

JURISDICTION OF THE FEDERAL HIGH COURT ON TITLE TO LAND: A JUDICIAL MYTH OR REALITY

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1.1 Introduction

Judicial jurisdiction is the legal power and authority of a court to make a decision that binds the parties to any matter properly brought before it.¹ It is a court's power to decide a case or issue a decree.² Thus, jurisdiction is the power of court to determine a matter; it presupposes the existence of a duly constituted court with control over the subject matter and the parties.³ A court is said to be competent to assume jurisdiction in a matter when;

- a) 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;
- b) the subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from exercising jurisdiction; and

The case comes before the court initiated by due process of law, and upon fulfilment of any condition precedent to the exercise of jurisdiction.⁴ It therefore goes without saying that a court cannot confer or vest in itself jurisdiction not specifically conferred on it by statute or the Constitution.⁵ The issue of jurisdiction is so fundamental that it goes to the root of and is the basis of every adjudication. It is required to be considered and dealt with first whenever it is raised in any proceeding before the trial or appellate court. The rationale is to avoid an exercise in futility as the whole proceedings conducted without jurisdiction would be rendered a nullity however well conducted it might have been.⁶ It is with the above premise in mind that this paper examined the jurisdictional power of the Federal High Court in Nigeria, with the view to determine whether or not it has exclusive

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¹ Garner, B. A., *Black's Law Dictionary*. 8th edition, West Group Publishing Co. U.S.A., 1999, p. 869

² Ibid, p. 867

³ Umar, A. and Imhanobe, S. O., *Quick Reference Material on Nigeria Law and Practice*. Temple Legal Consult, Abuja (2004) P.3

⁴ See *Madukolu v. Nkemdilim* (1962) SCNLR 341. See also *A. G., Kano State v. A.G., Federation* (2007) All FWLR (pt 369) 238

⁵ *Ansa v. Regd Trustees, Presbyterian Church of Nigeria* (1962) ALL FWLR (pt 405)

⁶ See *Federal Ministry of Commerce and Tourism (F.M.C.T.) v. Eze* (2006) All FWLR (pt 323) 1704

jurisdiction respecting title to land where the Federal Government or any of its agency is concern.

1.2 Establishment Of The Federal High Court

The Federal High Court was first established as the Federal Revenue Court under Decree No. 13 of 1973. In 1979, the Federal Revenue Court was named the Federal High Court under the 1979 constitution.⁷ The Act became the Federal High Court Act⁸ and was later amended by the Federal High Court Decree No. 61 of 1991 which conferred exclusive jurisdiction on the Federal High Court except as against Special Tribunal. Section 249 of the 1999 Constitution established the Federal High Court and it consist of the Chief Judge of the Federal High Court and such number of judges as may be prescribed by an Act of the National Assembly. The Chief Judge is appointed by the President on the recommendation of the National Judicial Council (N.J.C.) subject to confirmation of such appointment by the Senate.⁹ The same procedure for appointment applies to other judges of the Federal High Court except the issue of confirmation by the Senate.¹⁰

1.3 Exclusive Jurisdiction Of The Federal High Court

Section 251(1) of the *Constitution of the Federal Republic of Nigeria*, 1999 confers on the Federal High Court exclusive jurisdiction in respect of the following matters:

- (a) Revenue of Government of the federation
- (b) Taxation
- (c) Custom and excise
- (d) Banking and fiscal measures
- (e) Operation of CAMA
- (f) Copyright, trade mark, patent and designs
- (g) Admiralty
- (h) Diplomatic, consular or trade representative
- (i) Citizenship
- (j) Bankruptcy and insolvency
- (k) Aviation and safety of aircraft
- (l) Arms and ammunition

⁷ See Section 230(2) *Constitution of the Federal Republic of Nigeria (CFRN)* 1979

⁸ Cap. 134 Laws of the Federation of Nigeria (LFN) 1990

⁹ Section 250 CFRN 1999

¹⁰ See Generally on Historical Antecedents of the Federal High Court. Ojukwu, E. and Ojukwu, C.N., *Introduction to Civil Procedure*. Helen – Roberts Research & Resources Ltd, (2002), pp.26-54

- (m) Drugs and poisons
- (n) Mines and minerals
- (o) Weights and measures
- (p) Administration and management of any government agency
- (q) Interpretation of the Constitution as it affect the Federal Government and its Agencies.
- (r) Actions for declaration or injunction against the Federal Government or its agencies
- (s) Any other jurisdiction conferred by the National Assembly.

It is not in dispute that the jurisdiction of the Federal High Court is limited to the items enumerated above. But the listed items, particularly paragraphs (p) (q) (r) and (s) relating to the administration and management of any government agency, interpretation of the Constitution as it affect the Federal Government and its agencies, actions for declaration or injunction against the Federal Government or its agencies and any other jurisdiction conferred by the National Assembly respectively, have been subject of controversies and multiple litigations. Perhaps, it can be said that no court has been subjected to controversies over its jurisdiction since its inception like the Federal High Court.¹¹

Commenting on the import of section 251(1) (p - r) *CFRN* 1999, learned author Nwadialo,¹² stated that the sections are no doubt meant to place the judicial control of the Federal Government and its agencies in the hands of the Federal High Court. In *NEPA v. Edegbero*,¹³ the Supreme Court held that the aim of subsection (q) (r) and (s) was to vest exclusive jurisdiction in the Federal High Court in matters in which the Federal Government or any its agencies was a party. A State High Court would no longer have jurisdiction in such matters notwithstanding the nature of the claim in the action.

Later in the course of this paper we would examine the implication of

¹¹ For example, in *SavannahBank v. Pan Atlantic Shipping Transport Agency Ltd* (1987) 1 SCNJ 87, the Supreme Court held that the Federal High Court did not have exclusive jurisdiction but instead a concurrent jurisdiction with the State High court with respect to the matters contained in section 7 and 8 of the Federal High Court Act since those provisions conflicted section 236 *CFRN* 1979 which vested unlimited jurisdiction in all matters on the State High Court. See also *Jamal Steel construction Ltd v. A.C.B* (1973) All NLR 258, *Bronick Motors Ltd v. WEMA Bank* (1983)1 SCNLR. 296. It took the amendment of section 230 *CFRN* 1979 by Decree No. 107 of 1993 to restore the exclusive jurisdiction of the Federal High Court in those matters now guaranteed by section 251(1) *CFRN* 1999. See Ojukwu, E. and Ojukwu, C.N., *op. cit.* p.28.

¹² Nwadialo, F., *Civil Procedure in Nigeria*. 2nd edition University of Lagos Press, Lagos, (2000),p.58

¹³ (2002) 18 NWLR (pt 798) 79

this Supreme Court decision on the jurisdiction of the Federal High Court. For now, we will look at the jurisdiction of the Courts in action for declaration of title to Land.

1.4 Jurisdiction Of Courts In Action For Declaration of Title To Land

Under the common law, land covers the earth surface (the top soil), the sub-soil, things attached to the land e.g. structures, crops, etc and other incorporeal hereditament enjoyed on land.¹⁴ The term 'Land' has been defined to include: "the earth surface and everything attached to the earth otherwise known as fixtures and all chattels real. It also includes incorporeal rights like a right of way and other easements as well as profits enjoyed by one person over the ground and buildings belonging to another".¹⁵

Section 18(1) of the *Interpretation Act*¹⁶ defines land to include any building and any other thing attached to the earth or permanently fastened to anything so attached... Land therefore is an immovable and indestructible three-dimensional area consisting of a portion of the earth's surface, the space above and below the surface, and everything growing on or permanently affixed to it. It is an estate or interest in real property.¹⁷ Whereas the term 'title to land' connotes the existence of facts from which the right of ownership and possession could be inferred.¹⁸ Ownership is the infinite and absolute right to land. It connotes the complete and total right over a property. The owner of a property is the alpha and omega of the property. The property begins and ends with him. He can use it for any propose whether beneficial or even detrimental to his personal or proprietary interest.¹⁹

The *Land Use Act (LUA)*,²⁰ makes provision for jurisdiction of courts on matters relating to statutory or customary right of occupancy including declaration of title to land. Section 39(1) *LUA* confers exclusive original jurisdiction on the State High courts in matters relating to any land the subject of a statutory right of occupancy granted or deemed granted by the Governor including matters for declaration of title to a statutory right of occupancy. By virtue of section 41 *LUA*, an Area Court or Customary Court or other court of

¹⁴ Smith, I.O., *Practical Approach To Law Of Real Property In Nigeria*. Ecowatch Publications Ltd, Lagos, 1999, p.5

¹⁵ Section 2 of the *Property and Conveyance Act*. Cap. P Laws of the Federation of Nigeria, (L.F.N.) 2004.

¹⁶ Cap. 123 LFN 2004

¹⁷ Garner, B.A., *Black's Law Dictionary*, *op. cit.*, p.881

¹⁸ Smith, I. O., *op. cit.*, p. 14

¹⁹ See Tobi J.C.A. (as he then was) in *Abraham v. Olorunfunmi* (1991) 1 NWLR (pt. 165) 53

²⁰ Cap. L.5, LFN 2004

equivalent jurisdiction in a state shall have jurisdiction in respect of a customary right of occupancy granted by a Local Government including matters for declaration in respect of a customary right of occupancy. It must be emphasized here that while the State High Courts have general jurisdiction under section 272 *CFRN* 1999 to hear and determine matters affecting land in any part of the state irrespective of whether the land in question is situate in an urban or rural area, the same cannot be said of the Area, Sharia or Customary Courts. Therefore, where the land is situate in non-urban area, the High Courts have concurrent jurisdiction with Area, Sharia or Customary Courts.²¹

From the foregoing, it can be stated thus that the following courts have jurisdictions to hear and determine matters relating to Land and/or interests thereon;

- (a) Area / Sharia / Customary Courts
- (b) Magistrate / District Courts; and
- (c) High Courts of the various states in Nigeria.

Although, learned author Smith,²² relying on the *Constitution (Suspension and Modification) Decree* 107 of 1993 was of the view that;

“The Federal High court has exclusive original jurisdiction to hear and determine matters relating to title, right and interests over land belonging to the Federal Government or arising from Housing belonging to the Federal Government or, it would appear a claim of land in which the Federal Government is a party.”

The view expressed by Smith above was rightly and respectfully debunked by Adedokun²³ to the effect that it represents the misconception of the true position of the Law. Relying on the decision of the Supreme Court in *Erhunmwunse v. Ehanire*²⁴, Adedokun submitted that in as much as it is the Governor of a state that grants statutory rights of occupancy to either the Federal Government or its agencies, the High Court of a state has exclusive

²¹ See *Ebite v. Obiki* (1992) 5 NWLR (pt 243) 599; See also *Adisa v. Oyinlola* (2000) 6 SCNJ290

²² Smith, I. O., *op. cit.*, p.386

²³ Adedokun, K. A., “The Rule in *NEPA v. Edeghero*: A Case of Absolute Rule? *A.B.U. , Zaria Journal of Private and Comparative Law*. Vols. 2&3, 2007-2009, pp.191-198.

²⁴ (2003) 13 NWLR (pt 837) 353 at 370 paras A – B; 373 paras A - C

original jurisdiction on dispute regarding such land. The view expressed by Adedokun above is passionately shared by this writer.

1.5 Conflicting Judicial Pronouncements on the Exclusive Jurisdiction of Federal High Court Respecting Title to Land

Since the decision of the Supreme Court of Nigeria per Ogundare J.S.C. (of blessed memory) in the case of *NEPA v. Edeghero* (*supra*) to the effect that "a State High Court would no longer have jurisdiction in matters in which the Federal Government or any of its agencies is a party notwithstanding the nature of the claim in the action..." our courts have been embroiled in controversial and conflicting decisions on the exclusive jurisdiction of the Federal High Court respecting title to land where the Federal Government or any of its agencies is a party. In *Engr. P.J.I. Azagba v. Nigeria College of Aviation Technology (N.C.A.T), Zaria*,²⁵ the plaintiff's claim that he is the rightful owner of the parcel of land covered by state Certificate of Occupancy number KD5251 lying and situate at *Ungwar Yusi*, Sabon Gari Local Government Area, Kaduna state among other reliefs.

The Defendant by way of preliminary objection prayed the Honourable court to strike out the suit for want of jurisdiction to entertain same on the ground that the Defendant being a Federal Government agency could not be sued before the Honourable court in view of the provisions of section 251 (1) (p – r) *CFRN* 1999. The Honourable Court declined jurisdiction and struck out the suit relaying substantially on the apex's court decision in *NEPA v. Edeghero*.

Also in *Comfort Olukosi v. N.C.A.T. Zaria*²⁶, the plaintiff's claim was for a declaration that she is the rightful owner of the land measuring 8 plots laying and situate behind *N.C.A.T. Zaria*. The Honourable court ordered counsel to the parties in the suit to address it on whether or not it has the jurisdiction to entertain the suit in view of the statutory nature of the Defendant. Nonetheless, the trial court held that in view of the Supreme Court's decision in *NEPA v. Edeghero*, the court has no option but to hold that it has no jurisdiction to determine the suit and consequently struck out the same.

However, in *Lawal Ibrahim & 15 ors v. Ahmadu Bello University (A.B.U.), Zaria*,²⁷ the plaintiffs claim against the Defendant, a Federal

²⁵ Unreported Suit No. KDH/Z/73/2007

²⁶ Unreported Suit No. KDH/Z/72/2007

²⁷ FHC/KD/CS/37/2003

Government agency, was for a declaration of title to land at *Kundigi Village* near A.B.U. Zaria, having inherited same from their parents and grand parents. The Federal High Court, Kaduna Division in its ruling dated 25th February, 2009 declined jurisdiction and transferred the suit to High Court of Kaduna State, Zaria Division under section 22 Federal High Court Act for trial. The case is presently pending before the High Court of Kaduna State, Zaria Division as Suit No. KDH/Z/153/2009.

Also, in *Ahmadu Bello University, Zaria & 1 or v. Bala Samaru & 9 ors*²⁸ the plaintiff, a Federal Government agency commenced the action seeking for a perpetual injunction restraining the defendants and their privies from causing damage to the plaintiff's dam located within 30 yards inside the plaintiff's land. The Federal High Court Kaduna Division declined jurisdiction and transferred the suit to High Court of Kaduna State, Zaria Division for the purpose of trial on the ground that land is not a subject of Federal High Court jurisdiction.

The conflicts in decisions were not limited to High Courts alone, for even the Court of Appeal was not left out in the controversy. For example, in *Otiki v. Bagehson*,²⁹ the sole issue for determination was; whether the High Court of Federal Capital Territory has jurisdiction to entertain the action (Revocation of Certificate of Occupancy without notice) in view of section 230(1)(q) (r) and (s) *Constitution (Suspension and Modification) Decree No. 107 of 1993*, the Court of Appeal, per Abdullahi PCA (as he then was) held;

Having regard to these clear statements of law, it is no longer in doubt at least for now that the submission of learned senior counsel for the Respondent that the Federal High Court does not have exclusive jurisdiction in this case since land matter is not one of the items listed under section 230 (1) (a – s) of Decree 107 of 1993 cannot be legally correct...

The Court of Appeal, Per Abdullahi PCA concluded by stating that;

²⁸ FHC/KD/CS/42/2002

²⁹ (2006) All FWLR (pt 307) 1054

In the light of the position of the law clearly stated in the case of NEPA v. Edegbero (supra), the inevitable conclusion I have to reach on this issue is that the trial court, the High court of the Federal Capital Territory, Abuja has no jurisdiction to hear this case. The proper forum for the determination of the Respondent's claims is the Federal High Court.

Also, in *Ansa v. The Registered Trustees of the Presbyterian Church of Nigeria & 3 Ors*,³⁰ the plaintiff's/Respondents instituted an action at the High Court of Cross River State against the Central Bank of Nigeria, Inspector General of the Police and Commissioner of Police claiming a declaration that they are the rightful owners of a piece of land situate at *Otu* street, Calabar and are entitled to the statutory right of occupancy over the land among other reliefs. The Court of Appeal, per Omokri J.C.A held on whether the State High Court has jurisdiction in actions or proceedings instituted against the Federal Government or any of its agency, that;

From the claims of the Respondents at the court below, it is clear that it is for declaration and for injunction challenging the executive action of the Federal Government and its agencies, that is, the Central Bank of Nigeria and the Police... therefore, the suit comes within the purview of the Constitution (Suspension and Modification) Decree No. 107 of 1993 (now section 251 (1) CFRN 1999) ... it is manifestly clear that the court below was divested of the adjudicatory jurisdiction to entertain, hear and determine the suit...

On the contrary, the Court of Appeal in *Achebe v. Nwosu*,³¹ expressly held that “the Federal High Court, not being a State High Court or

³⁰ (2008) All FWLR (pt 405) 1681

³¹ (2003) 7NWLR (pt 818) 103 at 128 – 129, paras. H - G

an Area/Customary Court or court of equivalent jurisdiction, had no jurisdiction to hear the action for declaration of title to land and injunction consequently it acted without jurisdiction...”

Also, in *Omotosho v. Abdullahi*,³² the Hausa Community Development Association in a representative capacity instituted an action against the Federal Ministry of Works and Housing and the Attorney General of the Federation claiming a declaration that they are entitled to the statutory right of occupancy over a land lying at Phase II, Federal Low cost Scheme, Agege, Lagos state. The Defendant’s Notice of Preliminary objection was struck out for want of prosecution. The action proceeded to trial and judgment delivered in favour of the plaintiffs. The Appellants who were not party to the suit at the High Court appealed to the Court of Appeal pursuant to section 243(a) CFRN 1999. Dismissing the appeal, the Court of Appeal, per Salami J.C.A (as he then was) held in a well – considered judgment, on the import of section 230(1) (a) – (s) of the 1979 CFRN on the jurisdiction of the Federal High court, that:

Section 230(1)(a)-(s) CFRN 1979 (now section 251(1)(a)-(s) CFRN 1999) does not confer blanket jurisdiction to the effect that any action against the Federal Government or its agencies, notwithstanding the subject matter of the action, must be instituted or entertained and determined in the Federal High Court. The section does not confer jurisdiction on parties but on the subject matter of the suit...the mere making of the Federal Government or its agencies party in a process does not automatically vest jurisdiction in the Federal High Court...

It is submitted that the pronouncements of Court of Appeal per Salami J.C.A in *Omotosho v. Abdullahi* and the case of *Achebe v. Nwosu* (*supra*) represent the correct position of law and the same is completely shared by this writer. While the decisions per Abdullahi PCA (as he then was) in *Otiki v. Bajehson* and Omokri J.C.A. in *Ansa v. Registered Trustees. Presbyterian Church of Nigeria* are, with due respect to the learned Justices.

³² (2008) All FWLR (pt 402) 1114

bad law and would lead to manifest hardship and injustice on the part of some litigants. For example, while it is possible to have the presence of the Federal Government or its agencies in almost all the states of the federation, the same cannot be said of the Federal High Court.³³ This will not doubt result in the increase of burden of the cost of litigation on the part of litigants because it will compel those litigants in the states that do not have a Federal High Court to travel to other states that have such courts in search of justice, at greater risk, expenses and inconveniences, thereby jeopardizing the much publicized government policy of taking justice nearer to the people.³⁴

Those that advocate the jurisdiction of the Federal High Court respecting title to land where the Federal Government or its agency is a party anchored their submissions on the provisions of the preamble to the *LUA* and the Supreme Court decision on *NEPA v. Edeghero* among others.³⁵ It is argued that³⁶ the preamble to the *Land Use Act* is to the effect that all land comprised in the territory of each state (except land vested in the Federal Government or its agencies) is solely vested in the Governor of the state. And section 49(1) of the *LUA* provides that:

“Nothing in this Act shall affect any title to land, whether developed or undeveloped, held by the Federal Government or any agency of the Federal Government at the commencement of this Act and accordingly, any such land shall continue to vest in the Federal Government or the agency concerned”

It was submitted that the combined effect of the preamble to the *Land Use Act* and section 49(1) *LUA* reproduced above preclude the powers conferred on the Governor of a state under the *Land Use Act*, as such the powers are inapplicable and do not arise in respect of title to land held by the Federal Government or any of its agencies.³⁷ This position, it was further submitted that the above stated position was confirmed by the Court of Appeal

³³ In Anambra State for example there is no Federal High Court, in Delta State, Federal High Court was recently established.

³⁴ This view was canvassed by Mahmud Mohammed J.C.A.(as he then was) in *Ali v. Central Bank of Nigeria* (1997) 4 NWLR (pt 498) 192 - 205 paras. H - C

³⁵ See Azuonye, K. Counsel for the Respondent in *Engr. P. J. I. Aragba v. NCAT Zaria*, Unreported Suit No. CA/K/92/2010.

³⁶ *Ibid.*

³⁷ *Ibid.*

in the case of *Ona v. Attanda*³⁸ where the court, per Akinta J.C.A. held;

"It is clear from the objective of the Land Use Act as set out in its preamble and the specific provisions of section 49(1) of the same Act, the provisions of the said Act are not applicable to land held by the Federal Government or any agency of the Federal Government."

Besides that, since the apex court's decision in *NEPA v. Edegero* (*supra*), subsequent decisions following the case were to the effect that the Federal High Court has exclusive jurisdiction in matters where one of the parties is the Federal Government or an agency of the Federal Government.³⁹ Thus, in *Nwude v. Chairman Economic and Financial Crimes Commission (EFCC)*,⁴⁰ it was held that.

"... By virtue of section 251(1) of 1999 Constitution where the Federal Government of Nigeria or any of its agencies is a party to a suit, it is no longer necessary to examine the nature of relief's or claims sought in the case in order to determine the jurisdiction of the court. It is sufficient that once one of the parties, be it the plaintiff or the defendant, is Federal Government or any of its agencies, only the Federal High Court has jurisdiction to determine the matters."

It is our humble submission that the views expressed by their learned Justices and Azounye Esq above are, with due respect to them, incorrect and as such, represent a misconception of the law. To start with, it is not correct to say that once one of the parties to the suit is the Federal Government or any of its agencies, only the Federal High Court has the exclusive jurisdiction to determine the matter. This is because the Rules of court and plethora of judicial authorities have watered down or create exceptions to that rule.⁴¹

³⁸ (2000) 5 NWLR (pt 650) 244 at 267

³⁹ Azounye, K., *op. cit.*

⁴⁰ (2005) All FWLR (pt 276) 740 at 755 paras. F - G

⁴¹ For example, in an action for enforcement of fundamental rights under the *Fundamental Rights (Enforcement*

Thus, in *Paico Press and Books Ltd v. Central Bank of Nigeria*,⁴² the Court of Appeal held that;

“...It is a clear misconception of the law to say that whenever any Federal Government agency is involved in an action that the forum must be a Federal High Court without regard to the nature of the transaction...”

Besides, there is nowhere in the provisions of section 251 (1) of the Constitution and the case of *NEPA v. Edeghero (supra)* where issue of ‘Land’ is specifically stated as falling under the jurisdiction of the Federal High Court.⁴³ However, our courts have had occasion to pronounce expressly that;

*“...the Federal High Court, not being a State High Court or an Area/Customary Court or Court of equivalent jurisdiction, had no jurisdiction to hear the ... action for declaration of title to land and injunction consequently it acted without jurisdiction...”*⁴⁴

Furthermore, in *Adisa v. Oyinwola*,⁴⁵ the Supreme Court held on the exclusive jurisdiction of High Court over title to land in urban area that;

Procedure) Rules 2009 both the Federal High Court and High Court of the States have concurrent jurisdictions to hear and determine same regardless of whether or not any of the parties is a Federal Government or its agencies. See *Omosomwan & ors v. Chidozie* (1998) 9 NWLR (pt 566) 477. See also *Nigerian Navy v. Garrick* (2006) All FWLR (pt 315) 45. In *Onuorah v. KR.P.C. Ltd* (2005) 6 NWLR (pt 920) 393, the Supreme Court held on whether Federal High Court has jurisdiction over matters involving simple contracts, that since disputes founded on simple contracts are not among those included in the jurisdiction on the Federal High Court, that court had no jurisdiction to entertain the Appellant’s claims which are based on simple contract. In this case the Respondent Kaduna Refining and Petrochemical Co. Ltd., a subsidiary of Nigeria National Petroleum Corporation is Federal Government agency. Again, in *Shittu v. N.A.C.B & 2 ors* (2001) 10 NWLR (pt 721) 298, it was held that section 7(1) of the *Federal High Court Act* does not confer jurisdiction on the Federal High Court to try any civil cause or matter connected or pertaining to the revenue of the government of a State or any authority established by the government of a State. For further exceptions to the Rule in *NEPA v. Edeghero*, see Adedokun, K. A., op. cit., n. 23, pp. 194 - 198

⁴². (2001) 3 NWLR (pt 700) 347 at 371 paras. H, 372 para. B.

⁴³ Compare this with other specifically listed items such as; the revenue of the Federal Government, taxation, custom and excise, Bank etc.

⁴⁴ See the Court of Appeal decision in *Achebe v. Nwosu* (2003) 7 NWLR (pt 818) 103 at 128, 129., paras. H-G.

⁴⁵ (2000) 10 NWLR (pt 674) 166 at 202, paras. G-H; See also the case *Erhunmwunse v. Ehanire* (2003) 13 NWLR (pt 837) 353, at 370, paras A-B, where it was held that the High court has the exclusive jurisdiction to determine the issue of title to land in urban areas in respect of which a statutory right of occupancy has been issued...

“From the plain and unambiguous provisions of section 39(1) of the Land Use Act, 1978, they vest original and exclusive jurisdiction in the clearest possible terms on the state High Court in respect of all causes or matters relating to Land the subject of a statutory right of occupancy granted by state Government or deemed to have been granted by him under the Act.”

Following the Apex’s court decision in *Adisa v. Oyinwola* (*supra*), the Court of Appeal in *National Universities Commission v. Oluwo*,⁴⁶ held that,

“The High court as a superior Court of record and by virtue of section 236 of the 1979 Constitution (now section 272 of the 1999 Constitution) has general and unlimited power or jurisdiction to hear and determine questions relating to ownership of any Land per se...”

Now, even the much quoted part of the decision in *NEPA v. Edeghero* (*supra*) wherein the Supreme Court, per Ogundare JSC, stated that “ A state High court would no longer have jurisdiction in such matters, where the Federal Government or any of its agencies is a party notwithstanding the nature of the claim in the action”, is an obiter. The statement is not borne out of the lone issue formulated for determination in that case,⁴⁷ which was:

“whether the High Court of Niger State had jurisdiction to entertain and determine the Respondents’ claim in view of the provisions of section 230(1)(g),(r) and (s) of the Constitution of the FRN 1979 as amended by Decree No. 107 of 1993”

It could have been different if the issue put before the Supreme Court

⁴⁶ (2001) 3 NWLR (pt 699) 90 at 105-106, paras. G-A.

⁴⁷ See Adedokun, K. A., *op. cit.*, n 23, p.194

or determination was;

"whether a State High Court would have jurisdiction in any action where the Federal Government or any of its agencies is a party regardless of the subject matter of the suit".

The apex Court in *Clement v. Iwuanyanwu*,⁴⁸ held with respect to issues of *ratio decidendi* and *obiter dictum* as follows;

"A court lower in the judicial hierarchy is bound by the ratio decidendi of a High Court but not necessarily by the obiter dictum, for the doctrine of precedent to apply, the two cases must be close in facts... it will be dangerous to consider any pronouncement of any Court, even the Supreme Court, in vacuo and without reference to the peculiar fact of the cases in which those pronouncements were made as those facts formed the issues that were decided"

Also, in *Governor of Kogi State v. Yakubu*,⁴⁹ the apex court held that:
"..Any decision on the merit outside the issues formulated by the parties or the court is without jurisdiction and incompetent. "

It is our humble submission therefore, that the Supreme Court's statement made in *vacuo* in the case of *NEPA v. Edegbero* (*supra*) cannot be binding on the Federal High Court if the claim before the Federal High Court is that of declaration of title to land. It is equally pertinent to note that the subject matter in *NEPA v. Edegbero* was determination of the validity or otherwise of the termination of contract of service and not a declaration of title to land. The two can be distinguishable.

It is our further submission that in an action for declaration of title to land, what determines the jurisdiction of the court are not parties alone but

⁴⁸ (1989) 3 NWLR (pt 107) 53 at 154, paras. D-F

⁴⁹ (2001) 6 NWLR (pt 710) 528

the subject matter of the suit as well and the two must go hand in hand. Thus, in *NEPA v. Edeghero*, the Supreme Court, per Niki Tobi (JSC) (as he then was) held that;

“In construing section 230(1) of the 1999 Constitution (section 251 (1) of the 1999 Constitution) two important matters arise. They are the parties in the litigation as well as the subject matter of the litigation. The court must consider both...”

1.6 Conclusion

The attempt in this paper has been to examine the jurisdiction of the Federal High Court with respect to title to land. It is the view here that the exclusive jurisdiction of the Federal High Court as provided under section 251(1) *CFRN* 1999 does not extend to nor covers actions for declaration of title to land. This is so notwithstanding the blanket statement by the apex court in the case of *NEPA v. Edeghero* to the effect that regardless of the nature of the claim, once one of the parties to a suit is a Federal Government or its agency, then it is within the exclusive preserve of the Federal High Court and not any other court of co-ordinate or concurrent jurisdiction. The decision in *NEPA v. Edeghero* has succeeded in creating more problems than solving them. It has created untold hardship and difficulties on the part of litigants with little or no wherewithal to confront the might or resources of the Federal Government or its agencies.⁵⁰ This, with resultant conflicting decisions between and or among the lower courts. The rule in *NEPA v. Edeghero* is not absolute.⁵¹ It is not without qualifications. Besides, it was not arrived at in respect of dispute for declaration of title to land but on the determination of the validity or otherwise of the termination of contract of service. It is therefore necessary and a matter of urgency for the Supreme Court to review the case of *NEPA v. Edeghero* with respect to issues of title to land, for it has created unnecessary delays and difficulties in the lower courts.⁵²

⁵⁰ For example, in *Engr. Azagba v. NCAT & 1 Or* unreported suit No.KDH/Z/73/2007, the Nigeria College of Aviation of Technology briefed the law firm of Messrs Bayo Ojo (SAN) from Abuja. While the plaintiff briefed a local law firm in Zaria to handle their respective briefs. One could imagine the difficulties the litigants would face if there is no Division of the Federal High Court in Kaduna State where the cause of action arose.

⁵¹ See Adedokun, K.A., *op. cit.*

⁵² For example, the cases of *A.B.U., Zaria & 1 Or v. Bala Samaru & 9 Ors* and *Lawal Ibrahim & 15 Ors v. A.B.U., Zaria* have been pending since 2002 and 2003 respectively, while the cases of *Comfort Olukosi v. NCAT*, and *Engr Azagba v. NCAT* have been pending at the lower court since 2007 and not a single witness has been taken let alone been cross-examined.