Engine number LJ3012U582905X purchased for the sum of N516, 757.00. The 1st Defendant defaulted in paying its monthly instalments, and the Plaintiff continued to demand payment of the outstanding rental. As at 15/5/94 the 1st Defendant was owing the sum of 611,289.78. The Plaintiff has had to provide for the debt owed it by the 1st Defendant in accordance with prudential Guidelines for Banks, and this has affected its cash flow. Consequently the Plaintiff in order to mitigate losses terminated the lease agreement vide a letter which demanded all the equipments under the lease. The equipments were all returned with the exception of the 60 KVA Perkins unused generating set, which they both arranged should be sold by Inland Bank Nigeria Limited at Onitsha for the sum of N650, 000.00. The 2nd Defendant knowing fully well that the ownership of the Equipment did not reside in the 1st Defendant went to Onitsha in the Company of some armed men and forcibly removed the equipment from the premises of the 1st Defendant. The Plaintiff as owners of the equipment claimed as follows:-

"(A) (i) against the 2nd Defendant the sum of N200, 000.00 as general damages for wilful and wrongful detention of its equipment.

(ii) against the 2nd Defendant the sum of N15, 000.00 monthly (from 4 October, 1994, till the judgment debt is finally liquidated) as damages for loss of profit resulting from wilful and wrongful detention of the Plaintiffs Equipment by the 2nd Defendant.

(B)

(C) (i) In the alternative to the claims under B) above the Plaintiff claims against the Defendants jointly and severally the sum of N938, 479.50 being the value of one unit of 60 KVA sound-proof Perkins Generator set complete with all its accessories plus there on at the banks' current prime lending rate from time to time (currently 20%) from 4th October, 1994, till total liquidation of the debt.

(ii) the sum of N50, 000.00, being solicitors' fees for recovery of all the arrears of rent and repossession of the equipment from the Defendant which the Plaintiff claims pursuant clause 2 under the principal covenants in the offer letter;

(iii) as general damages the sum of N300,000.00.

After the service of the Plaintiff's Statement of Claim on the Defendants, the 2nd Defendant filed a notice of Preliminary Objection, which reads thus: -

'The action in so far as it affects the 2nd Defendant, is incompetent in that the subject matter of the suit, namely 60 KVA sound-proof Perkins Generating set, Model 6, 3544, together with its accessories, is not situated within the territorial jurisdiction of the High Court of Lagos State and the alleged seizure or detain took place outside the jurisdiction of this Honourable Court.

And Take Notice that grounds of the said objection are as follows:-

1. All the claims in the Plaintiffs action against the 2nd Defendant relate to and arise from an alleged detain or seizure of a 60 KVA Generating set, (personal property) and the action must be commenced and determined in the Onitsha judicial (territorial) division (outside the jurisdiction of this Honourable Court) in which the detain or seizure took place and where the property is alleged to be situated.'

The Plaintiff filed a reply to the above objection thus: -

'Take Notice that the Plaintiff/Applicant shall be opposing the Preliminary Objection filed by the 2nd Defendant/Respondent:

That this honourable Court has jurisdiction to entertain the action against the 2nd Defendant and that the 2nd Defendant's preliminary action be dismissed in limine with substantial costs.

Take Further Notice that the grounds upon which the Plaintiff shall be opposing the 2nd Defendant's Preliminary Objection are as follows:

1. that the 2nd Defendant is a necessary party against whom the right of the Plaintiffs reliefs/remedies exist;
2. that the Plaintiff, as well as the 1st and 2nd Defendants reside within jurisdiction of this honourable Court;
3. that this honourable Court being a Court of Law and equity has jurisdiction to try the action against both 1st and 2nd Defendants;
4. that the distraint to Plaintiffs property took place within jurisdiction of this honourable Court;
5. that the contract between Plaintiff and the 1st Defendant was performed within jurisdiction of this honourable Court;'

Learned Counsel for the parties addressed the Court viva voce, and the learned trial Judge after considering the addresses dismissed the objection and held as follows :-

'With this alternative relief, I do hold that this Court is vested with jurisdiction while I agree with Mr. Sogbetun that under the equitable jurisdiction, this Court is vested with power to entertain this suit against the 2nd Defendant. I rely on *Ayinule v Abimbola* (1957) 1 LR 41 at 42.'

Aggrieved by the ruling, the 2nd Defendant appealed to the Court of Appeal on 3 grounds of appeal. The Court of Appeal allowed the appeal and pronounced that the Lagos State High Court had no jurisdiction to entertain the suit.

Another appeal was filed against the decision of the Court of Appeal in this Court, on five grounds of appeal. Briefs of arguments were exchanged by learned Counsel, and the Briefs were adopted at the hearing of the appeal. In the Appellant's brief of argument are two issues formulated for determination, and these issues are: -

'(i) Whether the Lagos High Court did not in all the circumstances of this case have jurisdiction to entertain the Plaintiffs' claim as formulated.

(ii) Whether the Court of Appeal was right in holding that the Lagos High Court did not have jurisdiction in the circumstance to entertain any of the Plaintiffs claims before it.'

A single issue was raised in the 2nd Respondent's Brief of argument and the issue is: -

'Whether the Court of Appeal was right in holding that the Lagos High Court does not have jurisdiction over a matter based on \"seizure and detention\" which took place in Onitsha Anambra State even where all the parties reside in Lagos.'

The issue raised in the 1st Respondent's brief of argument is, whether the Court of Appeal was right in holding that the Lagos High Court did not have jurisdiction to entertain a claim relating to an alleged seizure and distraint (detinue and conversion) of a property, among other reliefs, which took place at Onitsha, Anambra State irrespective of the fact that all the parties in the case reside in Lagos.

I will adopt the issue raised in the 1st Respondent's brief of argument for the treatment of this appeal. Learned Counsel for the Appellant has submitted that the conclusions of the learned justices of the Court of Appeal that it is the Anambra State High Court that has jurisdiction to try the case is clearly erroneous for the following reasons:-

(i) The Appellant's claim as clearly stated in the pleadings is anchored on the finance base contract for the 60 KVA sound-proof Perkins Generating set which is the subject of the conversion and detinue.

(ii) The Appellant pleaded that by virtue of that contractual relationship the ownership of the generating set still vests in the Appellant.

(iii) The Appellant's claim in respect of the ownership of the generating set as it affects the 2nd Respondent is in detinue and conversion and not seizure or distress.

(iv) The claim for detinue and conversion of the generating set is an unseverable aspect of the contract.

Learned Counsel is of the view that a Court in considering whether or not it has jurisdiction to entertain a matter is bound to look at the totality of the Appellant's pleadings which gives the Appellant the cause of action. He submitted that the cause of action is constituted by the bundle of or aggregate facts, which the law recognizes as giving the Appellant substantial right to claim any remedy and relief. He placed reliance on the case of *Bello v. Attorney General of Oyo State* 1986 5 NWLR part 45 page 828. He further submitted that the Appellant is entitled to seek all remedies against all persons in respect of the breach of contract by the Respondents as pleaded in its Statement of claim in one action and in one Court and not by way of separate actions. He cited the case of *Gafaru v. U.A.C. Ltd.* 1961 1 All NLR 785, and *Fadavomi vs. Sadipe* 1986 2 NWLR, part 25 page 736.

Learned Counsel for the 1st Respondent has contended that it is now settled law that jurisdiction of any Court to entertain any matter may be gleaned in the first instance, from the cause of action identified in the Statement of claim of the Plaintiff. He cited the cases of *Okulaja v. Awosanya* 2000 2 NWLR part 646 page 530, and *Tukur v. Government of Gongola State* 1989 4 NWLR part 117 page 5.

Learned Counsel for the 2nd Respondent has argued that from a combined effect of paragraphs 14, 15 and 22 of the Appellant's Statement of Claim foundation of his claim including pecuniary claim was seizure and detention of the generating set, and since it is not in dispute that the said seizure took place in Onitsha, Anambra State, the Court below was right when it held that the Anambra State High Court has jurisdiction. Learned Counsel submitted that in all matters of identifying jurisdiction and competence, it is only the claim and or pleadings of the Plaintiff that should be considered. He placed reliance on the cases of *Tukur v. Government of Gongola State* supra, *Adeyemi v. Opeyori* (1976) 9 - 10 SC 31, *Okulaja v. Awosanya* supra and *Emeka v. Emordi* 2004 16 NWLR , part 900 page 433.

I will now look at the pertinent averments in the Plaintiffs pleadings and reproduce them below. They are: -

'14. The Plaintiff further avers that sometime in May, 1994, the 2nd Defendant without authority of the Plaintiff and the original particulars of the generating set and knowing fully well that ownership of the equipment did not reside in the 1st Defendant went to Onitsha in the company of some armed men and forcibly removed from the premises of the 1st Defendant, the said equipment belonging to the Plaintiff. The Plaintiff shall at the trial of this action rely on the 1st Defendant's letter dated 24th May 1994 and the reports by the 1st Defendant and Inland Bank Nigeria Limited to the police at Onitsha and on the report by the Plaintiff to the police headquarters at Alagbon Lagos.

15. After oral pleas and demand by the Plaintiff for possession of the equipment from the 2nd Defendant the Plaintiff further caused a formal demand notice (vide the Plaintiff's letter of 24th October 1994) to be served on the 2nd Defendant but till date the 2nd Defendant has will fully and wrongfully detained possession of the equipment from the Plaintiff.

19. Till date the 1st Defendant has failed and refused to pay any of the said arrears of rentals and the 2nd Defendant has neglected and refused to deliver possession of the Plaintiffs equipment to the Plaintiff.

Whereupon the Plaintiff claims from the 2nd Defendant the sum of N200, 000.00 as general damages for wilful and wrongful detention of its Equipment.'

Then the claim under paragraph (22), which I have already reproduced in the earlier part of this judgment.

A very careful study of the above pleadings reveal that the base of the complaint of the Appellant in the High Court is the seizure by the 2nd Respondent of the generating set that is in controversy, and that seizure was in Onitsha, Anambra State and not in Lagos State. I believe if the 2nd Respondent had not removed the generating set from where it was in Onitsha, the claim against him would not have arisen. It would have been a claim against the 1st Respondent for mere breach of contract. What gave the Appellant the cause of action against the 2nd Respondent was the seizure of the generating set. A cause of action arises from circumstances containing different facts that give rise to a claim that can be enforced in Court of law, and thus lead to the right to sue a person responsible for the existence of such circumstances. There must therefore be a wrongful act of a party (i.e. the party sued), which has injured or given the Plaintiff a reason to complain in a Court of law of consequent damage to him. See *Labode v. Otubu* 2001 7 NWLR, part 712 page 256, and *A. G. Federation v. A. G. Abia State* 2001 11 NWLR part 725 page 689. The contention of learned Counsel for the Appellant that a party is entitled to lump several reliefs in a case and his reliance on the *Fadayomi's* case supra is untenable. The *Fadayomi's* case is not relevant to this case, because the facts and principles are distinguishable from those of the present case, as the former dealt mainly with joinder of Plaintiffs and striking out of name of one of several Plaintiffs. The seizure, which translates to detinue having occurred in Anambra State, it is Anambra State that should hear and determine the case.

In his Brief of argument, the learned Counsel for the Appellant asked the following questions: -

'(a) Whether the trial Court can exercise jurisdiction to entertain this matter as against the 1st and 2nd Respondents as a whole where the subject matter of the contract which was forcibly removed by the 2nd Respondent in the premises of the 1st Respondent is in another State; and (b) Whether the Court can exercise jurisdiction in personam against the 2nd Respondent on account of residence of parties.'

Learned Counsel for the Appellant has invited the Court to answer the above questions in the affirmative, referring to Order 1A Rule 3 of the Lagos State High Court (Civil Procedure) Rules 1972 which provides thus: -

'All suits for the specific performance or upon the breach of any contract may be commenced and determined in the Judicial Division in which such contract ought to have been performed or in which the Defendant resides'

Learned Counsel for the 2nd Respondent has argued that the various High Court Laws and Rules derive their potency from the Constitution and therefore they cannot supersede the Constitution. He placed reliance on the case of *Obasanjo v. Yusuf* (2004) 9 NWLR part 877 page 144.

As I have observed earlier on, the claim in the Court of trial was predicated on the seizure of the generating set, that is the subject matter in controversy. In that case although there was contract between the Appellant and the 1st Respondent, it cannot be said that it was the breach of that contract that triggered the action, because to my mind, if the generating set had not been seized by the 2nd Respondent, the action involving the 2nd Respondent wouldn't have arisen, and the Appellant wouldn't have had a cause of action against him. I will buttress this fact by reproducing some relevant averments in the Plaintiff's Statement of Claim hereunder. They read:

'4. On April, 1993, at the instance of the 1st Defendant (vide its letter of 15th April, 1993) and further to the Plaintiffs offer letter of even date (which was signed as accepted by the Defendant) the Plaintiff and the 1st Defendant entered into a Finance Lease Agreement

6. However, since the inception of the lease Agreement the 1st Defendant has either made late payments, which have attracted late payment charges or has completely defaulted in paying its monthly rentals under the Lease Agreement.

14. The Plaintiff further avers that sometime in May, 1994, the 2nd Defendant without authority of the Plaintiff and the original particulars of the generating set

I have already reproduced this last paragraph fully in the early part of this judgment, so I need not reproduce the whole paragraph here. What I am trying to illustrate by the above averments is the fact that the Plaintiff complained of breach of terms of agreement between it and the 1st Respondent to have taken place from the inception of the agreement, but then it did not institute any action against the 1st Respondent until and after the generating set had been seized by the 2nd Respondent. It is instructive to note that the action was instituted on 24/10/94, as can be seen on the writ of summons. The pertinent questions to ask here is, why did the Appellant not sue the 1st Respondent when it breached the terms of the agreement, but waited until the generating set was seized' The answer is obvious.

It is my view that order 1A Rule 3 of the High Court of Lagos State does not apply to this case, for I endorse the argument of the learned Counsel for the Respondents that the Constitution of Nigeria and its provisions are supreme. Specifically Section 239 of the Constitution of the 1979 Constitution of Nigeria stipulates the following:-

'The High Court of a State shall exercise jurisdiction vested in it by this Constitution or by any law in accordance with the practice and procedure (including the service and execution of all civil and criminal processes of the Court) from time to time prescribed by the House of Assembly of the State.'

The above provision is very clear on the jurisdiction of each State, and I say categorically here, that no party can impose rules of a State on another State, and so the Lagos State High Court Rules cannot be applied to litigations that should take its root from Anambra State.

Learned Counsel for the Appellant has made heavy weather of the provision of Section 236(1) of the Constitution that confers unlimited jurisdiction to High Court. For clarity, I will reproduce the section here below. It reads: -

'236 (1) subject to the provisions of this Constitution and in addition to such other jurisdiction as may be conferred upon it by law, the High Court of a State shall have unlimited jurisdiction to hear and determine any civil proceeding in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings

True the above provision gives the High Court unfettered power to hear civil matters, but that is not to say that the provision of Section 239 of the Constitution already reproduced supra would be ignored. Each State of Nigeria has its High Court rules of practice and procedure, which must be adhered, and the Constitution having given each State that power to make its rules, such rules which may differ from State to State will govern the State's High Court exercise of its jurisdiction.

Learned Counsel for the Appellant is also quarrelling with the misapplication of the decision of the case of British Bata

Shoe Co. Ltd v. Melikian 1956 Vol. 1 NSCC 91 in this case by the lower Court, contending that it clearly misapprehended the decision in that case.

'When, therefore, a dispute arises as to which State High Court has jurisdiction in a matter, this can be usually determined by reference to the cause of action in a suit and the Constitution of Nigeria and such similar laws conferring jurisdiction.....

The Plaintiff in this case has clearly pleaded his cause of action and there can be no dispute as to the place from which the cause of action arose. That place is Onitsha within Anambra State. The High Court that has jurisdiction is Anambra State High Court.'

With the above discourse on the present case vis a vis the decision in the Bata Shoe case supra, I fail to see that the lower Court erred in any way.

In the light of the above discussions my answer to this single issue is in the affirmative. All the grounds of appeal to which it is married fail and they are dismissed. In the final analysis the appeal fails in its entirety and it is dismissed. The judgment of the Court of Appeal is affirmed. I assess costs at N10, 000.00 in favour of each set of Respondent against the Appellant.

Judgment delivered by Sylvester Umaru Onu, J.S.C.

I have had the privilege of reading before now the judgment of my learned brother, Aloma Mukhtar, J.S.C. just delivered. I agree with her that the appeal lacks merit and it accordingly fails in its entirety and is dismissed. I make similar award as to costs as contained in the leading judgment.

Judgment delivered by Dahiru Musdapher, J.S.C.

I have read before now the judgment of my learned colleague Mukhtar J.S.C., just delivered with which I entirely agree, for the same reasons so lucidly set out in the aforementioned judgment which I respectfully adopt as mine, I too, dismiss the appeal and I abide by the order for costs contained in the aforesaid lead judgment.

Judgment delivered by Walter Samuel Nkanu Onnoghen, J.S.C

This is an appeal against the judgment of the Court of Appeal holden at Lagos in appeal No CA/L/321/96 delivered on the 14th day of April 1999 in which it allowed the appeal of the 2nd Defendant/Appellant against the Ruling of the Lagos State High Court in suit No LD/4788/94 delivered by Akinsanya J. on the 2nd day of June, 1995.

The facts of the case are that on the 15th day of April, 1993, the Appellant and the Respondent entered into a Finance Lease Agreement/Contract in Lagos, where the parties reside, for the sum of N 2,700,000.00 for the purchase of various equipments including one unit of 60 KVA sound-proof Perkins Generating set, Model 63544. The 1st Respondent later failed to discharge its obligations under the contract resulting in the Appellant terminating the same and demanding for the possession of all the equipments under the contract. The 1st Respondent surrendered the equipments except the generating set which was taken possession of by the 2nd Respondent who refused to release same to the Plaintiff inspite of repeated demand. The 2nd Respondent took possession of the generating set at Onitsha in Anambra State but the Appellant instituted an action against the 1st and 2nd Respondents in Lagos claiming the following reliefs:-

- i. Against the 2nd Defendant the sum of N200, 000.00 as general damages and the sum of N4 5,000.00 monthly from. 4th October 1994 until the judgment debt is finally liquidated.
- ii. Against the Defendants jointly and severally and (sic) order of perpetual (sic) injunction compelling the

Defendants, their servants, agents, privies., directors, officers and employees or any of them respectively or otherwise howsoever as ordered to deliver possession of the Plaintiff's 60 KVA Perkins Generating set Model 63544 with Engine Number LJ3012 U 582905X complete with the accessories to the Plaintiff.

ii. Against the Defendants jointly and severally an order of perpetual (sic) injunction allowing the Plaintiff to repossess forth with its 60 KVA Perkins Generating Set Model 63544 with Engine Number LJ3012 U 582905X complete with its accessories currently in the possession of the 2nd Defendant.'

In the alternative to the claims under B above, the Plaintiff claims against the Defendants jointly and severally:-

i. The sum of N938,479,50 being the value of one unit of 60 KVA sound-proof Perkins Generator Set complete with all its accessories plus interest thereon at the bank's current prime lending rate from time to time (currently 20%) from 4th October 1994 till total liquidation of the debt

ii. The sum of N50, 000.00 being solicitors fees for recovery of all the arrears of rent and repossession of the equipment from the Defendant which the Plaintiff claims pursuant to clause 2 under the principal covenants in the offer letter.

iii. As general damages the sum of N300, 000.00.

Appellant followed up the claim on the writ by pleading in paragraphs 14 and 15 of the Statement of Claim, the following facts: -

'14. The Plaintiff further avers that sometime in May, 1994, the 2nd Defendant without authority of the Plaintiff and the original particulars of the generating set and knowing fully well that ownership of the equipment did not reside in the 1st Defendant went to Onitsha in the company of some armed men and forcibly removed from the premises of the 1st Defendant the said equipment belonging to the Plaintiff. The Plaintiff shall at the trial of this action rely on the 1st Defendant's letter dated 24th May, 1994, the Plaintiff's letter of 27th June, 1994 and the reports by the Defendant and Inland Bank Nigeria Limited to the Police at Onitsha and on the report of the Plaintiff to the Police Headquarters at Alagbon, Lagos.

15 After oral pleas and demand by the Plaintiff for possession of the equipment from the 2nd Defendant, Plaintiff further caused a formal demand notice (vide the Plaintiff's letter of 4th October, 1994) to be served on the 2nd Defendant but till date, the 2nd Defendant has wilfully and wrongfully detained possession of the equipment from Plaintiff.

When served with the processes, the 2nd Defendant filed a Notice of Preliminary Objection against the suit contending that:

'The action in so far as it affects the 2nd Defendant is incompetent in that the subject matter of the suit, namely a 60 KVA sound-proof Perkins Generating Set, Model 63544 together with its accessories, is not situated within the territorial jurisdiction of the High Court of Lagos State and the alleged seizure or distraint took place outside the jurisdiction of this Honourable Court.'

The objection was overruled by the trial Judge whose decision was set aside by the Court of Appeal, as earlier Stated in this judgment, resulting in the instant appeal.

The issues for determination, as identified by learned Counsel for the Appellant in the Appellants brief of argument filed on 27/2/03 and adopted in argument of the appeal on 16/10/06, are as follows:-

'(i) Whether the Lagos High Court did not in all the circumstances of this case have jurisdiction to entertain the Plaintiff's claim as formulated.

(ii) Whether the Court of Appeal was right in holding that the Lagos High Court did not have jurisdiction in the circumstance to entertain any of the Plaintiffs claims before it.'

A look at the issues above clearly shows that they are the same. No wonder learned Counsel for the Appellant proceeded to argue them together.

In arguing the appeal, learned Counsel for the Appellant Okon E. Uye Esq, in the said Appellant's Brief submitted that the learned Justices of the Court of Appeal erred in their holding that the Lagos High Court had no jurisdiction in the matter particularly as their Lordships did not take into account the following facts/reasons: -

(ii) the Appellant's claim is based on the finance lease contract for the 60 KVA sound-proof Perkins Generating set which is the subject of the conversion and detinue

(ii) that by virtue of the said contract, ownership of the generating set remained in the Appellant

(iii) that the claim of the Appellant as it affects the Respondent is in detinue and conversion not in seizure or distress, and

(iv) that the claim for conversion and detinue of the generating set is an unseverable aspect of the contract

Learned Counsel for the Appellant cited and relied on Order 1A Rule 3 of the Lagos State High Court (Civil Procedure) Rules 1972; section 11(i) (a), 13 and 14 of the High Court Law, Cap 60, Laws of Lagos State 1994 and submitted that where a claim is predicated on contract whether in part or the whole, the necessary consideration in respect of the forum is whether or not the parties are resident within the forum.

Learned Counsel further cited and relied on sections 6(2), 236(1) of the 1979 Constitution., and section 22(2) of the High Court Law, Cap 61 Laws of Eastern Nigeria as applicable to Anambra State and submitted, rather strangely, that the jurisdiction conferred on a State High Court by section 236(2) of the 1979 Constitution when read together with section 6(2) and 231 of the said 1979 Constitution empower the High Court of a State to enact lawsadopt such rules of practice and procedure as may be necessary for a proper exercise of its judicial power provided that such law and/or rules of practice and procedure are not inconsistent with the provisions of this Constitution'. I say that the above submission is strange because I have never heard it said that one of the functions of a State High Court is 'to enact laws'. The submission is therefore an obvious error.

Learned Counsel however submitted that by the provisions of section 22(2) of Cap. 61 supra, the High Court of Anambra State has no jurisdiction to hear the matter since, none of the parties is resident in Anambra State and that the lower Court ought to have followed the decision in *Ndaeyo vs. Ogunaya* (1977) 1 S.C. 11, that it is rather the Lagos State High Court that has the jurisdiction to entertain the matter in personam over persons in respect of the tort of conversion and detinue which took place outside jurisdiction particularly as the tort arose out of a contractual relationship entered into by parties resident within jurisdiction, relying on sections 13 and 14 of the High Court Law, Cap. 60 Laws of Lagos State.

It is now settled law that it is the claim of the Plaintiff before the Court that has to be examined to ascertain whether or not a Court is possessed with the jurisdiction to hear and determine the matter before it. In other words, it is the cause of action as identified in the Statement of claim that determines the issue of jurisdiction of the Court concerned - see *Izenkwe vs Nnadozie* (1953) 14 WACA 361 at 363; *Tukur vs. Government of Gongola State* (1989) 4 NWLR (Pt. 17) 517; *Okulata Vs Awosanya* (2000) 2NWLR (pt. 646)530.

The law being as Stated above, the question that follows is, what is the cause of action as pleaded in the Statement of claim in this action' I had earlier in this judgment reproduced the relevant paragraphs of the Statement of claim. It will be noted that the claims are in two parts; the main and the alternative claims.

However, a community reading of the relevant paragraphs of the Statement of claim, particularly paragraphs 14,15 and

22 thereof show clearly that both the main and alternative claims are based on the same cause of action, to wit, the seizure and detention of the 60 KVA Generating Set at Onitsha. Both parties agree that the seizure and detention took place at Onitsha in Anambra State.

Though the contractual relationship between the Appellant and the 1st Respondent may ground the claim of ownership of the Appellant of the 60 KVA Generating set in question, that claim is with respect, not relevant to the determination of the issue of jurisdiction in this matter which issue is determinable only by the cause of action as pleaded by the Appellant in the Statement of claim, which in the instant case and as concurrently found by the lower Courts, is the seizure and detention of the generating set - see page 20 where the High Court stated thus:

'the facts are not really in dispute. The issue is whether the subject matter of the action which involved the 2nd Defendant/Applicant being the 60 KVA Generating set located at Onitsha where it was seized by the 2nd Defendant ' this Court has jurisdiction as regards the 2nd Defendant' and page 71 where the Court of Appeal held thus:

'when paragraphs 14 and 15 of the Statement of Claim, are read along with paragraph 22 (both reproduced above), it will be seen that the foundation of Plaintiff's claim was the seizure and detention of Plaintiff's generating set. Even the alternative pecuniary claim put across in sub-paragraph C of paragraph 22 flows from the alleged unlawful seizure and detention of the Generator.'

It is settled law that the Supreme Court will not disturb concurrent findings of the two lower Courts unless special circumstances exist to warrant interference and that the special circumstances that may weigh on the Court to so interfere include:

- a. where the finding is perverse;
- b. where there is/are error(s) in procedure or substantive law occasioning a miscarriage of justice - see *Chinwendu vs. Mbamali* (1980) 3-4 S.C31; *Onwuka vs Ediala* (1989) 1 NWLR (pt. 96) 182; *Adebayo vs. Ighodalo* (1996) 5 NWLR (pt. 450)501; *Okulate vs. Awosanya* (2000) 2 NWLR ; (pt. 646) 530; *Salami vs Gbodoolu* (1997) 4 NWLR (pt. 499) 277; *Lokoyi vs. Olojo* (1982) 2 SCNLR 127; *Chikere vs. Okegbe* (2000) 12 NWLR (pt. 681) 274.

In the instant case as can be seen from the pleadings which forms the bedrock of the claim of the Appellant, it is very clear that the concurrent finding as reproduced supra is not perverse. Learned Counsel for the Appellant has not submitted before this Court that the said finding has resulted in any miscarriage of justice neither have I found any miscarriage resulting therefrom. In whatever angle one looks at the issue in this appeal, the irresistible conclusion is that it is devoid of merit. I therefore agree with the conclusion of my learned brother Mukhtar J.S.C. in the lead judgment that the appeal be dismissed. I order accordingly and abide by the consequential orders made in the said lead judgment including the order as to costs. Appeal dismissed.

Judgment delivered by Francis Fedode Tabai, J.S.C.

I was privilege to read before now the draft of the leading judgment prepared by A.M. Mukhtar J.S.C. and I agree with the reasoning and conclusion that the appeal is liable for dismissal for lack of merit.

I shall however comment on some aspects of the sole issue raised in the appeal. Although in the Appellant's brief of argument learned Counsel for the Appellant Okon E. Uye formulated two issues, they are, in substance, one and the same as the single issue formulated by Uche Nwokedi for the 1st Respondent and G.C. Igbokwe for the 2nd Respondent. And the said sole issue is:-

'Whether the Court of Appeal was right in holding that the Lagos State High Court did not have the jurisdiction to entertain the claim.'

Firstly, learned Counsel for the Appellant tried to fault the finding of the Court below that the Appellant's claim is

founded on damages arising from the seizure and distraint of its generating set and which seizure and distraint took place at Onitsha in Anambra State. He submitted that the claim is anchored on the finance lease contract and that the claim specifically relating to the 2ⁿ Respondent is in detinue and conversion not severable from the contract. It was Counsel's further submission that the Appellant is entitled to seek in one action, several reliefs in respect of the subject matter in order to avoid multiplicity of suits. He relied on *Fadayomi v. Sadipe* (1986) 2 NWLR (Part 25) 736. For this submission, he also relied on sections 11(i) (a) 13 and 14 of the Lagos High Court Cap. 60 Laws of Lagos State 1994 and Order 1A Rule 3 of the Lagos State High Court (Civil Procedure) Rules 1972.

Learned Counsel for the Respondents argued conversely that the main claim involved the seizure and distraint of the generating set at Onitsha in Anambra State outside the territorial jurisdiction of the Lagos State High Court and therefore that the issue was correctly resolved by the Court below.

The state of the law as agreed by Counsel for all the parties is that it is the matters pleaded in the Statement of Claim that determine the question of jurisdiction. See *Okulaja v. Awosanya* (2000) 2 NWLR (Part 646) 530; *Tukor v. Government of Gongola State* (1989) 4 NWLR (Part 117) 592; *Emeka v. Emodi* (2004) 16 NWLR (Part 900) 433. The relevant averments in the Statement of Claim are paragraphs 14, 15 and 22 which for purposes of clarity I reproduce hereunder as follows:-

'The Plaintiff further avers that sometime in May 1994, the 2nd Defendant without authority of the Plaintiff and the original particulars of the Generating set and knowing fully well that ownership of the equipment did not reside in the 1st Defendant, went to Onitsha in the company of some armed men and forcibly removed from the premises of the 1st Defendant the said equipment belonging to the Plaintiff. The Plaintiff shall at the trial of this action rely on the 1st Defendant's letter dated 24th May 1994, the Plaintiff's letter of 27th June 1994 and the reports by the 1st Defendant and Inland Bank Nigeria Limited to the Police at Onitsha and on the report by the Plaintiff to the Police headquarters at Alagbon, Lagos.'

'15. After oral pleas and demand by the Plaintiff for possession of the Equipment from the 2nd Defendant, the Plaintiff further caused a formal demand notice (vide the Plaintiffs letter of 4th October 1994) to be sewed on the 2nd Defendant but till date the 2nd Defendant has wilfully and wrongfully detained possession of the Equipment from the Plaintiff.'

'22. Whereof the Plaintiff as owners of the Equipment claims:

A(i) Against the 2nd Defendant the sum of N200,000.00 as general damages for wilful and wrongful detention of its Equipment.

(ii) Against the 2nd Defendant the sum of N45, 000.00 monthly (from 4th October 1994 till the judgment debt is finally liquidated) as damages for loss of profit resulting from wilful and wrongful detention of the Plaintiff s Equipment by the 2nd Defendant.

B(i) Against the Defendant's jointly and severally, an order of perpetual injunction compelling the Defendants, their servants, agents, privies, directors, officers, employees or any of them respectively or otherwise however as ordered to deliver possession of the Plaintiff's 60 KVA Perkins generating set model 6.3544 with Engine Number LJ3012US82905X complete with its accessories to the Plaintiff.'

Against the Defendants jointly and severally an order of perpetual injunction allowing the Plaintiff to repossess forthwith its 60KVA Perkins generating set model 6.3544 with Engine Number U3012US582905X complete with its accessories currently in the possession of the 2nd Defendant.

C. In the alternative to claims under B above the Plaintiff claims against the Defendants jointly and severally:-

(i) The sum of \$4938,479.50 being the value of the one unit of 60 KVA sound proof Perkins Generator set complete with all the accessories plus interest therein at the banks' current prime lending rate from time to time (currently 20%) from 4th October till total liquidation of the debt.

(ii) The sum of N450,000,00 being Solicitor's fees for recovery of all arrears of rent and repossession of the equipment from the Defendant which the Plaintiff claims pursuant to clause 2 under the Principal Covenants in the Offer Letter.

(iii) As general damages the sum of N3000.000.00.

On this issue of the claim and the Court on which the jurisdiction is vested, the Court below at page 71 of the record had this to say:

'When paragraph 14 and 15 of the Statement of Claim are read along paragraph 22, it will be seen that the foundation of the Plaintiff's claim was the seizure and detention of the Plaintiffs generating set. Even the alternative pecuniary claim put across in sub-paragraph 22 flows from the alleged unlawful seizure and detention of the generator. It is from the alleged seizure and detention.'

I agree entirely with the foregoing reasoning and conclusion. The cause of action accrued to the Plaintiff only upon the seizure and detention of its equipment at Onitsha by the 2nd Defendant/Respondent who was not even a party to the finance lease agreement of or about the 15th April 1993. The 2nd Defendant/Respondent and his seizure and detention of the equipment were surely not within the contemplation of the Plaintiff/Appellant and the 1st Defendant/Respondent when the finance lease contract and its terms were being conceived. The cause of action that arose from the said seizure and detention of the equipment is completely distinct from that concerning the finance lease agreement. In these circumstances therefore the Court below was, in my view, right in holding that the Lagos State High Court has no jurisdiction to entertain the claim.

For the foregoing and the fuller reasons contained in the leading judgment of my learned brother Mukhtar J.S.C. I also dismiss the appeal for lack of substance. I also abide by the orders on costs contained in the leading judgment.