

A CRITICAL EVALUATION OF THE UNCERTAINTIES SURROUNDING THE ADMIRALTY JURISDICTION OF THE FEDERAL HIGH COURT

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Abstract

The power and authority which a court has to hear and determine any matter is conferred on it by the Constitution, the enabling Act setting up the court in question and other sundry legislation. Upon the coming into effect of the 1999 Constitution, the draft men in their bid to ensure certainty in the court that should handle matters sounding in admiralty inserted section 251(1)(g) into the CFRN,1999 (as amended).Notwithstanding the preciseness of the above provision on the admiralty jurisdiction of the Federal High Court, the practical reality is that it is still uncertain in some cases whether it the State High Court or the Federal High Court that should adjudicate on some categories of admiralty matters, more especially matters of simple contract with arising from transaction sounding in admiralty. The uncertain nature of the admiralty jurisdiction of the Federal High Court came about from decisions of the Courts which interpreted section 272 of the Constitution as still empowering the State High Court to hear matters of simple contract generally irrespective of whether the so called 'simple contract' cases has its background in issues that are unarguably admiralty in nature. This limitation on the Federal High Court jurisdiction and the consequential enlargement of the Jurisdiction of the State High Court now put admiralty claimant and admiralty law practitioners in a disadvantaged position. The objective of this paper is to look at the powers of the Federal High Court to hear admiralty matters generally and critically evaluate recent judicial authorities which by implication has now limited the jurisdiction of the Federal High Court in admiralty causes to the advantage of the State High Court, particularly in cases of simple contract. Finally conclusions were made based on the issues raised in the course of the paper and recommendations on way forward were offered.

1.0 Introduction

Given the spate of activities within the admiralty sector of the economy, maritime disputes become inevitable. When dispute does arise as it will surely and definitely do, the law court is the forum where dispute is to be determined. The claimant who initiates the legal action against the defendant desires expeditious determination of his case in court. The proper court to approach is a key factor. Ordinarily, this consideration for the court that has the jurisdiction to hear and determine the dispute ought not to have been a serious issue of concern having regard to the fact that there are legal instruments specifically enacted to give direction on the forum of adjudication. To buttress the above point, the Constitution¹ in an unambiguous language donate jurisdiction in admiralty matters to the Federal High Court of Nigeria.² The admiralty

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¹Constitution of the Federal Republic of Nigeria (CFRN) 1999(as amended)

²Ibid, s 251(1)(g).

jurisdiction Act,³ The Federal High Court Act, (FHCA)⁴ the Merchant Shipping Act (MSA)⁵ and other specific legislation⁶ confer on the Federal High Court the exclusive jurisdiction to hear and determine matters sounding in admiralty.

Despite this seemingly straight forward position of the law on the admiralty jurisdiction of the Federal High court in admiralty matters, the current reality is that the High Court of the State now adjudicate on clear cases having its background in admiralty. It does now appear that it is no longer automatic that once a matter is admiralty in nature or has issue that precipitated the dispute sounding in admiralty, the proper court to initiate the action is the Federal High Court. Judicial authorities from the courts including the apex court of the land now makes it the case that in all cases of simple contract, irrespective of whether it is admiralty in nature, the court that has jurisdiction to hear and determine same is the State High Court. It is of no moment if the claim in a broader sense is a maritime claim which invariably ought to be enough to ignite the admiralty jurisdiction of the Federal High Court.

A maritime claim is defined as a claim arising out of an agreement relating to the carriage of goods or persons by a ship or to the use or hire of a ship whether by charter party or otherwise.⁷ The nature of a claim which qualifies as a maritime claim is crucial in determining whether a court has admiralty jurisdiction or not.⁸ By virtue of section 2 of the Admiralty Jurisdiction Act,⁹ maritime claims are classified into proprietary maritime claims and general maritime claims. A proprietary maritime claim includes a claims relating to the possession of a ship, a title to or ownership of a ship or of a share in a ship, a mortgage of a ship or of a share in a ship, a mortgage of a ship's freight.¹⁰ Proprietary maritime claim also includes a claim between co-owners of a ship relating to the possession, ownership, operation or earning of a ship¹¹ and a claim for the satisfaction or enforcement of a judgment given by the court (including a court of a foreign country) against a ship or other property in an admiralty proceeding in rem.¹² Most of the aforementioned transaction to a large extent can be said to be contractual in nature. The Act in in no ambiguous term donate jurisdiction to the Federal High Court in all admiralty matters and other matters connected thereto.¹³

³Admiralty Jurisdiction Act, (AJA) Cap A5 LFN, 2004.s 2

⁴FHCA, Cap F12, LFN,2004

⁵MSA No. 27 of 2007

⁶Coastal and Inland Shipping (Cabotage) Act, Act No 5 2003, Suppression of Piracy and other Maritime Offences (SPOMO) Act 2019 and others.

⁷A. Omaka, *Fundamentals of Maritime, Admiralty and International Water Law* (Lagos: Princeton & Associates Publishing Co Ltd, 2018) 342-343.

⁸Omaka (n7), 342

⁹AJA (n3)

¹⁰*Ibid*

¹¹*Ibid*

¹²*Ibid*, s 2.

¹³(n3), See the Commencement section to the Act.

The State High Courts now exercises jurisdiction in pure admiralty cases of simple contract.¹⁴ In cases of debt recovery not minding that the subject of the debt is a vessel, the legal position now is that it is a simple contract. Being a simple contract, it is wrong to commence any such action at the Federal High Court. The above forming the background of the subject of discuss, we shall consider in this write up, the historical perspective on the admiralty jurisdiction of the Federal High Court, the constitutional and legislative intervention in making the Federal High Court the sole court to handle all matters sounding in admiralty. We shall equally examine the recent authorities from the courts, particularly, the Supreme Court wherein the position is now certain that in all matters of simple contract or cases of debt recovery arising from the use of a vessel, the State High Court and not the Federal High Court retains jurisdiction to hear and determine such categories of cases irrespective of whether or not such cases has its background in admiralty.

Historical Background on the Admiralty Jurisdiction of Courts in Nigeria

Admiralty law or maritime law is a body of law that governs nautical issues and private maritime disputes. Admiralty law consists of both domestic law on maritime activities and private international law governing the relationships between private parties operating or using ocean-going ships. While each legal jurisdiction usually has its own legislation governing maritime matters, the international nature of the topic and the need for uniformity has since 1900 led to considerable international maritime law developments, including numerous multilateral treaties.

On the meaning of admiralty, the eminent jurist, *Niki Tobi* of blessed memory in *Integrated Timber and Plywood Product Ltd v Union Bank*¹⁵ defined admiralty as that which shares so much affinity with maritime law, to the extent that the words are used interchangeably in marine practice. It is posited that admiralty refers to the law of marine commerce and marine navigation. It encompasses the transportation at sea of persons and property and marine affairs generally.¹⁶ The expression ‘Admiralty Law’, used in many countries with Anglo Saxon legal traditions, add to the terminology debates.

Admiralty law refers to the body of law including procedural rules developed by the English Courts of Admiralty, in their exercise of jurisdiction over matters pertaining to the sea. Admiralty law thus originally encompasses the subject matter over which the admiralty courts possessed inherent jurisdiction imbued through a process of evolution. Subsequently, the

¹⁴*Texaco Overseas Limited v Pedmar Ltd* (2002) 24 WRN (2002) ,13 NWLR (PT 785), *Adelekan V Ecu-Line NV* (2006) 31 WRN 25, *M. I. (Nig) v Omoduemu* (2012) 46 WRN188. In the latter case, Omoleye JCA after reviewing all the previous cases on this issue beginning from *Petro Jessica Enterprises Ltd v Leventis Technical Co. Ltd* (1992) 5 NWLR (Pt. 244), *Texaco Overseas Unltd v Pedmar Supra* and *Adelakun v Ecu-Line Supra* reiterated the point that where a Plaintiff case touches on contract or dealing with simple contract it is within the residual jurisdiction of the High Court of a state and not the Federal High Court. The court accordingly struck out the suit of the plaintiff.

¹⁵(2006) LPELR-1519SC Pp 24-24 para-D-E

¹⁶*Ibid*, *Integrated Timber and Plywood Product*.

subject matter which bore a maritime character was codified and enumerated by statute.¹⁷ In common law jurisdiction, Admiralty law often connotes the maritime law relating to wet matters, that is those involving ships when they are at sea, as distinguished from dry matters also involving ships but pertaining only to commercial aspects that are essentially land based issues.¹⁸

The invasion of Nigeria by the English in 1862 which led to the colonisation of Lagos, marked the introduction of the English legal system in Nigeria.¹⁹ Section 2 of the *Colonial Courts of Admiralty Act (CCAA), 1890*²⁰ established the Admiralty Court on 25 July 1890, providing that the jurisdiction of the court was the same as England's High Court of Admiralty,²¹ established under section 12 of the CCAA which afforded the power to the Queen in Council to make directions regarding the CCAA in any colony established.²² Accordingly, the Nigeria Protectorate Admiralty Jurisdiction Order was passed in 1882 giving the Supreme Court in the Colony of Lagos admiralty jurisdiction. In 1933, the powers of the Lagos Supreme Court in Lagos Colony were extended to the whole of the protectorate of Nigeria.²³ Although another Supreme Court was established for Lagos Colony and the Protectorate of Nigeria in 1943,²⁴ the 1928 Order-in-Council was retained in terms of section 24 of the 1943 Supreme Court Act.²⁵

When Nigeria became a federal state in 1954, only the Federal Supreme Court was vested with admiralty jurisdiction.²⁶ The Admiralty Jurisdiction Act of 1962 then repealed the Supreme Court Act which resulted in the three regional (state) High Courts and the Lagos High Court being conferred with admiralty jurisdiction.²⁷ The process was disrupted when a Federal Revenue Court was established in 1973 with admiralty jurisdiction, ousting the admiralty jurisdiction of the State High Courts.

The Federal High Court Act 1973²⁸ is the enabling instrument enacted to confer jurisdiction on the Federal High Court of Nigeria. It was previously the Federal Revenue Court established, by the Federal Revenue Court Act.²⁹ In admiralty matters, arguably and to a large extent, it is the Federal High Court that has exclusive jurisdiction and competence to hear and determine all matters that has to do with admiralty. Specifically, the Federal High Court Act³⁰ provides

¹⁷J.C. Anishere, *Introduction to Maritime Law and Admiralty Jurisdiction in Nigeria*, A paper presented at the 14th International Maritime Seminar for Judges, Abuja, 31st May-1st May 2016, 2

¹⁸*Ibid*, 3

¹⁹John Hare. *Shipping Law and Admiralty Jurisdiction in South Africa* (2009) 19-30

²⁰CCAA

²¹A. Falase-Aluko, 'New Developments in the Admiralty Jurisdiction of the Federal High Court in Nigeria' (1995) *Journal of African Law*, 67. The 1962 Decree was later repealed by the Admiralty Jurisdiction Act of 1991

²²*Ibid*

²³*Ibid*

²⁴(n21)

²⁵*Ibid*

²⁶*Ibid*

²⁷*Ibid*

²⁸Cap F12 LFN, 2004

²⁹Act of 1973

³⁰(n28)

that the Federal High Court shall to the exclusion of any other court, have original jurisdiction to try civil causes and matters connected with or pertaining to any admiralty matter including shipping and navigation on the River Niger or Benue and their affluent and on internal water-ways as may be designated by any enactment to be an internal water-ways, all Federal Ports,(including the Constitution and the power of the Ports Authority for Federal Ports) and Carriage, by sea.³¹

In vein, the 1999 Constitution of the Federal Republic of Nigeria (as amended)³² being the grund norm which every other laws derive their validity stipulated in section 251(1)(g)³³ that the Federal High Court is the court clothed with jurisdiction in admiralty matters. The operative word of the Constitution is very clear. It says the Federal High Court “shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters” relating to each of the item listed in the said section.³⁴ Although the words of the Constitution are very clear to that extent, almost all of the items listed above have generated serious controversies with respect to the exact nature or scope of the jurisdiction of the Federal High Court in relation to State High Courts on the same or similar matters. Few examples will suffice.

In *Nepa v Edeghero*³⁵ the Supreme Court while interpreting the provisions of section 251 (1) (p)(q)(r) & (s) on the exclusive jurisdiction of the Federal High Court in matters affecting or relating to the Federal Government and its agencies held that Federal High Court will have exclusive jurisdiction in all matters or causes affecting or involving the Federal Government or any of its agencies, notwithstanding the nature of the claims or status of the parties. But in the subsequent cases of *Grace Jack v University of Agriculture Makurdi (2004)*³⁶ and *Onuorah v KRPC Ltd*,³⁷ the Supreme Court, without overruling itself in the earlier case of *Nepa v Edeghero*³⁸ held that where the dispute involving a person and the Federal Government or its agencies relates to simple contract or any breach thereof, it is the High Court of a State and not the Federal High Court that will have jurisdiction. In other words, it does follows that it is no longer correct to assume that the Federal High Court shall have exclusive jurisdiction merely because the Federal Government or any of its agencies is present in the matter or merely because the *res* relates to an issue where the Federal High Court has an exclusive jurisdiction.

³¹(n28), s7(1)(g)

³²(n1)

³³*Ibid*

³⁴*Ibid*, s 251(1) (a-s)

³⁵(2002)18 NWLR (Pt. 798) 79

³⁶(2004) 5 NWLR (Pt. 865) 208

³⁷(2005) 6 NWLR (Pt.921) 393

³⁸(2002)18 NWLR (Pt. 798) 79

2.0 Challenge on the Exclusive Jurisdiction of the Federal High Court in Certain Cases Sounding in Admiralty

With regard to the exclusive admiralty jurisdiction of the Federal High Court, it may be very easy, even up to the point of being taken for granted that there ought not to be any ambiguity having regard to the clear provisions of different enactments ceding jurisdiction to the Federal High Court to the exclusion of every other courts. The existing legal frameworks support the above assertion. The 1999 Constitution,³⁹ the Admiralty Jurisdiction Act,⁴⁰ the Federal High Court Act,⁴¹ the Merchant Shipping Act⁴² and other sundry admiralty related legislations gave preference to the Federal High Court as the court with jurisdiction to hear and determine cases sounding in admiralty. However, despite all these positive biases expressed in favour of the Federal High Court in cases of admiralty, judicial pronouncements in recent times appears to be gradually eroding the exclusiveness of the power and authority of the Federal High Court to try admiralty matters which it has previously enjoyed. Controversies, uncertainty and confusion is now the order of the day when it comes to determining with accuracy whether it is the Federal High Court or the State High Court that have jurisdiction in certain matters sounding in admiralty. Irrespective of the forum of commencement of the suit, serious jurisdictional issues are often raised by the defendant.

The concept of jurisdiction is key in legal adjudication. It is the Court's power to decide a case or issue a decree.⁴³ It is essentially the authority which a court of law has to determine matters or issues which are litigated before it or to take cognizance of issues presented in a formal way for its resolution.⁴⁴ The basis of jurisdiction of courts in Nigeria is the Constitution of the Federal Republic of Nigeria.⁴⁵ By virtue of the Constitution,⁴⁶ all courts in the Nigerian Federation derive their jurisdiction or competence from it.⁴⁷ Courts in Nigerian just like every other court in civilized countries of the world are creatures of statute. The power of any court to sit over a matter brought before it is derived from the enabling Act that created the court. Jurisdiction cannot be implied or assumed. When a court has no jurisdiction, it is futile exercise for that court to embark on the hearing of a matter.⁴⁸ Want of requisite jurisdiction emphasizes the lack of legal capacity and competence in the court to hear and determine the subject matter before it. This deprivation of jurisdiction necessarily means that the court does not have the authority to exercise the judicial powers vested in the courts by section 6(6)(b) of the

³⁹CFRN 1999 (n1)

⁴⁰(n3), Cap A5 LFN, 2004

⁴¹(n28)

⁴²(n5)

⁴³B. Garner (ed.), *Black's Law Dictionary*, (Ninth Edition, West Publishing, 2009) 297

⁴⁴J. Flemming and others, "Civil Procedure" s 2.1 and s.5 (5th Edition, 2001) cited by B. Garner, 927

⁴⁵Constitution of the Federal Republic of Nigeria 1999 (as amended)

⁴⁶*Ibid.*

⁴⁷*Osadebay v A.G. Bendel* (1991) 1 NWLR Pt. 169 525 at pp. 557 – 558; *Din v A.G. Federation* (1986) 4 NWLR (Pt. 87) 147 at 171.

⁴⁸*A.G. Federation v Sode* (1990) 1 NWLR (Pt. 128) 500 at 503, 504 and 505.

Constitution⁴⁹ and a decision or judgment made while lacking jurisdiction is null and void and of no effect whatsoever.⁵⁰

The pre-eminence of jurisdiction as a *sine qua non* in all judicial proceedings is such that an objection to jurisdiction can be raised at any time before, during and after a proceeding⁵¹ before the same court or even for the first time on appeal at the higher courts, including the Supreme Court.⁵² Despite the clarity of the law on this point, it is still a well-entrenched daily practice in the Nigerian courts, in both civil and criminal proceedings to see litigant even in clear cases where a court is clothed with jurisdiction raised issues of jurisdiction. When raised the court must first rule on whether it has jurisdiction before going into the merit of the case.

The Admiralty jurisdiction of the Federal High Court covers generally claims for loss or damage to goods carried in ships or any claim arising out of any claim relating to the carriage of goods in ships. Prior to the coming into force of the 1999 Constitution⁵³, the exact nature and scope of the admiralty jurisdiction of the Federal High Court was a matter of serious controversy. For examples, the Supreme Court of Nigeria in *American International Insurance Company v Ceekay Traders Ltd*⁵⁴ held that the Federal High Court had exclusive jurisdiction in all admiralty matters pursuant to the combined provisions of sections 7(1)(b)(iii), 8 (1), 24 and 63 of the Federal High Court Act of 1973.⁵⁵ However, in the subsequent case of *Savanah Bank v Pan Atlantic*⁵⁶ the same Supreme Court held that both the Federal and State High Courts have concurrent jurisdiction in admiralty matters and that the provision of section 8 (1) of Federal High Court Act of 1973⁵⁷ which had ousted the jurisdiction of the State High Court in admiralty matters was inconsistent with the provision of section 236(1) of the 1979 Constitution which vested the State High Court with an unlimited jurisdiction.

The coming into effect of the 1999 Constitution⁵⁸ made an attempt to cure the uncertainty as to the proper court to handle admiralty matters. Thus, the framers of the Constitution in their bid to enhanced the jurisdictional authority of the Federal High Court in handling admiralty matters

⁴⁹(n45)

⁵⁰*Madukolu v Nkemdilim* (1962) 2 SCNJ 341

⁵¹Ordinarily, a court will not sit on appeal on a case it has already decided or a ruling it has given. However, one of the well-recognised and very limited grounds upon which a court may reverse itself is where it made an order without jurisdiction or where the order is fundamentally defective. See *National Hospital Abuja v National Commission for Colleges of Education* (2014) 11 NWLR (Pt. 1418) 309 – 334; *Lawrence S.U. Azuh v Union Bank of Nigeria Plc* (2014) 11 NWLR (Pt. 1419) 580; *Okafor v Okafor* (2000) 11 NWLR (Pt. 677) p. 21; *Skenconsult (Nig) Ltd v. Ukey* (1981) 1 S.C p. 6; Other grounds include fraud and non-service on the other party.

⁵²*Madukolu v. Nkemdilim*, supra; *PetroJessica Enterprises Ltd v. Leventis Technical Co. Ltd.*

⁵³Constitution of the Federal Republic of Nigeria 1999 (as amended),
⁵⁴(1981) 5 SC 81

⁵⁵Act No.13

⁵⁶(1987) 1 NWLR (Pt. 49) 212

⁵⁷Act No.13

⁵⁸CFRN 1999 (n1)

alone to the exclusion of every other court in Nigeria inserted section 251(1)(g)⁵⁹ which provides thus:

251(1) notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other Court in civil cases and matters... (g) Any admiralty jurisdiction, including shipping and navigation on the River Niger or River Benue and their affluent and on such other inland waterways as may be designated by any enactment to be an international waterway the constitution and power of the port Authorities for Federal Ports) and carriage by sea'.(Underline is mine)

Now in view of the clear provision of section 251 (1) (g) of the 1999 Constitution,⁶⁰ coupled with the provisions of the Federal High Court Act⁶¹ as well as the Admiralty Jurisdiction Act of 1991,⁶² it ordinarily ought to be the case that it is the Federal High Court that should entertain any matter that has to do with admiralty. Sadly, this appears not to be the case. As we shall subsequently see.

3.0 Recent Judicial Attitude on Cases Sounding in Admiralty

For a matter to sound in admiralty, the entire fact of the case including the claims sought must have something to do with admiralty. The claim before the court must be maritime claim. Maritime claims are special commercial claims in Nigeria's judicial system. They enjoy special privileges over other categories of claims arising from other commercial transactions. Some of the special privileges includes rights to institute an action in *rem* against a ship and have it arrested.⁶³ In term of what constitutes maritime claims in Nigeria, section 2 of the Act⁶⁴ provides an answer. Going by the section, maritime claims are divided into two namely The Proprietary Maritime Claim and the General Maritime Claim.

As earlier noted, the jurisdiction of a court to entertain a matter is conferred on the court by the Constitution of the Federal Republic of Nigeria 1999 (as amended)⁶⁵ or by the statute that created the court. It is interesting to note that the scope of the admiralty jurisdiction of the Federal High Court has become less clear following a number of recent court decisions. Prior

⁵⁹CFRN 1999 (n1), this provision is not in the repealed 1979 Constitution of the Federal Republic of Nigeria

⁶⁰*Ibid*

⁶¹(n28)

⁶²(n3)

⁶³A.A. Olawoyin, "Admiralty Jurisdiction" in E.O. Akanki (ed), Commercial Law in Nigeria, (University of Lagos Press: Lagos, 2007) 811

⁶⁴(n3) Admiralty Jurisdiction Act

⁶⁵(n1)

to the promulgation of the 1999 Constitution⁶⁶, there existed a jurisdictional tussle on admiralty matters between the Federal High Court and the State High Courts. The Supreme Court resolved this jurisdictional wrangling in *Savannah Bank limited v Pan Atlantic Shipping & Transport Agencies*⁶⁷ where the Court held that the Federal High Court and the State High Courts had concurrent jurisdiction over admiralty matters. Meanwhile, upon the coming into effect of the 1999 Constitution,⁶⁸ section 251(1)(g) ought to have settled this controversy over the jurisdiction of the Federal High Court in certain admiralty matters. Going by the clear and unambiguous language of the above section, the Federal High Court retained the sole jurisdictional competence to hear and determine all matters sounding in admiralty. Sadly, the above assertion cannot be said to be correct legal postulation having regard to extant judicial authorities of the court on this subject.

The disposition of the courts of late is that some certain admiralty matters are to initiated at the State High Court. The State High Court and not the Federal High Court retains jurisdiction. This specie of cases are cases which the court termed ‘simple contract’. It is immaterial that such so called ‘simple contract’ cases has its background in matters of admiralty. The position of the law now arising from recent judicial pronouncement of the courts⁶⁹ is that it is the State High Court and not the Federal High Court that should determine matter such matters. The court finds it convenient to hold that the State High Court ought to be the proper forum of adjudication. In *Texaco Overseas Limited v. Pedmar Ltd*⁷⁰ the Supreme Court clearly established when issue of admiralty arises when it held thus:

with the greatest respect to the learned counsel to the Appellant, *I do not consider that he is right in his submission that this case is sounding in admiraltythe dispute arose from the failure of the appellant to pay for services rendered to it by the respondent.....After due consideration of the facts narrated above, I am in no doubt that the contention of the appellant that this is a case whose facts are sound in admiralty cannot be right.*⁷¹

The apex court in the above case⁷² accordingly struck out the case of the Appellant for being wrongly commenced at the Federal High court instead of the State High court. The point raised and explained by the Supreme Court was that the case is a case of breach of simple contract

⁶⁶*Ibid*

⁶⁷(1987) 1 NWLR (Pt. 49) 212; (1987) LPELR-SC 139/1985.

⁶⁸CFRN (n1)

⁶⁹Court of Appeal and now Supreme Court of Nigeria as seen in recent decision.

⁷⁰(2002) 24 WRN (2002) ,13 NWLR (PT 785),

⁷¹*Ibid*, Ejiwunmi (JSC) at page 895 paragraph A-H, (Emphasis mine)

⁷²*Ibid*

and by virtue of section 251 of the Constitution,⁷³ the Federal High Court lacks jurisdiction to try matters of simple contract. This position was reiterated and also followed in *Adelekan v Ecu-Line NV*.⁷⁴ The apex court towing the line in *Texaco Overseas Limited v Pedmar Ltd*⁷⁵ held that the provisions of the Constitution are very clear and unambiguous. It held that section 251(1)(g)⁷⁶ is the section that confers jurisdiction on the Federal High Court, however the above section clearly does not include dealing with any case of simple contract, thus the trial court⁷⁷ had no jurisdiction in the matter as framed before it. The court finally held that the lower court was right to have struck out the suit for want of jurisdiction.

There appears to be consistency in the disposition of the courts, particularly the Court of Appeal and the Supreme Court in its view with regards to the interpretation of the Constitutional provisions relating to admiralty jurisdiction of the Federal High Court.⁷⁸ The State High Court is the winning party in this jurisdictional tussle. As it appears at the moment, the Supreme Court of Nigeria in its recent decision in *TSKJ Nigeria Limited v Otochem Nigeria Limited*⁷⁹ has now finally, with any equivocation resolved the jurisdictional wrangling in favor of the State High Court. The *TSKJ*⁸⁰ case is very instructive because the subject of the transaction is a houseboat. Where it not that the court took time to analyze what a houseboat is and finally came to the conclusion that a houseboat is a vessel, one would have assumed that because the subject of the transaction is a houseboat, hence the reasoning of the court that it is the State High Court that has jurisdiction over the matter.

The Supreme Court was emphatic in *TSKJ*'s case⁸¹ when it held that dispute arising from repair and use of a houseboat⁸² is not enough to make the matter an admiralty matter. Thus, it no longer sacrosanct that once a vessel is involved in transaction leading to a dispute, it then automatically follows that the court that has jurisdiction is the Federal High Court. The Supreme Court was certain and emphatic when it posited as follows:

it can be seen at a glance from the Amended Statement of Claim reproduced above that the main plank of the plaintiff's case is the breach of the terms in respect of the contract entered into between the plaintiff and defendant. *The action instituted by the plaintiff before the Rivers State High Court is for the recovery of accrued but unpaid*

⁷³(n1)

⁷⁴(2006) 31 WRN 25

⁷⁵(n70)

⁷⁶(n1)

⁷⁷Federal High Court

⁷⁸*M. I. (Nig) v Omoduemuke* (2012) 46 WRN188 where Omoleye JCA after reviewing all the previous cases on this issue beginning from *Petro Jessica Enterprises Ltd v Leventis Technical Co. Ltd* (1992) 5 NWLR (Pt. 244), *Texaco Overseas Unltd v Pedmar and Adelakun v Ecu-Line* reiterated the point that where a Plaintiff case touches on contract or dealing with simple contact it is within the residual jurisdiction of the high court of a state and not the Federal High Court

⁷⁹(2018) LPELR-44294(SC)

⁸⁰*Ibid*

⁸¹*Ibid*

⁸²The Supreme Court held that a houseboat is a vessel

*hire rentals for the houseboat let by the plaintiff to the defendant and damages for breach of the contract simpliciter. In Chevron Nigeria Limited v. Lonestar Drilling Nigeria Limited (2007) 16 NWLR (pt. 1059) 168 this Court in considering whether an action for breach of contract for supply of goods conveyed by sea was an admiralty action held that notwithstanding the fact that a transaction between two parties in Nigeria involves the conveyance of the subject of the transaction by sea from another country to Nigeria does not give that transaction the character of an admiralty action. The Court affirmed the decision of the Court of Appeal when it held that the respondent's suit was not an admiralty matter within the exclusive jurisdiction of the Federal High Court, merely because of the fact that the contract involved the conveyance of the rig purchased by the respondent from India to Nigeria by sea. It was a claim in contract over which the High Court had jurisdiction. The present case is clearly a claim for recovery of accrued hire rentals for the houseboat and damages for breach of contract even though the houseboat had to be conveyed from Warri to Bonny by sea. The definition of the houseboat being "a flat bottomed boat or barge with a superstructure fitted out for living in" cannot affect the jurisdiction."*⁸³

In the *TSKJ*⁸⁴ case, a case that originated from the High Court of Rivers State, the fact of which was that the Respondent as Plaintiff before the trial Court entered into a contract with the Appellant for the supply of a houseboat for the temporary use of Appellant's staff. Debt was accumulated arising from the usage of the Respondent marine equipment. The Respondent approached the High Court claiming relief for payment of accrued unpaid debt arising from the use of the equipment. At the conclusion of the trial, the learned trial judge entered judgment in favour of the Respondent whereupon the Appellant appealed to the Court of Appeal. The Court of Appeal allowed the appeal in part, setting aside the part of the trial Court's judgment with regard to special damages which was granted. Nevertheless, the Court of Appeal affirmed that the lower court has jurisdiction to hear and determined the suit and not the Federal High Court as contended by the Appellant. The Appellant further appealed to the Supreme Court. The Supreme Court affirmed the judgment of both the trial court and the Court of Appeal. The apex court opined that the suit was rightly commenced at the State High Court.

The apex court in *TSKJ*⁸⁵ case was of the view that it is immaterial that a houseboat which in meaning is a vessel was involve in the transaction makes the matter an admiralty matter. The

⁸³(n79), per Aka'ahs, JSC. held thus at Pp. 34-35, Paras. B-E) (Emphasis mine)

⁸⁴*Ibid*

⁸⁵(n79)

court anchored its decision on the fact that being an action for the recovery money owed the Respondent arising from the use of the Respondent vessel makes the matter a simple contract case and not one sounding in admiralty. Therefore, being a simple contract matter, it is the State High Court that has jurisdiction to hear the case.⁸⁶ Towing a similar line, the Court of Appeal in *Shield Petroleum Co. (Nig) Ltd v Nimex Petroleum Ltd*⁸⁷ made further reiteration of this point when it further affirmed that in cases of simple contract notwithstanding that a vessel was used, this does not ignite the admiralty jurisdiction of the Federal High Court.

It may be argued that the position taken by the apex court of Nigeria in *TSKJ*'s⁸⁸ case on the surface goes against the clear provision of section 251(1)(g) of the Constitution.⁸⁹ This section begins with the phrase, 'any admiralty jurisdiction'. Similarly, the provision in the Commencement section of the Admiralty Jurisdiction Act⁹⁰ makes a clear affirmation when it stated that the Federal High Court is the forum where admiralty matters and other matters connected therewith are to be commenced.⁹¹ The clear intention of the draftsmen can be said to be that the Federal High Court and not the State High Court ought to be the proper forum of adjudication in all admiralty matters without any distinction of whether it is a simple contract or otherwise.

Further to our submission above, the Admiralty Jurisdiction Act⁹² which defines the scope of the admiralty jurisdiction of the Federal High Court provides for different types of agreements and transactions that are within the admiralty jurisdiction of the Federal High Court. Some of these agreements and transactions are mortgage of a ship, carriage of goods, supply of goods or materials to a ship for its use or maintenance, provision of services to a ship, shipbuilding, repair of ship, and so on.⁹³ All the aforementioned transactions and dealings are based on contracts. The decision that the Federal High Court lacks the jurisdiction to hear and determine any claim based on simple contracts has the effect of stripping the Federal High Court of its admiralty jurisdiction as most of the items of claims enumerated in section 2 of the Admiralty Jurisdiction Act⁹⁴ can only be actualized by means of a contract.

The law is clear that a court is competent to exercise jurisdiction whenever the subject matter of the claim is within the jurisdiction of the court. In determining whether it has jurisdiction it is the examination of the claims of the Plaintiff that will guide the court. For the purpose of examining the claims of the Plaintiff, it is the originating processes filed before the court, such as a writ of summons or an originating summons that recourse shall be had to.⁹⁵ The reason for

⁸⁶*Ibid*, Pp. 34-35, Paras. B-E)

⁸⁷(2019) LPELR 49503(CA)

⁸⁸(n79)

⁸⁹(n1)

⁹⁰(n3)

⁹¹*Ibid*. See also s.1 and 2

⁹²*Ibid*

⁹³(n3), s 2

⁹⁴*Ibid*

⁹⁵*Federal Government of Nigeria v Oshiomhole*, (2004) 3 NWLR (Pt.860) 305 at 341

having recourse to the claimant claim as a guide whether it has jurisdiction is because he is the one who invokes the constitutional right for a determination of his rights.⁹⁶ It is the subject matter of a contract and not the existence of the contract that determines the jurisdiction of a court. Using the existence of a contract as a test for determining jurisdiction, instead of the subject matter of the contract, has the effect of stripping the Federal High Court of the admiralty jurisdiction duly conferred on it by the Constitution. The obvious implication of the decision under review is that ship owners, charterers, seafarers and consignees have lost the opportunity to commence admiralty actions at the Federal High Court where the action is based on contract.

Notwithstanding the misgivings and or reservation expressed with regard to the extant position of the law courts, particularly, the apex court of the land on pure admiralty matters held to be simple contract, the position of the law as it stands now is that every simple contract cases are to be commenced at the State High Court. It is immaterial that the matter is admiralty in nature. To further lay credence on this simple contract twist that has been introduced and has now come to stay in pure admiralty cases, the Supreme Court of Nigeria in its more recent case of *Crestar Integrated Natural Resources Limited v Shell Petroleum Development Company of Nigeria limited*⁹⁷ held that there is no aspect of breach of contract, be it a simple or complex contract that the Constitution in section 251(1)⁹⁸ thereof, confers jurisdiction on the Federal High Court to adjudicate on.

Arising from our above analysis, one may therefore conveniently say that the exclusive jurisdiction in any admiralty matter as it is primarily ascribed to the Federal High Court has now been eroded and same shattered. The jurisdiction of the Federal High Court in matters sounding in admiralty is presently being shared with the State High Court in cases of simple contract.⁹⁹ The Federal High no longer enjoy the monopoly of hearing and determining cases sounding in admiralty any longer. This position as simple as it appears is confusing and comes with a lot of uncertainties. The maritime claimants are the ultimate victims in this unpleasant situation as the norms as presently the case is for a defendant to raise a preliminary objection irrespective of the court matter is commenced. This exercise will drag on for a long time. The implication is that the substantive matter to be resolved is left in abeyance pending the determination of the jurisdictional issues raised by the objector.

In our legal jurisprudence, issues of jurisdiction when raised must first be determined. It is fundamental. Matters of jurisdiction are very important as they must be resolve before a court proceed with the hearing of the substantive suit before it.¹⁰⁰ To underscore the importance of

⁹⁶A.G.F. v *Guardian Newspapers Ltd*, (1999) 9 NWLR (Pt. 618) 187 at 233, also *Babale v Abdulkadir*, (1993) 3 NWLR (Pt. 281) 254.

⁹⁷(2021) 16 NWLR (Pt.1800)

⁹⁸(n1)

⁹⁹See *TSKJ Nigeria Limited v Otochem Nigeria Limited* (2018) LPELR-44294(SC)

¹⁰⁰A.G. *Lagos State v Dosunmu* (1989) 3 NWLR (Pt. 111) 552, *Dapianlong v Dariye* (2007) 8 NWLR (Pt. 1036) 332

jurisdiction and how vital it is to every proceeding once raised, the Court of Appeal in *The Vessel MT Sam Purpose v Amarjeet Singh Bains* reiterated this point went it held thus:

The question of jurisdiction of Court is a radical and crucial question of competence because if a Court has no jurisdiction to hear and determine a case, the proceedings are and remain nullity ab initio no matter how well conducted and brilliantly decided they might be because a defect in competence is not intrinsic, but extrinsic to the entire process of adjudication. Jurisdiction of Court is therefore considered to be the nerve centre of adjudication, the blood that gives life to an action in a Court of law in the very same way that blood gives life to a human being.¹⁰¹

Where the court stood its ground in affirming its jurisdiction, the unsuccessful applicant will appeal to higher court. With regard to pure cases sounding in admiralty that ought to enjoy the priority of expeditious hearing,¹⁰² this benefit is lost.

Arising from absence of definitive legislative enactment with regard to the admiralty jurisdiction of the Federal High Court in cases sounding in admiralty, admiralty law practitioners/claimants, are the victims of this uncertain state of the law with regard to court that has jurisdiction to hear certain cases of admiralty. The current trend which most admiralty law practitioners are now being confronted with is for the defendant in a matter to bring a motion for preliminary objection challenging the jurisdiction of the court upon being served with the originating process in any admiralty matter. The default mind set of most legal practitioners briefed by their client to defend an admiralty matter is to immediately file motion for preliminary objection challenging the competence of the court irrespective of the court where matter is commenced. The moment a matter sounding in admiralty is commenced, the plaintiff/claimant who commenced the action on behalf of his client should be ready to battle this issue of jurisdiction head on, no thanks to the trite position in our judicial process that jurisdiction of the court, once challenged, no matter how frivolous it appears, the court must first and foremost rule on whether or not it has jurisdiction to hear and determine matter before proceeding further with the suit.¹⁰³

¹⁰¹(2021) LPELR-56460 (CA), per Ali Abubakar Babandi Gumel, 47-48

¹⁰²Admiralty actions are sui generis and unique in a number of key and important respects.

¹⁰³In *FCMB v Zumas Nig Ltd* (2021) LPELR-56245(CA) per Obande Festus Ogbuinya, JCA (Pp 22 - 23 Paras F - F) posited thus: "In an abiding loyalty to the injunction of the law, I will settle the jurisdictional issues first. The law compels the Courts to accord premier attention to issue of jurisdiction, which is numero uno in adjudication, when raised in any proceedings, see *Okwu v Umeh* (2016) NWLR (Pt. 1501) 120; *Brittania-U (Nig.) Ltd. v Seplat Pet. Co. Dev. Ltd.* (2016) 4 NWLR (Pt.1503) 541; *Oni v Cadbury Nig. Plc.* (2016) 9 NWLR (Pt. 1516) 80; *Diamond Bank Ltd. v Ugochukwu* (2016) 9 NWLR (Pt. 1517) 193; *PDP v Umeh* (2017) 12 NWLR (Pt. 1579); *A.P.C v Nduul* (2018) 2 NWLR (Pt. 1602) 1; *Adama v Maigari* (2019) 3 NWLR (Pt. 1658) 26; *A.P.C. v Lere* (2020) 1 NWLR (Pt. 1705) 254. The reason the law, in its wisdom, insists on prime consideration of jurisdictional issue is obvious. Where a Court is drained of the jurisdiction to entertain a matter, the proceeding germinating from it, no matter the quantum of diligence, dexterity, artistry, sophistry, transparency and objectivity

When Defendant now makes it a practice to challenge the jurisdiction of the court on the basis of lack of subject matter jurisdiction in exercise of their right as allowed by law, it makes it not to be only irritating but very frustrating to a serious plaintiff/claimant who believes he has serious maritime claim against a defendant and has now approached the court seeking justice. Even when the court finally comes up with a ruling affirming its jurisdiction to hear matter, the next step is for the defendant through their Counsel to file a 'Notice of Appeal' and an application staying further proceedings of matter, premising this application on the ground that the purported Notice of Appeal filed raises 'recondite' 'point of law to be determined at the Court of Appeal. The lower court in other not be perceived as undermining the authority of the Court of Appeal especially where the appeal has been entered at the Court of Appeal¹⁰⁴ will eventually succumbed to the vehement prayer of the defendant/Applicant. The proceeding will be stayed and or adjourned *sie die*.¹⁰⁵

4.0 Conclusion and Recommendations

The Admiralty Jurisdiction Act¹⁰⁶ which defines the scope of the admiralty jurisdiction of the Federal High Court provides for different types of agreements and transactions that are within the admiralty jurisdiction of the Federal High Court. Some of these agreements and transactions are mortgage of a ship, carriage of goods, supply of goods or materials to a ship for its use or maintenance, provision of services to a ship, shipbuilding, repair of ship, and so on.¹⁰⁷ All these are based on contracts. The decision of the Supreme Court in *TSKJ*¹⁰⁸ which has now validated the position that were taken in earlier decisions of the courts to the effect that cases of simple contract have no place at the Federal High Court appears to have put to rest the popular opinion that the Federal High Court retained exclusive jurisdiction in all admiralty causes and matters by virtue of the provision of the Constitution¹⁰⁹ and other subsidiary enactments.¹¹⁰

injected into it, will be trapped in the intractable web of nullity, see *Elugbe v Omokhaye* (2004) 18 NWLR (Pt. 905) 319; *Lokpobiri v Ogola* (2016) 3 NWLR (Pt. 1499) 328; *Garba v. Mohammed* (2016) 16 NWLR (Pt. 1537) 144; *Isah v INEC* (2016) 18 NWLR (Pt. 1544) 175."

¹⁰⁴Appeal is entered when the plaintiff/defendant/Applicant at the lower court successfully transmitted the record of appeal to the higher court and a suit number given in the appeal. Upon achieving the above, the Higher Court become seized of the appeal, the lower court whose decision is being challenged can no longer entertain any application in respect of the appeal filed in that court. For example, application for stay of proceedings or that for stay of execution can no longer be entertained by the lower court but the court appealed to. See *Isah v. INEC* (2016) 18 NWLR (Pt. 1544) 175 also *Akinyemi v Soyawo* (2006) LPELR-363(SC)

¹⁰⁵*Tinubu v I.M.B Securities PLC* (2001) LPELR-3248(SC) the apex court per Karibi Whyte JSC of blessed memory define this phrase thus: "The Latin expression sine die means without a date being fixed, indefinitely. A matter is said to be adjourned sine die when it is adjourned without a day being fixed for its resumption. In *Goddard v. Smith* 6 Mod. 261, Holt, C.J. explained the effect of a nolle prosequi by analogy with sine die. He said- "The entering of a nolle prosequi was only putting the defendant sine die, and so far from discharging him from the offence, that it did not discharge any further prosecution upon that very indictment, but that notwithstanding new process might be made out upon it." The effect of an adjournment sine die in the analogy is not to continue but to keep the pending civil action in abeyance indefinitely. (Pp 52 - 52 Paras C – G)

¹⁰⁶Admiralty Jurisdiction Act (AJA), Cap A5 LFN, 2004.

¹⁰⁷*Ibid*, s 2

¹⁰⁸*TSKJ Nigeria Limited v Otochem Nigeria Limited* (2018) LPELR-44294(SC)

¹⁰⁹(n1)

¹¹⁰See Admiralty Jurisdiction Act (AJA), Cap A5 LFN 2004, s 66 Merchant Shipping Act, Act No.27 of 2007 among other legislation.

The simple contracts dimension now introduced in admiralty transaction has stripped and undermined the Federal High Court with regard to its power of being the only court that has jurisdiction in admiralty cases. More worrisome with regard to this development is the fact that most of the items of claims enumerated in section 2 of the Admiralty Jurisdiction Act¹¹¹ can only be actualized by means of a contract. It is particularly worrisome that the recent decision in *Crestar Integrated Natural Resources Limited v Shell Petroleum Development Company of Nigeria limited*¹¹² has further reaffirmed that there is no aspect of breach of contract, be it a simple or complex contract that the Constitution in section 251(1)¹¹³ thereof, confers no jurisdiction on the Federal High Court to adjudicate on. With this position taken by the Supreme Court which is in tandem with other previous positions taken by the apex court, it then follows that the State High Court appears to be the court that will be entertaining the bulk of admiralty matters.

The above position of the court with regard to the ceding of the exclusive jurisdiction or sharing the exclusiveness of the Federal High Court with the State High Court in admiralty matters comes with the unintended consequences of depriving admiralty claimant the benefits associated with having matters sounding in admiralty commenced at the Federal High Court. Maritime claims are special commercial claims in Nigeria's judicial system. They enjoy special benefits over other categories of claims arising from other commercial transactions. Thus, maritime claimant prefers approaching the Federal High Court to the State High Court. Aside enjoying expeditious hearing in court because of its nature, a maritime claimant has the additional privilege of securing a warrant of arrest on a vessel belonging to the defendant. Another advantage of commencing a suit at the Federal High Court under an admiralty matter *in rem* is the special privilege of having a vessel owned by the defendant arrested even before the hearing and or commencement of the suit.¹¹⁴ The mechanism of arrest is resorted to by maritime claimant as a means of guaranteeing security for the claims sought from the court against a defendant before judgement is delivered.¹¹⁵

The State High Court lacks the power to arrest a vessel. It is only the Federal High Court that can exercise this power of arrest of a vessel. This power of arrest of a vessel is a unique feature of an *in-rem* action which can only be initiated where a plaintiff has a maritime claim to pursue against a defendant. An action *in rem* was originally founded on the premise of a maritime liens. Enforcement of Judgment was permitted against the property arrested on the traditional theory that a maritime lien attached to the property from the moment of the creation of such a claim. The right to enforce a maritime lien by an action *in rem* was confined to the vessel or property which necessitated the cause of action or in relation to which the maritime lien arose,

¹¹¹Admiralty Jurisdiction Act (AJA), Cap A5 LFN, 2004.

¹¹²(n97)

¹¹³(n1)

¹¹⁴A.A Olawoyin SAN, "Admiralty Jurisdiction" in Emmanuel O. Akanki (ed), Commercial Law in Nigeria, (University of Lagos Press: Lagos, 2007) 811

¹¹⁵(n7),380

even if the vessel or property is in the hands of a third party or an innocent purchaser, it is immaterial, an action by way of an order for its arrest can be made as an interim measure to guarantee the benefit of the litigation process in the event of a successful outcome. With the position taken by the court as seen in TSKJ's case and others, there is no doubt that a good number of claims that ought to be categorized as constituting maritime claim will now find their way in the State High Court. The implication of this is that all the benefits inherent in having an admiralty matter commenced at the Federal High Court is lost, this is aside the time-wasting gimmick of the defendant who may bring an application challenging the jurisdiction of the court on the ground that the Federal High Court is the court with jurisdiction to hear and determine all cases sounding in admiralty as stipulated in the Constitution and not the State High Court.

As it is presently, there are shortcomings with regard to the admiralty law regime in Nigeria. There is therefore urgent need for deliberate effort by way of a deliberate legislative intervention to cure the anomalies being experienced by admiralty claimant as well as legal practitioners.