

*Matters involving Federal Government or its agencies  
Exclusive Jurisdiction of the Federal High Court  
Effect of proviso to Section 251(1) of the Constitution*

IN SUPREME COURT OF NIGERIA  
HOLDEN AT ABUJA  
ON FRIDAY THE 13<sup>TH</sup> DAY OF JANUARY 2013

BEFORE THEIR LORDSHIPS

IBRAHIM TANKO MUHAMMAD  
JOHN AFOLABI FABIYI  
MARY UKAEGO PETER-ODILI  
OLUKAYODE ARIWOOLA  
STANLEY SHENKO ALAGOA : LEAD JUDGMENT

RE: APPEAL NO. SC. 92/2004

BETWEEN

CHIEF M.A. INEGBEDION ... .. APPELLANT  
AND

1. DR. SELO-OJEMEN  
2. OTIBHOR OKHAE TEACHING HOSPITAL, IRRUA ...RESPONDENT

*“The effect of paragraphs (p), (q) and (r) of Section 251(1) of the 1999 Constitution is to vest exclusive jurisdiction on the Federal High Court over all civil causes and matters in which the Federal Government or any of its agencies is a party. See NEPA V. EDEGBERO (2002) 103 LRCN 2280 at 2281-2282. The proviso to section 251(1) of the 1999 Constitution does not in any way detract from the exclusive jurisdiction conferred on the Federal High Court by virtue of Section 251 (1) (p) and (q) and (r)”*

The above was the holding of the Supreme Court, per Alagoa JSC on 18<sup>th</sup> January, 2013.

The appellant had gone to the 2<sup>nd</sup> respondent’s hospital for purpose of having an HIV/AIDS test conducted on him and his estranged wife. The test was carried out by the 1<sup>st</sup> respondent, a medical doctor in the employment of the 1<sup>st</sup> respondent and who

informed the appellant that he was HIV positive. The appellant was advised to come back to the 2<sup>nd</sup> respondent's hospital in three months time for a confirmation of the first test. The appellant went to another hospital, St Camillus Hospital Uromi, Edo State, for another HIV test, where he was advised that he was in fact HIV negative. Subsequent to the above, the confirmatory test after 3 months at the 2<sup>nd</sup> respondent hospital also revealed that the appellant was HIV negative.

Dissatisfied with the above state of affairs, the appellant commenced an action against the respondents at the High Court of Edo State. He contended that the 1<sup>st</sup> respondent falsely and maliciously wrote and/or published information about the appellant imputing HIV/AIDS to him, which caused the appellant incalculable damage as well as injury to his reputation, his family and professional life. He further contended that the 2<sup>nd</sup> respondent failed in its duty to provide the following: (a) competent staff; (b) adequate and efficient plant and equipment and (c) a safe, efficient and effective system of work. He argued that the 1<sup>st</sup> respondent was an agent of the 2<sup>nd</sup> respondent and therefore the 2<sup>nd</sup> respondent was vicariously liable for all the acts and omissions of the 1<sup>st</sup> respondent.

The respondents filed a memorandum of appearance in the matter. By an application dated 21<sup>st</sup> June 2001 brought pursuant to Order 8 Rules 1 and 2 of the High Court of Bendel State (Civil Procedure) Rules 1988, the respondents sought "an order striking out this suit on the ground that the state high court lacked the jurisdiction to entertain same". They posited that in light of the fact that the 2<sup>nd</sup> respondent was an agency of the Federal Government, the suit was not maintainable in the State High Court but at the Federal High Court which has exclusive jurisdiction on the subject matter. The trial judge, Amaize J., upheld the submission of the respondent and struck out the suit for lack of jurisdiction. An appeal to the Court of Appeal by the appellant was dismissed.

The appellant further appealed to the Supreme Court. At the Supreme Court, the issue before the court was "*Whether the lower court was right in holding that in view of S. 251(1) (p)(q) and (r) of the Constitution of the Federal Republic of Nigeria 1999, the trial court lacked jurisdiction to entertain the suit.*"

The respondent submitted that the appellant's claim fell within the purview of section 251(1), (p). The said S. 251(1) provides 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 - (p) the administration or the management and control of the Federal Government or any its agencies*

The respondents argued that although the 2<sup>nd</sup> respondent had filed an affidavit in support of the application deposing to the fact that it is a Federal Government agency, the appellant on the other hand never filed a counter affidavit, let alone counter the deposition of the 2<sup>nd</sup> respondent. The respondents contended that the appellants simply argued that the combined effect of section 251 of the 1999 Constitution works hardship on the ordinary person who cannot afford access to the Federal High Court and so, he argued, the intendment of the proviso was to obviate this hardship and enhance the ordinary person's access to the court. The respondents submitted that the appellant is deemed to have admitted the fact that the 2<sup>nd</sup> respondent is an agency of the Federal Government. The respondents relied on *AGU V NICON INSURANCE PLC (2000) 6 WRN 57 AT 63; N.S.C V. U.W.L (2000) 22 W.R.N. 54 AT 63* among others

On this point, the Supreme Court quoted and relied on the dictum of Mohammed JSC in *ADEYINKA ABOSEDE BADEJO V. FEDERAL MINISTRY OF HEALTH (1996) 8 NWLR (PART 464) 15* as follows

*"It is an elementary principle of law that facts contained in an affidavit form part of documentary evidence before the court. Where an affidavit is filed deposing to certain facts and the other party does not file a counter affidavit, the facts deposed to in the affidavit would be deemed unchallenged and undisputed"*

In its judgment, the Supreme Court observed that a careful perusal of the appellant's submissions while arguing the respondents motion for striking out shows that no references were made or arguments canvassed by the appellant that the 2<sup>nd</sup> respondent was not an agency of the Federal Government. The court therefore held that the 2<sup>nd</sup> respondent was indeed a Federal Government Agency. The following cases were also referred to – *NWOKOLO OLIKOR & ANOR V OFILI OKONKWO & ORS (1970) ALL NLR 89; MOJEKWU V IWUCHUKWU (2005) 11 WRN 1; AMAMCHUKWU OBIEKWE & ANOR (1989) 1 NWLR (PART 99) 556 AT 580.*

Having settled the question as to whether the 2<sup>nd</sup> respondent was a Federal Government agency, the Supreme Court proceeded to determine whether the appellant's claim

relates to the administration or management and control of the 2<sup>nd</sup> respondent. The claims as can be deciphered from the appellant's statement of claim is for exemplary damages for defamation, negligence and breach of Doctor/Patient confidence. These claims, the Supreme Court held, undoubtedly relates to the administration or management of the 2<sup>nd</sup> respondent. Therefore, the trial judge was right that it was the Federal High Court that had exclusive jurisdiction on the subject matter of the suit.

Appeal dismissed.

**Counsel:**

Chief Micheal Inegbedion Esq., appears in person

E.I. Esene with Onyebuchi Ifeanyi for the respondents