

The Jurisdiction of Federal High Court: Is Onuorah v KRPC Ltd a correct decision?

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INTRODUCTION

As distilled from the law report, the facts of *Onuorah v Kaduna Refining and Petrochemical Co. Ltd, (A subsidiary of Nigerian National Petroleum Corporation)*¹ are that the appellant (plaintiff at the trial court) entered into a contract to purchase specified number of empty tins from the respondent (defendant at the trial court), at an agreed amount and payment of the agreed sum was made. But before delivery was made to the appellant, the respondent had increased the price. The appellant was duly informed of the new price and was requested to pay the difference between what he had paid and the new unit price. The appellant refused, insisting that the respondent was bound to deliver to him the quantity he had ordered at the price agreed by the parties. This constituted the cause of action of the appellant who commenced an action at the Federal High Court, Kaduna, against the respondent claiming as follows:

- a) An order of court declaring the purported price increase/review of the 18 litres empty tins by the defendant from N25 to N40 with effect from 10/5/93 as not affecting the plaintiff who paid for his own empty tins much earlier than the commencement date of the price increase/review.
- b) An order of specific performance directing the defendant to issue/supply the plaintiff with the remaining 17,012

¹ [(2005)6NWLR (pt 921) 393 Note that the provisions of Section 230(1)(q) (r) (s) of the 1979 Constitution and the proviso o which the judgment was based thereto are impari materia with the provisions of Section 251(1)(p)(q)(r) of the 1999 Constitution and the proviso thereto. Therefore, our discussion on this decision applies mutatis mutandis to Section 251(1)(p)(q)(r) of the 1999 Constitution and the proviso thereto.]

pieces of the 18 litre empty tins not later than 30 days from the date of judgement.

c) N1,000,000 general damages from the defendant to the plaintiff for the breach of the arrangement/agreement between him and the defendant.

At the end of the trial, the Learned Trial Judge, Okeke, J., in a reserved judgment granted the claims for declaration and specific performance but refused the claim for damages. The respondent appealed to the Court of Appeal, Kaduna Division, and raised as a ground of appeal, the jurisdiction of the trial Court. The Court of Appeal allowed the appeal on the ground that the trial court lacked jurisdiction to entertain the claim and consequently set aside the orders of the Federal High Court and struck out the claim.

The appellant dissatisfied with the decision of the Court of Appeal appealed to the Supreme Court raising 7 grounds of appeal out of which the following 4 issues for determination were formulated by the appellant and adopted by the respondent as follows:

1. Whether the Court below was right in the instant matter in requiring the appellant to prove that the respondent is a subsidiary of Nigerian National Petroleum Corporation (NNPC).
2. Is the respondent a distinct and separate legal entity from the Nigerian National Petroleum Corporation?
3. Is the respondent an agent of NNPC and the Federal Government of Nigeria?
4. Was the Court below right when it held that the Federal High Court, Kaduna, had no jurisdiction to hear and determine the appellant's claims?

The Supreme Court in deciding the appeal, however, relied only on what it considered as the main question or issue namely; whether the Federal High Court had jurisdiction to entertain the appellant's claim. On this question, the Court dismissing the appeal, held, per Akintan, JSC, (Onu, Ejiwunmi, Tobi and Edozie JJSC concurred) as follows:

1. That in determining the jurisdiction of the Federal High Court and State High Court in the instant case, it is the relevant provisions of the 1999 Constitution of the Federal Republic of Nigeria as amended by Decree No. 107 of 1993 that would be applicable since the appellant's action was commenced and in fact judgment was delivered before the 1979 Constitution came into force.
2. That Section 230(1) of the 1979 Constitution provides a limitation to the general and all embracing jurisdiction of the State High Court because the items listed under the said Section 230(1) can only be determined exclusively by the Federal High Court.
3. That Section 230(1) of the 1979 Constitution (particularly sub-section (1)(q)(r) and (s) and the proviso thereto) does not confer on the Federal High Court jurisdiction to entertain claims founded on contract as in the instant case and therefore the Federal High Court had no jurisdiction to entertain the appellant's claim.
4. That the question whether the respondent is a subsidiary or agent of NNPC or not has no role when a consideration of the jurisdiction of the Court is being made since the claim is one founded on breach of contract.

Basically, the decision of the Supreme Court in this case is to the effect that contract or a claim founded on contract is not specifically provided for or included in Section 230(1) of the 1979 Constitution which provides for the exclusive jurisdiction of the Federal High Court and therefore, where, as in the instant case, a cause of action is founded on contract (and by implication, on any matter not included in Section 230(1) of the 1979 Constitution) the Federal High Court lacks jurisdiction to entertain the matter and in such a case, the status of the parties (i.e. whether Federal Government or any of its agencies) is irrelevant in determining jurisdiction of the Federal High Court.

The question is whether this decision is correct?

APPLICATION OF SECTION 230(1) TO CONTRACTUAL CLAIMS

Section 230(1)(q) of the 1979 Constitution confers exclusive jurisdiction on the Federal High Court in respect of civil causes and matters relating to the administration or the management and control of the Federal Government or any of its agencies.

It is submitted that this provision, contrary to the decision in *Onuorah*, is wide enough to cover contractual claims. This view is fortified by the judicial interpretation of this provision by Niki Tobi, JSC, in *National Electric Power Authority v Mr. B. Edeghero and 15 others*² as follows:

"I do not however agree with him that the claim which relates to breach of contract of employment has nothing to do with the administration or management and control of the appellant. Administration is a large term in business and commerce. So too management etymologically, the words are synonymous in our context. Administration is the management or direction of affairs of a business. Management is the art or practice of managing especially a business. Both words have business as a common denominator. Entering into a contract of employment with an employee is a business relationship which clearly comes within Section 230(1)(q) of the 1979 Constitution as amended by Decree 107 of 1993."

It follows from this pronouncement that Section 230(1)(q) of the 1979 Constitution covers cases of contract and therefore any claim founded on such, so long as it arises from the administration or management and control of the Federal Government or any of its agencies, comes within the exclusive jurisdiction of the Federal High Court under this subsection.

² [2002] 18 NWLR (pt 798) 79. The facts and applicability of *NEPA v Edeghero* to *Onuorah* will be considered in greater detail later in this paper.

Section 230(1)(s) also confers exclusive jurisdiction on the Federal High Court in respect of any action or proceeding for declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies. Again, it is submitted that this provision is wide enough to cover claims founded on contract. The only condition for the invocation of the jurisdiction of the Federal High Court under this provision is that the relief sought must be a declaration or injunction and must relate to an administrative or executive action or decision of the Federal Government or any of its agencies. Indeed, the first relief sought in the instant claim which seeks declaration in respect of the administrative/executive decision of the appellant to increase prices of its products, clearly comes within this provision.

Finally, the proviso to Section 230(1)(q) (r) and (s) gives jurisdiction to the Federal High Court, in respect of actions for damages, injunction or specific performance where the action is based on an enactment, law or equity.³

It is submitted that a claim for specific performance mentioned in the proviso is one which usually arises from contractual claims. Contractual claims may give rise to claims for damages and injunction and may also qualify as actions based on an enactment, law or equity. Indeed, a claim for specific performance of a contract is usually one based on equity.

Therefore, relief 2 and 3 in the instant claim come squarely within the proviso. In the light of the foregoing, it is difficult to agree with the Supreme Court's position in *Onuorah* that claims founded on contract are not covered by Section 230(1) of the 1979 Constitution and therefore, ipso facto, outside the jurisdiction of the Federal High Court.

³ The proviso has been held by the Supreme Court in *NEPA v Edeghero*, supra to confer or extend jurisdiction of the Federal High Court to matters mentioned therein. Per Ogundare JSC at page 95 Paragraph F-G; Uwais, CJN, at Page 98 paragraph E-F.

Perhaps, it is pertinent to observe at this point that the Court of Appeal's decision which the Supreme Court purportedly affirmed was greatly misconceived on this issue.

Although the Court of Appeal ultimately held that the Federal High Court lacked jurisdiction over the matter, their reasoning appears to be more logical and consistent with the Constitution. From the lead judgment of Omuogbo, J.C.A.,⁴ the main reason for holding that the Federal High Court lacked jurisdiction over the matter was not because the claim for damages bordered on contract per se as the Supreme Court held, but because none of the parties was either an agent or functionary of the Federal Government.

In the words of his Lordship:

"I have read with diligence the provision of Decree No. 107 of 1993, Decree No. 60 of 1991 which both created and widened the jurisdiction of the Federal High Court. I can find nowhere therein where provisions are made for the jurisdiction of the Federal High Court in a matter for specific performance or for a claim of damages, made between two parties neither of which is a government agent or functionary of the Federal Government. Neither the plaintiff nor the defendant in the Court below is an agent or a functionary of the Federal Government or any Government in Nigeria for that matter.

The Federal High Court in Kaduna or any Federal High Court in Nigeria would appear not to possess any jurisdiction to preside and determine such a claim as the plaintiff had in the Court below:

In other words, the Court of Appeal decision was not based on the subject matter of the claim but on the parties to the action.

Rather than the Supreme Court resolving the issue of whether the respondent was an agent of the Federal Government which was

⁴ Reproduced in the judgment of Niki Tobi, JSC in *Onuorah v KRPC Limited* supra at page 404 paragraph G-H

rightly raised by the appellant and adopted by the respondent the Court instead pre-occupied itself with the rather inconsequential issue of whether contract was provided for in Section 230(1) and yet on that issue came to the wrong conclusion as has been shown in the foregoing arguments.

THE RELEVANCE OF THE STATUS OF THE PARTIES IN DETERMINING JURISDICTION UNDER SECTION 230(1)

The jurisdiction conferred on the Federal High Court by the provisions of Section 230(1)(q) (r) (s) and the proviso thereto are not limited to reliefs sought or cause of action only.

A cursory look at these provisions shows that parties to the claim are paramount in determining jurisdiction of the Federal High Court contrary to the decision in *Onuorah*. Under subsection (1)(q), for the Federal High Court to assume jurisdiction, the cause of action must relate to the administration or management or control of the Federal Government or any of its agencies. Under subsection (1)(r), the Federal High Court can only assume jurisdiction if the action for the operation or the interpretation of the Constitution affects the Federal Government or any of its agencies. Under subsection (1)(s), the Federal High Court can only assume jurisdiction if the action for declaration or injunction affects the validity of any executive or administrative action or decision by the Federal Government or any of its agencies.

Finally, under the proviso, the Federal High Court's exclusive jurisdiction is only invoked where the action for damages, injunction or specific performance based on any enactment, law or equity is sought against the Federal Government or any of its agencies.

Although these provisions do not expressly provide that the Federal Government or any of its agencies must be a party to the action, however, this is implied as it is unlikely that the claims envisages by S.230(1)(q)(r) particularly (r) and the proviso which essentially challenge the action or decision of the Federal Government or any of its agencies will lie against a third party except as nominal parties.

It can therefore be argued that the cause of action, relief sought and the parties to the action are equally important in determining the jurisdiction of the Federal High Court under S.230 (q)(r)(s) and the proviso thereto. Indeed, one may go as far as saying that the parties and the reliefs sought (nor necessarily subject matter of action) are even more paramount in determining the jurisdiction of the Federal High Court under these provisions. This much had been conceded by the Supreme Court itself in its earlier decision in *NEPA v Edeghero*⁵ when it held per Ogundare J.S.C. that:

"From what I have said earlier in this judgment the aim of paragraphs (q), (r) and (s) of sub-section (1) of section 230 was to vest exclusive jurisdiction in the Federal High Court in matters in which the Federal Government or any of its agents was a party. A State High Court would no longer have jurisdiction in such matters notwithstanding the nature of the claim in the action. I agree entirely with the submission of the learned counsel for the defendant that the two Courts below were in error in holding that the State High Court had jurisdiction in this matter. There is nothing in the proviso to those paragraphs that could be said to have whittled down the objective of the law."

Niki Tobi, J.S.C., also lent his voice in his concurring judgment when he held that:⁶

"In construing jurisdiction of the Federal High Court under S.230(1), the Court must consider two important issues namely:

1. the parties and 2. the subject matter of litigation.

The Court must consider both..."

This position clearly conflicts with *Onuorah* which is of the view that the parties are irrelevant in determining jurisdiction of the Federal High Court under S.230(1). According to Akintan, JSC in his lead judgment in *Onuorah*:⁷

⁵ Supra at Page 97 Paragraph F-G.

⁶ At Page 100 Paragraph D-G.

⁷ At Page 404 Paragraph G-H and 405 Paragraph

"It is settled law that jurisdiction of a Court is determined by the plaintiff's claim as endorsed in the writ of summons and statement of claim ... Thus in this case, the appellant's claim, already set out above, is the one that should be the focus of attention in determining whether the trial court had jurisdiction to entertain the suit ... The question whether the respondent is a subsidiary or agent of the NNPC or not has no role when a consideration of the jurisdiction of the Court is being made ... This is because as already stated above the determining factor is the claim, which in this case, is one founded on breach of contract."

Again Niki Tobi JSC concurring with Akintan, JSC held:⁸

"The law is elementary that in the determination of whether a court has jurisdiction in a matter or not, the Court will examine or consider the claim or relief. This is because only the claim or relief donate jurisdiction to the Court."

It is strange that his Lordship Niki Tobi, JSC concurred with Akintan JSC on this point given the position his Lordship had taken just three years earlier in *NEPA v Edegbero*.⁹ What is strange was that neither his Lordship nor any other justice of the Supreme Court who sat in *Onuorah* referred to *Edegbero*.

It is submitted therefore that the Supreme Court, with due respect, was wrong when it held that contract is not covered by Section 230(1) and that parties are irrelevant when considering the jurisdiction of the Federal High Court under Section 230(1).

⁸ At 407 Paragraph F

⁹ Onu, JSC had also, strangely, concurred with the conflicting lead judgments in *Edegbero* and *Onuorah*.

This decision is not only wrong in its reasoning as we have shown so far in this paper but also wrong for failing to follow the earlier binding decision of the Court in *Edeghero*.

APPLICABILITY OF EDEGHERO TO ONUORAH

It may be necessary at this point to examine the decision in *NEPA v Edeghero* in some detail to determine its applicability to *Onuorah*.

In that case, the respondents (plaintiffs at the trial) were employees of the appellant (defendants at the trial). Following an industrial action embarked upon by the employees of the appellant, including the respondents, in August 1994, the respondents' appointments were terminated whereupon they instituted various suits at the High Court of Niger State claiming in each case as follows:

- (i) A declaration that the purported termination of the plaintiff vide a letter dated 10th August, 1994, from the service of the defendant is irregular, wrongful null void and of no effect whatsoever.
- (ii) An order reinstating the plaintiff with the defendant and the payment of the plaintiff's salaries allowances and entitlements from the purported day of termination till re-instatement.
- (iii) A perpetual injunction restraining the defendant from harassing, intimidating and violating the plaintiffs rights.

All the actions were consolidated and tried together at the High Court of Niger State. In the course of his final address, the appellant's counsel contended that the High Court of Niger State had no jurisdiction to entertain the claims of the respondents on the ground that the jurisdiction of that Court was ousted by virtue of Section 230(1)(q)(r) and (s) of the 1979 Constitution as amended by Decree No. 107 of 1993 which conferred exclusive jurisdiction on the Federal High Court in respect of matters affecting the Federal Government or any of its agencies

The High Court overruled the appellant on the issue of jurisdiction holding that by virtue of the proviso to Section 230(1)(q)(r) (s), it can entertain the suit.

The decision was affirmed by the Court of Appeal, Abuja Division, Coram Musdapher, Bulkachua and Oduyemi JJ.CA. Being dissatisfied, the appellant further appealed to the Supreme Court which after considering the above provision held as follows:

1. That the action being for a declaration and injunction, the principal purpose of which is to nullify the decision of the appellant terminating the appointments of the respondents and others, came squarely within the provision of Section 230(1)(s) and therefore within the exclusive jurisdiction of the Federal High Court.¹⁰
2. That the aim of Section 230(1) (q) (r) and (s) is to take away from the jurisdiction of the State High Court, actions in which the Federal Government or any of its agencies is a party irrespective of the nature of the claim in the action.
3. That the proviso to Section 230 (1) (q) (r) and (s) merely extends the action in respect of which exclusive jurisdiction is conferred on the Federal High Court by Section 230 (1) (q) (r) and (s) to claims for damages, injunction and specific performance where the action is based on an enactment, law or equity.

This decision, contrary to the decision in *Onuorah V K.R.P.C. Ltd*, makes it clear that parties and the reliefs sought (or necessarily the cause of action per se) are paramount in the determination of the jurisdiction of the Federal High Court under S.230 (1) (q) (r) (s) and the proviso thereto. It is also clear from *Edegbero* that claims founded on contract are covered by Section 230(1).

From the facts of the two cases, there is no reason why the Supreme Court should not have followed *Edegbero* in *Onuorah*.

¹⁰ Niki Tobi, JSC, in his concurring judgment held that the facts of the case came within S.230(1)(q) and also within the jurisdiction of the Federal High Court.

Like *Onuorah* where the cause of the action, it is submitted, arose from administrative action or decision of an agency of the Federal Government, Kaduna Refining and Petrochemical Co. Limited (the respondent) to increase unit price of its goods. In *Edeghero*, the cause of action also arose out of the administrative action or decision of an agency of the Federal Government, NEPA, to relieve the respondents of their employment.

Also, like *Onuorah* where the claim included a declaration that the decision of the respondent (KRPC Ltd) on price increase was ineffective, in *Edeghero*, the claim also included a declaration that the decision of the appellant terminating the appointments of the respondents was ineffective.

Finally, both *Onuorah* and *Edeghero* bordered on contract though while *Onuorah* was a supply contract, *Edeghero* was an employment contract. From the reasoning in *Edeghero* which situated the claim under Section 230(1)(q) and (s), the claim in *Onuorah* ought also to come within Section 230(1) (q) and (s).

Given the circumstances therefore, *Onuorah* ought to have followed *Edeghero* as precedent.

WHAT NOW?

It is settled law that the Supreme Court is bound by its previous decision except when it distinguishes or overrules same. We have already shown the two cases as not distinguishable in any material particular. In any case, the court made no effort whatsoever to distinguish the two cases, assuming they are distinguishable. As to overruling, there is also no indication in *Onuorah* that *Edeghero* was being overruled.

There are clear grounds upon which the Supreme Court may overrule itself. These include the following:

1. Where the previous decision is inconsistent with the Constitution or is erroneous in law in which case it must be shown that there are fresh elements not adverted to in the earlier proceedings and a development in the socio-economic stance of the country.
 2. Where the decision was given *per incuriam*.
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3. Where the decision is occasioning miscarriage of justice or perpetuating injustice.¹¹
4. Where the previous decision is impeding the proper development of the law or has led to results which are unjust and undesirable or which are contrary to public policy.¹²
5. Where the decision is in conflict with another decision of the Court.
6. Where the judgment is obtained by fraud or deceit.
7. Where the judgment is a nullity.
8. When it is obvious that the Court was misled into giving judgment under a mistaken belief that the parties consented to it.
9. Where the Court is of the opinion that it is in the interest of justice.¹³

A party seeking the Supreme Court to overrule itself on any of these grounds or indeed, on any other ground, must raise and prove same as prescribed by law and the rules of the Court.

Among others, the point must, in accordance with Order 6 Rule 5(4) of the Supreme Court Rules (1985) (as amended in 1999), be raised as an issue in the brief of argument of the party seeking the Court to depart from its previous decision. The Supreme Court has no jurisdiction to raise and resolve the issue itself.

¹¹ Rossek v A C B Ltd [1993] 8NWLR (pt 312) 382.

¹² Towogbade v Obadina [1994] 4NWLR (pt 33) 326.

¹³ See generally Johnson V Lawanson [1971] 1 ALL NLR 56

These principles were recently reiterated by the Supreme Court per Uwaifo, J.S.C. in *Olafisoye v Federal Republic of Nigeria*¹⁴ as follows:

“Before the Court will embark on considering to depart from its previous judgment, an appellant who desires to have this done, must comply with the necessary procedure provided by the rules . . . The appellant did not take steps in compliance with order 6 rule 5(4) of the Supreme Court Rules (as amended in 1999) for this Court to depart from the said decision. The said rule reads: ‘5(4) if the parties intend to invite the Court to depart from one of its own decisions, this shall be clearly stated in a separate paragraph of the briefs to which special attention shall be drawn, and the intention shall also be restated as one of the reasons’. Unless this is done, this Court will continue to feel bound by its earlier decision in the Ondo case and faithfully apply it as occasion may demand”.

There is no indication whatsoever that this procedure was followed in *Onuorah*. Indeed, there was no mention of *Edegbero* at all. It is for this reason therefore, that one is unable to accept the view by some that *Edegbero* has been impliedly overruled. Such a principle, with the greatest respect, does not exist in law.

The position instead, is that *Onuorah* was bound to follow *Edegbero* and not having done that, has now created a conflict namely, that an action in which an order of declaration, injunction, damages or specific performance is claimed against the Federal Government or any of its agencies in respect of a contract, on the authority of *Edegbero*, can only be instituted in the Federal High Court and not the State High Court, whereas, on the authority of *Onuorah*, cannot be instituted in the Federal High Court but in the State High Court.

¹⁴ [2004] 4 NWLR (pt 864) 580 at 681 - 682 See also *Adesokan v Adetunji* [1994] 5 NWLR (pt 346) 540; *Epevokun v University of Lagos* [1987] Q.L.R. 1; [1986] 4 NWLR (pt 34) 162

This conflict unfortunately leaves the lower courts with the option of picking and choosing which of the two decisions to follow.¹⁵ Of course, the damage that this will do to certainty and stability of the law on the subject and ultimately to the doctrine of judicial precedent, is better imagined.

CONCLUSION:

It is suggested that the Court of Appeal as soon as it has the opportunity of being faced with these two conflicting decisions, should state a case to the Supreme Court¹⁶ so that the Court will have the opportunity of either reconciling the two decisions or overruling one. In the meantime and for the purpose of certainty and stability of the law, the Supreme Court will do well to consider its past decisions in arriving at new ones on the same subject. Counsel should also be more diligent in drawing attention of the Court to these past decisions.

The conflicts are simply becoming too many¹⁷ and a burden on those of us whose job it is to teach the law as it is and not to explain the law as it ought to be.

¹⁵ *NEPA v Onah* [1997] 1 SCNJ 220; *Atolagbe v Awuni* [1997] 7 SCNJ at 20

¹⁶ See *Alhaji v Egbe* [1986] 1 NWLR (pt 16) 361.

¹⁷ Recently one had cause to examine one of the decisions of the Supreme Court that did not make reference to earlier binding authorities, see OKORIE, P.C. "Extent of the Jurisdiction of the High Courts to Try Fundamental Human Rights Cases in Nigeria: A Review of the Supreme Court Decision in *Grace Jack v University of Agriculture, Makurdi* [2004] 5 NWLR (pt 865) 208", *Nigerian Bar Journal*, Vol. 2 No 2, April 2004.