**UNIVERSITY OF ILORIN TEACHING HOSPITAL**

**V**

**MRS. THERESA AKILO**

COURT OF APPEAL, ILORIN DIVISION

3RD JULY, 2000

CA/IL/6/2000

**LEX (2000) - CA/IL/6/2000**

OTHER CITATIONS

2PLR/2000/174 (CA)

[2000] 22 WRN 117

**BEFORE THEIR LORDSHIPS**

MURITALA AREMU OKUNOLA, J.C.A

PATRICK IBE AMAIZU, J.C.A

WALTER SAMUEL NKANU ONNOGHEN, J.C.A

**BETWEEN**

1. UNIVERSITY OF ILORIN TEACHING HOSPITAL

2.   UNIVERSITY OF ILORIN TEACHING HOSPITAL MANAGEMENT BOARD – Appellants

AND

MRS. THERESA AKILO – Respondent

**ORIGINATING COURT**

KWARA STATE HIGH COURT, ILORIN DIVISION (Gbadeyan J., Presiding)

**REPRESENTATION**

K.I. ADAM Esq., for the 1st and 2nd appellants.

DAYO AKINLAJA Esq., for the respondent.

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

TORT AND PERSONAL INJURY LAW:– Claim based on tort – Nature of - When deemed to have arisen - Whether duty primarily is one fixed by the law – Breach of duty – Whether redressible by an action for unliquidated damages

TORT AND PERSONAL INJURY LAW – VICARIOUS LIABILITY:– Rule that not only is a person liable for torts committed by himself but also, in certain cases, liable for torts committed by persons acting or purporting to act on his behalf - Two important classes of persons for whose tort another person may be liable – How treated

TORT AND PERSONAL INJURY LAW:– Medical negligence – Factors considered by court – Liability of doctor in contradistinction from that of Hospital – Doctor employed in public health facility who refers patient to own private clinic – Legal effect in cases of professional liability

CHILDREN AND WOMEN LAW: *Women and Healthcare/Justice Administration* – Medical negligence - Woman who sued doctors and their employers for negligent medical care – How treated

CONSTITUTIONAL LAW:- Jurisdiction of state High Court vis a vis Federal High Court – Whether every matter involving a federal body belongs exclusively within the jurisdiction of the Federal High Court – Section 230(1)(q) of the 1979 Constitution of the Federal Republic of Nigeria -

EMPLOYMENT AND LABOUR LAWS – VICARIOUS LIABILITY:- Classes of persons for whose tortuous wrong another party can be deemed vicariously liable – Servants and independent contractors - Medical practitioners employed by an institution – Nature of employment and operation - Whether while discharging their duties as medical doctors they are deemed not to be under the control or management of the employee and thus individually liable for any tort they might have committed in the course of discharging such duty – Liability for professional negligence –Relevant considerations

EMPLOYMENT AND LABOUR LAWS:– Servants and independent contractors – Common feature - Distinction between –Whether distinction between them is determined is a question of degree of control exercisable by the employer – Implication for tortuous liability

HEALTHCARE AND LAW:- Professional negligence – Doctors employed in public health institution – Court with jurisdiction to hear claim – Nature of liability of doctor and employer

HEALTHCARE AND LAW:- Professional negligence – Doctor employed n public health institution who maintains a private clinic – Practice of referring patients in public institution to own private hospital – Alleged negligence arising therefrom – How treated

HEALTHCARE AND LAW:- Professional negligence –nature of – When not linked to "administration or the management and control" on the part of a public health institution in contradistinction from its individual doctor – Effect of

**PRACTICE AND PROCEDURE ISSUES**

ACTION:- Cause of action – Validity of – How determined – When deemed to have arisen – Whether obligations and rights of parties must be considered in the light of the law at the time when the cause of action arose

COURT:- Duty of court in the interpretation of statute - Where the words used in a legislation are plain and unambiguous - Where a statute seeks to deprive a court from the exercise of its jurisdiction on a matter – How properly treated

JURISDICTION:- Jurisdiction over matters involving federal bodies and institution - When Federal High Court is deemed to have concurrent jurisdiction with State High Court – Relevant considerations

INTERPRETATION OF STATUTES:- Where words used in a legislation are plain and unambiguous – Duty of court thereto

**MAIN JUDGMENT**

**PATRICK IBE AMAIZU, J.C.A. (delivering the leading judgment)**

This is an appeal against the ruling of Gbadeyan J., of Kwara State High Court, Ilorin Division, in suit No. KW/273/96, Mrs. Theresa Akilo v. University of Ilorin Teaching Hospital and 3 others. The ruling was delivered on 23/6/99.

Briefly, the facts that gave rise to the ruling are as follows – the plaintiff (hereinafter referred to as the respondent) instituted an action against:

(i) The University of Ilorin Teaching Hospital.

(ii) The University of Iloring Teaching Hospital Management Board.

(iii) Dr. O. Balogun, and

(iv) Dr. Oluyori, claiming -

"Jointly and severally against the defendants a sum of one Million naira (N1, 000,000.00) being special and general damages for the pains, agonies, travails and emotional distress suffered by the plaintiff and for the dangers and hazards to which her life and family have been exposed to as a result of the negligent treatment carried out by the defendants on the plaintiff when she was to be delivered of a baby in or about the month of June, 1996".

The first and second defendants are hereinafter referred to as the appellants. The third and fourth defendants are medical doctors in the employment of the appellants. They did not appeal against the ruling.

Pleadings were filed and exchanged. They were settled after some amendments. Thereafter, the trial proceeded. In the course of the trial, the learned counsel for the appellants raised an objection by way of Notice of Preliminary objection, to the continued trial of the case by the Ilorin Judicial Division of the Kwara State High Court. The ground of the objection was that the lower court being a State High Court lacks the jurisdiction to entertain the suit.

The appellants’ challenge of the jurisdiction was predicated on the fact that they are Federal Government Agencies. In that case, only a Federal High Court has the jurisdiction to entertain any suit against them. The learned trial judge after listening to the argument for and against the objection ruled as follows:-

"In this case, the complaint firmly centres on the alleged negligence of two medical doctors and by extension the vicarious liability of their employer is involved in the contest.

I am therefore of the firm view that this case does not fall within the class ousted by the operation of Decree 107 of 1993. Consequently the objection is hereby over ruled as this court has competent jurisdiction to deal with this matter".

The appellants were dissatisfied with the ruling. They appealed to this court. In compliance with the rules of this court, the parties through their counsel filed briefs of argument and exchanged same. Before us the learned counsel adopted their briefs of argument.

The learned counsel for the appellants formulated one issue for determination. It reads –

"Whether the plaintiff’s/respondent’s claim falls within the purviews of the provisions of section 230 of 1979 Constitution as amended by Decree 107 of 1993 (and now section 251(1) (P) of the 1999 Constitution)".

The learned counsel for the respondent also formulated one issue for determination. In my considered view, the lone issue is adequately covered by the above issue identified by the learned counsel for the appellants. I will determine the appeal on the above issue formulated by the appellants. I consider it not necessary therefore to reproduce the issue formulated by the respondent.

Arguing the issue, Lawal-Rabana Esq., of counsel, referred to the admissions of the respondent in paragraphs 2 and 3 of the Amended Statement of Claim dated 24th July 1997 that the appellants are creations of Federal enactments. The learned counsel also referred to the ruling of the court below that the appellants are agencies or organs of the Federal Government. He contended that the status of the two appellants as Agencies or Organs of the Federal Government is established beyond any dispute. It is the learned counsel’s view that under the provisions of section 230 of the 1979 Constitution as amended by Decree No. 107 of 1993 which, according to him, was the applicable law at the material time, in any civil causes and matters relating to the administration or the management and control of the Federal Government or any of its Agencies, the Federal High Court has the jurisdiction to hear such a case to the exclusion of any other court. He cited –

1. University of Abuja v. Prof. Ologe (1996) 4 NWLR (Pt. 445) pg. 706 at 722.

2. Ali v. C.B.N. (1997) 4 N.W.L.R. (Pt. 498) p. 92

3. Oyenucheya v. Military Administrator of Imo State (1997) 1 N.W.L.R. (Pt. 482.) p. 429 at 449.

The learned counsel contended that it is the plaintiff’s claim that determines the jurisdiction of the court. To make his point, the learned counsel referred to paragraphs 4-6, 8 and 9, 11 and 34, of the Amended Statement of Claim. He submitted that the following facts are deductible from the paragraphs –

1. The 3rd and 4th defendants are medical doctors in the employment of the 1st and 2nd appellants.

2. The plaintiff/respondent was treated at the maternity run by the 1st appellant by the 3rd and 4th defendants.

3. The two defendants were negligent in treating the plaintiff/ respondent. And, this gave rise to a claim for special and general damages against the appellants by way of vicarious liability.

Finally, on this point, the learned counsel submitted that the action of the plaintiff/respondent which is founded on negligence and vicarious liability against the appellants affects the management and control exercised by the two appellants on the medical doctors and the maternity hospital.

In his reply, Akinlaja Esq., of counsel, submitted that it is a settled principle of law that it is the plaintiff’s claim that confers jurisdiction on a court. He cited the following cases -

Akinfolarin v. Akinnola (1994) 4 S.C.N.J. 30

Kotoye v. Saraki (1994) 7-8 SCNJ 524

Anya v. Iyayi (1993) 9 S.C.N.J. 53.

It is the learned counsel’s view that a perusal of the Statement of Claim would show that the learned trial judge was right in holding that:

"In this case, the complaint firmly centers on the alleged negligence of two medical doctors and by extension the vicarious liability of their employer is involved in the contest".

The learned counsel submitted that the relief sought by the respondent as contained in paragraph 34 of the Amended Statement of Claim is for special and general damages premised on tort of medical negligence. It is his view that in the light of the foregoing, the respondent’s action does not touch on a matter or case arising from the "administration or the management and control of the Federal Government or any of its agencies". He submitted that the view taken by Lawal-Rabana Esq., of counsel, imports into the provisions of section 230(1)(q) of the 1979 Constitution what is obviously not there. He further submitted that when the words used in a statute are clear they should be accorded their ordinary and plain meaning. He cited the cases of –

Awolowo v. Shagari (1979) 6-9 S.C. 51 at 90-92.

Aqua Ltd. v. Ondo State Sports Council (1988) 4 NWLR (Pt. 91) 622 at 641 and 642.

Fasakin v. Fasakin (1994) 4 NWLR (Pt. 340) 597.

It is the view of the learned counsel that the treatment received at the hospital by the respondent has nothing to do with the management and control of the hospital by the appellants. It is further his view that the argument would have held water if the complaint of the respondent had been against the way and manner the appellants had run, managed, administered or controlled the hospital. The learned counsel further observed that the respondent is not complaining about the functions or decisions or actions of the appellants simpliciter which, according to him, would have made it fall within the scope of the cases ousted by Decree 107 of 1993. It is the learned counsel’s view that the cases referred to by Lawal-Rabana Esq., of counsel, are of little or no assistance to the appellants’ case. The authorities, the learned counsel submitted, were decided on matters that clearly fall within the scope of the management, administration or control of agencies of the Federal Government. Finally, the learned counsel contended that the intention of the law makers was not to confer exclusive jurisdiction on the Federal High Court in respect of all causes or matters involving the Federal Government or any of its agencies. He referred to the case of Federal Mortgage Bank of Nigeria v. Nigeria Deposit Insurance Corporation (1999) 2 S.C.N.J. 57, where the Supreme Court held that –

"To say that where there is a dispute between two banks the forum for the resolution of the dispute is the Federal High Court is to read into section 230(1)(d) what is not there. A lot depends on the nature of the transaction between the two banks".

He urged the court to dismiss the appeal.

I observe that the cause of action arose in 1996. It is trite that the obligations and rights of parties must be considered in the light of the law at the time when the cause of action arose. See F.S. Uwaifo v. A.G. Bendel State & Ors. (1982) N.S.C.C. 221. It follows, in my view that the law that determines the court that has the jurisdiction to hear the suit is the 1979 Constitution of the Federal Republic of Nigeria as amended by Decree No. 107 otherwise known as Constitution (Suspension & Modification) Decree 1993. Section 230(1)(q) thereof provides –

"Notwithstanding any thing 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 from-

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

The question that arises is, how far does this provision go? It is a well established principle of interpretation that if the words used in a legislation are plain and unambiguous they shall be given their ordinary meaning. It is therefore not the function of a judge to import into a statute words which would do violence to the provisions of that statute. See Fred Egbe v. M.D. Yusuf (1992) 6 N.W.L.R. (Pt. 245), p.1. It is also a well established principle of interpretation of statutes that where a statute seeks to deprive a court from the exercise of its jurisdiction on a matter, such a statute must be strictly and scrupulously considered. To give effect to the provision of such a statute it must be clear from the facts and circumstances of the particular case that an interpretation taking away the jurisdiction of the court is justified. Military Governor of Ondo State v. Adewunmi (1988) 3 N.W.L.R. (Pt. 82) p. 280 at 294.

In this light, I now consider the provision. In my considered view, the provision is very clear and unambiguous. Only the Federal High Court has the jurisdiction to hear cases relating to the administration or the management and control of the Federal Government or any of its agencies.

I start with the claim. The parties are sued jointly and severally for the negligent treatment of the respondent carried out by the 3rd and 4th defendants. Osborn’s Concise Law Dictionary, Sixth Edition defines joint and several obligation as meaning –

"An obligation entered into by two or more persons jointly & severally, so that each is liable severally, and all liable jointly ….".

It follows that Dr. Balogun and Dr. Oluyori, and the appellants are also liable severally for damages for the claim of the respondent. It is not in dispute that a state high court has the jurisdiction to try any civil action against the two doctors under the provisions of section 236 of the 1979 Constitution of Nigeria.

Having made the point, I now refer to the averments in the Amended Statement of Claim. It reads in part as follows –

"6. The plaintiff as an expectant-mother registered at the maternity Wing of the 1st defendant for Ante-Natal care in the 3rd defendant’s firm and also registered at the 3rd defendant’s private clinic to facilitate special attention and care for her against the backdrop of the fact that she had previously undergone a caesarian operation.

7. The plaintiff attended both clinics regularly and paid all the charges prescribed thereat fully.

8. In or about the morning hours of 28/6/96, the plaintiff fell into labour and the plaintiff with her husband, Mr. Paul Akilo, went to see the 3rd defendant in the latter’s private clinic.

9. The 3rd defendant instructed the plaintiff and the husband to go and wait for him at the Maternity Wing of the 1st defendant after examining the plaintiff at about 10 am.

10. The plaintiff avers that strangely enough, the 3rd defendant did not show up at the Maternity and the plaintiff was for long without the benefit of medical assistance to assuage her from the travails of child labour because the other medical personnel in the maternity left her unattended to on the premise that she was the patient of the 3rd defendant.

11. At about 6.pm of the said 28/6/86, the 4th defendant performed a caesarian operation on the plaintiff to deliver the plaintiff of the baby after the condition of the plaintiff had become very critical and the plaintiff was at the point of death.

12. The plaintiff was later discharged from admission and attending the maternity on the assumption that she was okay but no sooner that she was discharged than the plaintiff started having severe pains and she started vomiting seriously.

13. The plaintiff and her husband consequently went back to the 3rd defendant in his private clinic to lodge a complaint on the precarious health – situation of the plaintiff although they first visited the Teaching Hospital for complaint before doing so.

14. The 3rd defendant ordered X ray and ultrasound tests which the plaintiff undertook after paying the charges thereof at the Teaching Hospital (Maternity Wing) and the result of which the plaintiff and her husband took back to the 3rd defendant at the Maternity.

I think it is convenient to stop here. It is my understanding of the claim that it is based on tort. Tortious liability arises from the breach of a duty primarily fixed by the law. Such a duty is towards persons generally and its breach is redressible by an action for unliquidated damages. It is accepted that not only is a person liable for torts committed by himself. He is also subject to certain conditions liable for torts committed by persons acting or purporting to act on his behalf. It has been identified that there are two important classes of persons for whose tort another person may be liable. These are servants and independent contractors. Both classes consist of persons employed to do work for their masters. The distinction between them is taken to lie in the different amounts of control exercisable by the employer.

In the present suit, it is common ground that the 3rd and 4th defendants are employees of the appellants. They were employed as medical doctors. At the time, material to this suit, they discharged their duties as medical doctors. It does seem to me that while discharging their duties as medical doctors they were not under the control or management of the appellants. They are therefore individually liable for any tort they might have committed in the course of discharging such duty.

A state High Court has the jurisdiction to determine such a case. In addition, I observe that the respondent averred in her amended Statement of Claim that she attended the private clinic of the 3rd defendant. Until evidence is given in the case, there is nothing before us to show whether the alleged negligence was committed in the private clinic or in the Maternity of the appellants or in both the Maternity and the Clinic. This is an issue that has to be determined by the court that hears the suit.

This court was referred to a number of cases by the learned counsel for the parties. The decisions in the cases are based on the peculiar facts of the cases. These facts are not the same in the present case.

There is no doubt that from the opening paragraph of section 230(1)(q) of the 1979 Constitution of the Federal Republic of Nigeria i.e. – ("Notwithstanding any thing to the contrary contained in the Constitution etc."), it is intended to give the Federal high Courts exclusive jurisdiction in matters specified in the section to the exclusion of any other court. For the purposes of clarification the matters specified in the section in respect of the present suit are –

"(a) The administration or the management and control of the Federal Government or any of its agencies".

It is clear that the section does not provide that whenever any action is brought against the Federal Government or its agencies it must be instituted in the Federal High Court. In my considered view, whether the jurisdiction of a State High Court is ousted in an action against the Federal Government or any of its agencies in a particular case depends solely on the nature of complaint against the Federal Government or the agency concerned. To hold otherwise will be reading into the section what is not there.

It is my view that a medical practitioner in the appellants’ establishment is liable in negligence if without due care and skill resulting in error of treatment he, for example describes fractures as dislocations and dislocations as fractures. The liability of the appellant in that case, is in essence determined by the law of master and servant.

It cannot be argued seriously that in the above hypothetical case the wrong diagnosis is in any way linked to "administration or the management and control" on the part of the appellants. It is a case of professional negligence. That is the case here.

In the end, I find no merit in this appeal. I dismiss it. The ruling of Gbadeyan J., delivered on 23rd day June 1999, is hereby affirmed. The respondent is entitled to costs of this appeal which I assess at N3, 000.00.

**MURITALA AREMU OKUNOLA, JCA.**

I have had the advantage of reading before now the leading judgment of my learned brother Amaizu, JCA. I agree with the facts of the case as narrated by my learned brother. I also agree with his reasoning and conclusion that the appeal lacks merit and same should be dismissed. I too dismiss the appeal. I abide by the consequential orders in the leading judgment including the order as to costs.

**WALTER S.N. ONNOGHEN, JCA.**

I have had the advantage of reading in draft the lead judgment just delivered by my learned brother, Amaizu, JCA.

I agree with his reasoning and conclusion that this appeal lacks merit and should be dismissed and I have nothing to add.

I also dismiss the appeal and abide by the consequential orders made in the lead judgment of my learned brother Amaizu, JCA, including the order as to cost.

Appeal dismissed.

CASES REFERRED TO IN THE JUDGMENT

Akinfolarin v. Akinnola (1994) 4 S.C.N.J. 30; (1994) 3 NWLR (Pt. 335) 659.

Ali v. C.B.N. (1997) 4 N.W.L.R. (Pt. 498) 92.

Anya v. Iyayi (1993) 9 S.C.N.J. 53.

Aqua Ltd. v. Ondo State Sports Council (1988) 4 NWLR (Pt. 91) 622.

Awolowo v. Shagari (1979) 6-9 S.C. 51.

F.S. Uwaifo v. A.G. Bendel State & Ors. (1982) N.S.C.C. 221 (1982) 7 S.C. 124.

Fasakin v. Fasakin (1994) 4 NWLR (Pt. 340) 597.

Federal Mortgage Bank of Nigeria v. Nigeria Deposit Insurance Corporation (1999) 2 S.C.N.J. 57.

Fred Egbe v. M.D. Yusuf (1992) 6 N.W.L.R. (Pt. 245)1.

Kotoye v. Saraki (1994) 7-8 SCNJ 524.

Military Governor of Ondo Statev. Adewunmi (1988) 3 N.W.L.R. (Pt. 82) 280.

Mrs. Theresa Akilo v. University of Ilorin Teaching Hospital and 3 others (unreported) suit No. KW/273/96.

Oyenucheya v. Military Administrator, Imo State (1997) 1 N.W.L.R. (Pt. 482.) 429.

University of Abuja v. Prof. Ologe (1996) 4 NWLR (Pt. 445) 706.

STATUTE REFERRED TO IN THE JUDGMENT

The Constitution of the Federal Republic of Nigeria 1979

Constitution (suspension & Modification) Decree 107 of 1993; S.S 230(1)(d) (q); 236.

The Constitution of the Federal Republic of Nigeria, 1999; S. 251(1)(p).