

Jurisprudence of Jurisdiction: Effect of Agreements Concerning Jurisdiction*

Abstract

The term *jurisdiction* denotes the constitutional or statutory power and authority donated to a court or other judicial tribunal by which it is authorised to take cognisance of and decide issues presented to it in a formal manner for resolution. Jurisdiction in its plenitude requires concurrence of subject-matter jurisdiction with personal jurisdiction. The jurisdiction of a court is only such as is vested by a constitution or statute, and the consent or error of parties is incompetent to vest subject matter jurisdiction where none exists. From the perspective of the current continual wrongful assumption of jurisdiction by Nigerian courts, this paper presented an in-depth analysis of the jurisprudence of jurisdiction as regards the effect of agreements concerning jurisdiction. Having defined and explained the connotations of jurisdiction as a term, the paper explained that court having jurisdiction rightly bestowed, has a right to decide all issues that arise in an adjudication. In this regard, a presumption of regularity attaches to its decision, and whether its decisions are correct or not, its judgment unless reversed, binds all other tribunals. The paper then explained the rule that requires a court seised of jurisdiction as possessing not only the right and power or authority, but also the duty to exercise that jurisdiction. The paper then brought out the qualifications to this rule, and highlighted the circumstances where a court, though possessing jurisdiction, may due to considerations of public policy, decline to exercise the jurisdiction. In analysing and distinguishing subject-matter jurisdiction from jurisdiction over parties, the paper established that parties by their conduct, consent, estoppel or laches are unable to vest or confer subject matter jurisdiction on a court; however, personal jurisdiction over the parties or any of them may arise from voluntary submission, by agreement or by consent. This led to inquiry into the effect of agreements purporting to exclude adjudication by the courts. The paper found that the general rule is that no person, whether by contract or otherwise, may divest the court of the jurisdiction which the legislature vested on it. This rule connotes that parties cannot by contract oust the courts of their jurisdiction, but may postpone a right of action till a third person had decided on the difference between the parties to the contract. On the effect of agreements conferring exclusive jurisdiction on certain courts, the paper found that though as a general principle, parties may not confer jurisdiction on a court where statute has not conferred any, but then, if there is a foreign jurisdiction clause in a contract, then *prima facie*, the Nigerian courts will give effect to the foreign jurisdiction clause by staying proceedings instituted in Nigeria in breach of the foreign jurisdiction clause. The paper then concluded.

Keywords

Foreign jurisdiction clause; *Forum non Conveniens*; Jurisdiction; Personal jurisdiction; Scott v. Avery clause; Subject-matter jurisdiction

1. Introduction

For a long time, it was assumed within legal circles that issues pertaining the possession, assumption and exercise of jurisdiction by courts had been settled to such an extent as to be incapable of misinterpretation. That was until the case between *A-G., Kaduna State & others v. A-G., Federation & others*.¹ In that case, the Supreme Court stood every legal principle pertaining to jurisdiction on its head. In the case the issue for determination was basically a challenge to the power vested in the Central Bank of Nigeria by the Central Bank of Nigeria

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¹ SC/CV/162/2023, judgment delivered on Friday March 3, 2023

Act, 2007, to call in any of its notes and issue new ones. In this regard, the Central Bank of Nigeria, by virtue of its establishment Act is independent in the exercise of its powers under the Central Bank of Nigeria Act. Clearly, performance by the Central Bank of its statutory functions does not constitute a dispute between the Federation and the States, and does not disclose any dispute that invokes the original jurisdiction of the Supreme Court. Most importantly, in order to aggrandise jurisdiction in the matter, the Supreme Court overlooked the non-joinder of the Central Bank as a party to the action. Then again, the case of *A-G., Federation v. A-G., Abia State & others*², in an action commenced by the Attorney-General of the Federation, the Supreme Court assumed original jurisdiction to order the disposition of funds accruing to local government councils, notwithstanding the absence of a dispute between the local government councils and the state governments, and that the Attorney-General of the Federation did not commence the action on the instruction or with the permission of the local government councils or on their behalf, and that the local government councils were not parties to the action, and that the action did not disclose a dispute between the federal government and the government of the states so as to predicate the original jurisdiction of the Supreme Court. With these as a background, this paper sets out to iterate basic principles of jurisdiction from the perspective of the basis of jurisdiction and the effect of agreements regarding jurisdiction. The section next will define and explain the concept of jurisdiction and lay out the basic principles regulating the acquisition and exercise of jurisdiction. Section 3 will explain the basic concept of the duty of a tribunal in possession of jurisdiction to exercise the jurisdiction. Section 4 will elucidate the disparate concepts of jurisdiction over parties and jurisdiction over subject matter, and distinguish the principles applicable to each. Section 5 will explain the legality and effect of agreements purporting to exclude the jurisdiction of courts, while section 6 will detail the lawfulness and effect of agreements purporting to vest exclusive jurisdiction on specific courts. The paper will then conclude.

2. General Connotations and Denotations of ‘Jurisdiction’

Jurisdiction is the authority which a court has to decide matters which are litigated before it, or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the court is constituted and may be extended or restricted by similar means. If no restriction is imposed, the jurisdiction is said to be unlimited. A limitation may be as to either the kind and nature of the actions and matters of which the particular court has cognisance or as to area over which the jurisdiction extends or it may partake of both of these characteristics³. Territorial jurisdiction of a court is confined to a bounded space including all those present therein and events which occur therein. Subject-matter jurisdiction is an authority over the subject of the legal questions involved in the case. For jurisdiction to be complete, a court must have a concurrence of subject-matter jurisdiction with either personal jurisdiction as may have been

² SC/CV/343/2024, judgment delivered on Thursday July 11, 2024

³ *Ejike v. Ifeadi*, [1990] 4 NWLR Part 142, 89, [quoting from Halsbury’s Laws of England, 4th edition, volume 10, para. 715, 323]; in *A-G, Lagos State v. Dosunmu* [1989] 3 NWLR Part 111, 552, jurisdiction is further defined as in its narrow sense, the limits which are imposed upon the power of a validly constituted court to hear and determine issues between persons seeking to avail themselves of its process by reference to the subject matter of the issue; or the persons between whom the issue is joined; or the kind of relief sought. In its wider sense, it comprises the way in which the court will exercise the power to hear and determine the issues which fall within its jurisdiction or as to the circumstances in which it will grant a particular kind of relief which it has jurisdiction to grant, including its settled practice to refuse to exercise such powers or to grant such relief in particular circumstances. See also *National Electoral Commission v. Izuogu*, [1993] 2 NWLR Part 275, 270

stated in the constitution or territorial jurisdiction as stated in the rules of court⁴. Jurisdiction of courts is purely a question of power, the power to create or affect legal interests which will be recognised as valid elsewhere. A limit is put on this power by the requisite clauses of the constitution. The judicial powers of the Federation and the judicial powers of States are vested in the courts provided for in the Constitution being courts established for the Federation and the States respectively. These powers extend, notwithstanding anything to the contrary in the constitution, to all inherent powers and sanctions of a court of law.⁵ Jurisdiction is the authority to hear and determine a cause; it is, in essence, power to adjudicate over an action; if a court lacks jurisdiction over an action, it lacks power to act with respect thereto⁶. Whenever the question of jurisdiction of any court is raised, it is a question that touches the competence of the court that is raised. It does not raise any issue touching the rights of the parties in the subject matter of the litigation or dispute. In our system of jurisprudence, only a court of competent jurisdiction can adjudicate on issues touching the rights of the parties⁷.

Both competence and jurisdiction are matters of statute. Jurisdiction delimits areas, extent and subject matter which a court may be seised. Competence, however, relates more to the proper constitution of the court, as to quorum and the qualification of its members, and whether or not the action is initiated by due process⁸. The power and authority of a court to proceed to hear and determine the particular case before it is established when - the Court has cognisance of the class of cases involved; proper parties are present before the Court; the point to be decided is within the powers of the Court; the Court is properly constituted as regards numbers and qualifications of members of the bench, and no member is disqualified; the subject matter of the case is within the 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 the fulfilment of any condition precedent to the exercise of jurisdiction.⁹ When a court has jurisdiction, it has a right to decide every question that occurs in a case and whether its decisions are correct or not, its judgment until reversed is regarded as binding on every other court¹⁰. This presumption of regularity assumes the exercise of a valid jurisdiction and does not arise in the absence of jurisdiction¹¹. Where a tribunal has decided on a matter within its regular jurisdiction, the decision must be presumed proper and is binding until it can be regularly reversed by a superior authority and cannot be affected, nor the rights of persons dependent on it, impaired by any collateral proceedings¹². This rule that every act of a court of competent jurisdiction shall be presumed to have been rightly done till the contrary appears, applies as well to every judgment or decree rendered in various stages of the proceedings before the court as to the adjudication that the plaintiff has a right of action¹³. An order made by a court of competent jurisdiction even in ignorance of some essential fact which went to the validity of the order is not void or a nullity and the order

⁴ *Eastern Bulkem Company Ltd v. Amobi*, [2010] 4 NWLR Part 1184, 381

⁵ s. 6 CFRN, 1999

⁶ *Rudick v. Laird*, 90 S Ct 244, 396 U S 918; *Commissioner for Local Government, etc., Anambra State v. Ezemuokwe*, [1991] 3 NWLR Part 181, 615

⁷ *Hi-Flow Farm Industries Ltd. v. University of Ibadan*, [1993] 4 NWLR Part 290, 719

⁸ *FCMB Ltd. v. Abiola & Sons Bottling Co. Ltd.* [1991] 1 NWLR Part 165, 14; *State v. Ozuzu*, [2009] All FWLR Part 454, 1581

⁹ *A-G, Lagos State v. Dosunmu* (n 3); *Madukolu v. Nkemdilim*, (1962) 1 All NLR 587, *Salati v. Shehu*, [1986] 1 NWLR Part 15, 199

¹⁰ *Thompson v. Tolmie*, 27 US 157

¹¹ *Matari v. Dangaladima*, [1993] 3 NWLR Part 281, 266

¹² *Cocke, for Use of Commercial Bank of Commerce v. Halsey*, 41 US 71

¹³ *Voorhees v. Jackson, ex dem. Bank of US*, 35 U S 449

stands and cannot be discountenanced or ignored until it is set aside¹⁴. But then, the doctrine that if a court has once acquired jurisdiction, it may decide every issue which arises in the cause, and its judgment, however erroneous, cannot be collaterally assailed is only correct when the court proceeds, after acquiring jurisdiction of the cause, according to the established modes governing the class to which the case belongs and does not transcend in the extent or character of its judgment, the law which is applicable to it¹⁵. What this means in essence is that there is a distinction between the cause of action jurisdiction and the adjudicatory jurisdiction of the court. The cause of action jurisdiction deals with the right and privileges which accrue to a party, whereas the adjudicatory jurisdiction of the court relates to the competence of a court to hear and determine an action before it. The law which supports a cause of action is not necessarily co-extensive with the law which confers jurisdiction on the court which entertains the suit founded on the 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, whereas the jurisdiction of the court to entertain an action is determined upon the state of the law that confers jurisdiction at the point in time the action was instituted and heard¹⁶. Therefore, when a court is denied jurisdiction at the time a cause of action arose, it cannot assume jurisdiction when the action is instituted later in respect of the subject-matter even if its jurisdiction to entertain similar matters is then restored. Similarly, when a court had jurisdiction over a subject matter at the time of the cause of action, but loses jurisdiction at the time the action is instituted, it cannot entertain such action¹⁷.

3. Duty of Tribunal Possessing Jurisdiction to Exercise the Jurisdiction

It is the duty of a court to accept jurisdiction of those cases where jurisdiction is present and it is equally the duty of the court to dismiss those cases where jurisdiction is not present¹⁸. A court having jurisdiction of a case has not only the right and the power or authority, but also the duty to exercise that jurisdiction¹⁹. The court must not only assume and exercise jurisdiction, but must render a decision in the case properly submitted to it²⁰. Where a court has jurisdiction, it may decide every question which occurs in the cause and whether its decision be correct or otherwise, its judgment, until reversed, is binding on every other court²¹. No court having proper jurisdiction and process to compel the satisfaction of its own judgments can be justified in turning its suitors over to another tribunal to obtain justice²². Jurisdiction, as power to consider and decide one way or the other, as the law may require is not to be declined merely because it is not foreseen with certainty that the outcome will help the plaintiff²³. The mere fact that a suit may fail for the failure of the plaintiff to prove satisfactorily the intermediate facts necessary for the success of the suit is not a valid reason for denying the court the requisite jurisdiction derived from the provisions of the Constitution²⁴. The motive or ulterior purpose of the plaintiff in invoking the jurisdiction of the court is not sufficient justification for the court to decline to exercise its jurisdiction²⁵.

¹⁴ *Akinfolarin v. Akinnola*, [1994] 3 NWLR Part 335, 659

¹⁵ *Windsor v. McVeigh*, 93 US 274

¹⁶ *Ansa v. Registered Trustees of the Presbyterian Church of Nigeria*, [2008] 7 NWLR Part 1086, 421

¹⁷ *Adah v. NYSC*, [2004] 13 NWLR Part 891, 639

¹⁸ *Bryson v. Northlake Hilton*, 17 FPD 2d 180

¹⁹ *England v. Louisiana Board of Medical Examiners*, 375 US 411, 84 S Ct 461

²⁰ *American Auto Insurance Co. v. Freundt*, 20 Am Jur 2d, 453

²¹ *Randall v. Howard*, 67 US 585, 17 L. Ed. 269

²² *Knox County v. Aspinwall*, 20 Am Jur 2d, 453

²³ *WMCA Inc. v. Simon*, 82 S Ct 1234, 370 U.S. 190

²⁴ *Igbokwe v. Udobi*, [1992] 3 NWLR Part 228, 214

²⁵ *Adams v. Union Railway Co.*, 20 AM Jur 2d, 454

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Want of physical power to enforce its judgment does not prevent a court from deciding an otherwise justiciable case²⁶. But then, the general principle that a court which has jurisdiction over a case is bound to exercise that jurisdiction is not without qualification²⁷. The existence of jurisdiction does not mean that it must be exercised and that grounds may not be shown for staying the hand of the court²⁸. Thus, the court may quite competently in certain types of cases, decline to assume or exercise jurisdiction. Examples are - where leave of the court is required for the service of process outside jurisdiction; where proceedings in respect of the same subject-matter are pending outside the court's jurisdiction; where a contract provides that all disputes between the parties are to be referred to the exclusive jurisdiction of a foreign court; or, where the court is being asked to exercise its equitable jurisdiction *in personam* in cases involving foreign land.²⁹ Consequently, in certain cases, a court seized of jurisdiction over a case, may, in its discretion, decline to exercise the jurisdiction³⁰. The court, though possessing jurisdiction, may due to considerations of public policy, decline to exercise jurisdiction, especially if the law provides an alternative, cheaper, more convenient and more expeditious forum, better equipped to deal with the matter than the court³¹. For example, the courts have consistently refused to usurp the function of the senate, the council and the visitor of the university in the selection of their fit and proper candidates for the award of certificates, degrees and diplomas. If however, in the process of performing their functions under the law, the civil rights and obligations of any of the students or candidates is breached, denied or abridged, it will grant remedies and reliefs for the protection of those rights and obligations³². Where a special statutory provision is made for the pursuit a relief, the procedure so laid down must be followed and complied with unless it is such that may be waived³³. Where a statute has prescribed a particular remedy, an aggrieved party should be left to exhaust the remedy. Where the legislature, clearly stipulated the procedure to be followed, when an act or a decision of an authority is challenged, the party aggrieved can only challenge the decision successfully in the manner laid down in the enabling statute. When an aggrieved party has not resorted to the remedies statutorily available to him on the infringement of his alleged right by the prescribed authority, such a party has therefore not exhausted the remedies available to

²⁶ *Nixon v. Sirica*, 17 FPD 2d 102

²⁷ *Canada Malting Co. v. Paterson SS Ltd.*, 285 US 413, 52 S Ct 413

²⁸ *Sparrow v. Nerzig*, 228 S Ct 227

²⁹ *Ogunsola v. APP*, [2003] 9 NWLR Part 826, 462

³⁰ *WH Muller & Co. v. Swedish American Line Ltd.*, 350 US 903, 76 S Ct 182, although the parties to a contract cannot by a provision therein oust a court of jurisdiction otherwise obtaining, the court may properly decline to exercise its jurisdiction and relegate a litigant to the forum to which he assented, upon finding that the agreement is not unreasonable in the setting of the particular case.

³¹ *Akintemi v. Onwumechili*, [1985] 1 NWLR Part 1, 68; *University of Ilorin v. Oluwadare*, [2006] 14 NWLR Part 1000, 751, in reconciling *Akintemi v. Onwumechili*, and *Garba v. University of Maiduguri*, [1986] 1 NWLR Part 18, 550, the Court held here that if the allegation involves criminal conduct such as are cognisable by the regular courts, the domestic forum has no jurisdiction, but if it involves matters pertaining to the internal affairs of the organisation, the complainant should first of all exhaust all the internal machineries for redress before recourse to the courts. Where he rushes to court without first exhausting all the remedies for redress available to him within the domestic forum, he would be held to have jumped the gun and the matter would be declared bad for incompetence. In *University of Ilorin v. Oluwadare*, [2009] All FWLR Part 452, 1175, the Court of Appeal cited the holding of the Supreme Court between the same parties in a prior action in suit No. SC/165/2003: *University of Ilorin v. Oluwadare*, decided on 14th July, 2006 where Tabai, JSC held that if the matters involve the award of degrees, diplomas and certificates and matters incidental thereto, like examination malpractices, a grieved party, whether student or lecturer, should first exhaust the internal machinery for redress before recourse to court. If he goes to court without first exhausting the remedies for redress available to him within the domestic forum, he would be held to have 'jumped the gun', and the matter would be declared bad for incompetence.

³² *Magit v. University of Agriculture, Makurdi*, [2005] 19 NWLR Part 959, 211

³³ *Adesola v. Abidoye*, [1999] 13 NWLR Part 637, 28

him, and has in consequence not satisfied the preconditions for access to court³⁴. Laws which prescribe that some procedural steps be taken to resolve a dispute before embarking on actual litigation are not treated as ousting the jurisdiction of the court. Such laws afford the body to which such disputes must be referred in the first instance an opportunity to resolve the dispute if it can, before a recourse is had to the court. In other words, they serve the purpose of preventing actual litigation in court where it is possible or desirable to resolve the dispute³⁵.

4. Jurisdiction of Subject Matter and of Parties Distinguished

All courts are creations of either statute or the Constitution. As statutory or constitutional creations, their power, authority and supremacy are construed strictly within the provisions, ramifications and ambit of the instrument creating them. Consequently, all courts are courts of limited jurisdiction. They may only exercise such jurisdiction as is conferred upon them. Where none is conferred none may be exercised. The existence or absence of jurisdiction is for the court to decide, and not for the parties to confer, or withhold. What the legislature has denied the court may not therefore be conferred upon the court either by itself, or by the consent or stipulation of the parties, or by a waiver of the parties, or by the silence or inaction of the parties³⁶. The reason why parties cannot by agreement vest jurisdiction on a court is because courts are creatures of statutes based on the Constitution. Their jurisdiction is based on statutes and no court assumes jurisdiction without an enabling statute³⁷. The jurisdiction of courts is such a public matter that it cannot be affected by a private agreement, and the jurisdiction of a court can therefore neither be acquired nor lost as a result of an agreement of the parties³⁸. No conduct or action of the parties can confer jurisdiction upon the courts when it otherwise does not exist, nor can the parties waive objections to jurisdictional requirements³⁹. The lack of subject matter jurisdiction cannot be waived by the parties or ignored by the court⁴⁰; it cannot be conferred by the consent, estoppel or laches of the parties⁴¹. However, a court's jurisdiction over the parties or one of them may arise from voluntary submission by agreement or by consent⁴². While it is proper for parties to submit to the jurisdiction of the court so far as their person is concerned, they cannot by consent give the court jurisdiction over real property outside the state⁴³, and the jurisdiction to hold

³⁴ *Orakul Resources Ltd. v. Nigeria Communications Commission*, [2007] All FWLR Part 390, 1482

³⁵ *Owoseni v. Faloye*, [2005] 14 NWLR Part 946, 719

³⁶ In *Aleut League v. Atomic Energy Commission*, 17 FPD 2d 183, it was held that jurisdiction cannot be conferred by the consent, waiver or conduct of the parties, and if the question is not otherwise suggested, the court in every case on its own motion may determine whether it has jurisdiction. In *Olympic Capital Corp. v. Newman*, 17 FPD 2d 183, it was held that the *jurisdiction* of the courts - their power to adjudicate is a grant of authority to them by the legislature and beyond the scope of litigants to confer, but the *locality of a lawsuit* - the place where judicial authority may be exercised - although defined by legislation, relates to the convenience of litigants, and as such is subject to their disposition.

³⁷ *Daewoo Nigeria Ltd. v. Uzoh*, [2008] All FWLR Part 399, 456; for constitutional and statutory bifurcation of subject-matter jurisdiction between the federal and state systems, see Chike B. Okosa, 'Jurisprudence of Jurisdiction: Relationship and Jurisdiction as Between the Federal and State Court Systems', (2023) 8 (1) *COOU Law Journal*, [159-172]

³⁸ *Swift & Co. v. Hocking Valley Railway Co.*, 243 US 281, 37 S Ct 287

³⁹ *Kimmey v. HA Berkheimer Inc.*, 17 FPD 2d 182

⁴⁰ *Pacific National Insurance Co. v. Transport Insurance Co.*, 85 S Ct. 1536, 381 U S 912

⁴¹ *May v. Supreme Court of Colorado*, 95 S Ct 2631, 422 U S 1008, because parties cannot confer subject matter jurisdiction upon the court by agreement, where the defendant asserted and subsequently withdrew the challenge to jurisdiction, it was held in *Metropolitan Federal S & L Association v. East Brooklyn Savings Bank*, 17 FPD 2d 187, that the issue remained before the court.

⁴² *Cooper v. Reynolds*, 20 Am Jur 2d, 450

⁴³ *Wilson v. Thelen*, 311 US 651, 61 S Ct 20

hearings or to conduct trial beyond the borders of the state to which the court belongs cannot be validly conferred by stipulation or agreement of the parties⁴⁴. In contradistinction to subject matter jurisdiction, want of personal jurisdiction and lack of venue can be waived by the consent or conduct of the defendant. The acquisition of personal jurisdiction by the court over the parties could be by express consent of the parties, by a failure to object, by agreement given prior to the institution of the action [for an example, by a jurisdiction clause contained in a contract]. The defendant may agree in advance to submit himself personally to the jurisdiction of a court that in the absence of the agreement could not extend its process to him⁴⁵. Even in the absence of express consent the particular conduct of the party involved may be interpreted to imply consent to the jurisdiction of the court, so that where a defendant had not been served with the required process, the general rule is that if he takes such a step or seeks such relief from the court as is consistent only with the hypothesis that the court has jurisdiction over his person, he submits himself to the jurisdiction of the court and is bound by the court's action as fully as if he had been served with the process⁴⁶. However, in the same manner as parties may grant express consent to the jurisdiction of a court, a court's jurisdiction of the subject matter as well as the parties may be affected by a valid arbitration agreement in that such an agreement may withdraw a matter covered by the agreement from the court until it has been first submitted to and decided by arbitrators⁴⁷.

5. Effect of Agreements Purporting to Exclude Adjudication by Courts

Courts should not as a matter of public policy be too eager to divest themselves of jurisdiction conferred on them by the constitution and other laws simply because parties in their private contracts choose a foreign forum and foreign law. Courts guard rather jealously their jurisdiction, and even where there is an ouster of that jurisdiction by statute, it should be by clear and unequivocal words. If that is so, as indeed it is, how much less can parties by their private acts remove the jurisdiction properly and legally vested in the courts. Consequently, the courts are required to be in charge of their proceedings. When it is said that parties make their own contracts and that the courts will only give effect to their intentions as expressed in and by their contract, that should be generally understood to mean and imply a contract which does not rob the court of its jurisdiction in favour of another foreign forum⁴⁸. In *The Ferhmarn*⁴⁹, in answer to a question whether parties can by their private act remove the jurisdiction vested in the courts by the Constitution, Lord Denning, MR stated that:

'...English courts are in charge of their own proceedings and one of the rules which they apply is that a stipulation that all disputes should be judged by the tribunals of a particular country is not absolutely binding. Such a stipulation is a matter to which the courts of this country will pay much regard and to which they will normally give effect, but it is subject to the overriding principle that no one by his private stipulation can oust these courts of their jurisdiction in a matter that properly belongs to them. I would ask myself therefore: is this dispute a matter which properly belongs to the courts of this country?'

⁴⁴ *Knight v. Younkin*, 20 Am Jur 2d, 414

⁴⁵ *National Equipment Rental Ltd v. Szukhent*, 84 S Ct 411, 375 US 311

⁴⁶ *Childs v. Lanterman*, 20 Am Jur 2d, 489

⁴⁷ 20 Am Jur 2d, 489

⁴⁸ *Lignes Aeriennes Congolaises, v. Air Atlantic Nigeria Ltd.* [2006] 2 NWLR Part 963, 49

⁴⁹ [1958] 1 All ER 333 at 335

No individual, whether by contract or otherwise, can deprive the court of the jurisdiction which the legislature has conferred on it⁵⁰. As a general rule, private parties cannot by private contract deprive the court of jurisdiction to hear and decide important constitutional issues.⁵¹ Consequently, agreements that purport to completely exclude or oust the jurisdiction of the courts in adjudicating disputes arising between the parties are unenforceable; they are against public policy, and consequently void. This principle has been held to be particularly compelling where the agreement limited jurisdiction to a court or courts of a foreign country⁵². Thus, contractual agreements to limit jurisdiction of courts are not effective to deprive any court of the jurisdiction which it would otherwise have unless the provision is justice-promoting, prevents fair compromise after dispute has arisen, or is tailored for the convenience of the parties⁵³. It is accordingly a principle of law that parties cannot by contract oust the courts of their jurisdiction, but any person may covenant that no right of action shall accrue till a third person has decided on any difference that may arise between himself and the other party to the covenant⁵⁴.

The inclusion in an agreement to submit a dispute to arbitration does not generate the heat of ouster of jurisdiction of the court. It merely postpones the right of either of the contracting parties to resort to litigation in court whenever the other contracting party elects to submit the dispute under their contract to arbitration. Secondly, where such reference to arbitration, under the arbitration clause is raised, the trial court seized of the action cannot overlook the party's right to submit to arbitration, which clearly is a condition precedent to the exercise of its jurisdiction⁵⁵. A provision in an arbitration agreement known as a *Scott v. Avery* clause whereby the making of an arbitral award is expressed to be a condition precedent to any right in respect of any of the matters agreed to be referred does not oust the jurisdiction of the court. Such a clause constitutes a defence to any proceedings brought before the making of the award⁵⁶. Where parties have chosen or determined for themselves that they would refer any of their disputes to arbitration instead of resorting to regular courts, a *prima facie* duty is cast upon the courts to act upon their agreement. Where parties to a contract have under the terms thereof agreed to submit to arbitration, if there is any dispute arising from the contract between them, a defendant who has not taken any steps in the proceedings commenced by the other party may apply to the court for a stay of proceedings of the action to enable the parties go to arbitration as contracted. The power of the courts to stay such

⁵⁰ *Perini Corp. v. Orion Ins. Co.*, 17 F P D 2d 192

⁵¹ *Newman v. Avco Corp-Aerospace Structures*, 17 FPD 2d 192

⁵² *Carbon Black Export Inc. v. SS Monrosa*, 359 US 180, 79 S Ct 710; however, in *WH Muller & Co. v. Swedish American Line Ltd.* (n 30), it was held that the validity or invalidity of such a contractual provision limiting adjudication to the court or courts of a foreign country depends on whether it is reasonable in the light of the surrounding circumstances.

⁵³ *Solomon v. Solomon*, 17 FPD 2d 192

⁵⁴ In *Scott v. Avery*, 10 ER 1121, A effected in a mutual insurance company a policy of insurance on a ship, one of the conditions of which was, that the sum to be paid to any insurer for loss should in the first instance be ascertained by the committee; but if a difference should arise between the insurer and the committee relative to the settling of any loss, or to a claim for average, or any other matter relating to the insurance, the difference was to be referred to arbitration, in a way pointed out in the conditions: provided that no insurer who refused to accept the amount settled by the committee should be entitled to maintain any action at law or suit in equity on his policy, until the matter had been decided by the arbitrators, and then only for such sum as the arbitrators should award, and the obtaining the decision of the arbitrators was declared a condition precedent to the maintaining of an action. It was held that these conditions were lawful, and even should the difference relate to other matters than those of mere amount, till an award was made no action was maintainable.

⁵⁵ *Maritime Academy of Nigeria v. Associated Quantity Surveyors*, [2008] All FWLR Part 406, 1872

⁵⁶ *African Insurance Development Corporation v. Nigeria LNG Ltd.* [2000] 4 NWLR Part 653, 494

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proceedings is exercisable under the requisite statutes, and the court is bound to stay the proceedings unless it is satisfied that there is sufficient reason to justify the refusal to refer the dispute to arbitration⁵⁷. An arbitration clause agreement, so long as it does not oust the jurisdiction of the courts may not be open to objection solely because it provides that all disputes under the contract shall be subject to the final decision of arbitrators⁵⁸. Where an arbitration agreement, while not expressly ousting the jurisdiction of the court, prohibits the parties from stating a special case for the opinion of the court, the provision will be treated as an ouster of the statutory jurisdiction of the courts and will be invalidated for being contrary to public policy⁵⁹. Where however, the agreement of the parties is in respect of the appointment of a surveyor, or an inspector or referee or other finder of fact whose findings would be conclusive between the parties in any subsequent litigation, the court would uphold the agreement⁶⁰.

⁵⁷ *Owners of MV Lupex v. Nigeria Overseas Chartering & Shipping Ltd.*, [2003] 15 NWLR Part 844, 469, per Iguh, JSC at 490F – 491C: “In the present case, the respondent had voluntarily submitted to arbitration in London pursuant to the agreement between the parties. It however went on to file a suit against the appellant in respect of the dispute which is the subject matter of the arbitration at the Federal High Court, Lagos. The arbitration proceedings then going on in London had reached an advanced stage when the respondent’s suit was filed in Nigeria. It seems to me that the said respondent, having voluntarily submitted to arbitration as contracted by the parties, it was an abuse of the process of the court for it to institute a fresh suit in Nigeria against the appellant in respect of the same dispute during the pendency of the arbitration proceedings unless there was a strong compelling and justifiable reason for such an action. This is because, prima facie the general policy of the courts in such circumstances is to hold parties to the bargain into which they had entered although the point must be stressed that this is not an inflexible rule. The court, of course, undoubtedly has a discretion in the matter which, in the ordinary way and in the absence of strong reason to the contrary would be exercised in favour of holding parties to their bargain. It is only where a strong reason to the contrary is established that the court will be disposed to depart from the aforesaid general policy. Where, however, it is shown that the court’s exercise of its discretion in the matter is plainly wrong or erroneous, the appellate court will be bound to interfere with the same.” See also *Niger Progress Ltd. v. North East Line Corporation*, [1989] 3 NWLR Part 107, 68

⁵⁸ In *Atlantic Shipping & Trading Co. v. Dreyfus (Louis) & Co.*, [1922] AC 250, the charterparty provided for the reference of all disputes under the contract to the final arbitrament of two arbitrators, one to be appointed by each of the parties, with power to appoint an umpire, and the clause continued: ‘any claim must be made in writing and claimants’ arbitrator appointed within three months of final discharge and where this provision is not complied with the claim shall be deemed to be waived and absolutely barred’ In response to an action commenced by the charterers, the ship-owners pleaded that the charterers failed to appoint their arbitrator within three months of the discharge of the ship and by reason of such failure the action was not maintainable, and by order of the court, the question whether the claim in the action was barred by the arbitration clause was tried as a preliminary question of law. It was held that the arbitration clause was not open to objection on the ground that it ousted the jurisdiction of the court.

⁵⁹ In *Czarnikow v. Roth, Schmidt & Co.* [1922] 2 KB 478, rule 19, in a compulsory submission to arbitration prevented that any party should require nor should they apply to the court to require any arbitrators to state in the form of a special case for the opinion of the court any question of law arising in the reference, but such question of law should be determined in the arbitration in manner therein directed. A dispute between the buyers and the sellers was referred to the arbitration of the council. The buyers requested the arbitrators to state their award in the form of a special case under s. 7 of Arbitration Act, 1889, or alternatively to state a case for the opinion of the court under s. 19 upon certain points of law arising in the reference, or to give them an opportunity of applying to the court for an order directing them to state a case. The arbitrators thinking themselves precluded by rule 19 refused to comply with that request, and made their award without giving the buyers an opportunity of applying to the court for an order. The buyers moved to set aside the award on the ground of misconduct of the arbitrators in so refusing. It was held that rule 19 and the agreement embodying it were contrary to public policy and invalid, as involving an ouster of the statutory jurisdiction of the courts under the above Act, and that the award should be set aside.

⁶⁰ In *London Tramways Co. v. Bailey*, (1877) 3 QBD 217, complainant became the conductor of a tramway company under an agreement by which he was to give certain collateral as security for the discharge of his duties and the observance of the rules of the company, etc. It was provided that the manager of the company would be

6. Effect of Agreements Conferring Exclusive Jurisdiction on Certain Courts

Parties may not confer jurisdiction on a court where statute has not conferred any. Neither the consent nor waiver or acquiescence of the parties can endue a court with the jurisdiction denied it by statute. Where parties therefore attempt give exclusive jurisdiction to a court denuded of statutory jurisdiction over the subject matter, their agreement in respect of the jurisdiction will not prevail. It is not competent to the parties to a contract to agree to confer jurisdiction to a statutory court, or to a court of any judicial division other than the one in which under statute any action arising out of a breach of the contract may be brought, and if such action is brought in any other court, the judge should refuse to try it on the ground of want of jurisdiction⁶¹. But then a citizen of a state has an undeniable right to go into another state or country to pursue such remedies and secure such reliefs as may be available there. Where parties have agreed to submit all their disputes under a contract to the exclusive jurisdiction of a foreign court, Nigerian courts would require very strong reasons to induce it to permit one of the parties to go back on his words. Necessarily, courts are reluctant to interfere with exercise of such right, and when called upon to do so, they will carefully weigh the equities upon which the complainant's case rests. Although courts of equity, like other tribunals act within the territorial limits of the state which creates them and cannot extend their jurisdiction to other sovereignties, their power to grant relief by restraining the bringing or prosecution of judicial proceedings in other states or countries is unquestioned. It is, in fact, the settled rule that a court of equity in one state may, and in a proper case will, restrain its own citizens or other persons within the control of its states or in foreign countries. Courts have jurisdiction to interfere to prevent possible injustice arising where two action are pending, one within the jurisdiction and the other in a foreign country, between the same parties and in respect of the same issues. The intervention may take the form of ordering a stay of the action within jurisdiction, or of restraining the institution or continuation of the foreign action, or where the same person is the plaintiff in both cases, of putting him to an election.⁶² However, this power must generally be exercised reluctantly, sparingly and with great circumspection. This type of relief should only be granted where grave reasons and special circumstances have been established⁶³. In *Re Vocalion (Foreign) Ltd.*⁶⁴ it was held that there is a clear jurisdiction in the Court to restrain persons within its jurisdiction by an injunction operating *in personam* from instituting or prosecuting suits in foreign courts if the circumstances are such as would make it the duty of the court to restrain a party from instituting proceedings within the country. In *The Angelic Grace*⁶⁵, the Court rejected the argument that the grant of an injunction to restrain foreign proceedings which were in clear

the sole judge between the company and the conductor as to the forfeiture of the collateral, and that his certificate should be binding and conclusive evidence in all courts of justice. It was held that the agreement was not illegal and the complaint being substantially a civil proceeding, the manager's certificate that the deposit and wages had been forfeited was conclusive evidence of the fact, precluding the magistrate from making any further inquiry.

⁶¹ *Manitoba Windmill Co. v. Vigier*, 16 E & E D 136

⁶² *UBA Plc v. Coker*, [1996] 4 NWLR Part 441, 239

⁶³ *Sonar (Nig.) Ltd. v. Partenreeder MS Nordwind*, [1985] 3 NWLR Part 11, 135

⁶⁴ [1932] All ER 519; In *Bushby v. Munday*, [1814-23] All ER 304, it was held that where defendants are resident in England and properly brought before an English court, that court has full authority, if the ends of justice require, to order them to take or omit to take any proceedings in any other court, whether in England or in a foreign country. In so doing, the English court does not pretend to any interference with the other court. It acts upon the defendant by punishment for his contempt if he disobeys the order of the court, and if he continues to be contumacious and ultimately obtains a judgment in the other court, it will protect the plaintiff in England by restraining by injunction the defendant from taking the fruit of his judgment.

⁶⁵ [1995] 1 Lloyd's Rep 87

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breach of contract would offend against the principle of comity of nations, and held that it was vexatious and oppressive for a party to maintain such proceedings in breach of its agreement not to do so. In *National Westminster Bank v. Utrecht-America Finance Company*⁶⁶ Clarke LJ, stated⁶⁷:

In my judgment, the time has come to lay aside the ritual incantation this is a jurisdiction which should be exercised sparingly and with great caution. There have been many statements of great authority warning of the danger of giving an appearance of undue interference with the proceedings of a foreign court. Such sensitivity to the feelings of a foreign court has much to commend it where the injunction is sought on the ground of forum non conveniens or on the general ground that the foreign proceedings are vexatious or oppressive but where no breach of contract is involved. In the former case, great care may be needed to avoid casting doubt on the fairness or adequacy of the procedures of the foreign court. In the later case, the question whether proceedings are vexatious is primarily a matter for the court before which they are pending. But in my judgment there is no good reason for diffidence in granting an injunction to restrain foreign proceedings on the clear and simple ground that the defendant has promised not to bring them.... I cannot accept the proposition that any court would be offended by the grant of an injunction to restrain a party from involving a jurisdiction which he has promised not to invoke and which it was its duty to decline.... In my judgment, where an injunction is sought to restrain a party from proceeding in a foreign court in breach of an arbitration agreement governed by English law, the English court need feel no diffidence in granting the injunction, provided that it is sought promptly and before the foreign proceedings are too far advanced. I see no difference in principle between an injunction to restrain proceedings in breach of an arbitration clause and one to restrain proceedings in breach of an exclusive jurisdiction clause.

In *Carron Iron Co. v. Maclaren*⁶⁸ Lord Cranworth stated the operative principle thus⁶⁹:

The result of the authorities is, that if the circumstances are such as would make it the duty of the court to restrain a party from instituting proceedings in this country, they will also warrant it in restraining proceedings in a foreign court. But though they will justify such a course, yet they will not, as I apprehend, make it the duty of the court so to act, if from any cause it appears likely to be more conducive to substantial justice that the foreign proceedings should be left to take their course.

The court will not intervene in foreign proceedings when to do so would deprive the plaintiff of the advantage of a particular procedure or remedy. On the other hand, the court will restrain foreign proceedings if the plaintiff is seeking some unfair advantage. However, no restraint will be placed on a foreign action if there is no clear evidence that a party would be prejudiced by the action. Moreover, for the applicant to convince the court to make the

⁶⁶ [2001] 3 All ER 733 at 745-746

⁶⁷ Quoting Millet, LJ in *The Angelic Grace* (n 65)

⁶⁸ 10 ER 961

⁶⁹ It was a case where there had been a decree for the administration of the estate of one Henry Stainton, who died possessed of considerable real and personal property in England and Scotland. He had been the London manager of the Carron Iron Co., and apparently owed them at the date of his death a very large sum, which they sought to obtain by proceedings in Scotland. The Carron Iron Co. had agencies and valuable assets in England, and an application was made in England for an injunction to restrain the company from further proceeding in Scotland in their suit. The injunction was granted, but the company appealed to the House of Lords. The House of Lords found and held that there was clear jurisdiction in the Court of Chancery to restrain persons within its jurisdiction from instituting or prosecuting suits in foreign courts.

order prayed, the affidavit in support of his application should be heavy on facts and particulars that would be so overwhelming as to readily persuade the court to make the order of injunction sought. In an action to restrain a party from instituting or continuing with an action in a foreign court because an action is pending against such a party in the home jurisdiction, the question of substantial justice must be taken into account. The principles applicable and pertinent in resolving an application to restrain a defendant from commencing action in a foreign court pending an action in the home jurisdiction against the defendant include - the burden is on the defendant to show that an injunction to restrain such proceedings is necessary, and a mere balance of convenience is not a sufficient ground for depriving a plaintiff of the advantages of prosecuting his action in the foreign court if it is otherwise properly brought. In order to justify a stay, the conditions that must be presented include that the applicant must satisfy the court that the continuance of the action would work an injustice because it would be oppressive and vexatious to him or would be an abuse of the process of the court in some other way; and the stay must not cause injustice to the plaintiff. It is generally not pertinent to the application and would not be sufficient to move the court to grant the injunction sought, that - that the defendant has no funds to defend himself in the foreign jurisdiction, and has been “*forced to brief an attorney to protect his interest*”; the cost of retaining an attorney in the foreign jurisdiction has been “*phenomenal and oppressive to him*”; he has now resorted to borrowing money from friends and relations in order to retain the attorney to defend him in the action in the foreign jurisdiction; he can adequately defend himself in Nigeria if the claim in the foreign jurisdiction is filed in Nigeria.⁷⁰

If there is a foreign jurisdiction clause in a contract or bill of lading, then *prima facie*, the Nigerian courts will stay proceedings instituted in Nigeria in breach of the foreign jurisdiction clause⁷¹. Parties are bound by the conditions and terms in a contract they freely entered into. The meaning to be placed on a contract is that which is the plain, clear and obvious result of the terms used. When construing documents in dispute between two parties, the proper course is to discover the intention or contemplation of the parties and not to import into the contract, ideas not potent on the face of the document. Where there is a contract regulating any arrangement between the parties, the main duty of the court is to interpret that contract and to give effect to the wishes of the parties as expressed in the contract document. In the construction of documents, the question is not what the parties to the document may have intended to do by entering into that document, but what is the meaning of the words used in the document. While a contract must be strictly construed in accordance with the well-known rules of construction, such strict construction cannot be a ground for departing from the terms which had been agreed by both parties to the contract. Parties to an agreement retain the commercial freedom to determine their own terms. No other person can determine the terms of contract between parties thereto. The duty of the court is to strictly interpret the terms of the agreement. Consequently, where parties agreed that a foreign country, instead of Nigeria would be the venue of litigation for any dispute between them, the Nigerian courts would be in error in assuming jurisdiction in a matter brought before it by one of the parties⁷². The domestic court as a matter of comity must take cognisance of the fact that the foreign court has assumed jurisdiction. If applying the principles of relating to *forum non conveniens*, the foreign court reasonably have concluded that there is no alternative forum that was clearly more appropriate, the domestic court should respect that decision⁷³. Where parties have

⁷⁰ *Coker v. UBA Plc.* [1997] 2 NWLR Part 486, 226

⁷¹ *Sonar (Nig.) Ltd. v. Partenreeder MS Nordwind*, (n 63)

⁷² *Nika Fishing Co. Ltd. v. Lavina Corporation*, [2008] All FWLR Part 437, 1

⁷³ *Airbus Industrie GIE v. Patel*, [1998] 2 All ER 257

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agreed to submit all their disputes under a contract to the exclusive jurisdiction of a foreign court, the court would require very strong reasons to induce it to permit one of the parties to go back on his words. The onus is on the party who wishes to invoke the jurisdiction of the Nigerian court despite the contractual submission to the exclusive jurisdiction of the foreign court to show a strong case why the proceedings in Nigeria should not be stayed, and this onus cannot be discharged on a mere balance of convenience. Nigerian courts would however stay proceedings if special circumstances are shown why the foreign court is not the convenient forum for the action, e.g. if all the witnesses to be called are in Nigeria; or if the action had become statute barred in the foreign country; or if the foreign court will, for some other reasons decline to exercise jurisdiction⁷⁴. In *Nika Fishing Co. Ltd. v. Lavina Corporation*⁷⁵, Mohammed, JSC stated⁷⁶:

“However, what was really in contention between the parties was whether having regard to the jurisdiction clause agreed between the parties in the bill of lading, the contract document binding between them which provided the venue or forum and the applicable law for the settlement of any dispute arising from the agreement in Argentina, the trial court exercised its discretion judicially and judiciously in refusing a stay of proceedings to give the parties the opportunity to be bound by their agreement executed outside Nigeria. ... the position of the law in this country regarding the enforcement or otherwise of a jurisdiction clause contained in a bill of lading as in the present case was extensively discussed in the decision of this court in Sonnar (Nig.) Ltd. v. Partenreedri MS Nordwind [1987] 4 NWLR Part 66, 520, where Eso JSC in the lead judgment said: ‘It is true that in the Eleftheria (1969) 1 Lloyd’s LR 237, Brandon J in his powerful judgment emphasised the essentiality of giving full weight to the prima facie desirability of holding the plaintiffs to their agreement. The tests set out by Brandon J in the Eleftheria are as follows: Where the plaintiffs sue in England in breach of an agreement to refer disputes to a foreign court, and the defendants apply for stay, the English court, assuming the claim to be otherwise within the jurisdiction, is not bound to grant a stay, but has a discretion whether to do so or not. (1) The discretion should be exercised by granting a stay, unless strong cause for not doing so is shown. (2) The burden of proving such strong cause is on the plaintiffs. (3) In the exercise of its discretion, the court should take into account all the circumstances of the particular case. (4) In particular, but without prejudice, the following matters, where they arise may be properly regarded: (a) In what country the evidence on the issues of fact is situated, or more readily available, and the effect of that on the relative convenience and expense of trial as between the English and foreign courts. (b) Whether the law of the foreign court applies, and if so, whether it differs from English law in any material respect. (c) With what country either party is connected, and how closely. (d) Whether the defendants genuinely desire trial in the foreign country, or are only seeking procedural advantages. (e) Whether the plaintiffs would be prejudiced by having to sue in the foreign court, because they would; (i) be deprived of security for that claim; (ii) be unable to enforce any judgment obtained; (iii) be faced with a time-bar not applicable in England; or (iv) for political, racial, religious or other reasons be unable to get a fair trial.’”

In spite of a jurisdiction clause specifically excluding the jurisdiction of the Nigerian courts in the event of any dispute arising between the parties in the performance or breach of

⁷⁴ *Sonnar (Nig.) Ltd. v. Partenreedri MS Nordwind* (n 63); *First Bank of (Nig.) Plc v. Abraham*, [2009] All FWLR Part 461, 853,

⁷⁵ (n 72); see also *Owners of MV Lupex v. Nigerian Overseas Chartering & Shipping Ltd*, (n 57)

⁷⁶ (n 72) at 15G-17B

such contract entered into in a foreign country, where there is clear evidence that the plaintiff's right of claim is likely to be statute barred in the foreign country where the parties agreed to pursue their rights under the agreement, Nigerian courts would be allowed to assume jurisdiction in the interest of justice⁷⁷. In *The Fehmarn*⁷⁸ there was a foreign jurisdiction clause requiring all claims and disputes arising under and in connection with the bill of lading to be adjudged in USSR. In the action brought in England, the court found that though the cargo was loaded at a Russian port by a Russian shipper, the vessel was a German ship which frequently traded in England. The cargo was ultimately bought by the plaintiffs, an English company who are the holders of the bill of lading. The damage sued for was discovered in England. The cargo was surveyed in England and the measure of damage was ascertained there. Virtually all the evidence which would have to be called on behalf of the plaintiffs was to be found in England, that is to say, such witnesses as may be necessary with regards to the plaintiff's title to sue, such witnesses as can speak as to the condition of the cargo on its discharge, and such witnesses as can speak of the condition of the ship, which was the subject matter complained of. The only matter of evidence, so far as the plaintiffs' case is concerned, which did not arise in England was the condition of the cargo on shipment at the Russian port. Based on the foregoing, in spite of the fact that the parties specifically agreed to take their disputes to the Russian courts, the Judge of the English court refused to accede to the motion to set the writ aside, and also refused to stay the proceedings. In *Sonnar (Nig.) Ltd. v. Partenreedri M.S. Nordwind*⁷⁹ the Supreme Court in allowing the appeal by the plaintiffs whose action was pending at the Federal High Court, Lagos, directed that court to proceed and determine the action in spite of the fact that the contract between the parties was, not only entered into between the parties outside Nigeria, in Germany, but also in addition, the parties had agreed to the application of German law and German courts to resolve any disputes arising from the contract between them.

7. Conclusion

The general rule is that proceedings conducted or decisions made by a court are legally void where there is an absence of jurisdiction over the subject matter, even if the court in good faith believed it had jurisdiction. Where a court has no jurisdiction, it cannot do anything, and that is where the matter ends. There is no longer any question of fair hearing, as it does not now arise without jurisdiction. If a court lacks jurisdiction, the question of doing substantial justice is not relevant since defeat of jurisdiction relates to embarking on the case and not to miscarriage in the course of it or to the correctness of the decision. Once a court lacks jurisdiction over a matter before it, the importation of the concept of doing substantial justice and shunning technicalities will make no difference, for no degree of liberal interpretation or coinage of the concept of justice, even in the most articulate judicial premise can be employed to confer jurisdiction on a court that lacks it. A decision of a court or other agency on matter concerning which it has no jurisdiction has no binding effect whatsoever. It is invalid in the sense that an invalid order of court is one which is deficient in law and therefore having no legal effect whatsoever. It carries a legal disability so that it should not be enforced. It has no effect in law and no cogency and force of law. It is null and void.

⁷⁷ *Sonnar (Nig.) Ltd. v. Partenreedri MS Nordwind* [1987] 4 NWLR Part 66, 520; *Nika Fishing Co. Ltd. v. Lavina Corporation*, (n 72)

⁷⁸ [1957] 2 All ER 707

⁷⁹ (n 77)

