

JURISDICTION IN GARNISHEE PROCEEDINGS: THE NIGERIAN POSITION¹- by Alexander A. Wodi, ² LLB, BL, LLM, ACI Arb, UK, Member, ICMC. © edited April 16, 2022.

The issue of jurisdiction may arise during the course of garnishee proceedings. Jurisdiction is so fundamental and crucial that once a court is held to have no jurisdiction to entertain a matter, the proceeding is a nullity however, well conducted and brilliantly decided.³

The Supreme Court in the case of *Madukolu & Ors v. Nkemdilim*⁴ held that for a court to have jurisdiction, the following conditions must be present:

- ‘(a)the proper parties are before the court;*
- (b)the subject matter falls within the jurisdiction of the court;*
- (c)the composition of the court as to members and qualifications; and*
- (d)the suit is commenced by due process of law and upon fulfillment of any conditions precedent to assumption of jurisdiction.’⁵*

The law governing garnishee proceedings tries to resolve the issue of jurisdiction by providing that garnishee proceedings may be taken in a magistrate’s court notwithstanding that the debt exceeds the court’s jurisdiction.⁶ The garnishee proceedings may also be taken before the same court that delivered the judgment

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³ *Osakue v. Federal College of Education (Technical) Asaba & 2 Ors* (2010) 2-3 S.C. (Pt.III) 158 at 176. See also *Ojukwu v. Ojukwu & Anor.* (2008) 12 S.C. (Pt. III) 1 at pp. 24-26, per Muntaka-Coomassie, J.S.C.

⁴ (1962) All NLR (Pt. 2) 581.

⁵ *Ibid.*, at pp. 589-590, per Bairamian, F.J.

⁶ O. 8, r. 1 JER.

sought to be enforced or in any court where the judgment debtor could have sued the garnishee for the recovery of the debt.⁷ The second leg of Order 8 rule 2 of the JER proposes a “debt recovery test”. Thus, a judgment creditor who seeks to commence garnishee proceedings would need to ask, “If the judgment debtor intends to recover a debt from the garnishee which court would he institute the action?” The rules do not provide a ready answer because no specific court is mentioned. Therefore, the application of the test may be difficult, particularly, where the garnishee is the Federal Government or any of its Agencies; or a garnishee banker.

A. Garnishee as Federal Government or its Agencies

In situation one, that is, **where the garnishee is the Federal Government or any of its Agency**, the choice of court until recently⁸ had not been so clear in view of the controversy between the two conflicting Supreme Court decisions of *NEPA v. Edeghero*⁹ and *Onuorah v. Kaduna Refining and Petrochemical Co. (KRPC) Ltd.*¹⁰

*NEPA v. Edeghero*¹¹ was a suit which arose from the termination of the appointment of the Respondents who were employees of the Appellant (National Electric Power Authority) following an industrial strike action embarked upon by them. The appellants contended that the High Court of Niger State had no jurisdiction. The High Court overruled the appellants on the issue of jurisdiction. The Court of Appeal affirmed the High Court’s decision. On appeal the Supreme Court held that by virtue of section 230 (1)(q), (r) and (s) of the 1979

⁷ O. 8, r. 2 (a) and (b) JER.

⁸ In view of the recent decision in *National Union of Electricity Employees v. Bureau of Public Enterprises* (2010) 2-3 SC (Pt. II) 27 (Judgment delivered, February 25, 2010).

⁹ (2002) 18 NWLR (Pt. 798) 79.

¹⁰ (2005) 6 NWLR (Pt. 921) 393.

¹¹ (2002) 18 NWLR (Pt. 798) 79.

Constitution¹² in matters in which the Federal Government or any of its agencies was a party, only the Federal High Court shall have exclusive jurisdiction to entertain such matters notwithstanding the nature of the claim in the action.¹³

In *Onuorah v. Kaduna Refining and Petrochemical Co. Ltd*¹⁴ the appellant entered into a contract to purchase empty 18 litres tins from the respondent at an agreed price which was reviewed before delivery was made to the appellant. The respondent informed the respondent of the review and insisted on payment before delivery. The appellant refused and went to the Federal High Court to enforce the contract. The trial granted the appellant the relief of specific performance. On appeal the Court of Appeal allowed the appeal on ground that the trial court lacked jurisdiction. Dissatisfied the appellant appealed to the apex court. The Supreme Court held that the Federal High Court has exclusive jurisdiction only in cases in which the subject matter of the action falls within the items enumerated under section 251 of the 1999 Constitution. Since simple contract is not one of the items listed under section 251 a State High Court would have jurisdiction in the circumstances.¹⁵

It is now settled that when faced with two conflicting decisions the lower court is bound by the latter in time.¹⁶ This by implication means that the latter case of *Onuorah v. Kaduna Refining and Petrochemical Co. Ltd (KRPC)*¹⁷ should be followed since it was decided in 2005, three years after *NEPA v. Edeghero*,¹⁸ which was decided in 2002, although it has been cited with affirmation in a number

¹² Which is similar to s. 251(1) (p), (q) and (r) of the 1999 Constitution.

¹³ *Ibid.*, at p. 97, paras. E-G.

¹⁴ (2005) 6 NWLR (Pt. 921) 393.

¹⁵ *Ibid.* at pp. 404, paras. E-F; 407, paras. F-H; and 408, paras. A-C.

¹⁶ *Osakue v. Federal College of Education (Technical) Asaba & 2 Ors* (2010) 2-3 S.C. (Pt.III) 158 at 177.

¹⁷ (2005) 6 NWLR (Pt. 921) 393.

¹⁸ (2002) 18 NWLR (Pt. 798) 79.

of cases.¹⁹ One may therefore want to conclude that on authority of *Onuorah v. Kaduna Refining and Petrochemical Co. Ltd*²⁰ when applying the debt recovery test prescribed by Order 8 Rule 2(b) of the SCPA, garnishee proceedings cannot be brought to the Federal High Court²¹ because it does not fall within the items enumerated under section 251 of the 1999 Constitution.

Interestingly *NEPA v. Edeghero* was not cited by any of the counsel or their lordships in *Onuorah*'s case despite the fact that it had been around for three years before the decision in *Onuorah*'s case.²²

Another interesting point is that Niki Tobi, J.S.C. who was a member of the panel in *Onuorah*'s case also sat on the panel in *Edeghero*'s case. In his concurring judgment in *Edeghero*'s case Niki Tobi, J.S.C. did not share the reasoning of lead judgment delivered by Ogundare, J.S.C. that in matters involving the Federal Government or its agencies, the Federal High Court had exclusive jurisdiction notwithstanding the nature of the claim in the action. The view of Niki Tobi, J.S.C. was that jurisdiction under section 230(1) of the 1979 Constitution (now section 251(1) of the 1999 Constitution) is subject and party based.²³

¹⁹ See *PPMC Ltd & NNPC v. Delphic Petroleum Inc.* (2005) 8NWLR (Pt. 928) 458 (CA) – which was a garnishee proceeding; *Abdulraheem v Oduleye* (2005) 8NWLR (Pt. 926) 149 (CA) – which was an appeal involving the Vice Chancellor of the University of Ilorin and some dismissed lecturers; and *Dr. Oloruntoba-Oju & 5 Ors v. Prof. Dopamu & 6 Ors* (2008) 2-3 S.C. (Pt. 1) 95 - a case related to the issue whether the removal of the plaintiffs/appellants complied with the University of Ilorin Act.

²⁰ (2005) 6 NWLR (Pt. 921) 393.

²¹ O. 37 of the Federal High Court (Civil Procedure) Rules 2009 makes provisions for garnishee proceeding in the Federal High Court.

²² Chief Akin Olujimi, SAN (Former Attorney General of the Federation) noted this point in paper, *Enhancing Transparency in the Nigerian Judicial Process: The Need to Adhere to the Rule of Stare Decisis*, presented to the Civil Litigation Committee of the Section on Legal Practice of the N.B.A. at the NBA Annual Conference held in Lagos from 17th to 23rd August, 2009. – <http://www.nba-slp.org/SL> . Last accessed on 7/22/2010.

²³ *NEPA v. Edeghero* (2002) 18 NWLR (Pt. 798) 79 at 100, *paras.* D-G.

B. Resolving the Conflicting Decisions

In other words, apart from the requirement that one of the parties to the case must be the Federal Government or any of its agencies, the subject matter of the claim should also fall within one of the items listed under section 230(1) of the 1979 Constitution to give the Federal High Court exclusive jurisdiction.

It is worthy to note, of course, that a concurring judgment which differs from the lead judgment can only be *obiter dicta*, and, therefore, it will be a mere academic exercise to consider them.²⁴ But it was the *obiter* of Tobi, J.S.C. in *NEPA v. Edeghero*²⁵ that became the *ratio* in the later decision of the Supreme Court in the case of *National Union of Electricity Employees v. Bureau of Public Enterprises*.²⁶ The Supreme Court in that case held that jurisdiction under section 251 is subject and party based. Chukwuma-Eneh, J.S.C. in the lead judgment considered the dicta of Ogundare, J.S.C. vis-à-vis the dicta of Tobi, J.S.C. and concluded thus:

...in the case of NEPA v. Edeghero (2002) 12 S.C. (Pt. II) 119; (2002) 18 NWLR (Pt. 798) 79 ... this court ... interpreted the provisions of section 251(1) (p) (q) (r) and (s) of the 1999 Constitution ... per Ogundare, J.S.C., in the Leading Judgment at p.95 Paragraph E said:

“A careful reading of Paragraph (q) (r) and (s) reveals that the intention of the lawmakers was to take away from the jurisdiction of the State High Court and confer same

²⁴ See per Wali, J.S.C. in *Idise v. Williams International Ltd* (1995) 1 NWLR (Pt. 370) 142 at 150, para. F.; See also per Ogbuagu, J.S.C. in *Osakue v. Federal College of Education (Technical) Asaba* (2010) 2-3 SC (Pt. III) 158 at pp. 178-179, para. 35, where his Lordship noted that, ‘... As for the hierarchy of courts, it is now settled that the *ratio decidendi* of a case is the reason for the decision, the principle of the decision. A court lower in the judicial hierarchy is bound by the *ratio decidendi* of a higher court not necessarily the *obiter dictum*.’

²⁵ (2002) 18 NWLR (Pt. 798) 79.

²⁶ (2010) 2-3 SC (Pt. II) 27. (Judgment delivered February 25, 2010).

exclusively on the Federal High Court actions, in which the Federal Government or any of its agencies is a party.”

The question arising from the above dicta ... is the automatic exclusive Jurisdiction of the Federal High Court in matters in which the Federal government or its agencies is a party notwithstanding the nature of the subject matter of the action. However, in the concurring Judgment of Tobi, J.S.C., at p. 100 of the report, his Lordship said:

“In construing section 230(1) of the 1979 Constitution as amended two important matters arise. They are the parties in the litigation as well as the subject-matter of the litigation.

The court must consider both.”

I hold the view in unison with the above dicta, to the effect that parties and the subject matter of litigation must be examined on the background of the provisions of section 251 of the 1999 Constitution (Emphasis Mine).²⁷

By this decision the Supreme Court put to rest the controversy generated by the two conflicting decisions of *NEPA v. Edeghero*²⁸ and *Onuorah v K.R.P.C. Ltd.*²⁹ The court has by implication returned to the earlier decision of *Madukolu & Ors v. Nkemdilim*³⁰ by recognising the parties and the subject matter of the claim as forming part of the basis for determining jurisdiction, which is the competence of a court to entertain a matter.³¹ The Supreme Court further reaffirmed this position in the case of *Adatayo & 2 Ors v. Ademola, Federal Ministry of Works and Housing & Attorney General of the Federation*³² where the Supreme Court held that in

²⁷ *Ibid.*, at pp. 66-67.

²⁸ (2002) 18 NWLR (Pt. 798) 79.

²⁹ (2005) 6 NWLR (Pt. 921) 393.

³⁰ (1962) All NLR (Pt. 2) 581.

³¹ The others being: the composition of the court; and fulfillment of any condition precedent for assuming jurisdiction.

³² (2010) 3-5 S.C. (Pt. I) 87. (Judgment delivered on April 30, 2010).

determining whether or not the Federal High Court has exclusive original jurisdiction in any civil cause or proceedings in which the Federal Government or any of its agencies is a party, the Court must carefully scrutinise the Plaintiff's claims to identify the parties i.e. whether the parties before it qualify as Federal Government or any of its agencies; and then, the subject matter of the dispute to see whether or not the claims can be accommodated under section 251 of the 1999 Constitution.

From the foregoing it therefore follows that in trying to determine jurisdiction of the Federal High Court in garnishee proceedings involving the Federal Government or its agencies both *the parties and the subject matter* must be considered. For the Federal High Court to have exclusive jurisdiction one of the parties must not only be the Federal Government or its agency but the subject matter, i.e., the attachment of a debt, must fall within the items enumerated under section 251(1) of the 1999 Constitution. The question must be asked, if the judgment debtor wishes to sue the Federal Government (now garnishee) in respect of a debt which court would he go to? Garnishee proceedings or attachment of debt is not mentioned as one of the items enumerated under section 251(1) so one may conclude that the State High Court would have jurisdiction. However, it may be argued that where such debt arose out of or are connected with the items enumerated under section 251 then the Federal High Court could exercise jurisdiction. Particularly, if the garnishee was the Federal Government or any of its agencies and the debt arose out of or falls within section 251(1) (p) (q) and (r), that is, *the administration or management and control of the Federal Government or its agency; the operation and interpretation of the Constitution; or any action or proceedings for a declaration or injunction affecting the validity of any executive*

or administrative action or decisions by the Federal Government, or any of its agencies as noted by Niki Tobi, J.S.C. in *Edegbero's* case.

It should be noted that section 272 of the 1999 Constitution vests unlimited jurisdiction in the State High Court to hear and determine both civil and criminal causes subject to the exclusive original jurisdiction on the Federal High Court under section 251 of the 1999 Constitution.³³ It follows, therefore, that where the Federal High Court is shown to lack jurisdiction in a matter the State High Court would be held to have jurisdiction.³⁴ Thus where the garnishee proceedings cannot be brought at the Federal High Court the appropriate court would be the State High Court.

It is submitted that where there is doubt or uncertainty, in the event of being faced with a choice between the Federal High Court and a State High Court in bringing an action, the Federal High Court is to be preferred. Owing to the fact that section 22 of the Federal High Court Act³⁵ empowers the Judge of the Federal High Court to transfer a matter to the State High Court or appropriate court in accordance with section 44 of the Federal High Court Act instead of striking such matter out on ground that it was wrongly commenced before the Federal High Court instead of the State High Court. Section 44 of the same Federal High Court Act empowers the Chief Judge of the Federal High Court to make Rules of Court for a number of

³³ See per Ogbuagu, J.S.C. in *Osakue v. FCE (Technical) Asaba & 2 Ors* (2010) 2-3 S.C. (Pt. III) 158 at pp. 177 – 178; and per Adekeye, J.S.C. at pp. 188-189; and See per Uwaifo, J.S.C. in *NDIC v. Okem Ent. Ltd* (2004) 4 S.C. (Pt. II) 77 at 111 -112.

³⁴ *Adatayo & 2 Ors v. Ademola, Federal Ministry of Works and Housing & Attorney General of the Federation* (2010) 3-5 S.C. (Pt. I) 87; and *Onuorah v. KRPC Ltd* (2005) 6 NWLR (Pt.921) 393.

³⁵ Cap F12, *Laws of the Federation of Nigeria*, 2004.

purposes including transfer of proceedings to Federal High Court to the State High Court or FCT High Court or Magistrate's Court.³⁶

C. The Garnishee banker

Where the garnishee is a banker the garnishee proceedings may be brought at either the Federal High Court or State High Court. The reason for this is that section 251(1)(d) of the 1999 CFRN includes in the exclusive jurisdiction of the Federal High Court matters pertaining to banking, banks, between banks, and the CBN's operations but, by the proviso to the paragraph, excludes disputes arising from the banker-customer relationship. By the proviso to Section 251(1)(d) above, exclusivity was removed from the jurisdiction of the Federal High Court in respect of disputes between an individual customer and his bank. The Federal and State High Courts now have concurrent jurisdiction to try such matters.³⁷

Kutigi, J.S.C. put it succinctly –

*For avoidance of doubt the conclusion is that under the proviso of section 251(1) (d) of the 1999 Constitution, the Federal High Court has concurrent jurisdiction with State High Courts in the matter stated in the proviso.*³⁸

The proviso is in recognition of the jurisdiction the State High Court had been exercising in such matters. Uwaifo, J.S.C. made this clarification in in *NDIC v. Okem Ent. Ltd*³⁹-

Plainly, the proviso in question in section 251(1)(d), to put it in simple

³⁶ s. 44(1)(u), Federal High Court Act; O. 49 r. 5 of the Federal High Court (Civil Procedure) Rules, 2009 makes provision for transfer of a cause or matter from the Federal High Court to State High Court.

³⁷ See *NDIC v. Okem Enterprises Ltd & Anor.* (2004) 4 S.C. (Pt. II) 77.

³⁸ *Ibid.*, at p.123.

³⁹ (2004) 4 S.C. (Pt. II) 77.

analysis, says that the Federal High Court will have exclusive jurisdiction in banking matters but when what is involved is individual customer and his bank transaction, the Federal High Court shall not have exclusive jurisdiction. Understandably, that was to recognise the jurisdiction the State High Courts had been exercising in such matters, which section 272(1) of the Constitution impliedly preserves. The High Court of a State can only exercise jurisdiction in any aspect of such specified matters to the extent that the proviso in section 251(1)(d) permits. The said proviso cannot be interpreted to have the effect of conferring exclusive jurisdiction on the State High Courts and completely taking away the jurisdiction of the Federal High Court to entertain causes and matters relating to individual customer and bank transactions as was erroneously decided by the court below and unsuccessfully argued before this court.⁴⁰

It is submitted that if a judgment debtor seeks to sue the garnishee banker in respect of money in his bank account this is a matter that falls within the proviso to section 251(1)(d). The recovery of such money is purely a matter arising from the banker-customer relationship that exists between the judgment debtor and the garnishee banker. It does not fall within the provisions of section 251(1)(d) of the 1999 Constitution which accords the Federal High Court exclusive jurisdiction. Therefore, in such a situation the garnishee proceedings could properly be brought at the Federal High Court or State High Court since both courts have concurrent jurisdiction in cases involving a dispute between bank and customer in respect of transactions between them.

In spite of the solutions discussed and proffered above it is submitted that in

⁴⁰ *Ibid.*, at pp. 112-113

application of the test(s) prescribed in the law and the cases cited⁴¹ the courts as well as the parties may still run into problems. To avoid any divergence of views or further controversy we strongly believe an amendment is needed to clearly specify the appropriate court to commence garnishee proceedings where they are instituted in a court different from the court that delivered the original judgment the judgment creditor seeks to enforce.

D. Postscript

The jurisdiction of a Court to adjudicate in any cause or matter is conferred on it and circumscribed by the Constitution and/or statute that created it.⁴² The Supreme Court recently, in the case of *Owners of the Mt. "Marigold" v. NNPC & Anor*, reiterated that jurisdiction may be raised at any stage, during the life of a matter.⁴³

I should restate the now elementary position of the law that due to its fundamental and crucial nature, the issue of jurisdiction of a Court to entertain and adjudicate over a matter or, as in this case, an appeal, as a matter of substantive law, can be raised at all stages of proceedings of all the Courts in the judicial hierarchy, at any time, anyhow and by any of the parties or the particular Court, suo motu. It is never late to raise the issue or question of the jurisdiction of the Court to adjudicate over a matter, case, or appeal, even viva voce and once it arises or is raised, the Court has the duty to determine it first before proceeding to deal with other issues that may be raised therein, if necessary. The reason for this inviolable position of the law is that

⁴¹ That is, in O 8, r. 2 JER and in the cases of *National Union of Electricity Employees v. Bureau of Public Enterprises* (2010) 2-3 SC (Pt. II) 27 and *NDIC v. Okem Enterprises Ltd & Anor.* (2004) 4 S.C. (Pt. II) 77.

⁴² See per Kekere-Ekun, J.S.C. in *Ogbuji & Anor v. Amadi* (2022) LPELR -56591(SC) at pp. 13 paras. C,

⁴³ (2022) LPELR 56858 (SC) at pp. 12-13 Paras. A, per Garba, J.S.C.

*all judicial proceedings of a Court conducted without the requisite jurisdiction, along with any product thereof, are null, void and of no legal value and effect ab initio, howsoever otherwise well conducted.*⁴⁴

In the case of *Ayorinde v. Kuforiji*⁴⁵ the defence of statute of limitation was raised as a fresh point on appeal. This of course was upheld by the court as it was tied to jurisdiction, which is fundamental to determining the competence of a court to adjudicate over a cause of action/matter.⁴⁶

It is now settled in our law that parties and subject matter must be taken into consideration when determining the jurisdiction of a court. In fact, jurisdiction has been held to be three dimensional. Muhammad, J.S.C. in *Adetona & Ors v. Igele General Enterprises Ltd*⁴⁷ stated that,

The matters of jurisdiction in our courts, is generally, approached from three dimensions: territorial, subject matter and jurisdiction on persons. On territorial jurisdiction, the Federal High Court enjoys nationwide jurisdiction whereas a State High Court is confined to the territory of the State and that of the Federal Capital Territory to the Federal Capital Territory. On subject matter jurisdiction, the High Court of a State, by the provision of Section 236 of the Constitution of

⁴⁴ See *Madukolu v. Nkemdilim*(1962) SCNLR, 341, (1962) All NLR, 587, *Odiase v. Agho* (1972) 1 All NLR (pt. 1) 170, *Bronik Motors Ltd. v. Wema Bank Ltd.* (1983) 7 SC, 158, *Oloriode v. Oyebe* (1984) 5 SC, 260, *Altine v. Afribank Plc.* (2000) 15 NWLR (pt. 687) 180 (SC), *Senate President v. Nzeribe* (2004) 41 WRN, 60 (SC), *Cotecna Int. Ltd. v. Ivory Merchant Bank Ltd* (2006) 5 SCM, 17, *NDIC v. CBN* (2002) 7 NWLR (pt. 766) 272 (SC), *Equity Bank of Nigeria Ltd. v. Halilco Nig. Ltd.* (2006) 7 NWLR (pt. 980) 568 (SC), *Shitta-Bey v. A.G., Federation* (1998) 7(pt. 11) 121, (1998) 10 NWLR (pt. 570) 392, *Onyema v. Oputa* (1987) 3 NWLR (pt. 60) 259 (SC), *Utih v. Onoyivwe* (1991) 1 NWLR (pt. 166) 166 (SC), *Durwode v. State* (2000) 15 NWLR (pt. 691) 467 (SC), *Otukpo v. John* (2000) 8 N WLR (pt. 669) 507 (SC), among the litany of the pronouncements on the position by this Court.

⁴⁵ (2022) LPELR (56600)

⁴⁶ Per Peter-Odili, J.S.C. at pp. 57-58 paras. E

⁴⁷ (2011) LPELR-159(SC)

*the Federal Republic of Nigeria, 1999, enjoys unlimited jurisdiction. The Federal High Court has limited jurisdiction or jurisdiction on some enumerated subject matters. A State High Court has jurisdiction mostly over natural persons. Federal High Court has jurisdiction over both natural and artificial persons. There are areas where both the Federal High Court and High Court of a State enjoys concurrent jurisdiction. Example of such is the enforcement of Fundamental Human Rights conferred in Chapter IV of the Constitution.*⁴⁸

In *Unity Bank Plc v. Onwudiwe & Anor*⁴⁹ it was held that both the subject matter and parties must be considered in ascertaining the Court that has jurisdiction where the Federal Government or its agencies is a party to an action:

*The perennial jurisdictional tussle between the Federal High Court and the State High Court has been such that there has been an unending disputation as to whether the subject matter of an action or the nature the claim before a Court should play a part in ascertaining the Court that has jurisdiction where the Federal Government or its agencies is a party to an action. The 2nd Respondent herein is clearly an agency of the Federal Government. The legal position has remained in flux, but it seems to be crystallizing to a situation where both the parties and the subject matter are considered. In *PDP v. Sylva* (2012) LPELR (7814) 1 at 52 - 53, it was held that when the*

⁴⁸ *Ibid*, at pp. 33-35 paras. F. The High Court and Federal High Court have concurrent jurisdiction in respect of enforcement of fundamental human rights. See, *Insp. Gabriel of the C.O.P Monitoring Unit, Lagos v. Ukpabio & Ors* (2022) LPELR 57032 at pp. 32-34 paras. F-E, per Aboki, J.S.C., "It is also my view that so long as the enforcement of the Applicant's fundamental right is the main claim in the suit and not an ancillary claim, the Federal High Court and State High Courts, including the High Court of the FCT, have concurrent jurisdiction to entertain it."

⁴⁹ (2015) LPELR-24907(CA) at pp. 14-16 paras. F, per Ogakwu, J.C.A.

jurisdiction of the Federal High Court is in issue, two factors must co-exist namely, that the parties or one of the parties must be an agency of the Federal Government and the subject matter of the litigation must be within the jurisdiction of the Federal High Court. It does not suffice merely that a Federal Government Agency is a party in order for the Federal High Court to have jurisdiction. See also Ports and Cargo Handling Services Company Ltd v. Migfo Nig. Ltd (2012) LPELR (9725) 1 and Inegbedion v. Selo-Ojemen (2013) LPELR (19769) 1. Accordingly, the subject matter of the action must be within the jurisdiction of the Federal High Court in order for the State High Court to be divested of jurisdiction. This is in keeping with the long established and settled legal position that jurisdiction is determined by the plaintiff's claim as endorsed on the writ of summons and statement of claim. See Izenkwe v. Nnadozie (1953) 14 WACA 361 at 363, Adeyemi v. Opeyori (1976) 9-10 SC 31, Orthopaedic Hospital Management Board v. Garba (2002) 14 NWLR (PT 788) 538 at 563 and Onuorah v. KRPC Ltd (2005) LPELR (2707) 1 at 15.

In *Abacha & Anor v. Minister, FCT & Anor*⁵⁰ the court noted:

The point must however be made categorically that it is not a general principle that in all cases where an agency of the Federal Government is a party to an action, only the Federal High Court has exclusive jurisdiction to determine the matter. To confer exclusive jurisdiction in the Federal High Court, the process must disclose an

⁵⁰ (2015) LPELR-25597(CA) at pp. 18-21 para. F, per Akomolafe-Wilson, J.C.A.

*action or proceedings for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies. The process must also disclose an action or proceedings for a declaration or injunction affecting the validity of any executive decision by the Federal Government or its agencies.*⁵¹

Jurisdiction may also be categorised into two, namely procedural and substantive jurisdiction. Where there is a defect or irregularities in relation to the former, that is procedure, same is not treated as fundamental enough to render the process or proceedings a nullity and thus may be waived.⁵² A substantive defect or irregularity on the other hand is a matter of law and has the effect of rendering the affected process and the proceeding conducted thereon incompetent. Such irregularity being a matter of law is capable of rendering the process invalid.⁵³

Wambai, J.C.A. expanded this point clearly in *Njoku & Anor v. Governor of Imo State & Ors*⁵⁴ :

As a matter of fact, jurisdiction has been classified into two types namely:

(1) Jurisdiction as a matter of substantive law and

(2) Jurisdiction as a matter of procedural law.

It is necessary to draw a distinction between the two.

Matters (including facts) which define the rights and obligations of the parties are matters of substance. Substantive jurisdiction gives

⁵¹ Suffice it to say that the Court of Appeal had also cited and considered *NEPA v. Edeghero* (supra) and *Onuorah v. KRPC Ltd* (supra) before arriving at its decision.

⁵² *Majekodunmi & Ors v. Ogunseye* (2017) LPELR-42547(CA), per Tsammani, J.C.A. at pp. 19-20 para. A.

⁵³ *Ibid.*

⁵⁴ (2021) LPELR 56549 at pp. 26-29 para. F.

or defines the right to be enforced and where the right conferred by the Constitution or Statute involves an element of public policy, i.e., of interest to the public, such a right cannot be waived. On the other hand, matters which are means by which matters in controversy or litigated upon is enforced, are matters of procedure. This can be waived. Where a statute gives a party a benefit, he may decide to waive it and by so doing confer jurisdiction on the Court. A litigant may submit to the procedural jurisdiction of the Court e.g., where a writ has been served outside Jurisdiction. See Ndayako & Ors v. Dantoro & Ors, Noibi v. Fikolati (1987) 1 NWLR (PT. 52) 619 @ 632.

Put differently, while a litigant can waive the latter (procedural jurisdiction), no litigant can confer jurisdiction on the Court where the Constitution or a statute does not confer any.

In Ag Kwara State & Anor v. Adeyemo & Ors (2016) LPELR-41147 (SC) Rhodes Vivour J.S.C., succinctly explained the two types of jurisdiction. Jurisdiction is a question of law. There are two types of jurisdiction:

"1. Jurisdiction as a matter of procedural law.

2. Jurisdiction as matter of substantive law.

A litigant may waive the former. For example, a litigant may submit to a procedural jurisdiction of the Court where a Writ of Summons has been served outside jurisdiction without leave or where a litigant (the defendant) waives compliance by the claimant of pre-action notice. No litigant can confer jurisdiction on the Court where the Constitution or Statute says that the Court does not have jurisdiction. Why is jurisdiction as a matter of procedural

law allowed to be waived but not allowed in the case of substantive law.....

The position of the law is that where a statute gives a party a benefit he may waive it, thereby conferring jurisdiction on the Court to hear the matter. Put in another way, conditions contained in a statute for the benefit of a person or class of persons can be waived by the person/s to benefit from it. ⁵⁵

E. Conclusion

Jurisdiction is indeed a fundamental part of the commencing, sustaining, and determining a matter in law. It is my hope that I have been able to shed some light on this interesting aspect of the law and encourage more research on the topic, particularly as it relates to garnishee proceedings involving the Federal Government or its agencies as parties or the Garnishee banker as a party.

A.A. Wodi, April 2022.

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⁵⁵ See *Adegoke Motors Ltd v. Adesanya* (1989) 3 NWLR (Pt. 109) P. 255, *Ezomo v. Oyakhire* (1981) 1 SC P. 6, *Nwabueze v. Okoye* (1985) 1 NWLR (Pt. 2) P. 195. On the other hand, where the right conferred by the Constitution or Statute involves an element of public policy, i.e., of interest to the public, such a right cannot be waived. See *Ariori v. Elemo* (1983) 14 NSCC P. 1