

IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE UROMI JUDICIAL DIVISION
HOLDEN AT UROMI
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
ON WEDNESDAY THE
6TH DAY OF FEBRUARY, 2019.

BETWEEN:

SUIT NO: HCU/15/2018

HON. ANSLEM OKOECO -----CLAIMANT/RESPONDENT

AND

ESAN NORTH LOCAL GOVT -----DEFENDANT/OBJECTOR
UROMI, EDO STATE

RULING

This is a Ruling on a Notice of Preliminary Objection, dated the 12th of June, 2018, filed on the 13th of June, 2018, brought pursuant to Order 37 Rules 1 and 2 of the Edo State High Court (Civil Procedure) Rules, 2012 and Section 254 C (1) of the 1999 Constitution of the Federal Republic of Nigeria as amended (Third Alteration) and Section 2 (a) Public Officers Protection Law, praying for the order as set out in the Notice of Preliminary Objection.

By the Notice of Preliminary Objection, the Defendant/Objector is challenging the competence of this suit on the following grounds:

1. That this Honourable Court lacks jurisdiction to entertain this Suit by virtue of Section 254 (c) (1) of 1999 Constitution of the Federal Republic of Nigeria (as amended) Third Alteration;
2. This Suit as presently constituted cannot be heard and determined by this Honourable Court as it is only the National Industrial Court that has exclusive Jurisdiction to entertain same by virtue of the aforementioned constitutional provisions; and
3. That even if this Honourable Court were to have Jurisdiction, the Suit would still have been caught by limitation Law as provided for by Section 2(a) of the Public Officers Protection Law, Cap. 137 laws of the Bendel State as applicable to Edo State.

The Notice of Preliminary Objection is supported by an affidavit of fourteen paragraphs and a Written Address of counsel. Upon receipt of the Notice of Preliminary Objection, the learned counsel for the Claimant/Respondent filed a Counter-Affidavit and a Written Address of counsel.

In his Written Address, the learned counsel for the Defendant/Objector, Idemudia Ilueminosen, Esq. distilled a sole Issue for Determination as follows:

Whether this Court has Jurisdiction to entertain this Suit?

Arguing the sole Issue for Determination, the learned counsel submitted that this Court lacks the jurisdiction to entertain this Suit.

He posited that by the provisions of Section 254 C (1) 1999 Constitution of the Federal Republic of Nigeria as amended (Third Alteration), the National Industrial court has and exercises exclusive Jurisdiction over civil causes and matters relating to or connected with any labour, employment, Trade Union, industrial relations and matters arising from the work place, the conditions of service, including health, safety, welfare of labour, employee, workers and matters incidental thereto or connected therewith. See Section 254 C (1) (a) – (m) of the 1999 constitution as amended (Third Alteration).

He submitted that jurisdiction is very fundamental to adjudication on a matter and where the Court lacks same, its decision will amount to a nullity no matter how beautifully it was conducted. See: **MADUKOLU VS. NKEMDILIM (1962) ALL NLR 587.**

He said that in the instant case, the claims of the Claimant/Respondent as presently constituted do not fall within the jurisdiction of this Court. That his claims are predicated on the non-payment of his severance gratuity, furniture allowance and duty tour allowance by virtue of his employment/appointment as Supervisor for Information, youths and Sports by the Defendant/Objector

He submitted that section 154 C (1) of the 1999 Constitution as amended (3rd alteration), robbed this Court of its jurisdiction as the claims of the Claimants/Respondents has to do with contract of employment and/or appointment and conditions of service which this Court lacks jurisdiction to entertain and any decision reached in respect of same will amount to a nullity and to that extent void. He submitted further that only the National Industrial Court has the jurisdiction over the subject matter in this suit to the exclusion of any other court created by any statute or the constitution.

Counsel submitted that it is settled law that the jurisdiction of a court is derived from the statute creating the court and a court cannot assume jurisdiction on any matter where the jurisdiction has been expressly taken away by a statute or constitution as in this case. He maintained that parties cannot by consent confer Jurisdiction on the court.

He submitted that the claims as presently constituted falls within the provisions of Section 254 C (1) (a)-(m), so this Court lacks jurisdiction as same has been expressly taken away by the aforesaid section.

Counsel further submitted that even if this Court has the jurisdiction, this suit would still be caught by the limitation Law by virtue of Section 2(a) of the Public Officers Protection Law, Cap. 137 Laws of the Bendel State as applicable to Edo State.

He said that the suit is statute barred and should be dismissed and/or struck out.

He posited that it has been settled in a plethora of cases that where a statute provides for the institution of an action within a prescribed period, proceedings shall not be brought after the time prescribed by such statute. That any action that is commenced after the prescribed period is statute barred. See: **OSUN STATE GOVT. V. DALAMI(NIG) LTD. (2007) 9 NWLR pt. 1038, P. 66 at PAGES 82, PARAS. D-E.**

He referred to section 2(a) of the Public Officers Protection Law, Cap. 137 Laws of the Bendel State as applicable to Edo State which provides as follows:

“Where any action, prosecution or other proceedings is commenced against any person for any act done in pursuance or execution or intended execution of any Act or law of any public duty or authority, or in respect of any alleged neglect, or default in the execution of any such Act,, law, duty or authority, the action, prosecution or proceeding shall not lie or be instituted unless it is commenced within three months next after the act, neglect or default complained of, or in case of continuance of damage or injury, within three months next after the ceasing thereof”.

He submitted that the Defendant/Objector is a Public Officer. That the term “Public officer” includes not just natural persons who hold Public Office but the Public Officer or institution itself; like the Defendant herein. See: *Ibrahim V. JSC, Kaduna State & Ors (2009) 43 WRN*. He submitted that it is settled law that all actions against Public Officers in respect of their official actions must be commenced within three months from the date the cause of action arose. See: *Chief Yakubu Sani Vs. Okene Local Government Traditional Council (2008) 5-6 SC (pt.11) 131*.

He said that worse still, the name of the Defendant/Objector on record is not known to Law.

In conclusion, he urged the Court to grant the Defendant/Objector’s application in the light of the above cited statutory and judicial authorities and dismiss or strike out the suit.

In his Written Address, in opposition to the Preliminary Objection, the learned counsel for the Claimant/Respondent, O. E. Osemede Esq. distilled three Issues for Determination as follows:

- a) *Whether there is a dispute known to law that will necessitate invocation of the Section 254C (1) AJ (IV) of the 1999 Constitution as amended?*
- b) *Whether this action arising from contract of employment is caught up by the provisions of statute of limitation Cap 137 Laws of Bendel State, 1976 as applicable to Edo State and Public Officers Protection Act Cap. P41 Laws of the Federation of Nigeria?*
- c) *Whether Section 2(a) of the Public Officers Protection Law Cap. 137 Laws of Bendel State 1976 will avail the Defendant/Applicant who without any legal justification failed to pay the Claimant/Respondent his statutory entitlement despite acknowledgment of the debt and promise to pay same?*

Thereafter, the learned counsel argued the issues *seriatim* in his Written Address.

ISSUE 1:

Whether there is a dispute known to law that will necessitate invocation of the Section 254C (1) AJ (IV) of the 1999 Constitution as amended?

Opening his arguments on this issue, counsel submitted that the Claimant/Respondent commenced this action *vide* a Writ of Summons dated 20th of April, 2018 claiming against the Defendant/Applicant the balance sum the Defendant/Applicant is owing the Claimant/Respondent as severance gratuity, furniture allowance and duty tour allowance in the course of his services to the Defendant/Applicant as an appointed Supervisor.

He said that the Claimant/Respondent brought an application pursuant to Order 11 Rule 1 of Edo State High Court (Civil Procedure) Rules 2012 for an Order for Summary Judgment against the Defendant since the Defendant has no defence whatsoever to the claim.

He referred to paragraphs 16 and 17 of the affidavit in support of the motion for summary judgment wherein the Claimant stated as follows:

- “16. *That unless a Court Judgment is delivered against the Defendant they will remain adamant and nonchalant to our demand for payment as they have always done.*
17. *That I verily believe that the Defendant have no defence whatsoever to this action.”*

He said that in response to the claim, the Defendant/Applicant brought this Motion with a supporting affidavit of 14 paragraphs which failed to disclose that there is a dispute known to law to

warrant the invocation of Section 254 (C) (1) of the 1999 Constitution and the provisions of Section 2(a) of Public Officers Protection Law Cap. 137 Laws of Bendel State 1976 as applicable to Edo State. He said that in the said supporting affidavit, instead of the Defendant/Applicant to challenge, contradict or controvert the Claimant/Respondent's claim, he sought to rely on constitutional provisions without any facts or evidence to support the law.

Counsel contended that in determining whether or not a Court is vested with the jurisdiction to entertain this Suit, the only relevant process to be considered is the Claimant's claim. On this point he relied on the case of: **EMEKA VS. OKADIGBO (2012) Monthly Judgment of the Supreme Courts of Nigeria at Page 178** where the Apex Court held thus:

"It is well settled that the Plaintiff's claim determines jurisdiction."

He also referred to an earlier decision of the apex Court in: **NIKA FISHING VS. LAVINA (2008) M.J.S.C. at Page 43 particularly at Page 51 – 52** where the Supreme Court held thus:

"When such an application or objection is raised before a trial Court challenging its jurisdiction, the Court could rely simply on the Writ of Summon, the Statement of Claim and affidavit in support of the application."

Learned counsel therefore urged the Court to consider the claim of the Claimant/Respondent which is for recovery of a simple debt, which he said this Court is vested with the jurisdiction to hear and determine pursuant to Section 6(6) (b) and Section 272(1) of the 1999 Constitution and Order 11 Rule 1 of Edo State High Court (Civil Procedure) Rules 2012.

He submitted further that the Defendant/Applicant did not place any material evidence before this Court to disclose a dispute that is known to law to warrant the invocation of Section 254 (C) (1) or any other provisions of the Constitution.

He reproduced Section 254C (1) AJ (IV) of the 1999 Constitution which referred to:

"Term of settlement of any trade dispute."

He said that "**dispute**" is defined by Black's Law Dictionary, 6th Edition at page 427 as:

"A conflict of claim or right. An assertion of right of claim or demand on one side met by contrary claim or allegation on the other. The subject of litigation, the matter of which issues are joined and in relation to which jurors are called and witnesses examined."

Submitting further, he said that relying on the ground of the Defendant/Applicant's Motion and paragraph 5e – 5f of the Counter affidavit, what the Claimant/Respondent is claiming is severance gratuity, furniture allowance and duty tour allowance which are terminal benefits recognized by the Local Government Laws of Edo State. He referred to the case of: **OSOH VS. UNITY BANK PLC (2013) 9 N.W.L.R.** where the Supreme Court held *inter alia* thus:

"1. On Definition of trade dispute –

By virtue of Section 47(1) of the Trade Disputes Act, a trade dispute is any dispute between employers and workers or between workers and workers, which is connected with the employment or non-employment, or the terms of employment and physical conditions of work of any person. In this case, the Appellants were no longer employees of the Respondent, who was their former employer. In the circumstance, the dispute between the Appellants and the Respondent was not a trade dispute."

The apex Court held further:

“10. On Scope of exclusive jurisdiction of National Industrial Court under Trade Disputes Act –

By virtue of Section 20(1) of the Trade Disputes Act, the National Industrial Court has exclusive jurisdiction to:

- (a) Make awards for the purpose of settling trade disputes; and*
- (b) Determine questions as to the interpretation of:*
 - (i) collective agreement between employers and employees;*
 - (ii) awards made by an arbitration tribunal or awards made by the Court;*
 - (iii) the terms of settlement of any trade dispute as recorded in any memorandum.*

In the instant case, the Appellants were no longer employees of the Respondent as at the time they filed their Suit and the Appellants’ claim was for their terminal benefits. In the circumstances, the dispute between the Appellants and the Respondent was not a trade dispute. Consequently, the dispute did not fall within the ambit of the exclusive jurisdiction of the National Industrial Court as rightly held by the Court of Appeal. Accordingly, the trial High Court had jurisdiction over the Appellants’ Suit.”

Learned counsel urged the Court to so hold in the instant case.

Again, he re-emphasized that the Defendant/Applicant did not place any material evidence challenging, contradicting or in conflict with the affidavit in support of the Claimant/Respondent’s application and in the circumstance the affidavit evidence of the Claimant/Respondent must be seen as admitted and acted upon by this Honourable Court. On this he relied on the Court of Appeal decision in the case of: *A. ADEBISI VS. HON. S. T. UMAR (2012) WRN Vol. 12 at Page 85 particularly at Page 102 Line 10 – 40.*

He therefore urged the Court to act on the unchallenged credible evidence contained in the supporting affidavit of the Claimant/Respondent’s Motion for Summary Judgment dated 20th day of April, 2018. He relied on the case of: *MAGNUSSON V. KIOKI AND ONSS (1993) 12 SCNJ 114: (1993) 9 NWLR (PT 317) 287* where the Supreme Court stated thus:

“Averment of facts on pleading must be distinguished from facts deposed to in an affidavit in support of application before court. Whereas the former unless admitted constitute no evidence, the later are by law evidence upon which a court of law may in appropriate cases act.”

He submitted that the Claimant/Respondent brought this action pursuant to *Order 11 Rule 1 of Edo State High Court Civil Procedure Rules 2012* for an order for Summary Judgment.

He maintained that the purpose of the procedure for Summary Judgment is to enable the Claimant/Respondent to obtain summary judgment without trial where the case is potently clear and unassailable. On the point he relied on the case of: *Inter Chemicals Limited and Anor vs. Intercontinental Bank Plc reprinted in WRN 2013 Vol 16 page 131 at page 149 lines 30-35* where the Court of Appeal held thus:

“The purpose of the summary judgment is to enable the Plaintiff obtain summary judgment without trial where his case is potently clear and unassailable”.

He submitted that the failure of the Defendant/Applicant to disclose material facts that will show that there is dispute to warrant the invocation of section 254 (C) (1) as erroneously proposed by the Defendant/Applicant is sufficient for this Court to assume jurisdiction and he urged the Court to so hold.

Counsel referred the Court to the unreported Ruling in the case of: *Hon. Abuya Christopher vs. Esan Central Local Government Council, Suit No. HEK/MISC/2/2010* where *Hon. Justice Tinuade Akomolafe-Wilson, Judge of the High Court of Edo State*, (as he then was) held as follows:

“A mere glance or a simplistic consideration of the writ gives semblance of a labour matter relating to non-payment of salaries or benefit or the Plaintiff/Respondent. However, it is important to determine whether there is in fact a dispute concerning the payment of the said benefits. Paragraph “9” of the affidavit in support of entering the suit under the undefended list procedure states thus:

“That by a letter with Ref No. F/DLG/13/195 dated October 2007, the Ministry of Local Government and Chieftaincy Affairs approved the payment of the entire debt. A photocopy of the letter with Ref. No. F/DLG/13/195 dated October, 2007 is herein attached and marked Exhibit “F”. (Underlining supplied for emphasis).

It is thus crystal clear from this deposition that the cause of action is a debt, which has been accepted by the Defendant/Applicant, hence, there is no dispute arising from the payment for entitlements for the Claimants/Respondents. The claim of Claimants/Respondent is simply based on recovery of debt which has been accepted by the Defendant/Respondent as being owed to the Claimants/Respondents. The Claimants claim therefore does not fall within trade dispute as defined by Section 48 of Trade Dispute Act, Laws of Federation of Nigeria 2004. See the case of NATIONAL UNION OF ROAD TRANSPORT WORKERS v. N. OGODO (1988) 2 NWLR (Pt. 354)189

In determining whether a Court has jurisdiction to entertain a suit, it is the nature of the claim as disclose in the writ of summons and the statement of claim that must be considered. See (1) ONUEKWUSI v. R.T.C.M.Z.C. (2011) 6 NWLR (PT. 1243 341 at 356. (2) OLAGUNJU vs. PHCN PLC. (2001) 10 NWLR (Pt. 1234) 113 at 126.

Furthermore, in construing the statement of claim of the Claimant’s suit, the court is enjoined to construe the said document as a whole and not in isolation of some paragraphs of the statement of claim. See Attorney –General, Ekiti State v. Daramola (2003) NWLR (Pt. 827) 104-125.

A holistic perusal of the affidavit in support of this suit shows that the cause of action is based simply on recovery of debt which is not disputed by the Defendant/Applicant as there are “No Contrary claims or allegations” in respect of the debt owed the Claimants/Respondent.

In the circumstance, I hold that the preliminary objection is misconceived. It lacks merit and it is hereby dismissed.”

Counsel also referred to the ruling of the Court in *Suit No. HEK/33/2016 between Hon. Saturday Ukposidolo and Esan Central Local Government delivered on the 28th day of March, 2017* where the Court held thus:

“In following the decision of the Apex Court, I must come to the decision that this court has the jurisdiction to entertain this suit as the applicant ceased to be an employee of the Respondent as at the time this suit was filed. The subject matter to my mind is a simple one for recovery of debt owed.”

ISSUE B:

Whether this action arising from contract of employment is caught up by the provisions of statute of limitation Cap 137 Laws of Bendel State, 1976 as applicable to Edo State and Public Officers Protection Act Cap.P41 Laws of the Federation of Nigeria?

Learned counsel submitted that the relationship between the Claimant/Respondent and Defendant/Applicant is that of contract of employment and therefore the provisions of Statute of Limitation is inapplicable. A relationship is said to be a contract where there is a legally binding agreement. On this submission, he relied on the definition of Contract by the: ***BLACK LAW DICTIONARY SIXTH EDITION at Page 322*** where Contract is defined as follows:

“An agreement between two or more persons which create an obligation to do or not to do a particular thing.”

He submitted that employment is a state of being engaged or occupied. See BLACK LAW DICTIONARY (supra) at Page 525. That the Defendant/Applicant in their Written Address admitted that the Claimant/Respondent is a past Political Office Holder who was appointed as Supervisory Councilor and Elected Councilor respectively. He therefore submitted that the Defendant/Applicant did not join issues with the Claimant/Respondent on the facts stated before this Court.

He maintained that the Defendant/Applicant misconceived the law in bringing this application and relied on the case of: ***FEDERAL GOVERNMENT OF NIGERIA & ORS. VS. ZEBRA ENERGY & ANOR. (2003) 3 WRN Page 1 particularly at page 11*** where the Supreme Court stated as follows:

“Mr. Akpamgbo SAN, submitted, quite rightly, that this Court whilst interpreting the provisions of Section 97 of the Ports Acts, which is in pari material with Section 2 of the Public Officers Protection Ordinance held in the case of Nigeria Ports Authority v. Construzioni Generali FarsuraCogefar SPA and Anor. (1974) All NLR 945 at 955 that the said law was not intended by the legislature to apply to contracts. The learned Senior Advocate referred also to the case of the Midland Railway Co. v. The Local Board for the District of Withington (1882 – 3) 11 QBD 788 at 794 and the case of Salako v. L.E.D.B. and Anor; (1953) 20 NLR 189. I have looked into those cases and I agree that the Supreme Court considered the applicability of Public Officers Protection Ordinance to action founded upon cases of breach of contract. In the Nigerian Ports Authority v. Construzioni, (supra) this Court, per Ibekwe J.S.C. held:

‘We shall now deal with the other point which to our mind, does not seem to be well – settled, namely whether the kind of statutory privilege which we have been considering is applicable to an action founded upon a contract. In other words, whether Section 97 of the Ports Act applies to cases of contract. We think that the answer to this question must be in the negative. We agree that the Section applies to everything done or omitted or neglected to be done under the powers granted by the Act. But we are not prepared to give to the Section the stress which it does not possess. We take the view that the Section does not apply to cases of contract. The learned Chief Justice, in deciding this point, made reference to the case of Salako v. L.E.D.B. and Anor. (1953) 20 NLR 189 where de Commarmond, S.P.J. as he then was, construed the provision of Section 2 of the Public Officer Protection Ordinance which is almost identical with Section 97 of the Ports act, and thereafter stated the law as follows:

‘I am of the opinion that Section 2 of the Public Officer Protection Ordinance does not apply in cases of recovery of land, breaches of contract, claims for work and labour done, etc.’

We too are of the opinion that the Commarmond S.P.J. has quite rightly stated the law in the passage of his Judgment cited above. It seems to us that an enactment of this kind i.e. Section 97 of the Ports

Act is not intended by legislature to apply to specific contracts. It is pertinent to point out that the view which we have just expressed seems to be in consonance with the trend of similar judgments pronounced in English cases dealing with similar provisions in certain English Statutes. We shall refer only to one case as an example. In the Midland Railway Company v. the Local Board for the District of Withington (1882 – 3) II QBD 788, the Court of Appeal construed Section 264 of the Public Health Act, 1875 (38 and 39 Vict. C. 55) which, more, or less falls in line with Section 97 of the Ports Act, the subject – matter of this appeal. We think that it is desirable that we should here set out the provision of Section 264 of the Public Health Act. 1875, as follows:

‘Section 264. A Writ or process shall not be sued out against or served on any local authority, or any member thereof, or any office of a local authority, or person acting in his aid, for anything done or intended to be done or omitted to be done under the provisions of this Act, until the expiration of one month after notice in writing has been served on such local authority, member, officer or person...’

Delivering the judgment of the Court at Page 794, Brett, M.R. made the following illuminating observation:

‘It has been contended that this is an action in contract, and that whenever an action is brought upon a contract, the Section does not apply. I think that where an action has been brought for something done or omitted to be done under an express contract the Section does not apply; according to the cases cited an enactment of this kind does not apply to specific contracts. Again, when goods have been sold, the Section will not apply to an action upon a quantum meruit, because the refusal or omission to pay would be a failure to comply with the terms of the contract and not with the provision of the statute.’

The Appellants have again failed in this issue and I resolve it in favour of the Respondent.”

He therefore urged the Court to resolve this issue in favour of the Claimant/Respondent.

ISSUE (C):

Whether Section 2(a) of the Public Officers Protection Law Cap. 137 Laws of Bendel State 1976 will avail the Defendant/Applicant who without any legal justification failed to pay the Claimant/Respondent his statutory entitlement despite acknowledgment of the debt and promise to pay same?

Counsel submitted that assuming without conceding that the relationship between the Defendant/Applicant and the Claimant/Respondent is not contractual, the Defendant/Applicant cannot be protected by the provision of Section 2(a) of Public Officers Protection Law Cap. 137 Laws of Bendel State 1976 now applicable to Edo State. According to him, the refusal of the Defendant/Applicant to pay to the Claimant/Respondent his statutory emoluments have no legal justification and therefore cannot be protected or covered by the said law.

He submitted that the surrounding circumstance is a major factor to be considered when a statute of limitation is to be applied. He referred to the case of: *EZEANI VS. NIGERIA RAILWAY CORPORATION (2014) 6 W.R.N. page 72 at 82* where the Court held thus:

“Decidedly, the surrounding circumstance in a particular situation is a major factor to be considered in equitably deciding when the statute of limitation can be wielded.”

He contended that there are exemptions to the three months limitation period for commencement of action against a public officer. That in: *EZEANI VS. NIGERIA RAILWAY CORPORATION (supra) at Page 80* the court stated thus:

“There are exceptions to the three months limitation period for commencement of action against public officers. These exceptions are for instance, where a public officer fails to act in good faith, or acts in abuse of office, or maliciously, or with no semblance of legal jurisdiction, Lagos City Council v. Ogunbiyi (1969) 1 All N.L.R. 297, C.B.N. v. Okojie (2004) 10 N.W.L.R. (Pt. 882) 488, Offoboche v. Ogoja LGA (2001) 36 W.R.N. 1; (2001) 7 S.C.N.J. 468; (2001) F.W.L.R. (Pt. 68) 1051; (2001) 7 S.C. (Pt. 111) 107; (2001) 16 N.W.L.R. (Pt. 739) 458.”

He submitted that the act of not paying statutory entitlement to the Claimant/Respondent is not only done in bad faith but malicious and without any legal justification and therefore must be condemned by this Honourable Court.

Furthermore, he referred to the *EZEANI VS. NIGERIA RAILWAY CORPORATION case (supra) at Page 84 – 85* where the Court stated as follows:

“To require the protection of the Public Authorities Protection Act, the acts must be acts not authorized by any statute or legal justification, but acts intended to be done in pursuance or execution of some statute or legal power...Where there is apparent bad faith on the part of the public officer like the instant case, where the Respondent exhibited obvious desire to do malice by disregarding lawful appropriate and reasonable instructions to reinstate the Appellant under the cover of so called ‘public interest’, such action gives a very clear and undoubted impression of bad faith, the actions portrays the Respondent as a party who from the on-set, designed to commit an act against the Appellant totally lacking in slightest semblance of legal justification. Onnoghen J.S.C. in Hassan v. Aliyu (2010) 17 N.W.L.R. (Pt. 1223) 547 at 591 said:

‘It is however correct that when a public officer acts outside the scope of his authority or without semblance of legal justification, he cannot claim the protection of the provisions of the Public Officers Protection Act.’

In conclusion, learned counsel submitted that on the facts and the law, the preliminary objection is misconceived and should be dismissed as lacking in merit with costs in favour of the Claimant.

I have carefully considered all the processes filed in this application, together with the arguments of the learned counsel for the parties. I adopt the sole issue for determination as formulated by the learned counsel for the Defendant/Objector which is as follows:

Whether this Court has Jurisdiction to entertain this Suit?

Essentially, this issue is concerned with whether the High Court or the National Industrial Court has jurisdiction over the instant suit.

The issue of jurisdiction is fundamental and pivotal to any proceedings. It has been described as the life blood of any adjudication. It is the fiat, the stamp of authority to adjudicate. See: *Katto vs. C.B.N (1991) 11-12 S.C 176.*

A Court can claim to have jurisdiction in respect of a matter if:

- (1) *It is properly constituted as regards members and qualifications of the members of the Bench and no member is disqualified for one reason or another;*
- (2) *The subject matter of the case is within its jurisdiction and there is no feature of the case which prevents the Court from exercising its jurisdiction; and*
- 3) *The case comes up before the Court initiated by due process of law and upon fulfilment of any condition precedent to the exercise of the jurisdiction.*

In support of the foregoing, see the following decisions on the point:

Madukolu vs. Nkemdilim (1962) 1 All NLR 587; Dangana & Anor vs. Usman & 4 Ors (2012) 2 S.C. (Pt.111) 103; and WESTERN STEEL WORKS LTD vs. IRON STEEL WORKERS UNION (1986) 3 NWLR Part 30d Pg. 617 D-H, 628.

It is an elementary principle of law that the issue of jurisdiction can be raised at any stage of the proceedings. It can even be raised by the Court *suo motu*. See: *SLB Consortium Ltd. vs. NNPC (2011) 9 NWLR (Pt.1252) 317 at 335.*

In determining the issue of jurisdiction, it is the Claimant's originating processes that are to be considered. See: *Okorocho vs. UBA Plc. (2011) 1NWLR (Pt.1228) 348 at 373; and A.G. Federation vs. A.G.Abia (2001) 11NWLR (Pt.725) 689 at 740.*

Furthermore, it is settled law that it is the statute creating the Court that determines the jurisdiction of that court. See: *Chief Daniel Awodele Oloba vs. Isaac Olubodu Akereja (1998) 7 S.C.(Pt.1) 1 at 21.*

In the instant case the learned counsel for the Defendant, relying heavily on the provisions of the relevant statutes creating the National Industrial Court, has contended that the said Court has exclusive jurisdiction over this matter.

As earlier stated, in determining the issue of jurisdiction, it is the Claimant's originating processes that are to be considered. See: *Okorocho vs. UBA Plc. (2011) 1NWLR (Pt.1228) 348 at 373; and A.G. Federation vs. A.G.Abia (2001) 11NWLR (Pt.725) 689 at 740.*

The learned counsel for the Defendant/Objector has submitted that the claims as presently constituted falls within the provisions of Section 254 C (1) (a)-(m), so this Court lacks jurisdiction as same has been expressly taken away by the aforesaid section.

Specifically the jurisdiction of the National Industrial Court is as enshrined in *Section 254 C (1) (a)-(m) of the 1999 Nigerian Constitution (Third Alteration) Act, 2010 No. 3* which provides as follows:

254. (1)Notwithstanding the provisions of sections 251, 257, 272 and anything 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 National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters-

- a) *relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith;*

- b) relating to, connected with or arising from Factories Act, Trade Disputes Act, Trade Unions Act, Labour Act, Employees' Compensation Act or any other Act or Law relating to labour, employment, industrial relations, workplace or any other enactment replacing the Acts or Laws;*
- c) relating to or connected with the grant of any order restraining any person or body from taking part in any strike, lock-out or any industrial action, or any conduct in contemplation or in furtherance of a strike, lock-out or any industrial action and matters Connected therewith or related thereto;*
- d) relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of this Constitution as it relates to any employment, labour, industrial relations, trade unionism, employer's association or any other matter which the Court has jurisdiction to hear and determine;*
- e) relating to or connected with any dispute arising from national minimum wage for the Federation or any part thereof and matters connected therewith or arising therefrom;*
- f) relating to or connected with unfair labour practice or international best practices in labour employment and industrial relation matters;*
- g) relating to or connected with any dispute arising from discrimination or sexual harassment at workplace;*
- h) relating to, connected with or pertaining to the application or interpretation of international labour standards;*
- i) connected with or related to child labour, child abuse, human trafficking or any, matter connected therewith or related thereto;*
- j) relating to the determination of any question as to the interpretation and application of any- (i) collective agreement; (ii) award or order made by an arbitral tribunal in respect of a trade dispute or a trade union dispute; (iii) award or judgment of the Court; (iv) term of settlement of any trade dispute; (v) trade union dispute or employment dispute as may be recorded in a memorandum of settlement; (vi) trade union constitution, the constitution of an association of employers or any association relating to employment, labour, industrial relations or work place; (vii) dispute relating to or connected with any personnel matter arising from any free trade zone in the Federation or any part thereof;*
- k) relating to or connected with disputes arising from payment or nonpayment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlement of any employee, worker, political or public office holder, judicial officer or any civil or public servant in any part of the Federation and matters incidental thereto;*
- l) relating to- (i) appeals from the decisions of the Registrar of Trade Unions, or matters relating thereto or connected therewith; (ii) appeals from the decisions or recommendations of any administrative body or commission of enquiry, arising from or connected with employment, labour, trade unions or industrial relations; and (iii) such other jurisdiction, civil or criminal and whether to the exclusion of any other court or not, as may be conferred upon it by an Act of the National Assembly;*
- m) relating to or connected with the registration of collective agreements.*

In order to determine whether the claims fall within the provisions of Section 254 C (1) (a)-(m), we need to examine them closely. For the avoidance of doubt, the Claimant's claims against the Defendant are as follows:

- (a) *The sum of N2,500,000.00 (Two Million, Five Hundred Thousand Naira) being the balance sum the Defendant is owing the Claimant for severance gratuity, in the course of the Claimant's service to the Defendant as Appointed Supervisor for Information, Youth and Sports.*

- (b) *The sum of N2, 500,000.00 (Two Million, Five Hundred Thousand Naira) being the balance sum the Defendant is owing the Claimant as furniture allowance.*
- (c) *The sum of N1, 500,000.00 (One Million, Five Hundred Thousand Naira) being payment for duty tour allowance owed by the Defendant to the Claimant.*
- (d) *The sum of N5, 000,000.00 (Five Million Naira) as general damages.*
- (e) *10% post judgment interest.*
- (f) *Cost of this Suit.*

A careful examination of the above claims will reveal that they are in respect of some of the Claimant's entitlement due to him from the Defendant. They include his severance gratuity and other allowances.

The learned counsel for the Claimant has forcefully contended that that this court has the jurisdiction to entertain this suit because the Claimant was no longer an employee of the Defendant as at the time this suit was filed. That the subject matter of the suit is a simple one for recovery of debt owed. He relied heavily on the decision of the Supreme Court in the case of: *OSOH VS. UNITY BANK PLC (2013) 9 N.W.L.R. (supra)*.

I have thoroughly read the case of *OSOH VS. UNITY BANK PLC (2013) 9 N.W.L.R. (supra)* which learned counsel relied on. In the first place, the focal issues for determination in that case were on the interpretation of the provisions of the Trade Disputes Act as it relates to the jurisdiction of the National Industrial Court. The provisions of Section 254 C (1) (a)-(m) of the 1999 Nigerian Constitution (Third Alteration) Act, 2010 No. 3 were never considered in that case. In the instant suit the objection is hinged on the radical provisions of Section 254 C (1) of the 1999 Constitution (Third Alteration) Act, 2010 No. 3 which appears to vest the National Industrial Court with an increasingly elastic exclusive jurisdiction.

The salient part of the said section in relation to this suit appears to be *Section 254 C (1) (k)* which provides thus:

“254. (1) Notwithstanding the provisions of sections 251, 257, 272 and anything 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 National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters-

k) relating to or connected with disputes arising from payment or nonpayment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlement of any employee, worker, political or public office holder, judicial officer or any civil or public servant in any part of the Federation and matters incidental thereto.”

Upon a careful examination of the above *Section 254 C (1) (k)*, it is evident that it clearly provides for matters relating to payment or nonpayment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlement of any employee, worker, political or public office holder. Moreover it is evident that payments of some of these severance benefits like pensions and gratuity only become due when the employer/employee relationship has long lapsed like in the instant case.

In the light of the foregoing, I will respectfully depart from the decision reached by my Lord, Hon. Justice Tinuade Akomolafe-Wilson, formerly of the High Court of Edo State in: *Suit No. HEK/MISC/2/2010 Hon. Abuya Christopher vs. Esan Central Local Government Council*. Moreover, from the suit number of the said case it is evident that the decision was given before the amendment of the Constitution to incorporate the new Section 254 C (1) of the 1999 Constitution (Third Alteration) Act, 2010 No. 3.

Also, in the said case, his Lordship relied on the case of: *NATIONAL UNION OF ROAD TRANSPORT WORKERS v. N. OGO DO (1988) 2 NWLR (Pt. 354)189*.

Incidentally, the said case of: NATIONAL UNION OF ROAD TRANSPORT WORKERS v. N. OGODO (1988) (supra) was decided before the amendment of the Constitution to incorporate the new Section 254 C (1) of the 1999 Constitution (Third Alteration) Act, 2010 No. 3. Thus the aforesaid decision is not quite apposite.

Again, for the same reasons, I cannot follow the other decision of the Ekpoma High Court in: *Suit No. HEK/33/2016 between Hon. Saturday Ukposidolo and Esan Central Local Government* delivered on the 28th day of March, 2017 where the Court held that it has the jurisdiction to entertain the suit because the applicant ceased to be an employee of the Respondent as at the time this suit was filed and that the subject matter is a simple one for recovery of debt owed.

In conclusion, I am of the view that the instant suit falls within the provision of Section 254 C (1) (k) of the Constitution which vests exclusive jurisdiction on the National Industrial Court. This Court lacks the jurisdiction to entertain the matter. In view of my finding, I do not think it expedient to consider the issue of the suit being statute barred by virtue of the provisions of the Public Officers Protection Law Cap. 137 Laws of Bendel State 1976 now applicable to Edo State. That matter can be determined by the court with the appropriate jurisdiction.

In the event, I resolve the sole Issue for Determination in favour of the Defendant. The preliminary objection is upheld and the suit is accordingly struck out with N20, 000.00 (twenty thousand naira) costs in favour of the Defendant/Objector.

P.A.AKHIHIERO
JUDGE
6/2/19

COUNSEL:

IDEMUDIA ILUEMINOSEN ESQ.....DEFENDANT/OBJECTOR

O.E.OSEMEDE ESQ.....CLAIMANT/RESPONDENT