

**EXCLUSIVE JURISDICTION OF THE FEDERAL HIGH COURT IN TELECOMMUNICATIONS  
DISPUTES IN NIGERIA: MYTH OR REALITY?\***

**Abstract**

*Telecommunications is a vital aspect of human existence. It enhances communication over significant distances without the necessity of physical movement from one location to another. It thus, enhances social and economic activities. The challenges of balancing the diverse interests in the industry give rise to disputes in various manifestations. Jurisdiction for settlement of these disputes is conferred by law. Is this jurisdiction exclusive to the Federal High Court in all telecommunications disputes? This paper answers the question in the negative because the Federal High Court lacks jurisdiction to entertain claims founded on contracts.*

**Keywords:** Federal High Court, Exclusive Jurisdiction, Telecommunications Disputes, Nigeria

**1. Introduction**

Telecommunications is the transmission of messages over significant distances for the purpose of communications. The term ‘telecommunication is defined in the Nigerian Communications Act<sup>1</sup> to mean ‘any transmission, emission or reception of signs, signals, writings, images, sounds or intelligence of any nature by wire, radio, visual or other electro-magnetic system’. This definition covers a very wide spectrum. This is typical of communications even from primordial times. In this regard, human history records the use of trade-communication systems such as smoke signals, town criers operating with the aid of their voices, drums, wooden and metal gongs, as well as canons powered with gun powder. Smoke signals have apparently transformed into a trade-modern means of communication as evidenced in its continued use by the Roman Catholic Church to announce the emergence of a new Pope. Communication or exchange of information is a vital aspect of human existence. Throughout the ages, men have in diverse ways communicated with one another within the limits of the facilities at their disposal. The inadequacy of the human voice is quite evident, being limited by distance. Thus, over the years, man has attempted to extend this distance by applying various techniques and technical devices. This has propelled human energies continuously into seeking ways of improving not only the processing of information, but also the communication of same *inter se* irrespective of distance and on a real time basis.<sup>2</sup> The inventions of the telephone by Graham Bell and Radio wave propagation over long distances have been major milestones in man’s quest to communicate over long distances. Telephony has thus, become an essential means through which social and economic activities are made palpably possible and indeed enhanced.<sup>3</sup> Access to telecommunications facility, particularly the telephone underscores the imperatives of social and business communications without having to contend with the risks associated with physical movement via the medium of air, road, rail and sea transportation. Thus, it appears that an average man in the street anywhere in Nigeria today is convinced of the necessity of owning a telephone, particularly the now popular Global System for Mobile Communication (GSM). The inadequacy of investible capital in telecommunications at the domestic realm has thrown up a highly competitive environment. Sometimes the challenges of balancing diverse interests and the ultimate interest of the consumer create room for disputes. Oftentimes resort is made to the courts for adjudication of these disputes. The critical question that arises is, which court has the jurisdiction to entertain telecommunications disputes?

**2. Nature of Telecommunications Disputes**

Disputes are a recurrent decimal in the conduct of the affairs of man. Throughout human history, the dialectics of disputes and dispute resolution have been a central concern and constant challenge aimed at making the world more

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<sup>1</sup> No. 19 of 2003, hereinafter, ‘the Act’, s. 157.

<sup>2</sup>E. Ndukwe, ‘The Role of Telecommunications in National Development’, being a paper presented at the 19<sup>th</sup> Omolayle Annual Management Lecture held on 15/12/2003 at the Chartered Institute of Bankers Auditorium, Victoria Island, Lagos, p.3.

<sup>3</sup>S. Bello, ‘The Engineering and Technological Challenges of Nigeria’s March to Universal Access in Telecommunications’, (2004), Vol.1, No.1, *Nigerian Telecommunications Journal*, p.68.

conducive for human habitation. The genesis of disputes in the telecommunications sector broadly lies in the conflict of interest between and among the parties involved in the sector, or in the violation of contractual terms and conditions or regulations in the sector; or in an inadequate appreciation and observation of the business practices and procedure in the sector.<sup>4</sup> Thus, the incidence of disputes in the telecommunications industry became even more accentuated in an environment of rapid competition brought about by liberalization and deregulation as is being witnessed in the sector in Nigeria. This transformation has consequently impacted on the nature and complexity of disputes that arise in the sector. These disputes may relate to infrastructure, competition, interconnection, investment regulations, trade, tariffs, jurisdiction, interpretation of policy and license terms and conditions as well as the all important and recurrent consumer concerns<sup>5</sup> among others.

With respect to infrastructure for instance, disputes may arise between the regulatory authority and industry operators for non-compliance with equipment type approval specifications. Similarly, deployment of telecommunications towers has been a source of infrastructure dispute. It appears that scant regard is paid to environmental concerns and standards in citing communication towers and masts in urban, sub-urban and rural parts of Nigeria. Hardly are environmental impact assessments carried out before erection of these masts and towers which dot the Nigerian landscape. Apparently actuated by poverty, land owners and host communities seem to be momentarily content with the paltry handouts in monetary terms from telecommunications operators to cede their land for the erection of towers and masts. The paramount consideration appears to be money. When the money is fully spent, the said land owners and host communities get restive in their further demand for more money. This unhealthy development unfortunately protracts and snowballs into disputes to the detriment of the industry.

Interconnection is another dispute area that has characterized the telecommunications industry. The word 'interconnection' is defined in the Act as 'the physical and logical linking and connection of communications system used or operated by the same or different licensees in order to convey messages to and from the respective systems for the provision of services'.<sup>6</sup> An interconnection arrangement allows an operator to use, for some consideration, another operator's infrastructure to increase the number of consumers it can reach. Interconnection disputes occur more often where the interconnection operators are both partners and competitors. There is thus, a tendency among incumbent or dominant operators to frustrate interconnection by delaying interconnection agreements and increasing entry cost for new entrants into the industry. This often results in drop calls, poor quality of services, high tariffs and frustrating experience for subscribers. The law and policy in Nigeria is that users of different networks must communicate or access each other. The law imposes an obligation on telecommunications service providers to interconnect.<sup>7</sup> There appears to be no doubt that the quality of telephone calls in Nigeria has incrementally improved in recent times. However, the Nigerian Communications Commission (NCC), the telecommunications industry regulator is yet to fully exercise its regulatory powers to sanction defaulting operators to the detriment of telephone service consumers.

With respect to competition which is another source of dispute in the industry, it must be underscored that the whole essence of liberalization of the telecommunications industry is to create an efficient regime by encouraging fair participation of the private sector at all levels of the industry through fair competition.<sup>8</sup> Indeed, the NCC has a mandatory role to promote fair competition in the industry and protect services and facilities providers from misuse of market power as well as prevent anti-competitive and unfair practices by operators and equipment suppliers.<sup>9</sup> Generally, abuse of rules of fair competition by employment of anti-competitive schemes as well as

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<sup>4</sup>U.S. Prasad, 'Dispute Resolution Mechanism in the Telecom Sector: Relating International Practices to Indian Experience', Stanford Centre for International Development Working Paper No. 372, September 2008, p.3.

<sup>5</sup> *Ibid.*

<sup>6</sup>S. 157 of the Act.

<sup>7</sup>*Ibid.*, s. 96. See also Regulation 1(1) of the Telecommunications Networks Interconnection Regulations 2007.

<sup>8</sup>S. 1(e) of the Act. See also chapter 4 of the National Telecommunications Policy of the Federal Republic of Nigeria, September 2000 hereinafter, 'the policy', particularly paragraphs 4 and 4.4 thereof.

<sup>9</sup> SS. 4(i) (d) and 90 of the Act.

misuse of ‘dominant position’ status to outwit co-competitors in the industry is ready recipe for disenchantment and disputes.

Consumer concerns constitute the most significant source of telecommunications disputes. It is perhaps to address these concerns that the Act makes provision for the protection and promotion of the interests of the consumer. Thus, the NCC shall ensure ‘the protection and promotion of the interests of the consumer against unfair practices including but not limited to matters relating to tariffs and charges for, and the availability and quality of communication services, equipment and facilities’.<sup>10</sup> Similarly, the Act provides that all service providers in the industry shall, in respect of their specific services, meet minimum standards of quality of service as the NCC may periodically specify and publish as well as deal reasonably with consumers of its services and adequately attend to consumer complaints.<sup>11</sup> The Act defines ‘consumer’, ‘customer’, or ‘subscriber’ simply as ‘any person who subscribes to and uses a communications service’. In Nigeria, consumers of telecommunications products and services are as varied as their tastes, needs and expectations. Besides, it seems that consumers of telecommunications services in Nigeria are no longer the few privileged wealthy urban dwellers. Virtually every part of Nigeria is populated by telecommunication services consumers.

Let it be said at once, that the telecommunications consumer wants good quality services to be available at all times, in all places and most importantly, at affordable rate. The consumer demands prompt response from the service provider whenever he needs attention. Similarly, he expects explanations from the service provider whenever anything goes wrong in the quality of service. Invariably, the consumer wants protection at all times from exploitation by service providers. The consumer of telecommunication services expects and indeed, wants to be well treated just like the consumer of any other type of services.<sup>12</sup> In a nutshell, the consumer demands value for his hard-earned money. When these expectations are not met, frustration sets in, and disputes follow. These disputes range from concerns for tariffs and charges imposed on consumers by service providers, particularly for unsolicited calls, messages and applications; poor quality services resulting in drop calls; access difficulties most often arising from the challenges of interconnectivity among service providers; promotional floaks by which service providers induce massive patronage from consumers sometimes in excess of their roll out capacities without fulfillment of their promotional promises. There are also the critical consumer concerns about the health implications of radioactive emissions from base stations, transmitter masts and mobile phones. Increasing incidence of cancer for people working or residing in the vicinity of the said base stations and masts is also cause for concern. In Nigeria, these concerns notwithstanding, base stations and masts are indiscriminately located in places of public resort such as markets, churches, schools, police barracks, residential areas, etc.

The NCC initiative to avert or minimize potential dispute areas in the industry by putting in place the twin programmes of Telecom Consumer Parliament and Consumer Outreach are at best commendably necessary, but certainly, not sufficient steps to address telecommunications disputes. The programmes which are interactive afford consumers of telecommunication products and services the opportunity of freely expressing their views and concerns about the quality of service right in the presence of service providers, the regulator and the media.

### **3. Jurisdiction**

Jurisdiction is the power of a court to hear and determine the subject matter in controversy between parties to a suit. It is the authority of the court to exercise judicial power. ‘Judicial power’ is the totality of the constitutional and legal authority vested in the court to hear and decide justiceable cases and controversies and to interpret and enforce same, or to void statutes and laws when their scope are in excess of constitutional limits.<sup>13</sup> The word ‘jurisdiction’ is expressed in the judicial context to mean the authority a court has to decide matters before it or to

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<sup>10</sup> *Ibid*, s. 4(i) (b).

<sup>11</sup> *Ibid* s. 104.

<sup>12</sup>E. Ndukwe, ‘The Place of the Consumer in the Nigerian Telecoms Industry’, being a Keynote Address presented at the Third Stakeholders Forum organized by IT and Telecoms Digest held at Golden Gate Restaurant, Ikoyi, Lagos, on Monday, 9<sup>th</sup> June, 2008, p.1.

<sup>13</sup><<https://thelawdictionary.org/ju>> accessed on 23/03/2019.

take cognizance of matters presented in a formal way for its decision.<sup>14</sup> Jurisdiction is thus, a radical and critical question of competence. A defect in jurisdiction is fatal to adjudication and renders an entire proceedings and decisions reached thereat invalid, null and void, however brilliantly conducted and concluded.<sup>15</sup> This was aptly captured by Belgore JSC in *Nwosu v Imo State Environmental Sanitation Authority*.<sup>16</sup> According to his lordship:

Jurisdiction is the spinal cord of a court of law. The issue of jurisdiction is always fundamental and it is only prudent if it is resolved first, otherwise, the court that ignores it might finally find its going to the real trial of all issues a mere adventure... To avoid unnecessary wasting of time, it is desirable to ascertain first if there is jurisdiction by the court to try the issue.

How then do the courts derive their jurisdiction? Courts are creatures of statutes and their jurisdiction is confined, limited and circumscribed by the statute creating them. These statutes include the Constitution, Acts of the National Assembly and Laws of State Legislatures. Courts cannot therefore, confer jurisdiction on themselves. Similarly, they cannot expand their jurisdictional limits by misappropriating or misconstruing statutes.<sup>17</sup> It follows therefore, that courts, being creatures of statutes cannot assume jurisdiction except it is statutorily prescribed because jurisdiction can neither be implied nor conferred by agreement<sup>18</sup> of parties.

In determining the jurisdiction of a court, the enabling law vesting jurisdiction on it has to be examined in the light of the reliefs sought.<sup>19</sup> A court is therefore competent to entertain, hear and determine a matter or matters presented before it if:

- (a) It is properly constituted as regards qualification of members of the bench and no member is disqualified for one reason or another; and
- (b) The subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction; and
- (c) The case comes before the court initiated by due process of law and upon the fulfillment of any condition precedent to the exercise of jurisdiction.

All the foregoing conditions must co-exist for the court to be vested with proper competence and jurisdiction.<sup>20</sup>

#### 4. Exclusive Jurisdiction in Telecommunications Disputes

On which court then is jurisdiction in telecommunications disputes under the Act conferred? And is the jurisdiction so conferred exclusive? It would appear that the Act confers exclusive jurisdiction over all matters, suits and cases howsoever, arising out of, or pursuant to, or consequent upon the Act or its subsidiary legislation on the Federal High Court. In the exact wordings of the Act:

*The Federal High Court shall have exclusive jurisdiction over all matters, suits and cases howsoever arising out of or pursuant to or consequent upon this Act or its subsidiary legislation and all reference to 'court' or 'judge' in this Act shall be understood and deemed to refer to the Federal High Court or a judge of the said court.*<sup>21</sup>

One of the few cases that have addressed the purport of the foregoing provision of the Act is *Njikonye v MTN Nig Communications Ltd*.<sup>22</sup> Thus, because of the importance and seeming milestone of this case, it is examined at length to expose and appreciate the purport of the arguments canvassed by both parties and the significance of the considered judgment of the court.

In this case, the appellant as plaintiff commenced an action at the High Court of the Federal Capital Territory (FCT), Abuja by Writ of Summons on 20/05/2003 against the respondent, claiming various sums of money as loss of income; inconveniences and distress; cost of instituting the action; and cost of prosecuting same. The plaintiff

<sup>14</sup> *Miscellaneous Offences Tribunal v Okoroafor* (2001) 9-11 SC 91 at pp. 101-102; *AG Federation v AG Abia State* (2001) 7 SC (pt. 1) 100.

<sup>15</sup> *Madukolu v Nkemdilim* (1962) 2 SCNLR 241; *Mobil Producing Nig. Unltd v LASEPA* (2003) FWLR (pt. 137) 1029.

<sup>16</sup> (1990) 2 NWLR (pt. 135) 668.

<sup>17</sup> *African Newspapers (Nig.) Ltd v Federal Republic of Nigeria* (1985) 2 NWLR (pt. 6) 137; *Onwudiwe v Federal Republic of Nigeria* (2006) 15 NWLR (pt. 1002) 404.

<sup>18</sup> *Gafar v Govt. of Kwara State* (2007) 10 NWLR (pt. 776) 524; *Osadebe v AG Bendel State* (1991) 22 NSCC (pt. 1) 137 at p. 160.

<sup>19</sup> *Njikonye v MTN Nig. Communications Ltd* (2008) All FWLR (pt. 413) 1343 at p. 1365 per Omoleye JCA.

<sup>20</sup> *Madukolu v Nkemdilim* *Supra* at p. 587; *AG Anambra State v AG Federation* (1993) 6 NWLR (pt. 302) 692.

<sup>21</sup> s. 138 of the Act, *Italics Supplied*.

<sup>22</sup> *Supra*

also claims interest at 10 percent per annum on the judgment sum from the date of judgment until it is fully paid. The Writ of Summons was supported by a 14 paragraphs amended Statement of Claim in which the plaintiff, a private Legal Practitioner averred that he acquired from the defendant, a mobile communications company limited by shares, incorporated under the laws of the Federal Republic of Nigeria and doing business in many Nigerian cities including Abuja, a cell line (sim card) No. 08033186095 which was installed in the plaintiff's Motorola Talkabout mobile handset and used by him for communications. The plaintiff's private legal practice cuts across several jurisdictions in Nigeria extending to Aba, Umuahia, Lagos and most of his briefs from within and outside Abuja judicial division are communicated to him through his said cell line, especially corporate briefs such as banks and land searches. The plaintiff averred that so far as he continued to load N1,500.00 every two months, the defendant had a contractual obligation to leave extant, and not to disconnect the plaintiff's said cell line from its network. More especially, within 15 days from any date the plaintiff refills his said cell line with credit, the defendant has a contractual duty to provide him with consecutive uninterrupted access to its network. The implication is that within such period, the plaintiff's communication through his said cell line must not suffer any hitch because of network problem and averred that at the trial, the plaintiff shall found on specimen of the defendant's credit card which terms are applicable to all defendant's customers including the plaintiff.

The plaintiff further averred that he constantly refills his cell line with credit and that on 30/04/2003, he loaded the said line with N1,500.00 worth of credit and as at 07/05/2003, he had a credit balance of N911.00 with the defendant. On the said 07/05/2003, despite the plaintiff having call credit of N911.00 in respect of his cell line, the defendant, between the hours of 7am and 5pm wrongfully hindered and interrupted his access to its network, thereby making it impossible for him to receive or make calls using his said cell line which doubles as the plaintiff's only direct line as well as the only telephone line of his Law Firm, Jeph C Njikonye & Co. The plaintiff further averred that the defendant's wrongful interruption with his access to its network on 07/05/2003 caused him and his Firm great damage in consequence of which the plaintiff lost briefs which his learned colleague A.O. Okpala Esq. from Aba attempted unsuccessfully to communicate to him via his cell line. This fact was brought to the plaintiff's knowledge by the said A. O. Okpala Esq., on 09/05/2003. The plaintiff averred that within the said hours of 7am to 5pm on 07/05/2003, he was at Banex Plaza, Wuse II, Abuja which ordinarily is the defendant's network service area and that the loss suffered by him and his Law Firm was as a result of the defendant's wrongful interruption of his access to its network which made it impossible for him to receive calls at the time aforesaid. Thus, the wrongful conduct of the defendant complained of caused him loss of income. And so, on 09/05/2003, the plaintiff wrote a letter to the defendant complaining of the wrongful conduct aforesaid but the defendant ignored the letter. In consequence, the plaintiff sued the defendant making the claims herein earlier stated.

The respondent in reaction, filed a Notice of Preliminary Objection on 25/07/2003 against the plaintiff's suit on the ground that the Writ of Summons was incurably defective and urged the trial court to strike out the suit with cost for being incompetent. Contemporaneously, the respondent filed a Motion on Notice on 30/07/2003 praying for a similar order of the trial court striking out the appellant's suit with cost on the grounds that:

- (1) the High Court of the FCT lacks jurisdiction to entertain the suit as jurisdiction in matters of the nature disclosed in the Writ of Summons and Statement of Claim vests only in the Federal High Court;
- (2) the plaintiff is not the proper party enjoined by law to institute the action,
- (3) the Writ of Summons is incurably defective; and
- (4) the condition precedent to the invocation of the Honourable Court's jurisdiction has not been fulfilled.

The application was supported by a 6 paragraph affidavit stating *inter alia* that the relationship between the defendant and the plaintiff is governed by the MTN terms and conditions contained in the sim pack which the defendant gives to all its customers upon purchase of the defendant's mobile telecommunication line. Clause 23 thereof enjoins the purchaser to refer any dispute relating to the defendant's network to any telecommunications representative who may be appointed as such by the NCC. The law establishing the NCC<sup>23</sup> empowers it to entertain complaints from *inter alia*, consumers of telecommunication services such as is rendered by the defendant. The said law provides for the procedure for processing complainants and instituting legal action against any telecommunication licensee or carrier. Clause 23 aforesaid derives its origin from the NCC Law. The Global Systems for Mobile Communication (GSM) is a government policy and in order to ensure its continued existence, the provisions of the NCC law was put in place to insulate or protect carriers and or licensees such as the defendant

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<sup>23</sup> Act No. 75 of 1992 (hereinafter referred to as 'the NCC Act') now repealed and replaced by the Act.

from 'spurious' claims such as the plaintiff's. And finally, that it will be in the interest of justice and preservation of government policy to grant the respondent's application.

In his counter-affidavit filed on 16/09/2003 in opposition to the respondent's application, the appellant stated *inter alia* that the relationship between the plaintiff and the defendant was entirely contractual and strictly governed by the law of contract including the doctrine of privity of contract. The defendant's sim pack was usually sealed at the time of purchase and the instructions contained on the surface of the sim pack at the time of purchase as opposed to 'terms and conditions' concealed in a sealed sim pack form the terms of contract between the plaintiff and the defendant. And finally, that the NCC Act was not applicable and a *fortiori* not relevant for the purpose of the plaintiff's suit.

At the conclusion of submissions of counsel for both parties on the Motion on 11/03/2004, the learned trial Judge ruled on 15/06/2004 declining jurisdiction to adjudicate the appellant's suit. Dissatisfied, the appellant filed a Notice of Appeal dated 12/07/2004 at the Court of Appeal raising *vide* his brief of argument deemed filed on 11/05/06, one issue for determination: 'Was the trial court right when it relied on the provisions of section 24 of the Nigerian Communications Commission Act No. 75 of 1992 to decline jurisdiction to hear the appellant's claim as constituted?'<sup>24</sup> The appellant also filed a reply on 09/11/2006. The respondent's brief which was deemed filed on 19/10/2006, also raised one issue for determination: 'Whether having regard to the appellant's Statement of Claim filed in the trial court and the provisions of the Nigerian Communications Commission Act No. 75 of 1992 ... it is not the Federal High Court that is vested with the jurisdiction to entertain the appellant's suit'.<sup>25</sup> Counsel for both parties on 15/02/2007 adopted their respective briefs of argument while the Court of Appeal per Omoleye JCA who read the lead judgment of the court adopted the sole issue formulated by the appellant. Learned Counsel for the appellant argued *inter alia* that in the determination of whether a court has jurisdiction to try a claim, the court must examine the cause of action as contained in the Writ of Summons and Statement of Claim of the plaintiff and submitted that such examination will show that there was breach by the respondent of its personal contractual obligation to the appellant, which breach occurred in the FCT, Abuja, entitling the High Court of FCT to exercise jurisdiction to hear the suit. And further, the contractual rights of the appellant are not stipulated by the NCC Act. Learned Counsel for the appellant further submitted that by the provisions of sub-section (1) of section 1 of the NCC Act, liabilities and duties created relate to the Commission (NCC) of the one part and Licensees or authorized carriers or other providers of telecommunications services and infrastructure on the other part.

Thus, it is the Federal High Court that is vested with the jurisdiction to hear all suits for the enforcement of these duties and liabilities by virtue of the provisions of section 24 of the NCC Act and so, the Commission must be the party suing or being sued in actions arising therefrom. According to Counsel for the appellant, the learned trial Judge erred when he held that there is no enforceable contractual relationship between the parties which are expected to bind them, were subscribed to; and gravely erred when he held that although by virtue of section 25 of the NCC Act, the Commission after receiving complaints from the public can institute actions to bring violators to book in cases bordering on public interest, that a consumer's private right to maintain an action for breach of contract where applicable is not reserved. Learned Counsel for the appellant further contended that the learned trial Judge rightly held that although the Commission regulates and controls carriers or licensees, a carrier or licensee is personally liable for its actions and omissions and an aggrieved consumer need not route his action through the Commission as a necessary party. And despite this holding, the learned trial Judge wrongly declined jurisdiction to adjudicate upon the suit. And further in his reply brief, learned Counsel for the appellant argued *inter alia* that the exclusive jurisdiction of the Federal High Court under Section 251 of the Constitution does not extend to the contractual claim of the appellant, nor does the appellant's suit as articulated in his Statement of Claim fall

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<sup>24</sup>S.24 of the said NCC Act is similar to S. 138 of the Nigerian Communications Act. The said S. 24 provides that: the Federal High Court shall have jurisdiction for the trial of offences and violations arising under this Act or the rules and regulations made thereunder over all suits brought to enforce any liability or duty created by the provisions of this Act.

<sup>25</sup>*Njiknye case supra*, at p. 1360.

into the realm of actions provided to be within the exclusive jurisdiction of the Federal High Court pursuant to the provisions of Section 24 of the NCC Act.<sup>26</sup>

Learned Counsel for the respondent in his reply stated *inter alia* that the jurisdiction of the Federal High Court as set out in section 251(1) of the Constitution<sup>27</sup> includes such other jurisdiction civil or criminal, whether to the exclusion of any other court or not as may be conferred upon it by an Act of the National Assembly. The NCC Act, being an Act of the National Assembly, did so *vide* section 24. Thus, vesting the Federal High Court with jurisdiction to entertain actions relating to trial of offences and violations arising under the NCC Act, rules and regulations made thereunder and all suits brought to enforce any liability or duty created by the provisions of the Act. Learned Counsel for the respondent argued that in order to correctly interpret section 24 of the NCC Act, other provisions of the said NCC Act relating to the objectives and functions of the Commission, particularly those which enjoin the Commission to protect consumers from unfair practices of licensees and other persons in the supply of telecommunications services and facilities; develop performance standards and indices relating to quality of telephone and other telecommunication services and facilities supplied to consumers and to monitor charges paid by consumers and the performance of licensees. These provisions impose a duty on licensees, authorized carriers and other providers of telecommunications services and infrastructure to meet their commercial obligations. Learned Counsel thus argued that the appellants claims constitute an alleged breach of duty by the respondent, a licensee to meet its commercial obligation, a breach created by the NCC Act. The word, 'commercial obligation' as used in the NCC Act relates to obligation owed by licensees/authorized carriers/providers of telecommunications services and infrastructure to their customers/consumers and the appellant's suit is one seeking to enforce a liability and duty created by the NCC Act in respect of which section 24 thereof vests jurisdiction in the Federal High Court. Counsel further argued that the NCC Act empowers the Commission to issue licenses and to regulate and monitor the conduct of licensees. And thus, although the NCC Act provides an enabling environment for telecommunications contracts, the terms and conditions of same have already been predetermined by the Commission and the licensees before a consumer purchases the line. There are therefore no terms, rights and obligations which are stipulated to bind licensees and the customer, and the alleged breach approximates to a breach of the provisions of the NCC Act, and so makes the Federal High Court the appropriate and constitutionally recognized forum to entertain the appellant's grievance, whether or not the NCC is made a party.<sup>28</sup>

After a thorough review of the submissions of Counsel for both parties, the Court of Appeal per Omoleye JCA took the view that the germane questions arising are:

- (1) what is the real relationship between the appellant and the respondent?
- (2) having regard to the nature of that relationship, is it the Federal High Court or the High Court of the FCT that has jurisdiction to entertain the dispute between the parties.<sup>29</sup>

The Court found that the negotiation between the appellant and the respondent connotes a simple contract made subject to the MTN terms and conditions which govern the relationship between both parties. The said terms and conditions are contained in the sim pack given to the appellant, a purchaser of the respondent's mobile telecommunications line. It is also clear from the printed record especially the Statement of Claim that the appellant after acquiring the mobile telecommunication line purchased calling credits from the respondent before the alleged breach of access, consequent loss of income and inconveniences. From the circumstances of the instant case, there is a condition subsequent which keeps, continues and sustains the relationship of both parties qua the purchase of calling credits at regular intervals.

Both parties appear *'ad idem'* with regard to the status of the relationship between them. One of the points of deviation however, is that while the appellant believes that the relationship between him and the respondent is contractual and that he is entitled to enforce the alleged breach against the respondent directly, the respondent takes the view that the appellant must channel his grievances through the NCC as contained in clause 23 of the said MTN terms and conditions. The court found that there is indeed a contractual relationship between the parties and the appellant has alleged a breach thereof and instituted an action to challenge same. The respondent's Counsel agreed that the NCC Act provides an enabling environment for telecommunications contracts and conceded that the

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<sup>26</sup>*Ibid* at pp. 1360 – 1361.

<sup>27</sup>Constitution of the Federal Republic of Nigeria 1999, hereinafter, 'the Constitution'.

<sup>28</sup> *Ibid*, at pp. 1362 – 1363.

<sup>29</sup> *Ibid*, at p. 1363.

appellant's claim is for breach of an obligation and that the suit is for the enforcement of a liability and against the respondent.<sup>30</sup>

On the critical question of which court has the jurisdiction to adjudicate upon the appellant's suit, Omoleye JCA stated as follows:

It is established that jurisdiction is a radical and crucial question of competence. A defect in competence is offensive, fatal to adjudication and renders an entire proceedings, trial and findings invalid, null and void *ab initio*, however brilliantly they must have been conducted and concluded. ... In determining the jurisdiction of a court, the enabling law vesting jurisdiction on it has to be examined in the light of the reliefs sought. This is so, for courts are creatures of statutes and their jurisdiction is confined, limited and circumscribed by the statutes creating them. Courts cannot in essence give themselves or expand their jurisdictional horizon by misappropriating or misconstruing statutes.<sup>31</sup>

Thus, it follows that if the reliefs sought by the plaintiff fall within the jurisdiction of the court as expressed by the facts of the relief in the Writ of Summons and Statement of Claim, then the court has jurisdiction otherwise, the court lacks jurisdiction and must reject adjudication.<sup>32</sup> The Court reviewed the provisions of section 257(1) of the Constitution which vests jurisdiction on the High Court of the FCT and section 251(1) of the Constitution which vests exclusive jurisdiction on the Federal High Court in civil cases and matters specified in paragraphs (a) – (s) thereof. The court also examined the provisos to paragraphs (d),<sup>33</sup> (p), (q) and (r)<sup>34</sup> of the said section 251(1), and such other exclusive jurisdiction as may be conferred on the Federal High Court by an Act of the National Assembly as may appear necessary or desirable for more effective exercise of its jurisdiction.<sup>35</sup> The court observed that it was not in doubt that the NCC Act No. 75 of 1992 is an Act of the National Assembly<sup>36</sup> and came to the conclusion that the Federal High Court has not been conferred with jurisdiction to entertain claims founded on contract. According to Justice Omoleye:

Section 251(1) [of the Constitution] provides a limitation to the general and all embracing jurisdiction of the State and the FCT High Courts because the items listed under the said section 251(1) can only be determined exclusively by the Federal High Court. Consequently, all the other items not included in the list would still be within the jurisdiction of the State and FCT High Courts.<sup>37</sup>

Thus, in the instant case, it is of no moment that the NCC is an agency of the Federal Government charged *inter alia* with liaising between licensees and the licensees' customers/consumers, nor will it make any difference if the NCC is made a party to the suit in whatever capacity. This is because the suit is based on contract. And 'contracts of whatever colour or shape are not among those include in the original and additional exclusive jurisdiction conferred on the Federal High Court'.<sup>38</sup>

<sup>30</sup>*Ibid*, at pp. 1364 – 1365.

<sup>31</sup>*Ibid*, at p. 1365. His Lordship relied on a plethora of authorities including *Madukolu v Nkemdilim* (1962) 2 SCNLR 341; *Ezenwosu v Ngonadi* (1988) 3 NWLR (pt. 81) 163; *Mobil Prod. (Nig) Unltd v LASEPA* (2002) 18 NWLR (pt. 798) 1; *African Newspapers (Nig.) Ltd. v FRN* (1985) 2 NWLR (pt. 6) 137; *Onwudiwe v FRN* (2006) 10 NWLR (pt. 988) 382; *A P C Ltd v NDIC (N U B Ltd)* [2006] 15 NWLR (pt. 1002) 404.

<sup>32</sup>*Njikonye Case, supra*, p. 1366. His Lordship cited *inter alia*, *A P C Ltd v N D I C (N U B Ltd)* *supra* at p. 404; *Onwudiwe v F upon R N supra*, at p. 382. The classical conditions listed in *Madukolu v Nkemdilim supra*, at p.587 with respect to jurisdiction of court, that is, proper constitution, subject matter falling within the court's jurisdiction, institution of action by due process of law and fulfilling any condition precedent to the exercise of jurisdiction, were also reiterated by the Court.

<sup>33</sup>The proviso relates to ordinary banker-customer relationship.

<sup>34</sup>The proviso to paragraphs (p), (q) and (c) of sub-section (1) of s.251 of the Constitution states that nothing in the said paragraphs shall prevent a person from seeking redress against the Federal Government or any of its agencies in an action for damages, injunction, specific performance where the actions is based on any enactment, law or equity.

<sup>35</sup> S.252 (2) of the Constitution in furtherance of S.251 (1) thereof.

<sup>36</sup> This is by virtue of s.315 (1) of the Constitution.

<sup>37</sup> *Njikonye case supra*, p.1368.

<sup>38</sup> *Ibid*. His Lordship cited *Seven-up Bottling Co Ltd v Abiola & Sons Bottling Ltd* (2001) FWLR (pt. 70) 1611; *Trade Bank PLC v Benilux (Nig) Ltd* (2003) FWLR (pt. 162) 1871 *Onuorah v K R P C Ltd* (2005) All FWLR (pt. 256), 1356.



It is not in doubt that the Constitution is the organic law from which all other laws flow and derive their validity. The Constitution creates the various organ of government and allocated to these organs their various rights, duties, powers and responsibilities. The courts constitute one of such organs and their jurisdiction mainly and principally, is defined by the Constitution. It is thus, the substantive and basic law which makes provisions for other laws applicable in the various courts established by it. Thus, the courts will disregard any enactment which purports to usurp or whittle down their judicial powers conferred by the Constitution. In the words of Justice Omoleye:

The courts would disregard any statute that seeks to regulate and obliterate their judicial powers conferred on them by the express provisions of the Constitution, the supreme [law] and grundnorm of Nigeria. By virtue of the provisions of section 6 of the 1999 Constitution, the judicial powers vested in the various courts created by the Constitution are constantly unassailable. An enactment will therefore be considered opposed to the constitutional provisions vesting judicial powers in a court if it had provided for sharing the judicial powers with any other body other than the courts in which it is vested by the Constitution, or purported to remove judicial powers vested in the courts or define it in a way to whittle it or limit the extent of the power vested or conferred on the courts by the Constitution ... Put in other words, no provision of any enactment save the express provisions of the Constitution itself can confer powers and rights limiting the supreme judicial powers conferred on the courts by section 6 of the Constitution. Therefore, the provisions of any other law which improperly restricts, impedes or curtails a complainant from commencing an action as laid down by constitutional provisions will be disregarded and declared void.<sup>39</sup>

It follows therefore from the foregoing that the dispute between the parties in the instant case is founded on contract and therefore, it is the High Court of the FCT where the action was instituted and not the Federal High Court that possesses the competence and jurisdiction to entertain the appellant's suit notwithstanding the provisions of section 24 of the NCC Act.

## **5. Conclusion**

The decision of the Court of Appeal in the *Njikonye* case has raised considerable doubt on the exclusivity of the jurisdiction of the Federal High Court in all telecommunications disputes *vide* the provisions of section 138 of the Act. It appears quite clear that contractual claims fall neatly outside the exclusive jurisdiction of the Federal High Court and therefore, other courts of co-ordinate jurisdiction such as the High Courts of the States and the FCT can entertain such matters depending on the place of occurrence of the breach. The courts will naturally guard very jealously, their jurisdiction conferred on them by the Constitution. Consequently, the courts will discountenance any enactment that purports to either derogate or usurp their jurisdiction. It seems therefore a misconception to generalize the assertion that the Federal High Court has exclusive jurisdiction to entertain all shades of telecommunications disputes. The brilliance of the Court of Appeal in the *Njikonye* case is of considerable jurisprudential worth and a commendable demonstration of judicial activism. The decision in our view, rightly reiterates the legal protection of peoples right of access to the courts as provided for in the Constitution, particularly in the face of complaints of poor service delivery by telecommunications operators. Perhaps most importantly, the decision defends the integrity of the Constitution as the supreme and fundamental law to which all inferior laws are subordinate. Accordingly, all other laws or enactments which are inconsistent with the provisions of the Constitution, shall be void to the extent of its inconsistency.<sup>40</sup>

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<sup>39</sup> *Njikonye case supra*.

<sup>40</sup> S. 1 (1) and (3) of the Constitution. See also *Nwaigwe & Ors v Okereke* (2008) LPELR – 2095 (SC) 1 at p.21 per Onnoghen JSC (as he then was); *Federal Republic of Nigeria v Osahon & Ors* (2006) LPELR – 3174 (SC) 1 at 27 per *Belgore JSC*. *Nkwocha v Governor of Anambra State* (1984) 1 SC 634; and a long line of cases.