

*Barr (Mrs) Ufu Mesubi-Eneke
Court of Appeal Benin
HOD Ughelli*

COURT OF APPEAL
BENIN
H.O. OF LITIGATION
SIGN *[Signature]*

IN THE COURT OF APPEAL
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY

20/1/18

**ON WEDNESDAY THE 24TH DAY OF JANUARY, 2018
BEFORE THEIR LORDSHIPS:**

**SAMUEL CHUKWUDUMEBI OSEJI
MOORE ASEIMO ABRAHAM ADUMEIN
MUDASHIRU NASIRU ONIYANGI**

**JUSTICE, COURT OF APPEAL
JUSTICE, COURT OF APPEAL
JUSTICE, COURT OF APPEAL**

APPEAL NO. CA/B/167/2016

MTN NIGERIA COMMUNICATIONS LTD

... APPELLANT

DELTA STATE GOVT.

... ..

RESPONDENT

(MIN. OF COMMERCE & INDUSTRY)

JUDGMENT

{DELIVERED BY SAMUEL CHUKWUDUMEBI OSEJI, JCA}

This is an appeal against the judgment of the High court of Delta State, Ughelli Judicial Division and delivered by M.N. Obi J. On the 4th day of February 2016.

The said judgment was borne out of an appeal to the said High Court sitting in its appellate jurisdiction, against the judgment of the Revenue court of Delta State sitting in Ughelli and delivered on the 27th day of May 2014 in Suit No. RCO/44/2011.

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BENIN CITY.
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RATE - - - - -

The Appellant herein was the defendant in the Revenue court while the Respondent was the plaintiff.

A summary of the facts of the case is that the Respondent herein brought an action against the Appellant at the Revenue Court Ughelli, claiming the total sum of ₦3,500,000.00 as fees for the Registration and Renewal of Business premises for the period 2009 to 2011 as per the provisions of the Registration of Business Premises Laws (Amendment) Edict 1995. It was the Respondent's case that each of the Appellant's Telecommunication Masts in different locations in Isoko South Local Government Area of Delta State constitutes a business premises for which the Appellant is required to obtain business premises Registration and Renewal licence from the Respondent under the Registration of Business (Amendment) Edict, 1995. At the conclusion of trial at the Revenue Court, judgment was entered for the Respondent as per its claim against the Appellant. Dissatisfied with the said judgment, the Appellant appealed to the High Court of Delta State (lower court) in its appellate jurisdiction. Therein, the Appellant challenged the jurisdiction of the Revenue court to entertain the suit and also contended that each of the Appellant's telecommunication masts is not a business premises within the contemplation of the Delta State Registration

of Business Premises (Amendment) Edict 1995 under which the Respondent has no competence to levy taxes as per the sum claimed: Briefs of argument were filed and exchanged by the parties which they subsequently adopted at the hearing of the appeal. The lower court delivered its judgment on the 4th day of February 2016 wherein it allowed the appeal in part by setting aside the part of the judgment of the trial Revenue court which ordered the Appellant to pay the amount claimed in the suit but also held that the Revenue court has jurisdiction to entertain the suit.

Not contented with a partial victory, the Appellant filed a Notice of Appeal to this court on 4/3/2016.

In compliance with the relevant Rules of this court, the parties filed and exchanged their briefs of argument which they subsequently adopted and relied on at the hearing of the appeal on the 31/10/2017.

However the hearing of the appeal was preceded by a Notice of Preliminary Objection which was moved by the Respondent. The said Preliminary Objection was filed on 1/11/2016 and it was premised on the contention that this court lacks the jurisdiction to hear the Appeal. The sole ground for the preliminary objection is as follows:-

1. "The appeal is incompetent for failure of the Appellant to seek and obtain the leave of the lower court or Court of Appeal before filing the notice of appeal".

In the Respondent's brief of argument in support of the preliminary objection and filed on 1/11/16 a sole issue was raised for determination as follows:-

"Whether this court can exercise jurisdiction to entertain the suit in view of the Appellant's failure to obtain leave of the lower court or this court before the Notice of Appeal was filed?"

Arguing in support of the said issue, learned counsel for the Respondent submitted that the notice of appeal is incompetent because it was filed without the leave of the lower court or this court. He referred to Sections 24 and 242(1) of the 1999 constitution and cited the following cases. **HARRIMAN VS HARRIMAN (1987) NSCC VOL 18 930** and **STATE VS JANNAH (2001) FWLR (PT 78) 1111.**

He further submitted that appeals from the decisions of a High court sitting in its appellate jurisdiction do not fall within the provisions of Section 241 of the constitution. Therefore appeals from a final decision of the High court sitting in its appellate

jurisdiction requires the leave of the High Court or the Court of Appeal before the latter can assume jurisdiction to hear the appeal. He cited the following cases of **MOSOBA VS ABUBAKAR (2005)6 NWLR (PT 922) 460; STATE VS ZANNAH (2001) FWLR (PT 18) 1111; ODOFIN VS AGU (1992) 3 NWLR (PT 229) 350 OGIDI VS EGBE (1999) 10 NWLR (PT 621) 42; CBN VS OKOJIE (220) 8 NWLR (PT 768) 48.**

He added that since the Appellant did not seek the leave of the High court or this court before filing the Notice of Appeal, it renders the appeal incompetent and robs this court of the jurisdiction to entertain same as held in **MESOBA VS ABUBAKAR supra and AYANSINA BS CO-OPERATIVE BANK (1994) 5 NWLR (PT 347) 742.**

This court was then urged to uphold the preliminary objection and strike out the Appeal.

The Appellant also filed a brief of argument in response to the Respondent's preliminary objection. It was filed 3/11/2016. The sole issue raised for determination therein is "**whether the Appeal is competent**"

Arguing thereon, learned counsel for the Appellant submitted that the appeal is competent because it falls within the purview of

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a brief of argument in response to

Section 242 (1) of the 1999 constitution as amended. It added that the Respondent seems to have glossed over the provisions of Section 241 (1) (b) which provided for appeal as a right where the ground of appeal involves questions of law alone in decisions in any civil or criminal proceedings. He further pointed out that the three grounds of appeal in the Notice of appeal involves questions of law alone as contemplated in section 241 (1) (b) of the constitution in which case no leave is required to file the Notice of appeal.

On instances where leave of court is required before filing a Notice of appeal, learned counsel relied on the following cases:- **LAUWERS IMPORT-EXPORT VS JOSEBSON INDUSTRIES LTD. (1988) 3 NWLR (PT 83) 249 at 443** and **ABE VS AKAAJIME (1989) 4 NWLR (PT 113) 95 at 97**. He then urged this court to dismiss the preliminary objection.

The law is trite that where leave is required before an appeal could be filed, failure to obtain leave would not only render the appeal incompetent but also rob the court of the jurisdiction to entertain the matter. See **OGECHIE VS ONOCHIE (1986) 3 SC 54**, **OTU VS ACB INTERNATIONAL BANK PLC (2008) 3 NWLR (PT 1073) 179**, **FALEYE VS OTAPO (1987) 4 NWLR (PT 64) 186**. Section 241 (1) (a) and (b) as well as 242 (1) of

the constitution of the Federal Republic of Nigeria as amended made provisions for when an appeal is as of right and when it should be with the leave of this court. Thus Section 241 (1) (a) provides thus:

"An appeal shall lie from the decision of the Federal High Court to the Court of Appeal as of right in the following cases:

a) Final decision in any civil or criminal proceedings before the Federal High Court or a High Court sitting at first instance.

b) Where the ground of appeal involves question of law alone, decisions in any civil or criminal proceedings".

Also section 242 (1) provides that:

"subject to the provisions of Section 241 of the Constitution, an appeal shall lie from the decisions of the Federal High Court or a High Court to the Court of Appeal with leave of the Federal High Court at High Court or the Court of Appeal".

A calm appraisal of the above set out sections discloses that while Section 241 (1) (a) allows for an absolute right of appeal against the final decisions of the Federal High Court or a High

Court Section 24 (1) (b) allows an appellant to appeal to the court of Appeal as of right on grounds of law on any decision of the lower court (civil or criminal). But where the decision appealed against under the provision is interlocutory, the ground of appeal must be one of law before the Appellant can appeal as of right, otherwise leave of the lower court or the Court of Appeal must be sought and obtained under Section 242 (1). In other words, appeals against interlocutory decisions must be with the leave of the court except it is on grounds of Law. See **NWADIKE VS IBEKWE (1997) 4 NWLR (PT 67) 718, TOTAL INTERNATIONAL LTD. VS AWOGBORO (1994) 4 NWLR (337) 100.**

In the instant case, the appeal is from the decision of the High Court of Delta State sitting in its appellate jurisdiction. The learned counsel for the Respondent is of the stance that the Appellant requires the leave of the High Court or the court of Appeal before filing the Notice of appeal and failure to do so robs this court of the jurisdiction to entertain the appeal.

On the other hand the learned counsel for the Appellant holds strongly to the view that, since the grounds of appeal involve questions of law alone, they fall within the purview of Section 241 (1) (b) of the 1999 Constitution in which case the leave of the

High Court or this court is not required before filing the Notice of Appeal.

I had earlier in this judgment reproduced the provisions of Sections 241 (1) (a) and (b) as well as Section 242 (1) of the 1999 Constitution.

Going by their provisions, Section 241 (1) (b) allows a party to appeal as of right where the ground of appeal involves questions of law alone. The Respondent herein is not challenging the fact that the grounds of appeal are grounds of law alone but that the Appeal is against the decision of the High Court sitting in its appellate jurisdiction in which case Section 242 (1) should apply.

However, a calm reading of the said Section 242 (1) shows that its provision is subject to the provisions of Section 241 of the 1999 Constitution. This means that its relevance or efficacy is subject to the provision of Section 241. In interpreting the phrase "subject to ", this court in **FEDERAL REPUBLIC OF NIGERIA VS DARIYE (2011) L PELR 4151 (CA)** held per **OGBUINYA JCA** at Page 20 as follows:-

"In the case of OLORUNTOBA-OJU VS ABDULRAHEEM (2009) 13 NWLR (PT 1157) 83 at 138-139, ADEKEYE JSC, had this to say of "subject to"

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"wherever the phrase "subject to" is used in a statute the intention, purpose and legal effect is to make the provisions of the Section inferior, dependent on, or limited and restricted in application to the section to which they are made subject to. In other words, the provision of the latter section shall govern, control and prevail over the provisions of the section made subject to it. It renders the provision of the subjected section subservient, liable, subordinate and inferior to the provisions of the other enactment." See also **FRN VS OSAHON (2006) 5 NWLR (PT 973) 261; BALONWU VS GOV. OF ANAMBRA STATE (2009) 18 NWLR (PT 1172) 13; DINGYADI VS INEC (NO 1 (2010) 18 NWLR (PT 1224) 1**".

The expression "subject to " is often used in Statutes to introduce a condition, a provision and indeed a limitation. The effect is that the expression evinces an intention to subordinate the provisions of the section to the one referred by the provisions of the latter. See **AQUA LTD. VS ONDO STATE SPORTS COUNCIL (1988) 4 NWLR (PT 91) 622** and **ALHASSAN VS**

DINGYADI VS INEC (2009) 18 NWLR (PT 1172) 13
DINGYADI VS INEC (NO 1 (2010) 18 NWLR (PT 1224) 1
10 **CERTIFIED TRUE COPY** (PT. 1172)

**AHMADU BELLO UNIVERSITY, ZARIA & ORS. (2009) L
PELR 8138 (CA) OKE VS OKE (1974) ALL NLR (PT 1) 443.**

In the circumstance, given the provision of Section 242 (1) which is made to apply, subject to section 241 of the 1999 Constitution, the former is made subservient to the latter which under subsection 1(b) confers on the Appellant the right of appeal without the need for leave while the grounds of appeal involves questions of law.

Consequently, the preliminary objection is overruled and it is hereby dismissed.

On the main appeal, the Appellant's brief of argument was filed on 9/5/2016 wherein the following two issues were formulated for determination:

1) **Whether the Delta State Revenue Court has jurisdiction to entertain the subject matter of this suit.**

2) **Whether each of the Appellant's Telecommunication mast is a business premises within the contemplation of the Delta State Registration of Business Premises Amendment Edict 1995".**

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In the Respondent's brief of argument filed on 16/1/2017 but deemed properly filed on 23/3/2017 a sole issue was formulated as follows:-

"Whether the lower court was right in law when it held that the trial Revenue court had jurisdiction to entertain the Suit?"

I will adopt the two issues as raised in the Appellant's brief in the determination of this appeal.

ISSUE 1

Dwelling on this issue, learned counsel for the Appellant submitted that the Delta State Revenue Court has no jurisdiction to entertain the subject matter of the suit and which subject matter is already covered by the Nigerian Communications Act 2003, cap N 97, Laws of the Federation of Nigeria (LFN) 2004 under the doctrine of covering the field.

He cited numerous authorities on the concept of jurisdiction and its effect where a court has no jurisdiction to hear and determine a matter before it.

Reference was then made to the Respondent's processes as per the Demand Notice, (Exhibit A) as well as claims which shows that the suit relates to "communication services through site matter is already covered by the Nigerian Communications Act 2003, cap N 97, Laws of the Federation of Nigeria (LFN) 2004 under the doctrine of covering the field."

He cited numerous authorities on the concept of jurisdiction and its effect where a court has no jurisdiction to hear and determine a matter before it.

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stations constructed in Isoko South Local Government Area of Delta State.

He added that the implication therein is that the suit falls under the provisions of the Nigerian Communications Act and therefore, clearly outside the provision of the Delta State Registration of Business Premises (amendment) Edict 1995.

It was further submitted that the lower court having found that the Appellant's Mast is "Network Facility" under the provisions of Section 157 of the Nigerian Communications Act, it follows that the subject matter of the suit falls within the jurisdiction of the Federal High Court by virtue of Section 138 of the said Act which confers exclusive jurisdiction to entertain the suit.

It was further submitted that "communication services through site stations constructed in Isoko South Local Government Area of Delta State" as stated in the Demand Notice is a creation of the Nigerian Communication Act which is an Act of the National Assembly enacted pursuant to Item 46 of the Executive Legislative List, contained in Part 1 of the second schedule of the 1999 Constitution (as amended). The said Item 46 is said to enumerate posts, telegraphs and telephone matters as matter within the exclusive legislative competence of the

It was further submitted that "communication services through site stations constructed in Isoko South Local Government Area of Delta State" as stated in the Demand Notice is a creation of the Nigerian Communication Act which is an Act of

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National Assembly while Item 66 lists, wireless broadcasting and television transmission.

Dwelling on the legislative competence of the National Assembly vis-a-vis the State Houses of Assembly, it was submitted that where a matter is within the exclusive legislative competence of the National Assembly, no State House of Assembly is competent to legislate on such matter. He cited the case of **AG ABIA STATE VS AG FEDERATION (2006) 9 MJSC 1 at 44.**

On the doctrine of covering the field learned counsel relied on the case of **OSUN STATE INDEPENDENT ELECTORAL COMMISSION VS ACTION CONGRESS & ORS. (2010) 12 MJSC 102 at 187 to 188** to emphasize that the doctrine of covering the field is to the effect that once there is a federal legislation on a particular subject matter, it is not necessary for any of the federal states to legislate on that area and the provision made by the National Assembly covers the subject matter in question and this supports the principle of hierarchy of legislations in a federation.

On the law that where there is conflict between an act of the National Assembly and a state law on the same subject matter, the Act of the National Assembly shall prevail, he cited the case of **AG ABIA STATE VS AG FEDERATION (2006) 9 MJSC 1 at 44** to the effect that once there is a federal legislation on a particular subject matter, it is not necessary for any of the federal states to legislate on that area and the provision made by the National Assembly covers the subject matter in question and this supports the principle of hierarchy of legislations in a federation.

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following authorities:- **AG FEDERATION VS AG ABIA STATE (2002) 5 MJSC 1 at 49; AG ONDO STATE VS AG FEDERATION & ORS. (2002) 7 MJSC 1 at 181; INEC VS BALARABE MUSA & ORS. (2003) 3 MJSC 1 at 27; AG LAGOS STATE VS AF FEDERATION (2003) 7 MJSC 1 at 33.**

Consequently it was submitted that in the instant case the Appellants telecommunication masts in Isoko South Local Government Area of Delta State are matters already covered by Sections 121, 123, 125, 130, 132 and 157 of the Nigerian Communications Act and chapter six of the guidelines on Technical Specifications issued by the Nigerian Communications Commission (NCC) and which empowers only the NCC to grant permits, licenses and certificates to the Appellant and other Telecommunication companies in Nigeria for the erection of their masts and towers in the country.

He added that since the lower court specifically found that the Appellant's mast is a Network Facility, the subject matter of the suit is caught by Section 138 of the Nigerian Communications Act which confers exclusive jurisdiction on the Federal High Court over all matters, suits and cases howsoever, arising out of or pursuant to or consequent upon the Nigerian Communications Act or its Subsidiary Legislations.

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On issue two, learned counsel submitted that each of the Appellant's Telecommunication Mast is not a business premises within the contemplation of the Delta State Registration of Business Premises (amendment) Edict 1995. More so that the lower court in its judgment agreed that the masts constitute part of a network facility.

It was agreed that the expression "Business Premises" is not defined in the Registration of Business Premises (Amendment) Edict 1995 and the lower court's holding that the Appellant's masts or the location of the mast and the generator outside constitute Business Premises is perverse and not supported by evidence on record.

Furthermore, that reliance by the lower court on the provisions of the Registration of Business Premises and Social club Law of 2006 is perverse as the Respondent's claims is specifically founded on the Registration of Business Premises (amendment) Edict 1995 and even if the said law is to apply, by the doctrine of covering the field the said law is inconsistent with Section 157 of the Nigerian Communications Act and is to that extent deemed null and void and of no effect.

It was also learned counsel's contention that each of the Appellant's masts is a communications equipment and /or

network facilities as defined by Section 157 of the Nigerian Communications Act and Chapter 6 of the Guidelines on Technical Specification dated 9th April 2009.

He therefore urged the court to resolve the issue in favour of the Appellant and allow the appeal.

Arguing on the sole issue as raised in the Respondent's brief of argument, learned counsel for the Respondent submitted that in determining the issue of jurisdiction, the court looks at the plaintiff's claim before the court and in the instant case the Respondent's claim against the Appellant is for payment of business premises registration fees for their station sites where they built their masts in seven different locations in Isoko South Local Government Area of Delta State.

He added that the trial Revenue court was right in law to hold that it is the plaintiff's statement of claim and not the motion or any document that the court will look at in determining its jurisdiction as held in the following cases: **NNOJE VS ANYICHIE (2005) 2 NWLR (PT. 910) 623; UWAZURIKE & ANOR VS NWACHUKWU & ANOR. (2012) LPELR 1965 (SC); OKULATE VS OPEJORI (1976) 9-10 SC 31; OKULAJE VS AWOSANYA (2000) 2 NWLR (PT 646) 530.**

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jurisdiction as held in the following cases: **NNOJE VS ANYICHIE**

Learned counsel further noted that the Respondent's claim is contained in the Demand Notice Exhibit 'A' at the Revenue court and the entire claim as summarised by the lower court at page 139 lines 10 – 20 of the Record, wherein it was emphasized that what is being levied is not the Telecommunication Mast but the station site upon which the Mast is built and which conforms with the provisions of the Registration of Business Premises and Social Club Law, Cap R2, Laws of Delta State 2006.

He added that the Appellant laboured under the erroneous impression that it is the Telecommunication Masts that are being levied, hence his reference to Section 157 of the Nigerian Communications Act and an analogy to electricity transmission poles.

It was further submitted that the findings of the lower courts were based on the evidence before the trial court and the enabling laws of Delta State and that an appellate court is enjoined not to set aside the concurrent findings of two lower courts unless they are shown to be perverse or not in line with the evidence led.

This court was then urged to resolve the issue against the Appellant and dismiss the Appeal.

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The two issues are interwoven and I will consider them together. It is settled law that jurisdiction is the fundamental nerve centre of any judicial process. It is defined as the power of any court or tribunal to hear and determine the suit brought before it by parties in a dispute. See **USMAN VS KADUNA STATE HOUSE OF ASSEMBLY (2007) 11 NWLR (PT 1044) 148; UTHI VS ONOYIVWE (1991) NWLR (PT 166); NATIONAL BANK OF NIGERIA VS SHOYOYE (1977) SC 181.**

Jurisdiction has also been held to be the authority which a court has to decide matters that are litigated before it or take cognisance of matters presented in as formal way for its decision. It is the power of the 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. See **TELLA VS DANIEL (2013) LPELR (22620) CA.**

In the instant case the Appellant's grouse is that the lower court having found that the Appellant's Telecommunication Mast (subject matter of the suit) is a network facility under the provisions of Section 157 of the Nigerian Communications Act it follows that by virtue of Section 138 of the said Act, the subject matter of the suit is only within the exclusive jurisdiction of the court. It is the power of the court to decide a matter in controversy and presupposes the existence of a duly constituted court with control

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In the instant case the Appellant's grouse is that the

Federal High Court and not the Delta State Revenue Court having regard to the Doctrine of covering the field.

For the Respondent, the stance is that its claim against the Appellant is for payments of business premises registration fees for their station sites where they built their Telecommunication Masts and the lower court never relied on the provisions of section 157 of the Nigerian Communications Act in coming to the conclusion that the Revenue Court has jurisdiction to entertain the suit.

It is settled law that it is the plaintiff's claim that determines the jurisdiction of the court. In other words, whatever is brought before the trial court by the plaintiff or claimant for resolution will determine whether or not the trial court is competent to entertain or adjudicate on the matter. That is to say, the jurisdiction of a court is determined by the plaintiff's claim as endorsed in the writ of summons and statement of claim. See **PDP VS SYLVA (2012) 4 – 5 SC 36** or **(2012) 13 NWLR (PT 1316; EBEBI VS SPEAKER BENUE STATE HOUSE OF ASSEMBLY (2012) 5 NWLR (PT 1292) PAGE 1; EMEKA VS OKADIGBL (2012) 7 SC (PT 1) page 1; GOLDMARK (NIG) LTD VS IBAFON CO. LTD (2012) 3 SC (PT 111) 72 OR (2012) 10 NWLR (PT 308) 291.**

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(2012) 4 – 5 SC 36 or (2012) 13 NWLR (PT 1316; EBEBI

In the instant case, the Respondent's claim before the Revenue court is as contained in page 5 of the Record of Appeal and for purposes of clarity, it is herein below reproduced.

CLAIMS

The Revenue court is informed that revenue due to:

- I. State Government
- II. Local Council (Name) _____
- III. Any other Government Parastatal or Company

DELTA STATE GOVERNMENT (Name)

Is due from you or has come to your custody by virtue of (particulars).

REGISTRATION / RENEWAL OF BUSINESS
PREMISE FOR THE PERIOD 2009 – 2011 I.E 3
YRS AS PER REGISTRATION OF BUSINESS
PREMISES LAWS AMENDMENT EDICT 1998

And you have neglected, failed and refused to pay over the total outstanding amount of N3,500,000.00

THREE MILLION FIVE HUNDRED THOUSAND
NAIRA ONLY (in words)

I, MR OFUDU S. OKEME herein claim the said Amount of ₦ 3, 500,000.00 on behalf of the

REGISTRATION OF BUSINESS
PREMISES LAWS AMENDMENT EDICT 1998

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And you have neglected, failed and refused to pay over the total outstanding amount of

I. DELTA STATE GOVERNMENT

II. MINISTRY OF COMMERCE AND INDUSTRY

Dated this 23rd day of November, 2011

In the Registry, Oleh.

Signature of Claimant/Date

Prima facie, the claim against the Appellant as set out above was brought pursuant to the Delta State "Registration of Business Premises Laws (Amendment) Edict, 1995" which deals with registration of business premises in Delta State and annual renewal of same through payment of prescribed fees as per the provisions of the said Edict. The said law, where applicable accords with the constitutional competence and entitlement of a state in a Federal system of government to make laws for the control and management of businesses, institutions and facilities located within its territorial or geographical area and to do whatever is necessary within legal and constitutional limits to generate revenue for the running of the government of the state in terms of provision of social and infrastructural facilities such as roads, water, security etc.

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Signature of Claimant/Date

Learned counsel for the Appellant had contended that the Appellant's mast in Isoko South Local Government Area of Delta State are matters already covered by Section 121, 123, 125, 132 and 157 of the Nigerian Communications Act and Chapter 6 of the Guidelines on Technical Specifications for the Installation of Telecommunications Masts and Towers dated 9th April 2009 which empowers only the NCC to grant permits, licenses and certifications to the Appellant and other Telecommunication companies in Nigeria for the erection of their masts and towers.

The Sections of the Nigerian Communications Act and the guidelines referred to by the learned counsel for the Appellant deals with grant of permits, licenses and certifications to Telecommunication Companies that want to erect or instal such Telecommunication Mast or other equipment in any part of Nigeria, and this clearly falls under Item 46 and 68 of the exclusive legislative list contained in Part 1 of the Second Schedule of the Constitution of the Federal Republic of Nigeria 1999 as amended.

That brings me to **whether each of the Appellant's Telecommunication Mast is a business premises within the contemplation of the Delta State Registration of Business Premises (Amendment) Edict 1995** as to confer

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on the Delta State Revenue Court the competence to entertain the Respondent's claim.

For the Appellant, the Telecommunication Mast is not a business premises within the contemplation of the Delta State Registration of Business Premises (Amendment) Edict 1995 going by the Demand Notice (Exhibit 'A') which shows that the Appellant's business for which the Respondent made its claim is "Communication Services through sites Stations constructed in Isoko South Local Government Area, Delta State."

A perusal of the said Demand Notice "Exhibit A" at page 52 of the Record of Appeal show that it is headed:-

"DEMAND NOTICE ON PAYMENT FOR REGISTRATION/RENEWAL OF BUSINESS PREMISES".

In the body of the said Demand Notice, it was clearly stated thus:-

"we wish to inform you that Records available to us show that you have defaulted on your payment for Registration/Renewal of business premises revenue due to Delta State Government for the period 2009 – 2011 that is 3 years."

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In the column for Description or nature of business being carried on by the Appellant it was stated thus:-

“Communication Services through Masks (sic) site stations constructed in Isoko South Local Government Area, Delta State”

To my mind the message contained in the Demand Notice is very clear and unambiguous and it shows nothing more than an intention by the State Government to use the Registration and renewal of business premises as one of its sources of generating revenue for the state and this effort has the backing of law by way of the Registration of Business Premises (Amendment) Edict 1995 where applicable.

However, the Respondent's claim as earlier set out is premised on the said Edict of 1995 and noting more. The question is whether the Appellant's seven Telecommunication Masts located in Isoko South Local Government of Delta State constitutes a business premises as provided for in the said Registration of Business Premises (Amendment) Edict 1995.

A calm perusal of the said Edict of 1995 relied upon in making the claim shows that it nowhere defined or described what constitutes a business premises. This state of affairs is also

However, the Respondent's claim as earlier set out is premised on the said Edict of 1995 and noting more. The

question is whether the Appellant's seven Telecommunication Masts located in Isoko South Local Government of Delta State constitutes a business premises as provided for in the said

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reflected in the judgment of the lower court wherein it was held at page 139 of the record that:-

"Both parties agree that the Delta State Registration of Business Premises (Amendment) Edict 1995 does not define what constitutes a business premises for purpose of Registration and Renewal. However, the Respondent had recourse to Registration of Business Premises and Social Clubs Law Cap R2 Laws of Delta State 2006. In the interpretation of the said Law, business premises is defined as "the premises in which any business is carried on whether situated within or without a building or structure, and whether fenced or unfenced."

I however agree with the submission of learned counsel for the Appellant to the effect that the reliance by the lower court, on the provisions of the Registration of Business Premises and Social Club Laws Cap R2, Laws of Delta State, 2006 is perverse given the fact that the Respondent specifically founded its claim in the Revenue court on the provisions of the Registration of Business Premises (Amendment) Edict 1995 and not the 2006 Law. This brings to the fore the age long principle of law that it is the plaintiff's claim that determines the jurisdiction of the court. See

I however agree with the submission of learned counsel for the Appellant to the effect that the reliance on the provisions of the Registration of Business Premises and Social Club Laws Cap R2 Laws of Delta State, 2006 is perverse given

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PDP VS SYLVA supra and EMEKA VS OKADIGBO (2012) 7 SC (PT 1) page 1. I will also quickly add here that the relief sought by a party in a suit must flow from the facts and evidence provable before the court.

From the record before this court, the Respondent's claim before the Revenue Court as well as the Demand Notice are clearly founded on the provisions of the Registration of Business Premises (Amendment) Edict 1995. They are not allowed to subsequently turn around and rely on another entirely different statutory provision without first applying for and obtaining an order of amendment from the court. But even at that and assuming the said Delta State Law of 2006 is to be invoked, the interpretation of the words "Business Premises" does not seem to cover a Telecommunication Masts installed at random in different locations given the provisions of Section 4 and 6 of the said Law and the particulars required to be supplied thereto. Each of the said Telecommunication Masts to my mind, is nothing more than network facilities installed at specified locations by communication outfits for the purpose of enhancement or facilitation of the services they provide to their customers from their various business centres.

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What is more, Section 157 of the Nigerian Communications Act, which is the interpretation section, defines "Network Facilities" to mean, "any element or combination of elements or physical infrastructure used principally for or in connection with the provision of service but does not include customer equipment".

It also defines "access" to mean"-

"The making available of communication facilities and communications services one licence to another for the purpose of providing services, and includes the connection of equipment by wire or wireless means, access to physical infrastructure including but not limited to buildings, ducts and masts, access to mobile networks, in particular for roaming, and access to number translation or systems offering equivalent functionality."

In the light of the above definitions, I cannot but agree with the stance of the learned counsel for the Appellant that to hold that a Telecommunications Mast is a business premises is akin to holding that an electricity transmission pole or electricity transformer is a business premises to be registered with a fee and renewable annually by all the private electricity transmission physical infrastructure used principally for or in connection with the provision of service, but does not include customer equipment.

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In the light of the above definitions, I cannot but agree with the stance of the learned counsel for the Appellant that to hold that a Telecommunications Mast is a business premises is akin to holding that an electricity transmission pole or electricity transformer is a business premises to be registered with a fee and renewable annually by all the private electricity transmission physical infrastructure used principally for or in connection with the provision of service, but does not include customer equipment.

and distribution companies without regard to the fact that they also have offices in almost all the towns and cities from where they operate their businesses.

On this premise and having regard to the Respondent's claim wherein the Appellant's seven Telecommunication Masts are described as business of "Communication services through site stations constructed in Isoko South Local Government Area of Delta State, I cannot but hold that the said Telecommunication Mast locations is not a business premises within the contemplation of the Delta State Registration of Business Premises (Amendment) Edict 1995 to warrant a demand for registration and renewal as per the Respondent's claim in the Revenue Court and this also robs the said court of the competence on jurisdiction to entertain the action.

The issues are therefore resolved in favour of the Appellant.

On the whole, this appeal is found to be meritorious and it is hereby allowed.

The part of the judgment of the High Court of Delta State which is the subject of this appeal and delivered on 4th day of February 2016 is hereby set aside.


On this premise and having regard to the Respondent's claim wherein the Appellant's seven Telecommunication Masts are described as business of "Communication services through site stations constructed in Isoko South Local Government Area of Delta State, I cannot but hold that the said Telecommunication Mast locations is not a business premises within the contemplation of the Delta State Registration of Business Premises (Amendment) Edict 1995 to warrant a demand for registration and renewal as per the Respondent's claim in the Revenue Court and this also robs the said court of the competence on jurisdiction to entertain the action.

The issues are therefore resolved in favour of the Appellant.

On the whole, this appeal is found to be meritorious and it is hereby allowed.

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Parties to bear their costs.


SAMUEL CHUKWUDUMEBI OSEJI
JUSTICE, COURT OF APPEAL.

APPEARANCES

I.N. Doghor (Mrs) with brief of Jonathan Ekperusi for the Appellant

C.O. Agbagwu Asst. Director (MOJ) Delta State for the Respondent.

SAMUEL CHUKWUDUMEBI OSEJI
JUSTICE, COURT OF APPEAL.

APPEARANCES

I.N. Doghor (Mrs) with brief of Jonathan Ekperusi for the Appellant

C.O. Agbagwu Asst. Director (MOJ) Delta State for the Respondent.

SAMUEL CHUKWUDUMEBI OSEJI
JUSTICE, COURT OF APPEAL.

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CA/B/167/2016

{MOORE ASEIMO ABRAHAM ADUMEIN, JCA}

I had a preview of the judgment just delivered by my learned brother, **Samuel Chukwudumebi Oseji, JCA.**

My learned brother has painstakingly advanced elaborate reasons for allowing this appeal. I adopt the reasons given by my learned brother as mine and I also allow the appeal.

The judgment of the lower court delivered on the 4th day of February, 2016 is hereby set aside, as the Revenue Court of Delta State had no jurisdiction to entertain the respondent's claim in that court.

There is no order for costs.

My learned brother has painstakingly advanced elaborate reasons for allowing this appeal. I adopt the reasons given by my learned brother as mine and I also allow the appeal.

The judgment of the lower court delivered on the 4th day of February, 2016 is hereby set aside, as the Revenue Court of Delta State had no jurisdiction to entertain the respondent's claim in that court.

There is no order for costs.

My learned brother has painstakingly advanced elaborate reasons for allowing this appeal. I adopt the reasons given by my learned brother as mine and I also allow the appeal.

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MOORE ASEIMO ABRAHAM ADUMEIN
JUSTICE, COURT OF APPEAL

APPEAL NO: CA/B/167/2016

MUDASHIRU NASIRU ONIYANGI. JCA

My lord, SAMUEL CHUKWUDUMEBI OSEJI, JCA, obliged me with the draft of the leading judgment just delivered.

I agree that the appeal is meritorious and I also allow it. I abide by the consequential orders contained therein.

APPEAL NO: CA/B/167/2016

**MUDASHIRU NASIRU ONIYANGI
JUSTICE, COURT OF APPEAL.**

My lord, SAMUEL CHUKWUDUMEBI OSEJI, JCA, obliged me with the draft of the leading judgment just delivered.

I agree that the appeal is meritorious and I also allow it. I abide by the consequential orders contained therein.

APPEAL NO: CA/B/167/2016

**MUDASHIRU NASIRU ONIYANGI
JUSTICE, COURT OF APPEAL.**

My lord, SAMUEL CHUKWUDUMEBI OSEJI, JCA, obliged me with the draft of the leading judgment just delivered.
CERTIFIED TRUE COPY
I agree that the appeal is meritorious and I also allow it. I abide by the consequential orders contained therein.