

IN THE COURT OF APPEAL, NIGERIA
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

ON FRIDAY THE 1ST DAY OF JULY, 2022
BEFORE THEIR LORDSHIPS

JIMI OLUKAYODE BADA
ABUBAKAR SADIQ UMAR
ADEBUKUNOLA ADOTI BANJOKO

JUSTICE, COURT OF APPEAL
JUSTICE, COURT OF APPEAL
JUSTICE, COURT OF APPEAL

APPEAL NO: CA/L/27/2016

BETWEEN

- | | | |
|--|---|-------------------|
| <p>1. PRINCE DR. LIONEL OLUSEGUN
OLAREWAJU BENSON</p> <p>2. PRINCE HEWETT ADEGBOYEGA BENSON
(Executors of the Codicil to the last
Will and Testament of Otunba T.O.
Shobowale Benson)</p> | } | APPELLANTS |
|--|---|-------------------|

AND

- | | | |
|--|---|--------------------|
| <p>1. MR. ADEGBOYEGA BENSON</p> <p>2. MR. TITILOLA O. BENSON</p> <p>3. MRS. GLORIA SOJI BENSON
(Substituted as Beneficiaries of the Estate
of Late Prince Soji Benson, pursuant to an
Order made by this Honourable Court
on the 24th day of March, 2022)</p> <p>4. CHIEF (DR) OPRAL BENSON</p> <p>5. PRINCESS (MRS) CHIMA ABIMBOLA
CARDOSO (NEE BENSON)</p> | } | RESPONDENTS |
|--|---|--------------------|

JUDGMENT
(DELIVERED BY JIMI OLUKAYODE BADA, JCA)

This appeal emanated from the Ruling of the Lagos State High Court of Lagos Judicial Division in **Suit No: M/1142/12:**
BETWEEN: PRINCE SOJI BENSON VS. (1) CHIEF (DR) OPRAL BENSON (2) PRINCE (DR) LIONEL OLUSEGUN OLNREWAJU BENSON (3) PRINCESS (MRS) CHIMA ABIMBOLA CARDOSO (NEE BENSON) (4) PRINCE HEWETT ADEGBOYEGA BENSON (The Executors/Executrixes of the Codicil to the Last Will and Testament of Otunba T. O. Shobowale Benson delivered on the 17th day of January 2014 wherein the trial Court made the following orders among others:-

".....

In the light of the above, I find that this Court lacks jurisdiction to further entertain this matter and same is struck out. It is further ordered that the Judgment of 5th of June 2013 is also set aside.

I will also however not fail to call the attention of the executors of the estate in this matter to do the needful in order for the Claimant to claim his entitlement under his late father's estate in accordance with the directive of the deceased. For that reason I

hereby on compassionate ground only order the executors to make the sum of (N300,000.00) Three Hundred Thousand Naira available to the Claimant monthly until they regularise the issue of the vesting deed in respect of the Will of the deceased.

Garnishees are also discharged for now.

It is so ordered."

Briefly, the facts of this case are that the Appellants who were the 2nd and 4th Defendants in an action commenced by Originating Summons, Supporting Affidavit and Written Address by which the previous 1st Respondent, that is, Late Prince Soji Benson who has now been substituted by the 1st to 3rd Respondents sequel to his demise and pursuant to an Order of this Honourable Court made on the 24th March, 2022, prayed the trial Court for the following reliefs: -

"(a) A Declaration that Claimant is a beneficiary under the codicil to the Last Will and Testament of Otunba T. O. Sobowale Benson dated 5th day of August 2003.

(b) An Order that the Claimant is entitled to an annual funds under paragraph 7 of the Codicil to the Last Will and Testament of Otunba T. O. Shobowale Benson.

- (c) *A Declaration that the Defendants are in breach of their duty to the Claimant by refusing to make annual funds available to the Claimant for his maintenance and upkeep by virtue of paragraph 7 of the Codicil to the Last Will and Testament of Otunba T. O. Shobowale Benson dated 5th day of August 2003.*
- (d) *An Order that the Codicil to the last Will and Testament of Otunba T. O. Shobowale Benson dated 5th day of August 2003 did not state that a joint account should be opened in the name of Mrs. Gloria Soji Benson and Oye Benson.*
- (e) *An Order directing the Defendants to pay the sum of (N20,000,000.00) Twenty Million Naira only to the Claimant as annual funds for his maintenance and upkeep of the property of No. 1A Lander Close, Apapa, Lagos based on the Codicil to the Last Will and Testament of Otunba T. O. Shobowale Benson dated 5th day of August 2003.*
- (f) *A Declaration that the 1st to 4th Respondents are deliberately and intentionally refusing to give effect to the wishes of the Testator as stated in*

Paragraph 7 of the Codicil to the Last Will and Testament of Otunba T. O. Shobowale Benson dated the 5th day of August 2003 in order to wilfully cause his death.

(g) An Order that the 2nd and 4th Defendants should render true and perfect accounts, vouching (sic) receipts and inventory of the Estate of Otunba T. O. Shobowale Benson."

The said 1st Respondent also brought an application ex-parte for leave to effect substituted service of the Originating Processes on the Appellants and the 2nd Respondent by pasting. Leave was granted to effect service by substituted means on the 4th day of February, 2013. On the 5th day of June, 2013 judgment was entered in terms of the Originating Summons and the reliefs of the 1st Respondent were granted in default of appearance of the Appellants.

The 1st Respondent thereafter initiated garnishee proceedings to realise the Judgment Debt and prayed the lower Court for a Garnishee Order Nisi attaching the monies due to the 2nd and 4th Defendants. These Garnishee Proceedings brought the suit to the attention of the Appellants who prior to which time had not received notice of the hearing of the Originating

On the strength of the Appellant's motion dated the 1st day of July 2013, the trial Court upheld the 2nd prayer in the Appellant's motion paper dated the 1st day of July 2013 and struck out the suit for want of jurisdiction as the 1st Respondent as Claimant had no Locus Standi to institute the action.

The default Judgment was accordingly set aside in the Ruling of the trial Court delivered on January 17th 2014. However subsequent to striking out of the suit, the trial Court entered the following order: -

" for the reason I hereby on compassionate ground only order the executors to make the sum of (N300,000.00) Three Hundred Thousand Naira available to the Claimant monthly until they regularize the issue of the vesting deed in respect of the Will of the deceased."

The Appellants who were dissatisfied with the Financial Order made by the Learned trial Judge on compassionate ground after having struck out the suit for want of jurisdiction appealed to this Court.

The Learned Life Bencher for the Appellants, Mrs. H. A. Balogun formulated a sole issue for the determination of the appeal. The issue is reproduced as follows: -

"Whether the trial Court had the Jurisdiction to make the order for payment of monies on compassionate grounds after striking out the suit for want of Jurisdiction. (Distilled from Grounds 1 & 2 of the Notice of Appeal)"

On the other hand, the Learned Counsel for the 1st, 2nd and 3rd Respondents Messrs Oluseyi Olukoga and Nwokedi Ohuaka formulated a sole issue for the determination of the appeal. The issue is reproduced as follows: -

"Whether the lower Court does not have judicial discretion to order for the payment of the sum of (N300,000.00) Three Hundred Thousand Naira only to the 1st, 2nd and 3rd Respondents monthly until the Appellants and the 4th and 5th Respondents regularize the issue of the vesting deed in respect of the will of the deceased in order to give effect to the intention of the testator vide paragraph 7 of the codicil to the Last Will and Testament of Otunba T. O. Shobowale Benson dated 5th day of August 2003"

At the hearing of this appeal on 7th day of April 2022 the Learned Life Bencher for the Appellants Mrs. H. Balogun stated that the appeal is against the Ruling of the High Court of Lagos State delivered on 17/1/2014. The Notice of Appeal was filed on 30/3/2022 was deemed as properly filed and served on 7/4/2022. The Appellants' brief of argument was filed on 30/3/2022 and it was deemed as properly filed on 7/4/2022. The records of appeal transmitted to this Court since 2/1/2016 was deemed as properly compiled and transmitted on 7/4/2022.

The Learned Life Bencher for the Appellants adopted and relied on the Appellants' brief of argument as her argument in urging that the appeal be allowed.

The Learned Counsel for the 1st, 2nd and 3rd Respondents Mr. Oluseyi Olukoga referred to the 1st, 2nd and 3rd Respondent's brief filed on 5/4/2022 and deemed as properly filed and served on 7/4/2022. He adopted and relied on the said brief as his argument in urging that the appeal be dismissed.

The 4th Respondent's Counsel was served with hearing notice on 5/4/2022. He did not file any brief on behalf of the 4th Respondent.

The 5th Respondent's Counsel though present in Court did not file any brief on behalf of the 5th Respondent.

I have carefully gone through the issues formulated for the determination of the appeal by Counsel for both parties. The issues are more or less the same. I will therefore rely on the sole issue formulated for the determination of the appeal on behalf of the Appellant in the determination of the appeal.

ISSUE FOR THE DETERMIANTION OF THE APPEAL

"Whether the trial Court had the Jurisdiction to make the order for payment of monies on compassionate grounds after striking out the suit for want of Jurisdiction." (Distilled from Grounds 1 and 2 of Notice of Appeal).

The Learned Life Bencher for the Appellants in her submission referred to the definition of jurisdiction as stated in the following cases:-

- **A. G. OYO STATE VS. NLC (2003) 8 NWLR PART 821 PAGE ____.**
- **OHAKIM VS. AGBASO (2010) 19 NWLR PART 1226 PAGE 172 (SC).**

- PETROJESSICA ENTERPRISES LTD. VS. LEVENTIS TECHNICAL CO. LTD. (1992) 5 NWLR PART 244 PAGE 675 AT 693.

She submitted that any decision taken by a Court without jurisdiction is incompetent and is subject to being nullified on appeal. She relied on the following cases:

- UMANNAH VS. OBONG VICTOR ATTAH (2006) 17 NWLR PART 1009 PAGE 503.
- NWANKWO VS. YARADUA (2012) 12 NWLR PART 1209 PAGE 518 (SC).

It was submitted that in the event that the trial Court is found to have jurisdiction, the consequential order to pay the sum of (N300,000.00) Three Hundred Thousand Naira was made without jurisdiction. This is because it was not a relief claimed by the 1st Respondent. She referred to pages 2 to 4 of the record of appeal which contained the prayers of the 1st Respondent.

It was also submitted on behalf of the Appellants that the Garnishee Order made on compassionate grounds is unfounded in law as it is predicated on nothing.

It was finally submitted on behalf of the Appellants that the Appellants were sued as Executors of the Estate of the Late Otunba Theophilus O. Shobowale Benson, No order could be validly made against them in their personal capacity in the instant suit.

She finally urged this Court to allow this appeal.

The Learned Counsel for the 1st, 2nd and 3rd Respondents in his response to the submission of Learned Life Bencher for the Appellants referred to the case of - **AKINYEMI VS. ODUVA INV. CO. LTD. (2012) 17 NWLR PAGE 209** where he stated that the Court held that discretion knows no bound. In its general usage, it is that freedom or power to devise what should be done in a particular situation. The general meaning of the word discretion includes analysis, appraisal, assessment, choice, consideration, contemplation, decision, designation, determination, discrimination, distinction, election, evaluation, examination, free decision, free will, freedom of choice, liberty of choosing, liberty of judgment, licence, option, optionality, permission, pick, power of choosing, review, right of choice, sanction, selection, self determination, suffrage etc.

Learned Counsel contended that the lower Court was guided by the evidence before the Court which shows that the Appellants and the 4th and 5th Respondents have failed to take care of the 1st, 2nd and 3rd Respondents contrary to the wishes of the Testator in Clause 7 of the codicil to the Last Will and Testament of Otunba T. O. Shobowale Benson dated 5th day of August, 2003.

It was also contended on behalf of 1st, 2nd and 3rd Respondents that though the trial Court struck out the matter for lack of jurisdiction but it applied discretion in granting the sum of (N300,000.00) Three Hundred Thousand Naira only to 1st, 2nd and 3rd Respondents pending when a vesting deed is granted to them. He referred to the following cases:-

- **AKINYEMI VS. ODUVA INV. CO. LTD. (SUPRA).**
- **UNIVERSITY OF LAGOS VS. AIGORO (1985) 1 NWLR PART 1 PAGE 143.**

It was submitted further that although a Court must not grant to a party a relief not claimed by him, it has the power to grant a relief incidental and necessary to the relief claimed even if such incidental relief has not been expressly claimed, eg.,

payment of salary and wages for the intervening period. He referred to the following cases:-

- **EKPENYONG VS. NYONG (1975) 2 SC PAGE 71.**
- **NNEJI VS. CHUKWU (1988) 3 NWLR PART 81 PAGE 184.**
- **RABIU VS. ADEBAJO (2012) 15 NWLR PAGE 125.**

It was also submitted that since lower Court did exercised its discretion judiciously and judicially in favour of the 1st, 2nd and 3rd Respondents, this Court was urged not to interfere with the order of the trial Court even if it would have exercised its discretion differently. He relied on the case of - **ATTORNEY GENERAL OF BENDEL STATE VS. AIDEYAN (1989) 4 NWLR PART 118 PAGE 646** where it was held that in procedural matters the Court has moved far away from strict adherence to mere technicalities at the expense of substantial justice.

The Learned Counsel for the 1st, 2nd and 3rd Respondents submitted that the trial Court moved away from strict adherence of striking out the suit but went further to do substantial justice by awarding the sum of (N300,000.00) Three Hundred Thousand Naira only monthly to the 1st, 2nd and 3rd Respondents until the

Appellants and the 4th and 5th Respondents regularize the issue of the vesting deed in respect of the Will of the deceased in view of the facts and circumstances of the case. He relied on the following cases:-

- **ADUSEI VS. ADEBAYO (2012) 3 NWLR PART 128 PAGE 534.**
- **SAVANNAH BANK OF NIGERIA PLC VS. JATAU KYENTU (1998) 2 NWLR PART 536 PAGE 41.**
- **AKINGBOLA VS. CHAIRMAN EFCC (2012) 9 NWLR PAGE 475.**
- **EJIDIKE VS. AKUNYILI (1990) 5 NWLR PART 152 PAGE 564.**

Learned Counsel for the 1st, 2nd and 3rd Respondents finally urged this Court to uphold the award of the sum of (N300,000.00) Three Hundred Thousand Naira only because the Appellants have not regularized the issue of the vesting deed in respect of the Will of the deceased.

RESOLUTION

Earlier in this judgment, the order of the trial Court which struck out the suit for want of Jurisdiction and went ahead to

make an order for payment of money on compassionate ground, was set out.

In the case of IFEANYICHUKWU OKONKWO VS. DR. CHRIS NWABUEZE NGIGE & OTHERS (2007) LPELR – 2485 (SC). It was held among others that "Jurisdiction" has been beautifully defined by the Learned Authors in volume 10 Halsbury's Laws of England, 4th Edition, para. 715 page 323 and I quote:-

"Jurisdiction of a Court has been judicially defined as a very fundamental and priceless "commodity" in the judicial process. It is the fulcrum, centre piece, or the main pillar upon which the validity of any decision of any Court stands and around which other issues relate. It cannot be assumed or implied. It cannot also be conferred by consent or acquiescence of parties. See:- SHELL PETROLEUM DEVELOPMENT CO. NIGERIA LTD. VS. ISAIAH (2001) 1 S.C. PART II PAGE 1, (2001) 11 NWLR PART 723 PAGE 168.

- ATTORNEY GENERAL OF THE FEDERATION VS. SODE (1990) 1 NWLR PART 128 PAGE 500 AT 541.

- **OKOLO VS. UNION BANK (NIG.) PLC (2004) SC PART 1 PAGE 1, (2004) 3 NWLR PART 859 PAGE 87** in which this Court has severally referred with approval to the above definition of Jurisdiction”.

Jurisdiction has repeatedly been referred to as the live blood of any adjudication without which no Court, regardless of its hierarchical eminence can validly determine a matter before it.

In **OHAKIM VS. AGBASO (SUPRA)** it was held among others thus:-

"It is settled law that jurisdiction is the live blood of any adjudication without which no proceedings, however brilliantly conducted by the Court or Tribunal can be valid. It is really a threshold matter or sometimes referred to as a periphery matter to be dealt with once raised or challenged in any proceedings".

Jurisdiction being the power of the Court to adjudicate on a matter is so fundamental that proceedings conducted in the absence of jurisdiction are a nullity no matter how brilliantly conducted.

Jurisdiction has been held to be so fundamental to adjudication as it is the special cord of a Court of law.

In the case of – **PETROJESSICA ENTERPRISES LTD. VS. LEVENTIS TECHNICAL CO. LTD. (1992) 5 NWLR PART 244 PAGE 675 AT 693** it was held that:–

"Jurisdiction is the very basis on which any tribunal tries a case; it is the lifeline of all trials. A trial without jurisdiction is a nullity. The importance of jurisdiction is the reason why it can be raised at any stage of a case, be it at the trial, on appeal to the Court of Appeal or to this Court; a fortiori, the Court can suo motu raise it. It is desirable that preliminary objection be raised early on the issue of jurisdiction; but once it is apparent to any party that the Court may not have jurisdiction, it can be raised even viva voce as in this case. It is always in the interest of Justice to raise the issue of Jurisdiction so as to save time and costs and to avoid a trial in nullity".

Where a Court finds out that it lacks jurisdiction, the matter ends there.

In **NWANKWO VS. YARADUA (SUPRA)** it was held among others that it is only when it is found that a Court has jurisdiction that an appeal can be determined on merit.

In the case of – **UMANNAH VS. OBONG VICTOR ATTAH (SUPRA) PAGE 534** it was also held thus:-

"Where the issue of jurisdiction is raised, in a matter, once the Court determines that it has no jurisdiction in the suit, it needs not proceed further to consider any other issue since there is no longer the jurisdiction for doing so. It follows therefore that it is only after a Court determines that it has jurisdiction that it can proceed to consider other issues raised by the party invoking its jurisdiction".

In this appeal under consideration, the trial Court having found that it lacked jurisdiction to hear the matter and thus proceeded to strike out the suit, there is no other judicial or adjudicatory matter to be resolved as the Court has stripped itself of competence to take any further step.

It is therefore, my view that the trial Court having been divested of Jurisdiction had no power of any kind to make any

order subsequent to the order striking out the suit. The effect of striking out the suit means that there is nothing left before the Court. The subsequent orders made by the trial Court on compassionate ground was made without Jurisdiction and therefore void.

There is no sentiment or emotions in Court, therefore the order made on compassionate ground that the Appellants should pay the sum of (N300,000.00) Three Hundred Thousand Naira only was made without jurisdiction and it is invalid and liable to be set aside.

See – **UKWU VS. BUNGE (1997) 8 NWLR PART 518 PAGE 527.**

Furthermore, looking at the issue from another perspective, it is my view that since the relief of (N300,000.00) Three Hundred Thousand Naira monthly was not claimed by the 1st Respondent (now 1st, 2nd and 3rd Respondents), the trial Court order was made without jurisdiction. The trial Court went outside the reliefs claimed by the 1st Respondent in making the order.

It is trite that a Court cannot grant reliefs not claimed or sought for by a party.

In the case of - ODUNZE & OTHERS VS. NWOSU & OTHERS (2007) 13 NWLR PART 1050 PAGE 1.

The Supreme Court held among others as follows: -

"The cardinal principle of the law that is well settled is that a Court is not a charitable institution that would grant reliefs that are not claimed by a party. It must restrict and confine itself within the wall of the relief a party approaches it for and not to undertake its own generous acts of awarding reliefs not sought".

In this appeal, the trial Court was clearly in error in granting the consequential order, the order is unlawful.


As I stated earlier, once a Court declines jurisdiction and has gone ahead to strike out the suit, there is nothing left in the proceedings. Therefore the order of the trial Court made on compassionate ground that the Executors should make the sum of (N300,000.00) Three Hundred Thousand Naira available to the Claimant monthly is like putting something on nothing.

In the circumstance, the sole issue for determination in this appeal is resolved in favour of the Appellants and against the 1st Respondent now 1st, 2nd and 3rd Respondents.

There is merit in the appeal and it is allowed.

Consequent upon the foregoing, the Ruling of the trial Court in **Suit No. – M/1142/12: BETWEEN – PRINCE SOJI BENSON (CREDITOR/APPLICANT) VS. (1) CHIEF DR. OPRAL BENSON (2) PRINCE (DR.) LIONEL OLUSEGUN OLANREWAJU BENSON (3) PRINCESS (MRS.) CHIMA ABIMBOLA CARDOSO (NEE BENSON) (4) PRINCE HEWETT ADEGBOYEGA BENSON (THE EXECUTORS/EXECUTRIXES OF THE CODICIL TO THE LAST WILL AND TESTAMENT OF OTUNBA T. O. SHOBOWALE BENSON)** delivered on the 17th day of January 2014, wherein the trial Judge ordered that the sum of (N300,000.00) Three Hundred Thousand Naira be made available to the Claimant monthly until they regularize the issue of the vesting deed in respect of the Will of the deceased is hereby set aside.

There shall be no order as to cost. Each of the parties are to bear their own costs.



JIMI OLUKAYODE BADA
JUSTICE, COURT OF APPEAL

COUNSEL:

MRS. H. A. BALOGUN, LIFE BENCHER with her is **MR. VICTOR OBARO** for the Appellants.

MR. OLUSEYI OLUKOGA with him is **MR. NWOKEDI OHUAKA** for the 1st, 2nd and 3rd Respondents.

MR. OMOTOSHO ALADE for the 5th Respondent.

4th Respondent's Counsel Absent despite being duly served with hearing notice.

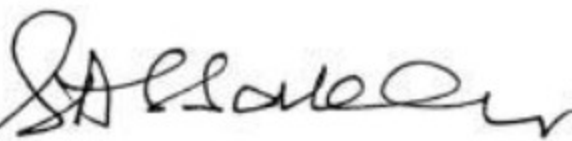
CA/L/27/2006

ABUBAKAR SADIQ UMAR, JCA

I had the opportunity to read in draft the leading judgment in this appeal just delivered by my learned brother **JIMI OLUKAYODE BADA, JCA** for the reasons well-articulated in the said judgment which I adopt as mine.

The appeal is meritorious and hereby allowed.

I abide by the consequential orders therein.



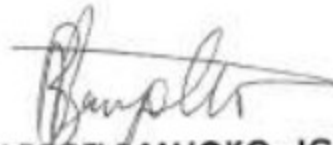
**ABUBAKAR SADIQ UMAR
JUSTICE, COURT OF APPEAL**

CA/L/27/2016

ADEBUKUNOLA ADEOTI BANJOKO, JCA

I have carefully perused the Draft Copy of the Judgment delivered by my Learned Brother, **JIMI OLUKAYODE BADA JCA** and found out that he rightly resolved all the Issues in this Judgment.

I abide by the Decision of my Learned Brother to allow the Appeal. To this end, the Ruling of the Trial Court in Suit No M/1142/12, delivered on the 17th January 2014, wherein the Trial Judge ordered that the Sum of 300,000 (Three Hundred Thousand Naira) to be made available to the Claimant monthly until they regularize the Issue of the Vesting Deed in respect of the Will of the Deceased is hereby set aside. I also abide as to the Order made as to Cost.



ADEBUKUNOLA ADEOTI BANJOKO, JCA

JUSTICE, COURT OF APPEAL