**HASSAN GARBA**

**V.**

**MUSA LAWAN BIRNIWA AND ANOTHER**

IN THE COURT OF APPEAL OF NIGERIA

THE 3RD DAY OF JULY, 2013

CA/K/338/2011

**LEX (2013) - CA/K/338/2011**

OTHER CITATION

2PLR/2013/76

(2013) LPELR-21478(CA)

**BEFORE THEIR LORDSHIPS**

DALHATU ADAMU, J.C.A

ITA GEORGE MBABA, J.C.A

HABEEB ADEWALE OLUMUYIWA ABIRU, J.C.A

**BETWEEN**

HASSAN GARBA - Appellant(s)

AND

1. MUSA LAWAN BIRNIWA

2. NIGERIA DEPOSIT INSURANCE CORPORATION (LIQIDATOR PREMIER BANK PLC) - Respondent(s)

**ORIGINATING COURT**

KANO STATE HIGH COURT (M. H. Abdullahi J- Presiding)

**REPRESENTATION**

VICTOR ORUNO ESQ. - For Appellant

AND

S.A. NASIR ESQ., - for the 1st Respondent

SIR STEVE ADEHI ESQ., - for the 2nd Respondent - For Respondent

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

BANKING AND FINANCE:- Distressed bank cases involving the Nigeria Deposit Insurance Corporation (NDIC), an agency of the Federal Government – Whether exclusively under the jurisdiction of the Federal High Court – Claim for declaration as to the illegality of a loan transaction involving an NDIC predecessor/defunct bank – How treated

COMPANY LAW:- Law firm as business name under which a lawyer Practices –. Whether is not accorded legal personality capable of taking or defending actions in the law Courts – Designation which in addition to Law Firm may suffice -

CONSTITUTIONAL LAW:- Federal High Court as a court of enumerated jurisdiction, and not one of general jurisdiction – Meaning – Duty of court to peruse the subject matter of an action to see if it fit into one of the enumerated areas of its jurisdiction

CONSTITUTIONAL LAW:- Section 251 (1) of the 1999 Constitution of the Federal Republic of Nigeria - Proviso to the Section 251(1) (p) (q) and (r) of the 1999 Constitution (as amended) - The jurisdiction of the Federal High Court – Whether every suit to which an agency of the Federal government is a party necessarily falls under the jurisdiction of the Federal High Court – Land matters and causes – Whether can be entertained by the Federal High Court – Duty of court in determining questions of jurisdiction

DEBTOR AND CREDITOR:- Mortgage – Legality of a mortgage based on a third party’s property which was delivered to mortgagor as security for loan – Whether property can be recovered from mortgagee by third party on ground of illegality – How treated

DEBTOR AND CREDITOR:- National Deposit Insurance Commission, NDIC cases – Where made a party in a claim relating to the legality of using a third party’s property as security for loan transaction involving a distressed bank succeeded to by the NDIC as liquidator– Whether the claims have nothing to do with the administration, management and control of the NDIC as to vest jurisdiction in the NDIC - Effect

DEBTOR AND CREDITOR:- Title documents used as security for a loan – Where wrongfully used by creditor to obtain a loan from a bank which subsequently became distressed and is under receivership/management by NDIC– Whether injunction can be issued against receiver for the recovery of title document

ETHICS – LEGAL PRACTITIONER:- Duty to be upright and on the side of the law in every matter before the court – Where counsel adumbrates sound position of the law even where it threatens the substance or private interest of client’s case - Refusal to taken undue advantage of opposing party to protect to protect the integrity of Ruling of the Court appealed from even if adverse to client’s case – Attitude of court thereto

ETHICS – LEGAL PRACTITIONER:- Meaning - Law Firm registered as a business name - Whether would satisfy the requirements of the Legal Practitioners Act - Whether cannot be held out as qualifying as a legal practitioner, registered with the Supreme Court, to practice law in Nigeria – Effect for judicial processes signed only in the name of a firm instead of a lawyer

REAL ESTATE AND PROPERTY LAW - LAND:- Court with jurisdiction to hear land matters - Whether there is nothing in sections 39, 41 and 42 of the Land Use Act that conferred any jurisdiction on the Federal High court to entertain land cases or matters

**PRACTICE AND PROCEDURE ISSUES**

COURT - JURISDICTION - FEDERAL HIGH COURT:- Exclusive jurisdiction of the Federal High Court as conferred on it by section 251 (1) of the 1999 Constitution of the Federal Republic of Nigeria – Limits – Causes and matters where it does not apply

COURT - INTERLOCTORY APPLICATION/RULING:- Rule that at the point of considering preliminary objection or interlocutory application, the trial Court must avoid delving into the substantive questions or issues in the case before him, which it is yet to try or take evidence – Whether imply that the Court is precluded from analyzing the case of the plaintiff as stated in the pleadings (Statement of claim) and bringing it forward, while considering the interlocutory application by the defendant seeking to abort the trial of the substantive case.

COURT - JURISDICTION - FEDERAL HIGH COURT:- Rule that what determines jurisdiction of a Court, apart from the Statute that established the Court, is the subject matter to be litigated upon – Duty on court thereto

COURT - JURISDICTION:- Meaning – What determines – Whether it is the case of the plaintiff as endorsed on the writ of summons and elaborated in the statement of claim or any other originating process – Whether the court does not look at the faces, designations or duties of the parties in a suit to determine whether or not it has jurisdiction

COURT - JURISDICTION:- Jurisdiction as the authority which a court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision - Rule that jurisdiction is a hard matter of law that can only be determined in the light of the enabling statute – Duty of a court of law not to add to or subtract from the provisions of a statute – Whether as a matter of law, a court must blindly follow and apply the jurisdictional limits and limitations as contained or provided in a statute

ACTION **-** SIGNING OF COURT PROCESS:- Error of omitting to state the name of a legal practitioner, duly registered to practice law as barrister and solicitor in Nigeria, on a process of court, meant to originate a matter – Effect - Whether can be fatal to the suit on the ground of incompetency

ACTION **-** SIGNING OF COURT PROCESS:**-** Who may sign court processes – Where litigant is a biological person – Whether litigant may sign directly – Where litigant is a biological or juristic person – How processes may be signed in a representative capacity

**MAIN JUDGMENT**

ITA GEORGE MBABA J.C.A. (DELIVERING THE LEADING JUDGMENT):

This is an appeal against an interlocutory Ruling of Kano State High Court, delivered by Hon. Justice M. H. Abdullahi on 4/5/2010, in Suit NO. K/88/1995.

The 2nd Respondent (NDIC- Liquidator Premier Bank PLC) and the Appellant had filed applications before the Lower Court on 17/8/2006, and 9/11/2006, respectively, seeking the striking out of the Suit (K/88/1995) for want of jurisdiction. The 1st Respondent, who was the plaintiff in the action, filed Counter affidavits on 8/11/2006 and 15/11/2006, in response to the two applications, respectively. Arguments were taken in both applications on 15/11/2006 and in its ruling, on 4/5/2010, the learned trial Court dismissed the applications, saying:

"On the issue of jurisdiction of Federal High Court in relation to this matter, since the Company referred to in Section 417 of CAMA has not been shown to be party to this case, this court has jurisdiction, moreover the issue of the 2nd defendant being made a party to the plaintiff's case (sic) of the 1st defendant using his title documents illegally to secure a loan from the Defunct Premier Bank PLC, to which the 2nd defendant is now the successor, makes the issue of application of section 251(1) of the constitution in relation to exclusivity of the Federal High Court jurisdiction clearly inapplicable here, as the exception provided in the provision to paragraph 251(1) (p) (q) and (r) of 1999 constitution clearly given the case at hand. In the end I hold that the entire two Notices of Preliminary objection lack merit and are hereby dismissed in their entirety;"

Appellant filed Notice of this appeal on 25/10/2011 with the leave of this Court granted on 20/10/2011. He filed amended Notice of Appeal on 18/12/2012 and disclosed 3 grounds of appeal as follows:

"GROUND ONE

The learned trial judge erred in law when he held that he has jurisdiction to entertain the suit.

PARTICULARS

1. The Appellant filed an application dated 17th August, 2006 before the trial court seeking the leave of the trial court to strike out the suit for want of jurisdiction.

2. Arguments were taken in respect of the said application on the 15th of November, 2006.

3. The crux of the Appellant's argument at the trial court was that the 2nd Respondent (2nd Defendant at the lower court), trial is NDIC is an agency of the Federal Government and thus the trial court had no jurisdiction to entertain same.

4. Despite the Appellant's argument the trial court ruled finally on the 4th of May, 2010 that it had jurisdiction to entertain the suit.

GROUND TWO

The learned trial judge erred in law when he delved into the substantive matter at the hearing of the 1st Defendant's motion on notice dated 17th August, 2006, when he held thus "moreover, the issue of the 2nd Defendant being made a party to the Plaintiff's case of the 1st Defendant using his title documents illegally to secure a loan from the defunct Premier Bank Plc, to which the 2nd Defendant is now a successor makes the issue of application of section 251(1) in relation to exclusivity clearly inapplicable here as the exception provided in the proviso to paragraph 251 (p) (q) and (r) of the 1999 constitution clearly govern the case at hand"

PARTICULARS

1. The Appellant filed an application dated 17th August 2006 at the trial court seeking that the suit be struck out for want of jurisdiction.

2. Argument were taken in respect of the said application on the 15th of November, 2006 and ruling finally delivered on the 4th of May, 2010 in favour of the 1st Respondent.

3. That the learned trial judge in its interlocutory ruling dated 4th May, 2010 held that the Appellant used the title documents of the 1st Respondent illegally to secure a loan the defunct Premier Bank Plc. Which pronouncement touched on the substantive suit.

GROUND 3

The learned trial judge erred in law when he failed to make a finding on the 2nd Respondent and Appellant's submission that the writ of summons was defective as same was signed by a firm of legal practitioners.

PARTICLARS

1. The Appellant filed an application dated 17th August, 2006 before the trial court, seeking that the suit before the trial court be struck out for want of jurisdiction.

2. The 2nd Respondent also filed an application dated 9th November, 2006 also seeking that the suit at the trial court be struck out for want of jurisdiction.

3. Arguments were taken in respect of both applications (i.e. one dated 17th August, 2006 filed by the Appellant and the other dated 9th November, 2006 filed by the 1st Respondent) on the 15th of November, 2006.

4. Ruling was finally delivered on 4th May, 2010 dismissing both applications.

5. One of the arguments of the 2nd Respondent in respect of his application dated 9th November, 2006 was that the writ of summons was defective as same was signed by a firm of legal practitioner.

6. The Appellant in his submissions in respect of his application dated 17th August, 2006 fully associated himself with the submissions of the 2nd Respondent's counsel and adopted the said arguments of the 2nd Respondent's counsel as his submissions also.

7. Despite the submissions of the 2nd Respondent on the defectiveness of the writ of summons which was obviously apparent and the adoption of the said argument also by the Appellant's counsel, the learned trial judge refused to make a finding on the propriety or otherwise of the writ of summons.

8. Failure of the trial court to make a finding on the validity or otherwise of the writ of summons signed by Ibrahim Mudi & Co. a firm of solicitors has led to a miscarriage of justice."

Appellant filed Amended Brief of arguments on 18/12/2012 with the leave of Court and distilled three (3) issues for determination, namely:

"(i) Whether from the statement of claim at the trial Court, it can be said that the trial Court had jurisdiction to entertain the 1st Respondent's suit, where Nigeria Deposit Insurance Corporation (NDIC), an agency of the Federal Government, is a party to the said suit.

(ii) Whether the pronouncement of the trial Court that the Appellant illegally used the title documents of the 1st Respondent to procure a loan from the defunct premier bank plc touched on the substantive suit. If the answer to the above is in the affirmative, what then is the effect of the said pronouncement?

(iii) Whether the trial Court had jurisdiction to entertain the suit at the trial Court when it was obvious that the writ of summons was signed by a firm of solicitors "Ibrahim Mudi & Co".

The 1st Respondent filed his Amended Respondent's Brief on 25/4/2013, with the leave of Court, granted on 18/4/2013. In it he distilled 3 Issue for determination, as follows:

"(i) WHETHER FROM THE AVERMENTS IN STATEMENT OF CLAIM IT CAN BE SAID THAT THE TRIAL COURT HAD JURISDICTION TO ENTERTAIN THE 1ST RESPONDENT'S SUIT, WHERE NIGERIA DEPOSIT INSURANCE CORPORATION (NDIC) AN AGENCY OF THE FEDERAL GOVERNMENT IS A PARTY TO THE SAID SUIT.

(ii) WHETHER THE PRONOUNCEMENT OF THE TRIAL COURT THAT THE APPELLANT ILLEGALLY USED THE TITLE DOCUMENTS OF THE 1ST RESPONDENT TO PROCURE A LOAN FROM THE DEFUNCT PREMIER BANK PLC TOUCHED ON THE SUBSTANTIVE SUIT. IF THE ANSWER TO THE ABOVE IS IN THE AFFIRMATIVE, WHAT THEN IS THE EFFECT OF THE SAID PRONOUNCEMENT?

(III) WHETHER THE TRIAL COURT HAD JURISDICTION TO ENTERTAIN THE SUIT AT THE TRIAL COURT WHEN IT WAS OBVIOUS THAT THE WRIT OF SUMMONS WAS SIGNED BY A FIRM OF SOLICITORS "IBRAHIM MUDI & CO."

The writ of Summons in Suit No. K/88/1995, as per the Amended Statement of Claim paragraph 11, was for:

"WHEREOF" the Plaintiff claims against the 1st and 2nd Defendants jointly and severally as per paragraph 13 (a), (b), (c), (d), and (e) of his Statement of Claim and further claims against the Defendants as follows:-

i. A declaration that from the available facts, the Plaintiff was never a party to the assignment as he never executed the same and was not aware of the same and cannot be bound by the said Deed of Assignment.

ii. A declaration that in so far as the Plaintiff is not a party to the purported Deed of Assignment his rights, interest and ownership over property, covered by Certificate of Occupancy NO. LKN/RES/82/1538, still reside in the Plaintiff and unaffected by the purported assignment and the same ought to be set aside for being incompetent and void.

iii. A declaration that in so far as the purported assignment is incompetent the subsequent deed of legal mortgage purportedly built on the illegal Deed of Assignment is also void and ought to be set aside as against the Plaintiff's property covered by Certificate of Occupancy NO. LKN/RES/82/1538.

iv. An order giving effect to the pledge agreement between the Plaintiff and 1st Defendant dated 14/11/1992, that is to say, the immediate repayment of the N30,000.00 pledge as agreed under the pledge agreement and the surrender to the Plaintiff of his Certificate of Occupancy No.LKN/RES/82/1538 by the Plaintiff and 1st Defendant, respectively.

v. An order for immediate possession of the property in favour of the Plaintiff and the surrender of Certificate of Occupancy No. LKN/RES/1538 to the plaintiff with immediate effect against the 1st and 2nd Defendants."  
(see page 35 of the Records)

The 2nd Respondent who was not a party to the Suit originally, applied by notice dated 10/1/2004 to be joined as a party to defend the suit. On being joined, the 2nd Respondent and Appellant brought the motion earlier referred, to strike out the Suit. The texts of the two motions were the same:

"An Order of this Honourable Court striking out this Suit for want of jurisdiction. And for such further Order as this Honourable Court may deem fit to make in circumstance of this case."

The 2nd Respondent too filed its Brief of argument on 24/1/2012, and distilled two (2) issues for determination:

"(i) Whether from the statement of claim at  the trial court, it can be said that the trial court had jurisdiction to entertain 1st Respondent's suit, where the Nigerian Deposit Insurance Corporation (NDIC) an agency of the Federal Government, is a party to the said suit.

(ii) Whether the pronouncement of the trial Court, that the Appellant illegally used the title documents of the 1st Respondents to procure a loan from the Defunct Premier Commercial Bank Plc touched on the substantive suit to the extent that the presiding judge can be said to have, by that pronouncement, decided the substantive suit."

Arguing the issue 1 of the appeal, Counsel for the Appellant Victor Oruno Esq., (who settled the Brief), submitted that the trial Court lacked jurisdiction to entertain the suit, where an agency of the Federal Government was sued as a party - in this case the 2nd Respondent (NDIC); that by section 251 (p)(q), (r) of the 1999 Constitution, as amended, the Federal High Court has exclusive jurisdiction to entertain any matter affecting the Federal Government or any of its agencies. He relied on the case of NEPA VS. ADEGBENRO (2003) FWLR (pt. 139) 1556; UNIVERSITY OF AGRICULTURE MAKURDI VS. GRACE ELEYI JACK (2010) FWLR (Pt. 20) 720; UNIVERSITY OF ABUJA VS. OLOGE (1999) 4 NWLR (pt. 706) 772.

He urged us to hold that the Federal High Court is the proper venue for the trial of the case; that this case is distinguishable from the circumstances in the case of ADEBAYO vs. ADEMOLA (2010) ALL FWLR (pt. 533) 1806. He submitted that the jurisdiction of a Court is determined by the Plaintiffs statement of claim; that in the instant case, the claim of the 1st Respondent goes beyond mere declaration reliefs; that by his further and Amended statement of claim, the 1st Respondent (Plaintiff in the Court below), paragraph 10 (a) (b) pleaded:

"10(a) The Plaintiff further avers that both transactions were done without his knowledge or consent and were both purportedly conducted during the pendency of suits No, K/43A/94, K/179/94.

10(B) The 2nd Defendant is the liquidator of Premier Commercial Bank Plc to whom 1st Defendant purportedly mortgaged Plaintiff's property and the said mortgage was registered at the Kano State Ministry of Land and Physical Planning as No. 220 page 220 Volume 10 (mortgage) on the 9th day of September, 1994 and the Plaintiff hereby pleads both the Deed of Mortgage and the Deed of Assignment registered as No. 225 page 225 in Volume 11 (Assignment) at the Lands Registry Office in Kano and notice is hereby given to the Defendants to produce the originals of the same at the trial." (Page 4 of the Brief)

Appellant submitted that it was clear from the above and as per page (sic) 35 of the Plaintiffs amended statement of claim which claimed against the 1st and 2nd defendants, jointly and severally, an order for immediate possession of the property in favour of the Plaintiff and surrender of Certificate of Occupancy No. KN/RES/82/1538 to the plaintiff the suit was outside the jurisdiction of the trial Court, as the 1st Respondent from his statement of claim was seeking Certificate of Occupancy (allegedly belonging to him), which was in possession of the 2nd Respondent; that the effect of such relief would be to invoke the administration management and control of the 2nd Respondent.

He submitted further that sections 38, 39 and 41 of the Land Use Act are inconsistent with the provisions of section 251 of the 1999 Constitution and to the extent should be declared void. He urged us to so hold, relying on the case of NUHU VS. OGELE (2004) 1 NJSC 70 at 82.

On issue 2, Counsel submitted that by the trial Court saying, in the Ruling of 4/5/2010, that:

"1st Defendant used the title documents of the Plaintiff to illegally secure a loan from the Defunct Premier Commercial Bank Plc" the Court was pronouncing on the substantive suit; that the legality or otherwise of the 1st Defendant's (Appellant's) use of the title documents were issues that were yet to be resolved by the parties. He argued that what was before the Court at that stage was whether the Court had jurisdiction to hear the case, not whether the 1st Defendant illegally used the title documents of the Plaintiff, He relied on the case of ODUTOLA VS. LADEJOBI (2006) ALL FWLR (Pt. 322) 1394 at 1435.

Counsel added that by that pronouncement the trial Court had pre-judged the substantive suit; that Appellant therefore lost confidence on the ability of the trial Court to, objectively, decide the facts before him, at the hearing of the substantive suit; that it was very obvious, judging by that pronouncement, where the pendulum will eventually swing at the end of the trial, if the trial judge hears the substantive matter. He relied on the case of PON SON ENTERPRICES (NIG.) LTD VS. NJICHR (2001) FWLR (Pt. 61) 1685.

Appellant prayed, alternatively, that if the 1st issue is resolved against him, that the 2nd should succeed and the case remitted to the Chief of Kano State for assignment to another judge of the Kano High Court to hear.

On issue 3, Counsel argued that in the cause of arguing the motion by the 2nd Respondent, dated 9/11/2006, it was pointed out that the writ of summons filed by the Plaintiff (1st Respondent) was defective as same was signed by a firm of solicitors; that cases were cited in support of the defect of the writ and that the submission of the 2nd Respondent thereon was adopted by Appellants Counsel, and so it became the argument of the Appellant also, by adoption. Counsel referred us to page 20 of the Records, where the writ of summons, as signed by IBRAHIM MUDI & Co. is reproduced. He submitted that IBRAHIM MUDI & Co is not a natural person or a legal practitioner, duly called to the Nigerian Bar; that by section 2(1) of the Legal Practitioner's Act, a Legal Practitioner is defined as, one who can act as Barrister and Solicitor. He relied on the case of ESTHER THOMAS VS. MR. DAVID MAUDE (2007) ALL FWLR (Pt. 361) 1749 at 1762; OKAFOR VS. NWEKE (2007) ALL FWLR (Pt. 368); MADUKOLU VS. NKEMDILIM (1962) 1 ALL NLR, to say that the said process signed by a law firm was incompetent, as it was not initiated by due process of law, and so the Court lacked jurisdiction in respect of the case.

Counsel said that it was astonishing that the trial Court made no findings on that submission; that that was wrong. He relied on the case of IKONO LOCAL GOVT. VS. DE HEACON FINANCE Co. NIG. LTD. (2002) FWLR (Pt. 114) 415 at 422.

Counsel urged us to make specific findings on the issue and strike out the suit, for want of jurisdiction. He relied on the case of OKAFOR VS. NWEKE (SUPRA).

He also relied on the case of P.J. EFFIONG & 3 ORS VS. DR. INIH EBONG (2007) 28 WRN 71 at 96; NNB VS. DENAG (2005) 4 NWLR (Pt. 916) 549 at 574; NWAIGWE VS OKEKE (2008) ALL FWLR (Pt. 431) 843 at 804, to say that amendment of the process signed by IBRAHIM MUDI & Co., cannot cure the defect in the writ of summons.

He also relied on other cases, and urged us to allow the appeal.

The 1st Respondent's Counsel, S.A. NASIR Esq., arguing issue 1, reproduced the provisions of section 251 (r) of the 1999 Constitution, and sections 39 (1) of the Land Use Act, and submitted that the claim of the 1st Respondent at the trial Court (paragraph 13, in particular) comes within the ambit of the provisions section 39 of the Land Use Act; that the trial judge was therefore right when he dismissed the preliminary objection; that looking at the statement of claim, the High Court of Kano State had jurisdiction to hear the case; that Land Use Act is part and parcel of 1999 Constitution - He referred us to section 315 (5) (d) section 315 (b) of the Constitution. Thus, he submitted that the Land Use Act cannot be inconsistent with the 1999 Constitution, Counsel also submitted that by the Land Use Ad, as a Federal Law, does not make land a Federal cause so as to oust the jurisdiction of the State High Court. He relied on the case of JOY VS. DOM. (1999) 7 SCNJ 27 at 37; he added that NDIC (2nd Respondent) joined as defendant in the case, did not oust the jurisdiction of the State High Court, since the proviso of section 251 (1) (p) (q) and (r) of the 1999 Constitution did not override the provisions of section 39 of the Land Use Act, and section 315 (5) of the Constitution. He also relied on the case of ADETAYO VS. ADEMOLA (2010) ALL FWLR (pt. 539) 1806.

Counsel submitted that the cases relied on by the Appellant, namely NUHU VS. OGELE (supra); UNIVERSITY OF AGRIC. MAKURDI VS. JACK (supra) are not applicable to this case.

He urged us to resolve the issue against the Appellant.

On issue 2, Counsel submitted that the effect of the pronouncement by the Court, that Appellant "illegally used the title documents of 1st Defendant to procure loan" was over blown by the Appellant; that Appellant was making a mountain out of an anthill. He called on us to consider whether the pronouncement of the trial Court was justified in the face of the printed records of appeal. He referred us to page 12 of the Records lines 9 - 18, and submitted that in the context which the trial judge use the words, it was neither intentional nor calculated by the trial Court to support the view expressed by the Appellant; that it was a typographical error!

Counsel said that it was a fact that the appellant used the documents of the 1st Respondent to secure loan from Premier Bank Plc - as per Exhibits SM2 on page 26 of the Record; that the error was that the Court used the words "ILLEGALLY USED."

That it was slip!

However, Counsel submitted that not every error or slip will result in an appeal being allowed; that it is only when the slip or error results in miscarriage of justice. He relied on the case of OYEFOLU VS. A.G. LAGOS STATE (2001) 7 SCNJ 108 at 117; KENON VS. TEKAM (2001) 7 SCNJ 620.

On issue 3, Counsel submitted that the irregularity of the writ being signed by a firm IBRAHIM MUDI & Co had been regularized by amending the portion signed by the firm by means of the further amended statement of claim. He referred us to the Application by plaintiff filed on 29/6/10 wherein the 1st Respondent applied to amend his statement of claim by adding the correct name of the legal practitioner that signed the statement of claim; that the trial Court had allowed the amendment on 21/8/11 and thereafter the statement of claim was further amended and the same signed by S.A. Nasir Esq.; He submitted that the defect was cured, in the circumstances.

Counsel added that in law, the statement of claim supercedes the writ of summons and relied on OGIDI VS. IGBA (1999) 6 SCNJ 107 at 129.

Counsel urged us to resolve the issues against the Appellant and dismiss the Appeal.

The 2nd Respondents arguments and submissions as settled by SIR STEVE ADEHI, surprisingly, are on the same page with those of 1st Respondent, on issues 1 by the Appellant and by the 1st Respondent. He says that even though the 2nd Respondent is an Agency of the Federal Government, the action being complained of by the 2nd Respondent is the exercise of its statutory powers and not administrative functions as being canvassed by the Appellant's Counsel. He added that the cases of NEPA VS. EDEGENRO (supra) and UNIVERSITY OF ABUJA VS. OLOGE (supra) relied upon by the Appellant, do not address the issue.

He relied on the case of ASSOCIATED AVIATION LTD VS. MAINLAND TRUST LTD (2008) 5 CLRN 61, to say that the mere making of the Federal Govt. or its Agency a party in a process does not, automatically, vest jurisdiction in the Federal High Court. He also relied on the case of ADETAYO VS. ADEMOLA (2010) ALL FWLR (Pt. 533) 1806, to say that nothing in the reliefs sought by the 1st Respondent (Plaintiff) against the 2nd Respondent has anything to do with validity of executive or administrative action or discretion of the Federal Government or its Agency.

He further submitted that a careful perusal of the reliefs sought by the Appellant (sic) (1st Respondent, rather), at the trial Court, clearly shows it relates to title to or ownership of land; that there is no - where, under section 251 (1) (p) (q) and (r) of 1999 Constitution, that the Federal High Court is given jurisdiction over land matters.

He submitted that jurisdiction over land matters is exclusively vested in the State High Court. He referred us to section 39 (1) and 51 (1) of the Land Use Act. He added that the Federal High Court cannot be said to have jurisdiction over land matters, merely because the Federal Government or any of its agents is/are parties to the suit; that the proviso to section 251 (1) (p) (q) and (r) of the 1999 Constitution of Nigeria has stated that action for declaration and injunction against the Federal Government or any of its agencies may be maintained in the State High Court, if the cause of action is based on any law, enactment or equity. He relied on the case of MINISTER For WORKS vs. TOMAS NIG. LTD (2002) 2 NWLR (Pt. 752) 740 at 776.

On issue 2, 2nd Respondent's Counsel, surprisingly, too, said that there is nowhere in the ruling where the Court below held that the 1st Defendant made use of documents illegally to secure a loan. He referred us to 1st Respondent's Further And Better Statement of Claim as Amended, filed on 25/10/2005, (earlier referred as Amended Statement of Claim), where the 1st Respondent averred in paragraph 11 (iii) as follows:

"A declaration that in so far as the purported assignment is incompetent, the subsequent Deed of Legal Mortgage purportedly built on the illegal Deed of Assignment is also void and ought to be set aside as against the plaint is property covered by certificate of occupancy No. LKN/RES/82/1538"

Counsel submitted that it was in relation to the above relief that the trial Court based its ruling, complained of by the Appellant, that the 1st Defendant using title documents illegally to secure a loan from the Defunct Premier Bank PLC, to which the 2nd Defendant is now the successor, makes the issue of application of Section 251 (1) of the Constitution in relation to the exclusively of the Federal High Court, clearly inapplicable..."

Counsel submitted, that the trial Court was not in fact, pre-judging the Substantive case, but was rather, in fact, understood to be saying that in view of the claim in paragraph 11 (iii) (quoted above), Section 251(1) of the 1999 Constitution would not be applicable, to oust the jurisdiction of the trial Court! He saw nothing ambiguous in that part of the Ruling to justify the complaint of the Appellant. He urged us to disregard the submissions of the Appellant and resolve the issues in favour of the 2nd Respondent.

RESOLUTION OF ISSUES

I shall consider this appeal on the Issues as formulated by the Appellant. Of Course, the Issues by the Respondents are the same as that of the Appellant, except that the 2nd Respondent had no 3rd Issue, distilled by the Appellant and 1st Respondent.

ISSUE ONE

I think Appellant was a victim of the usual misconception or misapplication of the general powers/jurisdiction of the Federal High Court, as enshrined in Section 251 (1) of the 1999 Constitution, as amended, which tends to vest the Federal High Court with exclusive jurisdiction in cases involving the Federal Government and its Agencies.

We have stated, over and over again, as per the decisions of this Court and of the Apex Court, that the mere involvement of the Federal Government, Federal Department or Federal Government Agency in a case does not make the matter to fall within the jurisdiction of the Federal High Court, or outside the jurisdiction of the State High Court (or of the Federal Capital Territory). What determines jurisdiction of a Court, apart from the Statute that established the Court, is the subject matter to be litigated upon, and this (subject matter) is usually determined by the Claim of the plaintiff. See the case of ABU VS ODUGBO (2001) SCNJ 262, ADEYEMI VS OPAYORI (1976) 9 -10 SC 31; NEPA vs. EDEGBERO (2003) FWLR (pt. 139) 1556; ADEMOLA VS. ADETAYO (2005) ALL FWLR (pt. 259) 1966 at 1988 - 1992.

The proviso to the Section 251(1) (p) (q) and (r) of the 1999 Constitution (as amended), has also cleared every confusion, as to the fact that nothing in the provisions of paragraphs (p), (q) and (r), referred above "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," (in a Court outside the Federal High Court)!

Counsel for the 2nd Respondent had addressed us extensively on this and had relied on the case of Minister of WORKS vs. TOMAS NIG. LTD. (2002) 2 NWLR (Pt. 752) 740 at 776, where this Court said:

"By the provision to Section 251 of the Constitution of the Federal Republic of Nigeria 1999, nothing in the provisions of the subsections 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: Therefore it is a misconception to hold that whenever the Federal Government, or any of its agencies is involved in a case, the only Court for the case is the Federal High Court..."

Counsel for the 2nd Respondent had also specifically drawn the attention of this Court to the fact that the case of the 1st Respondent at the High Court of Kano State was one for declaration of interest in land; that jurisdiction in Land matters is vested in the State High Court, as the Federal High Court has no jurisdiction over Land matters.

I must commend the Learned Counsel for the 2nd Respondent, for being upright and on the side of the law in this matter, despite the fact that 2nd Respondent was in the same camp with the Appellant at the High Court, and, in fact, was the first to initiate the preliminary objection, which Ruling, brought about this appeal! That is how, I think, a Counsel should act, to serve the interest of the Court and of justice, even if that conflicts with the private interest of his client.

The Appellant appeared to have foreseen the futility of his argument on this point, when he cited and relied on the case of ADEYATO VS ADEMOLA (2010) ALL FWLR (pt. 533) 1806 at 1828, where the Supreme Court held:

"Happily in the instant case, there is no dispute at all that the Federal Government and the Federal Ministry of Works are parties as Defendants at the trial court and as Respondents at the Court of Appeal and this court. What remains therefore to be considered is the subject matter of the Plaintiffs/Appellants' claims to see whether or not the claims can be accommodated under section 251 (r) of the constitution...

It is quite clear from the provision of the above sections of the Land Use Act with specific powers and jurisdiction in respect to land matters specified therein conferred on State High Court and Magistrate Court, that the Federal High Court is not one of the Courts conferred with jurisdiction to entertain any dispute in land matters. In fact, the purpose of section 39, 41 and 42 of the Land Use Act are designed is clear...

There is nothing in sections 39, 41 and 42 of the Land Use Act that conferred any jurisdiction on the Federal High court to entertain land cases or matters"

Of Course, the Appellant cannot deny the fact that the claims of the 1st Respondent as shown in the Amended Statement of claim, paragraph 11, (earlier reproduced) were founded on title to land or interest in land. The 2nd Respondent, who earlier opposed the jurisdiction of the State High Court, as the Appellant did, has since seen the light or illumination of the law and confessed. I therefore recommend his example to the Appellant.

As it is also stated in the case of ADETAYO VS. ADEMOLA (supra) (cited by the Appellant);

"Applying this provision to the claims of the Plaintiff/Appellants in the instance issue, although the claims include declaration and injunction, there is nothing to show that the declaration and injunction being claimed relate to or affect the validity of any executive or administrative action or decision of the Federal Government or any of its agencies..."

I therefore resolve the issue against the Appellant.

ISSUE 2

Appellant had maintained that the trial Court's Ruling of 4/5/2010 had delved into the substance of the main Suit; that by saying:

"...Moreover, the issue of the 2nd Defendant being made a party to the plaintiff's case of 1st Defendant using his title documents illegally to secure a loan from the Defunct Premier Bank Plc to which the 2nd Defendant is now the Successor, makes the issue of application of Section 251 of the Constitution...in relation to the exclusivity of the Federal High Court inapplicable here...,"

that the Court had, by so doing, pre-judged the substantive Suit, at the stage of preliminary objection; that the trial Court had disqualified itself from hearing the main Suit, by so doing.

Counsel for the 1st Respondent seemed to have accepted that argument, when he submitted that the use of the words, "ILLEGALLY USED" by the Court was a typographical error or ship; that the Court did not intend same to convey the meaning, inferred by the Appellant.

Counsel for the 2nd Respondent, rather saw it different, when he argued that the Court did no wrong and did not pronounce on the substantive matter, but rather used the relief sought by the Plaintiff (1st Respondent) in paragraph 11 (III) of his Amended Claim, which was to the effect that the 1st defendant (Appellant herein) had used his (1st Respondents) title documents illegally to obtain loan from the defunct Premier Bank Plc!

I am totally in agreement with this reasoning and view by the learned Counsel for the 2nd Respondent. And coming from the 2nd Respondent, who would have taken undue advantage of the failure of the 1st Respondent to protect the Ruling of the Court, to toe the path of the Appellant and lambast the ruling of the trial Court, one should appreciate the honesty and sound legal mind of learned Counsel for the 2nd Respondent.

Of Course,the law is trite that at the point of considering preliminary objection or interlocutory application, the trial Court must avoid delving into the substantive questions or issues in the case before him, which it is yet to try or take evidence. See the case of ODUTOLA VS. LADEJOBI (2006) ALL FWLR (Pt.322) 1394 AT 1435:

"Care should be taken when a court is hearing an interlocutory application, to avoid making any pronouncement which may appear to prejudice the main issue in the proceedings relative to the interlocutory application..."

See also BAIDE VS. INEC (2012) 31 WRN 27, held 9;

"The law is well settled that a Court in considering and determining an interlocutory application, must be circumspect and not delve into determining any part of the substantive matter before it." Per YAKUBU JCA

That does not however imply that the Court is precluded from analyzing the case of the plaintiff as stated in the pleadings (Statement of claim) and bringing it forward, while considering the interlocutory application by the defendant seeking to abort the trial of the substantive case. I think that was what the learned trial Court did in this appeal, when he made reference to paragraph 11 (III) of the Amended pleading of the 1st Respondent, which sought a declaration.

"that in so far as the purported assignment  is incompetent, the subsequent Deed of Legal Mortgage purportedly built on the illegal Deed of Assignment is also void and ought to be set aside as against the plaintiff's property covered by Certificate of Occupancy No. LKN/RES/82/1538."

I think the trial court, in its Ruling was simply trying to refer to the above relief, which alleged that the Appellant illegally used his (1st defendant's) documents to secure loan from the bank. A careful study of that Ruling can show that the Court was not ruling on the substantive matter by so saying and was not betraying any opinion on the said allegation. Like the Counsel for 2nd Respondent rightly opined, the trial Court could be understood to be saying, in view of the claim of the 1st Respondent in paragraph 11 (111) of the Amended Statement of claim, alleging illegal use of 1st Respondents documents by Appellant to obtain loan from the Defunct Premier Bank Plc (which the 2nd Respondent succeeded) the Section 257 (1) of the Constitution, would not be applicable to the application!

I therefore resolve the Issue against the Appellant.

Issue 3, was founded on the complaint that the writ of Summons was signed by IBRAHIM MUDI & CO, a law firm, and so it was incompetent, and the Court cannot exercise jurisdiction on it; that the same could not be amended as one cannot put, something on nothing and expect it to stand.

Appellant relied on the case of P.J EFFIONG AND ORS. VS DR. INIH EBONG (2007) 28 CORN 71; NNB vs. DENAG (2005) 4 NWLR (Pt. 916) 549 at 574; NWAIGWE VS. OKEKE (2008) ALL FWLR (Pt. 431) 843 at 864.

The 1st Respondent had argued that the defect in the process had been cured by the Amendment of the claim of the 1st Respondent (Plaintiff) which obtained the leave of Court to disclose the Counsel who signed the Plaintiffs Suit, and that the Amended process was duly signed by S. A. NASIR ESQ., as Counsel for the plaintiff; that though the Appellant had opposed that application, to amend the process, the Court had granted it all the same; that by law, the Statement of Claim supersedes the writ of Summons, relying on the case of OGIDI VS. IGBA (1999) 6 SCNJ 107 at 129.

The position of the law on who is qualified to sign a legal process on behalf of a litigant, as a lawyer (that is, where the litigant is a biological person and fails to sign it himself), is well defined. See the case of OKAFOR VS. NWEKE (2007) ALL FWLR (Pt. 368); NEW NIGERIA BANK vs. DEDANG LTD (2005) 4 NWLR (PT.916) 573. See also the recent decision of this court in, AGROVET SINCHO PHAM LTD AN ANOR. vs. ESTATE OF ENGR. DAHIRU (2013) - LPELR - 20364 (CA).

There is, however, evidence that the plaintiff received the leave of Court to file his Amended Statement of Claim, which he called "Further and Better Statement of Claim". The application was said to have been granted on 21/8/2011. He filed the same, as per pages 33 to 35 of the Records of Appeal. But the said process was allegedly signed by S. A. NASIR AND CO. as the PLAINTIFF'S SOLICITORS

Sadly, 1st Respondent's Counsel was not presenting the correct facts to this Court, when he submitted that the further Amended Statement of Claim "was signed by S. A. NASIR ESQ."

S. A. NASIR ESQ is not the same as S. A. NASIR AND CO. If S.A. NASIR Esq., was the person who signed the process for S.A. NASIR and Co., he did not say so and did not state his name. I believe it was S.A. Nasir Esq., who was registered as a legal Practitioner to practice law in Nigeria, not S.A, NASIR & Co. This point was explained by this Court in the case of AGROVET SINCHO PHAM LTD. VS. ESTATE OF ENGR. DAHIRU (supra), when we said:

It must also be added that the error of omitting to state the name of a legal practitioner, duly registered to practice law as barrister and solicitor in Nigeria, on a process of court, meant to originate a matter can be fatal, on enquiry as to whether the person who signed the process is known to law as duly registered legal practitioner. There can be no argument that a Law Firm cannot claim to qualify as a legal practitioner, registered with the Supreme Court, to practice law in Nigeria. It is the individual lawyer(s) in the law firm that can enjoy such privilege and recognition of signing legal processes for a party. See the unreported decision of this court in BELLO V. ADAMU (APPEAL No. CA/K/235/09, delivered on 8th June, 2011; OKAFOR V. NWEKE (2007) 10 NWLR (Pt. 1043) 521 at 530; or (2007) 3 SCNJ 185; NEW NIGERIAN BANK V. DEDANG LTD (2005) 4 NWLR (Pt.916) 573.

See also the case of S.L.B. CONSORTIUM LTD VS. NNPC (2011) LPELR - SC.180/2008, or (2011) 9 NWLR (Pt.1252 ) 317, where the Supreme Court said:

"It has been argued that COLE VS. MARTINS (Supra) is an authority to the effect that a business name under which a lawyer Practices would satisfy the requirements of the Legal Practitioners Act. I doubt it because in law, a business name is not accorded legal personality - it is not recognized as a legal person capable of taking or defending actions in the law Courts. In the instant case, ADEWALE ADESOKAN & Co is not a legal person. It can only function as such, if it describes itself as: ADEWALE ADESOKAN (Trading under the name and style of ADEWALE ADESOKAN & Co). I leave it at that ..." ONNOGHEN JSC.

Of Course, if the 1st Respondent's Amended pleadings had been signed by legal Practitioner, with a disclosed registered name as legal Practitioner, the case would have been saved, as was also held in case of AGROVET SINCHO PHAM VS. ESTATE OF DAHIRU (SUPRA):

"The first arm of the Respondents' objection appears overtaken, having been raised against the Notice of Appeal by the Appellants, dated 7th August, 2002, which was signed for and on behalf of PP. Maitama Tula & Co, obviously not a legal practitioner (but a law firm of Appellant' Counsel). Having amended the Notice of Appeal on 15th January, 2013, with the leave of this court, which application was not opposed by the Respondents, the Amended Notice of Appeal, therefore, superseded the defective Notice of appeal, and, since the Amended Notice of Appeal, filed on 14th January, 2013 (and deemed duly filed on 15th January, 2013) appears to have cured the defect, having been signed by M.T. Tula Esq., Counsel for the Appellants, the objection on that point, lapses.

This appeal therefore succeeds on this issue, which is resolved in favour of the Appellant.

Accordingly, the judgment of the trial Court is set aside.

And because the suit was not properly originated, it is hereby struck out.

Parties to bear their Costs.

**DALHATU ADAMU, J.C.A.:**

I have been privileged to have read in advance the lead judgment of my learned brother Mbaba JCA I this appeal. I agree with his reasoning and conclusion in the said judgment. I hold that the appeal has succeeded on issue No.3 which is resolved in favour of the appellant. I abide by the consequential orders made in the said lead judgment including order as to costs.

**HABEEB ADEWALE OLUMUYIWA ABIRU, J.C.A.:**

I have had the privilege of reading the lead judgment delivered by my Lord, Honourable Justice Ita George Mbaba, JCA. His Lordship has considered and resolved the issues in contention in this appeal. I agree with the reasoning and abide the conclusions therein.

The first Respondent, as plaintiff, commenced an action in the Kano State High Court in Suit No K/88/1995 against the Appellant and Premier Bank Plc, as first and second defendants, claiming for:

i. A declaration that from the available facts, the Plaintiff was not a party to the assignment as he never executed the same and was not aware of the same and cannot be bound by the said Deed of Assignment.

ii. A declaration that in so far as the Plaintiff is not a party to the purported Deed of Assignment his rights, interest and ownership over property, covered by Certificate of Occupancy No LKN/RES/82/1538 still reside in the plaintiff and unaffected by the purported assignment and the same ought to be set aside for being incompetent and void.

iii. declaration that in so far as the purported assignment is incompetent the subsequent deed of legal mortgage purportedly built on the illegal Deed of Assignment is also void and ought to be set aside as against the Plaintiff s property covered by Certificate of Occupancy No LKN/RES/82/1538.

iv. An order giving effect to the pledge agreement between the Plaintiff and 1st Defendant dated 14/11/1992, that is to say, the immediate repayment of the N30, 000.00 pledge as agreed under the pledge agreement and the surrender to the Plaintiff of his Certificate of Occupancy No LKN/RES/82/1538 by the Plaintiff and 1st Defendant, respectively.

v. An order for immediate possession of the property in favour of the Plaintiff and the surrender of Certificate of Occupancy No LKN/RES/82/1538 to the Plaintiff with immediate effect against the 1st and 2nd Defendants.

The suit was commenced in 1995 and the second Respondent was subsequently appointed as the liquidator of Premier Bank Plc and it applied to be joined as the second defendant in 2004. Upon the joinder, the Appellant, as first defendant, filed an application praying that the lower Court lacked jurisdiction to continue to entertain the matter on the ground that the second Respondent was an agency of the Federal Government. The lower Court dismissed the application and this appeal is against the ruling. The Appellant raised three issues for determination in the appeal.

The first issue for determination was on whether or not it was the Federal High Court that had jurisdiction to entertain the matter and not the High Court. Jurisdiction is the authority which a court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision. It is the power of the court to decide a matter in controversy and presupposes the existence of a duly constituted court with control over the subject matter and the parties. Jurisdiction defines the power of courts to inquire into facts, apply the law, make decisions and declare judgment. It is the legal right by which Judges exercise their authority. It is trite that jurisdiction is a hard matter of law that can only be determined in the light of the enabling statute. A court of law cannot add to or subtract from the provisions of a statute. As a matter of law, a court must blindly follow and apply the jurisdictional limits and limitations as contained or provided in a statute. In this and other situations, the statute is the master and all that a court of law can do is to interpret the provisions of a statute to obtain or achieve the clear intentions of the lawmaker. A court cannot do more than this - Atiku Vs Bodinga (1988) 2 NWLR (Pt 76) 369, Oloba vs Akereja (1988) 3 NWLR (Pt 84) 508, Anibi vs Shotimehin (1993) 3 NWLR (Pt 282) 461, Elelu-Habeeb Vs Attorney General, Federation (2012) 13 NWLR (Pt 1318) 423.

The jurisdiction of the Federal High Court is donated by the section 251 (1) of the 1999 Constitution of the Federal Republic of Nigeria. The opening part of the section reads:

"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 cases and matters"

The provision then proceeded to list eighteen specific areas in paragraphs (a) to (r) where exclusive jurisdiction is conferred on the Federal High Court and, it concluded in paragraph (r), and "such other jurisdiction civil or criminal and whether to the exclusion of any other court or not as m y be conferred upon it by an Act of the National Assembly". What this provision does is that it made the Federal High Court a court of enumerated jurisdiction, and not one of general jurisdiction, and as such for the Federal High Court to have jurisdiction over a matter, the subject matter of action must fit into one of the enumerated areas of its jurisdiction Anao Vs Sun Publishing Ltd (2013) 3 NWLR (Pt 1341) 399. This point was succinctly made by Nweze, JCA in Oladipo Vs Nigerian Customs Service Board (2009) 12 NWLR (Pt.1156) 563 at page 585 thus:

"... Before we return to this question, we must first return to the implication of the drafting technique in section 251 (supra). The point must be noted that the draftsman of that section painstakingly itemized the subject matters that fall within the exclusive jurisdiction of the Federal High Court. In all, that section vested exclusive jurisdiction on the Federal High Court in eighteen major items... The implication of this technique is that the said court (Federal High Court) is actually a court of enumerated jurisdiction, that is, a court whose jurisdiction is not only delimited by statute but whose jurisdiction is delineated in relation only to the subject matter enumerated therein

It would, therefore, amount to wreaking havoc on the express letters and intendment of the said section 251 to construe it as granting the said court a carte blanche to deal with every conceivable matter (that is, beyond those expressly enumerated...

The effect of the circumscription of the jurisdiction of the court to those eighteen major items is that whenever the question of jurisdiction of the court is canvassed, attention ought to be focused on the subject matter of the suit. If the subject matter of the suit cannot be pitch forked into any of those eighteen major items, then that court is not the proper forum for the ventilation of the action ..."

The Courts have held that it is the case of the plaintiff as endorsed on the writ of summons and elaborated in the statement of claim or any other originating process that determines the jurisdiction of the court - Elelu-Habeeb Vs Attorney General, Federation supra, Merill Guaranty Savings & Loans Ltd Vs WorldGate Building Society Ltd (2013) 1 NWLR (Pt 1336) 581 and Uwazurike Vs Nwachukwu (2013) 3 NWLR (Pt 1342) 503. And that the court does not look at the faces, designations or duties of the parties in a suit to determine whether or not it has jurisdiction Dagazau Vs Bokir International Company Ltd (2011) 14 NWLR (Pt.1267) 261. The complaint of the first Respondent in the instant case was against the use of his title documents by the Appellant to secure a loan with the Premier Bank Plc, the predecessor of the second Respondent. The claims of the Appellant question the legality of the actions of the Appellant and the legality of the transaction between the Appellant and the banker of the Appellant, Premier Bank Plc. The second Respondent only stood in the position of Premier Bank Plc. The claims have nothing to do with the administration, management and control of the second Respondent.

The claims of the first Respondent cannot be pigeon holed into any of the enumerated areas of exclusive jurisdiction of the Federal High Court. The lower Court was thus correct in its finding that the Kano State High had jurisdiction to entertain the matter.

The third issue for determination was on the signing of the writ of summons and the statement of claim filed by the first Respondent by the law firm of Ibrahim Mudi & Co. The records of appeal show that the originating processes were signed by the law firm of Ibrahim Mudi & Co. The records show that the first Respondent filed an application in the course of proceedings to amend the statement of claim and he filed a further and better statement of claim but this was again signed by the law firm of S.A. Nasir & Co.

The present position of the law on the subject as established by a long line of Supreme Court decisions is that such a process is a nullity and it is void ab initio and being a statement of claim, it cannot sustain a cause of action. It is a requirement of substantive law, and not of procedural law, and thus it cannot be waived and it is an issue that can be raised even at the Supreme Court for the first time - Okafor Vs Nweke (2007) 10 NWLR (Pt 1043) 521, Oketade Vs Adewunmi (2010) 8 NWLR (pt 1195) 63, SLB Consortium Ltd Vs NNPC (2011) 9 NWLR (Pt 1252) 317, Braithwaite Vs Skye Bank Plc (2013) 5 NWLR (Pt 1346) 1, First Bank of Nigeria Plc Vs Maiwada & Ors (2013) 5 NWLR (Pt 1348) 444, Alawiye Vs Ogunsanya (2013) 5 NWLR (Pt 1348) 570, Minister of works and Transport, Adamawa State (2013) 6 NWLR (Pt 1351) 481 and Okarika Vs Samuel (2013) 7 NWLR (Pt 1352) 19. Without the writ of summons and statement of claim, there is no feasible action before the lower Court.The suit was thus liable to be struck out. It is this third issue for determination that invests merits into this appeal. It is by reason of this, and the fuller exposition in the lead judgment, that I also set aside the ruling of the Kano State High Court in Suit No K/88/1995 delivered by Honourable Justice M. H. Abdullahi on the 4th of May, 2010. The said Suit No K/88/1995 is hereby struck out.