

THE STATE AND FEDERAL HIGH COURTS' JURISDICTION OVER BANKER-CUSTOMER DISPUTE FROM THE PRISM OF DECIDED CASES: WHITHER THE MAGISTRATE COURT'S JURISDICTION

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Abstract

The Magistrate Court Law of most States in Nigeria, (including Oyo State) gives them jurisdiction over tortious acts of which detinue is one. Thus, where a bank customer, mistakenly makes an intra or interbank transfers to a wrong account whereof the money is withheld by the bank, and the withheld amount is within the monetary jurisdiction of the Magistrate Court, the customer, usually brings an action in detinue for the bank to release the money to him/her. This is usually done notwithstanding that both the Supreme Court of Nigeria (SCN) and Court of Appeal (CA) have held that the State and Federal High Courts' have concurrent jurisdiction over banker-customer disputes. This paper, adopts desk-based method in interrogating the jurisdiction of the Magistrate Court of Oyo State under the Oyo State Magistrate Court Law, 2011 vis-à-vis the jurisdiction of the State and Federal High Courts over banker-customer dispute based on decided cases to determine whether there is any conflict. It argues that the cases in which the SCN and CA have held that the State and Federal High Courts have and exercises concurrent jurisdiction over banker-customer disputes, were decided without reference to the jurisdiction of other equally competent courts including the Magistrate Court of Oyo State (and other States as well). It found that there is not jurisdictional conflict between these courts in relation to banker-customer disputes but symbiotic. The paper makes vital recommendations before concluding.

Keywords: Banker, Customer, Constitution, Jurisdiction, Magistrate Court, Nigeria

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1. INTRODUCTION

The Federal High Court was created as the Federal Revenue Court is a specialized court. Thus, the law is that courts are the creation of statute and the statute that creates a court, gives it jurisdiction to the extent that any matter not expressly included as the court's jurisdiction, is by necessary implication, taken away from the courts was held in *Gafar v. Govt. Kwara State* (2007) Section 251 of the Constitution of the Federal Republic of Nigeria, 1999 (hereinafter simply referred to as CFRN, 1999) invest the Federal High Court (herein referred to as FHC) with exclusive original civil jurisdiction over a wide range of disputes including banking matters. (Adekunle and Onokoya 2016, Pp. 184-204) On the other hand, section 272(1) of the CFRN, 1999 invests the State High Court (and by necessary implication, the High Court of the Federal Capital Territory, Abuja) with jurisdiction over certain matters too. One of the controversies that has arisen from the FHC's jurisdiction to banking matters is whether or not the FHC has and exercises exclusive original civil jurisdiction over banker-customer disputes as was held in *Access Bank Plc v. Okpu* (2021). Nigeria's appellate courts (i.e. the Court of Appeal and Supreme Court) in an avalanche of decisions such as *Diamond Bank Ltd. v. PIC Ltd.* (2009); *Union Bank of Nigeria Plc. v. Mr. N.M. Okpara Chimaeze* (2014); and *Union Bank of Nigeria Plc v. Alhaji Adams Ajabule & Anor* (2011) (which are examined in the subsequent part of this article) have resolved the quagmire *Interdrill Nigeria Ltd. & Anor v. United Bank For Africa Plc* (2017). The outcome of the resolution is that in relation to disputes bothering on banking administration and control, the FHC has and exercises exclusive original civil jurisdiction *Keystone Bank Ltd v. Dazz Motors Ltd.* [2021] but, in relation to disputes pertaining to or arising from banker-customer relationship, the FHC and State High Court (including the High Court of the Federal Capital Territory, Abuja by necessary implication), have and exercises concurrent original civil jurisdiction over such disputes *Nigeria Deposit Insurance Corporation v. Okem Enterprises Limited & Anor* [2004].

Meanwhile, Section 19(1) of the Oyo State Magistrate Court Law, 2000 provides for the civil jurisdiction of the court which includes tortious liability such as detinue. Under this jurisdiction, it has become a practice where a bank customer, mistakenly transfers money to the wrong bank account either of the same or different bank wherein the money is in the custody of the recipient bank and reversal is not made after a demand, to approach the Magistrate Court under the tort of detinue (or purely for a reversal order owing to wrongful transfer) for an order directing the bank to release the detained money. This practice has persisted and gained momentum even though the Court of Appeal and Supreme Court of Nigeria (CA and SCN) have held that the Federal High Court and State High Court have and exercise concurrent jurisdiction over banker-customer disputes.

Based on the foregoing, the issues arising are: whether or not the decisions of the CA and SCN to the effect that the Federal High Court and State High Court have and exercise concurrent original jurisdiction over banker-customer disputes affects the jurisdiction

bestowed on the Magistrate Court of Oyo State (and similar State Magistrate Court) to entertain banker-customer disputes hinged on the tort of detinue? Whether or not the jurisdiction invested on the High Court and reverberated by these decisions of the CA and SCN is exclusive thereby sequestering all other courts (including the Oyo State Magistrate Court) of jurisdiction? What is the utilitarianism of Magistrate Courts being seised of small money claims in banker-customer disputes about access to court and quick dispensation of justice? These questions form the crux of this article.

By structure, the article is divided into five sections. Section one which includes this part, contains the introduction. Section two is an exegesis of the concept of jurisdiction under Nigerian law. Section three analytically discusses the stance of the CA and SCN on the jurisdiction of the Federal High Court and State High Court on banker-customer disputes explicating the extent of the applicability/bindingness of these decisions. Section four answers the question of whether or not the position taken by the CA and the SCN affects the jurisdiction bequeathed on the Magistrate Court of Oyo State by Section 19(1) of the Oyo State Magistrate Court Law, 2000 and matters arising. Section five contains the conclusion and recommendations. This article adopts a doctrinal method through analytical interrogation of the question raised. It relies on primary data such as the Constitution of the Federal Republic of Nigeria, 1999, Federal High Court Act, 1973, Oyo State Magistrate Court Law, 2000, Case law, and secondary data such as articles in learned journals, textbooks, and online materials. The case law from the Court of Appeal and Supreme Court of Nigeria were critically analyzed with the aim of showing that the jurisdiction conferred on the State High Court and the Federal High Court on banker-customer relationship, is not exclusive, but extends to other courts such as the Magistrate Court. These data were subjected to rigorous context and jurisprudential analysis. The importance of these findings is that the Magistrate Court is a grassroots court which access is easier and less expensive unlike the State and Federal High Courts that although available, are limited in terms of number, and the vast majority of litigants with small claims, may not easily have access to especially bearing in mind the cost of retaining a legal practitioner for such courts.

2. EXPLICATING THE CONCEPT OF JURISDICTION OF COURT UNDER NIGERIAN LAW

Jurisdiction of the court is a fundamental principle in adjudication. The Supreme Court of Nigeria (SCN) in *Egharevba v Eribothe* (2010) while defining jurisdiction and its nuances held as follows:

Jurisdiction is a term of comprehensive import embracing every kind of judicial action. It is the power of a court to decide a matter in controversy and presupposes the existence of a duly constituted court with control over the subject matter and the parties. Jurisdiction also defines the power of the court to inquire

into facts, apply the law, make decisions, and declare judgments. It is the legal right by which Judges exercise their authority. Jurisdiction is equal to the court what a door is to a house. This is why the question of a court's jurisdiction is called a threshold issue because it is at the threshold of the temple of justice. Jurisdiction is a radical and fundamental question of competence, for if the court has no jurisdiction to hear the case, the proceedings are and remain a nullity however well conducted and brilliantly decided they might have been. A defect in competence is not extrinsic but rather intrinsic to adjudication.

Thus, (Akeredolu and Eyongndi, 2019, Pp. 3-4) argued that the foregoing position of the court is instructive as it gives credence to the position earlier stated by the SCN in the *locus classicus* case of *Madukolu v Nkemdilim* (1962) where the indicia for determining the competence of the court were first laid down. The SCN stated the law as follows:

A court is competent when it is properly constituted as regards the numbers and qualifications of the members of the bench, and no member is disqualified for one reason or another; 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 the case comes before the court initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction. The court further held that any defect in competence is fatal, for the proceedings are a nullity however well conducted and decided; the defect is extrinsic to the adjudication.

From the foregoing, a court is said to have the requisite jurisdiction to adjudicate over a matter when it is composed of the prescribed number of judges/justices and their qualifications is intact. Moreso, the subject matter must be within its express adjudicatory purview; all condition(s) required to be fulfilled before the institution of the case had been met and due process of the law had been strictly adhered to. In *Attorney General of Ogun State v Coker* (2002), the SCN held that failure to meet any of these requirements will render the court incompetent to adjudicate over the dispute, and any decision reached, will be a nullity.

Jurisdiction is germane to adjudication (Ukeje 2006, 249-250). Jurisdiction of a court is an intrinsic matter that due to its importance, can be raised at any stage of the proceedings even on appeal at the Supreme Court for the first time *National Bank of Nigeria Ltd. & Anor v John Akinkunmi Shoyoye & Anor* (1977). According to (Eyongndi and Onu 2019, Pp. 243-270) the law is that once the issue of jurisdiction of a court is raised howsoever, the court must keep at abeyance further proceedings and determine the

challenge one way or the other as was decided in *Felix Onuora v Kaduna Refining and Petrochemical Co. Ltd* (2005). The rationale is that irrespective of how well the proceedings were conducted if they were conducted in want of jurisdiction, the whole exercise would be one in futility *Ibori v Ogboru* (2005). This position of the law is to guide against fruitless adjudication that this rule exists to save the precious scarce time of the court as well as resources of litigants and the overall interest of justice. The jurisdiction of a court could be original or appellate. Original deals with matters that the court can entertain as first instance while appellate deals with matters emanating from inferior courts which the court can entertain on appeal (Obi and Ochonogor 2020, Pp. 49-63). It could also be territorial or monetary. Territorial jurisdiction refers to the territorial area within which disputes emanating thereof could be entertained by a court while monetary pertains to the amount of money issued or claimed upon which a court can adjudicate. The jurisdiction of a court could also be supervisory which gives the court the power to exercise a supervisory role over others. For instance, based on hierarchy, the Magistrate/Area Courts are inferior to the State High Courts. As a result, State High Courts exercise supervisory jurisdiction over these inferior courts.

In Nigeria, the doctrine of precedent is recognized and practiced. By this doctrine, decisions of superior courts, are binding over inferior courts. By section 6(6) (5) of the Constitution of the Federal Republic of Nigeria, 1999, the hierarchy of courts in Nigeria from the top to the least follows from the Supreme Court, the Court of Appeal, the High Court, Federal High Court, State High Court, High Court of Federal Capital Territory, Abuja, the National Industrial Court of Nigeria, the Customary Court of Appeal of a State, the Sharia court of Appeal of a State, the Customary Court of Appeal of the Federal Capital Territory, Abuja, the Sharia Court of Appeal of the Federal Capital Territory, Abuja, the Magistrate Court/Area Court. The point must be noted that all the High Courts, (i.e., Federal High Court, State High Court, High Court of Federal Capital Territory, Abuja, the National Industrial Court of Nigeria) are courts of coordinate jurisdiction, i.e. they rank the same on the judicial hierarchy. As a result, none of these courts can sit on appeal over the decision of another, and the decision of one, is not binding on the other. The National Industrial Court of Nigeria (NICN), Customary Court of Appeal of a State, the Sharia court of Appeal of a State, the Customary Court of Appeal of the Federal Capital Territory, Abuja, the Sharia Court of Appeal of the Federal Capital Territory, Abuja are specialized courts. The NICN has and exercises exclusive original civil jurisdiction over labor and ancillary matters. Appeals from the courts beneath the Court of Appeal, lie to the Court of Appeal either as of right or with the leave of the court first sought or obtained.

Jurisdiction is germane that it challenge could be raised at any stage of the proceedings and even at the Supreme Court for the first time. Thus, where the jurisdiction of a court is challenged, the only prudent option the court can take is to pause further

proceedings and decide the challenge one way or the other. The reason is that any judicial adjudication done in want of jurisdiction is an exercise in futility. Where a court has jurisdiction to entertain a case filed before it, that jurisdiction must subsist throughout the hearing of the case. In determining whether a court has jurisdiction over a suit filed before it, recourse is usually had to the statement of claims of the claimant (*Yakubu v. Governor of Kogi State* 1997). Thus, once a court has examined its jurisdiction and finds that it lacks the requisite jurisdiction, the proper order for it to make is an order striking out the suit and not dismissal to give the party where possible, the opportunity to remedy the defect and present the matter before the appropriate court as was held in *Babington-Ashaye v. E. M. A. Gen-Ent. (Nig.) Ltd* (2012). Thus (Eyongndi, Onu & Ebiye 2022, Pp. 339-340) have posited that jurisdiction is a threshold issue and it is to adjudicate what blood is the body of living things.

3. THE STANCE OF THE CA AND SCN JURISDICTION OVER BANKER-CUSTOMER DISPUTES

The relationship subsisting between a banker and customer is mainly contractual and that of the debtor and creditor *Dike v Key Construction Ltd* (2017). The controversy has been the interpretation of sections 251(d) and 272(1) of the CFRN, 1999 that relates to the jurisdictions of the Federal High Court and State High Court. These sections respectively provide that:

Notwithstanding anything to the contrary contained in this constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters connected with or about banking, banks, other financial institutions, including any action between one bank and another, any action by or against the Central Bank of Nigeria arising from banking, foreign exchange, coinage, legal tender, bills of exchange, letters of credit, promissory notes and other fiscal measures: Provided that this paragraph shall not apply to any dispute between an individual customer and his bank in respect of transactions between the individual customer and the bank.

Subject to the provisions of section 251 and other provisions of this constitution, the High Court of a State shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings

involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offense committed by any person.

It is the opposite to note that what is known today as the Federal High Court (FHC) was established by Decree No. 13 of 1973 as the Federal Revenue Court. The name Federal High Court is a creation of 228(1) and 230 (2) of the Constitution of the Federal Republic of Nigeria, 1979. Gleaning from its original name, the FHC is a specialized court meant to handle matters dealing with the revenue of the federal Government but whose jurisdictional scope, was enhanced and enlarged under both the 1979 and 1999 Constitutions. Thus, Section 251(1) of the CFRN, 1999 invests the FHC with exclusive original civil jurisdiction over a broad spectrum of matters. One of the matters is banking as contained in section 251(1) (d). Thus, controversy has arisen as to the interpretative import of the section transmogrifying the question of whether the FHC has exclusive original civil jurisdiction over banking matters to banker-customer disputes. This question arose about the jurisdiction conferred on the SHC under section 272(1) of the CFRN, 1999. Thus, in *De Lluch v. S.B.N. Ltd* (2003) the Court of Appeal had the opportunity to answer the vexed question and concluded that:

The purport of the proviso to section 230(1)(d) of the 1979 Constitution as amended by Constitution (Suspension and Modification) Decree No. 107 of 1993, which is in pari materia with section 251(1)(d) of the 1999 Constitution is that the Federal High Court does not have exclusive jurisdiction over matters listed in the section if the dispute in respect of the matters is between an individual customer and his bank; and that both the Federal High Court and a State High Court enjoy concurrent jurisdiction over such disputes. In the instant case, the dispute between the parties arose from a customer/banker relationship. In this circumstance, both the Federal High Court and the State High Court had concurrent jurisdiction over the same.

The foregoing position had been reached by the Supreme Court when it had to answer the same question in *Nigeria Deposit Insurance Corporation v Okem Enterprises Limited & Anor.* (2004) The Supreme Court of Nigeria per Kalgo JSC (as he then was) held as follows:

It will be seen clearly that Section 251(1) (d) confers exclusive jurisdiction on the Federal High Court in specified matters notwithstanding Section 272(1). What this means is that the jurisdiction conferred upon and exercised by the State High Court hitherto regarding those specified matters has been removed. The proviso to Section 251(1) (d) however exempts any dispute between an individual Customer and his Bank from the exclusive jurisdiction of the Federal High Court. What this means is this. The proviso has done two

things, First, the jurisdiction of the High Court in transactions involving an individual customer and his Bank has been preserved. In the second place, although the Federal High Court has jurisdiction in such disputes, it is not to exclude the State High Court. In other words, both Courts have concurrent jurisdiction, That is to say under the proviso to Section 251(1) (d) of the Constitution, the Federal High Court has concurrent jurisdiction with the State High Court in transactions involving an individual customer and his Bank

4. ANY DISPUTE BETWEEN THE CA AND SCN DECISIONS AND SECTION 19(1) OF THE OYO STATE MAGISTRATE COURT LAW?

From the preceding section, it has been established from the decisions of the Court of Appeal and Supreme Court of Nigeria examined that, the FHC and SHC under the CFRN, 1999 have and exercise concurrent jurisdiction over banker-customer disputes. The issue this raises is that: aside from these courts (i.e. the FHC and SHA) does any other court in Nigeria have the jurisdiction to entertain disputes arising from or about banker-customer relationships? Is the jurisdiction vested in the Magistrate Court over torts that have made it entertain a variant of banker-customer dispute in compliance with this decision or not? This section of the article addresses these questions.

Section 19(1) of the Magistrate Court Law of Oyo State, 2000 provides that subject to the provisions of this, or any other law or Act, a Chief Magistrate shall have and exercise jurisdiction in civil cases: a. In all personal suits, whether arising from contract, or tort or from both where the debt or damage claimed, whether as balance claimed or otherwise, is not more than Thirty thousand Naira in the case of a Chief Magistrate Grade I and Twenty-five Thousand Naira in the case of Chief Magistrate Grade II. While Section 2 of the Magistrate Courts (Increase in Jurisdiction of Magistrates) Order 2022 provides as follows: In all proceedings in respect of which jurisdiction has been conferred on them within their various cadre be it under Part 4 Section 19 of the Magistrate Court No. 82, Volume III laws of Oyo State of Nigeria (2000), or by any other conferring jurisdiction generally on Magistrates, actions may be instituted in the Court where the amount claimed or the value of the subject matter of the case may be or are as follows:

Chief Magistrate I - ₦10, 000,000.00

Chief Magistrate II - ₦9, 000,000.00

Senior Magistrate Grade I - ₦8, 000,000.00

Senior Magistrate Grade II - ₦7, 000,000.00

Magistrate Grade I - ~~₦~~6, 000,000.00

Magistrate Grade I - ~~₦~~5, 000,000.0

From the foregoing provisions of the Magistrate Court Law of Oyo State, 2000 and the Magistrate Courts (Increase in Jurisdiction of Magistrates) Order 2022, the Magistrate Court of Oyo State and other states with similar provisions, has jurisdiction to hear civil matters which are personal suits bothering on contract or tort or both where the debt damage being claimed is based on the amount/monetary jurisdiction of the court. Whenever claimants file suit to recover money in the possession of a bank especially where extra-judicial appeasement has been unsuccessfully made, such actions are hinged on the tort of detinue which the court has vires over *Julius Berger Nigeria Plc v. Omogui* (2001). Once the tort of detinue is established, unless and until the possession of the detained chattel is given up, the cause of action subsists and since jurisdiction over torts has been lawfully vested in the Magistrate Court over the same, the court is competent to be seized of the matter and to adjudicate thereof *Ordia v. Piedmont Nig. Ltd* (1995). It is the law that an action in tort could be successfully maintained against any person natural or artificial.

From the foregoing, it is apposite to note that the decisions of the Court of Appeal and Supreme Court to the effect that banker-customer disputes under sections 251(1) (d) and 272(1) of the CFRN, 1999 relate only to adjudications dealing with the question of between these courts (i.e. the Federal High Court and State High Court) which has jurisdiction over the subject. These decisions do not extend to all courts that could exercise jurisdiction over the matter. The bone of contention was not which court has exclusive jurisdiction but it was strictly between these two courts. In resolving this issue, the appellate courts concluded that neither the Federal High Court nor the State High Court has exclusive original jurisdiction but that so far as the question is concerned, both courts have and exercise concurrent jurisdiction. The reason for this conclusion is that the phraseology of the Constitution conferring jurisdiction on both courts is not framed in exclusivity but concurrence. Because the State High Court and Federal High Courts are courts of coordinated jurisdiction and access to court requires the availability of several avenues for ventilation of legal grievances, coming to the conclusion that both courts have and exercise concurrent jurisdiction is welcomed. It is trite that a case is a precedent only about the matter is decided, *Ecobank (Nig.) Ltd. v. Anchorage Leisures Ltd & 2ors* (2018) and no two cases are the same no matter their similarity *Union Bank of Nigeria Plc. v. Olori Motors & Co Ltd & 2 ors.* (1988). Thus, the decisions in cases like *Nigeria Deposit Insurance Corporation v. Okem Enterprises Limited & Anor.* (2004), *De Lluch v. S.B.N. Ltd.* (2004) *First City Monument Bank v. Nigeria Deposit Insurance Company* (1999) cannot be construed as sequestrating the jurisdiction of any other court in Nigeria to entertain banker-customer relationship. To argue otherwise is to push to a ridicule extreme, the absurd especially when

the issue adumbrated and decided upon was which court, between the two has jurisdiction. The irresistible and logical conclusion from the foregoing is that the position of the law that the FHC and SHC have and exercise concurrent jurisdiction over banker-customer disputes does not mean that no other court in Nigeria, is competent to entertain such dispute. Hence, these decisions do not sequester the jurisdiction conferred on the Oyo State Magistrate Court under section 19(1) of the Magistrate Court Law of Oyo State and Magistrate Courts (Increase in Jurisdiction of Magistrates) Order 2022, the Magistrate Court of Oyo State. The only limitation placed on the jurisdiction of the Magistrate Court to entertain banker-customer disputes is the monetary jurisdiction specified under the law. All these courts, (i.e. the Federal High Court, State High Court, and Magistrate Court) are competent to entertain banker-customer disputes. While the monetary jurisdictions of the former is unlimited, that of the latter court is strictly and expressly limited.

It is worth noting that the Magistrate Court is somewhat of a grassroots court. Aside from being a court of summary jurisdiction, its special procedure and less rigidity in its adjudicatory practice and procedure make it most suitable for the adjudication of petty banker-customer claims. The dockets of the High Courts (whether State or Federal), are enormously overcrowded requiring decongesting. It will be calamitous to add to their already filled dockets seemingly small and financially inconsequential claims that are being adjudicated at the Magistrate Court. Such small claims require expeditious adjudication which is most impracticable at the High Court. As such, a litigant should be encouraged to take advantage of the respite found at the Magistrate Court rather than made to face to hurdle of litigating where to litigate.

5. CONCLUSION AND RECOMMENDATIONS

Extrapolating from the analysis above, it is crystal clear that the jurisdiction conferred on the Federal High Court and State High Court by the appellate court in their interpretation of sections 251(1) (d) and 272(1) of the CFRN, 1999 over banker-customer disputes as a court of first instance is concurrent. Thus, despite the originality of the jurisdiction, its concurrence does not make it exclusive to any other court in Nigeria which is statutorily empowered to be seised from such dispute. Thus, it is within this prism that other courts, subject to the law empowering them, can and are entertaining banker-customer disputes. One of these courts is the Magistrate Court of Oyo State which is empowered by its enabling law to entertain civil actions bothering on torts of which detinue is one. Thus, the act of customers of banks whose money is withheld by a bank despite request of same approaching the Magistrate Court under section 19(1) of the Oyo State Magistrate Court Law, 2000 does not by any legal logic impede on the jurisdiction of either the FHC or SHC based on the decisions of the CA and SC.

Thus, if the Magistrate Court is faced with an objection to its jurisdiction to entertain banker-customer disputes rooted in the tort of detinue or any other civil suit for that matter, once the amount involved is within the court's monetary jurisdiction, such objection meant to hoodwink the court should be discountenance as it lacks merit howsoever.

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