AN AGREEMENT TO HIRE HOUSEBOAT IS NOT WITHIN THE REALM OF ADMIRALTY JURISDICTION: TSKJ (NIG) LTD V. OTOCHEM (NIG) LTD (2018) 11 NWLR (PT.1630) 330

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Abstract
The general principle of law in maritime jurisdiction is that issues of admiralty matters are exclusive jurisdiction of the Federal High Court having regard to section 251(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). However, there have been dilemmas as some cases had posed difficulties to determine court with jurisdiction over it, as it may not be straight jacketed one.This research investigates the clog that is making it extremely thorny to decipher the court that can host such occurrence. The paper finds out that the inability to decipher the court (State or Federal High court) sometimes leads to striking out or dismissal of such matter which no doubt prejudice the interest of the litigants even if they have good cases. The paper recommends adequate consideration of the nature of a case, as an action for breach of contact for supply of goods conveyed by Sea does not change the character of an admiralty action, notwithstanding the movement of the subject matter of the transaction by Sea from one country to another.

Keywords: Agreement, Hire Houseboat, Realm, Admiralty, Jurisdiction.

1. Introduction

The issue of jurisdiction concerning maritime cases has been thereby making it extremely difficult to comprehend and decipher the court that can host such occurrence. That pitfall in the inability to decipher would be that where such an action is instituted in a wrong court, it would be struck-out or dismissed as the case may be a subject of controversy between the Federal High Court and State High Court in Nigeria over the years.[1] By the provision of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Federal High Court is clothed with the jurisdiction to entertain matters relating to admiralty/maritime jurisdiction.[2]The question that follows is howto determine whether a matter is admiralty in nature. The Constitutionhad the settled matters that fall under the admiralty law. Once a matter is adjudged an admiralty, it is the Federal High Court that possesses the power to adjudicate on such matter. However, occasions have arisen where the issue

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[1] See for example the cases of *Onuorah v. Kaduna Refining and Petrochemical Co. Ltd* (2005) 6 NWLR (Pt. 921) 393; *Trade Bank Plc v. Benilux (Nigeria) Ltd* (2003) 9 NWLR (Pt. 825) 416: *Adeyemi v. Opeyori*(1976) 6-10 SC 31 among others.

[2] See section 241(i)(g) of the Constitution of the Federal Republic of Nigeria 1999 (as Amended).

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of what constitutes admiraltywould not be a straight jacketed one;[3]State High Courts in Nigeria have jurisdictions to entertain all strata of cases except those stated under section 251 of the Constitution.[4]

The above background informed the review of the decision of the Supreme Court of Nigeria in the case of *TSKY (Nig) Ltd v. Otochem (Nig) Ltd* which was basically on the agreement to hire a houseboat.

2. Facts of the Case

In this case, Otochem (Nig) Ltd, an incorporated liability company whichcarries on the business of marine construction and equipment instituted this action as the plaintiff. According to the Statement of Claim, sometime in February 1997, an agreement was entered with the Defendant (TSKJ (Nig) Ltd) for the supply of houseboat for the temporary use of its staff. Part of the arrangement between the parties was that the Defendant would make an advance payment of ₦6,288,000.00representing the rental value at the rate of ₦100,000.00 per day for two month as well as the cost of transporting the boat from Warri to Bonny. Certain modifications were also made to the boat before delivery.

On the other hand, the case of the Defendant was that after the houseboat had been delivered, the Plaintiff requested for upgrading to European Executive Standard and that it actually carried-out further modifications to the boat at a cost of ₦12 million. However, after the completion of the modification based on specification of the Plaintiff, the Plaintiff neglected or refused to settle its bill and that the houseboat remained in the Plaintiff's possession for a period of 148days before it was recovered thereof. Therefore, the recovery of the houseboat by the Defendant from the Plaintiff's possession prompted the institution of this case. The plaintiff claims before the trial courts are as follows:

i. ₦14,800,000 (fourteen Million, Eight Hundred Thousand Naira Only) representing tire rental for 148days.
ii. ₦12,000,000 (Twelve Million Naira Only) as special damages.
iii. ₦40,000,000 (Forty Million Naira Only) as general damages.

3. Proceeding of the Court

At the end of the proceeding, the trial HighCourt of Rivers State awarded the sum of ₦32, 000,000.00 (Thirty Two Million Naira) only in favour of the Plaintiff,

[3] See for example the decision of the court in the case of P&I club V. M.T Clover Pride.

[4] For the avoidance of doubt, section 272(1) provides:" subject to the provision of section 251 and any other provisions of the Constitution, the High Court of a State shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relation to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person."

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representing special damages, advance payment before or at the delivery of the boat and daily hire of the houseboat for 2 months and 28 days.

Miffed by the judgment of the trial court, the Defendant appealed to the Court of Appeal which set aside the Judgment of the trial court in part, especially the award of special damages of ₦12,000,000.00 (Twelve Million Naira) only. On this premise, the Plaintiff also being dissatisfied with the decision of the Court of Appeal, further appealed to the Supreme Court of Nigeria. The Supreme Court of Nigeria dismissed the appeal on the ground that mere fact that a ship is involved in a simple contract does not automatically make that simple contract a subject of jurisdiction in admiralty matters. The case of *Texaco Overseas Nigeria Petroleum Company Unlimited v. Pedmar Nigeria Ltd*,[5] was cited in aid.

The jurisdiction of the Federal High Court of Nigeria concerning maritime or admiralty matter became crystallisedfollowing the enactment of the provision of section 251 (1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) which goes:

> Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon 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 causes and matters-
> (g) any admiralty jurisdiction, including shipping and navigation on the River Niger or River Benue and other affluent and on such other inland waterway as may be designated by any enactment to be on international waterway, all Federal ports (including the Constitution and powers of the ports authorities for Federal ports) carriage by sea.

To give credence to the provision of section 251 (1) above, Per Suleiman Galadima, J.S.C, in the case of *Ports and Cargo Handlings Service Company Limited &ors v.Migfo Nigeria Ltd*,[6] stated as follows:

> I agree with the learned Senior Counsel for the Appellants that the phrase, "any matters arising within a Federal Port" is further qualified to the extent that such matters must relate to claims for loss of or damage to goods occurring between the offloading of goods across space from a ship or any aircraft and their delivery at the Consignee's premises or during Storage or transportation before delivery of the consignment. Applying the *ejusdem generis* rule of construction, such matters "arising within a federal port" can only include other similar matters. In other words, the matters arising within a Federal Port to

[5](2002) 13 NWLR (Pt. 785) 526. See also *American International Insurance Co. Ltd. v. Ceekay Traders Ltd* (1981) 5 SC 81.

[6] SC.42/2009, delivered on 8th June, 2012. See also *S.O. Ntuksvs NPA*, SC.190/2003, delivered on 11thMay, 2007.

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fall under the admiralty jurisdiction of the Federal High Court, such matters must be marine-related.

3.1 Jurisdiction as a Threshold

The issue of jurisdiction is a threshold concern that must be addressed in any given circumstance it presented itself. It has been stated that a proceeding well conducted by a court devoid of jurisdiction,[7] amounts to a nullity.In the case of *Nigergate v. Niger State Government,*[8] the 1st Defendant awarded a contract of the management of control posts located in Niger State, Nigeria for the purpose of collecting taxes relating to all live stock, grains produce and other goods transporting via the state to the Plaintiff. By term of the contract, the contract commenced on the 1st February 2001 and to terminate on the 31st of January 2005. By this arrangement, the contract was to last for a period of 5 years.It was however unilaterally terminated by the 1st Defendant on the allegation of irregular remittance of monthly dues by the Plaintiff. The Plaintiff instituted an action at the High Court Niger State, the action was dismissed. But on appeal, the Plaintiff was reinstated to the management based on the agreement between the parties. The Defendant waited till the effluxion of time as contained in the Contract Agreement and thereafter terminated the contract.

The Plaintiff was dissatisfied with the termination and filed another action. It was contendedon behalf of the Plaintiff that the contract ought to continue till 2008. The application of the Plaintiff to continue the management until the final determination of the suit was dismissed on the ground that the issue had earlier been determined by the Court of Appeal, hence, the court was divested of the jurisdictional competence in the circumstance. The court held that:

> The jurisdiction of a court is very fundamental to the adjudication of the matter before it. It is so much radical that it forms the foundation of adjudication. It is the cornerstone of all litigations. If a court lacks jurisdiction, it lacks the necessary competence to entertain the claim before it. Where an objection is raised to the jurisdiction of the trial court to try an action, the court atthat stage has to enquire whether in fact its jurisdiction has been ousted.[9]

It has been demonstrated in the above decision of the court that issue of jurisdiction goes to the root of the matter and must be given adequate attention by the court. This is because issue of jurisdiction is capable of nullifying the entire proceeding, no matter how well conductedand it could be raised at any time, even at the Supreme Court being the last resort in Nigeria.[10]

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[7] See *Fidelity Bank Plc v.The M.T. "Tabora"* (2018) 12 N.W.L.R (Pt. 1632) 135.

[8] (2008) ALL FWLR (pt 406) 1938 at 1965

[9] See also *Madukolum v. Nkemdilim* (1962) 1 ALL NLR 588, *Nwosu v. Imo State Environmental and Sanitation Authority* (1990) 2 NWLR (pt 135) 688, *Oloba v. Akereja* (1988) 3 NWLR (Pt 84) 508, *Aremoll v. Adekanye* (2004) ALL FWLR (Pt. 224) 2113

[10] In the case of *Nigerian Port Authority v. Aminu Ibrahim&Co* (2018) 12 NWLR (pt 1632) 62 at 77, the court held reinstated

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Therefore, the issue of jurisdiction raised by the Defendant was in order, although the court held that trial High Court of Rivers State has the jurisdiction to hear and determine the case *ab-initio*, being a case of simple contract of debt recovery.[11] If the Supreme Court had held otherwise, it would have nullified the entire proceedings of the trial court.

3.2 Recovery of Accrued Hire Rentals of Houseboat

Evidently, what affected the chancesand/or objection to the jurisdiction of the High Court of Rivers State was the erroneous intuition that an agreement for the hire of houseboatis one of the admiralty matters.The Defendant in the case of*TSKJ Ltd v. Otochem,supra*was unable to decipher whether agreement for hire of houseboat falls under admiralty jurisdiction in our jurisprudence. The Defendant argued that contract for the hire of houseboat is one of matters within the jurisdiction of the Federal High Court and not High Court of State as being represented by the Plaintiff. It was contended, that admiralty Jurisdiction Act, Cap. A5, Law of the Federation of Nigeria, 2004defines a ship as a Vessel of any kind used or constructed for use in navigationby water, however it is propelled or moved and includes a barge, lighter or other floating vessel.[12]

What constitutes a ship has been defined in *Re Sedco, Inc*,[13]when court was asked to determine whether the SEDCO 135 rig was a vessel in order to determine and/or invoking the Limitation of Liability Act, 46 U.S.C & 183, Semisubmersible drilling rigs long have been held vessels for other statutory purposes. The case of*Offshore Co. v. Robison*[14] was cited in aid and it decided that semisubmersible was a vessel under the Jones Act. It followed then whether same craft would be a vessel under the Limitation Act. By the provision of the Limitation Act, "all seagoing vessels, and also to all vessels used on lakes or rivers or inland navigation, including canal boats, barges, and lighters.[15]Vessel has also been defined with reference to general statutory definition as "every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water."[16]

Admittedly, a houseboat could be taken to be a floating vessel or watercraft being used for transportation.[17] But can an agreement for hire of a houseboat convert same to admiralty jurisdiction? A house has been defined as a flat bottomed boat or barge

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[11] See I.T. Muhammad at page 344 in *TSKJ v. Otochem*, supra.

[12] Admiralty jurisdiction Act, 2004, Section 26

[13] 543 F. Supp. 561 (S.D. Tex. 1982).

[14] 266 F.2d 769, 779 (5th Cir. 1959).

[15] 46 U.S.C & 188.

[16] Louis B. Sohn and John E. Noyes, *Cases and Materials on the Law of the Sea,* (Transnational Publisher Inc., 2004), p.143.

[17] Note that some crafts that have nexus to the sea or inland waterways have been excluded from the Limitation Act. Conversely, see decisions in Re P. Sanford Ross, Inc., 196 F.921 (E.D.N.Y. 1912) where the district court held a barge fitted with a pile driver to be a vessel for limitation purposes. The court found that mooring the securely prior to driving craft piles did not alter the status of the craft, which was otherwise used in navigation and considered a vessel under the Limitation Act.

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with a superstructure fitted out for living in.[18] The present issue in the TSKJ's case is based on recovery of accrued hire rentals for the houseboat and damages for breach of contract though the houseboat was conveyed from Warri to Bonny Sea, cannot affect the jurisdiction of the River State High Court, being a State High Court to adjudicate on the matter.

That issue of jurisdiction can be raised by any of the parties at any stage of the proceeding at any time and before any court including the Supreme Court. The issue can also be raised by a court *suo-motu*; and where it is raised, it must be decided first.[19]

The above position that an agreement for hire of houseboat cannot be regarded as admiralty matter was fortified by the Supreme Court in the case of *Chevron Nigeria Ltd v. Lonestar Drilling Nigeria (Ltd),*[20] where it was held that an action for breach of contract for supply of goods conveyed by Sea does not give that action the character of an admiralty action. The fact that a transaction between two parties in Nigeria involves the movement of the subject matter of the transaction by Sea from another country to Nigeria is of no moment.[21]

4. Conclusion

It has been demonstrated in this case review that the issue bothering on recovery of debt emanating from the rent of houseboat cannot be characterised as one of maritime claims. It is not in doubt that houseboat may be grounded as vessel contemplated under the Admiralty Jurisdiction Act, Limitation Act and other enactments, but an agreement to hire houseboat appears more of simple contract that should not be clothed with admiralty empathy. It is essential that when confronted with issues of maritime claim, there is need to understand the class such of claim and determine whether it falls under the proprietary or general maritime claims. The ability to classify those claims would assist and avert avoidable pitiable objections on the ground of jurisdiction of the court.

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[18] Aka'ahs J.S.C in the case of *TSKJ V. Otochem*, supra.

[19] See also Durwode v. State(2000)15 NWLR (pt. 691) 467, *Elabanjo v. Dawodu*(2006)15 NWLR (pt. 1001)76, *NDIC v. C.B.N* (2002)7 NWLR (pt. 766)272; *Bronik Motors v. Wema Bank (Nig. Ltd* (1983) SCNLR 296 to mention but a few.

[20] (2007)16 NWLR (pt. 1059)168

[21] In *Adelekan v.Ecu-Line NV* (2006)12 NWLR (pt. 993)33 at 52, it was held that the provisions of section 251 of the constitution of the Federal Republic of Nigeria, 1999 are very clear and unambiguous. It is the section that confers jurisdiction on the Federal High Court, which jurisdiction clearly does not include dealing with any case of simple contract or damages for negligence as envisaged by the action before the trial court.

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