Territorial Jurisdiction for Disputes between Members of a Political Party in Nigeria

Election or political party disputes often feature before Nigerian courts. In Nigeria jurisdiction in matters of conflict of laws (called "territorial jurisdiction" by many Nigerian judges) also applies to matters of disputes between members of a political party in the inter-state context.[1]

In *Oshiomhole v Salihu (No. 1*)[2] (reported on June 7, 2021), one of the issues for determination was whether the High Court of the Federal Capital Territory, Abuja possessed territorial jurisdiction to handle a dispute between members of Nigeria's ruling political party. The 1st defendant/appellant was at the time the National Chairman of the 2nd defendant/appellant (the ruling party in Nigeria). It was alleged by some Members of the party that he had been suspended at the ward level in Edo State and he was thus disqualified from holding the position of National Chairman. The 1st defendant/appellant, inter alia, filed a preliminary objection to the suit and argued that the High Court of the Federal Capital Territory did not possess territorial jurisdiction because the cause of action arose in Edo State where he was alleged to have been suspended as the National Chairman. The Court of Appeal (per Onyemenam JCA in his leading judgment) dismissed the preliminary objection and held as follows:

"The issue herein is straightforward. Order 3 rule 4 of the High Court of Federal Capital Territory (Civil Procedure) Rules 2018 provides that:

"All other suits shall where the defendant resides or carries on business or where the cause of action arose in the Federal Capital Territory, be commenced and determined in the High court of Federal Capital Territory, Abuja."

By this Rule, apart from the matters that fall under Order 3 Rules 1 & 2 of the

High Court of Federal Capital Territory (Civil Procedure) Rules 2018, the High Court of Federal Capital Territory, Abuja shall have territorial jurisdiction where:

1. The defendant resides within the Federal Capital Territory or
2. The defendant carries on business within the Federal Capital Territory or
3. The cause of action arose within the Federal Capital Territory or

In either of the three circumstances stated above, the High Court of Federal Capital Territory, Abuja shall have territorial jurisdiction to hear and determine the suit. The appellants' contention herein is that the cause of action arose in Edo State and not in the Federal Capital Territory, Abuja and as such the High court of Federal Capital Territory, Abuja lacks the jurisdiction to hear the suit. This argument is one third percent correct for the simple fact that, where cause of action arose is not the sole source of territorial jurisdiction of the High court of Federal Capital Territory, Abuja. In the instant case, the office of the 1st appellant as National Chairman of the 2nd appellant; as well as the Registered office and Secretariat of the 2nd appellant are both within the Federal Capital Territory, Abuja. This makes the High court of Federal Capital Territory, Abuja, have territorial jurisdiction over the suit filed by the respondents under Order 3 rule 4(1) of the High Court of Federal Capital Territory(Civil Procedure) Rules, 2018…

I therefore hold that the trial court has the territorial jurisdiction to hear the respondent's suit and resolve the issue in favour of the 1st – 6th respondents."[3]

The above rationale for the Court of Appeal's decision of Onyemenam JCA in his leading judgment is clearly wrong. Order 3 rule 4 of the High Court of Federal Capital Territory (Civil Procedure) Rules 2018 is a choice of venue rule for allocating jurisdiction as between the judicial division of the Federal Capital Territory for the purpose of geographical and administrative convenience. It cannot and should not be used to resolve inter-state matters of conflict of laws. It is submitted that the better view is stated by the Court of Appeal in *Ogunsola v All Nigeria Peoples Party,*[4] where Oduyemi JCA in his leading judgment at the Court of Appeal, rightly held that:

"Where the dispute as to venue is not one between one division or another of the same State High Court or between one division or the other of the F.C.T. Abuja

High Court, but as between one division or the other of the F.C.T Abuja High Court, but as between the High Court of one State in the Federation and the High Court of the F.C.T. then the issue of the appropriate or more convenient forum is one to be determined under the rules of Private International Law formulated by courts within the Federation."[5]

In *Oshiomhole* (*supra*) the opportunity was missed to apply and develop jurisdictional conflict of law rules for disputes between members of a political party in Nigeria. The result of the decision reached in *Oshiomhole* (*supra*) in applying choice of venue rules through Order 3 rule 4 of the High Court of Federal Capital Territory (Civil Procedure) Rules 2018 will conflate with the principles of Nigerian private international as the defendants were resident in the State they were sued. So the Court of Appeal in *Oshiomhole* (*supra*) incorrectly reasoned its way to the right conclusion – the High Court of the Federal Capital Territory had jurisdiction in this case.

Unfortunately, in recent times the Supreme Court of Nigeria has held that the High Court of a State cannot establish jurisdiction over a cause of action that occurs in another State – the strict territorial jurisdiction approach.[6] This approach has also been applied to disputes between members of a political party.[7] This approach is also wrong as it ignores the principles of traditional Nigerian common law conflict of laws. It also leads to injustice and unduly circumscribes the jurisdiction of the Nigerian court, which ultimately makes Nigerian courts inaccessible and unattractive for litigation. Nigerian courts should have jurisdiction as of right once a defendant is resident or submits to the jurisdiction of the Nigerian court. In *Oshiomhole* (*supra*), if the strict territorial jurisdiction approach was applied, the High Court of the Federal Capital Territory, Abuja would not have had jurisdiction because the cause of action arose in Edo State.

In summation, applying the right principle of private international law, the Court of Appeal in *Oshiomhole* (*supra*) reached the right decision (residence of the defendant) through an incorrect reasoning of relying on Order 3 rule 4 of the High Court of Federal Capital Territory (Civil Procedure) Rules 2018, which is choice of venue rule for judicial divisions within a State. If the recent Supreme Court cases, which apply the strict territorial jurisdiction approach was applied in this case, *Oshiomhole (supra*) would be *per incuriam* and, the High Court of the Federal Capital Territory, Abuja would not have had jurisdiction because the

cause of action arose in Edo State.

[1]*Ogunsola v All Nigeria Peoples Party* (2003) 9 NWLR (Pt. 826) 462, 480.

[2] (2021) 8 NWLR (Pt. 1778) 237.

[3]*Oshiomhole v Salihu (No. 1*) (2021) 8 NWLR (Pt. 1778) 237, 275-6.

[4](2003) 9 NWLR (Pt. 826) 462, 480 .

[5] *Ogunsola v All Nigeria Peoples Party* (2003) 9 NWLR (Pt. 826) 462, 480 .

[6] *Capital Bancorp Ltd v Shelter Savings and Loans Ltd* (2007) 3 NWLR 148; *Dairo v Union Bank of Nigeria Plc* (2007) 16 NWLR (Pt 1059) 99,

[7]*Mailantarki v Tongo & Ors* (2017) LPELR-42467; *Audu v. APC & Ors* (2019) LPELR – 48134.