**DR. DARU & ORS.**

**V.**

**BARRISTER IBRAHIM AMINU UMAR**

IN THE COURT OF APPEAL OF NIGERIA

ON FRIDAY, THE 7TH DAY OF JUNE, 2013

CA/J/272/2009

**LEX (2013) - CA/J/272/2009**

**OTHER CITATIONS**

3PLR/2010/19 (SC)

**BEFORE THEIR LORDSHIPS**

RAPHEAL CHIKWE AGBO, JCA

IBRAHIM SHATA BDLIYA, JCA

PETER OLABISI IGE, JCA

**BETWEEN**

1. DR. DARU

2. DR. MADUKA

3. DR. UTOO

4. DR. MICAH

5. DR. OCIIEKE

6. JOS UNIVERSITY TEACHING HOSPITAL (JUTH) - Appellant(s)

**AND**

BARRISTER IBRAHIM AMINU UMAR - Respondent(s)

**REPRESENTATION**

JOSHUA BARAU Esq., - For Appellant

**AND**

L. E. ANYIA Esq., with A. R. DASOEM Esq., - For Respondent

***ORIGINATING STATE***

Plateau State: High Court (Amaize J., Presiding)

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

TORT AND PERSONAL INJURY LAW – MEDICAL NEGLIGENCE:- Claim for declaration of wrongful death arising from medical negligence and award of damages for loss of consortium – Husband of deceased woman who died during surgical pregnancy in a public health facility – Curt with jurisdiction to hear same - Relevant considerations

ADMINISTRATIVE AND GOVERNMENT LAW:- Public healthcare delivery – Doctor providing medical care in any form to a patient - Legal nature of – Whether considered part of management and administration of the hospital instead of doctor-patient relations – Implication for justice administration

CHILDREN AND WOMEN LAW:- *Women and Healthcare/Justice Administration* – Access to good healthcare in public health facility - Woman who died during the course of surgical procedure for ectopic pregnancy – Where her complaint was for common cold – How treated

CONSTITUTIONAL LAW – JURISDICTION:- Public health facility belonging to federal government – Whether a State High Court has jurisdiction to entertain suit arising from negligent conduct of its officers notwithstanding the provisions of section 251 (1) (p) and (r) of the Constitution of the Federal Republic of Nigeria 1999 which confers exclusive jurisdiction on the Federal High Court in respect of matters involving the Federal Government and its agencies – Relevant considerations

EMPLOYMENT AND LABOUR LAW – VICARIOUS LIABILITY:- Public health workers as persons employed in the public service of the Federation by virtue of their employment – Vicarious liability of parent hospital for any proved damages in negligence or default/wrong – How treated

HEALTHCARE AND LAW – MEDICAL NEGLIGENCE:- Allegation of inflicting a surgical procedure on woman for ectopic pregnancy when all she complained of was common cold – How treated

HEALTHCARE AND LAW – MEDICAL ETHICS:– Public health workers employed in the public service of the Federation – Whether unlike their private counterparts are not liable to damages arising from patient-doctor relationship – Whether any patient who elects for healthcare in a public health facility automatically becomes the patient of the parent hospital and NOT the patient of any of the Consultant or Doctors at the public hospital

HEALTHCARE AND LAW – MEDICAL MALPRACTICE– Doctors employed in publicly owned healthcare centers - Where found wanting, incompetent or negligent while treating a patient leading to damage or mismanagement of the patient or death – Whether proved liability attaches only to the parent institution vicariously and not doctor

**PRACTICE AND PROCEDURE ISSUES**

ACTION - PRELIMINARY OBJECTION:- Aim and or intendment of a Notice of Preliminary objection

APPEAL:- Judgment given by court without jurisdiction – Duty of appellate court to set same aside

COURT – FEDERAL HIGH COURT:- Jurisdiction under the Nigerian Constitution - Exclusive jurisdiction – basis and extent of

COURT - PRECEDENT - CONFLICTING DECISIONS- Where lower court is confronted with conflicting decisions of the Supreme Court - Proper treatment of - Whether lower court is bound by the latest judgment - Ratio decidendi and obiter dictum of an appellate court – Which is binding on a lower court

JURISDICTION:- Nature and essence of - How determined – Duty of court to promptly investigate and determine challenge to jurisdiction when raised by party or suo motu - Need for court to confine itself to the examination of the writ of summons and the statement of claim in order to determine whether or not it has jurisdiction to adjudicate on the claimant's or the plaintiff s suit – Justification

INTERPRETATION OF STATUTES:- Interpretation of section 251 (1) (p) and (r) of the 1999 Constitution

**MAIN JUDGMENT**

**PETER OLABISI IGE, J.C.A. (Delivered the Leading Judgment):**

This appeal is against the decision of the Plateau State High Court of Justice Holden at Jos contained in the Ruling of Honourable Justice M. I. Sirajo delivered on the 5th day of March, 2009. The facts leading to the appeal herein is pathetic. The wife of the Respondent was indisposed in June, 2007. She visited the Jos University Teaching Hospital for treatment.

The Respondent alleged in his statement of Claim at the lower Court that at the behest of the Appellants one thing led to another. The Respondent's wife was asked to undergo surgery operation which according to the Respondent led to the death of his wife. He consequently sued the Appellants vide his writ of Summons issued out of Plateau State High Court of Justice on 24th day of September, 2007 claiming against the defendants now Appellants jointly and severally as follows:-

"1. A declaration that the illness that the Plaintiff's wife (Mrs Safiya Ibrahim Aminu Umar) (deceased) presented for treatment at the 6th Defendant on the 6th day of June, 2007 was common cold and not a case of ectopic pregnancy.

2. A declaration that the act of the Defendants jointly and severally in carrying out a surgery on the wife of the Plaintiff (Mrs Safiya Ibrahim Aminu Umar) (deceased) for an alleged ectopic pregnancy (which did not exist), which surgery led to her death constitutes acts of gross medical negligence.

3. A further declaration that the acts of the Defendants, jointly and severally above stated has denied the plaintiff's wife (Mrs Safiya Ibrahim) (deceased) right to life as enshrined in Section 33 of the Constitution of the Federal Republic of Nigeria, 1999.

4. A further declaration that the acts of the Defendants above stated has denied the Plaintiff, the consortium of his wife (Mrs Safiya Ibrahim Aminu Umaru).

5. The sum of N10,0000,000.00 (Ten Million Naira) being and/or aggravated general damages against the Defendants jointly and severally for negligently causing the death of the Plaintiffs wife (Mrs Safiya Ibrahim Aminu Umaru).

6. The cost of this action."

The Defendants now Appellant filed joint memorandum of Conditional Appearance in the action on 30th day of October, 2007. On 20th January, 2009 the Appellants filed Notice of Preliminary Objection against the suit of the Respondent in the following terms viz:-

"1ST - 6TH DEFENDANTS' NOTICE OF PRELIMINARY OBJECTION

TAKE NOTICE that the Defendants herein shall raise and rely on the preliminary objection herein filed, notice whereof is hereby given as follow:-

That this Honourable Court lacks the jurisdiction to entertain this suit having regard to the provisions of section 251 (1) (p) and (r) Constitution of the Federal Republic of Nigeria, 1999, AND TAKE NOTICE that the grounds of the said object are as follows:

i. The 6th Defendant, Jos University Teaching Hospital is an agency of the Federal Government of Nigeria and exercises Control over the 1st - 5th Defendants.

ii. That Section 251(1) (p) and (r) of the 1999 Constitution vests exclusive jurisdiction on the Federal High Court in respect of the subject matter of this action thereby divesting this Honourable Court of jurisdiction to entertain this suit.

WHEREOF the Defendants shall urge this Honourable Court to strike out this suit as same is incompetent for want of jurisdiction."

The Respondent did not respond to the application but sought for an adjournment when the application came up for hearing on 5th day of March, 2009. The learned trial Judge refused the Respondent's application for adjournment and the Notice of Preliminary Objection was argued by the learned counsel to the Appellants Okwori Esq. The Learned trial Judge delivered his Ruling on the Appellants' Notice of Preliminary Objection on the said 5th day of March, 2009.

The learned trial Judge found that it is not in doubt that the Jos University Teaching Hospital is an agency of the Federal Government having been established by that Government and that he accordingly took judicial notice of same.

In the considered Ruling the trial court said:-

"What now falls for determination is whether the cause of action in this suit falls within the ambit of Section 251(1) (p) and (r) of the Constitution. In order to determine this, I need to go back to the Plaintiff's claim us it is now trite that it is the Plaintiff's claim as endorsed on the writ of Summons or the Statement of claim that determines the jurisdiction of the court. At paragraph 19 of the Statement of Claim the Plaintiff claimed four declarations one for damages and the cost of this action the bundle or aggregate of facts leading to that ultimate claim is the cause of action. What then are those bundles of facts?

The Plaintiff alleged in summary that the defendants negligently caused the death of his wife, Safiya Ibrahim Umar sometimes in June, 2007 following a surgical operation. He also accused the 6th defendant of carelessness and negligence. He itemized the particulars of negligence of the defendants at paragraph 13 (a) of the Statement of Claim. Relating these aggregate of facts and the Plaintiffs ultimate claim on one hand with Section 251 (1) (p) (r) of the 1999 constitution on the other hand, I am of the humble opinion that the claim of the plaintiff does not question tie administration or the management of the 6th defendant as to bring it within the exclusive jurisdiction of the Federal High Court. It is a claim on the tort of negligence. Furthermore, the claim did not challenge the validity of any administrative or executive action of the 6th defendant as an agency of the Federal Government; rather it challenges the professional competence of the staff of the 6th defendant leading to what the plaintiff alleged as negligent conduct of the staff of the 6th defendant which in the Plaintiff's view was responsible for the death of his wife. I therefore hold that even though the 6th Defendant is an agency of the  Federal Government, the cause of action, in this suit did not fall under the provisions of section 251 (1) (p) (r) of the constitution of the Federal Republic of Nigeria, 1999, as to confer jurisdiction exclusively on the Federal High Court. I rule that this court has jurisdiction to entertain this suit, consequently the Preliminary Objection is hereby dismissed."

The Appellants were aggrieved by the above quoted decision of the trial court. They filed Notice and Grounds of Appeal consisting of one ground against the said decision of 18th day of March, 2009, but dated the 17th day of March, 2009. The sole ground of Appeal reads:-

"(1) The learned trial judge erred in law in holding that Plateau State High Court had jurisdiction to entertain suit notwithstanding the provisions of section 251 (1) (p) and (r) of the Constitution of the Federal Republic of Nigeria 1999 which confers exclusive jurisdiction on the Federal High Court in respect of matters involving the Federal Government and its agencies.

PARTICULARS OF ERROR

The learned trial Judge held that even though the 6th Defendant is an agency of the Federal Government, the cause of action in the suit does not  fall under the provisions of section 251 (1), (p) and (r) constitution of the Federal Republic of Nigeria 1999 as to confer exclusive jurisdiction on the Federal High Court."   
The Appellants therefore pray this court to set aside the Ruling of the plateau State High Court and in its stead to hold that the Plateau State High Court lacks jurisdiction to entertain the action or suit.

The parties exchanged Briefs of Argument in this appeal. The learned counsel to the parties in this appeal adopted their Briefs of Argument on 11th day of March, 2013.

The Learned Counsel to the Appellant A. M. Okwori Esq, formulated Sole issue for determination viz:

"WHETHER THE LEARNED TRIAL JUDGE RIGHTLY HELD THAT THE PLATEAU STATE HIGH COURT HAD JURISDICTION TO ENTERTAIN THAT SUIT BASED ON THE GROUND THAT THE CAUSE OF ACTION IN THIS SUIT DID NOT FALL UNDER THE PROVISIONS OF SECTION 251 (1)(P) AND (R) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 AS TO CONFER JURISDICTION EXCLUSIVELY ON THE FEDERAL HIGH COURT."

On his part the learned counsel to the Respondent L. E. Anyia Esq, also formulated one issue which has the same connotation or effect with that raised for determination by the appellants. Respondent's issue reads thus:-

"WHETHER THE LEARNED TRIAL JUDGE WAS RIGHT TO HAVE HELD THAT THE PLATEAU STATE   HIGH COURT HAD JURISDICTION TO ENTERTAIN THE SUIT AND THAT THE SUIT DID NOT FALL UNDER THE PROVISION OF SECTION 251 (1) (P) AND (R) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 AS TO CONFER JURISDICTION ON THE FEDERAL HIGH COURT."

The respective issue raised by the Appellant and the Respondent are coterminous and same will be treated as the same.

The learned counsel to the Appellant traced the antecedent of this appeal including the Notice of preliminary objection to jurisdiction of the trial court by the Appellants which objection was overruled by the lower court. A. M. Okwori Esq., for the Appellants stated that the claims of the Respondent was not exclusively predicated on alleged Professional incompetence or negligence of the Appellants and that being the case since The 6th Appellant is an Agency of the Federal Government the State High Court has no jurisdiction to entertain the Respondent's action. That the reliefs  sought fall within the exclusive jurisdiction of the Federal High court pursuant to Section 251 (1) (p) and (R) of 1999 constitution of the Federal Republic of Nigeria. He quoted the relevant provisions of the aforesaid section 215(1) of the 1999 constitution. That what needs to be established is whether the Federal Government or any of its agencies is involved in any matter in which the cause of action fall within the ambits of the constitutional frame work relying on the case of NEPA vs EDEGBERO (2003) FWLR (PART 139) 1556 AT 1573 D-G and paragraph 7 (b) and 19 of the Statement of Claim filed by the Respondent in the suit. He also relied on paragraph 12 of the Statement of Claim wherein Appellants learned counsel stated that the Respondent challenged the managerial and administrative competence of the 6th Appellant. He also relied on page 25 of the Record containing witness Statement of One of the Plaintiff/Respondent proposed witness at the trial one Hajiya Rabi Sani.

The Appellant, Learned Counsel A. M. Okwori Esq., submitted that a careful perusal of paragraphs 2-4, 8-10, 11(b), 13(1) and (3), 14, 15 (a) 18, 19(1) - (6) of the Statement of Claim made the Respondent's action caught by Section 215 (1) (P) and (R) of the 1999 Constitution. That this made the learned trial Judge to say in his ruling that:-

"He Respondent also accused the 6th Defendant of carelessness and negligence"

That the accusation is no doubt directed against the administrative competence of the Hospital. The Appellants accused the learned trial Judge of failure to have dispassionately considered the entire case put forward by the Respondent in the light of decided authorities relying on the cases of NEPA VS EDEGBERO (supra) at 1569; ADEMOLA VS ADETAYO (2005) ALL FWLR (pt 259) 1966 at 1988 H-A and JUTH VS AJEH (2007) 1 NWLR (pt 1016) 490 at 520 - 521; where according to the Appellants the courts emphasized the clear intention, purport and effect of Section 234(1) of 1979 Constitution as amended which Appellants submitted is in pari material with section 251(1) of 1999 constitution vis-a-vis the exclusive jurisdiction of the Federal High court. Appellants further submitted that jurisdiction is the bedrock and life wire of litigation and where jurisdiction is lacking, the entire exercise would be of no moment. He urged the court to allow the appeal by striking out the Respondent's suit.

In response to the Appellants arguments or submissions the Respondent's learned Counsel L.E. Anyia Esq., opined that the trial Judge was right in holding that the High Court of State has jurisdiction to entertain Respondent suit on the ground that the cause of action in the suit did not fall under the provisions of Section 251(1) (p) and (r) of the Constitution of Nigeria 1999 as to confer jurisdiction on the Federal High court. He discussed the factors determining whether a court has jurisdiction in a cause or matter. He relied on the cases of MADUKOLU & OTHERS V NKEMDILIM (1962) 1 ALL NLR 587 AT 589 per BAIRAMIAN F.J. and NJIKONYE VS. MTN (NIG) COMM. LTD (2008) ALL FWLR (PART 413) 1343 at 1366 D-G.

That the claims of Respondent which according to L. E. Anyia Esq. were for damages against the Appellants for the acts of negligence committed against his wife Safiya Ibrahim (deceased) is one that falls within the confines of the State High Court which Respondent submitted has exclusive jurisdiction to entertain a claim for negligence which is a tortuous liability.

Anyia Esq then reproduced again the reliefs sought by Respondent in paragraph 19 of the Statement of Claim, He also cited in support the decision of Supreme Court in the case of ADELEKAN V. ECULINE NV (2006) ALL FWLR (pt 32) 1213 at 1226 D-E per ONNOGHEN, JSC and the decision of this court in the case of UNILORIN V. AKILO (2001) 4 246 AT 257 B-D to submit that the Federal High Court lacks the jurisdiction to hear Respondent's case. He sought support in the case of ONUORAH VS. K.R.P.C. LTD (2005) 6 NWLR (pt 921) 393 at 404 E-F per AKINTAN JSC.

To L. E. Anyia Esq., the Appellants further shot themselves in the feet by making heavy weather of the case of NEPA V. Edegbero (2003) FWLR (Pt.139) 1556 at 1573 D-G. It is the further submission of the Respondent that there is nothing in the respondent's pleadings that challenges the administration, management and control of 6th Appellant to confer jurisdiction on the Federal High Court in this matter. The Respondent Counsel urged this court to discountenance the Appellants submission that since the Respondent complained about the ultra sound machine of the 6th Appellant which purportedly gave wrong diagnosis the Respondent has thereby challenged the management and control of the 6th Appellant. He submitted that it was the negligence of the Appellant and professional incompetence of the doctor who used the Ultra sound machine that led to a wrong diagnosis. L. E. Anyia Esq., submitted that proper use of a machine does not fall under the administration and control of 6th Appellants. Respondent also submitted that the argument of Appellants that because the Respondent accused them of failure of lack of care for his wife after she was operated upon by 1st - 5th Appellants and abandoned her to mean that the action falls within section 251(1)(p) and (r) of the 1999 Constitution. He relied on paragraphs 7 and 8 of the statement of claim to contend that going by the averments therein contained it was clear that the 5th defendant had a crucial role to play, in the treatment of the Plaintiff was not proper Management of 6th Appellant that caused the death of Respondent's wife but rather that it was the gross negligence and incompetence of 1st - 5th Appellants. The Appellants according to Respondent could not have being under the control of the 6th Appellant in the operation carried on the Respondent's wife but due to medical negligence. He relied on the case of UNILORIN V AKILO (SUPRA) 256 - 257 F-B per AMAIZU JCA. The Respondent also submitted that paragraphs 2-4, 8-1 (9) (1) (b), 131(1) 14, 15(a) 18, 19(1) - (6) of the Respondent's Statement of Claim did not fall into Section 251(1) of the 1999 Constitution but rather the paragraphs were intended to show the aggregate of facts which led to the untimely demise of his wife. Respondent relied on the position taken by the trial court in its Ruling relying on the case of UNILORIN V. AKILO (SUPRA) 257 B-F and the exposition of law by Lord Denning concerning doctor and his patient in the case of CASSIDY VS MINISTRY OF HEALTH (1951) 2 KB 343 in his book "The discipline of law page 238".

Respondent concluded his submissions by urging this court to hold that the Respondents claim is solely for damages for tort of negligence and that same is triable by the state High Court. Respondent finally urge this court to dismiss the appeal of Appellants and uphold the Ruling of the Learned Trial Judge.  
Now the law is settled that the aim and or intendment of a Notice of Preliminary objection is to terminate in limine the life of an action or to bring a suit or matter to an abrupt end due to obvious defect or incompetence of the action. See CHIEF U. M. EFET VS INEC & ORS (2011) 3 SC 63 at 76 I-77A where the Supreme Court per I. T. Muhammad, JSC had this to say:-

"As has been chronicled above, all the three Respondents raised Preliminary objection, argued same and relied on same as to the competence of this appeal. The aim/essence of a preliminary objection is to terminate at infancy, or as it were to nib it in the bud, without dissipating unnecessary energies in considering an unworthy or fruitless matter in a court's proceedings. It in other words, forecloses a hearing of the matter in order to save time- See YARO VS. AREWA CONSTRUCTION LTD & ORS (2007) 6 SCNJ 418 2007) 12 SCM (PT 1) 748."

The mainstay of the Appellant's Notice of Preliminary objection was that the lower court has no jurisdiction to entertain the Respondent's suit in view of the fact that Jos University Teaching Hospital is an Agency of the Federal Government and having regard to Section 251 (1) (p) and (r) of the Constitution of the Federal Republic of Nigeria 1999. The law is clear that where a Defendant conceives that ex-facie he has a good point or points of law that can in limine dispose or terminate a claimant's case or action, he is entitled to bring an application to canvass such point or points of law particularly where it touches and concerns the jurisdiction of the court trying the action. This the Defendant can do even without filing a defence to the plaintiff's action. If the preliminary objection fails the action continues. See OBA J. A. AREMO II VS. S. F. ADEKANYE & ORS (2004) 13 NWLR (PART 891) 571 AT 594 F-H per EDOZIE JSC. Where the competence of an action is called to question as in the case on appeal on the ground that the prerequisite of initiating such proceeding within the parameters of the law or the constitution has not been followed or fulfilled the court must promptly investigate and determine the question in order to discern if it has jurisdiction to entertain the matter. The position was reemphasized in the case of ISAAC OBIUWEUBI VS C.B.N. (2011) 7 NWLR (PART 12470 46 at 49 where RHODES-VIVOUR, JSC who delivered the leading judgment said:

"Jurisdiction is a threshed matter. It is very fundamental as it goes to the competence of the court to hear and determine a suit. Where a court does not have jurisdiction to hear a matter, the entire proceedings no matter how well conducted and decided would amount to a nullity. It is thus mandatory that the courts decide the issue of jurisdiction before proceedings to consider any other matter. See Bronik Motors Ltd and Anor. Vs. Wema Bank Ltd (1983) 1 SCNLR (Pt.131) 1172; Madukolu VS. Nkemdilim (1962) 1 ANLR (PART 4) 587; (1962) 2 SCNLR 341.

Jurisdiction can be raised at any stage of the proceedings in the High Court, on appeal and even in the Supreme Court for the first time. See Usman Dan Fodio University VS Kraus Thompson Organisation Ltd. (2001) 15 NWLR (PART 376) p.305.

It can be raised by any of the parties or by the court and once raised, the Judge would well to examine it and render a considered ruling on it. In the task of determining if the court has jurisdiction to hear and determine a case the following principles must be considered diligently Judge.

(a) Whether the subject matter of the case is within the court's jurisdiction;

(b) Whether there is any feature in the case which prevents the court from exercising its jurisdiction; and

(c) Whether the case comes before the court initiated by due process of law and upon fulfilment of any condition precedent to the exercise of jurisdiction; See Madukolu VS Nkemdilim (1962) 2 SCNLR P.341; Ajao Vs Ajao (1926) 5 NWLR (Pt.45) P.802"

The learned trial Judge did well in promptly dealing with the issue of jurisdiction raised by the Appellants.

The issue for determination in this appeal vividly revolves around the real import, meaning and interpretation of Section 251 (1) (p) and (r) of the 1999 Constitution as amended which no doubt has always being a recondite or difficult issue of jurisdiction as between the State High Court and the Federal High Court.

The said section of the Constitution reads thus:-

"251 (1) 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 to the exclusion of any other court in civil causes and matters -

(a) Relating to the revenue of the Government of the Federation in which the said Government or any organ thereof or a person suing or being sued on behalf of the said of the said Government is a party;

(b) Connected with or pertaining to the taxation of companies and other bodies established or carrying on business in Nigeria and all other persons subject to Federal taxation.

(c) connected with or pertaining to customs and excise duties and export duties, including any claim by or against the Nigeria Customs Service or any member or officer thereof, arising from the performance of any duty imposed under any regulation relating to custom and excise duties and export duties;

(d) connected with or pertaining to banking, bands, other financial institutions including any action between one bank and another, any action by or against the Central Bank of Nigeria arising from banking foreign exchange, coinage, legal tender, bills of exchange, letters of credit, promissory notes and other fiscal measures;

Provided that this paragraph shall not apply to any dispute between an individual customer and his bank in respect of transactions between the individual customer and the bank;

(e) arising from the operation of the Companies and Allied Matters Act or any other enactment replacing that Act or regulating the operation of companies incorporated under the Companies and Allied Matters Act;

(f) any Federal enactment relating to copyright, patent, designs, trade marks and passing-off, industrial designs and merchandise marks business names, commercial and industrial monopolies, combines and trusts, standards of goods and commodities and industrial standards;

(g) any admiralty jurisdiction, including shipping and navigation on the River Niger or River Benue and their effluents and on such other inland waterway as may be designated by any enactment to be international waterway, all Federal ports, (including the constitution and powers of the port, authorities for Federal ports) and carriage by sea;

(h) Diplomatic, consular and trade representation,

(i) citizenship, naturalization and aliens, deportation of persons who are not citizens of Nigeria, extradition, immigration into and emigration from Nigeria, passports and visas;

(j) bankruptcy and insolvency;

(k) aviation and safety of aircraft;

(l) arms, ammunition and explosives;

(m) drugs and poisons;

(n) mines and minerals (including oilfields, oil mining, Geological surveys and natural gas).

(o) weights and measures;

(p) the administration or the management and control of the Federal Government or any of its agencies;

(q) subject to the provisions of this Constitution, the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies;

(r) any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies; and

(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; provided that nothing in the provisions of paragraphs of paragraphs (p), (q) and (r) of this subsection shall prevent a person from seeking redress against the Federal Government or any of its agencies in an action for damages, injunction or specific performance where the action is based on any enactment, law or equity."

The above provisions of the Constitution are a replica of Section 230 (1) (a), (p), (q), (r) and (s) of 1979 Constitution of Nigeria. More often than not their interpretation have generated a lot of disputes and controversies as to correct interpretation of the Section particularly as to whether a State High Court shares concurrent jurisdiction on matters enumerated in Section 251 (1) (p), (q), (r) and (s) with the Federal High Court or whether it is the Federal High Court that has exclusive jurisdiction in any matter in which an agency of the Federal Government of the Federation is a party irrespective of the context and content of the reliefs claimed or the subject matter of such action.

The law needs no restatement that in situation such as this the court must confine itself to the examination of the writ of summons and the statement of claim in order to determine whether or not it has jurisdiction to adjudicate on the claimant's or the plaintiff s suit since it is the claimant's claims that determine the jurisdiction of the court. See. P.D.P. VS SYLVIA & ORS 2012 13 NWLR PART 1316 85 at 127 D-F where Supreme Court per RHODES-VIVOUR JSC held:-

"JURISDICTION of a court to entertain a suit is resolved by scrupulous examination of the writ of summons, the statement of claim and the reliefs claimed No other document should be examined."

I have reproduced hereinbefore the claims indorsed on the writ of summons by the Plaintiff. It is also relevant and necessary to examine the Statement of claim. I also believe that in view of the finding and reasoning of the trial court that he has jurisdiction to entertain the suit and the contending contentions of learned counsel to the Appellant and Respondent on the sole issue raised for determination to reproduce in full the Statement of Claim filed on 23rd day of July 2008 and deemed properly filed on 22-01-2009 by the trial Judge. See pages 14-18 and 44 of the Record of proceedings. The 19 paragraph Statement of Claim reads:-

"1. The Plaintiff avers that of all times material to this suit he was the husband of Mrs. Safiya Ibrahim Umar (Deceased) and he resides at G. 74 Nasarawa Gwong, Jos within the Jurisdiction of this court.

2. That Plaintiff avers that the 1st to 5th Defendants are all staff of Jos University Teaching Hospital (JUTH)

3. That Plaintiff further avers that the 1st to 5th Defendant were the team that carried out surgical operation on his wife, Safiya Ibrahim (deceased) before she died.

4. The Plaintiff avers that the 6th Defendant is Hospital in Jos, where the said Safiya met her untimely death.

5. The Plaintiff avers that at the material time to this suit, he was and is a legal practitioner and he carried out his legal practice in Jos, and its environs.

6. The plaintiff also avers that before the death of his beloved wife, they were happily married according to Islamic Injunctions.

7. The plaintiff further avers that, before the death of his wife she went to Jos University Teaching Hospital on the 6th of June, 2007, and presented a case of common cold (cough and cather).

(a) That consequent on paragraph 7 above, she was examined by the medical Doctor assigned to her and was asked to go for scanning which she did on the said 6th of June, 2007 at J.U.T.H. the 6th Defendant.

(b) That on the said 6th of June, 2007, the 6th Defendant's diagnostic ultra sound machine allegedly revealed that his late wife had ectopic pregnancy and he got this, information from the 5th Defendant (Dr. Ocheke) who works with the obstetric and gynaecology department of the 6th Defendant.

8. That Dr. Ocheke (5th Defendant) also told him (Plaintiff) that his wife must be operated upon otherwise she will die soon.

(a) That consequent upon paragraph I above he was not only confused but was put under duress and threat (of the imminent death of his wife) because there was no detailed information given to him us to the merit and demerit of the operation.

9. That he relied on the expertise and insistence of the 5th Defendant to carry out an urgent operation on his wife, not knowing that there was a deliberate intention to kill his late wife by the Defendants.

10. The Plaintiff avers that in order for the Defendants to carry out an urgent surgery on his wife, he was given a consent form to sign.

(a) The plaintiff further avers that he then signed the consent from due to the fact that he believed in the expertise opinion of the Defendants.

(b) That he is not a medical Doctor versed in Medicine but a only legal Practitioner.

11. The plaintiff further avers that, by divine providence somebody very close to him a final year Medical Student with J.U.T.H. was in The theatre with the medical Team comprising the 1st - 5th Defendants that operated his late wife.

(a) The plaintiff avers that when his wife was opened up by the 2nd - 5th Defendant, the said Defendants discovered to their embarrassment and shame that his wife had no ectopic pregnancy.

(b) That the Doctors had to call Dr. Daru (the consultant and 1st Defendant) on phone to explain to him that they did not find ectopic pregnancy.

(c) Dr. Daru asked them on phone to close her up which they 2nd to 5th Defendants quickly did, and then wheeled her to the ward.

12. The Plaintiff avers that while his late wife was in the ward of the 6th Defendant, she kept on complaining of abdominal pains and each time the doctors doing ward rounds came forward their attention was drawn to the condition of his late wife but the Doctor's would always retort that she was not their patient.

(a) That the terrible condition his wife was kept continued for about 24 (Twenty Four Hours) until his late wife's tummy became so distend that it created panicky situation.

(b) The Plaintiff also avers that although he was not a Medical Doctor he was so worried that he had to give a hand written note to the Hospital authority complaining of painful condition of his wife. The 6th Defendant is given notice to produce the notice which is pleaded.

13. The plaintiff avers without equivocation whatsoever, that the actions of all the persons who participated in the surgery does not only-smack of medical negligence but is highly criminal.

(a) The plaintiff also avers that the team that carried out the said surgical operation on his wife and the 6th Defendant did not exercise the duty of care which was required of them during and after the surgery.

PARTICULAR OF NEGLIGENCE

1. The Defendants had earlier on diagnosed the late Safiya Ibrahim that she had ectopic pregnancy and after opening her up, she never had ectopic pregnancy and the Defendant's then close her up and she died. The Defendants did not exercise due care and were negligent.

2. The actions of the Defendant did not conform with rule 10 of rules of professional conduct for medical Dental practitioners.

3. Post operatively the patient was not reviewed by the Defendants, since she was brought back from the theatre and she was in intense pain before she finally died in the hands of the Defendants.

14. The Plaintiff avers that after the death of his beloved wife in the cruel hands of the Defendants, he wrote a reminder letter dated 18/6/2007, to the Chief Medical Director of the 6th Defendants further informing him of the death of his wife at the hands of the Defendants. The Plaintiff plead a copy of this letter and shall rely on same at the trial of this suit, Notice is hereby given to the Defendants to produce the original copy of the said letter at the trial this suit.

15. He instructed his solicitors the law firm of Anyia & Co to write a letter to the Chief Medical Director of the 6th Defendant to recant the story of what transpired between his late wife and the Defendants which led to her untimely death. The Plaintiff plead a copy of the said letter and the Defendants are put on Notice to produce the original at the trial of this suit.

(a) The Chief Medical Director did not reply the said letter.

16. The Plaintiff further avers that as a follow up to the said letter, he wrote a reminder letter to the Chief Medical Director of the Defendants to give him a written detail of account that led to the death of his wife and that failure to do same he was going to take appropriate action.

17. The Plaintiff shall lead oral and documentary evidence in proof of the Defendants negligence in the manner in which they diagnosed the late Safiya as having and ectopec pregnancy, when that was not the case and the manner she was treated by the Defendants and the staff of the 6th Defendant.

18. In the alternative The Plaintiff shall find and rely on the doctrine of Res Ipsa Loquitor in that in the ordinary cause of events, if the Defendants have exercised due care and caution, the Plaintiff's wife wouldn't have died in their hands.

19. WHEREFORE the Plaintiff claims from the Defendants jointly and severally as follows:-

1. A declaration that the illness that the Plaintiff's wife (Mrs. Safiya Ibrahim Aminu Umar (deceased) presented for treatment at the 6th Defendant on the 6th of June, 2007, was common cold and not a case of ectopic pregnancy.

2. A declaration that the act of the Defendants jointly and severally in carrying out a surgery on the wife of the Plaintiff (Mrs. Safiyu lbrahim Aminu Umar (decease) for an alleged ectopic pregnancy (which did not exist), which surgery led to her death constitutes acts of gross medical negligence.

3. A further declaration that the acts of the Defendants, jointly and severally above stated has denied the Plaintiff's wife's (Mrs. Safiya Ibrahim Aminu Umar (deceased) right to life as enshrined in S.33 of the Constitution of the Federal Republic of Nigeria, 1999.

4. A further declaration that the acts of the Defendants above stated has denied the plaintiff of the consortium of his wife (Mrs. Safiya Ibrahim Aminu Umar).

5. The sum of N10,0000,000.00 (Ten Million Naira) being exemplary and/or aggravated general damages against the Defendants jointly and severally for negligently causing the death of the Plaintiffs wife (Mrs. Safiya Ibrahim Aminu Umar).

6. The cost of this action. "

The pivot of the Appellants' arguments is that since the learned trial Judge had no difficulty in deciding that the 6th Appellant is an agency of the Federal Government it erred when he held that the claims of Respondent did not question the administration or the management of the 6th Appellant JUTH thereby holding that Federal High Court had no jurisdiction in the matter.   
The learned counsel to the Appellants relied on paragraphs 7 (b) and 19 of The Statement of Claim to urge that the Respondent in fact challenged and questioned the administration or the management of 6th Appellant and called in aid the decision of the Supreme Court in the case of NEPA V EDEGBERO (2003) FWLR (PART 139) 1556 at 1573 D-G.

In his own response L. E. Anyia Esq., for the Respondent stated in paragraphs 4.11 and 4.12 of Respondent's Brief thus:-

"My Lords there is nothing, in the respondent's pleadings that challenges the administration, management and control of the 6th Appellant to confer jurisdiction on the Federal High Court to hear this suit rather it has clearly showed the breach of duty of care the 1st - 5th Respondents owed to the Respondent's wife which they refused and neglected to give to her which breach we submit occasioned a fatal damage. We urge my Lords to so hold.

4: 12 We urge your Lordships to discountenance the submission of the Appellants that the Respondent having made reference to the ultra sound machine of the 6th Appellant which purportedly gave the wrong diagnosis according to the 5th Appellant was a challenge of the management and control of the 6th Appellant."

The Respondent relied heavily on two decisions of the Supreme Court in the cases of:-

1. MR. VICTOR ADELEKAN V ECULINENV (2006) 12 NWLR (PART 993) 33 at 52 G where ONNOGHEN JSC said:-

"The provisions of Section 251 of the Constitution of the Federal Republic of Nigeria, 1999 hereinafter 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."

2. ONUORAH VS K.R.P.C. LTD (2005) 6 NWLR (PART 921) 393 AT 404, wherein it was stated that it is the Plaintiff s claim as endorsed on the writ of summons that determines the court's jurisdiction. The Respondent also found support in the decision of this court in the case of UNILORIN V AKILO (2001) 4 NWLR (pt 703) 246 AT 257 B-D, where this court held that the ouster clause contained in Section 230 (1) of 1979 Constitution did not extend to tortuous liability arising from professional negligence committed in the course of employment of medical doctors because it does not bear connection with management or control of a government agency. To the Respondent what the Supreme Court decided in NEPA V BEGBERO supra relied heavily upon by Appellants is that a Federal High Court will only have jurisdiction where the matter is a Civil matter arising from the administration and control of the Federal Government or any of its agencies.

I am of the solemn view that the first port of call at arriving at a just decision in this matter is to undertake an examination of the decisions of the Supreme Court on the interpretation of Section 251 (1) (p) (q) (r) of the Constitution of Nigeria 1999 and decisions of this Court.

1. In the case of NEPA VS MR. B. EDEGBERO & ORS (2002) 18 NWLR (PART 798) 79 at 95 - 97 OGUNDARE JSC held thus:-

*"It is not in dispute that the defendant - NEPA - is a Federal Government Agency, the two courts below made a finding of fact to this effect and this has not been challenged by the plaintiffs. It is also not disputed that the cause of action in this matter arose out of the administrative action or decision of the defendant. The action is for a declaration and an injunction and the principal purpose of it is to nullify the decision of the defendant terminating the appointments of the plaintiff and others. In the light of all these, therefore, the action on hand came squarely within the provision of Section 230 (1) (s) of the 1979 Constitution. It would appear on the surface, therefore, that the action would be one within the exclusive jurisdiction of the Federal High Court. I have myself read the proviso to paragraphs (q), (r) and (s) of sub-section (1) of Section 230 all over again; I can find no such exception in it that would lead me to find to the contrary. A careful reading of paragraphs (q), (r) and (s) reveals that the intention of the lawmakers was to take away from the jurisdiction of the State High Court and confer same exclusively on the Federal High Court actions in which the Federal Government or any of its agencies is a party. While paragraph (s) talked of actions for declaration or injunction, the proviso extended this to actions for damages, injunction or specific performance. It did not say as the learned trial Judge, with profound respect, appear to read into it that action for damages, injunction or specific performance against the Federal Government or any of its agencies could still come before a State High Court. I am of the view that the learned trial Judge was in error in his interpretation of the purport of the proviso.*

*Their Lordships of the Court of Appeal were equally in error to affirm the decision of the learned trial Judge. They based their own conclusion on the cases Nigerian Deposit Insurance Corporation (Liquidator of United Commercial Bank Ltd.) V Federal Mortgage Bank of Nigeria Ltd. (1997) 2 NWLR 735 at 756; Ona v Atunda (2000) 5 NWLR 244 and Egbuonu v Borno Radio (1997) 12 SCNJ 99; (1997) 12 NWLR 29. With profound respect to their Lordships of the court below they wrongly applied these cases to the matter before them. In the Federal Mortgage Bank case what came up for decision is the interpretation of the proviso to paragraph (d) of section 230 (1) of the 1979 Constitution. That paragraph read:   
b. banking, banks, other financial institutions, including any action between bank and other, any action by or against the Central Bank of Nigeria arising from banking, foreign exchange, coinage, legal tender, bills of exchange, letter of credit, promissory note and other fiscal measures.*

*Provided that this paragraph shall not apply to any dispute between an individual customer and his bank in respect of transactions between the individual customer and the bank;"*

*The Court of Appeal sitting as a full court held that by the proviso above an action between a bank acting as a customer to another bank and that latter bank could come before a State High Court. That decision was affirmed by this court in Federal Mortgage Bank of (Nig.) V NDIC (1999) 2 NWLR 333.*

*That is not the issue arising in the instant case. In Una V. Atandu (supra) the issue in that case was quite different to the issues in the present case. If anything, the dictum of Akintan, JCA on the exclusive jurisdiction of the Federal High Court ought to have informed their Lordships to arrive at a conclusion in the instant action different to what they decided Incidentally the three Justices that presided over the instant case were members of the full Court of the Court of Appeal that decided Ona V Atunda (supra), Indeed if there was anything relevant in that case to the instant case, it was wrongly applied.*

*Akintan, JCA who read the lead judgment of the Court of Appeal in that case had this to say at pages 269 - 270 of the report:*

*"The point which must be made clear is that all the decisions in question are in respect of the interpretation to be given to the provisions of sections 39 and 41 of the Land Use Act. But since it has been clearly shown above that the provisions of the Land Use Act requiring the State Governor to deliminate portions of the lands in a State as urban as against non-urban areas are inapplicable in the Federal Capital Territory, the division of jurisdiction between the High Court and the Area Court/Customary Court in the Federal Capital Territory will therefore not arise. It follows therefore that the appropriate court having jurisdiction in land matters in the Federal Capital Territory is the High Court of the Federal Capital territory by virtue of section 236 of the 1979 Constitution since it has been shown that there is no customary right of occupancy in the Federal Capital Territory and that section 41 of the Land use Act is also inapplicable in the Territory. The jurisdiction of that court however, is subject to the provisions of section 230(1) (q) and (r) of Decree No. 107 of 1993 (now section 251 of the 1999 constitution) whereby the High court would assume jurisdiction where the Government of the Federation or any of its agencies is a party to the action*." (italics mine for emphasis).

Equally if their Lordships had correctly applied the above dictum to the instant case which dictum in my respectful view, is a correct statement of the law, they would have held that the State High Court had not jurisdiction in the instant case.

...

...

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

This case was followed by this court in the case of C.B.N. VS SYSTEMS (APLICATION PRODUCTS NIGERIA LTD) (2005) 2 NWLR (PART 911) 152 at 178 D - 179 A - E, I.T. MUHAMMAD JCA, (Now JSC) where his Lordship said:

"Just of recent, I made the following observation in the Unreported case of Federal Housing Authority V. John Shoy International Ltd., CA/A/83/2003, delivered on the 1st day of April, 2004.

"The law has now been made clearer by further pronouncements of this court by taking cognizance of the proviso to Section 230(1) of the 1979 Constitution (now amended by Section 251(1) of the 1999 Constitution, one would come to the irresistible conclusion that even the proviso does not portray that the State High court or High Court of the Federal Capital Territory shall have jurisdiction on matter in which the Federal Government or any of its agencies is a party. See: Ali V. C.B.N. (1997) 4 NWLR (Pt.498) 192; Adebileye V N.E.P.A. (1998) 12 NWLR (Pt.644) 290; Oygoke V. Iriguna (2002) 5 NWLR (Pt.760) 417. In a recent decision of the Supreme Court Ogundare, JSC, in his leading Judgment in NEPA V Edegnero & 15 Ors. (2002) 12 SCNJ 173. (2002) 18 NWLR (Pt.798 79 particular at pp.95 e-f has this to say:-

'I have myself read the proviso to paragraphs (q), (r) and (s) of sub-section (1) of S.230, 1979 constitution (now S.251 (p), (q) and (r) of 1999 Constitution) all over again; I can find no such exception in it that would lead me to find to the contrary. A careful reading of paragraphs (q), (r) and (s) reveal that the intention of the Lawmakers was to take away from the jurisdiction of the State High Court and confer same exclusively on the Federal High court actions in which the Federal Government or any of its agencies is a party. From what I have said earlier in this judgment, *the aim of paragraphs (q),(r) & (s) of S. 230(1) was to vest exclusive jurisdiction in the Federal High Court in matters in which Federal Government or any of its agencies was a party. A state High Court would no longer have jurisdiction in such matters notwithstanding the nature of the claim in the action*'" (italics mine).

Same case is reported (2002) 12 SCNR, 173."

In view of the above therefore, it is clear now that the nature of the claim in an action can no longer be a criteria for the Federal High Court to refuse to assume jurisdiction on matters placed before it so long as any of the parties is either the Federal Government or any of its agencies. Therefore, I find that the Federal High Court had jurisdiction on the matter brought before it by the plaintiff/applicant/respondent. Issue No.2 is hereby resolved in favour of the respondent."

(underlined mine)

However in the case of FELIX ONUORAH VS K.R.P.C. LTD (2005) 6 NWLR (PART 921) 393 at 404 - 405 AKINTAN JSC had this to say:-

"The main question to be resolved in this appeal is whether the Federal High Court had jurisdiction to entertain the appellant's claim. It is settled law that jurisdiction of a court is determined by the plaintiff's claim as endorsed in the writ [of] summons and statement of claim: see Tukur V. Government of Gongola State (1989) 4 NWLR (Pt.117) 517; Orthopaedic Hospital Management Board V. Garba (2002) 14 NWLR (Pt.788) 538 at 563. Thus in this case, the appellant's claim, already set out above, is the one that should be the focus of attention in determining whether the trial court had jurisdiction to entertain the suit. It is clearly not the rules of court that vest jurisdiction in the court but rather the statute creating the court. Thus, in the instant case, in determining the jurisdiction of the Federal High Court and the State High Court, it is the relevant provisions of the 1979 Constitution of the Federal Republic, as amended by Decree No. 107 of 1993 that would be applicable since the appellant's action was commenced and in fact judgment was delivered before the 1999 constitution came into force. Section 230(1) (q), (r) and (s) of Decree No.107 of 1993 which extended the jurisdiction of the Federal High Court also sets out a proviso after subsection (s). It is that: " nothing in the provisions of paragraphs (q), (r) and (s) of this subsection shall prevent a person- from seeking redress against the Federal Government or any of its agencies in an action for damages, injunction or specific performance where the action is based on any enactment, law or equity."

A close examination of the additional jurisdiction conferred on the Federal High Court in the Section and by the 1979 Constitution clearly shows that the court was not conferred with jurisdiction to entertain claims founded on contract as in the instant case. In other words, section 230(1) provides a limitation to the general and all embracing jurisdiction of the State High Court because the items listed under the said section 230(1) can only, be determined exclusively but he Federal High court. All other items not include in the list would therefore still be within the jurisdiction of the State High Court. In the instant case, since dispute founded on contract are not among those, included in the additional jurisdiction conferred on the Federal High Court, that court therefore has no jurisdiction to entertain the appellant's claim. The lower court therefore acted rightly in its decision that the Federal High Court lacked jurisdiction to entertain the claim: See Seven-up Bottling Co. Ltd V. Abiola & Sons Bottling Co. Ltd. (2001) 13 NWLR (Pt. 730) 469; and Trade Bank Plc. V. Benilux (Nig.) Ltd. (2003) 9 NWLR (Pt.825) 416 at 430 & 431." (underlined mine)

This court in the case of NPA Vs ETUBOM E. EYAMBA & ORS (2005) 12 NWLR (PART 939) 409 at 441 H to 442A had cause again to consider the same provisions of the Constitutions of the Constitution.

OMOKIRI JCA of blessed memory while considering the implication of the said Section 251(1) of 1999 Constitution had this to say:-

"By virtue of the provisions of Section 251 (1) (a) of the 1999 Constitution, the Federal High Court shall and exercise jurisdiction to the exclusion of any other court in civil cases and matters relating to the revenue of the Government of the Federation or any organ thereof or a person suiting or being sued on behalf of the said Government is a party or the administration and control of the Federal Government or any of its agencies of the Federal Government.

It is clear to me that the payment of rents as claimed by the respondents will obviously be a deduction from the purse of the appellant who admittedly is an agent of the Federal Government. Therefore, the claim of the respondents relate in essence to the revenue of the Federal Government.

I am fortified in my view by the decision in F.H.A. V John Shoy International Ltd. (2005) 1 NWLR (pt.908) 637 at 650 where this court held that:-

"Whatever proceeds, revenue or whatever name one would call it, accruing to the appellant, or is being paid to others by the appellant, must ... be regarded to be addition to or deduction from the purse of the federal Government. It relates in essence, to the revenue of the Federal Government."

It is therefore glaringly clear that by virtue of the provisions of Section 251(1) (s) of the 1999 Constitution the claim of the respondents before the lower court is triable by the Federal High Court, which has exclusive jurisdiction over the matter.

It is also common ground that the appellant, Nigerian Ports Authority Plc. is an agency of the Federal Government. See NEPA V Edegbero & Ors. (2002) 18 NWLR (PT. 798) 79; (2002) 12 NSCQR 105. See also the item 36(d) of the Second Schedule Part 1 of the Exclusive Legislative list of the 1999 Constitution dealing with issues relating to the Ports.

The claim of the respondents relates to the administration, management and control of the Calabar Port by the appellant who is an agency of the Federal Government. Suits challenging or touching on the administration, management and control of the Federal Government or any of its agencies are vested exclusively on the Federal High Court by virtue of the provisions of Section 251 (1) (p), (q), (r) and (s) of the 1999 Constitution. See Adebiyeje Vs NEPA (1998) 12 NWLR (pt. 577) 219; Ayeni v University of Ilorin (2000) 2 NWLR (PT 644) 290; University of Abuja v Ologe (1996) 4 NWLR (pt.445)706 AND University of Agriculture, Makurdi v Jack (2000) 11 NWLR (PT. 679) 658."

I am of the settled view that the 1st, 2nd, 3rd, 4th and 5th Respondent's are staff or employees of the Jos University Teaching Hospital (JUTH) an Agency of the Federal Government. It must be borne in mind that they are in the public service of the Federation by virtue of their employment. Therefore the fact that they are all professional Doctors with knowledge and expertise in medical field would not create personal or private doctors cum patients relationship. Anyone who goes in search of healing and sound health at the Jos University Teaching Hospital will upon being registered to see Consultant or any doctor with knowledge in the field of ailment such person may have, automatically becomes the patient of Jos University Teaching Hospital and NOT the patient of any of the Consultant or Doctors at Jos University Teaching Hospital. That being the case, where anyone who approaches Jos University for treatment on medical grounds must be taken as being treated or taking care of by the Jos University Teaching Hospital.If any Doctor is found wanting, incompetent or negligent while treating a patient and it results in damage or mismanagement of the patient even where it results in death, the Jos University Teaching Hospital will be vicariously liable for negligence or incompetence on the part of any or all of the doctors that attended to the patient if it can be proved or established.

I am therefore of the firm opinion that treating or giving medical care in any form or ramification to a patient at hospitals like Jos University Teaching Hospital constitutes or forms an integral part of the administration or management and control of the Federal Government or any of its agencies. The parties are ad idem in this appeal that the Jos University Teaching Hospital is an Agency of the Federal Government even as adjudged by the learned trial Judge. My firm view on settled principles of law and interpretation of section 251 (1) (p) and (r) of the 1999 Constitution is that the subject matter of Respondent suit and the reliefs sought therein in paragraph 19 of the statement of claim are all matters or reliefs falling squarely and within the penumbra of section 251 (1) (p) and (r) of the 1999 constitution as amended or altered. For avoidance of doubt the Supreme Court has in several decisions in recent times reaffirmed and reiterated the factors to be taken into consideration whenever issue of interpretation or consideration of section 251 of the Constitution crops up in any cause of matter having the Federal Government or any of its agencies as a party or parties.

See:

1. ISAAC OBIUWEUBI VS C.B.N (2011) 7 NWLR (PART 1247) 465 At 492 D-H to 493 where Supreme Court per RHODES-VIVOUR JSC had this to say:-

"Section 251(1)(p)(r) of the 1999 constitution is in pari material with the above. The provisions vest exclusive jurisdiction in the Federal High Court in civil causes and matters, arising from the administration, management and control of the Federal Government and its agencies, the operation and interpretation of the Constitution as it affects the Federal Government and its agencies as well as any action or proceedings for a declaration or injunction affecting the validity of any executive or administration action or decisions by the Federal Government and its agencies.

For the Federal High court to have jurisdiction under section 230 of the 1979 Constitution or Section 251 of the Constitution the following must co-exist.

(a) The parties, or a party must be the Federal Government or its agencies;

(b) Subject matter of the litigation.

That is to say jurisdiction is the combination of parties and subject matter. The words used in this piece of legislation are plain as plain can be and have been interpreted by this court on several occasions. See: NEPA v. EDEGBERO (2002) 18 NWLR (Pt.798) P.79; OLORUNTOBA-OJU V. ABDUL-RAHEEM, & 3 ORS (2009) 5-6 SC (Pt.11) P.57; (2009) 13 NWLR (Pt.1157) 83.

In this appeal it is not in dispute that the respondent, the Central Bank of Nigeria is an agency of the Federal Government, Any lingering doubt of that fact is put to rest by the provisions of Section 39 of the Central bank of Nigeria Act, Cap 47, Laws of the Federation of Nigeria 1990 which states that the Central Bank may act generally as agent for the Federal Government or of a State Government. It is thus obvious that the respondent Bank was established as an Agency of the Federal Government. On subject matter of the litigation, the matter must arise form the administration, management and control of the Federal Government or any of its agencies, from the operation and interpretation of the Constitution and from an action or proceedings for a declaration or injunction affecting the validity of any executive or administrative action or decisions by the Federal Government, or any of its agencies.

I am firmly of the view that as from the 17th of November, 1993 the Federal High Court had exclusive jurisdiction if the matter is a civil matter arising from the administration, management and control of the Federal Government or any of its agencies.

The matter must arise from the operation and interpretation of the Constitution. Finally the matter must arise from any action or proceedings for a declaration or injunction affecting the validity of any executive or administrative action or decisions by the Federal Government, or any of its agencies.

This suit has to do with the administration or management and control of the Federal Government. The respondent is a Federal agency and the appellant is/was its employee. The termination of the appellant's appointment is an administrative action by an agency of the Federal Government, the respondent."

2. CYRIL O. OSAKUE V. FEDERAL COLLEGE OF EDUCATION (TECHNICAL & ORS (2010) 10 NWLR (PART 1201) 1 AT 32 D - H to 34 A - C per OGBUAGU JSC who firmly asserted that NEPA V EDEGBERO remains the leading authority on interpretation of Section 251 (1) (p) (q) (r) of 1999 Constitution as follows:-

"Now back to the issue. It is now settled that issue of jurisdiction, is fundamental and crucial, it is in fact, a threshold matter. Where a court has no jurisdiction, any action taken will be a nullity however well conducted.

The principles which define the competence of the court are stated in the case of Madukolu & Ors. V. Nkemdilim (1962) 1 ANLR (Pt.4) 587; (1962) 2 SCNLR 341.

Where a court on its own discovers that it has acted without jurisdiction, it has an inherent power to set aside its own decision in the matter. See the cases of Forfei V Kwubena Saifah (1958) 1 All E. Report 289 P.C.; and Western Steel Works, Ltd. & Anor V. Iron Steel Workers Union of Nigeria (1986) 3 NWLR (pt.30) 617

It is not in dispute as borne out from the records, that the appellant brought the suit in the Delta State High Court and not in the Federal High Court that has jurisdiction. In the NEPA. V Edegbero & Ors case (supra), which facts are substantially similar to the instant case, the court per Ogundare, JSC (of blessed memory) held inter alia, at pages, 95 -97 as follows:-

"... It is also not disputed that the cause of action in this matter arose out of the administrative action or decision of the defendant. The action is for a declaration and an injunction and the principal purpose of it is to nullify the decision of the defendant terminating the appointments of the plaintiffs and others. In the light of all these, therefore, the action on hand came squarely within the provision of section 230 (1) (s) of the 1979 Constitution ... A careful reading of paragraphs (q), (r) and (s) reveals that the intention of the law makers was to take away from the jurisdiction of the State High Court and confer same exclusively on the Federal High Court actions in which the Federal Government or any of its agencies is a party ... I agree entirely with ... The submission of the learned counsel for the defendant that the two courts below were in error in holding that the State High Court had jurisdiction in this matter. There is nothing in the proviso to those paragraphs that could be said to have whittled down the objective of the law."

In the light of the above, this should have been the end of this appeal as I hold that it is the Federal High court and not the Delta State High Court, that has jurisdiction to entertain and determine the subject-matter of the appellant's said suit or action.

However, for purposes of emphasis, this court is bound not only by the decision in NEPA V Edegbero (supra), it is also bound by that in Prof. Olutola V. University of Ilorin (supra). The latter decision was after the decision in O.H.M.B. V. Mallam Garba (supra). It is now settled that if there are two conflicting judgments of this court, the lower courts, are bound by the latter.So be it in this case. To sound it loud and clear, by the Decree, the unlimited jurisdiction vested in the State High Courts, to hear and determine both civil and criminal causes, had by virtue of the Decree, been modified by removing from the State High Court, the jurisdiction to hear and determine causes and matters including declaratory actions against the Federal Government and its agencies such as the 1st respondent. The amendment on section 230 of the 1979 Constitution, conferred additional jurisdiction on the Federal High Court which is exclusive to it hence by the opening words in section 230(1), it states or uses the words.

"notwithstanding anything to the contrary contained in this constitution 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 or a Decree, the Federal High court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters arising."

This is in spite of the proviso thereto. In other words, the aim of paragraphs (1), (r) and (s) of sub-section (1) of section 230, was to vest exclusive jurisdiction in the Federal High Court in matters, notwithstanding the nature of the claim in the action. While paragraph(s) talks of action for declaration or injunction, the proviso extended this to actions for damages injunction or specific performance.

It is now settled that where there are two conflicting judgments of this court, the lower court or courts, is or are bound by the latter decision and must follow and apply it. See the case of Chief Okpozo V Bendel Newspaper Corporation & Anor. (1990) 5 NWLR (Pt. 153) 652 @ 661, 663 C.A.  
  
As for hierarchy of the courts, it is now settled that the ratio decidendi of a case, is the reason for the decision, the principle of the decision. A court lower in the judicial hierarchy is bound by the ratio decidendi of a higher court not necessarily the obiter dictum."  
(underlined mine) "

3. The decision in NEPA V EDEGBERO supra again very recently came under searchlight in the supreme court in the case of BENSON AGBULE V. WARRI REFINERY & PETROCHEMICAL CO. LTD (2013) 6 NWLR (PART 1350) 318 at 348 353 A - G where section 230 of 1979 Constitution which is in pari material with Section 251(1) P & R of 1999 constitution, OGUNBIYI JSC, who read the leading Judgment said:

“On a gruesome and careful determination of the case NEPA V Edegbero (2003) 1 MJSC 69; (2002) 18 NWLR (pt. 795) 79, this court per Ogundare, JSC while interpreting the Constitutional enactment as provided in paragraphs (q), (r) and (s) of section 230 (1), held the following pronouncement at pages 80 - 81 of the report and said:-

"From what I have said earlier in this judgment the aim of paragraphs (q), (r) and (s) of sub section 230 was to vest exclusive jurisdiction in the Federal High Court in matters in which the Federal Government or any of its agencies was a party. A State High court would not long have jurisdiction in such matters notwithstanding the nature of the claim in the action"

At this a stage and for proper comprehension of the Constitutional provision it will be pertinent to reproduce section 230(1) in particular (q), (r) and (s) of the 1979 constitution as amended by Decree 107 of 1993 which state as follows:-

"Notwithstanding anything to the contrary contained in this Constitution and I addition to such other jurisdiction asmay be conferred upon it by an Act of the National Assembly or a Decree, the Federal High Court shall have and exercise jurisdiction to the exclusion to any other court in civil causes and matters arising from.

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(f) ...

(g) ...

(q) The administration or the management and control of the Federal Government or any or its agencies;

(r) Subject to the provisions of this Constitution, the operation and interpretation of this Constitution in so far as it affect the Federal Government or any of its agencies; and

(s) Any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any or its agencies.

Provided that nothing in the provisions of paragraphs (q), (r) and (s) of this subsection shall prevent a person from seeking redress against the Federal Government or any of its agencies in an action its agencies. See again the decision in the case of University of Abuja V Ologe (1996) 4 NWLR (pt. 445) 706 AT 722."

From the pleadings of the parties, it is admitted the respondent is a subsidiary of Nigeria National Petroleum Corporation (NNPC) established by the Federal Government. This is as pleaded by the appellant in paragraph 2 of the statement of claim appearing at page 4 of the record appeal which averment was specifically admitted by the respondent in paragraph 2 of the amended statement of defence also at page 47 of the record of appeal. Following from above, it therefore settled that the respondent being a subsidiary of NNPC, it goes without further saying that it is an agency of the Federal Government having record to Decree 107 of 1993.

It is also trite law and well settled that the jurisdiction or a court is determined by the plaintiff's claim before it. See the case of Akeem v. University of Ibadan (2005) 10 NWLR (pt. 829) 584. For the purpose of determining the jurisdiction of the court in this case therefore, the plaintiff appellant's paragraphs 1, 2, 9, 10, 18(b) and 19 of his statement of claim are relevant. The reproduction of paragraphs 18(b) and 19 in particular would be apt as follows:-

"18. Whereupon the plaintiff claims -

(b) A declaration that the purported termination of the plaintiff as per letter dated 8th April, 1993 is unconstitutional, unlawful, ultra vires, capricious, wrongful invalid, and null and void.

19. The plaintiff has tried to secure alternative employment but all to no avail, And the plaintiff claims the sum of N152,000.00 for breach of contract of employment by the unconstitutional, wrongful, unlawful termination of his appointment contrary to the principle of natural justice."

The use of the phrase "any of its agencies" as provided in the proviso to section 230(1) of the 1979 Constitution as amended by Decree No. 107 of 1993 has been judicially interpreted to cover all the organs established by law through which the Federal Government carries out its functions. The case of University of Abuja V Ologe (supra) is relevant in point. In further serving us point of reference is the pronouncement made by this court per  Tobi, J.S.C. again in the case of N.E.P.A. v. Edegbero (2002) 18 NWLR (PT.798) 79 wherein he said thus at page 100.

"In construing section 230(1) as amended, two important matters arise. They are the parties in the litigation as well as the subject matter of litigation. The court must consider both. In construing the parties, the court will have no difficulty in identifying the Federal Government but it may have some difficulty in identifying the agency of the Federal Government in certain matters.

The case law and the law of agency will certainly be of help in relevant cases  ... Another important area is the subject matter of the litigation. In my view, *for the Federal High Court to have exclusive jurisdiction, the matter must be a civil matter arising from the administration, management and control of the Federal Government or any of its agencies. The matter must arise from the operation and interpretation of the Constitution. And finally, the matter must arise from any action or proceedings for a declaration or injunction affecting the validity of any executing or administrative action or decisions by the Federal Government, or any of its agencies.*" (Italics mine).

In the light of the view held by this court in the case of NEPA V Edegbero (supra) the case at hand is on all fours thereto and could also be interpreted in the same vein as rightly arrived at by their Lordships of the lower. In other words, the pleadings of parties have conceded as a matter of fact that the respondent is an agency of the Federal Government. It is also an established fact from the same pleadings that the appellant's claim relates to a breach of contract of employment. This is the subject matter that arose in the case comes within section 230(1) (q) of the 1970 Constitution (as amended).

The principle in the case of NEPA V. Edegbero has also been applied with affirmative approval in the later case of Olutola V. University of Ilorin (2005) 3 MJSC 151 at Pp. 173-174; (2004) 18 NWLR (pt. 905) 416 wherein this court per Ejiwunmi, J.S.C. held and said:-

"In The case at hand, it is not in doubt that Decree No. 107 of 1993 had removed the jurisdiction of state High courts to hear and determine causes and matters including declaratory actions against the Federal Government or its agencies."

From the foregoing conclusion, the questions as to parties and subject matter are seen to be of paramount significance. With the question of parties having been settled therefore the subject matter of consideration does not in my view also pose any difficulty especially having regard to the reliefs sought by the appellant which same are also similar to the ones claimed by the respondents in the case of NEPA. v. Edegbero (supra). It has been clearly pronounced by this court per Ogundare, J.S.C. in the same case as stated supra that the aim of sub paragraphs (q), (r) and (s) to section 230 (1) of the 1979 Constitution as amended by Decree No. 107 of 1993 was to vest exclusive jurisdiction in the Federal High court in matters in which the Federal Government or any it its agencies was a party; the consequential effect is that the State High Court would no longer have jurisdiction in such matters notwithstanding the nature of the claim in the action.  Note the use of the phrase "in such matters", which in other words is relevant to restate that the nature of such claims relating paragraphs (q), (r) and (s) are not at large but specifically restricted as per the deduction arrived at by his Lordship Tobi, J.S.C. in NEPA v Edegbero under reference.

I hasten to repeat again that such applicable situations could only be read in the phrase laid down by his Lordship; that is to say:

"That the matter must be a civil matter arising from the administration management and control of the FederalGovernment or any of its agencies. The matter must arise from the operation and interpretation of the Constitution. And finally the matter must arise from any action or proceedings for a declaration or injunction affecting the validity of any executive or administrative action or decisions by the Federal Government, or any of its agencies."

The caveat or proviso thereto is that any subject matter which does not fall within the exclusive and water tight phrase supra, will not come within the expectation of section 230 (1) sub paragraphs (q), (r) and (s). The case of NEPA V. Edegbero therefore is very interpretative and unambiguous of the said constitutional provision. The clear intendment of the modification of section 230 of the 1979 Constitution therefore was to confer in the Federal High court exclusive jurisdiction in respect of subsection (1) (a) to (s) thereof. This was the view held by Uwais, CJN in his concurring judgment in NEPA v Edegbero wherein he further said thus in respect of the proviso to the section:-

"The proviso applies merely to the right of a person seeking redress in an action for damages injunction or specific performance but does not extend the exclusive jurisdiction conferred on the Federal High court to a State High Court..."

This is a clear confirmation that the matter must arise from the operation and interpretation of the Constitution before the exclusive application of section 230 (1) (a) to (s) could be involved. The learned appellant's counsel in my view had misconceived the clear interpretation of the provision therefore. This is more so especially wherein the said appellant's counsel submitted extensively on the jurisdictional struggle or rivalry between the State High Court and Federal High Court, which I hold does not exist as rightly submitted by the respondent's counsel. *The perceived confusion appears only to be a mirage which is not a reality. This is affirmed by the clear juridical interpretation which is well pronounced in the case of NEPA V Edegbero. Hence the authority in the case of Onuorah V. Kaduna Refinery and Petrochemical Ltd. (2005) All FWLR (pt 256) 1356; (2005) 6 NWLR (pt. 921) 393 referred to by the appellant's counsel as well as the hosts of other related authorities cited are not relevant to this case. With the subject matter of the case, under reference, being on all fours with the case at hand, the lower court was therefore on the right footing in holding that the case of NEPA V Edegbero applies.* (italics mine).

The argument of L. E. Anyia Esq., for the Respondent to the effect that the Respondent action has nothing to do with administration and control of 6th Appellant is not supported by the authorities just cited by me in this Judgment. This argument of Respondent's learned counsel was destroyed and it fizzled out when in paragraph 4.27 of the Respondent's Brief of Argument while relying on the case UNILORIN V AKILO supra page 257 B-F and CASSIDY V MINISTRY OF HEALTH supra 343, he submitted thus:-

"My Lords, the above cited case further amplifies the fact that the appellants are both jointly and severally liable for their negligence which unfortunately led to the death of respondent's wife in her prime. We submit that the Respondent claim which is solely for damages for tort of negligence is triable by the State High Court. We urge your Lordships to so hold"

It must be borne in mind that if the Respondent should proof his entitlement to the exemplary damages of N10 million or any sum in damages the money will come from the purse and revenue of the Federal Government the principal of Jos University Teaching Hospital. The case and reliefs claimed therein therefore fall within the jurisdiction of the Federal High Court notwithstanding that the action was rooted in tort of negligence.

See 1. NEPA VS ETUNBOM E. EYAMBA & ORS 12 NWLR (PART 939) 409 at 441 where OMOKIRI JCA of blessed memory said:-

"It is clear to me that the payment of rents as claimed by the respondents will obviously be a deduction from the pulse of the appellant who admittedly is an agent of the Federal Government.

Therefore, the claim of the respondents relate in essence to the revenue of the Federal Government. I am fortified in my view by the decision in F. H. A. Vs JOHN SHOY INTERNATIONAL LTD (2005) 1 NWLR (PART 908) 637 at 650 where this court held that:

Whatever proceeds, revenue or whatever name one would call it, accruing to the appellant, or is being paid to others by the appellant, must be regarded to be addition to or deduction from the purse of the Federal Government. It relates in essence to the revenue of the Federal Government."

2. This court per OGUNWUMIJU, JCA, also held in the case of NEPA VS BAR DAN URUAKA (2010) 12 NWLR (PART 1208) 298 AT 326 thus:-

"I agree with the learned trial Judge that this is not a case of simple contract like a purchase contract. NEPA was agent of the Federal Government under S. 251 of the Constitution responsible for generation, distribution and marketing of electricity in Nigeria. It took the decision to cut off the respondent's electricity in the course of distribution and marketing of electricity in Nigeria that was the nature of respondent's claim. The claim is seeking for a declaratory order, nullifying the administrative decision taken by NEPA an agent of the Federal Government disconnecting the electricity simply to the respondent based on indebtedness of the respondent's co-tenants. It was also for damages for the discomfort, inconvenience and money incurred by the respondent as a result of this administrative decision. If found liable the Federal Government will pay the damages ...

The decision at hand involves the question of the validity of certain policy decision taken by the management of NEPA in respect of their business of supply and distribution.

See also INEC V. LAGOS STATE BOARD OF INTERNAL REVENUE (2011) 4 NWLR (PART 1237) 318 at 335 per OGUNBIYI, JCA now JSC.

It can be seen from NEPA VS EDEGBERO supra and other authorities following it that the clear implication is that whenever an agent of the Federal Government is made a party to any proceedings bordering on section 251(1) (p) (q) (r) and (s) of the 1999 Constitution the Federal High Court has exclusive jurisdiction.  
In this case the incident leading to this action on appeal occurred in the course of provision of medical and health care to the populace in Nigeria.

Any lingering doubt about the court that has jurisdiction in this matter which no doubt is tort of negligence has been laid to rest in the very recent decision of the Supreme Court in the case of CHIEF M. A. INEGBEDION V. DR SELO OJEMEN & ANOR (2013) 1 SCM 74. The facts of the case as narrated in the leading Judgment delivered by S. S. ALAGOA JSC are quite interesting. My Lord stated the facts as follows:-

"The Appellant as Plaintiff took out a Writ of Summons against the Respondents as Defendants a the Edo High Court, Ekpoma Judicial Division claiming damages for negligence, defamation and breach of Doctor/Patient confidence. So much of the facts as are necessary and as can be gleaned from the Statement of Claim are that the Plaintiff went to the hospital of the 2nd Defendant's for the purpose of having an HIV/AIDS test conducted on him and his estranged wife. The test was carried out by the 1st Defendant Dr. Selo-Ojemen a medical doctor employed by the 2nd Defendant is hospital who informed the plaintiff that he was H.I.V. positive. He was however advised to come back to the 2nd Defendant's hospital in three months time to have this test confirmed. Plaintiff then proceeded to another hospital. St Camillus Hospital Uromi Edo State for another test which in fact revealed that he was H.I.V. negative. Meanwhile the confirmatory test after three months at the 2nd Defendant's hospital revealed that plaintiff was in fact H.I.V. negative. It was the allegation of the plaintiff that the doctor/patient relationship which existed between the plaintiff and the Defendants had been breached by the Defendants who had disclosed the result of the first test which showed that the Plaintiff was H.I.V. positive to the Plaintiff's wife and a prophet which prophet had attempted and failed to capitalize on plaintiff's medical condition to extort money from him. It was the contention of the Plaintiff that the 1st Defendant's Dr. Selo-Ojemen falsely and maliciously wrote and/or published information about the plaintiff imputing H.I.V. AIDS to the Plaintiff which caused the plaintiff incalculable damage and injury to his reputation and to his family and professional life. Plaintiff relied in part on RES IPSA LOQUITUR in that according to him, the 2nd Defendant's hospital had failed in its duty to:

1. Provide competent staff

2. Provide adequate and efficient plant and equipment and

3. Provide a safe, efficient and effective system of work and supervision in order, to discharge the duty of care owed to the Plaintiff as a Patient.

The 1st Defendant doctor in so acting was an agent, servant and/or employee-of the Otibhor Okhae Teaching Hospital Irrua sued as the 2nd Defendant in the action and the 1st Defendant at all material times acted in the course of the 2nd Defendant's business.

Plaintiff therefore contended that the 2nd Defendant is vicariously liable for all the tortuous acts and omissions of the 1st Defendant which act and omissions are a treacherous grand design to perpetuate fraud on the Plaintiff hence the Plaintiffs claims against the Defendants jointly and severally. The Defendants filed a memorandum of appearance and by Motion on Notice dated the 21st June, 2001 and brought pursuant to Order 8 Rules 1 and 2 of the High Court (Civil Procedure) Rules 1988 of Bendel State as applicable in Edo State and the inherent jurisdiction of Court, prayed for "An Order striking out this suit on the ground that the court lacks the jurisdiction to entertain same"

PARTICULARS:

"The suit is not maintainable against the 2nd Defendant in that the 2nd Defendant being a Federal Government Agency, cannot be sued in this Honourable Court AND FOR SUCH FURTHER ORDER OR ORDERS AS THIS Honourable Court may deem fit to make in the circumstance."

It is instructive to reproduce paragraphs 3, 4 and 5 of the Affidavit in Support of this motion which read as follows;-

3. That I know as a fact that the 2nd Defendant/Applicant was created by an Act of The National Assembly.

4. That being a creation of the National Assembly it is a Federal Government Agency supervised by the Federal Ministry of Health and as such an action of this nature is not maintainable against it in this court.

5. That the 1st Defendant is an agent of the 2nd Defendant.

There is no indication from the records that the Plaintiff filed a counter affidavit to this motion. After arguments of counsel on both sides, the learned trial Judge, Amaize J, in a considered ruling delivered on the 13th May, 2022 upheld the submission of the Defendants' Counsel and struck out the Plaintiff's suit for want of jurisdiction on the part of the court.

Aggrieved by this ruling, the Plaintiff (hereinafter referred to as "the Appellant") appealed to the Court of Appeal sitting in 2004 dismissed the appeal. This is a further appeal to the Supreme Court by a Notice of Appeal dated the 26th March, 2004. It consists of five Grounds from which the Appellant formulated the following three issues in his Brief of Argument dated 5th July, 2004 and filed same day for determination by this court.

Issue (i) Was the Court of Appeal right in holding that the 2nd respondent was a Federal Government Agency based on the finding that Appellant did not contradict 2nd Respondent's affidavit evidence to that effect?

Issue (ii) Was the court of Appeal right in failing to interpret and apply the proviso to paragraphs (p), (q) and (r) of S. 251 of the 1999 constitution to the facts of this case? (Ground 2, 3 and 4).

Issue (iii) Was the Court of Appeal Right in upholding the ruling of the Trial Court striking out Appellant's claim for lack of jurisdiction in the State High Court? (Ground 5)."

In the resolution of the sole issue formulated by the Respondent in that appeal my Noble Lord ALAGOA, JSC held on page 83 of the report as follows:-

"The question having now been settled that the 2nd Respondent Otibhor Okhae Teaching Hospital Irrua is an agency of the Federal Government, the next relevant question is whether the Appellant's claim relates to the administration or management and control of the 2nd Respondent. Paragraph 25 of the Statement of claim is a claim in aggravated and/or exemplary damages for defamation, negligence and breach of Doctor/Patient Confidence which undoubtedly relates to the administration or management of the Oribhor Okhae Teaching Hospital, Irrua sued as the 2nd defendant in the trial court and is 2nd Respondent in this appeal and in the lower Court. The effect of paragraphs (p), (q) and (r) of Section 251 "(1) of the 1999 Constitution is to vest exclusive jurisdiction on the Federal High Court over all civil causes and matters in which the Federal Government or any of its agencies is a party. See NEPA V. Edegbero (2002) 103 LRCN 2280 AT 2281 - 2282.

The proviso to section 251 (1) of the 1999 Constitution does not in any way detract from the exclusive jurisdiction conferred on the Federal High Court by virtue of Section 251 (1) (p) and (r). Consequently the proviso cannot apply.

From the foregoing, the sole issue for determination must be resolved in favour of the Respondents against the Appellant and it is hereby so resolved. The Appeal lack merit and is hereby dismissed. The Judgment of the Court of Appeal Benin Division delivered on the 27th February, 2004 upholding the ruling of Amaize J. of the Ekpoma High Court, Edo State delivered on the 13th May, 2002 is hereby affirmed. Parties are however to bear their own costs".

In his own Judgment in the said case my Noble Lord who presided over the matter, I. T. Muhammad, JSC held on page 84 A - D in the following pungent manner viz:

"...judgment just delivered by my learned brother, Alogoa, JSC. I am in agreement with him that the trial court lacked jurisdiction to entertain the matter as one of the parties that is, the 2nd respondent is an Agency of the Federal Government.

The law is unequivocally stated the 1999 constitution (as amended) in section 251 (1) (p), (q),(r ) and by this court that where in matter, one of the parties is the Federal Government or any of its Agencies, it is only the Federal High court that has exclusive jurisdiction. A state High court lacks jurisdiction to entertain such a matter.

See National Electric Power Authority v. Adegbero 1 2002 118 NWLR (PART 789179.

I too, dismiss the appeal I abide by consequential orders made in the lead Judgment."

Jurisdiction is the very heart of any matter. Any proceeding conducted without jurisdiction is a nullity ab inito. I call in aid the imperishable words of that legal icon and giant jurist KAYODE ESO JSC of blessed memory in the case of THE ATTORNEY-GENERAL OF LAGOS STATE VS HON. JUSTICE L. J. DOSUNMU (1989) 3 NWLR (PART 111) 552 at 608 C where the eminent had this to say:-  
"It is futile to set down issues, deliberate on the evidence led, resolve point of law raised, if the court seised of the matter is devoid of jurisdiction. The substratum of a court is no doubt jurisdiction. Without it the "labourers" therein, that is both litigants and counsel on the one hand and the Judge on the other hand, labour in vain"

In the result I hold that the trial court has no jurisdiction to entertain and adjudicate on the Respondent's suit. The Respondent's suit ought to have been brought to an end or terminated upon the application of the Appellant wherein the jurisdiction of the lower court was effectively challenged. The sole issue for determination in this appeal is hereby resolved against the Respondent and in favour of the Appellants. The Ruling of the Plateau State High Court of Justice delivered on 5th day March, 2009 is hereby set aside. The Respondent's action/suit No. PLD/J352/2007 is hereby struck out. Parties are to bear their own costs.  
   
  

**RAPHAEL CHIKWE AGBO, J.C.A.:**

I had the privilege of reading in draft the lead judgment beautifully written and delivered by my learned brother P. Olabisi Ige JCA.  It is clear that the law relating to the jurisdiction of the Federal High Court as set out by the Supreme Court in NEPA Vs. Edegbero (2002) 18 NWLR (Pt. 798) 79 which is that the Federal High Court has exclusive jurisdiction to hear all matters in which the Federal Government or any of its agencies is a party has withstood all attempts to constrain it. I too allow this appeal and strike out the Respondent's Suit No. PLD/J/352/2007 pending at the Plateau State High Court.

**IBRAHAM SHATA BDLIYA, J.C.A.:**

Having been privileged to read the draft judgment of my learned brother IGE, J.C.A. I entirely agree with his reasonings and conclusion therein. All the vital issues in the appeal have been ably and commendably treated and resolved in the lead judgment. I have nothing useful to add to the well-articulated judgment of my Lord, IGE, J.C.A. I, too, do hereby allow the appeal and set aside the ruling of the trial court. I abide by the orders made by my Lord, IGE, J.C.A., in the lead ruling, including costs.