**DEC OIL & GAS LIMITED**

**V.**

**SHELL NIGERIA GAS LIMITED**

IN THE SUPREME COURT OF NIGERIA

ON FRIDAY, THE 12TH DAY OF JULY, 2019

SC.333/2010

**LEX (2020) – SC. 333/2010**

**OTHER CITATIONS**

3PLR/2020/12 (SC)

(2019) LPELR-49347 (SC)

**BEFORE THEIR LORDSHIPS**

IBRAHIM TANKO MUHAMMAD, JSC

OLUKAYODE ARIWOOLA, JSC

JOHN INYANG OKORO, JSC

PAUL ADAMU GALUMJE, JSC

UWANI MUSA ABBA AJI, JSC

**BETWEEN**

DEC OIL & GAS LIMITED - Appellant(s)

AND

SHELL NIGERIA GAS LIMITED - Respondent(s)

**ORIGINATING COURT**

1. COURT OF APPEAL (Lagos Division)

2. FEDERAL HIGH COURT (Lagos Division, Okeke J. Presiding)

**REPRESENTATION**

J.T.O Ugboduma with him, A. Ayogu, Esq. and C. I Igbenedion, Esq. - For Appellant

AND

Mrs. Abimbola Williams- Akinjide SAN with him, E. OSAGIE. - For Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

COMMERCIAL LAW – CONTRACT:- Simple contract – Nature of - Termination of – Issues arising therefrom – Court with jurisdiction to entertain same

CONSTITUTIONAL AND HUMAN RIGHT LAW - RIGHT TO FAIR HEARING:- Breach of – Duty on party asserting breach to prove same – Effect of failure thereto - – Where Judge raises and answers constitutional question suo motu without inviting address of Counsels/parties – Whether amounts to a breach of fair hearing rights

CONSTITUTIONAL LAW – SUPREMACY CLAUSE AND VALIDITY OF ACTS OF THE NATIONAL ASSEMBLY:- Constitutional guarantee of the right of appeal over decisions of the Federal High Court pursuant to s. 233 of the 1999 Constitution (as amended) - Section 22(4) of the Federal High Court Act which designates any order of transfer of a matter made by the Federal High Court to a State High Court unappealable – Validity of

CONSTITUTIONAL LAW – JUDICIAL POWERS – FEDERAL HIGH COURT:- Jurisdiction of Federal High Court over mines and minerals under Section 251(1)(n) of the 1999 Constitution – Extent of – Where parties at least one of the parties is a federal entity and subject matter of the litigation appears to fall within the legislative competence of the National Assembly – Whether necessary to further review the pleadings of the plaintiff so as to understand the facts and circumstances of the case

ADMINISTRATIVE AND GOVERNMENT LAW – JUDICIARY:- Power of Federal High Court pursuant Section 22(2) of the Federal High Court Act to transfer a case to a State/FCT High Court – Legal validity of – Nature of power exercised – Where Judge acts suo motu without inviting address of Counsels/parties – Whether amounts to a breach of fair hearing rights

OIL AND GAS/ENERGY LAW - MINING:- Case based solely on contract connected with an oil and gas entity – Contract for construction of Gas Distribution, Pipelines, Personnel and equipment as per contract – Where not directly connected to mines and minerals as envisaged under 251(1)(n) of the 1999 Constitution – Whether falls under the jurisdiction of the Federal High Court

**PRACTICE AND PROCEDURE ISSUES**

COURT - JURISDICTION:- What determines jurisdiction of Court to entertain a cause/matter – Whether it is the relief claimed as endorsed in the writ of summons and the statement of claim

COURT - DUTY OF COURT: Duty of an lower appellate Court to consider all issues for determination raised before it – Justification of – Failure thereto – Legal implications – Whether ground for voiding the final decision of the lower appellate court

COURT - TRANSFER OF CASES: Transfer of a case by a High Court suo motu to another court deemed legally appropriate for it pursuant to Section 22(2) of the Federal High Court Act – Failure of Court to call for address of contending parties before issuing the order - Whether amounts to breach of fair hearing

COURT - COURT OF APPEAL – POWERS: - Powers of the Court of Appeal pursuant to Section 15 of the Court of Appeal Act – Extent of – Duty of Court to restrict use of the power to the determination of real issue in controversy in the appeal – Duty not to extend it to striking out or dismissing an appeal in which the issues in controversy have not been fully determined

COURT - COURT OF APPEAL – POWERS: - Powers of the Court of Appeal pursuant to Section 15 of the Court of Appeal Act – Stipulation that the Court shall have full jurisdiction over the whole proceedings as if the proceedings had been instituted in the Court of Appeal as a Court of first instance – Meaning of – Whether empowers Court of Appeal to transfer a case from Federal High Court to a State/FCT High pursuant to Section 22(2) of the Federal High Court Act

COURT - TRANSFER OF CASES:- Federal High Court – Powers of, pursuant to Section 22(2) of the Federal High Court Act - Causes over which it has no jurisdiction - Whether can make a valid order transferring such a matter to a State/FCT High Court

COURT - TRANSFER OF CASES:- Federal High Court – Powers of, pursuant to Section 22(2) of the Federal High Court Act - Causes over which it has wrongly assumed, wrongly declined or properly declined jurisdiction - Whether can make a valid order transferring such a matter to a State/FCT High Court – Proper treatment of

COURT – TRANSFER OF CASES:- Court of Appeal - Powers of, Powers of the Court of Appeal pursuant to Section 15 of the Court of Appeal Act – Acting as a Court of first instance where Federal High Court wrongly assumed jurisdiction – Whether Court of Appeal can validly invoke Section 22(2) of the Federal High Court Act as to make a valid order transferring such a matter to a State/FCT High Court

JUDGMENT AND ORDER - CONSEQUENTIAL ORDER: Nature and purpose of – Principle that a “consequential order merely gives effect to a judgment or order to which it is consequential. It is directly traceable to or flow from the judgment or order duly prayed for and made” – Legal effect

JURISDICTION - JURISDICTION OF THE STATE/FEDERAL HIGH COURT: Simple contract connected with a maritime or oil and gas asset – Court with jurisdiction to hear same - Whether the State High Court or Federal High Court – Basis of

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

Both parties are companies incorporated in Nigeria which primary operations fall under the legislative domains of the National Assembly to wit: business of Design Engineering/construction in the Hydrocarbon Oil/Gas Sector in Nigeria and Natural Hydrocarbon Gas exploitation, transmission, management, distribution and sales respectively. Their operations, therefore, prima facie seems to fall under the jurisdiction of the Federal High Court. However, the dispute disclosed in the Appellant/Plaintiff writ was that of a simple contract for the design and construction of subsurface and Submarine Natural Gas Pipeline for transmission and distribution of Natural Gas to Agbara and Ota, which contract had an effective date of commencement of 15th March, 2000 and a scheduled completion date of 20th October, 2000. During the execution of the contract, the appellant claimed that he incurred additional expenditures with the knowledge of the respondent. Even though the respondent made substantial payment to the appellant, misunderstanding ensued between them which led to the issuing of a letter of termination of the contract on the 4th of December, 2001 by the respondent.

The appellant, aggrieved by the termination of the contract took out a writ of summons and a statement of claim at the Federal High Court, Lagos Division, in which it claimed special damages, N2 billion in general damages for loss of good will, business prospects, sub-contractors, and staff loyalty, bankers confidences for failure to keep to scheduled loan repayment obligations, equipment deterioration etc., among other reliefs.

The trial court (Federal High Court, Lagos, Okeke J.), granted all the reliefs sought by the appellant and dismissed respondents counter claims.

Court of Appeal (Lagos Division) heard the appeal of the Respondents during which, for the first time, Respondents raised the issue of the jurisdiction of the Federal High Court. After extensive analysis of Section 251(1)(n) of the 1999 Constitution of the Federal Republic of Nigeria and references to decided cases, the lower Court came to conclusion that the trial Federal High Court lacked jurisdiction to hear, and determine the appellants claims which were based on simple contract. The respondents’ appeal was allowed and by virtue of Section 24(2) of the Federal High Court Act and further, by the authority of Section 15 of the Court of Appeal Act, the lower Court transferred the ease to the Lagos State High Court as a judicial forum with the requisite jurisdiction, to hear and determine the case.

DECISION(S) APPEALED AGAINST

The Court of Appeal held that –

1. the case is one founded on simple contract within the jurisdictional competence of State/FCT High Courts but outside of the jurisdiction of the Federal High Court [Appeal];

2. the issue placed before the trial Court have nothing to do with "mining operation and do not fall within the preview of Section 251(1)(n) of 1999 Constitution [Appeal].

3. pursuant to its powers under S. 15 of the Court of Appeal Act, it had the competence to invoke s. 24 (2) of the Federal High Court Act to transfer the case to Lagos State High Court for fresh adjudication instead of making an order striking out or of dismissal. [Cross-appeal].

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT:*

(1) Whether in view of the jurisdiction conferred on the Federal High Court Act, Cap. F12, LFN, 2004, the Court of Appeal was right when it held that the Federal High Court lacked jurisdiction to entertain the appellants claim which arose from the construction of gas pipelines.

(2) Whether the Court of Appeal was right when it held that the case of SPDC Ltd. v. Isaiah (2001) 11 NWLR(Pt.723) 168 does not apply to the facts of this case now on appeal.

*BY RESPONDENTS*

1. Having regard to the nature of the plaintiffs claims set out in the plaintiffs writ of summons and statement of claim, was the Court of Appeal right in holding that the plaintiffs suit is an action for damages for alleged breach of contract for which the Federal High Court lacks jurisdiction to entertain. *[Appeal]*

2. The Federal High Court having not declined jurisdiction in the matter but instead assumed jurisdiction, albeit wrongly, and determined on the merit the plaintiff/respondents claims and delivered a final judgment, whether or not the Court of Appeal was right in the circumstances of the matter, in invoking of Section 22(2) of the Federal High Court Act and transferring the matter to the Lagos State High Court for determination purportedly pursuant to Section 15 of the Court of Appeal Act instead of striking out the plaintiff/ respondents claims *[Cross Appeal]*.

3. Did the finding by the Court of Appeal on issue one of the defendant/appellants brief of arguments that the Federal High Court wrongly assumed jurisdiction in the matter relieve the Court of Appeal, an intermediate Court of the duty to consider and determine the other eight issues for determination canvassed by the parties in the circumstances of this case *[Cross Appeal]*?

4. Was the Court of Appeal right to have raised, considered and ordered, suo motu, that the matter be transferred to the High Court of Lagos State for determination without affording the parties an opportunity of being heard on that point before that decision was made. *[Cross Appeal]*

*AS ADOPTED BY COURT*

[Court treated the issues as framed by the parties]

**DECISION OF SUPREME COURT**

1. Unlike the State High Court which is a Court of unlimited jurisdiction, the Federal High Court is a special Court with limited but exclusive jurisdiction clearly specified under Section 251 of the Constitution which will nopt assume jurisdiction on items outside Section 251 of the Constitution, unless jurisdiction on such matters is conferred upon it by the National Assembly. Simple contract is not within the jurisdiction of the Federal High Court.

2. Appellants claims at the trial Court were based on simple contract of service. The nature and scope of activities to be undertaken in a contract document does not change the complexity of the contract. Even though the contract was for construction of Gas Distribution Pipelines, it does not translate into mines and minerals (including oilfields, oil mining, geological surveys and natural gas) as envisaged by Section 251(1)(n) of the Constitution. [That Section] concerns ownership and general administration of mines including mineral prospecting and incidental occurrences like damages from exposure to mineral resources.

3. Section 22(2) of the Federal High Court Act empowering the Court to transfer a case to State/FCT high Court is valid but Section 22(4) making such a transfer an unappealable decision is void for barring a party from exercising a constitutional right granted by the Constitution.

4. The provision of Section 15 of the Court of Appeal Act properly is for the making of order, necessary for determining the real issue in controversy in the appeal. The power is not to strike out or dismiss an appeal in which the issues in controversy have not been fully determined.

5. Section 15 of the Court of Appeal Act also grants the Court of Appeal full jurisdiction over the whole proceedings as if the proceedings had been instituted in the Court of Appeal as a Court of first instance thereby entitling it to make orders that the trial Court ought to have made including the powers to transfer the case to a State/FCT High Court.

**MAIN JUDGMENT**

PAUL ADAMU GALUMJE, J.S.C. (Delivering the Leading Judgment):

The appellant herein is a company incorporated in Nigeria with limited liability, and carries on the business of Design Engineering and construction in the Hydrocarbon Oil and Gas Sector in Nigeria.

The respondent is a company incorporated in Nigeria with limited liability and carries on the business of Natural Hydrocarbon Gas exploitation, transmission, management, distribution and sales.

Sometimes in March 1999, the appellant and the respondent entered into a written contract No. L01408 for the design and construction of subsurface and Submarine Natural Gas Pipeline for transmission and distribution of Natural Gas to Agbara and Ota, which contract had an effective date of commencement of 15th March, 2000 and a scheduled completion date of 20th October, 2000. The original contract ceiling stipulated in the contract was N393,563,264.00 and US$8,803,388.80.

During the execution of the contract, the appellant claimed that he incurred additional expenditures with the knowledge of the respondent. Even though the respondent made substantial payment to the appellant, misunderstanding ensued between them which led to the issuing of a letter of termination of the contract on the 4th of December, 2001 by the respondent. The appellant felt aggrieved by the termination of the contract by the respondent and therefore took out a writ of summons and a statement of claim both dated and filed on the 13th November, 2002, at the Federal High Court, Lagos Division, in which it claimed the following special damages:-

1. Value of the work done (VOWD) not paid for on the original contract N60,416,722.19 and USD1,351,426.88.

2. Completed Additional Works as agreed upon on joint site verification N85,505,938.11 and USD2,192,454.30

3. Interest on Returned invoices of August 2001 = N783,950,601.07.

4. Standby charges on personnel and equivalent as per contract =N325,756,723.60 and USD20,310,262.28.

5. Value of work done on extra dredging based on the Probing Result and Bathymetric Survey on the Oko-Omi River = N1,458,300.25 and USD10,121,436.00.

6. Interest on (1), (4), and above at 40% per annum from 6/1/2002, till 30/10/2002 and thereafter of 22% per annum until judgment.

7. Interest on the judgment debt of 10% until satisfaction thereof.

In addition, the appellant claimed the sum of N2 billion in general damages for loss of good will, business prospects, sub-contractors, and staff loyalty, bankers confidences for failure to keep to scheduled loan repayment obligations, equipment deterioration etc.

The respondent as defendant at the trial Court filed a memorandum of conditional appearance on 20th November, 2002 and subsequently filed a statement of defence with annexures on the 12th December, 2002. This statement of defence was amended several times, and the final amended statement of defence was filed on the 19th November, 2007, wherein the respondent set out counter-claims.

Issues having been properly joined, the case proceeded to trial. At the end of the trial and in a reserved and considered judgment delivered on the 27th October, 2008, Okeke J., granted all the reliefs sought by the appellant and dismissed respondents counter claims.

Aggrieved with the decision, the respondent appealed to the Court of Appeal (the lower Court) Lagos Division and submitted nine issues distilled from nineteen grounds of appeal for determination of the appeal. For the first time, learned senior counsel for the respondent raised the issue of the jurisdiction of the Federal High Court, which was the fulcrum of the first issue for determination.

After extensive analysis of Section 251(1)(n) of the 1999 Constitution of the Federal Republic of Nigeria and reference to same cases decided by this Court, the lower Court came to conclusion that the trial Federal High Court lacked jurisdiction to hear, and determine the appellants claims which were based on simple contract. The respondents appeal was allowed and by virtue of Section 24(2) of the Federal High Court Act and by the authority of Section 15 of the Court of Appeal Act, the lower Court transferred the ease to the Lagos State High Court that has the requisite jurisdiction, to hear and determine it.

The appellant before this Court is dissatisfied with the decision of the lower Court. Being aggrieved, it has brought this appeal. Its notice of appeal filed on the 3rd of June 2010 contains two grounds of appeal. These two grounds, without their particulars, are reproduced hereunder for clarity as follows:-

1. The learned Justices of the Court of Appeal erred in law when they held, thus:

The plaintiff/respondents action was for the recovery of monies for works allegedly done by the plaintiff/ respondent under the contract, which works plaintiff/ respondent claimed were not paid for by the defendant/ appellant. By the nature of the claim, I am of the firm view that Section 251(1)of the 1999 Constitution cannot be invoked to confer jurisdiction on the Federal High Court. The present case is simply an action for damages for alleged breach of contract. It is settled law that Federal High Court has no jurisdiction in matters(n)of simple contract.

2. The learned Justices of the Court of Appeal erred in law when they held that the issue placed before the trial Court and before this Court have nothing to do with "mining operation and do not fall within the preview of Section 251(1)(n) of 1999 Constitution unlike SPDC v. Isaiah (supra).

The respondent herein is also not happy with certain aspect of the judgment, particularly, the order of transfer of the case to the Lagos State High Court by the lower Court. Being aggrieved, it has appealed to this Court.

The appeal is given number SC.333A/2010. The respondents notice of appeal filed on the 7th of June, 2010 contains three grounds of appeal, which I reproduced hereunder, without their particulars as follows:-

1. The learned Justices of the Court of Appeal erred in law in ordering that the matter be transferred to the Lagos State High Court for determination instead of dismissing or striking out the plaintiffs entire claims.

2. The learned Justices of the Court of Appeal erred in law when they failed to determine and pronounce on all the other issues for determination in the appeal simply because they had found that the lower Court wrongly assumed jurisdiction in the matter.

3. The learned Justices of the Court of Appeal erred in law when they, suo motu, raised and determined the issue of transfer of the matter to the Lagos State High Court without affording the defendant/appellant on opportunity of being heard on that point.

Parties filed and exchanged briefs of argument. There are two appeals before this Court arising from the same judgment. I will therefore determine the appeal filed by the appellant, before I deal with the appeal No. SC.333A/2010, filed by the respondent.

The appellants brief of argument in SC.333/2010 is settled by J.T.O. Ugboduma, Esq., Learned counsel formulated two issues for determination of this appeal. They read as follows:-

(1) Whether in view of the jurisdiction conferred on the Federal High Court Act, Cap. F12, LFN, 2004, the Court of Appeal was right when it held that the Federal High Court lacked jurisdiction to entertain the appellants claim which arose from the construction of gas pipelines.

(2) Whether the Court of Appeal was right when it held that the case of SPDC Ltd. v. Isaiah (2001) 11 NWLR(Pt.723) 168 does not apply to the facts of this case now on appeal.

Chief Richard Akinjide, learned senior counsel for respondent, settled the respondents brief of argument filed on the 8th of November, 2010. Learned senior counsel formulated one issue for determination of this appeal, in the following terms:-

Having regard to the nature of the plaintiffs claims set out in the plaintiffs writ of summons and statement of claim, was the Court of Appeal right in holding that the plaintiffs suit is an action for damages for alleged breach of contract for which the Federal High Court lacks jurisdiction to entertain.

Learned counsel for appellant filed a reply brief on the 6th of December, 2010. I have carefully read through the record of this appeal and the briefs of argument filed by parties in this appeal. I am therefore of the firm view that the sole issue formulated by learned senior counsel to the respondent as adequately covered the field. I will therefore adopt the issue formulated by the respondent in the determination of this appeal.

In his argument, learned counsel for the appellant submitted that the Court of Appeal was wrong in law to have held that the Federal High Court lacked jurisdiction to entertain the appellants claim which arose from the construction of gas pipelines in view of the ample jurisdiction vested in the Federal High Court under Section 251(1)(n) of the 1999 Constitution and Sections 7(1)(n) and 7(3) of the Federal High Court Act, 2004. In a further argument, learned counsel submitted that the Courts have consistently held that once the cause of action arose from or related to or is connected with or pertain to mines and minerals, including oil fields, oil mining, geological surveys and natural gas, it is the Federal High Court that has the exclusive jurisdiction to determine it. In aid, learned counsel cited Barry v. Eric (1998) 8 NWLR (Pt. 562) 404 (CA); The Shell Petroleum Dev. Co. of Nigeria Ltd v. Maxon (2001) 9 NWLR (Pt. 719) 541 (CA); The Shell Petroleum Dev. Co. of Nigeria v. Isaiah (2001) 11 NWLR (Pt. 723) 168 (SC); C.G.G. (Nig.) Ltd. v. Ogu (2005) 8 NWLR (Pt. 927) 366.

For the respondent, it is argued that the Court of Appeal was right in holding that the appellants action at the trial Court is predicated on simple contract and that the Federal High Court lacked jurisdiction to entertain the suit. Learned senior counsel cited several authorities in support of his submissions. I will consider some of these authorities in course of this judgment.

Generally it is the relief claimed that determines the jurisdiction of a Court. This is the position this Court has adopted in a myriad of cases, which include Adeyemi v. Opeyori (1976) 9 - 10 SC 31; Tukur v. Government of Gongola State (1989) 4 NWLR (Pt. 117) 517 at 549 paras B - D; Akinfolarin v. Akinnola (1994) 3 NWLR (Pt. 335) 659; Magaji v. Matari (2000) 8 NWLR (Pt. 670) 722 at 735 paras F- G. The question of whether a Court can entertain or exercise jurisdiction in a particular case or matter will, to a large extent, depend on the reliefs claimed, as endorsed in the writ of summons and the statement of claim. The reliefs claimed by the appellant in this case at the trial Court, has been reproduced elsewhere in this judgment.

The appellant admitted in its statement of claim that it entered into a contract of service with the respondent which is evidenced by a written contract No. L01408 and that because the respondent unilaterally revoked the contract aforesaid, that it resorted to Court action. It itemized its special claims into seven paragraphs. The first paragraph is claim for work done and not paid on the original contract ceiling. The second is for completed additional work as agreed on joint site verification. The fourth paragraph is claim for standby charges on personnel and equipment as per contract and forth. There is therefore nothing in the appellants claim that is connected to mines and minerals as provided for under Section 251(1)(n) of the 1999 Constitution.

Unlike the State High Court which is a Court of unlimited jurisdiction, the Federal High Court is a special Court with limited, but of exclusive jurisdiction clearly specified under Section 251 of the Constitution. It is plain that the Federal High Court will not assume jurisdiction on items outside Section 251 of the Constitution, unless jurisdiction on such matters is conferred upon it by the National Assembly. The lower Court found that the appellants claims at the trial Court were based on simple contract of service. I agree with the lower Courts finding, especially when the letter of termination of the contract dated 3rd December, 2001 is reckoned with. That letter of termination at page 272 volume 1 of the record of this appeal reads thus:-

TERMINATION Of CONTRACT

The above contract refers

We hereby notify you of our intention to exercise our right of termination under the contract. Accordingly, this contract is hereby terminated pursuant to Article 21.1 of the contract with effect from 05.12.2001.

We hereby propose a meeting at our officeat Freeman House, 21/22 marina, Lagos on 06.12.2001 by 10.00 hours to agree on a schedule for a joint assessment of the work done including materials reconciliation and outstanding payments (if any). We intend to close out this activity by 07/12/2001.

From the claims of the appellant and the letter of termination as reproduced herein above, I have no doubt in my mind, that the lower Court was perfectly right when it held that the claims of the appellant were based on simple contract.

The nature and scope of activities to be undertaken in a contract document does not change the complexity of the contract. Even though the contract was for construction of Gas Distribution Pipelines, it does not translate into mines and minerals (including oilfields, oil mining, geological surveys and natural gas) as envisaged by Section 251(1)(n) of the Constitution. This Section in my view, concerns ownership and general administration of mines including mineral prospecting and incidental occurrences like damages from exposure to mineral resources. This is clearly not the issue in this case.

Learned counsel for the appellant has asked this Court to hold that this case is at all fours with the case of SPDC Ltd. v. Isaiah (2001) 11 NWLR (Pt. 723) 168. This is not true. The decision in Isaiah concerned oil spillage into the claimants land. The plaintiffs case in Isaiah, is that, a tree fell on the defendants pipeline carrying crude oil from the production head to the flow station. The tree dented the pipeline. The defendant employed a contractor to repair the pipeline. In the course of the repairs and in attempt to replace the dented portion of the pipeline, noxious crude oil freely spilled and spread into the plaintiffs dry land, swamps and streams causing pollution. The plaintiffs sued for damages and maintained that the defendant did not construct an oil trap to contain the spillage and no other precautionary measures were taken by the defendant. The plaintiff also claimed that as a result of the spillage, all the uses to which they put the said land, swamps and streams were permanently terminated. Clearly, Isaiahs case cannot be at all fours with the instant case which deals solely with simple contract.

Having come to this conclusion, that the appellants claim is based on simple contract, was the lower Court right when it held that the Federal High Court has no jurisdiction. I answer this in the affirmative. In Adelekan v. ECU-Line NV (2006) 12 NWLR (Pt. 993) 33 at 54 paras. F- H, this Court, per Onnoghen JSC, held:-

The provisions of Section 251 of the Constitution of the Federal Republic of Nigeria, 1999, hereafter called the 1999 Constitution 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.

See Onuorah v. KRPC (2005) 6 NWLR (Pt. 921) 393.

I wish to emphasize that this case has nothing to do with mines and minerals and the authority of SPDC v. Isaiah (supra) is inapplicable. The sole issue which I adopted for the consideration of this appeal is resolved against the appellant. Having so resolved the issue against the appellant, this appeal shall be and it is hereby dismissed.

On the appeal No. SC.333A/2010, the appellants brief of argument filed on the 20th September, 2010 was settled by Chief Richard Akinjide, SAN. At page 8 of the said brief of argument, learned senior counsel formulated three issues for determination of this appeal as follows:-

1. The Federal High Court having not declined jurisdiction in the matter but instead assumed jurisdiction, albeit wrongly, and determined on the merit the plaintiff/respondents claims and delivered a final judgment, whether or not the Court of Appeal was right in the circumstances of the matter, in invoking of Section 22(2) of the Federal High Court Act and transferring the matter to the Lagos State High Court for determination purportedly pursuant to Section 15 of the Court of Appeal Act instead of striking out the plaintiff/ respondents claims.

2. Did the finding by the Court of Appeal on issue one of the defendant/appellants brief of arguments that the Federal High Court wrongly assumed jurisdiction in the matter relieve the Court of Appeal, an intermediate Court of the duty to consider and determine the other eight issues for determination canvassed by the parties in the circumstances of this case?

3. Was the Court of Appeal right to have raised, considered and ordered, suo motu, that the matter be transferred to the High Court of Lagos State for determination without affording the parties an opportunity of being heard on that point before that decision was made.

Mr. J.T.O. Ugboduma, learned counsel for the respondent simply adopted the three issues formulated by learned senior counsel for the appellant.

In arguing the first issue for determination of this appeal, learned senior counsel for the appellant submitted that Section 22(2)of the Federal High Court Act and Section 15 of the Court of Appeal Act are neither applicable nor available to the Court of Appeal in the circumstances of this case and were wrongly invoked by the Court of Appeal. In a further argument, learned senior counsel submitted that the Federal High Court did not decline jurisdiction but heard and determined all the issues both of law, and of facts in the matter on the merit and delivered final judgment. It is learned senior counsels contention that the Court of Appeal would have been right if the Federal High Court had declined jurisdiction but failed to transfer the matter to an appropriate High Court. In aid, learned senior counsel cited the authorities in Egbuziem v. Nigeria Railway Corporation (1994) 3 NWLR (Pt. 330) 23 at 33, a decision of the Court of Appeal and Omoijahe v. Umoru (1999) 8 NWLR (Pt. 614) 1. Also cited as examples of where matters were transferred by the Court of Appeal and this Court when those matters were yet to be determined on the merit are F.C.E., Oyo State v. Akinyemi (2008) 15 NWLR (Pt. 1109) 21, and Gafar v. Govt. of Kwara State (2007) 4 NWLR (Pt. 1024) 375; Ayman Enterprises Ltd. v. Akuma Industries Ltd (2003) 12 NWLR (Pt. 836) 22. Learned senior counsel urged this Court to hold that any second trial by the High Court of Lagos State will grossly prejudice the appellant. Finally learned counsel urged the Court to resolve this issue in favour of the appellant.

In reaction to the argument proffered on behalf of the appellant, Mr. J.T.O. Ugboduma, learned counsel for the respondent submitted that the cross-appeal against the order of transfer of the suit from the Federal High Court to the Lagos State High Court pursuant to Section 22 of the Federal High Court Act made by the Court of Appeal under Section 15 of the Court of Appeal Act is incompetent, by virtue of Section 22 of the Federal High Court Act which makes the order unappealable.

In a further argument, learned counsel submitted that apart from the incompetence of the appeal, the Court of Appeal properly invoked the provisions of Section 22(2) of the Federal High Court Act and Section 15 of the Court of Appeal Act to transfer the case without hearing the parties. Learned counsel cited a host of authorities in support of his submission and finally urged this Court to resolve the first issue for determination of this appeal in favour of the respondent.

As a preliminary point, I wish to state that a right to appeal is a very important constitutional right and its exercise cannot be curtailed or fettered by any legislation. Section 1(1) of the Constitution of the Federal Republic of Nigeria, 1999 provides that the Constitution is supreme and its provisions shall have binding force on all authorities and person throughout the Federal Republic of Nigeria. Subsection 3 of the same Section says, if any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void. Section 22(4) of the Federal High Court Act which makes any order of transfer of a matter unappealable is inconsistent with the provision of Section 233 of the 1999 Constitution of Nigeria. In Aqua Ltd. v. Ondo State Sports Council (1988) LPELR 527 (SC), this Court per Karibi- Whyte said:-

It is an elementary and fundamental proposition that a right conferred by the Constitution cannot be taken away by any other provision except by the Constitution itself. The Constitution having conferred a right of appeal as of right, the Court of Appeal Act or rules of practice made under the Act, which derive their force from the Constitution cannot take away such a right. Any law so made will be inconsistent with the constitutional provision and void.

In Obikoya v. Wema Bank Ltd. (1998) LPELR- 2176 (SC), this Court per Oputa, J.S.C. said:-

A right to appeal is a very important constitutional right and its exercise ought not to be unduly fettered.

In Skye Bank v. Iwu, Ogunbiyi, J.S.C. made it clear, when he said:-

Constitutional right of an appeal (whether as of right or with leave) of a litigant cannot be curtailed or circumscribed except by an express provision in the Constitution. There should therefore be no reason to encourage the removal of such as it will signal dangerous trend.

See PDP v. Sherrif (2017) LPELR- 42736 (SC); Bello v. AG., Oyo State (1986) 5 NWLR 828; Total International Ltd. v. Awogboro (1994) 4 NWLR (Pt. 337) 147.

From the decision of this Court which I have cited above, it is very clear that Section 22(4) of the Federal High Court Act, barring a party from exercising his constitutional right is void. The appellants appeal herein is competent.

The starting point in this appeal is to examine the provisions of Section 15 of the Court of Appeal Act, which deals with the general powers of the Court of Appeal. The Section reads as follows:-

The Court of Appeal may, from time to time, make any order necessary for determining the real question in controversy in the appeal, and may amend any defect or error in the record of appeal, and may direct the Court below to inquire into and certify its findings on any question which the Court of Appeal thinks fit to determine before final judgment in the appeal, and may make an interim order or grant an injunction which the Court below is authorized to make or grant and may direct any necessary inquiries or accounts to be made or taken, and, generally shall have full jurisdiction over the whole proceedings as if the proceedings had been instituted in the Court of Appeal, as Court of first instance and may re-hear the case in whole or in part or may remit it to the Court below for the purpose of such re-hearing or may give such other directions as to the manner in which the Court below shall deal with the case in accordance with the powers of that Court, or, in the case of an appeal from the Court below, in that Courts appellate jurisdiction, order the case to be re-heard by a Court of competent jurisdiction. (Italics is mine).

The provision of Section 15 of the Court of Appeal Act is very clear as to the use of the powers of that Court. The power of the Court is to make order, necessary for determining the real issue in controversy in the appeal. The power clearly is not to strike out or dismiss an appeal in which the issues in controversy have not been fully determined. The Section also stipulates that the Court shall have full jurisdiction over the whole proceedings as if the proceedings had been instituted in the Court of Appeal as a Court of first instance.

This provision clearly means that whatever the Federal High Court was competent to do, the Court of Appeal is as well competent to do the same thing. Now this brings me to the question as to whether the Federal High Court had the competence to transfer the present case to the Lagos State High Court. Section 22(2) of the Federal High Act provides as follows:-

No cause or matter shall be struck out, the Court merely on the ground that such cause was taken in the Court instead of the High Court of a State or of the Federal Capital Territory, Abuja in which it ought to have been brought, and the Judge of the Court before whom such cause or matter is brought, may cause such cause or matter to be transferred to the appropriate High Court of a State or of the Federal Capital Territory, Abuja in accordance with Rules of Court to be made under Section 44 of this Act.

The Federal High Court in pursuant to the provision of Section 44 of the Federal High Court Act, promulgated the Federal High Court (Civil Procedure) Rules, 2009. Order 49 Rule 5 of the said Rules provides as follows:-

Where a Judge has in the exercise of the powers conferred by Section 22(2) of the Act directed that any cause or matter be transferred to the High Court of a State or the Federal Capital Territory, the Judge shall make an order under his hand to that effect to the Chief Judge of the High Court of the State or the Federal Capital Territory to which the matter is to be transferred.

There is nothing in any of the provisions of the Act and the Rules of the Federal High Court which I have referred to in this judgment that says a Judge must decline jurisdiction before the order of transfer is made. I have also not come across any provision that says where a Judge wrongly assumes jurisdiction and determines a case to finality, an order of transfer under Section 22(2) of the Federal High Court cannot be made. The decision whether to transfer a case or not will depend entirely on the nature of the proceedings in the case. Once it is held that the Court has no jurisdiction to entertain a matter ab initio, its decision is a nullity. In the instant case, since the Federal High Court has no jurisdiction to hear the claim of the respondent ab initio, its decision is a nullity. See Ayman Ent. Ltd. v. Akuma Industries Ltd. (2003) 12 NWLR (Pt. 836) 22 at 50 paras. E - F. Once a decision is a nullity, it is taken that the Court never assumed jurisdiction at all. The argument that the Court assumed jurisdiction, albeit wrongly cannot be factored into the case as to deprive an appellate Court from giving appropriate directive or order. Section 22(2) of the Federal High Court Act is made by the National Assembly for due preservation of cases that have been instituted in wrong Courts. It is not contrary to any of the provisions of the Constitution and this Court has in a number of cases upheld its validity. InGafar v. The Government of Kwara State (2007) 4 NWLR (Pt. 1024) 375, the appellant instituted an action at the Federal High Court in Ilorin, in which he sought to enforce his fundamental right. Appellant was in the service of the Government of Kwara State as Secretary to the Government. A commission of inquiry in its report had indicted the appellant and he was asked to pay the sum of N2 million to the Kwara State Government or forfeit his assets. The respondents on being served, filed a preliminary objection challenging the jurisdiction of the trial Federal High Court to entertain the action of the appellant having regard to the circumstances of the case and the reliefs claimed therein. After hearing both parties, the trial Court dismissed the respondents preliminary objection and held that it had jurisdiction to entertain the action.

Dissatisfied with the decision, the respondent appealed to the Court of Appeal, which allowed the appeal after considering the issue of jurisdiction alone, and transferred the case to the Kwara State High Court.

The appellant was dissatisfied with the decision of the Court of Appeal and he appealed to the Supreme Court. In a lead judgment delivered by Mahmud Mohammed, JSC (as he then was) at page 399 paras. D- E, held:

I entirely agree with the Court below that the trial Federal High Court lacks jurisdiction to hear and determine the appellants action as brought before the Court. This being the position, the Court below is also right in sending the case to the High Court of Kwara State which has the necessary jurisdiction to hear and determine all the claims of the appellant.

Similarly, in Oliver v. Dangote Ind. Ltd. (2009) 10 NWLR (Pt. 1150) 467 at 490- 491 paras H- C. The Court of Appeal per Salami, JCA (as he then was) held:-

The trial Court lacks jurisdiction to hear the suit which is substantially a claim in contract. The trial Court, Federal High Court, could properly transfer the matter to the Court competent to hear and determine the action under Section 22(2) of the Federal High Court Act, Cap. F12 of the Laws of Federation of Nigeria, 2004 This Court, like any other appellate Court, is vested with power of the trial Court. By virtue of Section 15 of the Court of Appeal Act, the matter is transferred to the Lagos State High Court for determination.

In the two cases, I have cited hereinabove, the Federal High Court did not decline jurisdiction. Rather, the Federal High Court assumed jurisdiction to determine whether it had jurisdiction but did not hear the matters to finality. Even if the matter were heard to finality, it would have made no difference, since any Court proceeding that is conducted without jurisdiction is a nullity. See also Mokelu v. Federal Commissioner for Works and Housing (1976) 1 NWLR 329 at 332- 333.

Most of the issues raised and canvassed in the reply brief of the appellant are issues that have been argued in its brief of argument. This is clearly not the essence of reply brief. Where a Court lacks jurisdiction or where the grounds of appeal are incompetent, they remain so. It does not matter whether such defect in jurisdiction and grounds of appeal are raised by way of preliminary objection or argued in the issues for determination of the appeal, they cannot be discountenanced by the Court seized with the matter if those defects have the effect of ousting the Courts jurisdiction. So there is nothing wrong in the respondents objection to the 1st and 3rd grounds of appeal contained in the notice of appeal.

The first issue for determination of this appeal is resolved against the appellant.

On the 2nd issue for determination of this appeal, learned senior counsel for the appellant submitted that the Court of Appeal as an intermediate appellate Court, was wrong in failing to consider and determine the other eight issues for determination fully argued by the parties before the Court of Appeal after it decided that the trial Federal High Court has no jurisdiction to hear the suit. Yes, this Court has held in a number of decided cases that an intermediate Court, such as the Court of Appeal, has a duty to consider all the issues that are properly raised before it. The reason why this Court has asked intermediate Court to consider all the issues raised before it, is that in event of such intermediate Courts decision on the point or points considered by it being reversed on further appeal to this Court, its decision on the rest of the other points may then be considered for a final determination of the appeal. See Owners of the MV Arabell v. N.A.I.C. (2008) 11 NWLR (Pt. 1097) 182; Ifeanyi Chukwu (Osondu) Ltd. v. Saleh Boneh Ltd. (2000) 5 NWLR (Pt. 656) 322 at 351 paras. F - H; Owodunni v. Registered Trustees of CCC (2000) 10 NWLR (Pt. 675) 315. Even though this Court frowns at the procedure of considering one issue out of many by intermediate Court, it has never pronounced such decisions invalid.

Where an intermediate appellate Court correctly decides a matter upon consideration of one issue out of many, this Court will have no reason to interfere with such decision. This is so because the reason for asking an intermediate appellate Court to consider all the issues raised is in event where the decision on the issue is reversed on further appeal, there will be nothing left to fall on. In the instant case, the lower Court rightly decided that the Federal High Court has no jurisdiction to hear and determine the matter before it. Having correctly determined the issue dealing with the jurisdiction of the trial Court, it had no obligation to consider the remaining eight issues. See Etajata v. Ologbo (2007) 16 NWLR (Pt. 1061) 554 at 579 - 582 paras. A - D.

Learned senior counsels argument in respect of this issue is clearly without base. This issue is also resolved against the appellant.

On issue three, learned senior counsel for the appellant submitted that the lower Court is wrong when it raised suo motu the issue of transfer of the case under Section 22(2) of the Federal High Court Act in its judgment without affording the parties the opportunity of being heard on that point. In aid, learned counsel cited Ebba v. Ogodo (1984) 15 NSCC 255 at 265; Iriri v. Erhurhobara (1991) 2 NWLR (Pt. 173) 252 at 265.

Learned senior counsel in a further argument, submitted that the failure of the lower Court to invite parties to address the Court on the issue of transfer of the case is against the principle of fair hearing and cannot be sustained.

In aid, learned senior counsel cited Humbe v. Hueze (2001) 4 NWLR (Pt. 703) 372. I think, learned senior counsel has got it wrong when he argues that the failure of the lower Court to call for further address, before the order for transfer of the case to the Lagos State High Court. The appellants complaint before the lower Court was that the Federal High Court has no jurisdiction to hear the matter before it. The lower Court in its judgment did answer the question affirmatively when it delivered its judgment. What followed thereafter is a consequential order which is the prerogative of the Court. A consequential order is an order that follows as a result of the earlier order. It may have an indirect or secondary result in the relief awarding process. See Eagle Super Pack (Nig.) Ltd. v. ACB Plc (2006) 19 NWLR (Pt. 1013) 20. A consequential order merely gives effect to a judgment or order to which it is consequential. It is directly traceable to or flow from the judgment or order duly prayed for and made. See Obayagbona v. Obazee (1972) 5 SC 247.

Parties were heard before the judgment of the Court from which the order of transfer was made. There is therefore no breach of fair hearing by the lower Court as the learned senior counsel would want this Court to decide. Section 22(2) of the Federal High Court Act says:

No cause or matter shall be struck out by the Court...

Clearly this is a mandatory provision, which left no room for the lower Court to manoeuvre when it acted under Section 15 of the Court of Appeal Act.

This issue is similarly resolved against the appellant.

Having resolved the three issues submitted for determination of this appeal, against the appellant, this appeal shall be and it is hereby dismissed.

On the whole, the two appeals numbers SC.333/2010 and SC.333A/2010 are both dismissed. Parties shall bear their respective costs.

**IBRAHIM TANKO MUHAMMAD, AG. C.J.N.:**

I have had the opportunity of reading in draft a copy of the judgment just delivered by my learned brother, Galumje, J.S.C. I am in complete agreement with my Lords reasoning and conclusion contained in the lead judgment that the appeal lacks merit and it should be dismissed. I too hereby dismiss the appeal. I abide by all orders made in the lead judgment.

**OLUKAYODE ARIWOOLA, J.S.C.:**

I had the opportunity of reading in draft the lead judgment of my learned brother, Galumje, J.S.C. just delivered. I agree entirely with the reasoning and conclusion that the appeal is unmeritorious and should be dismissed. I too will dismiss the appeal.

**JOHN INYANG OKORO, J.S.C.:**

The facts and circumstances leading to the two appeals numbered SC.333/2010 and SC.333A/2010 have been summarized in great details by my learned brother, Paul Adamu Galumje, JSC in the Judgment which I had a preview before now and with which I am in complete agreement. I have found no reasons to differ in the reasoning leading to my brother's conclusions in both appeals. In appreciation of the lead judgment, I will proffer a few comments of my own, which shall be based majorly on the sole issue adumbrated in the main appeal, to wit:

"Having Regard to the nature of the plaintiff's claims set out in plaintiff's writ of summons and statement of claim, was the Court of Appeal right in holding that the plaintiffs suit is an action for damages for alleged breach of contract for which the Federal High Court lacks jurisdiction to entertain."

My response to the question posed above is in the affirmative. This Court has held in a plethora of cases that disputes founded on contracts are not among those envisaged in the exclusive jurisdiction conferred on the Federal High Court under Section 251 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). See Onuorah v. Kaduna Refining & Petrochemical Co. Ltd (2005) 6 NWLR (pt. 921) 393, Adelekan v. ECU-line NV (2006) 12 NWLR (pt. 993) 33 at 54.

A careful perusal of the written Contract No. L01408 between the parties in this appeal would reveal that they entered into a simple contract for the design and construction of subsurface and submarine Natural Gas pipeline for transmission of natural gas to Agbara and Ota.

I hold the view that an agreement between two private persons to construct "gas pipeline', as in this case, does not fall within the contemplation of the jurisdiction of the Federal High Court under Section 251(1)n of the 1999 Constitution. Clearly, the Appellant cannot confer jurisdiction on a Court where the Constitution says that the Court does not have jurisdiction.

I agree that in determining conditions precedent to the invocation of the jurisdiction of the Federal High Court under Section 251 of the 1999 Constitution, the observation of my brother, Rhode-Vivour, J.S.C. in the case of PDP v Sylva (2012) 13 NWLR (pt. 1316) 85 at 138 B- E is apt. See also Enterprise Bank Ltd v Ltd v Aroso (2015) 3 NWLR (pt.1394) 386 at 291. In the above cases, my Lord reiterated his observation as follows:

"Section 251 of the Constitution confers exclusive jurisdiction on the Federal High Court for the items listed in the section. All items not listed in the section are to be heard and determined by the State High Court. When the jurisdiction of the Federal High Court is in issue, the following must co- exist:

(a) the parties or party must be the Federal Government or its agency.

(b) Subject matter of the litigation.

Satisfying the above is not the end of the matter. The pleadings of the plaintiff must be carefully examined so as to understand the facts and circumstances of the case in order to determine if the claims are within the jurisdiction of the Court."

The above represents the position of this Court and we have not departed from it. Applying the above to the instant case therefore, it is obvious that the claims of the Appellant emanates from a simple contract which was terminated by the Respondent. The claims of the Appellant are therefore clearly outside the contemplation of Section 251(1)n of the 1999 Constitution and conditions set down in the above decided cases.

In the final analysis, I entirely agree with my learned brother that both the main appeal and the cross-appeal are lacking in merit and are accordingly dismissed by me. I affirm the judgment of the Court below.

Appeal Dismissed.

**UWANI MUSA ABBA AJI, J.S.C.:**

I was privilege to read in draft the lead judgment of my learned brother, P.A. Galumje, J.S.C. and I agree with his reasoning and conclusion arrived thereat.

Appeals SC.333/2010 and SC.333A/2010 were merged for consideration by my learned brother, Galumje JSC, since their parties and facts are akin.

In the 2 appeals, the issue of the jurisdiction of the trial Court to entertain a case of simple contract featured and whether the issue of the trial Court's power to transfer a case to the appropriate Court with jurisdiction without calling on parties amounted to breach of fair hearing respectively.

The parties sometime in 1999 entered into a written contract for the design and construction of subsurface and submarine natural gas pipeline for transmission and distribution of natural gas to Agbara and Ota to commence on 15/3/2000 and complete on 20/10/2000 at the cost price of N393,563,264.00/US$8,803,389.80. Eventually, due to some misunderstanding, the contract was terminated by the Respondent which caused the institution of the case before the Federal High Court, Lagos.

The fact that the issue of design and construction of subsurface and submarine natural gas pipeline for transmission and distribution of natural gas to Agbara and Ota is involved does not make the contract or bring it under Section 251 of the Constitution. By the Appellant's letter of termination of contract dated 3/12/2001, it clearly reveals that it was a case of simple contact. Besides, what determines the jurisdiction of a Court is the plaintiff's claim and not otherwise or as may be provided by law. See FELIX ONUORAH V. KADUNA REFINING AND PETROCHEMICAL CO. LTD (2005) 6 NWLR (PT. 921) 393. In the instant appeal, the claims of the Respondent have demonstrated this that what they seek after is a remedy for a breach of contract of service and nothing else.

A similar case came up before this Court inTSKJ (NIG) LTD V. OTOCHEM (NIG) LTD (2018) LPELR- 44294 (SC), wherein Per MUHAMMAD, JSC rightly observed that the transaction between the parties is that of houseboat hire. This, in my view, is a simple contract and not an admiralty or maritime matter. By the constitutional provisions of a State High Court, it is the Port Harcourt High Court and not the Federal High Court that has jurisdiction over this simple contractual engagement. This is because, a careful observation and literal construction of the averments of the statement of claim is to the effect that the action filed before the trial Court is for the recovery of accrued and unpaid hire rentals for a houseboat let to the Appellant by the Respondent and damages for breach of the contract. The mere fact that a ship is involved in a simple contract does not automatically make that simple contract a subject for jurisdiction in admiralty matters. To hold to that supposition will be ridiculous. This case of a simple contract of debt recovery is, I hold, within the civil jurisdiction of the Rivers State High Court and it properly assumed jurisdiction on the matter.

Per KUMAI BAYANG AKAAHS, JSC, in the same case revealed that from the Amended statement of claim reproduced above that the main plank of the plaintiffs case is the breach of the terms of payment by the defendant 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 hire rentals for the houseboat let by the plaintiff to the defendant and damages for breach of the contract simpliciter. 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 of the Rivers state High Court from adjudicating on the breach of the contract.

On the issue of the trial Court's power to transfer a case to the appropriate Court with jurisdiction without calling on parties to address it, I will not hesitate to state that it does not amount to breach of fair hearing as rightly held by my learned brother Galumje, JSC, in the lead judgment. Per OGBUAGU, JSC in FASAKIN FOODS (NIG.) LTD. V. SHOSANYA (2006) LPELR-1244 (SC) reiterated that the Federal High Court can transfer a cause or matter to a State High Court, by virtue of Section 22(2) of the Act. See also ALUMINIUM MANUFACTURING CO. (NIG.) LTD. v. N.P.A. (1987) 1.

Section 22(2) of the Federal High Court Act is a saving provision. It saves a matter duly and properly filed in a Court of law from being struck out. Instead of striking out for lack of jurisdiction, Section 22(2) vests in the Federal High Court, the power to transfer the matter to the appropriate Court. See Per NIKI TOBI, JSC in FASAKIN FOODS (NIG.) LTD. V. SHOSANYA (2006) LPELR- 1244 (SC). Thus, the power exercised by the trial Court is within the ambit of the law to do so. In fact, may I produce the relevant Section for emphasis. Section 22(1)(2) of the Federal High Court Act provides:-

"22. (1) A Judge of the Court at any time or at any stage of the proceedings in any cause or matter before final judgment, either with or without application from any of the parties thereto, shall transfer such cause or matter before him to other Judge of the Court. (1975 No. 36).

(2) No cause or matter shall be struck out by the Court merely on the ground that such cause or was taken in the Court instead of the High Court of a State or of the Federal Capital Territory, Abuja in which it ought to have been brought, and the Judge of the Court before whom such cause or matter is brought may cause such cause or matter to be transferred to the appropriate High Court of a State or of the Federal Capital Territory, Abuja in accordance with Rules of Court to be made under Section 44 of this Act."

The Federal High Court Judge therefore has power to order a transfer suo motu. In the exercise of the powers above, the Judge is merely acting administratively and the issue of lack of fair hearing cannot avail a party raising it in the circumstances. Clearly there is no right of appeal where the Judge, in his administrative capacity, transfers a case from one Court to another either suo motu or upon the application of a party to the suit.

I therefore agree with the decision and reasons reached by my learned brother, Galumje, J.S.C., in dismissing the 2 appeals.