

IN THE SUPREME COURT OF NIGERIA

On Friday, the 14th day of July 2006

AREWA PAPER CONVERTERS LTD (APPELLANT)

VS.

NDIC (NIG. UNIVERSAL BANK LTD) (RESPONDENT)

S.C. 135/2003

Before Their Lordships

- Idris Legbo Kutigi JSC
- Niki Tobi JSC
- George Adesola Oguntade JSC
- Mahmud Mohammed JSC (Delivered the Lead Judgment)
- Walter Samuel Nkanu Onnoghen JSC

The respondent is the plaintiff. The appellant is the defendant. The respondent applied to the Kano Zone of the Failed Banks Tribunal for the issuance of a writ of summons on the undefended list for the sum of ₦969,572.01 with interest at 21%. The respondent applied for leave to serve the appellant by substitution, that is, by pasting the civil processes on her last known address at No. 4, Light Industrial Layout, Kawo, Kaduna. Although the application was granted, the service was not effected at the appellant's last known address. Judgment was entered for the respondent on 24th April 1998 in respect of the above sum and in the above term of 21% interest. On 22nd October 1999, the appellant filed a motion at the Federal High Court, Kaduna, seeking the Court to set aside the judgment of the Failed Banks Tribunal which was obtained in default of appearance. The

motion was dismissed. The appeal to the Court of Appeal was struck out. This is a further appeal to the Supreme Court.

In the appellant's amended Notice of Appeal filed on 25-10-2004, the appellant challenged the decision of the Court of Appeal on three grounds of appeal from which three issues for determination were framed in the appellants brief. The issues are:

1. Whether the appellant's appeal from the Federal High Court to the Court of Appeal was incompetent by reason of the provisions of section 5(2) of Decree No. 18 of 1994 (as amended) and Tribunals (Certain Consequential Amendments, etc) Decree No. 62 of 1999, which prescribes finality for the judgment of the defunct Failed Banks Tribunal.
2. Whether the appellant's right of appeal from the Federal High Court to the Court of Appeal guaranteed by the 1999 Constitution can be defeated by the provisions of the Failed Banks Decree No. 18 of 1994 when the decision being appealed against was that of the Federal High Court and not that of the Tribunal.
3. Whether the Court below was not in error when it failed to decide the appeal in the alternative on its merit regardless of the fact that it had hinged its decision on a preliminary jurisdictional point, which could be set aside by the Supreme Court.

Although the respondent had raised a Preliminary Objection to all the three grounds of appeal contained in the appellant's amended notice of appeal, the respondent appeared to

have also agreed with the appellant that there are three issues for determination in this appeal. The versions of the respondent's issues are:

1. Whether the Court of Appeal rightly upheld the Respondent's Preliminary Objection to the Appellant's Appeal
2. Whether the refusal of the Federal High Court in exercise of the jurisdiction of the Failed Banks Tribunal, to set aside the final judgment of the Failed Banks Tribunal is appealable.
3. Whether the Court of Appeal must consider in all cases, the merit of an appeal after holding that it lacked jurisdiction to entertain the appeal.

The Supreme Court dismissed the appeal and HELD inter alia:

On the Effect of Provisions of the Tribunals (Certain Consequential Amendments etc) Decree No. 64 of 1999

The provisions of the Tribunals (Certain Consequential Amendments etc) Decree 1999, otherwise known as Decree No. 62 of 1999, conferred specific jurisdiction to the Federal High Court in all criminal and civil matters that were within the jurisdiction of the Failed Banks Tribunals which were in operation under the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree 1994 otherwise known as Failed Banks Decree No 18 of 1994. In other words by section 2(1) of Decree No 62 of 1999, the Federal High Court with effect from the date of the commencement of the Decree being 28-5-1999, had stepped into the shoes of the Failed Banks Tribunals in respect of all matters within the jurisdiction of the Tribunals under the Failed Banks Decree which had been consequentially amended to bring the life of the Failed Banks Tribunals to an

end. Thus, the jurisdiction of the Federal High Court to entertain and determine matters under the Failed Banks Decree commenced on 28-5-99.

On the Jurisdiction Conferred on the Federal High Court by Decree No. 62 of 1999

The nature of the jurisdiction conferred on the Federal High Court by Decree No. 62 of 1999 is further specifically stated in section 3(1) and (2) of the Decree earlier quoted in this judgment. The jurisdiction under this provision is confined to part-heard matters pending before the dissolved Failed Banks Tribunal on the date of the making of the Decree on 28-5-99. The jurisdiction also covers all new proceedings that shall be commenced before the Federal High Court. The provisions of sections 2 and 3 of Decree No. 62 of 1999 conferring additional jurisdiction on the Federal High Court in respect of matters under the jurisdiction of the dissolved Failed Banks Tribunals, are quite plain and unambiguous. It is in line with the provision of section 251 of the constitution of the Federal Republic of Nigeria 1999, which recognised this type of additional jurisdiction conferred by statute in specifying the general jurisdiction of the Federal High Court under the Constitution.

On Power of the Federal High Court to Vary or Reject the Decisions of the Failed Banks Tribunal

The trial Federal High Court by virtue of the provisions of Decree No. 62 of 1999, is incompetent to vary and/or reject rights thus established by the Court of competent jurisdiction namely, the Failed Banks Tribunal. This means even if there were some errors in the judgment of the Tribunal against the appellant, it is for the competent Court to which an appeal lies against the judgment, in this case the Special Appeal Tribunal, to correct it or so declare. The result of the proceedings undertaken in the absence of jurisdiction by the trial Court is of course obvious as the law on the situation is trite.

On the Relevant Law Applicable In Respect of a Cause of Action

As at 29-5-99, when Decree No. 62 of 1999 came into force, the judgment of the Failed Banks Tribunal of 24-4-98, against the appellant was not a pending part-heard matter that could have gone before the Federal High Court for any form of adjudication under the Decree. This is because the case of the appellant was governed by the provisions of the Failed Banks Decree 1994 before its amendment in 1999 and therefore the rights and obligation of the parties in this appeal in respect of the case must be determined in accordance with the law prevailing before the amendment. See *A.G. Lagos State v. Dosunmu* (1989) 3 NWLR (pt 111) 552; *Alao v. Akano* (1988) 1 NWLR (pt 71) 431; *Uwaifo v. A.G. of Bendel State* (1982) 7SC, 124; *Utih v. Onoyivwe* (1991) 1 NWLR (pt 166) 166 at 201; *Rossek v. A.C. B. Ltd* (1993) 8 NWLR (pt 312) 382 at 474 and *Adah v. N. Y.S.C.* (2004) 13 NWLR (pt 891) 639 at 648 where Uwaifo, JSC observed that:

"It ought to be understood that the law which supports a cause of action is not necessarily coextensive with the law which confers jurisdiction on the Court which entertains the suit founded on that cause of action. The relevant law applicable in respect of a cause of action is the law in force at the time the cause of action arose where as the jurisdiction of the Court to entertain an action is determined upon the state of the law conferring jurisdiction at the point in time the action was constituted and heard."

On the Appellate Procedure of Appeals Arising from Decisions of the Failed Banks Tribunal

The appellate procedure is clearly stated above in section 5(1) and (2) of the Failed Banks Tribunal Decree No. 18 of 1994. There is no Court of Appeal in the provision. There is

also no Federal High Court in terms of having original jurisdiction in the matters in the Failed Banks Tribunal Decree No. 18 of 1994 or any other jurisdiction for that matter.

On the Jurisdiction of the Court of Appeal to Entertain Appeals on the Decisions of the Failed Banks Tribunal

The Court of Appeal held that it has no appellate or supervisory jurisdiction over the Failed Banks Tribunal or the Special Appeal Tribunal. The Court said at pages 132 and 133 of the Record:

"Where, as in this appeal, the substance of the appeal is actually in respect of the decision of the Failed Banks Tribunal, whatever errors of a procedural nature or of a procedural vice as to jurisdiction or competence, cannot be corrected by this Court or the Federal High Court. They can only be corrected by the Failed Banks Tribunal or the Special Appeal Tribunal itself or else they will remain uncorrected, unresolved as this Court cannot intervene since it has no appellate or supervisory jurisdiction over the Failed Banks Tribunal or the Special Appeal Tribunal. It is my respectful view that this Court will not permit or encourage any subterfuge under which it may assume jurisdiction to hear an appeal in respect of which the Failed Banks Decree has in clear and unambiguous language made the Failed Banks Tribunal or the Special Appeal Tribunal, the final Court."

I entirely agree with the Court of Appeal. The position cannot be otherwise. The position of the law is as stated above as it vindicates section 5(1) and (2) of the Failed Banks Tribunal Decree No. 18 of 1994. The sub-sections provide as follows:

"(1) A person convicted or against whom judgment is given under this Decree may, within 21 days of the conviction or judgment appeal to the Special Appeal

Tribunal established under the Recovery of Public Property (Special Military Tribunal) Decree 1984, as amended, in accordance with the provisions of that Decree.

- (2) The decision of the Special Appeal Tribunal shall be final and, where there is no appeal, the decision of the Tribunal shall be final."

The appellate procedure is clearly stated above in section 5(1) and (2) of the Decree. There is no Court of Appeal in the provision. There is also no Federal High Court in terms of having original jurisdiction in the matters in the Failed Banks Tribunal Decree No. 18 of 1994 or any other jurisdiction for that matter.

The above apart, section 5(1) says appeal shall lie to the Special Appeal Tribunal within 21 days. As there was no appeal within the statutory period of 21 days in section 5(1), the decision of the Failed Banks Tribunal became final under the second leg of section 5(2) of the Decree. Jurisdiction is a sensitive matter dealing with the hierarchy of Courts in any democracy. As a threshold issue, Courts lean sentimentally to their jurisdiction and feel bad when other Courts encroach upon their jurisdiction. Because of the jurisdictional hierarchy in our Court system, Courts are satisfied with the position of jurisdiction vested in them and will not have the hunger or gluttony for what is not within their jurisdiction. That is exactly what the Court of Appeal did and I cannot see my way clear in faulting the Court. The Court has enough to do in the Constitution by way of jurisdiction and it does not need a failed bank jurisdiction.

On Meaning of 'Final'

The word *final* really means final in section 5(2) of the Failed Banks Tribunal Decree No. 18 of 1994. It means end, last, terminate or complete. In relation to legal action, the word

is used in contradistinction with "interlocutory". In other words, an interlocutory process or decision is not final. An interlocutory matter is provisional, interim, temporary; **not final**. In the circumstances, the Court of Appeal, **nay** this Court, have nothing to do with this matter, which is final by virtue of section 5(2) of the Decree.

On the Jurisdiction of the Federal High Court to Hear, Determine and Set Aside the Decisions of the Failed Banks Tribunal

It is very clear, and I hereby hold that the jurisdiction conferred on the Federal High Court by the provisions quoted supra does not include the hearing and determination of an application to set aside a judgment of the Failed Banks Tribunal for any reason whatsoever particularly as the same cannot be said to fall within the term part heard matters nor is it an enforcement process. It is important to note that the judgment in this case was delivered more than a year before the promulgation of Decree No. 62 of 1999.

On Effect of Appellant Not Appealing Against the Judgment of the Failed Banks Tribunal Before the Judgment Became Final

It is unfortunate that appellant did not appeal against the judgment of the Tribunal before that judgment became, by operation of law, final and the Tribunal that entered same, extinct also by operation of law. The appellant's right of appeal is as provided in Decree No. 18 of 1994 which is the applicable law at the time the right of appeal accrued.

The appellant cannot hide under the cloak of appealing against the decision of the Federal High Court refusing the application to set aside the judgment of the Tribunal which decision (as) has been demonstrated in this judgment is without jurisdiction particularly as Decree No. 62 of 1999 only conferred jurisdiction on the Federal High Court to deal with part heard matters from the Tribunals and fresh or new matters, apart from enforcement of already existing judgments of the Tribunals.

Appeal dismissed.

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For the Respondent