IN THE FEDERAL HIGH COURT
HOLDEN AT LAGOS NIGERIA
ON FRIDAY THE 11TH DAY OF MARCH, 2016
BEFORE THE HONOURABLE JUSTICE
M.B. IDRIS
JUDGE

SUIT NO: FHC/L/CS/1851/2014

BETWEEN:

ACCESS BANK PLC..... PLAINTIFF

AND

1. **MR. PATRICK SYLVESTER FERNANDES**
2. **PET PRIME IMPEX LIMITED**
3. **CASH CRAFT ASSETS MANAGEMENT LIMITED**
4. **SECURITIES AND EXCHANGE COMMISSION**
5. **NIGERIA STOCK EXCHANGE**
6. **CENTRAL SECURITIES CLEARING SYSTEM LTD**

DEFENDANTS

RULING

This Ruling is in respect of two (2) Objections filed by the 1st and 2nd and 6th Defendants.

The Objection of the 1st and 2nd Defendants is in these terms:-

"NOTICE OF PRELIMIANRY OBJECTION
BROUGHT PURSUANT TO THE INHERENT
JURISDICTION OF THIS HONOURABLE COURT

TAKE NOTICE that the hearing of the above mentioned suit the 1st and 2nd Defendants/Applicants shall BE raising Defendants/Applicants shall raising a preliminary objection challenging the jurisdiction of this Honourable Court to entertain the suit and shall be praying for an order of this Honourable Court striking out this suit for lack of jurisdiction.

TAKE FURTHER NOTICE that the grounds of objection are as follows:-

1. The subject matter of this suit deals with a dispute between an individual customer and the bank in respect of an alleged transaction between the individual customer and the bank.
2. The Court lacks the territorial jurisdiction to entertain the matter since the transaction took place at Port-Harcourt.
3. The Claimant is not seeking any principal relief in this suit against an agency of the Federal Government.
4. Non-compliance with the provision of section 97 and 98 of the Sheriffs and Civil Process Act.

This application was supported by an affidavit and a written address. The Plaintiff filed a Counter Affidavit and a written address in opposition.

The Objection filed by the 6th Defendant is in these terms:-

"NOTICE OF PRELIMINARY OBJECTION BROUGHT PURSUANT TO ORDER 26 RULE 1 OF FEDERAL HIGH COURT (CIVIL PROCEDURE) RULES 2009; SECTIONS 6 (6) (a) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 AND UNDER THE INHERENT JURISDICTION OF THIS HONOURABLE COURT

TAKE NOTICE that this Honourable Court will be moved on..... the .....day of ..... 2015 at the hour of 9 O'clock in the forenoon or so soon thereafter as Counsel may be heard on behalf of the 6th Defendant/Applicant praying the Court for the following:

(1) AN ORDER striking out or dismissing this suit *in limine.*

(2) Alternatively, AN ORDER striking out the 6th Defendant/Applicant from this suit.

AND FOR SUCH FURTHER OR OTHER ORDERS as this Honourable Court may deem fit to make in the circumstances of this case.

TAKE FURTHER NOTICE that the grounds on which this application is predicated are as follows:

(1) This suit as against the 6th Defendant/Applicant is incompetent having

been commenced against an agent of a known and disclosed principal

(2) The Plaintiff's claim, as constituted discloses no reasonable cause of action against the 6th Defendant/Applicant to warrant the exercise of the jurisdiction of this Honourable Court or at all. The statement of claim does not disclose any right of action which the claimant has against the Applicant.

(3) The 6th Defendant/Applicant does not owe any legal, contractual, or other duty or obligation whatsoever to the Claimant to confer a right of action on the Plaintiff against the 6th Defendant/Applicant.

(4) In view of paragraph (3) above, the Plaintiff lacks the locus standi to maintain this action as against the 6th Defendant/Applicant

(5) Failure to disclose a right of action is fatal to the Claimant's case, as against the Applicant

(6) The Honourable Court lacks the competence to grant the remedies of injunction and specific performance sought against the 6th Defendant/Applicant who is a total stranger to the contract which is the subject matter of this dispute

(7) This suit, as against the Applicant, was not commenced in accordance with due process of law and this Honourable Court lacks jurisdiction to entertain the suit as against the 6th Defendant/Applicant."

The application was supported by an affidavit and a written address. The Plaintiff filed a Counter Affidavit and a written address in opposition.

At the hearing, both applications being a challenge to jurisdiction were argued together. Learned Counsel relied on the processes filed and adopted their respective written addresses.

I have quickly examined the records of Court, and the processes filed by the Defendants. I have seen that the objection of the 6th Defendant was filed on the 30th of March 2015. The Originating processes were however served on the said 6th Defendant on the 26th day of February, 2015, so that, by the time the Objection was filed, the 6th Defendant was clearly out of time to file same.

Filing of Notice of preliminary objection outside the twenty one days of service of originating processes is offensive to **ORDER 29 RULE 4 (A) OF THE FEDERAL HIGH COURT (CIVIL PROCEDURE) RULES 2009.**

It appears clear to me that, the Notice of Preliminary Objection was not duly filed and it is trite law that " *when a process is not*

duly filed before the Court, it does not exist in the eyes of the law and as such the jurisdiction of the Court cannot be said to be properly invoked". See **UNITY BANK PLC VS. KAY PLASTIC (NIG) LTD (2011) 51 W.R.N. PAGE 96 AT 104.**

The applicability and scope of Order 29 of the Rules of this Court has been dealt with by the Appellate Courts. In its recent decision in **Suit No: CA/L/1200/2014, NIGERIAN GAS COMPANY LTD VS. GASLAND COMPANY LTD** delivered on the 3rd day of July, 2015, the Lagos Judicial Division of the Court of Appeal held as follows:-

> *"In my modest opinion, the sole issue (supra) formulated by the Appellant is identical to the Respondent's issue for determination and based on that premise I propose to follow the Appellant's said issue for determination for the discourse.*
>
> *A careful appraisal of the record relating to the appeal indicates that the Court below did not prefer to deal with the substantive action before the preliminary objection to its jurisdiction to entertain the substantive action. Rather the court below stated that both the preliminary objection to its jurisdiction and the substantive action would be taken in one package. The Court below followed the decision of this Court (Lagos Division) in* ***CBN V. AKINGBOLA AND ANOR (SUPRA)*** *in arriving at the said decision. In that case which is also reported as* ***CBN V.***

AKINGBOLA AND ANOR (2013) 3 BFLR 128 AT 153-154 *the Court (Coram Saulawa, Ikeygh and Iyizoba, J.CA) held inter alia that:-*

> *"...the Court below was right to invoke order 29 rule 1 of its rules (supra) to order that the preliminary objection be heard together with the substantive action at which the preliminary objection to jurisdiction, locus standi and justifiability/reasonable cause of action of the substantive matter will be taken first followed by the substantive matter and a decision given on them in one package by the court below for the purpose of saving time, cost and duplication of effort by the parties and the Court below. See* ***SENATE PRESIDENT V. NZERIBE (2004) 9 NWLR (PT.878) 251 AT 274*** *thus -*
>
> > *" ... saying that the issue of jurisdiction should be resolved first however does not mean that it should be resolved separately. It can be taken along with arguments on the merits of the case. The important thing is that the court should first express its view on jurisdiction before considering the merits.*

The advantage of so proceeding is that in the event of an appeal by any of the parties, it is easy for the Appellate court to express its views on the decision of the lower Court as to jurisdiction and merit of the case. This removes the necessity for two appeals - one as to jurisdiction and the other as to the merit of the case".

There is again the case of ***AMADI V. N.N.P.C. (2000) 10 NWLR (PT. 674) 79 AT 100,*** *where Uwais, C.J.N., held inter alia that-*

"with the success of the plaintiff's appeal before us the case is to be sent back to the High Court to be determined, hopefully, on its merits after a delay of 13 years. Surely, this could have been avoided had it been that the point was taken in the course of the proceedings in the substantive claim to enable any aggrieved party to appeal on both the issue of jurisdiction and the judgment on the merit in the proceedings as the case might be".

Even where facts are needed to resolve preliminary objection, for the purpose of convenience and economy of time, the preliminary objection can be taken with the substantive matter. See ***OLORUNKUNLE AND ANO V. ADIGUN AND ORS (2012) 6 NWLR (PT.1297) 407 AT 426*** *where this Court (Okoro, Bage and Pemu, J C.A.) followed* ***AMADI V. N.N.P.C. (SUPRA)*** *on the same issue to hold inter alia that-*

> *"It is instructive that the Supreme Court has given support to the position taken by the learned trial Judge in that an objection to jurisdiction where facts are needed to resolve it can be heard together with the substantive matter and an appeal taken together if need be".*

See also ***GOVERNOR OF CENTRAL BANK OF NIGERIA V. AKINGBOLA (2013) 3 BFLR 158 AT 178 -179.***

The hierarchy of Courts in Nigeria in descending order is the Supreme Court followed by the Court of Appeal, then the other Superior Courts of Record

(Federal High Court, High Court of a State; the Federal Capital Territory, High Court of a Sharia Court of Appeal and Customary Court of Appeal; and the National Industrial Court) and at the base of the pyramid of Courts are the inferior Courts (Magistrate Courts, Sharia 'Customary 'Area Courts etc and other Tribunals established by an Act or Law) vide Section 6(5)(a-k) of the Constitution of the Federal Republic of Nigeria 1999, as amended (1999 Constitution). A decision given by the Supreme Court is binding on the Courts below it with respect to the matter decided which is in issue before the Courts below it, while a decision given by the Court of Appeal binds the courts below it on the same issue; similarly a decision given - by the Federal or High Court, for instance, binds the inferior Courts below it; so, the Court below out of judicial discipline merely obeyed precedent or the doctrine of stare decisis when it followed the decision of the Court of Appeal in ***CBN V. AKINGBOLA AND ANOR (SUPRA).*** *The Court below cannot be faulted in the circumstance vide* ***OKONJO V. ODJE AND ORS (1985) 10 SC 267 AT 268 - 269, CLEMENT V. IWUANYANWU (1989) NSCC 234, AFRICAN NEWSPAPERS V. AKANO (2013) ALL FWLR (PT.605) 345, SULEMAN V. C.O.P. PLATEAU STATE (2008) 8***

Now Order 29 of the Rules of the Court below provides –

> *"29(1) Where a defendant wishes to -*
>
> *(a) dispute the Court's jurisdiction to try the claim; or*
>
> *(b) argue that the Court should not exercise its jurisdiction, he may apply to the Court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have, and the court may take such application together with the Plaintiff's substantive suit in so far as the substantive suit does not involve the taking of oral evidence*

(2) *A Defendant making such application must first file along with the application a memorandum of appearance stating that he is appearing conditionally.*

(3) *A Defendant who files a memorandum of appearance does not, by so doing, loses any right*
that he may have to dispute the Court's jurisdiction.

(4) *An application under this order shall;*

(a) Be made within twenty one days after service on the Defendant of the originating process, and

(b) Be supported by affidavit where it is not based on ground of law alone.

(5) *If the Defendant files an acknowledgment of service and does not make such application*

within the period specified in rule 4 of this order, any such application can only be taken at the conclusion of the trial.

Originating process is defined in Order 1 Rule 5 of the Rules of the Court below to mean any Court process by which a suit is initiated. The definition covers a suit commenced by writ of summons as is the case here, as well as by originating summons, for example; consequently, the Respondent's action which was commenced by a writ of summons is within the bracket of Order 29 of the Rules of the Court below.

As stated in ***CBN V. AKINGBOLA (SUPRA)*** *in* ***PAGES 150 - 151*** *of the law report while considering Order 29 of the Rules of the Court below-*

"There are three significant instances that give order 29 of the rules of the Court below mandatory or compulsory content. First if a defendant files

the preliminary objection within 21 days of service on him of the originating process and the originating process does not involve the taking of oral evidence the preliminary objection must be taken together with the originating process.

Second, if the preliminary objection is filed after 21 days of the service on the Defendant of the originating process, the preliminary objection must be taken with the originating process at the conclusion of trial, whether or not the originating process does not require the taking of oral evidence.

And third, if the preliminary objection is filed and the originating process entails oral evidence whether or not it was filed by the defendant within 21 days of service on him of the originating process, the

preliminary objection must be taken first and separate from the originating process as a threshold issue. These are the only three instances discernable from order 29 of the rules of the Court below showing the court below has no discretion to exercise in the implementation of order 29 of its rules, in my view." (My emphasis).

See also ***GOVERNOR, CBN V. AKINGBOLA (SUPRA) AT 176.***

Evidently, the Appellant brought the preliminary objection to jurisdiction of the Court below outside the 21 days required to have it taken alone as a threshold issue which necessitated the invocation of Order 29 Rule 4 of the Rules of the Court below for the objection to be heard together with the substantive action. The rationale is based on case management to the effect that a party who raises the preliminary objection to jurisdiction early

will be heard on it instantly, while a party such as the Appellant, who decided to raise it much later after issues have been joined would be heard on it together with the substantive suit. It does not mean the relevant rules of the Court below forbid the raising of preliminary objection to jurisdiction, nor does the said rule of Court whittle down any substantive law. It is a matter of procedure and the scheduling of the business of the Court below in accordance with its rules. What it does mean is that time which is a scarce natural resource and which is also the backbone of litigation must be properly managed by the parties and, in the event a party is tardy in the management of time such a party will be heard last in matters of preliminary objection as stipulated by the Rules of the Court below. See by analogy the case of ***AFRICAN PETROLEUM PLC V. ADENIYI AND ORS (2011) 15 NWLR (PT.127) 562.***

The penalty for the failure of a party to

take any step in the proceedings within the time stipulated therefore is made obvious in the proviso to Order 48 of the Rules of the Court below for computation of time in these words-

> *"Provided that any party who defaults in performing an act within the time authorized by the Judge or under the Rules shall pay to the Court an additional fee of N200. 00 (two hundred naira) for each day of such default at the time of compliance".*

The proviso (supra) clearly makes the keeping of time for performing an act by any of the parties obligatory or compulsory, which is based on the footing that any enactment that prescribes penalty for default in carrying out the requirements of the enactment makes the provisions of the enactment in question mandatory.

Rules of Court are not for fancy, or for decoration. They are for orderly

presentation of cases. When time is of the essence in keeping with the rules of court, the time frame must be complied with; or the party in default may lose the advantage provided by the rules of Court and face the consequences of disobedience stated by the Rules of Court. Thus in ***NIGERIAN NAVY AND ORS V. LABINJO (2012) 17 NWLR (PT.1328) 56 at 84****, the Court held inter alia that*

> *"The rules of Court are meant to be obeyed. The purpose of the rules is to regulate matters in court and assist parties to any suit or appeal to present their cases for the purpose of fair and quick trial or hearing. Where the rules are quickly complied with, there will be quick dispensation of justice ".*

Again it was held in the Apex Court case of ***MC INVESTMENTS LTD AND ANOR V. CORE INVESTMENTS AND CAPITAL MARKETS***

LIMITED (2012) 12 NWLR (PT.1313) 1 AT 17

particularly At Page 20 that:-

> *The Appellant should be reminded that rules of Court are meant to be obeyed. Any party who fails to obey Court rules does so at his own peril. Such a party as the Appellants herein cannot be heard to complain. See:* ***AFOLABI V. ADEKUNLE*** **(1983) SCC 398 AT 405,** **(1983) 2 *SCNLR* 141;** ***UNIVERSITY OF LAGOS V. AIGORO*** **(1985) 1 *NWLR (PT.1) 143.*"**

See also ***UNIVERSITY OF LAGOS V. AIGORO (1985) 1 NWLR (PT.1) 143, WELLINGTON V. REGISTERED TRUSTEES IJEBUODE (2000) 5 NWLR (PT.647) 130*** *which were followed in* ***NIGERIAN NAVY AND ORS V. LABINJO (SUPRA); WILLIAMS V. HOPERISING VOLUNTARY FUNDS SOCIETY (1982) 13 N.S.C.C. 36, A-G., FEDERATION V.***

BI-COURTNEY LTD (2012) 14 NWLR (PT.1321) 467.

The argument that Order 29 Rule 4 of the Rules of the Court below deprives the Appellant of its statutory and constitutional right to raise the issue of jurisdiction at any time is neither here nor there. The Court below simply adhered to its rules by holding that the issue was raised at the stage of the proceedings when the time for it to be determined as stated by the rules of the Court below had not come and/or was not ripe.

Invariably, at the opportune time stipulated by the rules of the Court below, the issue of jurisdiction will be heard first and determined before the substantive suit is looked into and, in the event the matter goes on appeal the Appeal Court will have the benefit of dealing with the entire case inclusive of the objection to jurisdiction in one fell swoop for the purpose of saving time and costs and/or protracted litigation vide ***CBN V. AKINGBOLA (SUPRA) at 151*** *thus:-*

The fundamental objective of the rules of the Court below is to promote speedy dispensation of justice and avoid protracted trial. Consequently, if oral evidence is to be taken at the hearing of the main action, its protracted nature due to cross-examination and re-examination would unduly delay or bog down the just and expeditious disposal of the preliminary objection contrary to the spirit and soul of the rules of the Court below expressed in order 1 rule 4 thereof thus -

"The fundamental objective of these rules is, just and expeditious disposition of cases".

The touchstone of order 1 rule 4 of the rules of the Court below is therefore for it to do justice fairly and avoid delay plus unnecessary cost of protracted litigation. The Court below, accordingly, had to balance the criteria of fairness, justice,

convenience, time management and/or efficient case management for the purpose of attaining justice in the case by deciding to hear both the preliminary objection and the main application together.

In the present case, the advantage and protection the appellant will have of having its preliminary objection attended to first shall not be lost as the preliminary objection will be heard before the substantive matter at the time both the preliminary objection and the substantive matter are taken together.

The Court below would also have to rule on the preliminary objection first, thus giving priority to the preliminary objection over and above the substantive matter."

See also ***GOVERNOR, CBN V. AKINGBOLA (SUPRA) AT 176 -177.***

On the whole, I see no merit in the

interlocutory appeal and hereby dismiss it as the Court did not refuse to hear the objection to its jurisdiction at all: it stated merely that the objection should have been taken with the substantive action as required by its rules."

I hold that the Notice of Preliminary Objection of the 6th Defendant is incompetent and it is struck out. The issue of jurisdiction shall be taken at the conclusion of trial in line with Order 29 Rule 5 of the Rules of this Court. N5,000 cost is awarded in favour of the Plaintiff against the 6th Defendant.

In the 1st and 2nd Defendants' objection, it was argued that the subject matter of the suit deals with a dispute between an individual customer and the bank, and that this Court lacks jurisdiction to entertain the action, including the territorial jurisdiction to hear the matter since the transaction took place in Port Harcourt.

It was argued that the suit did not seek a relief against an agency of the Federal Government, and that the process did not comply with sections 97 and 98 of the Sheriffs and Civil Process Act.

The Court was urged to decline jurisdiction and strike out the suit.

These cases were relied on:-

(1) ASTC VS. QUORUM CONSORTIUM LTD (2004) 1 NWLR

(PT. 855) 601.

(2) **INC CO. LTD VS. GIWA (2003) 13 NWLR (PT. 836) 69.**

(3) **OWNERS OF MV ARABELA VS. NAIC (2008) 11 NWLR (PT. 1097) 182.**

(4) **MADUKOLU VS. NKEMDILIM (1962) 2 ALL NLR 581**

(5) **GFC VS. NNPC (2002) 12 NWLR (PT. 786) 133**

(6) **GAFAR VS. GOVT. KWARA STATE (2007) 4 NWLR (PT. 1024) 375**

(7) **TRADE BANK VS. BANILUX NIG. LTD (2003) 9 NWLR (PT. 825) 416**

(8) **LADO VS. CPC (2011) 18 NWLR (PT. 1279) 201.**

The Plaintiff argued in reply that the Court had territorial jurisdiction in Order 2 Rule 1 (1) and (4) of the Rules of Court, and that sections 97 and 98 of the Sheriffs and Civil Process Act were inapplicable to this case.

It was argued that the Court had subject matter jurisdiction, concurrent with the State High Court. The Court was urged to dismiss the application.

These authorities were relied on:-

"**LIST OF AUTHORITIES**

1. **MADUKOLU VS. NKEMDILIM (1962) 2 ALL NLR 581 AT PP. 589-590**
2. **ORDER 2 RULES 1 (1) & (4) *OF* THE FEDERAL HIGH**

COURT (CIVIL PROCEDURE) RULES, 2009.

3. **PALM BEACH INSURANCE CO LTD VS. BRUHNS (1997) 9 NWLR (PT.519) 80 @ PARAGRAPH 94** Per Akapabio JCA.
4. **ODUA INVESTMENT VS. TALABI (1997) 10 NWLR (PT.523) 1 @ 51 PARA G-H** Per Ogundare JSC.
5. **NDIC VS. ENTERPRISES LTD & ANOR (2004) 11 CLRN @ PG 3 LINES 25-30.**
6. **SAM FARM FINANCIERS LTD VS. MR. AINA (2003) FWLR [PT. 159] 1482 @ 1496"**

I have read the processes filed and I have carefully reviewed the submissions made.

The Sole issue submitted for determination is whether this Court has jurisdiction to entertain this suit

Without going further, I do answer the above poser unequivocally in the affirmative. It is no longer news that the issue of jurisdiction is cardinal to the adjudication of disputes between parties. Thus, in the notorious case of **MADUKOLU VS. NKEMDILIM (1962) 2 ALL NLR 581 AT PP. 589-590**, the Supreme Court per Bairamian, FJ (as he then was) laid down the major prerequisites for the assumption of jurisdiction by any court in the land. In that case it was held that a Court is competent when:

(1) *It is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or another; and*

(2) *The subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the Court from exercising its jurisdiction; and*

(3) *The case comes before the Court initiated by the process of law, and upon fulfilment of any condition precedent to the exercise of jurisdiction*

A review of the case shows that the case on all fours complied with the aforementioned requirements.

The Applicant's Counsel in his written address in support of this application contended that this Court does not have territorial jurisdiction to entertain this suit. Quite contrary to the learned counsel's submission, the issue of territorial jurisdiction in our judicial system is for administrative convenience. Nevertheless, this Court has the territorial competence to hear this suit.

The only statutory authority on territorial jurisdiction remains the rules of court. Thus, *Order 2 Rule 1 (1) and (4) of* the Federal High Court (Civil Procedure) Rules, 2009 *states:-*

> *2 (1)(1) Subject to the provisions of any law with respect to transfer of suits or to specific subject matters, the place for the trial of any suit or matter shall be as provided in this*

order.

> 2 (1)(4) *All suits for specific performance or upon the breach of any contract shall be commenced and determined in the Judicial Division of the Court in which the contract is supposed to have been performed or in which the Defendant resides or carries on substantial part of his business*

Based on the above provision of the Rules of this Court, it is not the law as contended by the learned Counsel to the Applicants that an action for breach of contract can only be commenced where an alleged transaction leading to the breach took place. As a matter of fact, the rules cited above gives three leave gates to a claimant in commencing an action against a defendant for breach of contract. In the instant case, the Claimant opted for the latter.

It is noteworthy, that 1st Defendant who is also the alter ego of the second Defendant resides in Lagos and was indeed served with the writ of summons in his residence here in Lagos by the sheriff of this Court. This dispenses with this issue and suffices to cloak this court with territorial jurisdiction to hear this suit.

Consequently, *Order* 2 *Rules* 1(1) and (4) *of* the Federal High Court (Civil Procedure) Rules, 2009 thus laid to rest the dust raised by the Applicants challenging the territorial jurisdiction of this Court.

It is not the correct position of the law that a company or

agency with offices or branch as in the case of the 4th Defendant must be served in its head office as insinuated by the Applicants' counsel. Service on a company's branch office in the jurisdiction of the forum has been held to be sufficient. On this principle, I refer to the case of **PALM BEACH INSURANCE CO LTD VS. BRUHNS (1997) 9 NWLR (PT.519) 80 @ PARAGRAPH 94** per Akapabio JCA.

Instructively, sections 97 and 98 of the Sheriff and Civil Processes Act provides as follows:

> *"Every writ of summons for service under this Part out of the State or the Capital Territory in which it was issued shall, in addition to any other endorsement or notice required by the law of such State or the Capital Territory, have endorsed thereon a notice to the following effect (that is to say) ... "*

From the wordings of the above provision it is clear that only when a writ is specifically addressed to be served outside jurisdiction that the endorsement and subsequently the leave of Court talked about by the Applicants is required. See the address for service on the 4th Defendant in the writ of summons already before the Court.

Furthermore, it is quite surprising and one wonders what the Applicants' counsel seeks to achieve by raising the issue when a careful perusal of the writ of summons clearly shows that the 4th Defendant was NOT addressed in the writ to be served outside the jurisdiction of this Court. It is manifest and obviously so, that the

Applicants were crying wolves when there is none in sight by this contention.

Instructively, the writ complained of was received at the address for service by the 4th Defendant without protest. See the proof of service evidencing receipt already before the Court. In the case of **ODUA INVESTMENT VS. TALABI (1997) 10 NWLR (PT.523) 1 @ 51 PARA G-H** per Ogundare JSC where a party is served with a writ of summons in breach of sections 97 and 98 of the Sheriff and Civil Processes Act, he has a choice either to object to the service or accept same. In the present case, I hold that it is the 4th Defendant that should raise objection (if any).

It is quite strange that the Applicants are making a case for the 4th Defendant when obviously the party concerned has not complained. This is a clear case of crying more than the bereaved. Consequently, I hold that the submission of the Applicants' counsel in the address in support of this application and the avalanche of cases erroneously cited in support on this issue are of no moment. This is purely a voyage of futility which goes to no issue.

The Application's Counsel in his written address in support of this application laboriously dissipated energy on non endorsement of the Writ commencing this suit. To the contrary, the address for service on the 4th Defendant as per the Plaintiff's writ in this suit is well within the jurisdiction of this Court. There was therefore absolutely no need to have endorsed the said as a writ to be served outside jurisdiction as contended by the Learned Counsel.

Furthermore, there is no evidence placed before this court by

the Applicants that the said writ which has already been served by the sheriff of this Court and received by the 4th Defendant was served outside jurisdiction. Consequentially, the contention and submissions of the learned counsel to the Applicants as well as the authorities copiously cited on this issue hold no water.

The jurisdictional controversy between the Federal High Court and that of the State High Courts over dispute between an individual customer and a bank is long dead and buried. The Applicants' counsel's submission in his written address does not represent the current position of the law. It is obvious and sadly so that the Applicants' counsel is oblivious of the decisions of our Courts on this issue. For the avoidance of doubt, in the classical case

of **NDIC VS. ENTERPRISES LTD & ANOR (2004) 11 CLRN @ PG 3 LINES 25-30** the Supreme Court per Kalgo JSC held:

> *"Section 251 (1) (d) of the 1999 constitution does not confer exclusive jurisdiction in disputes between individual customer and the bank on the state high Courts. All it does is to remove the exclusivity in dealing with those kinds of disputes from the Federal High Court; which means that the high court of a state by virtue of section 271(1) of 1999 constitution shares the jurisdiction with the Federal High Court.*

Similarly, in the case of **SAM FARM FINANCIERS LTD VS. MR. AINA (2003) FWLR (PT. 159) 1482 @ 1496,** it was also

decided that Federal High Court has no exclusive jurisdiction, but concurrent jurisdiction in respect of banker - customer complaints to Court. In the light of the above decision it is obvious that the issue of the jurisdiction of this Court as to the subject matter of this suit is unassailable.

In the circumstances, I hold that the Preliminary Objection filed by the 1st and 2nd Defendants lack merit and it is dismissed, N5,000 cost is awarded in favour of the Plaintiff against the 1st and 2nd Defendants.

M.B. IDRIS
JUDGE
11/3/16

A. Akintomiwa for the Plaintiff

O. Edeh for the 4th Defendant

R. Uzochi with I.F. Ariranmien for the 6th Defendant