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**An Appraisal of the Nexus between Jurisdiction  
and the Non-Payment or Inadequate Payment  
of Filing in Nigeria: A Critique of *Akpaji V. Udemba***

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**Abstract**

In the realm of legality and *judiciality* problems that appear intractable usually do not occur. In this wise, the issue of whether there exists a nexus or connection between jurisdiction or competence and the payment of filing fees evokes an image of double standardism which to my mind is abhorrent. The Supreme Court of Nigeria in a recent decision (2010) held that the non-payment of filing fees on a process is merely an irregularity which does not affect the jurisdiction or competence of the court – *Akpaji v. Udemba* (2010) 2 WRN 63. This decision, in my honest opinion, overlooks one of the cardinal conditions of competence of a court, that is, that all conditions precedent to the valid institution of the action must have been fulfilled or met. The Supreme Court's majority decision thus runs against the major thrust of the jurisprudence of jurisdiction and/or competence in Nigeria. We are of the view that the minority decision in the above case is better, sounder and is a lucid statement of the law. I implore the Supreme Court to expeditiously retrace its steps and overrule itself at the earliest opportunity otherwise it would have set a precedent of impunity and flagrant legal violations in Nigeria. We salute the courage of Aderemi JSC for stating the law correctly, in my view.

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### **The Fundamentality of Filing Fees**

I shall adopt the High Court (Civil Procedure) Rules, 2009 of Abia State as a model in discussing this segment. To this end, Order 28 Rule 1 (1) provides that:

1. Subject to the provisions of any written law and of the foregoing orders.
  - (1) The fees set out in the first, second, third and fourth schedules hereunder shall be payable by any person commencing the respective proceedings or desiring the respective services for which they are specified in those schedules. The regulations set out in the fourth schedule shall be observed by all officers of court concerned with the rendering of services, and/or collection of fees payable, under the provisions of the foregoing orders.
  - (2) No fees are to be taken in respect of any proceedings where such fees would be payable by any Ministry or Non-Ministerial Government Department or Local Government Council. All fees which would have been payable but for the provision of this rule shall be taken as paid.

The Fourth Schedule to the Rules, 2009 in obedience to Or.28 R.2 then provides inter alia:

1. No summons, warrant, writ or subpoena shall except by special order of the court be issued until: (a) all (fees) contained in the appropriate schedule of fees shall have been paid.

Most importantly, the Regulations contain a provision that: “No document in respect whereof a fee is payable shall be used in any legal proceeding, unless... the court shall be otherwise satisfied that the proper fees in respect thereof have been paid”<sup>1</sup>. Other regulations regarding fees include that every document for or in respect of which any fee or fees shall have been paid, shall bear an endorsement initialed by the Registrar or officer bearing the amount of the fee so paid and the number of the receipt. All such fees shall be carried to account immediately on the process being signed by the Judge. Every Registrar or other officer submitting any writing, summons or other process whatever for signature by a Judge shall at the same time produce the stamp of the receipt given for the fees of such process. All fees for service, execution and mileage shall be paid into the Revenue. No hearing or other fee shall be

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<sup>1</sup> Regulation No. 5, Contained in the Fourth Schedule to the Abia State High Court Civil Procedure. Rules, 2009.

returned except upon a voucher payable at the Treasury, in favour of the party entitled to receive the same and prepared at the direction of the Judge before whom the cause or matter is set down and comes on for hearing<sup>2</sup>.

Part VI of the High Court Law of Abia State (prepared by the Abia State Law Reform and Review Commission), especially Section 65 thereof contains the duties of officers of the High Court. S.65 provides *inter alia*, that “subject to the provisions of this law and any written law or any rules of court or special orders of the Chief Judge, the Chief Registrar or any Registrar... shall have the custody and keep an account of all fees and fines payable or paid into court and of all moneys paid into or out of court and shall keep proper accounts thereof”<sup>3</sup> A Registrar of the High Court shall again “tax all bills of records referred to him by the court in accordance with the scale of fees for the time being in force and any rules of court”<sup>4</sup>

The first, second and third schedules of the Abia State High Court Rules, 2009 (as amended) had then gone ahead to itemize the various fees payable for every conceivable subject or item including fees payable upon commencement of causes or matters, matrimonial causes, court fees, legitimacy cases, probate and administration applications, affidavits, judgments, orders, security bonds, warrants and writs. Miscellaneous services, as well as fees payable in Criminal Appeal from the Magistrate Courts and also from Civil Appeals are included. Allowances to witnesses<sup>5</sup> and specific fees were further stipulated including notaries fees of office, fees for translations, fees for registration of judgments etc. These fees range from N100 at the least to N20, 000 or more. Against the foregoing backdrop, it is indeed legal for fees or even fines to be paid or imposed for filing documents in the course of judicial proceedings or in the conduct of legal proceedings in court.

It is thus a fundamental requisite or condition precedent in conferring competence on any judicial proceedings. Suits or processes filed therein must conform to this essentiality. Otherwise, the competence or jurisdiction of the

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<sup>2</sup> See the Fourth Schedule to the Rules 2009 generally.

<sup>3</sup> See S. 65 of the High Court Law, Cap 48 of the Abia State, 1991-2000.

<sup>4</sup> See. S. 66 of the High Court Law of Abia State.

<sup>5</sup> See Or. 28 Rule 1 (2) and Part II of the First Schedule of the High Court Civil Procedure Rules 2009 of Abia State.

court seized with the matter is called into question. As stated earlier, a court is said to be competent when:

- (a) The court is properly constituted with respect to the number and qualification of its membership.
- (b) The subject matter of the action is within its jurisdiction
- (c) The action is initiated by due process of law; and
- (d) Any condition to the exercise of its jurisdiction has been fulfilled.<sup>6</sup>

Payment of filing fees is a quintessential requisite of competence in a court. Jurisdiction is divested of a court when parties thereto fail, neglect or refuse to pay filing fees. It thus presupposes that a condition precedent to the valid exercise of jurisdiction by such a court has not been met or fulfilled. In this vein, the Supreme Court of Nigeria in *Okolo and Anor v. Union Bank of Nigeria Plc*<sup>7</sup> stated that: “Payment of filing fees is a precondition to or condition precedent to the court’s assumption of jurisdiction. Where filing fees are not paid a court of law will have no jurisdiction to entertain the matter before it. This is because the rules of court make it mandatory for a party to pay filing fees. The reliefs with respect to which filing fees are not paid are liable to be struck out”<sup>8</sup>.

### **The Quintessence of Jurisdiction in Adjudication**

Jurisdiction is the threshold of any judicial adjudication; it is the authority or power of a court to deal with matters that are being litigated before it. It is either criminal or civil and can even be seen in electoral matters. Whenever the issue of jurisdiction is raised in court, it touches on the competence of the court to adjudicate on the matter and goes directly to the root of the matter. As such, it ought to be dealt with immediately because the court must satisfy itself that it is not about to embark on an exercise in futility<sup>9</sup>. Any court that acts when it is not competent to so act, acts in vain and any decision taken or reached therein will be taken as having no foundation and non-existent. The jurisdiction of a court may be limited or unlimited. It is unlimited where no restrictions are imposed on the jurisdiction of such a court. It is limited where

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<sup>6</sup> See *I. M. B. Ltd v. P. T. F.* (2005) 26 WRN 195; *Madukolu v. Nkemdilim* (2001) 46 WRN 1; (1962) 2 SCNLR 341, *Utih v. Onoyivwe* (1991) 1 NWLR (Pt. 166) 166, At 80, *Skenconsult (Nig.) Ltd v. Ukey* (2001) 49 WRN 63, (1981) ISC6.

<sup>7</sup> (2004) 13 WRN 62 Per Niki Tobi JSC.

<sup>8</sup> Per Tobi JSC at pp. 74-75.

<sup>9</sup> See Okoboh C. U. “Jurisdiction and Competence of Court in Election Matters”, *Igbinedion University Law Journal* Vol. 6 January 2008 p. 76.

there exist restrictions on such jurisdiction or power.<sup>10</sup> In *Adams v. Umar*,<sup>11</sup> the Court of Appeal held that ‘Jurisdiction’ is the authority which a court has to decide matters which are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are limited by the constitution or by the statute under which the court is constituted and may be extended or restricted by similar means. Lord Diplock L. J. opines that, in its narrow and strict sense, the jurisdiction of a validly constituted court connotes the limits which are imposed upon its power to hear and determine issues between persons seeking to avail themselves of its processes (2) to the persons between whom the issues are joined or (3) to the kind of relief sought or to any combination of these factors. In the wider sense, it embraces also the settled practice of the courts as to the way in which it will exercise its powers to hear and determine issues which fall within its jurisdiction (in the strict sense) or as to the circumstances in which it will grant a particular kind of relief which it has jurisdiction (in the strict sense) to grant including its settled practice to refuse to exercise such power or to grant such relief in particular circumstances.<sup>12</sup>

Jurisdiction is the authority the court has to decide matters before it or to take cognizance of matters presented in a formal way for its decision<sup>13</sup>. It is the authority of the court to adjudicate on the matter before the court.<sup>14</sup> It represents the life-wire of a trial. It is a radical fundamental pre-requisite in the adjudication of any matter.... There is no justice in exercising jurisdiction where there is none. It is injustice to the law court and parties to do so.<sup>15</sup> Without jurisdiction a court lacks the judicial basis for the exercise of any

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<sup>10</sup> See Yinka Fashakin, “The Vexed Question of the Ambit of the Civil Jurisdiction of the Federal High Court with Regards to Banker/ Customer Relationship” , The Advocate Journal, Nigerian Law School, Lagos Campus, 2003, p. 102.

<sup>11</sup> (2009) 41 WRN 81 at 123 per Sankey JCA.

<sup>12</sup> See *Garthwaite v. Garthwaite* (1964) Probate 356. See also *Oruba v INEC* (1988) (NWKR Pt. 94) 323.

<sup>13</sup> See *A. G of the Federation v. A. G. of Abia State* (2001) 7 S.C. (Pt. 1 ) 100; (2001) 11 NWLR (pt. 725) 679.

<sup>14</sup> *Alao v. Adetola* (2004) 29 WRN 155 at 168.

<sup>15</sup> See *A. A. Ahmed & Co. Ltd V. AIB Ltd* (2001) FWLR 1560 *Sanusi v. Ayoola* (1992) 9 NWLR (pt. 265) 275; *Olaba V. Akereja* (1988) 3 NWLR (pt. 94) 508. *Nwosu v. Imo State Environmental Sanitation Authority* (1990) 2 NWLR (pt. 135) 715. *Ibrahim v. Fulani* (2009) 18 WRN 1 at 108 per Sankey JCA.

power.<sup>16</sup> I had in an earlier work stated that ‘Jurisdiction’ is a threshold issue which may be considered at any stage in the course of proceedings, be it at the pre-trial stage of a case, during or at the hearing of an appeal. The issue of jurisdiction is very fundamental as it goes to the competence of a court or tribunal to entertain the case brought before it and so it would amount to a sheer waste of precious time for that court to embark on a purported hearing or determination of the suit. The simple reason for that is that no matter how well such proceedings were conducted and brilliantly decided it is and remains a nullity *ab initio*. It need not be gainsaid therefore that where jurisdiction is absent neither the parties nor the court can confer or vest it.<sup>17</sup>

Jurisdiction brings into focus the issue of competence of a court which is closely related to it; wherever court is divested of jurisdiction, the proceedings however well conducted and brilliantly decided, is and remains a nullity. A defect in competence is not intrinsic to but rather extrinsic to the adjudication.<sup>18</sup>

A court is competent when:

(1) It is properly constituted as regards members and qualifications of the members of the Bench and no member is disqualified for one reason or another.

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<sup>16</sup> *Bronik Motors Ltd v. Wema Bank Ltd* (1983), 1 SCNR 296. After all in *Buhari V. Haddy Smart (Nig) Ltd* (2010) 11 WRN 101 at 138, Hon. Justice Lokulo-Sodiye of the Court of Appeal opined that “a defect in competence of an action spells absence of jurisdiction while a defect in procedure shows a defect in the process of adjudication and may not be fatal to jurisdiction’.

<sup>17</sup> See Kalu, U. C. Esq, “Jurisdictional issues in Bankruptcy Adjustications in Nigeria” in UNIZIK Law Journal, vol. 6 No. 1 of 2007 P. 30 at 40-41. *Adetona v. Gele Gneral Enterprises Ltd* (2005) 17 WRN 179; *Olutola v. University of Ilorin* (2005) 3 WRN 22. (2004) 18 NWLR (Pt. 903) 416- A. G. of Lagos State V. *Dosunmu* (1989) 3 NWLR (pt. 111) 552. *Dalfan v. Okaku Int.l*(2001) 15 NWLR (pt. 735) 203. In *Galadima v. Tambari* (2000) 6. S. C. (pt. 11) 196 at 213, Kalgo JSC in a concurring decision or opinion pointed out that “any issue which challenges the jurisdiction of a court can be raised by the court, “suo motu.” It can be raised for the first time on appeal – *Essi v Nigerian Ports Plc* (2006), 23 WRN 184 at 198; *NDIC v CBN*(2002) 118 WRN 1. (2002) 7 NWLR (pt. 766) 272; *Jeric Nig. Ltd v. UBN Plc* (2001)7 WRN 1 (2000) 15 NWLR (pt. 691) 447.

<sup>18</sup> See *Madukolu v. Nkemdilim*(2001) 46 WRN 1 (1962) 2 SCNLR 341. In *Senate President v. Nzeribe*(2004) 41, WRN 39 at 57 Oduyemi JCA opined that “the issue of jurisdiction is so radical that it forms the foundation of adjudication. If a court lacks jurisdiction, it also lacks the necessary competence to try the case at all. A defect in competence is fatal .... The court must be competent... before it can proceed on any adjudication”. See also *Oloruntoba- Ojo v. Dopamu* (2003) 31 WRN 19 at 36 per Amaizu JCA.

(2) 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.

(3) The case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction<sup>19</sup>.

In *Yusuf v. Obasanjo*<sup>20</sup>, Niki Tobi JSC opines that:

Jurisdiction is a very hard matter of law which is donated by the constitution and the enabling statute. It is also a very sensitive matter in the judicial process. Considering its very hard and sensitive nature, courts of law must always bow or kowtow to the provisions of the constitution and the enabling statute. On no account should we remove from a court which has jurisdiction to hear a matter to another court which has no jurisdiction to hear it. That is not right and we should not do it.<sup>21</sup>

Jurisdiction is very fundamental in the realm of administration of justice as, any form of pronouncement by a court or tribunal without jurisdiction is an exercise in futility no matter how brilliantly conducted.<sup>22</sup> In *Ogboru v. Shell Petroleum Dev. Co Nig Ltd*,<sup>23</sup> it was held *inter alia* that where there is no objection to jurisdiction of a court by a party who consents to the exercise of the jurisdiction, he is not thereby stopped from afterwards raising the objection since the jurisdiction of a court cannot be enlarged by estoppel<sup>24</sup>. It was further decided therein that where a suit is being challenged on point of law which affects the jurisdiction of the court to entertain a suit before it, the party will not be estopped from raising that point of law on the ground that he has entered an unconditional appearance in the case. The second respondent cannot by entering an unconditional appearance submit himself to the jurisdiction of the court where the case before the court is not properly constituted. A defendant who entered an unconditional appearance can question the jurisdiction of a court to try a matter.

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<sup>19</sup> See note ante. See also *Cousin v. Odejigba* (2005) 26 WRN 66 at 80. *IMB Ltd v. PTF* (2005) 26 WRN 195, *Utih v. Onoyivwe* (1991) 1 NWLR (pt. 166) 166. *Skenconsult (Nig) Ltd v. Ukey* (2001) 49 WRN 63; (1981) I.S.C. 6.

<sup>20</sup> (2004) 5 SCNJ 1.

<sup>21</sup> See *Yusuf v. Obasanjo* (2004) 5 SCNJI at 44.

<sup>22</sup> See *Ogboru v. Shell Petroleum Dev. Co. Nig. Ltd* (2005) 26 WRN 128.

<sup>23</sup> (Supra) per Abba-Aji JCA at p. 158.

<sup>24</sup> See also *Jadesimi v. Okotie-Eboh* (No. 2) (1986) 1 NWLR (pt. 16) 264. *Osibamowo v. Osibamowo* (1991) 3 NWLR (Pt. 177) 65. *Essi v. Nigeria Ports Plc* (2006) 23 WRN 184 at 198-199, *Petrojessica Ent. Ltd V. Leventis Techn. Co. Ltd* (1992) 5 NWLR (pt. 244) 675.

It is a basic principle of law that the jurisdiction of a court is very fundamental to the adjudication of the matter before it. It is so radical that it forms the foundation of adjudication. If a court lacks jurisdiction, it lacks the necessary competence to entertain the claim before it. That is why the issue of jurisdiction, where raised, whether by the parties or by the court itself, *suo motu*, must be determined in limine. Where an objection is raised to the jurisdiction of the trial court to try an action, the court, at that stage, has to enquire into whether in fact, it possesses the requisite jurisdiction to so proceed<sup>25</sup>. It remains settled law that it is only the plaintiff's claim that determines the question of the court's jurisdiction. Therefore, in considering whether the court has jurisdiction to entertain an action, it is the plaintiff's claim as endorsed on the writ of summons and the statement of claim, (where filed), that the court has to consider and not the defense. Where pleadings have been filed, the issue of the court's jurisdiction is best determined from the averments on the plaintiff's statement of claim. Where this is not the case, the court has to look only at the claim as endorsed on the writ of summons. This is a fundamental principle of law that brooks no argument<sup>26</sup>.

#### **Payment of Filing Fees as a Condition Precedent**

The High Court laws as well as the Rules of Court in Nigeria make the prior payment of filing fees mandatory as conditions precedent to a court having jurisdiction in any matter. In *Onwugbufor v. Okoye*<sup>27</sup> the Supreme Court of Nigeria held that: "For a valid and effective commencement of a claim, an intending plaintiff shall strictly comply with the provisions of relevant statutes and the rules made thereunder and governing the claims made such as the High Court Law and Civil Procedure Rules." The Court maintained that it is the responsibility of the Plaintiff (Claimant) to pay the requisite fees in respect of each and every relief claimed as prescribed by the Rules to enable the court's judicial function to commence. Accordingly, it further stated that the claim in respect of which such prescribed fees have not been paid cannot be

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<sup>25</sup> See *Ibrahim v. Fulani*\_ (2009) 18 WRN 40 at 108 per Sankey JCA. *Oloba v. Akereja* (1988) 3 NWLR (Pt. 84) 508. *Nwosu v. Imo State Environmental Sanitation Authority*\_ (1990), 2 NWLR (pt. 135) 715; (1990) 4 SCNJ 97.

<sup>26</sup> See *Edjerode v. Ikime*\_ (2002) 10 WRN 46; (2001) 12 SCNJ 184; *Akinfolarin v. Akinola* (1994) 4 SCNJ 30. *Aremo v. Adekanye*\_ (1994) 7 SCNJ 218, *Aladegbemiv. Opeyora*\_ (1976) 9-10 S.C. 31; *Ege Shipping and Tradition Ind. V. Tigris International Corp.* (1999) 14 NWLR (Pt. 637) 70 at 89. *Warri Refining and Petrochemical Co. Ltd v. Onwu* (1999)\_ 12 NWLR 312 at 326. *Ibrahim v. Fulani*\_ (supra) at 108-109.

<sup>27</sup> (1996) 1 NWLR (pt. 424) 252, at 292 Per Iguh JSC.

said to be proper before the court and should be struck out in the absence of an appropriate remedial action or application to regularize such anomaly.

Iguh JSC then stated poignantly that: “In the present case, no payment whatever was made by the appellants in respect of their new claim for forfeiture. Payment of the prescribed fees being a condition precedent to the filing of a valid claim before the courts, it seems to me clear that the claim for forfeiture in the present suit is incompetent, improper before the court and ought to be struck out.” Similarly, in *Okolo v U.B.N*<sup>28</sup> Niki Tobi JSC, in the lead judgment, states that: “Payment of filing fees is a pre-condition or condition precedent to the court’s assumption of jurisdiction. Where filing fees are not paid, a court of law will have no jurisdiction to entertain the matter before it. This is because the rules of court make it mandatory for a party to pay filing fees. The reliefs with respect to which filing fees are not paid are liable to be struck out.”

A summary of the facts in Okolo’s case reveals that the respondents failed to comply with a foreign exchange transaction involving the transfer abroad timeously of foreign exchange or currency equivalent of N239,143.00 to cover cost of goods supplied them by their overseas customer, thus causing business loss to the appellants. Appellants alleged that Respondents were negligent. Appellants subsequently appealed to the Supreme Court having lost in the 2 courts below while the Respondents cross-appealed contending that the Assistant Chief Registrar of the High Court extended the time allowed for perfecting conditions of appeal without having the power to do so, thus rendering the appeal incompetent. Respondents also raised the Appellant’s failure to pay filing fees in respect of two reliefs. Striking out the main appeal and allowing the cross-appeal in part the Supreme Court through Uwaifo JSC held that: “The reliefs in paragraph 21 (d) and (e) were obviously not paid for. But the judgement which was given by the learned trial judge in favour of the plaintiffs was essentially in respect of those reliefs. The relief in para. 21 (d) for N1, 000,000.00 general damages was allowed up to N50, 000.00 while the relief in para. 21 (e) for £5,155.35 was granted in full. As has been shown, those reliefs could not be competently entertained, not having been lawfully claimed by paying the necessary fees for them.”

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<sup>28</sup> (2004) 13 NRN 62 at 74-75. It referred to and followed *Onwugbufor v. Okoye*, (supra).

See *Onwugbufo v. Okoye* (1996) INWLR (pt. 424) 252. The cross-appeal concerns the award of those sums of money. Since the reliefs in question were incompetent, the awards must be set aside and those reliefs struck out.<sup>29</sup>

Mrs. C. U. Okoboh, the Acting Dean of the Faculty of Law, Igbinedion University Okada, Benin in her article quoted above maintains and I unequivocally concur that filing fees and its payments are requisite conditions precedent to the valid institution of action even before Election Tribunals under the Electoral Act 2006 and the Practice Directions, 2007.

Like the non-service of a pre-action notice on a defendant entitled to same statutorily, the non-payment of filing fees robs the court of competence and jurisdiction. For example, in *Ntiero v. NPA*<sup>30</sup> the Supreme Court held that Failure to serve a pre-action notice is not a mere irregularity which could be waived by the defendant taking further steps in the proceedings... Rather, it is a statutory requirement, failure of which means that a condition precedent has not been complied with. Such failure will therefore deprive the trial court of any competence or jurisdiction to try the case.

The Court then concluded that, “there was no service of the pre-action notice and there was no waiver by the defendant, a condition precedent was not fulfilled. This makes the action before the trial court incompetent and that court certainly lacked jurisdiction.<sup>31</sup>” The law was thus thought to be settled that where no filing fees are paid the court is divested of competence and jurisdiction. The Rules of Court contain provisions to the effect that: “No process on which any fee is payable shall except by special order of the court, be issued until:- (a) all fees payable therein shall have been paid and (b) an account thereof initialed as received shall have been set forth by the officer issuing the process both in the margin and in the counterfoil thereof.

No document in respect whereof a fee is payable shall be used in any legal proceedings, unless it shall have been initialed as aforesaid by the Registrar or

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<sup>29</sup> *Op. cit.* p. 93.

<sup>30</sup> (2009) 2 WRN 1 at 19 Per Muhammad JSC see also *Nnonye v. Anyichie* (2005) 8 WRN 1. (2005) 2 NWLR (Pt. 910) 623 *Eze v. Okechukwu* (2003) 8 WRN 1; (2002) 18 NWLR (pt. 799) 348.

<sup>31</sup> *Op. cit.*, at p. 21 Per Muhammad JSC. In *Sanni v. Abdul-Salam* (2009) 15 WRN 61 at 82. Sabjet JCA stated that “... one of the determinants of jurisdiction is when the case comes before the court upon the fulfillment of all conditions precedents to its filing. Where such conditions precedent is not met, then the case before the court is not competent and the jurisdiction of the court has not been invoked to hear same.”

other officer or unless the court shall be otherwise satisfied that the proper fees in respect thereof have been paid”<sup>32</sup>

### **A Disturbing Judicial Course/Path**

The decisions of both the Court of Appeal, Enugu Division delivered on 25<sup>th</sup> April, 2002 with Ubaezonu JCA delivering the lead judgment (without any dissent from the other two justices) and that of the Supreme Court delivered on 13<sup>th</sup> February, 2009 with Ikechi Francis Ogbuagu JSC delivering the lead judgment, with Pius Olayinwola Aderemi JSC (dissenting) in *Akpaji v. Udemba* marked an inglorious derailment of the hitherto settled position of the law. In this respect, in *Akpaji v. Udemba*<sup>33</sup> the Supreme Court by a majority decision of 4-1 (with Aderemi JSC dissenting) held *inter alia* that:

It is now firmly settled that even the failure to pay does not raise issue of jurisdiction and that the failure to fulfill the provisions of the High Court rules in that regard, is a mere irregularity which when not taken timeously or when acquiesced in, become incapable of affecting the proceedings in any way...

The usual remedy, it is also settled, is an order by the lower court, that the appropriate fees or any short fall, be paid. It has nothing to do with jurisdiction of the lower court to entertain the counter-claim.

The learned Justice had quoted and relied on the dictum of Oguntade JCA (as he then was) in *ACB v. Henshaw*<sup>34</sup> thus: “...even if the defendant/respondent had not paid the requisite court fees, this was a matter to be settled before the lower court. The usual remedy being an order by the lower court that the appropriate fees or any shortfall be paid. It certainly has nothing to do with jurisdiction of the lower court to entertain the counter-claim.” He further relied on *Lawal v. Odijim*<sup>35</sup> where inadequate fees were paid for a writ of summons, and the trial court allowed the plaintiff time to pay the balance of the fees.

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<sup>32</sup> See for example Order 6 rules 5 and 8 of the High Court of Anambra Civil Procedure, Rules, 1988 applicable to Ebonyi State which was construed by the Court of Appeal, Enugu Division in *Akpaji v. Udemba* (2003)6 NWLR 169.

<sup>33</sup> (2010)2 WRN 63 at 76-77 Per Ogbuagu JSC. See *Savde v. Abdullahi* (1989) ISC (pt.11) 116; (1989)4 NWLR (pt. 116) 387 at 405-406; (1989)7 SCNJ 216; *Noibi v. Fikolati* (1987) 1 NWLR (pt..52) 619 at 631; (1987) 3 SCNJ 14, *Ezemo v. Oyakhire* (1985) 1NWLR (pt. 2) 195 at 202-203-(1985)2 S.C. 260-*Sonuga v. Anadein* (1967) 1 All NLR 91.

<sup>34</sup> (1990) 1 NWLR (pt. 129) 646 at 651.

<sup>35</sup> (1963) WNLR 23; (1963) ANLR 569 at 570 per Charles J. See also the case of the *State v. Sunday Ugboi* (1979) 1 MSLR 521 at 523 per Ukattah J.

### **Facts of the Case under Review**

The facts of this case (*Akpaji v. Udemba*) are that plaintiff/appellant advanced an interest free loan of N1, 484, 535.00 to the defendant/respondent. Defendant made a partial refund of N472, 805 on 6/6/1996 and N600, 000.00 on 8/12/1996. Appellant issued him with receipts for both. It was for the balance of N411, 730.00 that parties went to court. In his counter-claim, the Respondent stated that the two sums of money were proceeds from the management of his 2 commercial vehicles being done by the appellant and the sale of another vehicle. The Respondent averred that a credit balance of N550, 000, 00 was recorded from the vehicles' management after the 2 sums were paid. He then counter-claimed for a set-off of N138, 270.00. He prayed the court to order the Appellant to issue him receipts for the N411, 780 deducted from the N550, 000.00. Defendant/Respondents did not pay the requisite fee for filing the counter-claim. The Trial Judge granted the counter-claim, dismissing the Appellants' case for which he filed an appeal. At the Court of Appeal, while dismissing the appeal, Ubaezonu JCA (as he then was) holds that:

The record shows that the fees as assessed by the Registrar were paid fully. If the Registrar failed to collect the full or appropriate fee, it is not a matter for which a party should be punished. .... The Respondent failed to pay the necessary fee for the counter-claim through no fault of his... I hereby order that the appropriate fee for the counter-claim be paid by the respondent in the court registry of the Court below.

Adding its weight and voice, the Supreme Court further held that “Rules on payment of requisite court fees are rules of natural justice and that objection thereof ought appropriately to have been taken, at the stage of trial and not at the appellate level.” It maintained that “the non-payment in full of the appropriate fees was a mere irregularity and did not vitiate the proceedings and it has nothing to do with the jurisdiction of the trial court. At worst it is voidable not void. As can even be seen, it is not the failure to pay assessed filing fees, but non-payment of the appropriate or requisite fees – i.e. inadequate fees. If the Registrar/Registry under-assessed – i.e. not assessing correctly, can it be said, by any stretch of imagination, that the fault to assess adequately is that of a litigant or the lawyer of the respondents.” In the same vein in *Eke v. Eluwa*<sup>36</sup> the Court of Appeal held that: “the payment of

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<sup>36</sup> (2000) NWRN. 16; (2000) 14 NWLR (pt. 688) 560 at 562 (Emphasis mine). See also *Omojuyigbe v. NIPOST* (2010) 24 WRN 61 at 109-110.

adequate or inadequate filing fees on documents for use in court does not raise an issue of jurisdiction and the failure to fulfill the provisions of High Court rules in that regard is a mere irregularity which when not taken up timeously or when acquiesced in becomes incapable of affecting the proceedings in any way.” In *Omojuyigbe v. NIPOST*<sup>37</sup>, Agube JCA held further that:

It is the duty of the Court Registrar to assess processes and prescribe the necessary fees payable and for the court to ensure that the necessary fees are paid by the litigant. Once assessment has been done and a litigant fulfils his part of the bargain by paying the necessary fees as endorsed in the writ or other processes filed, such a litigant cannot be visited with the negligence of the Registry of the Court in under-assessing him.<sup>38</sup>

In *ACB v Henshaw*<sup>39</sup> Oguntade JCA (as he then was) said:

“Even if the defendant/respondent had not paid the requisite court fees...it certainly has nothing to do with the jurisdiction of the lower court....” Again, following the same line of reasoning Ogunbiyi JCA in *Oshiomowo v. Oshiomowo*<sup>40</sup> states that:

I also subscribe that the failure by the appellants in raising the question of inadequate payment of filing fees at the trial court should not now be made an issue...even in the absence of any payment at all, the remedy has been put clearly in the case of *ACB v. Henshaw* (supra) wherein non-payment of fees on counter-claim does not affect the jurisdiction of the lower court... the fault of the registry should not be visited on the litigant.

*Eke v. Eluwa* appears to be suggesting that where the issue of inadequate payment of filing fees is raised timely or not acquiesced in by the complaining party, it will affect the proceedings. The competence or jurisdiction of the

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<sup>37</sup> (2010) 24 WRN 61 at 109-110.

<sup>38</sup> See also *Princewill v. Amachree*, (2005) 3 NWLR (pt. 112) 358 at 369 per Ikongbeh JCA (of blessed memory). See also *Abeje v. Alade*, (2010) 24 WRN 138 at 158 Bage JCA stated that “Non payment of fees on counter-claim does not affect the wish action of the lower court.” To him, also “The failure of the appellant to raise the question of inadequate payment of filling fee at the trial court should not be made an issue”. He further said that “The fault of the registry should not be visited on the litigant”.

<sup>39</sup> (1990) 1 NWLR (pt. 125) 646 at 651.

<sup>40</sup> (2006) 1 WRN (22 at 154-155).

Court will be questioned or ousted. The law here is tentative, not clear and precise. There is an apparent confusion. Certitude appears to have eluded us.

### **A Worthy and Preferable Dissent**

Hon. Justice Aderemi JSC wrote a very powerful and moving dissenting judgement in the *Akpaji v. Udemba* case which, in my humble opinion, is more commendable and best met the justice of the matter while laying down or being a restatement of the law. This dissent shows or reveals the nexus or connection between the competence or jurisdiction of a court of law on the one hand and the issue or fact of non-payment or inadequate payment of filing fees on the other hand. His Lordship had held that:

Payment of a prescribed filing fee is a precondition to the validity of any process filed in the court. In a counter-claim, the defendant who has filed it is in the same position as a plaintiff. Indeed, he is the plaintiff vis-à-vis that counter-claim.

My view as to the payment of prescribed filing fees is reinforced by the decision in *Onwujor & Ors v. Okoye* (1996) 1 NWLR (pt. 424) 252 and *Okolo & Anor v. UBN Ltd* (2004)13 WRN 62; (2004) 1 SCNJ 125. (2004) I.S.C (pt. 1) 1- (2004) 3 NWLR (pt. 859) 87.

His Lordship then asserted that: “If the statute says that there shall be no jurisdiction to entertain a claim or a counter-claim, as in the instant case until the filing fee is first paid until that event, the payment of filing fee occurred; the trial court would have no jurisdiction to entertain it. Every court is bound by the statute and its provision cannot be circumvented under the thin guise of desire to do justice. The condition precedent must not only be fulfilled it must be seen to be properly fulfilled. That is the righteousness of the matter. The respondent has further argued that the non-payment of the filing fee was not his fault as it was not his duty to assess the process.” My quick reply is that it is he who is seeking a redress from the court that must see to it that all righteousness is fulfilled. His ignorance of the law pertaining to the payment of the filing fee, even if he relies on that can not avail him. The saying is quite sacrosanct. Ignorance of the law which everybody is supposed to know does not afford excuse –*Ignorantia juris quod quisque scire jenetur non excusant*”<sup>41</sup>.

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<sup>41</sup> *Akpaji v. Udemba*, (supra) at pp. 88-89 Per Aderemi JSC.

It should be noted that it is unarguably the responsibility of the plaintiff, *inter alia*, to pay the requisite fees in respect of each and every relief claimed as prescribed by the Rules to enable the court's judicial function to commence. A court shall not entertain a relief claimed without payment of the prescribed/requisite fees unless such fees have been waived or remitted by the court or such are payable by any Government Ministry or Non-ministerial Government Department pursuant to the provisions of the said High Court Rules. In *Moore v. Tayee*<sup>42</sup> a matter went on appeal before the Provincial Commissioner. The respondent had not paid costs as early ordered by the trial court of first instance. The respondent objected to the appeal being competent. The Provincial Commissioner ordered that the costs be paid at once into his court. It was immediately carried out. He then proceeded to hear the appeal and eventually allowed it. On appeal, the Court of Appeal held that the Provincial Commissioner had no jurisdiction to make any orders at all because no appeal was properly before him. On a final appeal to the Privy Council, Lord Atkin held that:

...the Provincial Commissioner had no jurisdiction at all;... it is quite true that their Lordships, like any other court, attempt to do substantial justice and to avoid technicalities; but their Lordships, like any other court, are bound by the Statute Law and if the Statute Law says there shall be no jurisdiction in a certain event, and that event has occurred, then it is impossible for the Lordships or for any other court to have jurisdiction.<sup>43</sup>

In *Danzaria Fada v. Maman Naomi*<sup>44</sup> the Court of Appeal, Kaduna Division presided over by Isa Ayo Salami, JCA, held that: "Payment of the prescribed filing fees is a condition precedent to the filing of a valid claim. It is the primary responsibility of the plaintiff to pay the appropriate or adequate filing fees prescribed in the rules as a condition precedent for the exercise of jurisdiction. When such a condition is not satisfied the jurisdiction of the court does not vest or is ousted. Failure to comply can be fatal because any suit brought in contravention of or without compliance with the rules of Court or payment of filing fees is incompetent and the court is equally incompetent to entertain or hear the same."

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<sup>42</sup> WACA 43.

<sup>43</sup> *Op. cit.*, at P. 45 Per Lord Atkin.

<sup>44</sup> (2002) 4 NWLR (pt. 757) 318.

It is therefore not a mere irregularity which is curable by a mere amendment. Neglect to pay filing fees in respect of each relief sought before a trial court vitiates the claim in respect of which no filing fees had been paid.

It further held that:

Payment of filing fee is not only a primary responsibility of the party filing a document but also a statutory prescription. Thus, the payment of filing fees is mandatory notwithstanding whether the court expressly said so or not. In the instant case, the argument that the omission to pay filing fee was an error on the part of the court registry is adroit but not candid.... Payment of filing fees is mandatory and not discretionary. It cannot be waived<sup>45</sup>.

Even in the Election Petition case of *Ezeani v. Okosi*,<sup>46</sup> the Court of Appeal, Enugu Division presided over by E.C. Ubaezonu, JCA, held that: “Non-compliance with the provision of paragraph 37 of Schedule I to the Local Government (Basic Constitutional and Transitional Provisions) Decree No 26 of 1998 which provides for payment of filing and hearing fees indicates that the petition is not properly presented. It thereby becomes incompetent and it can be struck out.<sup>47</sup>” In *Seven-up Bottling Company Ltd v. Alhaji T. Yahaya*<sup>48</sup> the Court of Appeal (Kaduna Division) on 15/01/2001 held that: “The requirement to pay a filing fee is not only mandatory but also fundamental to the proceedings. It is a condition precedent to the filing of a valid claim before the Court. Therefore, non-compliance or failure goes to the root of the matter. In the instant case, the notice of appeal is incompetent, the filing fees having not been paid. The appeal cannot be said to be properly brought when no filing fees has been paid nor step or steps taken to have the omission rectified.”

The Court in this case had insisted that for a Memorandum of Appeal to be valid or competent there must be payment and evidence of payment of filing fees. It is the duty of the Appellant to pay the appropriate filing fees. It is the duty of the Appellant to pay the appropriate filing fees to enable the court’s function to start. The court shall not commence its function in respect of any

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<sup>45</sup> *Supra* p. 331.

<sup>46</sup> *Op. cit.*, p. 629. See also *Olamiyonu v. Anah* (1989) 5 NWLR (Pt. 122) 493, *Nnonye v. Anyichie* (1989) 2 NWLR (Pt. 101) 110 46(2001) 4 NWLR (Pt. 702) 47.

See *Provisional Council, Ogun State University v. Makinde* (1991) 2 NWLR (Pt. 175) 613. *Aja v. Okoro* (1991) NWLR (pt. 203) 260.

<sup>48</sup> *Ibid.*, p. 53.

appeal unless the prescribed filing fees have been assessed and paid except where such fees are classified as official. The fees classified as official are those payable by Government Ministries, Extra-Ministerial Departments and Local Governments. Where there is a requirement for payment of filing fees to set a process in motion, and the payment is not made, the process will be improper or incompetent, and the court will be equally incompetent to deal with it<sup>49</sup>.

The argument of the ‘mere irregularity’ camp was effectively countered when Justice Salami stated that:

The notice of appeal before us, as already observed, does not carry evidence of filing and payment of filing fees. The practice is for the registrar or cashier, whichever be the case, to endorse the receipt number on the relevant paper be it motion, notice of appeal, application for leave or affidavit and date the same. But the tendency these days is for counsel to carry the document in one hand and a receipt in the other. The troubling development is that most invariably the document does not tally. Why? Could it be as a result of honest mistake or a sleight of hand! Whatever be the case there must be payment and there must be evidence of payment of filing fees.<sup>50</sup>

The Supreme Court of Nigeria had earlier in 1989 in *Saude v. Abdullahi*<sup>51</sup> held that: “There is non-compliance with due process of law when the procedural requirements have not been complied with, or the preconditions for the exercise of jurisdiction have not been complied with. In such a circumstance, the defect is fatal to the competence of the trial court to entertain the suit. This is because the Court will in such a situation not be seized with jurisdiction in respect of the action<sup>52</sup>.” In his minority and dissenting judgement in *Emesim v.*

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<sup>51</sup> (1989)4 NWLR (pt. 116) 387.

<sup>52</sup> *Ibid.*, p. 422. Note that at p. 424 the Supreme Court further held that “where the non-compliance with the rules of Court is on the part of the Court, the defect is merely administrative and does not render the proceedings consequent thereto a nullity. Should this still be correct or lawful?”

*Nwachukwu and others*<sup>53</sup>, Ubaezonu JCA states, “Suppose the fee to be paid by a party in an election petition was wrongly assessed by the Secretary to the Tribunal and as a result the party failed to pay a correct fee at the time of presentation of the petition, could a court permit him to pay the correct fee long after the prescribed time for payment of fees, if the Decree did not make a provision for extension of time within which to pay such fees. I think not.” I think not too. A marriage of Ubaezonu JCA’s dissent here and Aderemi JSC’s minority opinion reinforces my conviction that in *Akpaji v. Udemba* the Supreme Court erred. We have forgiven My Lord, Ubaezonu JCA for his views in the matter under review at the Court of Appeal Enugu Division, which *mutatis mutandi*, is the same as that of the Supreme Court in the matter. Or did His Lordship recant? I applaud and approbate his stand in *Emesim v. Nwachukwu* but his decision in *Akpaji v. Udemba* cannot have and does not deserve my support or approval.

Aderemi JSC’s dissent in *Akpaji v. Udemba* is consistent with an earlier posture or position of the Supreme Court of Nigeria in Appeal No. SC. 249/2001 delivered on 11<sup>th</sup> April 2008. Justice W.S. N. Onnoghen in the lead judgment in *OGLI OKE MEMORIAL FARMS LTD and Another v. NIGERIAN Agricultural and Co-operative Bank Ltd and Another*<sup>54</sup> had held while allowing the appeal that:

Jurisdiction of the court to hear and determine any matter is invoked by the filing of the appropriate process in the Registry of the Court and by filing of a process is meant payment by the litigant of the appropriate filing fees as assessed by the appropriate or designated Registrar of the Court concerned. When a process is not duly filed before the court, it does not in the eyes of the law exist and as such cannot invoke the jurisdiction of the court. Thus, for a counter-claim or any suit for that matter to be valid before the court for consideration on the merits, it has to be properly filed. Such a matter is not one of procedural jurisdiction but of substantive jurisdiction. In the instant case, there was no evidence that the counter-claim was separately paid for by the Respondents so as to bring same properly before the court.

The Supreme Court further holds that, “There was no evidence of any payment for the institution of the counter-claim consequently, there was no

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<sup>53</sup> (1999) 6 NWLR (pt. 605) 154 at 173.

<sup>54</sup> (2008) 12 NWLR (pt. 1098) 412 at 427 -428 Paras H-B.

counter-claim. There being no counter-claim to which the appellants would have filed a defence, it was wrong for the trial court to hold that no defence was filed to a non-existent counter-claim and the Court of Appeal was equally in error when it affirmed the decision of the trial court.”

Justices Katsina-Alu, Akintan, Mohammed and Chukwuma-Eneh all of the Supreme Court concurred with Onnoghen JSC in the above case. *Ogli Oko Memorial Farms Ltd v. N.A.C.B* is to me a better decision than *Akpaji v. Udemba*, and coming from the same court (the Supreme Court) within a space or period of one year, one wonders whether this case (*O.O.M.F. V. N.A.C.B.*) was brought to the notice or knowledge of the Court in *Akpaji v. Udemba* by 13th February 2009 when the Supreme Court delivered its judgment. I salute the wisdom and sagacity of Justices Aderemi, Katsina-Alu Onnoghen, Akintan, Mohammed and Chukwuma-Eneh for their steadfastness and courage as shown above. At the earliest opportunity the Supreme Court should elevate *O.O.M.F. v. N.A.C.B.* as the law on this issue being on all fours with Aderemi JSC’s dissent in *Akpaji v. Udemba*.

### **The Issue of Rationalization and the Decision**

The majority decision in *Akpaji v. Udemba* failed to appreciate the sacrosanctity and sanctimonious nature of competence and jurisdiction. It overlooked the condition that there must be a prior fulfillment of conditions precedent before a court assumes jurisdiction or commences the exercise of judicial power or authority. Without the prior fulfillment of such a condition such as payment of filing fees, there is no legal basis or foundation for judicial intervention. Any action taken in such want or lack of jurisdiction or competence must be void, since it will collapse because it is a void act and thus a nullity.

In *Macfoy v. UAC*<sup>55</sup> Lord Denning observed that “when an act is void, it is in law a nullity. It is not only bad but incurably bad; there is no need for an order of the court to set it aside. It is automatically null and void without much ado though it is sometimes convenient to have the court declare it to be so and every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stand, it will surely collapse”. The Supreme Court misdirected itself in seeing the non-payment of filing fees as a mere irregularity which can be regularized by invoking its power under S. 22 of the Supreme Court Act. What the Supreme Court

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<sup>55</sup> (1962) A. C. 152 at 162.

actually did was to say that a man can take advantage of or benefit from his own wrongdoing. This is not the law in Nigeria. Nobody can do that and get away with it. There is nobody or lawyer who will claim ignorance of the fact that a legal process must be paid for before it goes before a judge or court. Thus unduly helping a litigant's lack of prudence, diligence or willful disobedience challenges the law-abiding instincts or sensibilities of rational and right thinking citizens.

A lot of judicial pronouncements exist to buttress the principle of *nullus commodum capere protest de Injuria sua propria*. For example in *Ibrahim v. Fulani*<sup>56</sup> the Court of Appeal stated that: "The principle of law is that no man can take advantage of his own wrongs. In other words, a party should not be allowed to benefit from their (his) own wrongs, if proved." In *Green v. Green*<sup>57</sup> Hon. Justice Aniagolu JSC said: "As a matter of general principle of avoiding injustice and absurdity, a court would not allow a person to profit by his own wrong. A person may not create a crisis situation and turn round to plead the crisis in support of his interest." That party who is aware that fees must be paid in the litigation process should not be allowed to benefit from any failure, neglect or refusal to pay. It has remained the argument of the other side that the problem arose from the Registrar/Registry and should not be visited on an unsuspecting litigant. My ready answer is that, in this era of frontloading, can a party who fails to present documents which exist in proof or support of his case otherwise be entitled to judgment or judicial relief. The answer is No! If so, why should a man who ought to know that payment must be made on a process in court fail to pay such fees and then be granted judicial relief?

The argument becomes stronger when the party is represented by an expert or professional – Counsel. A counsel who files a process should be able to decipher or discern whether he or she has paid or not for such a process. Non-payment must definitely be punished as a pre-condition to validity of the action where it is not only lacking but must be explained. It goes to the root of the matter. It is a fundamental defect not a mere remediable irregularity. Counsel or his client should ask – Have I done everything necessary to vest in

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<sup>56</sup> (2009) 18 WRN 40 at 119 per Sankey JCA. In *Kish v. Taylor* (1911) 1 KB 625 at 634, Fletcher Moulton L. J. opined that a man may not take advantage of his own wrongs. He may not plead in his own interest a self-created necessity.

<sup>57</sup> (2001) 45 WRN 90 at 138.

me the right of audience before a Court or Judge? The payment of requisite filing fees is one of such preconditions. Muhammed JCA had in the case of *G.T.B. Plc. v. Tabik Investment Ltd*<sup>58</sup> held that: “Where a law requires the fulfillment of a precondition before a particular act or substantive or main act or action is to be done, non-fulfillment of the precondition will be prejudicial to the party in default. By the requirement of the law he must take first thing first. He cannot jump the initial hurdle set by the law itself”. To hold otherwise is to make him take advantage of his lack of diligence or transgression.<sup>59</sup> Indeed in Osunde’s case the assertion of the court is here instructive. It was the same Justice Aderemi, the erudite and respected jurist, again at his poetic best.

He had stated that: “No polluted hand (shall) be allowed to touch the pure fountain of justice. One shall not have a right of action when one comes to a court of justice in an unclean manner...<sup>60</sup>” It can be said that even on equitable principles the Supreme Court’s decision cannot be supported. In the words of Aniagolu JSC as quoted by Agube JCA “Equity as we all know, inclines itself to conscience, reason and good faith and implies system of law disposed to a just regulation of mutual rights and duties of men in a civilized society.”<sup>61</sup> In the absence of payment of filing fees by any party to a judicial proceeding, it cannot be said that due process in the institution or commencement of the action has been followed. As Hon. Justice Uwa, JCA stated in *Sagaolu v. INEC*<sup>62</sup>: “A petition that was not initiated by due process of the law is incompetent no matter how well couched or the likelihood of its success had it been considered on its merit. Being incompetent, the Tribunal was not competent to entertain same.”

Due process is affected by non-payment of the filing fees by a litigant and this affects unequivocally the competence and jurisdiction of that court to hear the

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<sup>58</sup> (2005) 13 WRN 25 at 39 *Aina v. Jinadu* (1992) 4 NWLR (pt. 233) at 109.”

<sup>59</sup> See *Ibrahim v. Osunde* (2009) 37 NSCQR 196 at 221-222 per Aderemi JSC. *Civil Design Construction (Nig) Ltd v. SCOA (Nig.) Ltd* (2007). All FWLR (pt. 363) 1 at 64, *Adimorah v. Ajufo* (1988) 3 NWLR (pt. 800) 1. (1988) 6 SCNJ 18 *Ajibade v. Pedro* (1992) 5 NWLR (Pt. 24) 257 (1992) 6 SCNJ 44).

<sup>60</sup> *Op. cit.*, pp. 222-223. The Maxim is he who seeks equity must do equity – See *Moghalu v. Wobo* (2005) 11 WRN 115.

<sup>61</sup> See *Jamiu v. Ayinla* (2010) 9 WRN 72 at 128 – 130. *NICON Ltd v. Power and Industrial Engineering Co. Ltd* (1986), 1 NWLR (pt. 14) P. 1 at 39. *Jadesimi v. Fred Egbe* (2003) 36 WRN 79 at 102 (2003) 10 NWLR (pt. 827).

<sup>62</sup> (2009) 32 WRN 105 at 146.

matter. It goes to the root of the matter like the issue of bias. In the words of Adekeye JCA in *Olafemi v. Ayo*:<sup>63</sup>

Issue of bias also affects the jurisdiction of a court. Where a judge is found to be biased, he has to automatically disqualify himself from hearing the case. It is trite that an issue of jurisdiction being a fundamental and radical issue of competence can be raised at any stage of the proceedings even at the apex court.

Predicated on all the foregoing the Supreme Court erred or misdirected itself in *Akpaji v. Udemba* when it held that non-payment of filing fees was a mere irregularity which does not affect the competence or jurisdiction of the court in the matter where such fees are not paid. *OGLI OKO MEMORIAL FARMS LTD v. N.A.C.B.* is better and should be elevated at the earliest opportunity to a sacrosanct normative pedestal in Nigeria. The Supreme Court must do this, I pray, soonest.

### **Conclusion**

It cannot be gainsaid that jurisdiction is the authority which a court has to decide matters which are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are prescribed by the constitution or by the statute under which the court is constituted and may be extended or restricted by similar means. As Justice Niki Tobi JSC would say:

Jurisdiction is a very hard matter of law which is donated by the constitution and the enabling statute. It is also a very sensitive matter in the judicial process. Considering its very hard and sensitive nature, courts of law must always bow or kowtow to the provisions of the constitution and the enabling statutes. On no account should we remove from a court which has jurisdiction to hear a matter to another court which has no jurisdiction to hear. That is not right and we should not do it.<sup>64</sup>

The Supreme Court was apparently mistaken in *Akpaji v. Udemba* (under review) by not properly appreciating that, “Jurisdiction is blood that gives life

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<sup>63</sup> (2009) 19 WRN 30 at 68-69. See *Saleh v. Monguno*, (2003) 1 NWLR (Pt. 801) 221, *NDIC v. CBN* (2002) 18 ERN 1, (2002) 7 NWLR (Pt. 766) 272.

<sup>64</sup> See *Yusuf v. Obasanjo* (2003) 50 WRN 1, (2003) 16 NWLR (pt. 347) 554; (2003) 9-10 S.C. 53.

to the survival of an action in a court of law and without jurisdiction the action will be like an animal that has been drained of its blood. It will cease to have life and any attempt to resuscitate it without infusing blood into it would be an abortive exercise.<sup>65</sup>”

Their Lordships in the majority decision in the case under scrutiny again failed to comprehend that: “The absence of jurisdiction accentuates the want of legal capacity and competence in the court to hear and determine the subject matter before it.... In the absence of jurisdiction, *there* is no competence to exercise the judicial powers vested in the courts by section 6 (6)b of the constitution- Any such exercise of jurisdiction which is an obvious futility, is a nullity and proceedings and judgment relating thereto are null and void.” As aforesaid, jurisdiction cannot be acquired or conferred on the court by the consent of the parties or because the court was oblivious or mistaken as to the defect in its jurisdiction. *Akpaji v. Udemba* must be revisited and overruled by the Supreme Court of Nigeria if a precedent of impunity and an escape route for fraudsters and fees defaulters is not the intention of the apex court in Nigeria.

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<sup>65</sup> See *Ibrahim v. Fulani* (2009) 18 WRN 40 at 100 *Dangote v. Civil service Commission*, Plateau State (2001) 19 WRN 125; (2001) 9 NWLR (pt. 717) 132. *Ogboru v. Shell Petroleum Dev. Co. (Nig) Ltd* (2005) 26 WRN 128.