**COMPACT MANIFOLD AND ENERGY SERVICES LIMITED**

**V.**

**WEST AFRICA SUPPLY VESSELS SERVICES LTD**

COURT OF APPEAL (LAGOS DIVISION)

FRIDAY, 17 MARCH 2017

CA/L/670/2014

**LEX (2014) - CA/L/670/2014**

OTHER CITATIONS

2PLR/2017/88 (CA)

**BEOFRE THEIR LORDSHIP**

YARGATA BYENCHIT NIMPAR, JCA (Presided)

BIOBELE A. GEORGEWILL, JCA (Read the Lead Judgment)

ABIMBOLA OSARAGUE OBASEKI-ADEJUMO, JCA

**BETWEEN**

COMPACT MANIFOLD AND ENERGY SERVICES LIMITED – Appellant

AND

WEST AFRICA SUPPLY VESSELS SERVICES LIMITED – Respondent

**ORIGINATING COURT(S)**

FEDERAL HIGH COURT, LAGOS DIVISION (M.B. Idris J., Presiding)

**REPRESENTATION**

I.O. REJU Esq., - for the Appellant.

A.O. IFOISILI Esq., - for the Respondent.

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

ADMIRALTY AND MARITIME/shipping LAW - Maritime claim - What constitutes – Admiralty jurisdiction of Federal High Court - When may be invoked - Section 2(3) (f), Admiralty Jurisdiction Act, 1999 considered

ADMIRALTY AND MARITIME/SHIPPING LAW:- Contract for charter of vessels – Claim for damages and for outstanding sum due thereon – Whether State High Court vested with jurisdiction to hear same

ADMIRALTY AND MARITIME/SHIPPING LAW:- Claim founded on maritime claim - Provisions of section 2 (3)(f) of the Admiralty Jurisdiction Act, 1991 – Reference to a general maritime claim – Meaning of - Agreement relating to the carriage of goods or persons by a ship or to the use or hire of a ship, whether by charter-party or otherwise – Distinction from a claim founded in simple contract after the charter party agreement has come to an end without any incident at the time of its execution in relation to the vessels involved – Legal implication

DEBTOR AND CREDITOR:- Claim arising from a maritime transaction – Question of court with jurisdiction to hear same – How determined - Distinction between a claim founded on simple contract after admiralty contract had ended and maritime claim such as service rendered onboard a ship or vessel

DEBTOR AND CREDITOR:- Where claim was for recovery of debt on terms of a charter party agreement between the parties – Whether falls under admiralty jurisdiction of the Federal High Court

COMMERCIAL LAW – CONTRACT:- Simple contract - What amounts to

CONSTITUTIONAL LAW – JUDICIAL POWERS – FEDERAL HIGH COURT:- Section 251 (1) (g) and (s) of the Constitution of the Federal Republic of Nigeria, 1999 – Whether confers exclusive jurisdiction on the Federal High Court to hear maritime claims to the exclusion of State High Courts - Section 2 (1) of the Admiralty Jurisdiction Act in review

**PRACTICE AND PROCEDURE ISSUES**

JUDGMENT AND ORDER - INJUNCTION:- Mareva injunction - Applicant for - Grant of - What must establish to warrant

JUDGMENT AND ORDER - INJUNCTION:- Mareva injunction- Nature of - Applicant for - Whether must establish a cause of action against the subject matter of injunction - Grant of - Purport of

JURISDICTION:- Court jurisdiction - Determinant of – Defense of defendant - Irrelevance of thereto

JURISDICTION:- Issue of - Fundamental nature of - Determination of firstly - Propriety of - Lack of – Effect on proceedings

JURISDICTION:- Maritime claim - What constitutes – Admiralty jurisdiction of Federal High Court - When may be invoked - Section 2(3) (f), Admiralty Jurisdiction Act, 1999 considered

INTERPRETATION OF STATUTE - Admiralty Jurisdiction Act, 1999, section 2(3) (f) - Maritime claim - What constitutes - Admiralty Jurisdiction of Federal High Court - When may be invoked

**MAIN JUDGMENT**

GEORGEWILL JCA (DELIVERING THE LEAD JUDGMENT):

This is an appeal against the ruling of the Federal High Court, Lagos Division, Coram: M.B. Idris J., in suit No. FHC/L/CS/101/2014: West African Supply Vessel Services Limited v. Compact Manifold and Energy Services Limited delivered on 21 March 2014, wherein the appellant’s notice of preliminary objection filed on 7 February 2014, by which it sought an order striking out and/or dismissing the respondent’s suit for want of jurisdiction and an order vacating the order of mareva injunction granted against the appellant on 28 January 2014 was dismissed. The appellant was peeved with the said ruling and had promptly appealed to this court vide a notice of appeal on four grounds filed on 1 April 2014 at pages 425 - 429 of the record of appeal. The record of appeal was transmitted to this court on 2 July 2014, but deemed properly transmitted on 30 June 2016.

The appellant’s brief was filed on 12 July 2016. The respondent’s brief was filed on 7 November 2016 but deemed properly filed on 28 February 2017. At the hearing of the appeal on 28 February 2017, I. O. Reju Esq., learned counsel for the appellant adopted the appellant’s brief as their argument and urged the court to allow the appeal, set aside the ruling of the court below and to strike out the respondent’s suit for being incompetent. On his part, A. O. Ifoisili Esq., learned counsel for the respondent adopted the respondent’s brief as their argument and urged the court to dismiss the appeal and affirm the ruling of the court below.

On 27 January 2014, the respondent as claimant had commenced an action by means of a writ of summons in personam before the court below, claiming some reliefs against the appellant as defendant and on 28 January 2014, it sought and obtained an ex-parte order of mareva injunction restraining the appellant from removing the appellant’s barges “GP-35” and “Sea Constructor” from where it was berthed. Upon service, the appellant had on 7 February 2014, filed a notice of preliminary objection praying the court below to decline jurisdiction in entertaining the respondent’s suit for being incompetent and also to vacate the ex parte order of mareva injunction, relying on five grounds for the application. On 21 March 2014, the court below dismissed the preliminary objection in its entirety, hence this appeal by the appellant to this court against the said ruling.

Issues for determination: In the appellant’s brief, two issues were nominated as arising for determination from the four grounds of appeal, namely:

1. Whether the court below is competent and/or is conferred with jurisdiction to entertain claims/reliefs founded on an alleged outstanding amount in a contract already, completely executed, as in this case?(Distilled from Grounds 1 and 2)

2. Whether the lower court was right when it granted an interim/interlocutory order(s) and/or ancillary reliefs not based or founded on substantive reliefs/claims before the court? (Distilled from Grounds 3 and 4)

In the respondent’s brief, two issues were also nominated as arising for determination in his appeal, namely:

1. Whether the court below was right when it held that it has the requisite jurisdiction to entertain the claim of the respondent after it found that same is a general maritime claim.

2. Whether the Respondent had fulfilled the condition(s) for the grant of an order of mareva injunction by the court below as granted upon its motion ex- parte filed on 27 January 2016.

I have considered the entirety of the facts of this appeal as disclosed in the record of appeal. I have also calmly reviewed the submissions of counsel in their respective briefs in the light of the findings and conclusions reached by the court below in the ruling appealed against and I am of the view that the apt issues arising for determination in this appeal are appellant’s issue one and the respondent’s issue two, a consideration of which, in my view, would cover the entire issues arising for determination in this appeal.

Issue one

“Whether the court below is competent and/or is conferred with jurisdiction to entertain claims/reliefs founded on an alleged outstanding amount in a contract already completely executed, as in this case?”

Appellant’s Counsel Submissions:

The appellant’s counsel had submitted the claim of the respondent is a non-maritime claim, being purely a monetary claim by the respondent for an alleged outstanding contractual sum and thus outside the jurisdiction of the Federal High Court and contended that a careful consideration of the claims of the respondent as endorsed on the writ of summons and the statement of claim will show that the claim was one founded on simple contract between the parties, which has been successfully and completely executed and the vessels with which the contract was executed also already successfully demobilized and sailed back to where they came from without any incidence of damage to the vessel(s), damage to property, or injury to anybody in the course of execution of the contract and urged the court to hold that in law, jurisdiction of a court is determined by the claim of the claimant as endorsed in the writ of summons and statement of claim. Counsel relied on Tukur v. Government of Gongola State (1989) 4 NWLR (Pt. 117) 517, (1989) 9 SCNJ 1; Orthopaedic Hospitals Management Board v. Garba (2002) FWLR (Pt. 123) 200, (2002) 14 NWLR (Pt. 788) 538 at page 563.

The appellant’s counsel further submitted that when the claims of the respondent is viewed against the provisions of the Admiralty Jurisdictions Act, 1991 and section 251 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), it leaves no one in doubt that the respondent’s claims as constituted, are incompetent before the court below, being one founded on refusal or failure to pay an alleged contractual debt by the appellant and contended that the admiralty jurisdiction of the Federal High Court cannot be invoked, where the only purpose for the cause of action brought before it is for recovery of alleged contractual debt owed to a claimant as in the instant appeal and urged the court to hold that the court below lacked the jurisdiction to entertain the principal and ancillary claims of the respondent and to allow the appeal, and strike out the respondent’s suit for being incompetent. Counsel relied on Onuorah v. Kaduna Refinery & Petrochemical Co. Ltd (2005) All FWLR (Pt. 256) 1356, (2005) 6 NWLR (Pt. 921) 393, (2005) 6 MJSC 137 at page 154, (2005) 2 SC (Pt.) 1; Adelekan v. Ecu-line (2006) 8 MJSC 142 at pages 166 - 167, (2006) All FWLR (Pt. 321) 1213, (2006) 12 NWLR (Pt. 993) 33; Messrs N. V. Scheep v. M.V. “S Araz” (2000) 4 NSQR 112 at page 165, (2000) 15 NWLR (Pt. 691) 622 , (2000) 12 SC (Pt. 1) 164, (2001) FWLR (Pt. 34) 543; Aluminium Manufacturing Co. (Nig.) Ltd v. Nigerian Ports Authority (1989 - 1990) NSC volume III at page 82; I.T.P.P. Ltd v. Union Bank of Nigeria Ltd (2006) All FWLR (Pt. 324) 1789, (2006) 12 NWLR (Pt. 995) 483 at page 508.

Respondent’s counsel’s submissions:

The respondent’s counsel had submitted that section 251 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides for the list of civil causes and matters which fall within the exclusive jurisdiction of the Federal High Court in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly and contended that the Federal High Court therefore, has jurisdiction to the exclusion of any other court in civil causes and matters listed in sections 251 (a)- (s) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and such other or additional jurisdiction as may be conferred on it by an Act of the National Assembly and urged the court to hold that in the instant appeal, the respondent’s cause of action as formulated on the writ of summons and statement of claim is a maritime claim and is one as contemplated under the Admiralty Jurisdiction Act of 1991, which is an Act of the National Assembly and thus within the jurisdiction of the court below and to dismiss the appeal for lacking in merit while affirming the ruling of the court below. Counsel referred to sections 1(1)(a), 2(1) and 2(3)(f) of the Admiralty Jurisdiction Act of 1991 and relied on Iroegbu v. MV Calabar Carrier (2008) 5 NWLR (Pt. 1079) 169 at pages 170 -171; A.S.N v. E.T.B (2001)34 WRN 123 at page 133; Tigris International Corp. v. Ege Shipping & Trading Ind. (1999) 6 NWLR (Pt. 608) 701, while urging the court to hold that Onuorah v. Kaduna Refinery & Petrochemical Co. Ltd (2005) All FWLR (Pt. 256) 1356, (2005) 6 NWLR (Pt. 921) 393, (2005) 6 MJSC 137, (2005) 2 SC (Pt.) 1 and Adelekan v. Ecu-line (2006) 8 MJSC 142, (2006) All FWLR (Pt. 321) 1213, (2006) 12 NWLR (Pt. 993) 33 are inapplicable to the facts of the instant appeal.

Resolution of Issue One:

My lords, in considering issue one in this appeal, the pertinent question is whether or not the subject matter of the claims of the respondent as claimant before the court below was within the admiralty jurisdiction of the Federal High Court, the court below? In my view on the answer to this question, lies the due resolution of issue one for determination. In law, it is the claim of a claimant that denotes the jurisdiction of the court and therefore, when the issue of whether or not a claim is within the jurisdiction of a court is raised, it is the claim of the claimant as endorsed on the writ or other originating process or the statement of claim, where one is already filed, that must be looked and critically scrutinized to see whether or not it falls within the jurisdictional limit of the powers of the court before which it was commenced. In so doing, the defence of the defendant, no matter how strong, is really of no moment and thus goes to no issue in the determination of the jurisdiction of the court to entertain the claim of the claimant if it is found to be within the ambit of the jurisdiction conferred on the court by law. See Tukur v. Government of Gongola State (1989) 4 NWLR (Pt. 117) 517, (1989) 9 SCNJ 1; Orthopaedic Hospitals Management Board v. Garba (2002) FWLR (Pt. 123) 200, (2002) 14 NWLR (Pt. 788) 538 at page 563.

What then are the claims of the respondent as claimant against the appellant as defendant before the court below? By the writ of summons and the statement of claim filed on 27 January 2014, the respondent claims against the appellant the following reliefs, to wit:

1. The sum of US$470,568.85 (four hundred and seventy thousand, five hundred and sixty eight dollars and eighty five cents) being the dollar portion of the sum outstanding and due for the charter of the MV Ucodie and the MV Zikron defender based on the charter party agreements dated 18 October 2012 and 5 December 2012 respectively.

2. The sum of N56,483,834.59 (fifty six million, four hundred and eighty three thousand, eight hundred and thirty four Naira, fifty nine kobo) being the naira portion of the of the sum outstanding and due for the charter of the MV Uciodie and the Zikron defender based on the charter party agreements dated 18 October 2012 and 5 December 2012 respectively.

3. Interest in the said sum of US$470,568.85 (four hundred and seventy thousand, five hundred and sixty eight dollars and eighty five cents).

4. Interest in the said sum of N56,483,834.59 (fifty six million, four hundred and eighty three thousand, eight hundred and thirty four Naira, fifty nine kobo)

5. Damages for breach of contract.

6. Legal fees and cost of this action.

7. Further or other reliefs. See pages 1- 7 of the record of appeal It was on the strength of the above endorsements of the respondent’s claim and the pleadings in the statement of claim that the appellant had on 7 February 2014 filed a notice of preliminary objection challenging the competence of the respondent’s suit and praying for the following orders, to wit:

A. An order striking out and/or dismissing this suit for want of jurisdiction.

B. An order vacating the order of mareva injunction granted against the defendant of on 28 January 2014.

The grounds for the preliminary objection were stated to be as follows:

1. The Federal High Court lacks jurisdiction to determine issues emanating from breach of commercial contract.

2. The claims of the plaintiff as contained in the writ of summons and statement of claim only relate to alleged breach of contract by the defendant, which is not within the jurisdiction conferred on the Federal High Court pursuant to section 251 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

3. It is the claim of the plaintiff that determines the jurisdiction of the court, an interlocutory application or motion should be based on specific reliefs in the substantive action.

4. There is no relief in the substantive suit upon which the order of mareva injunction was and/or can be granted.

5. The action is a gross abuse of judicial process, incompetent, null and void “ex nihilo nihi fit” see pages 365 - 366 of the record of appeal.

On 10 March 2014, the court below heard arguments on the preliminary objection from the counsel to the parties and had on 21 March 2014 delivered its ruling, in which it overruled the preliminary objection and held inter alia thus: “The list of civil causes and matters which fall within the exclusive jurisdiction of the Federal High Court is defined by section 251 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

In particular instance, the plaintiff’s cause of action as formulated on the writ of summon and statement of claim is a maritime claim as contemplated under the Admiralty Jurisdiction Act of 1991. In addressing this issue, it is imperative that we take a look at the nature of the cause of action and the claim filed by the plaintiff in this suit against the defendant. The plaintiff filed this suit as an admiralty in personam and the writ of summons is appropriately headed.

The question which now arises for determination is whether or not the cause of action and the reliefs being sought from the court fall within the ambits of the action of the Federal High Court. A review of the heads of action claim on the plaintiffs writ of summons clearly show that the claim is entire premised on the charter party agreement which was executed between the plaintiff and the defendant as such is a general maritime claim. It is trite and beyond contention that the Federal High Court is conferred with exclusive jurisdiction to adjudicate over general maritime claims as well as other admiralty claims stipulated under the Admiralty Jurisdiction Act. It is my view that the reliance placed on the cases of Onuorah v. Kaduna Refinery & Petrochemical Co. Ltd (2005) All FWLR (Pt. 256) 1356, (2005) 6 NWLR (Pt. 921) 393, (2005) 6 MJSC 137, (2005) 2 SC (Pt.) 1; Adelekan v. Ecu-line (2006) 8 MJSC 142 at page 142, (2006) All FWLR (Pt. 321) 1213, (2006) 12 NWLR (Pt. 993) 33 are totally based on a misconception of the law, as the facts of those cases do not tally with the case presented to the court for adjudication herein.” See pages 408 - 423 of the record of appeal.

My lords, by section 251(1) of the Constitution of Nigeria, 1999 (as amended), the Federal High Court is conferred with exclusive jurisdiction over all the matters covered by paragraphs (a) - (s) of subsection (1) of Section 251 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Thus, in all matters falling under the provisions of section 251(1)(a) - (s) of the said Federal Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Federal High Court exercises original jurisdiction to the exclusion of all other courts in the land, notwithstanding anything to the contrary contained in the said Constitution of the Federal Republic of Nigeria, 1999 (as amended).

The above provision poses not much difficulty in its interpretation and has happily been blessed with the profound pronouncements of the apex court and this court in a plethora of decided cases as are replete in the law reports. However, the crux of issue one for determination in this appeal is the proper interpretation of section 251 (1)(g) and (s) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the provisions of sections 1(1) (a), 2(1) and 2(3)(f) of the Admiralty Jurisdiction Act, 1991.

By section 251 (1) (g) and (s) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), it is provided thus:

“251: Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction of any court in civil causes and matters

(g): “Any admiralty jurisdiction ...”

(r): Any action or proceedings for a declaration for a declaration or injunction affecting the validity of any executive or administrative action or decision by the federal government or and of its agencies”

(s): Such other jurisdiction, civil or criminal and whether to the exclusion of any other court or not as may be conferred upon it by an Act of the National Assembly” By section 1(1)(a) of the Admiralty Jurisdiction Act, it is provided thus: (1): “The admiralty jurisdiction of the Federal High Court (in this decree referred to as “the court”) includes the following, that is-

(a) Jurisdiction to hear and determine any question relating to a proprietary interest in a ship or aircraft or any maritime claim specified in section 2 of this Decree.”

By section 2 (1), it is provided thus: A reference in this Decree to a maritime claim is a reference to a proprietary maritime claim or a general maritime claim.

While by section 2 (3) (f), it is provided thus: 2(3): A reference in this Decree to a general maritime claim is a reference to: (f): A claim out of an agreement relating to the carriage of goods or persons by a ship or to the use or hire of a ship, whether by charter- party or otherwise.

Happily authorities abound on the interpretation, scope and applications of these provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the Admiralty Jurisdiction Act, 1991. See B. B. Apugo & Sons Ltd. v. Orthopaedic Hospital Management Board (OHMB) (2016) LPELR – 40598 (SC); I.T.P.P. Ltd v. Union Bank of Nigeria Ltd (2006) All FWLR (Pt. 324) 1789, (2006) 12 NWLR (Pt. 995) 483; Chevron (Nig.) Ltd v. Lonestar Drilling (Nig.) Ltd (2007) All FWLR (Pt. 386) 633, (2007) 16 NWLR (Pt.1059) 168 at page 185, (2007) 7 SC (Pt. 2) 27; B.B.Apugo Onuorah v. Kaduna Refinery & Petrochemical Co. Ltd (2005) All FWLR (Pt. 256) 1356, (2005) 6 NWLR (Pt. 921) 393, (2005) 6 MJSC 137, (2005) 2 SC (Pt.) 1; Adelekan v. Ecu-line (2006) 8 MJSC 142 at pages 166 - 167, (2006) All FWLR (Pt. 321) 1213, (2006) 12 NWLR (Pt. 993) 33; Messrs N. V. Scheep v. M.V. “S Araz” (2000) 4 NSQR 112 at page 165, (2000) 15 NWLR (Pt. 691) 622 , (2000) 12 SC (Pt. 1) 164, (2001) FWLR (Pt. 34) 543; Aluminium Manufacturing Co. (Nig.) Ltd v. Nigerian Ports Authority (1989 - 1990) NSC volume III at page 82; A.S.N v. E.T.B (2001)34 WRN 123 at page 133; Tigris International Corp. v. Ege Shipping & Trading Ind. & Ors. (1999) 6 NWLR (Pt. 608) 701; Iroegbu v. MV Calabar Carrier (2008) 5 NWLR (Pt. 1079) 169 at pages 170 - 171.

On the state of the law as in the judicial authorities above, the pertinent question therefore, is whether the claim of the respondent is one founded simply on contract between the parties and thus not within the admiralty jurisdiction of the court below or whether the claim of the respondent is one touching on admiralty matters within the admiralty jurisdiction of the court below? Now, looking calmly at the contentions of the appellant’s counsel and the plethora of judicial authorities relied upon therein, it would appear that the provisions of section 251(1)(g) and (s) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), would have to be critically looked at and considered for the proper and just resolution of issue one for determination in this appeal. In the instant appeal, while it is the vehement contention of the appellant’s counsel that the court below lacked the jurisdiction to entertain the claim of the respondent, which he submits is a claim for debt arising from a simple contract between the parties, was one outside the admiralty jurisdiction of the court below and therefore, incompetent, it is equally the vehement contention of the respondent’s counsel that the subject matter of the claim of the respondent, which he submits is a claim touching on charter-party agreement between the parties, was one squarely within the ambit of the provisions of sections 1 and 2 of the Admiralty Jurisdiction Act, 1991 and thus competent before the court below.

My lords, the issue of jurisdiction is very fundamental to adjudication because it goes to the foundation and competence of any cause or matter or action before the court. It is indeed the epicenter of the entire litigation process and thus without it, there can be no validity in any proceedings or resultant judgment of the court. However, in determining the issue of jurisdiction, it is settled law that it is the claim or subject matter of the claim of the claimant that denotes the jurisdiction of the court. Thus, it is the claim of the claimant that the court would critically examine to determine whether or not it is within the jurisdiction of the court to adjudicate upon. It is the law that once an issue of jurisdiction is raised, it must be determined first one way or the other by the court because jurisdiction is radical and sine quo non to adjudication of any matter or action or cause in a court of law and thus without jurisdiction there can be no competence in the court. See Madukolu v. Nkemdilim (1962) 1 All NLR (Pt. 4) 587, (1962) 2 SCNLR 341, (1962) 2 NSCC 374. See also Elugbe v. Omokhafe (2004) 18 NWLR (Pt. 905) 319 at page 334, (2005) All FWLR (Pt. 243) 629; Ansa v. Registered Trustees of the Presbyterian Church of Nigeria (2007) LPELR 4636 (CA), (2008) All FWLR (Pt. 405) 1681, (2008) 7 NWLR (Pt. 1086) 421 at page 448; Gaji v. Paye (2003) FWLR (Pt. 163) 1, (2003) 8 NWLR (Pt. 823) 583 at pages 599 - 600, (2003) 5 SC 53, (2003) 5 SCNJ 20, Fashogbon v. Adeogun (No. 2) (2007) All FWLR (Pt. 396) 661 at page 658, Tukur v. Government of Gongola State (1989) 4 NWLR (Pt. 117) 517, (1989) 9 SCNJ 1; Western Steel Works Ltd v. Iron & Steel Workers Union of Nigeria (1987) 1 NWLR (Pt. 49) 284; Adeyemi v. Opeyori (1975) 9 - 10 SC 31, (1976) 10 NSCC 455, (1976) 1 FNLR 148; Omaghoni v. Nigerian Airways Ltd (2006) 18 NWLR (Pt. 1011) 310; Equity Bank (Nig.) Ltd v. Halilco (Nig.) Ltd (2006) All FWLR (Pt. 337) 438, (2006) 7 NWLR (Pt . 980) 568; N.D.I.C. v. Central Bank of Nigeria (2002) FWLR (Pt. 99) 1021, (2002) 7 NWLR (Pt. 766) 272.

In law what would amount to a simple contract is very clear and thus poses no difficulty at all. It is consensus ad idem and execution of an agreement by the parties with terms and conditions to which they are both bound that constitutes an agreement. It may be oral or written or inferred from correspondences but in all and in whatever form there must be shown the terms as ad idem between the parties. A contract, simply put, is thus an agreement between two or more parties in which there is a consensus ad idem with the intention to create a legal relationship backed by offer, acceptance and consideration. See Olanlege v. Afro Continental (Nig.) Ltd (1996) 7 NWLR (Pt. 458) 29, (1996) 7 SCNJ 145, where the Supreme Court had stated inter alia thus:

“One of the fundamental principles of the Law of Contract is that parties must reach a consensus ad idem in respect of the terms thereof otherwise the contract cannot be regarded as legally binding and enforceable.” See also Bilante International Ltd v. Nigeria Deposit Insurance Corporation (2011) All FWLR (Pt. 598) 804, (2011) 15 NWLR (Pt. 1270) 407 at page 436.

Having determined as above what is a simple contract in law, what then would in law and on facts amount to admiralty matter as would ignite the admiralty jurisdiction of the Federal High Court to entertain such a claim filed before it? In the Supreme Court’s recent decision in B.B Apugo & Sons Ltd. v. Orthopedic Hospital Management Board (OHMB) (2016) LPELR – 40598 (SC), decided on 17 June 2016, the Supreme Court per Kekere -Ekun JSC at pages 35 - 39, after a careful review of some of its earlier decisions on the scope of the admiralty jurisdiction of the Federal High Court, had pronounced with finality inter alia thus:

“Having given careful consideration to the respondent’s claim as reproduced above, I agree with the learned counsel for the respondent that the claim is simply one for special and general damages for breach of contract to supply and install equipment.

The mere fact that the goods were to be conveyed to Nigeria by sea or air does not bring the claim within the admiralty jurisdiction of the Federal High Court.

Notwithstanding the opening of letters of credit in respect of the importation of the goods, there is no dispute between the parties on the actual conveyance of the goods. Simply put, appellant failed to supply all the equipment of which the respondent had made full payment in advance. Furthermore, the respondent incurred additional expense in installing the equipment that was delivered upon the appellant’s failure to fulfill its own part of the contract to install same. I therefore, hold that the claims did not fall within the exclusive admiralty jurisdiction of the Federal High Court”

Also in Iroegbu v. MV Calabar Carrier (2008) 5 NWLR (Pt. 1079) 169, pages 170 - 171, the court while considering what would constitute a general maritime claim had stated inter alia thus:

“By virtue of section 2 (3)(f) of the Admiralty Jurisdiction Act, 1991, reference to a general maritime claim is a reference to a claim out of an agreement relating to the carriage of goods or persons by a ship or to the use or hire of a ship, whether by charterparty or otherwise.”

See also A.S.N v. E.T.B (2001)34 WRN 123 at page 133; Tigris International Corp. v. Ege Shipping & Trading Ind. & Ors. (1999) 6 NWLR (Pt. 608) 701.

I had earlier reproduced, scrutinized and considered the entire claims of the respondent as endorsed on the writ and as pleaded in the statement of claim in the light of the relevant provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the Admiralty Jurisdiction Act, 1991 and it does appear to me and I so hold that the respondent’s claim founded on a demand for or recovery of debt arising from the charter-party agreement between the parties, in whatever way or manner it is looked at or construed or considered, is clearly a claim outside the ambit of the provisions of section 1(1)(a) and 2 (1) and (3)(f) of the Admiralty Jurisdiction Act, 1991 and thus not within the admiralty jurisdiction of the Federal High Court.

My lords, I therefore, cannot but agree with the appellant’s counsel submission and the findings of the court below that the respondent’s claim is not one founded on simple contract, but one relating to claim arising principally from maritime transaction by means of a charter-party agreement is erroneous, both on point of law and on the facts, as presented before the court below and thus liable to be set aside. I find the decisions in Onuorah v. Kaduna Refinery & Petrochemical Co. Ltd (supra) at page 393 and Adelekan v. Ecu-line (supra) at pages 166 - 167, as apt to the effect that once a claim is founded in simple contract and as in the instant appeal for recovery of debt after the charter party agreement has come to an end without any incident at the time of its execution in relation to the vessels involved, it is a claim outside the admiralty jurisdiction of the Federal High Court and ought to be commenced before the appropriate High Court and not the Federal High Court. This is so because in law it is only and only if or when the claim is founded on a maritime claim such as service being rendered onboard a ship or vessel etc which is not the fact in the instant appeal, which has to do with the claim by the respondent for outstanding debt from the appellant for services agreement already duly and completely executed, that the Federal High Court would have the requisite admiralty jurisdiction over such matter. See Iroegbu v. M. V. Calabar Carrier (supra) at pages 170 - 171. See also A.S.N v. E.T.B (supra) at page 133; Tigris International Corp. v Ege Shipping and Trading International Inc. & Ors (supra).

My lords, the law is thus now well settled that once the claim of a claimant is founded upon a simple contract such as a demand fore payment of debt or for recovery of debt arising from an executed contract or agreement between the parties and thus having no features of a maritime claim, then the admiralty jurisdiction of the Federal High Court cannot be invoked as such a claim would be outside the jurisdiction of the Federal High Court. This position of the law has long been settled by the apex court and cannot be re-opened at this level of this court unless and until the Supreme Court decides otherwise. See Onuorah v. Kaduna Refinery & Petrochemical Co. Ltd (2005) All FWLR (Pt. 256) 1356, (2005) 6 NWLR (Pt. 921) 393, (2005) 6 MJSC 137 at page 154, (2005) 2 SC (Pt.) 1, where the Supreme Court held inter alia thus:

“A careful perusal of section 230 (1) of the Constitution of the Federal Republic of Nigeria, 1979 (as amended) by decree No. 107 of 1993, which set out matters under the exclusive jurisdiction of the Federal High Court shows clearly that action for breach of contract, simpliciter, such as the plaintiff/appellant’s claim, is not included in the sub-section; rather, it falls within the residual jurisdiction of the State High Court pursuant to Section 236(1) of the 1979 Constitution, which was the law in force when the cause of action arose: See 7Up Bottling Co. Ltd v. Abiola & Sons Bottling Co. Ltd (2001) FWLR (Pt. 70) 1611, (2001) 13 NWLR (Pt. 730) 469; Trade Bank Plc v. Banilux (Nig.) Ltd (2003) FWLR (Pt. 162) 1871, (2003) 9 NWLR (Pt. 825) 416 at page 430.”

Also in Adelekan v. ECU-Line NV (supra) at pages 166 - 167, the Supreme Court per Onnoghen JSC (As my lord then was but now CJN) had pronounced inter alia thus:

“As regards ground (c), I had earlier in this judgment, reproduced the claims. I repeat that these, in my respectful view, are clearly, a case based on a simple contract and certainly not on admiralty. A claim for damages for negligence (which as rightly submitted in the brief of the respondent will only be collateral to the contract), cannot be entertained and determined in the Federal High Court. Therefore, the learned trial judge lacked the jurisdiction to entertain the claim in simple contract.’

See Omosowan & 2 Ors. v. Chiedozie (1998) 9 NWLR (Pt. 566) 477 at page 484 C.A.

What is more, by section 230(1) of the Constitution of the Federal Republic of Nigeria, 1979 and even by section 251 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Federal High Court has no jurisdiction in matters relating to simple contracts.” See also Messrs N. V. Scheep v. M.V. “S Araz” (2000) 4 NSQR 112 at page 165 per Karibi Whyte JSC, (2000) 15 NWLR (Pt. 691) 622 , (2000) 12 SC (Pt. 1) 164, (2001) FWLR (Pt. 34) 543; Aluminium Manufacturing Co. (Nig.) Ltd v. Nigerian Ports Authority (supra) at page 82 per Oputa JSC; I.T.P.P. Ltd v. Union Bank of Nigeria Ltd (2006) All FWLR (Pt. 324) 1789, (2006) 12 NWLR (Pt. 995) 483 at page 508.

Having therefore, found and so firmly too, that the principal claim of the respondent against the appellant founded on recovery for debt as by way of outstanding payments due to appellant on the terms of their completely executed charter-party agreement between the parties is one founded on a simple contract for recovery of debt and thus not a maritime claim, I have no difficulty resolving issue one in the negative against the respondent in favour of the appellant and hold firmly that the court below on the facts of the claims of the respondent is neither competent nor conferred with any jurisdiction to entertain the respondent’s claims against the appellant.

Issue two: “Whether the respondent had fulfilled the condition(s) for the grant of an order of mareva injunction by the court below as granted upon its motion ex- parte filed on 27 January 2016” Appellant’s counsel submissions

The appellant’s counsel had submitted that the respondent had obtained a warrant of arrest and detention of the appellant’s barges “GP-35” and “Sea Constructor” when there was no claim or declaration relating to or concerning the barges in the substantive reliefs claimed by the respondent in its writ of summons and statement of claim at the Federal High Court and contended that an interlocutory application should normally be based on the specific reliefs in the substantive action before the court and urged the court to hold that an interlocutory application which does not seek a prayer relating to the cause of action is incompetent since the respondent cannot at the stage of interim/interlocutory proceedings make a fresh case different from the reliefs sought in the substantive suit. Counsel relied Abacha v. Fawehinmi (2000) FWLR (Pt. 4) 533, (2000) 6 NWLR (Pt. 660) 228; (2000) 2 SCNQR 489 at page 500; Okulate v. Awosanya (2000) FWLR (Pt. 25) 1666, (2000) 1 SC 107, (2000) 2 NWLR (Pt. 646) 530, (2000) 1 SCNQR 149 at page 153; Adenuga v. Odumeru (2001) FWLR (Pt. 37) 1056, (2001) 2 NWLR (Pt. 696) 184, (2001) 83 LRCN 64 at pages 77- 84; Okoya v. Santilli (1991) 7 NWLR (Pt. 206) 753 at page 765.

The appellant’s counsel further submitted that on the facts in the instant appeal, the court below lacked the jurisdiction to grant an interim order of injunction on a subject matter not connected with or relating to the subject matter of the substantive suit and contended that the issuance of a warrant of arrest and detention of the appellant’s barges “GP-35” and “Sea Constructor” issued by the court below was wrong and urged the court to vacate and set aside the said order and to allow the appeal.

Respondent’s counsel submissions

The respondent’s counsel had submitted in law interlocutory orders are usually made based on the substantive relief(s) being sought from the court but contended that the grant of an order of mareva injunction, being an action in personam, is not on all fours in term of applicable principle with the regular orders of interlocutory injunction and an action in rem and urged the court to hold that the decisions in Abacha v. Fawehinmi (supra); Adenuga v. Odumeru (supra) and Okoye v. Santili (supra) were cited out of context as they are not applicable to the instant appeal.

The respondent’s counsel further submitted that the respondent established all the requirements in law for a grant of an order of mareva order and contended that on the affidavit evidence before the court the respondent showed that he has an action against the defendant within on a good arguable case and that the appellant has assets within jurisdiction with a real and imminent danger of its being removed from jurisdiction of the court below and which if not checked would render nugatory any judgment which the respondent may obtain and further that the balance of convenience is on the respondent’s side with an undertaking as to damages. Counsel relied on Third Chandris Shipping Corp v. Unimarine S.A. (1979) 2 All ER. 972, Visions Channel 4 Ltd v. Visions Channel 4 Ltd (1983) 1 WLR; Mutual v. Thakur Shipping (1986) 2 LYODS R 439, Sotuminu v. Ocean Steamship (Nig.) Ltd (1992) 5 NWLR (Pt. 239) 1, pages 9 -11 and 25 - 29.

The respondent’s counsel also submitted that the nature of the action filed by the respondent is for an action in personam and therefore, the respondent was not required by law to establish a cause of action against the assets which are the subject matter of the order of mareva injunction and which may also used in law as security for the judgment in the substantive suit. Counsel relied on Nipon Yusen Kaisha v. Karageorgis (1975) 3 All ER 282; Mareva Companies Naviera S.A. v. International Blukearriers S.A. (1975) 3 All E.R. 282; Sotuminu v. Ocean Steamship (Nig.) Ltd (1992) 5 NWLR (Pt. 239) 1; Efe Finance Holdings Ltd v. Osagie (2000) 5 NWLR (Pt. 658) 536.

Resolution of issue two

My lords, having resolved issue one in the negative against the respondent and holding firmly that the court below has not the requisite jurisdiction to entertain the claim of the respondent that ought to be the end of the matter in this appeal, since in law a court lacking the jurisdiction to entertain the substantive claims of a party would also naturally and legally lack the jurisdiction or power to grant an order, even if in the interim or interlocutory, founded on or hinged upon the substantive claim of the party, over which the court lacks the requisite jurisdiction to hear and determine as in the instant appeal. However, being a penultimate appellate court with the apex court up there looking, watching and waiting, I shall proceed to consider, albeit briefly issue two on its merit.

The crux of this issue is whether the court below exercised its discretion judicially and judiciously in line with applicable principles of law when it granted an ex-parte order of mareva injunction against the appellant restraining it in connection with its barge, being not the subject matter of the respondent’s claim.

On the one hand, the appellant’s counsel had contended that the court below was wrong to have granted the ex-parte order of mareva injunction against the appellant’s property that had nothing in connection or to do with the claims of the respondent before the court below. On the other hand, the respondent’s counsel had contended that on the facts as presented before the court below, the ex-parte order of mareva injunction was properly made by the court below to restrain the appellant from moving its only assets capable of satisfying the judgment debt, should the respondent succeed out of the jurisdiction of the court below.

My lords, while the relevant and applicable principles of law on the grant or refusal of ex-parte order of mareva injunction are well settled, it is the ascertainment of the relevant facts to see if they satisfy the applicable principles of law or not, that is, the real issue in contention under issue two. In an application for mareva injunction, the applicant has the burden to establish by relevant and cogent facts in the supporting affidavit all of the following, to wit:

a. He has an action against the defendant within jurisdiction.

b. He has a good arguable case.

c. The defendant has assets within jurisdiction and must give the particulars of such assets.

d. There is a real and imminent danger that the defendant will remove the assets from jurisdiction and thereby render nugatory any judgment which the plaintiff may obtain.

e. He must give a full and frank disclosure of all material facts relevant to the application.

f. He must show that the balance of convenience is on his side.

g. He must be prepared to give an undertaking as damages. See Third Chandris Shipping Corp v. Unimarine S.A. (1979) 2 All ER. 972. See also Sotuminu v. Ocean Steamship (Nig.) Ltd (1992) 5 NWLR (Pt. 239) 1 at pages 9 - 11 and 25 - 29.

Taking into consideration of the true purport and essence of mareva injunction, which is in the nature of a ‘qua timet’ action, the law does not require that an applicant, in an action commenced in personam, who applies for such an order, intended to secure primarily assets of the defendant within the jurisdiction of the court from being fritted away or dissipated before judgment, should establish a cause of action against the object or asset, the subject of the order of mareva injunction. Thus, where a claimant can show a good arguable claim to be entitled to money from a defendant and there is a real risk that the defendant will remove assets from the jurisdiction or dispose of them so as to render them unavailable, or untraceable in the event of judgment in the claim being obtained against him, the court may grant an injunction to restrain the defendant from disposing off the assets or removing them from the jurisdiction. This type of injunction is called “mareva injunction”. See the English case of Nipon Yusen Kaisha v. Karageorgis (1975) 3 All ER 282. See also Mareva Companies Naviera S.A. v. International Blukearriers S.A. (1975) 3 All E.R. 282; Efe Finance Holdings Ltd v. Osagie (2000) 5 NWLR (Pt. 658) 536 relied upon by the court below, which authorities I find are apt.

The introduction of mareva injunction into the Nigeria legal jurisprudence and its rationale were admirably expounded and expatiated by the Supreme Court in the celebrated case of Sotuminu v. Ocean Steamship Nig Ltd (supra), where NnaemekaAgu JSC, had stated inter alia thus:

“The appellant is basing his case, the subject of this appeal on a mareva injunction. Such injunction are novel and came on the firmament of injunction in only 1975, in the case relied upon and was a fundamental departure from the erstwhile general rule that a plaintiff will take his queue with other creditors of the defendant and if he obtained a judgment against the defendant would simply, subject to the rules on priorities of debts, execute it on the defendant’s available assets or on the person of the defendant. In 1975, the Court of Appeal in the judgment cited above introduced a more ubiquitous feature into the practice of injunctions. This introduced a limited exception to the general rule by granting ex-parte injunctions restraining defendants from disposing of or dealing with any other assets within the jurisdiction of the court or removing or disposing out of the jurisdiction monies standing against him. But as the case itself says, such will only be granted only if it appears that the debt is due and outstanding.”

Having reiterated the applicable principles of law on the grant or refusal of mareva injunction, I shall now focus my attention and pay closer attention to the facts as were presented before the court below by the respondent leading to the granting of the ex-parte order of mareva injunction against the appellant restraining it from moving its said barges from where they were berthed at the time of the order.

By a motion ex-parte filed on 17 January 2014, the respondent had sought an order of mareva injunction against the appellant to restrain it from removing the Barges “the Sea Constructor” and “the GP - 35” from the Nval Dockyard in Victoria Island, Lagos, where they are berthed pending the determination of the motion on notice. The application was supported by an affidavit of 20 paragraphs, annexed to which were several bundles of documents as exhibits A1, A2 and A3. In paragraphs 8, 10, 12, 17 and 18 of the said affidavit, the deponent, one Vito Cinnoti, the MD of the respondent’s company, had stated that following the charter-party agreements between the parties, the appellant had used the vessels availed it by the respondent in the due execution of its contract at Chevron Escravos Field and received due payment but had refused to make good its financial obligation to the respondent arising form the charter-party agreement. He also stated that the appellant has no fixed assets in Nigeria and that the only assets it has within the jurisdiction of the court below were the said two barges, which are sea going vessels and the respondent fears that once served with the processes in the suit, the appellant would remove the said vessels due to its uncorporative attitude towards the payment of its debt to the respondent. On 28 January 2014, the court below heard the application and granted it.

As part of its preliminary objection, the appellant also prayed the court below to vacate the ex-parte order of mareva injunction made against it on 28 January 2014. After taking arguments from the parties on 10 March 2014, the court below delivered its ruling on 21 March 2014, wherein it declined to vacate its order of mareva injunction issued against the appellant in favour of the respondent, holding firmly that the respondent established all the relevant facts required of it by law to be entitled to an ex-parte order of mareva injunction, which has over the years since 1975 become part of the Nigerian Law. The court relied extensively on several English and Nigerian judicial authorities for its decision not to vacate the said ex-parte order of mareva injunction it had earlier made against the appellant. See pages 419 - 423 of the record of appeal.

Having taken time to consider the affidavit evidence before the court in the light of the applicable principles of law, I find that the grant of the ex-parte order of mareva injunction by the court below against the appellant on 28 January 2014 in favour of the respondent was a proper, judicious and judicial exercise of the discretion of the court below. I find also that in the preliminary objection, in which no contrary facts were presented before the court below it, having not been supported by any affidavit, the court below had no justifiable reason as none was made out by the appellant, to disturb its earlier ex-parte order of mareva injunction as by way of vacation the same. In law, to ask or request a court of law to vacate its earlier order is not granted as a matter of course. It is also not a tea party and thus it is not available for the mere asking but must be obtained on sufficient material placed before the court to show why it ought in law and on the facts to set aside or vacate its earlier order. The appellant did not furnish any facts in support of its contention before the court below, as its preliminary objection was so rich in legal arguments, but very poor on the essential facts and was thus rightly refused by the court below. In the circumstances therefore, I cannot but resolve issue two in the affirmative in favour of the respondent against the appellant and hold firmly that the respondent fulfilled all the conditions essential for the grant of an order of mareva injunction by the court below, as was granted to it on 28 January 2014 against the appellant upon its motion ex-parte filed on 27 January 2016.

However, having found in the resolution of issue one that the court below lacks the jurisdiction to hear and determine the claims of the respondent and that being the end of the end the road for the claims of the respondent before the court below, this appeal is pregnant with merit and perforce must succeed, notwithstanding the resolution of issue two in favour of the respondent. Consequently, the appeal is hereby allowed.

In the result, the ruling of the Federal High Court, Lagos Division, Coram: M.B. Idris J., in suit No. FHC/L/CS/101/2014: West African Supply Vessel Services Limited v. Compact Manifold and Energy Services Limited delivered on 21 March 2014, wherein the appellant’s notice of preliminary objection filed on 7 February 2014 by which it sought an order striking out and/or dismissing the respondent’s suit for want of jurisdiction and an order vacating the order of mareva injunction granted against the appellant on 28 January 2014 was dismissed is hereby set aside.

In its stead, suit No. FHC/L/CS/101/2014: West African Supply Vessel Services Limited v. Compact Manifold and Energy Services Limited is hereby struck out. Consequently, the mareva injunction granted by the court below in respect of the respondent’s claims outside its jurisdiction, and which it thus also lacks the jurisdiction to so grant is hereby vacated forthwith.

There shall be no order as to cost.

**NIMPAR JCA:**

My learned brother, Biobele Abraham Georgewill JCA, gave me the opportunity of reading in advance, the judgment just delivered. I agree with the reasoning and conclusion arrived in the lead judgment.

Let me just add a few words specifically on the appellant’s first issue. This court and the apex court held unequivocally that the State High Court has jurisdiction over matters of simple contract, see Adelekan v. Ecu-line (2006) 8 MJSC 142, (2006) All FWLR (Pt. 321) 1213, (2006) 12 NWLR (Pt. 993) 33 and Ports & Cargo Handling Services Co. Ltd v. Migfo (Nig.) Ltd (2012) All FWLR (Pt. 642) 1615, (2012) 18 NWLR (Pt. 1333) 555.

Based on the nature of the claim presented by the respondent, founded majorly on a demand for recovery of debt arising from the charter-party agreement between the parties, it is clear that the services the respondent was engaged to render has been executed and it is outstanding payment that is being claimed here along damages.

In the case of Petrojessica Enterprises Ltd v. Leventis Technical Co. Ltd (1992) 5 NWLR (Pt. 244) 675, (1992) LPELR - 2915 SC, the court held that once cargo has been discharged from a vessel, carriage by sea admiralty jurisdiction ends and what follows is a mere contract not admiralty. The distinguishing feature is a thin line though clearly marked. A party claiming or defending a claim has to do some examination to determine where jurisdiction lies. For a claim to remain an admiralty claim, the goods and services must still be in the vessel, see Nomsal Marketing and Supplies Ltd v. Joasy Pen Enterprises Ltd (2005) All FWLR (Pt. 288) 1193, (2005) LPELR- 5981(CA) which held thus:

“For a claim in admiralty to arise, the cargo or goods must still be in the vessel. It follows that the admiralty jurisdiction of the Federal High court cannot be invoked once the goods carried by a ship have been discharged or, delivered to a point of destination of the cargo. In the instant case, the dispute arose from the failure of the appellant to pay for the balance of the services rendered to it by the respondent and nothing beyond that happened. Therefore, the case is simply one of debt and not one founded on admiralty and the High Court had jurisdiction to entertain it. I am fortified in my view with the decision of the Supreme court in the case of Texaco Overseas (Nig.) Petroleum Co. Unlimited v. Pedmar Nigeria Ltd (2002) FWLR (Pt. 126) 885, (2002) 13 NWLR (Pt. 785) 526.”

Once that service has been rendered and it is the payment outstanding that is the claim, then it becomes a simple contract and recovery of debt simpliciter.

It is for this and the other elaborate reasons in the lead judgment, that I too allow the appeal. I abide by the consequential orders made in the lead judgment.

**OBASEKI-ADEJUMO JCA:**

I was privilege to read before now, the judgment delivered by my learned brother, Georgewill JCA, and I agree with him that this appeal is meritorious.

It goes without saying that jurisdiction remains the nerve centre of adjudication and the blood that gives life to the continual survival of every action. The settled principle of law is that it is the claim of the plaintiff that determines the jurisdiction of a court to entertain a suit. See Madukolu v. Nkemdilim (1962) 1 All NLR (Pt. 4) 587 at page 595, (1962) 2 SCNLR 341, (1962) 2 NSCC 374; Olorunyolemi & Anor. v. Akhagbe (2010) All FWLR (Pt. 525) 246, (2010) 8 NWLR (Pt. 1195) 48, (2010) LPELR – 2597 (SC).

In the instant case, the claims of the respondent against the appellant and as contained in the statement of claim are as follows:

1. “The sum of US$470,568.85 (four hundred and seventy thousand, five hundred and sixty eight dollars and eighty five cents) being the portion of the sum outstanding and due for the charter of MV Ugodie and the MV Zikron Defender based on the charter party agreements dated 18 October 2012 and 5 December 2012 respectively.

2. The sum of N56,483,834.59 (fifty six million, four hundred and eighty three thousand, eight hundred and thirty four naira, fifty nine kobo being the naira portion of sum outstanding and due for the charter of the MV Ugodie and the Zikron defender based on the charter party agreements dated 18 October 2012 and 5 December 2012 respectively.

3. Interest in the said sum of US$470,568.85 (four hundred and seventy thousand, five hundred and sixty eight dollars and eighty five cents).

4. Interest in the said sum of N56,483,834.59 (fifty six million, four hundred and eighty three thousand, eight hundred and thirty four naira and fifty nine kobo).

5. Damages for breach of contract.

6. Legal fees and cost of this action.

7. Further or other reliefs.”

A prima facie reading of the above reproduced reliefs being sought by the respondent, should in my firm view, leave no one in doubt that the reliefs sought does not fall within the exclusive admiralty jurisdiction of the Federal High Court. See section 251 (1) (g) & (s) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended); section 2(3)(f) of the Admiralty Jurisdiction Act, 1991; Iroegbu v. MV Calabar Carrier (2008) 5 NWLR (Pt. 1079) 169. While enumerating on the limit of the Admiralty Jurisdiction of the Federal High Court, the Supreme Court, per Kekere-Ekun JSC in B.B. Apugo & Sons Ltd. v. Orthopedic Hospital Management Board (OHMB) (2016) LPELR - 40598, held at pages 35 to 39, paragraphs E - A thus:

“In determining whether the subject matter fell within the admiralty jurisdiction of the Federal High Court, his lordship, Niki Tobi JSC at pages 508 - 509, paragraphs H - B opined this:

“All that the defendant did was the confirmation of the authenticity of the plaintiffs letter of credit No. 16167/65626. This was done by the defendant’s letter of 12 October 1990. What is the content of admiralty in the letter of confirmation dated 12 October 1990? Has the letter anything to do with shipping, air crafting, transportation of property at sea and marine commerce and marine navigation in typical marine affairs.”

He observed that the provisions of the law are not to be considered in vacuo but the context of the claim before the court. The court concluded that what was between the parties was simply a contractual relationship which had no admiralty content. It was also held that there was nothing in the statement of claim that conveyed that a shipping transaction was contemplated between the parties. In Chevron (Nig.) Ltd v. Lonestar Drilling (Nig.) Ltd (2007) All FWLR (Pt. 386) 633, (2007) 16 NWLR (Pt.1059) 168 at page 185, paragraphs D - F and page 187, paragraphs G - H, (2007) 7 SC (Pt. 2) 27, this court made the position clearer when it affirmed the judgment of the court below, which held that an action for breach of contract for supply of goods conveyed by sea is not an admiralty action. It held that the mere fact that the transaction between the parties giving rise to the plaintiffs claim involved the conveyance of a rig purchased from India to Nigeria by sea did not give the transaction the character of an admiralty action.

The judgment of the court below, wherein it was held that the State High Court had jurisdiction to entertain the suit was affirmed.”

It is my view that the learned trial judge erred when he held that the respondent’s “cause of action as formulated on the writ of summons and statement of claim is a maritime claim as contemplated under the Admiralty Jurisdiction Act of 1991.” A careful consideration of the case of the respondent at the trial court shows that the claim is one simply based on breach of contract. The mere fact that the contract is one in the nature of charter-party does not bring it within the exclusive jurisdiction of the Federal High Court as contemplated under section 251(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Simply put, the claim of the respondent is inter alia for sum outstanding and due to it.

In the result, I have no hesitation in adopting the fuller reasoning contained in the leading judgement to hold this appeal is substantially meritorious and is hereby allowed. I abide by the consequential order(s) made in the leading judgment.

Appeal allowed

**Nigerian Cases Referred to in the Judgment:**

7Up Bottling Co. Ltd v. Abiola & Sons Bottling Co. Ltd (2001) FWLR (Pt. 70) 1611, (2001) 13 NWLR (Pt. 730) 469

A.S.N v. E.T.B (2001)34 WRN 123

Abacha v. Fawehinmi (2000) FWLR (Pt. 4) 533, (2000) 6 NWLR (Pt. 660) 228; (2000) 2 SCNQR 489

Adelekan v. Ecu-line (2006) 8 MJSC 142, (2006) All FWLR (Pt. 321) 1213, (2006) 12 NWLR (Pt. 993) 33

Adenuga v. Odumeru (2001) FWLR (Pt. 37) 1056, (2001) 2 NWLR (Pt. 696) 184, (2001) 83 LRCN 64

Adeyemi v. Opeyori (1975) 9 - 10 SC 31, (1976) 10 NSCC 455, (1976) 1 FNLR 148

Aluminium Manufacturing Co. (Nig.) Ltd v. Nigerian Ports Authority (1989 - 1990) NSC volume III

Ansa v. Registered Trustees of the Presbyterian Church of Nigeria (2007) LPELR 4636 (CA), (2008) All FWLR (Pt. 405) 1681, (2008) 7 NWLR (Pt. 1086) 421

Apugo & Sons Ltd. v. Orthopedic Hospital Management Board (OHMB) (2016) LPELR - 40598 (SC)

Bilante International Ltd v. Nigeria Deposit Insurance Corporation (2011) All FWLR (Pt. 598) 804, (2011) 15 NWLR (Pt. 1270) 407

Chevron (Nig.) Ltd v. Lonestar Drilling (Nig.) Ltd (2007) All FWLR (Pt. 386) 633, (2007) 16 NWLR (Pt.1059) 168, (2007) 7 SC (Pt. 2) 27

Efe Finance Holdings Ltd v. Osagie (2000) 5 NWLR (Pt. 658) 536

Elugbe v. Omokhafe (2004) 18 NWLR (Pt. 905) 319, (2005) All FWLR (Pt. 243) 629

Equity Bank (Nig.) Ltd v. Halilco (Nig.) Ltd (2006) All FWLR (Pt. 337) 438, (2006) 7 NWLR (Pt . 980) 568

Fashogbon v. Adeogun (No. 2) (2007) All FWLR (Pt. 396) 661

Gaji v. Paye (2003) FWLR (Pt. 163) 1, (2003) 8 NWLR(Pt. 823) 583, (2003) 5 SC 53, (2003) 5 SCNJ 20

I.T.P.P. Ltd v. Union Bank of Nigeria Ltd (2006) All FWLR (Pt. 324) 1789, (2006) 12 NWLR (Pt. 995) 483

Iroegbu v. MV Calabar Carrier (2008) 5 NWLR (Pt. 1079) 169

Madukolu v. Nkemdilim (1962) 1 All NLR (Pt. 4) 587, (1962) 2 SCNLR 341, (1962) 2 NSCC 374

Messrs N. V. Scheep v. M.V. “S Araz” (2000) 4 NSQR 112, (2000) 15 NWLR (Pt. 691) 622 , (2000) 12 SC (Pt. 1) 164, (2001) FWLR (Pt. 34) 543

N.D.I.C. v. Central Bank of Nigeria (2002) FWLR (Pt. 99) 1021, (2002) 7 NWLR (Pt. 766) 272

Nomsal Marketing and Supplies Ltd v. Joasy Pen Enterprises Ltd (2005) All FWLR (Pt. 288) 1193, (2005) LPELR- 5981(CA)

Okoya v. Santilli (1991) 7 NWLR (Pt. 206) 753

Okulate v. Awosanya (2000) FWLR (Pt. 25) 1666, (2000) 1 SC 107, (2000) 2 NWLR (Pt. 646) 530, (2000) 1 SCNQR 149

Olanlege v. Afro Continental (Nig.) Ltd (1996) 7 NWLR (Pt. 458) 29, (1996) 7 SCNJ 145

Olorunyolemi v. Akhagbe (2010) All FWLR (Pt. 525) 246, (2010) 8 NWLR (Pt. 1195) 48, (2010) LPELR - 2597 (SC)

Omaghoni v. Nigerian Airways Ltd (2006) 18 NWLR (Pt. 1011) 310

Omosowan v. Chiedozie (1998) 9 NWLR (Pt. 566) 477

Onuorah v. Kaduna Refinery & Petrochemical Co. Ltd (2005) All FWLR (Pt. 256) 1356, (2005) 6 NWLR (Pt. 921) 393, (2005) 6 MJSC 137, (2005) 2 SC (Pt.) 1

Orthopaedic Hospitals Management Board v. Garba (2002) FWLR (Pt. 123) 200, (2002) 14 NWLR (Pt. 788) 538

Petrojessica Enterprises Ltd v. Leventis Technical Co. Ltd (1992) 5 NWLR (Pt. 244) 675, (1992) LPELR - 2915 SC

Ports & Cargo Handling Services Co. Ltd v. Migfo (Nig.) Ltd (2012) All FWLR (Pt. 642) 1615

Sotuminu v. Ocean Steamship (Nig.) Ltd (1992) 5 NWLR (Pt. 239) 1

Texaco Overseas (Nig.) Petroleum Co. Unlimited v. Pedmar Nigeria Ltd (2002) FWLR (Pt. 126) 885, (2002) 13 NWLR (Pt. 785) 526

Third Chandris Shipping Corp v. Unimarine S.A. (1979) 2 All ER. 972

Tigris International Corp. v. Ege Shipping & Trading Ind. (1999) 6 NWLR (Pt. 608) 701

Trade Bank Plc v. Banilux (Nig.) Ltd (2003) FWLR (Pt. 162) 1871, (2003) 9 NWLR (Pt. 825) 416

Tukur v. Government of Gongola State (1989) 4 NWLR (Pt. 117) 517, (1989) 9 SCNJ 1

Western Steel Works Ltd v. Iron & Steel Workers Union of Nigeria (1987) 1 NWLR (Pt. 49) 28

**Foreign Cases Referred to in the Judgment:**

Kaisha v. Karageorgis (1975) 3 All ER 282

Mareva Companies Naviera S.A. v. International Blukearriers S.A. (1975) 3 All E.R. 282

Mutual v. Thakur Shipping (1986) 2 LYODS R 439

Visions Channel 4 Ltd v. Visions Channel 4 Ltd (1983) 1 WLR

**Nigerian Statutes Referred to in the Judgment:**

Admiralty Jurisdictions Act, 1991

Sections 1(1)(a), 2(1) and 2(3)(f) Constitution of the Federal Republic of Nigeria, 1979 (as amended) by decree No. 107 of 1993,

Sections 230 (1) and 236(1) Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 251 (1), (a) - (s)