

PICTURE

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**GARBA ADAMU
AND
THE STATE**

SC.404/2015

**IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA**

FRIDAY 7TH APRIL, 2017

BEFORE THEIR LORDSHIPS

WALTER SAMUEL NKANU ONNOGHEN	CHIEF JUSTICE OF NIGERIA
MUSA DATTIJO MUHAMMAD	JUSTICE, SUPREME COURT
KUDIRAT M. O. KEKERE-EKUN	JUSTICE, SUPREME COURT
EJEMBI EKO	JUSTICE, SUPREME COURT
SIDI DAUDA BAGE	JUSTICE, SUPREME COURT

APPEAL: Where appellant challenges a certified record of appeal – No affidavit before the court challenging the record – Whether court is bound by its record – Relevant considerations thereof.

CONSTITUTIONAL LAW: Fair hearing – S. 36(1) of the Constitution of Federal Republic of Nigeria 1999 (as amended) – Scope and application thereof.

COURT: Supreme Court – Approach to issues of technicalities – Inclined towards doing substantial justice – Relevant considerations thereof.

COURT: Construction of statute – Express written provisions of the law – How should be constructed thereby.

COURT: Power to make necessary inferences as to the admissibility of a piece

of evidence – S. 138(1) Evidence Act – Purport and Scope.

COURT: Where an accused absconds from trial proceedings – What is the appropriate procedure to be adopted by a trial court under S. 259 of the Criminal Procedure Code – Relevant considerations thereof.

CRIMINAL LAW AND PROCEDURE: 2nd accused absconded from the trial court stayed proceedings against the 2nd accused without striking out nullifies his name – Whether this procedure nullify the trial against the remaining accused – Consideration of S. 259 CPC.

CRIMINAL LAW AND PROCEDURE: A party alleging non compliance with a rule of court – Need to place something before court to indicate that there was non compliance.

CRIMINAL LAW AND PROCEDURE: Standard of proof in Criminal Cases – Where there are concurrent findings of two lower courts – Whether the requisite proof is discharged.

CRIMINAL LAW AND PROCEDURE: Where appellant raises a technical error on appeal – No evidence that the technical error in issue occasioned miscarriage of justice – Attitude of appellate court thereto.

EVIDENCE: Confessional statement of accused – Purpose – Admissibility.

JUDGMENT AND ORDERS: Alleged failure to seal, sign and date a judgment – Breach of S. 269 (1) of the Criminal Procedure Law – No contention that alleged breach occasioned miscarriage of justice – Effect.

JUDGMENT AND ORDERS: Content, signing, sealing and dating of judgments – S. 269 (1) of the Criminal Procedure Law – Essence and purport.

PRACTICE AND PROCEDURE: Amendment – Commencement date thereof.

RULES OF COURT: Whether meant to help the cause of justice or defeat the cause of justice – Relevant considerations thereof.

STATUTE: Construction – General principles thereof.

STATUTE: Section 259 Criminal Procedure Code – Purport – Relevant considerations thereof.

STATUTE: Section 259 Criminal Procedure Law – The use of the word 'may' therein – Implication.

Issues for Determination

- 1. Whether the court below was right in upholding the conviction and sentence of the appellant despite staying proceedings against the 2nd accused Ahmed M. Dikko who is reported to be at large.**
- 2. Whether the court below was right to have upheld the decision of the trial court in view of the provisions of Section 269(1) of the CPC.**
- 3. Whether the court below was right to have upheld the conviction and sentence of the appellant on the basis of his confessional statement and evidence adduced at the trial court.**

Facts of the Matter

The appellant herein was charged as the 4th accused person respectively in Charge No. NHSC/MN/11C/2006. He was arraigned alongside with three others, including one Ahmed M. Dikko, (who later absconded from his sick bed but was consequently declared wanted for being at large). The fugitive Dikko was absent throughout the proceedings at the trial court. This unfortunate

development was not to be treated with levity, as proceedings continued despite having excused him in a ruling on grounds of his unholy act of absconding from facing justice for the criminal allegations against him. His “co-travellers” journeyed-on in the proceedings, as trial continued against his allied-accused persons who were tried on a two count charge of culpable homicide not punishable with death and conspiracy contrary to Sections 224 and 97 of the Penal Code respectively. The said Ahmed M. Dikko was the 2nd accused while Dingi Mohammed is the 1st accused person.

During the course of the trial, Mr. Ahmadu Dikko escaped and the prosecution sought and obtained the order of the trial court to stay proceedings against the 2nd accused but proceeded against the three remaining accused persons. The order was granted on 18th June, 2007. Thereafter, the prosecution amended the charge and the pleas of the three accused persons, including the present appellant were taken to the amended charge. The prosecution called a total of 8 witnesses and each of the three accused persons testified in defence. The appellant in the instant appeal testified as DW.2. At the end of the trial, the accused persons were convicted. The appellant's appeal to the Court of Appeal was dismissed hence this further appeal to the Supreme Court.

Held (*Unanimously dismissing the appeal*)

1. *The purport of Section 259 Criminal Procedure Code*

The contention of the appellant is largely hinged on the effect or purport of the provisions of Section 259 of the CPC which provides thus:

“The court at any stage of the trial, where there are several accused may by order in writing stating the reasons therefore, stay proceedings of the joint trial and may continue proceedings against each and any of the accused separately.”

It is not in contention that the trial court granted and indeed stayed proceedings against the fugitive 2nd accused person who absconded. From the record of proceedings, and as rightly argued by

respondent's counsel, at no point in time after the grant of stay of proceedings was the name of the 2nd accused person, the absconding accused person, mentioned in the proceedings. It would appear that the contention of the appellant, on the basis of which he asked us to set aside the decision of the court below, and by necessary implications, that of the trial court, is that the trial court ought to have struck-out the name of the absconded 2nd accused person. Although doing so may be appropriate, I see no reason why it becomes procedurally imperative in view of the very clear and unambiguous provisions of section 259(1) of the CPC quoted above. (P 26 Paras C–I)

2. *The word 'may' in this provision connotes discretionary rules*

I wish to add that the above provision is very clear and unambiguous. The word “MAY” is used twice in that simple provision to connote discretionary rules. “The court 'may' by order stay proceedings of joint trial...”, which the trial court did, apparently and (for deliberate tautology) obviously and in writing within the precinct of the section that says “may” by order in writing....”

This court stated times without number, that the law is settled that express written provision of the law must be given its literary meaning irrespective of flowery embellishments in Counsel's written argument. See Calabar Vs. Central Co-Operative Thrift and Credit Society Limited & 2 Ors Vs. Bassey Ekpong Ekpo (supra) where Onnoghen (JSC) (as he then was) at page 29, lines 40-45, stated thus:

“It is settled law that where the words of a statute or Constitution are clear and unambiguous, they call for no interpretation, the duty of the court in such a circumstance being to apply the words as used by the legislature”. (P 27 paras A–E)

3. *General Principles applicable to the interpretation of statutes*
This court, also in the case of AG. Federation Vs. Abubakar 2007 20 W.R.N., per Akintan, (JSC) restated the position as follows:

“It is necessary to say something about the general principle of interpretation of statutes, including constitutions. The generally accepted rule of construction is that it is to be assumed that the words and phrases of technical legislation are used in their technical meaning if they have acquired one, and otherwise in their ordinary meaning. Phrases and sentences are to be construed according to the rules of grammar. If there is nothing to modify, alter or qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences. This approach is regarded as 'literal interpretation' or characterized as the 'positivist approach'....”

To my view, the above provisions are fully complied with. It is not within the contemplation of section 259 of the CPC that the name of the absconded 2nd accused person must, *willy-nully*, be deleted. The grant of an order of stay of proceedings against the 2nd accused, in our considered view, neither meant that the 2nd accused person was tried and convicted along with the appellant nor vitiate the order staying proceedings itself. The logic of the appellant's contention, which he failed to effectively sell; or sold but we did not buy, not for the lack of means but because subscribing to such would amount to technical justice, is that the requirement of section 259 of the Criminal Procedure Code does require mandatory separate trial of the accused persons. This is reading extraneous meaning to the above provisions as proceedings against any accused persons which is stayed as required by law needs not be isolated or his name struck-out. As I had said above, striking out his name may be appropriate

but not crucial as he ceased being part of the proceedings upon the grant of stay. (Pp 27–28 paras E–E)

4. *The object of rules of court*

I also wish to add a point on the effect of rules of procedures like the CPC, which, unwittingly may, or now increasingly being cited to sway the outcome of criminal trial beyond the merit of the case. In the famous case of Ariori & Ors. Vs. Muraimo Elemo & Ors. (1983) ANLR 1 13 at 24 per Obaseki (JSC), this court opined that fair hearing means a trial conducted according to all the legal rules formulated to ensure that justice is done to the parties to the cause. See also Idakwo Vs. Ejiga (2005) 48 WRN 19SCat ratio 5, page 35 to 36 Elsewhere, in the case of Adeyela Vs. Adeyeye (2010) W.R.N 42 at page 70 to 711 had opined, and remain so persuaded without having cause to change my view, that:

“Rules of procedure are made for the convenience and orderly hearing of cases in court. They are made to help the cause of justice and not defeat justice. The rules are therefore aids to the court and not masters of the court. For courts to read rules in the absolute without recourse to the justice of the cause, to my mind, will be making the courts slavish to the rules. This certainly is the reason of the rules of court.”

The provision of the CPC is intended, in this case and indeed all criminal proceedings, to aid in the smooth, fair and just administration of criminal justice. It certainly does not intend to defeat the end of justice. To take solace in the rule of procedure under section 259 of the Criminal Procedure Code to defeat justice without neutralizing or contradicting the evidence before the trial court is herculean task. (Pp 28–29 paras E–C)

5. *Consideration of S. 269 (1) of the Criminal Procedure Code*

The contention on issue two is the same as issue one having been based on Section 269(1) of the Criminal Procedure Code which provides thus:

“Every judgment shall contain the point or points for determination, the decisions thereon and the reasons for the decision and shall be dated and signed or sealed in the open court at the time of pronouncing it.”

I re-adopt my earlier views and ruling on issue one which bordered on Section 259 of the CPC in resolving the essence and purport of section 269(1) of the same law. In addition, beyond contesting formalities, which is grossly misplaced, the appellant placed nothing before the court to indicate non compliance with the provisions of Section 269 of the Criminal Procedure Code (CPC). I align with the court below in affirming that the judgment delivered on 29th June, 2012 by the learned Chief Judge contains all the requisite requirements of a valid judgment and therefore valid for all intent and purposes. Assuming without conceding that the argument is logical, I'm yet to see why the dating and signature or sealing of a judgment by the trial Judge in the open court is made a strict requirement of the law to vitiate a trial or judgment. It would have made better sense if doing so or it lacks occasioned miscarriage of justice on the part of the appellant. (Pp 29 – 30 paras E – B)

6. *Per Baje (JSC)*

Enough said on the essence of the provisions of the CPC against substantial justice. Litigants should expect no technical but substantial justice from this court. We have said several times that we are not a workshop for technical justice. Over and over again, we have reiterated the need to do substantial justice and avoid delving into the error of technicalities. See for example the case of National Revenue Mobilization Allocation and Fiscal Commission

(N.R.M.A.F.C) Vs. Johnson (2007) 49 W.R.N Pages 169-170 where Per Peter-Odili, JCA (As he then was) opined as follows:

“.... The courts have deliberately shifted away from narrow technical approach to justice which characterized some earlier decisions to now pursue the course of substantial justice. *See* *Makeri Smelting Co. Ltd. Vs. Access Bank (Nig.) Plc(2002) 7 NWLR (Pt.766) 447 at 476-477. ... The attitude of the court has since changed against deciding cases on mere technicalities. The attitude of the courts now is that cases should always be decided, wherever possible on merit. Blunders must take place from time to time, and it is unjust to hold that because a blunder has been committed, the party blundering is to incur the penalty of not having the dispute between him and his adversary determined upon the merits.”*

See also* *Ajakaiye Vs. Idehai (1994) 8 NWLR (Pt.364) 504, Artra Ind. Ltd Vs. NBCI (1997) 1 NWLR (Pt.483) 574, Dakat Vs. Dashe (1997) 12 NWLR (Pt. 531) 46. (P 30 Paras B–I)

7. *The nature of fair hearing*

Fair trial or hearing is a strict rule. What must be added and emphatically stressed is the fact that the principle of fair hearing as enshrined under the Constitution of the Federal Republic of Nigeria, 1999 as amended (CFRN, 1999) is for the benefit of the appellant and respondent. Section 36 (1) of the CFRN, 1999 provides thus:

“In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable

time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality.” (P 31 paras D–G)

8. *The standard of proof in criminal cases*

The burden of proof of a criminal offence is proof beyond reasonable doubt to secure conviction. The evidence at the trial and which was concurrently upheld by the courts below is that the respondent has adduced enough, convincing evidence to prove beyond reasonable doubt, including the confessional statement of the appellant, the ingredients of the offence of culpable homicide not punishable with death as basis for convicting the appellant. The burden of proof in criminal offence, to all intents and purposes, remains proof beyond reasonable doubt to secure conviction. (P 31 paras G–I)

9. *Power of court to make necessary inference as to the admissibility of a piece of evidence*

Section 138(1) and (2) of the Evidence Act also give the court power to make necessary inference as to admissibility of a piece of evidence, including, in my considered view, confessional statement whether or not same is subsequently denied by the maker. It states thus:-

“138. Burden of proving fact necessary to be proved to make evidence admissible.

(1) The burden of proving any fact necessary to be proved in order to:-

(a) enable a person to adduce evidence of some other facts;

or

(b) prevent the opposite party from adducing evidence of some other fact, lies on the person who wishes to adduce, or to prevent the adduction of such evidence, respectively.

(2) The existence or non-existence of facts relating to the admissibility of evidence under this section is to be determined by the court.” (P32 Paras A–E)

10. *Supreme Court does not interfere with concurrent findings of facts Per Baje (JSC)*

“The law is settled that the Supreme Court, this noble court, will not interfere with concurrent findings of facts made by the trial court and the Court of Appeal unless such findings are perverse; or are not supported by the evidence; or are reached as a result of a wrong approach to the evidence; or as a result of a wrong application of evidence; or as a result of wrong application of any principle of substantive law or procedure.” See Arabambi Vs. Advance Beverages Ind. Ltd. (2005) 19 NWLR (Pt.959) 1PER Onnoghen, J.S.C (as then was) at (P.46, C-E).

In this case, there are two concurrent findings of facts of the lower courts on the issue. It is usual in this court, in such circumstances, to decline to review the evidence of a third time particularly when we are not convinced or persuaded, as in this case, that there has been a miscarriage of justice or a violation of some principles of law or procedure, or that the two findings of the trial court and the court next to us, is and/or was perverse. See Ochiba Vs. State 2011 12 SC (Pt. IV) P.79 Per Rhodes-Vivour, J.S.C. (PP. 51-52, Paragraphs, F-B). See also Cameroon Airlines Vs. Otutuizu 2011 12 SC (Pt. III) P.200; Olowu Vs. Nig. Navy 2011 12 SC (Pt. II) P.1; Arowolo Vs. Olowookere & 2 Ors. 2011 11-12 SC (Pt. II) P.98. (Pp 32 – 33 paras E – A)

11. *The nature purpose and admissibility of confessional statement*
By virtue of the provisions of section 28 of the Evidence Act, confessional statement is tenable and admissible. The section describes a confessional statement thus:

“A confession is an admission made at any time by a person, charged with a crime tending to show or suggest the inference that he committed the crime.”

Confessional statement is the best evidence to ground conviction and, as held in a number of cases, it can be relied upon solely where voluntary. The criminal guilt of an accused person could be established by confessional statement, circumstantial evidence and evidence of an eye witness. A confessional statement of the appellant that was free and voluntary regardless of the fact that he (the appellant) subsequently resiled from his voluntary confession at trial, is good evidence to ground conviction. A confessional statement does not become inadmissible simply because the accused person denied having made it. This has been the settled position in our jurisprudence of criminal justice. See for example Patrick Ikemson & 2 Ors Vs. The State (1989) 3 NWLR (Pt. 110) 455 at 476 Para D; Joseph Idowu Vs. The State (2000) 7 SC 50 at 62; (2000) 12 NWLR (Pt. 680) at 48, Nkwuda Edamine Vs. The State (1996) 3 NWLR (Pt. 438) 530 at 537 Para D-E; Samuel Theophilus Vs. The State (1996) 1 NWLR (Pt. 423) Page 139 at 155 Para A-B; and Awopeju Vs. The State (2002) 3 MJSC 141 at 151.

This Court, and incidentally by no less a Jurist other than the Learned Onnoghen (JSC) (as he then was; and proudly the CJN) in Peter Iliya Azabada Vs. The State (2014) All FWLR (P.751) 1620, PARAB has made it abundantly clear in the following words:

“The confessional statement of an accused, where it is direct, positive and unequivocal as the commission of the crime charged, is the best evidence and can be relied upon solely for conviction of the accused person. An accused person can be convicted on his confessional statement alone, where the confession is consistent with other ascertained facts which have been proved.

Confession in criminal procedure is the strongest evidence of guilt on the act of an accused person. It is stronger than evidence of an eye witness because the evidence comes from the horse's mouth who is the accused person. There is no better evidence and there is no further proof. Therefore where an accused person confesses to a crime in the absence of an eye witness to the killing, he can be convicted on his confession alone once the confession is positive, direct and properly proved. In otherwords, a free and voluntary confession of guilt, direct and positive and if duly made and satisfactorily proved, is sufficient without corroborative evidence so long as the court is satisfied as to the truth of the confession.”

In view of the foregoing, it is my considered view that the judgment of the trial court cannot be faulted at all and the lower court was right in affirming and endorsing it. The appellant has failed to convince me that this is a situation in which this court should interfere.” See also Mini Lodge Ltd. Vs. Ngei (2009) 18 NWLR (Pt. 1173) 254 per Mustapher, J.S.C. (P.33, PARAS.B-D). (Pp 33 – 34 Paras A – G)

12. *Appellant did not show that non compliance occasioned any miscarriage of justice.*

In the instant case, the trial High Court adopted the latter option. It continued with the proceedings in the trial of the appellants after suspending further proceedings against the fugitive Ahmed M. Dikko. There is nothing wrong with this. It acted perfectly within the letters and spirit of the law as enacted in Section 259(1) CPC. In any case, the appellants have not shown in what way or manner this procedure adopted by the trial High Court had occasioned any miscarriage of justice to them. The appeal, on this issue is flimsy and vexatious.

The appeal, on whether the judgment of the trial court complied with Section 269(1) CPC, is also, in my firm view, vexatious. Section 269(1) CPC requires that every judgment shall contain the point or points for determination, the decision thereon and the reasons therefore, and shall be dated and signed or sealed in the open court at the time of pronouncing it. The complaint here is only that the learned trial Judge did not sign or seal the judgment with the date therein in open court. The appeal is not about the substance of the judgment, but about only the non-signing or sealing of the judgment and its non-dating.

Equity follows the law, and takes as done that which ought be done. This is what Section 168(1) Evidence Act 2011 is about when it provides that when any judicial act is shown to have been in a manner substantially regular, it is presumed that formal requisites for its validity were complied with. On this presumption, and without the appellants showing in what manner their rights have been compromised or prejudiced, or that they had suffered any miscarriage of justice, I hold that the trial court delivered its judgment wherein the appellants were convicted and sentenced for the offence(s) alleged against them on date the judgment was delivered in open court. The importance is that the judgment was delivered in open court by the learned trial Judge before whom they were tried. This resort to arcane technicality has not impressed me. I will not allow the appeal on this issue. I, accordingly, resolve the issue against the appellants. (P40 Paras A–I)

13. Issue of technicality not affecting substance

The law is trite that the amendment of a process takes effect from the date of the original document. See A.G. Ekiti State & Ors. Vs. Adewumi & Ors. (2002) 1 SC 47; Jatau Vs. Ahmed & Ors. (2003) 4 NWLR (Pt.811) 498; Enigbokan Vs. A.I.I. Co. (1994) 6 NWLR (Pt.348) 1 @ 15 – 16. The order for stay of proceedings against the 2nd respondent therefore remained valid and subsisting.

Although the hearing continued to reflect: The State Vs. Garba Adamu & Ors, this in my view, as rightly held by the lower court was a technicality that did not affect the substance of the proceedings. The factual situation was that the trial was conducted in respect of the three remaining accused persons and no finding was made in respect of the 2nd accused. I also agree with the court below that the appellant has not shown that he has suffered any miscarriage of justice in the circumstances of this case. This court in a recent decision in *Olatubosun Vs. The State* (2013) 7 SC (Pt.II) 1 @ 30; (2013) LPELR – 209 39 SC @ 21 E – G, held that an appellate court will not quash a conviction on a mere technicality which caused no embarrassment or prejudiced and where there has been no substantial miscarriage of justice.

I adopt this view in the instant case. It is similarly applicable to the appellant's second issue challenging the judgment of the trial court on the grounds that it was undated, unsigned and unsealed and delivered after that court became *functus officio*. I am of the view that the contention of learned counsel in this regard is speculative to say the least. The court is bound by its record. The record, including the judgment of the trial court, was duly certified as a true copy of the proceedings before the trial court, as transmitted to the court below. Page 143 of the record clearly indicates that the judgment of the court was delivered on 29/6/2012. There is no affidavit before this court or the court below challenging the record. This complaint is another attempt to enthrone technicalities over substantial justice, which cannot be countenanced by this court. (P38 Paras A–H)

Nigerian cases cited in the Judgment

A.G. Ekiti State & Ors. Vs. Adewumi & Ors. (2002) 1 SC 47;
Adeoye Vs State (1996) 6 NWLR (Pt. 605) 74;
Adeyela Vs. Adeyeye (2010) W.R.N 42;
AG. Federation Vs. Abubakar 2007 20 W.R.N.;
Ajakaiye Vs. Idehai (1994) 8 NWLR (PT.364) 504;
Alintah Vs. Federal Republic of Nigeria (2008) All FWLR (Part 436) 1999;

Arabambi Vs. Advance Beverages Ind. Ltd. (2005) 19 NWLR (Pt.959); Ariori & Ors. Vs. Muraimo Elemo & Ors. (1983) ANLR 1 at 24;
Arowolo Vs. Olowookere & 2 Ors. 2011 11-12 SC (Pt. II) P.98;
Artra Ind. Ltd Vs. NBCI (1997) 1 NWLR (PT483) 574;
Awoniyi Vs. Aleshinloye(1998) 9 NWLR (Pt. 564) 71;
Benson Vs. Nigeria AGIP Co. Ltd (1982) 5 S.C 1;
Cameroon Airlines Vs. Otutuizu 2011 12 SC (Pt. III) P.200;
Chief of Air Staff Vs. Iyen (2005) 6 NWLR (Pt. 922) 496;
Dakat Vs. Dashe (1997) 12 NWLR (PT. 531) 46;
Doma Vs. Origi(1998) 3 NWLR (PART 541) Pages 256;
Enigbokan Vs. A.I.I. Co. Nig. Ltd. (1994) 6 NWLR (Pt.348);
Eyorokooromo Vs. The State (1979) 6-9 SC 3;
GE Int'l Operation Ltd Vs. Q-O & G Serv (2014) ALL FWLR (PT 761) Page 1509;
Idakwo Vs. Ejiga (2005) 48 WRN;
Jatau Vs. Ahmed & Ors. (2003) 4 NWLR (Pt.811) 498;
Joseph Idowu Vs. The State (2000) 7 SC 50;
Makeri Smelting Co. Ltd. Vs. Access Bank (Nig.) Plc(2002) 7 NWLR (Pt.766) 447;
Mini Lodge Ltd. Vs. Ngei (2009) 18 NWLR (PT. 1173) 254;
National Revenue Mobilization Allocation and Fiscal Commission (N.R.M.A.F.C) Vs. Johnson (2007) 49 W.R.N Pages 169;
Nkwuda Edamine Vs. The State (1996) 3 NWLR (Pt. 438) 530;
Ochiba Vs. State 2011 12 SC (PT. IV) P.79;
Ochu Vs. FRN (2011) ALL FWLR (Pt. 563);
Okonji Vs. Njokanma (1991) 7 NWLR (Pt.202) 131;
Uka Vs.Irolo (1996) 4 NWLR (Pt.441);
Olatubosun Vs. The State (2013) 7 SC (Pt.II) 1;
Olowu Vs. Nig. Navy 2011 12 SC (Pt. II) P.1;
Opayemi Vs. State(1985) 2 NWLR (Pt.5) 101;
Patrick Ikemson & 2 Ors Vs. The State (1989) 3 NWLR (PT. 110) 455 at 476 Para D;
Peter Iliya Azabada Vs. The State (2014) All FWLR (P.751) 1620;
Peter Iliya Azabada Vs. The State (2014) All FWLR (P.751) 1620;

- A** *Samuel Theophilus Vs. The State (1996) 1 NWLR (PT. 423) Page 139 at 155 Para A-B; and Awopeju Vs. The State (2002) 3 MJSC 141; State Vs. Lawal (2013) 7 NWLR (Pt. 1354) 565; Sunday Vs. State (2011) ALL FWLR (Part 568) 922; and*
- B** *The State Vs. Garba Adamu & 3 Ors.*

Nigerian Statutes cited

- Evidence Act Section 138(1) and (2) and Sections 28 and 138(1);*
- C** *Criminal Procedure Code Section 153 and Sections 268 and 269; Criminal Procedure Code Section 259(1); Criminal Procedure Code Section 269(1); CFRN, 1999 Section 36 (1);*
- D** *Penal Code Section 97(1) and Sections 224 and 97;*

Representations:

Charles Ihua-Maduenyi and Cindy Ihua-Maduenyi for the appellant.

- E** **A.A. Ibrahim with M.A. Ebute, A. Apeh.B.E. Sheyin (Mrs.) and O. Ademola** for the respondent.

- DAUDA BAGE, JSC (Delivering the Lead Judgment):** This appeal arose from the decision of the Court of Appeal, Abuja Judicial Division, delivered on the 8th day of May, 2015 in Appeal No. CA/A/586C2/2012. In the appeal, the court, affirmed the conviction of, and sentence imposed on the appellant by the High Court of Niger State presided over by the Chief Judge, Hon Justice Jibrin N. Ndajiwo in Suit No. NSHC/MN/11C/2006 delivered on 29th June, 2012.
- F**
- G**

- The facts of the case are, unlike its convoluted history, direct. The appellant herein were charged as the 4th accused person respectively in Charge No. NHSC/MN/11C/2006. He was arraigned alongside with three others, including one Ahmed M. Dikko, (who later absconded from his sick bed but was consequently declared wanted for being at large). The fugitive Dikko was absent throughout the proceedings at the trial court. This unfortunate development was not to be treated with levity, as proceedings continued despite having excused him in a ruling on grounds of his unholy
- H**
- I**

A act of absconding from facing justice for the criminal allegations against him. His “co-travellers” journeyed-on in the proceedings, as trial continued against his allied-accused persons who were tried on a two count charge of culpable homicide not punishable with death and conspiracy
B contrary to Sections 224 and 97 of the Penal Code respectively. The said Ahmed M. Dikko was the 2nd accused while Dingi Mohammed is the 1st accused person. The aforementioned accused persons were charged with the following offences, as amended, quote:-

C

1st COUNT:

D **That you Garba Adamu Ahmadu M. Dikko, Dingi Mohammed and Hadi Sule on or about 14th day of October, 2005 at Maikunkele via Minna within Minna Judicial Division committed culpable homicide not punishable with death in causing the death of Manu Hassan in a sudden fight by doing an act to wit by inflicting bodily injuries on him by means of a cutlass which you know was likely to cause his death and thereby committed an offence punishable under section 224 of the Penal Code.**
E
F

2nd COUNT

G **That you Garba Adamu Ahmadu M. Dikko, Dingi Mohammed and Hadi Sule on or about 14th day of October, 2005 at Maikunkele via Minna within Minna Judicial Division agreed to do an illegal act, to wit to cause bodily injuries to Manu Hassan and same act was done in pursuance of the agreement and that you thereby committed an offence punishable under section 97(1) of the Penal Code.**
H
I

- A** It needs to be reiterated for obvious reasons as to be discovered below. During the course of the trial, Mr. Ahmadu Dikko escaped and the prosecution sought and obtained the order of the trial court to stay proceedings against the 2nd accused but proceeded against the three
- B** remaining accused persons. The order was granted on 18th June, 2007. Thereafter, the prosecution amended the charge and the plea of the three accused persons, including the present appellant were taken to the amended charge. The prosecution called a total of 8 witnesses and each of the three
- C** accused persons testified in defence. The appellant in the instant appeal testified as PW.2.

- The ship of the trial sailed smoothly, but not without the wind of technicalities, objections, counter objections and related procedural
- D** gymnastics that should, by now, have no place in our civil and criminal jurisprudence. This, regardless, at the conclusion of trial formalities, parties adopted their respective written addresses and matter adjourned for judgment. On the day of judgment, the learned trial judge found that the
- E** offence of conspiracy was not proved and discharged and acquitted the accused persons on that head of charge.

- However, the learned Chief Judge, found the three accused persons guilty of the offence of culpable homicide not punishable with death. He
- F** reasoned that the offence of “culpable homicide not punishable with death” has been proved by the prosecution beyond reasonable doubt.

- Being dissatisfied with the decision of the trial court, the appellant appealed to the lower court which confirmed the conviction and sentence of
- G** the appellant. The judgment of the trial court convicting and sentencing the appellant to 15 years imprisonment is at Pages 134-176 of the Record of Appeal while the judgment of the lower court affirming the decision of the trial court is at pages 316 – 338 of the Record of Appeal.

- H** Being dissatisfied with the judgment, the appellant sought to overturn the decision by lodging an appeal at the Court of Appeal, Abuja Division. The Court of Appeal affirmed the decision of the trial court as embedded in the judgment dated 29 June, 2012. The court directly below ours, in its
- I** judgment of May 8, 2015 also affirmed the conviction and sentence of the trial court, meaning the appellant was twice unlucky. Still not satisfied, the

A appellant appealed to this court.

In this appeal, the appellant filed his brief of argument dated 2/7/15 wherein four issues were formulated for the determination of this case, thus:

- B 1. **Whether the court below was right when it affirmed the trial by the trial court of the appellant jointly with Ahmed M. Dikko who was reported to be at large and was absent throughout the proceedings at the trial court in violation of the provisions of Section 259(1) of the Criminal Procedure Code and thereby rendered the whole trial a nullity.**
- C
- D 2. **Whether the court below was right when it held that the judgment/decision of the trial High Court copied at pages 144 176 of the record of appeal which was undated, unsigned and unsealed and was delivered after the court had become *functus officio* in the matter is not *ab initio* null and void and of no effect whatsoever.**
- E
- F 3. **Whether the decision of the court below was right when it refused to impeach the decision of the learned trial Chief Judge as a result of his failure to consider and pronounce on the appellants' defence to the confessional statements tendered against him as well as his perverse position on the alleged failure of appellant's counsel to file a further address in reply to the address of the learned prosecuting counsel.**
- G
- H 4. **Whether the court below was right when it affirmed that the learned trial Chief Judge properly assessed, evaluated and measured on the imaginary scale the various pieces of evidence laid before him by the parties before proceeding to find the appellant guilty of culpable homicide not punishable with death.**
- I

A Learned counsel for the respondent filed his brief of argument on 27/10/15 and raised three (3) issues for determination, thus:

B “1. **Whether the Court of Appeal was right when the court upheld the conviction and sentence of the appellant notwithstanding the absence of the 2nd accused (Ahmed M. Dikko) reported to be at large?”**

C 2. **Whether the Court of Appeal was right to have affirmed the conviction and sentence of the appellant by the trial court having regard to the allegation that the judgment copied at page 144 of the record, was undated, unsigned, unsealed and equally delivered after the court had become *functus officio* in the matter?**

D 3. **Whether the Court of Appeal was right when it upheld the conviction of the appellant on the basis of evidence adduced at the trial court.”**

E
F Taking a very close look at the contention of the appellant in the instant appeal leaves one with a clear message from the displeased party. Their message is not only loud but also very clear. His contention is to the effect
G that the judgment of the court below was, and perhaps still is, a nullity because the appellant was tried together with an absentee accused person.

H Learned counsel to the appellant reiterated the settled principle of law that the trial of an accused in absentia is not only unknown to Nigerian
I law but also a nullity. In support of this proposition, learned counsel relied heavily on Section 153 of the Criminal Procedure Code and case law authorities of **Chief of Air Staff Vs. Iyen (2005) 6 NWLR (Pt. 922) 496; Ochu Vs. FRN (2011) ALL FWLR (Pt. 563)**. Counsel also cited and relied on the case of **Alintah Vs. Federal Republic of Nigeria (2008) All FWLR (Part 436) 1999**. Counsel to the appellant further argued that except as

- A** permitted under Section 259(1) of the Criminal Procedure Code, the trial of one or more accused person(s) in a joint trial involving several accused persons where one of the accused persons was absent offends the provision of section 259(1) of the Criminal Procedure Code and rendered the entire
- B** proceedings which culminated in the conviction and sentence of the accused person a nullity.

- It was his submission that once a stay of proceedings is granted by the trial court in respect of the absentee accused person, the remaining accused
- C** persons should be tried separately and should not be tried jointly with the absentee (I'm minded to add 'fugitive') accused person. The trial of the appellant with the absentee 2nd accused person in absentia, in the considered opinion of counsel, was a serious fundamental flaw which renders the entire
- D** proceedings a nullity. To beef-up his position and 'sell' his proposition of law on this issue, Counsel also heavily relied on the **Adeoye Vs State (1996) 6 NWLR (Pt. 605) 74 at 76 79; Eyorokooromo Vs. The State (1979) 6-9 SC 3 at p. 9 and State Vs. Lawal (2013) 7 NWLR (Pt. 1354)**
- E** **565 at 595-596.**

- Learned counsel to the respondent presented his argument by urging the court to affirm the judgment and conviction of the appellant by the court below on the grounds that the appellant was neither tried in absentia nor
- F** denied fair hearing. He submitted that the Supreme Court decision in **Chief of Air Staff Vs. Iyen (supra)** and other authorities cited by the appellant's counsel were inapplicable to the circumstances of this case. This is because the appellant was physically present all through the trial and was duly
- G** represented by counsel.

- In countering the submission of the learned counsel to the appellant on the contention that the appellant was tried jointly with the absentee 2nd accused person, the learned counsel to the respondent further drew the
- H** attention of this Honourable Court to pages 54-143 of the record of appeal and submitted that at no point in time after the grant of stay of proceedings was the name of the 2nd accused person, the absconding accused person, included in the proceedings. He amplifies his position further by arguing
- I** that, the trial court's judgment at page 144-176 particularly at page 145 lends credence to the fact that the trial Chief Judge pointed out and

- A** acknowledged the fact that proceedings against the 2nd accused were stayed and by necessary implication and direct act, excluded. He submitted, by way of further clarifications, that the grant of an order of stay of proceedings against the 2nd accused neither meant that the 2nd accused person was tried
- B** and convicted along with the appellant nor suggests that the order staying proceeding was a nullity. Learned counsel to the respondent differs sharply with the position of the appellant's counsel. The point of divergence is that, according to the former, the requirement of section 259 of the Criminal
- C** Procedure Code does not involve mandatory separate trial of the accused persons and that all the law required is that proceedings against any accused persons at large be stayed. (My understanding also, meant without being necessarily isolated by striking-out his name).

D

Issue Two

- Learned counsel for the appellant in his brief of argument submitted that the judgment of trial court which was affirmed by the lower court was unsigned
- E** and undated in an open court as required under section 269(1) of the CPC. The section in question, that is Section 269(1) of the Criminal Procedure Code provides that:

- F** **“Every judgment shall contain the point or points for determination, the decisions thereon and the reasons for the decision and shall be dated and signed or sealed in the open court at the time of pronouncing it.”**
- G**

Counsel posited in his arguments that the dating and signature or sealing of a judgment by the trial Judge in the open court are strict requirements.

- H** Relying on the authorities of **Haruna Vs. University of Agriculture, Makurdi (2006) All FWLR (Part 304) 432; Sunday Vs. State (2011) ALL FWLR (PART 568) 922** and **Awoniyi Vs. Aleshinloye (1998) 9 NWLR (Pt. 564) 71**.

- I** On his part, the respondent's counsel countered that the learned trial Judge dutifully complied with the provisions of section 269(1) and that the

- A** court below was right to have upheld the decision of the trial court. The learned counsel emphasized that the appellant placed nothing before the court to indicate non compliance with the provisions of Sections 268 and 269 of the Criminal Procedure Code (CPC). Counsel relied on the case of
- B** **Doma Vs. Origi(1998) 3 NWLR (PART 541) Pages 256; GE Int'l Operation Ltd Vs. Q-O & G Serv (2014) ALL FWLR (PT 761) Page 1509 at 1529** and submitted that the judgment delivered on 29th June, 2012 contains all the requisite requirements of a valid judgment and therefore
- C** valid for all intent and purposes.

Issues 3 and 4 formulated by the appellant revolved around weight and evaluation of evidence before the trial court. However, the third issue formulated by the respondent also centres on evidentiary issues.

- D** On his part, the appellants' counsel argued his issues 3 and 4 together and contended that although the appellant's confessional statement was tendered and admitted in evidence, the trial court failed to advert his attention to the fact that the appellant had denied same on the grounds that it
- E** was coercive and made involuntarily, as he was tortured by the police. He contended that the defence of the appellant to the so-called confessional statements tendered against the accused persons were clearly unchallenged and remained firm and unshaken even under cross-examination and that the
- F** trial judge failed woefully to consider same in his judgment before coming to the conclusion that the appellant was the maker of the said confessional statement. The learned counsel relied on **Opayemi Vs. State(1985) 2 NWLR (Pt.5) 101; Okonji Vs. Njokanma (1991) 7 NWLR (Pt.202) 131**
- G** **Uka Vs. Irolo (1996) 4 NWLR (Pt.441)** in submitting that failure of the trial judge to consider the aforesaid defence of the appellant amounts to denial of fair hearing and renders the judgment impeachable.

- On his part, the respondent's counsel argued (on his issue 3) that the
- H** burden of proof of a criminal offence is proof beyond reasonable doubt to secure conviction. The learned counsel stressed further that proof beyond reasonable doubt is not therefore proof beyond all possible or imaginary doubt. The learned counsel cited that provisions of sections 28 and 138(1)
- I** of the Evidence Act in asserting the confessional statement is the best evidence to ground conviction and can be relied upon solely where

A voluntary. He cited the case: **Peter Iliya Azabada Vs. The State (2014) All FWLR (P.751) 1620, para. B per Onnoghen JSC (as then was; now CJN).**

B *Determination of the Issues*

The evaluation of arguments respectively put forward by both the learned counsel for the appellant and respondent on the issues he formulated for the determination in this appeal reveal that the central contention of the parties

C bordered on: (1) the trial of the absconding Ahmed M. Dikko; (2) alleged failure to comply with Section 259(1) of the CPC on mode of delivering judgment, and (3) effect of confessional statement of the appellant. All other issues and arguments are ancillary and/or appurtenant to the three

D points of contention, which, as I can deduce, border on three cardinal aspects of our jurisprudence: procedure; evidence and judgment. To anchor and resolve the respective contentions put forward by the parties, I have formulated three issues for determination thus:

E

4. Whether the court below was right in upholding the conviction and sentence of the appellant despite staying proceedings against the 2nd accused Ahmed M. Dikko who is reported to be at large.

F

5. Whether the court below was right to have upheld the decision of the trial court in view of the provisions of Section 269(1) of the CPC.

G

6. Whether the court below was right to have upheld the conviction and sentence of the appellant on the basis of his confessional statement and evidence adduced at the trial court.

H

I

A *Consideration and Resolution of Relevant Issues***ISSUE 1:**

B **“Whether the court below was right in upholding the conviction and sentence of the appellant despite staying proceedings against the 2nd accused Ahmed M. Dikko who is reported to be at large.**

C As recorded above in the summary of arguments of counsel to the parties, during the course of the trial, Mr. Ahmadu Dikko escaped and the prosecution sought and obtained the order of the trial court to stay proceedings against him while proceedings continued in absentia. The
D contention of the appellant is largely hinged on the effect or purport of the provisions of Section 259 of the CPC which provides thus:

E **“The court at any stage of the trial, where there are several accused may by order in writing stating the reasons therefore, stay proceedings of the joint trial and may continue proceedings against each and any of the accused separately.”**

F It is not in contention that the trial court granted and indeed stayed proceedings against the fugitive 2nd accused person who absconded. From the record of proceedings, and as rightly argued by respondent's counsel, at
G no point in time after the grant of stay of proceedings was the name of the 2nd accused person, the absconding accused person, mentioned in the proceedings. It would appear that the contention of the appellant, on the basis of which he asked us to set aside the decision of the court below, and
H by necessary implications, that of the trial court, is that the trial court ought to have struck-out the name of the absconded 2nd accused person. Although doing so may be appropriate, I see no reason why it becomes procedurally imperative in view of the very clear and unambiguous provisions of section
I 259(1) of the CPC quoted above.

A I wish to add that the above provision is very clear and unambiguous. The word “**MAY**” is used twice in that simple provision to connote discretionary rules. The court 'may' by order stay proceedings of joint trial...”, which the trial court did, apparently and (for deliberate tautology) B obviously and in writing within the precinct of the section that says “**may**” by order in writing....”

This court stated times without number, that the law is settled that express written provision of the law must be given its literary meaning C irrespective of flowery embellishments in Counsel's written argument. *See Calabar Vs. Central Co-Operative Thrift and Credit Society Limited & 2 Ors Vs. Bassey Ekpong Ekpo (supra)* where **Onnoghen (JSC)** (as he then was) at page 29, lines 40-45, stated thus:

D **“It is settled law that where the words of a statute or Constitution are clear and unambiguous, they call for no interpretation, the duty of the court in such a E circumstance being to apply the words as used by the legislature”.**

This court, also in the case of **AG. Federation Vs. Abubakar 2007 20 F W.R.N., per Akintan, (JSC)** restated the position as follows:

G **“It is necessary to say something about the general principle of interpretation of statutes, including constitutions. The generally accepted rule of construction is that it is to be assumed that the words and phrases of technical legislation are used in their technical H meaning if they have acquired one, and otherwise in their ordinary meaning. Phrases and sentences are to be construed according to the rules of grammar. If there is nothing to modify, alter or qualify the language which the statute contains, it must be construed in the ordinary and I natural meaning of the words and sentences. This approach is regarded as 'literal interpretation' or**

A characterized as the 'positivist approach'....”

To my view, the above provisions are fully complied with. It is not within the contemplation of section 259 of the CPC that the name of the absconded
B 2nd accused person must, *willy-nully*, be deleted. The grant of an order of stay of proceedings against the 2nd accused, in our considered view, neither meant that the 2nd accused person was tried and convicted along with the appellant nor vitiate the order staying proceedings itself. The logic of the
C appellant's contention, which he failed to effectively sell; or sold but we did not buy, not for the lack of means but because subscribing to such would amount to technical justice, is that the requirement of section 259 of the Criminal Procedure Code does require mandatory separate trial of the
D accused persons. This is reading extraneous meaning to the above provisions as proceedings against any accused persons which is stayed as required by law needs not be isolated or his name struck-out. As I had said above, striking out his name may be appropriate but not crucial as he ceased
E being part of the proceedings upon the grant of stay.

I also wish to add a point on the effect of rules of procedures like the CPC, which, unwittingly may, or now increasingly being cited to sway the outcome of criminal trial beyond the merit of the case. In the famous case
F of **Ariori & Ors. Vs. Muraimo Elemo & Ors. (1989) 1 SC 13 at 24 per Obaseki (JSC)**, this court opined that fair hearing means a trial conducted according to all the legal rules formulated to ensure that justice is done to the parties to the cause. *See also Idakwo Vs. Ejiga (2005) 48 WRN at*
G ratio 5, page 35 to 36 Elsewhere, in the case of **Adeyela Vs. Adeyeye (2010) W.R.N 42 at page 70 to 711** had opined, and remain so persuaded without having cause to change my view, that:-

H “Rules of procedure are made for the convenience and orderly hearing of cases in court. They are made to help the cause of justice and not defeat justice. The rules are therefore aids to the court and not masters of the court.
I For courts to read rules in the absolute without recourse to the justice of the cause, to my mind, will be making the

A courts slavish to the rules. This certainly is not the reason of the rules of court.”

B The provision of the CPC is intended, in this case and indeed all criminal proceedings, to aid in the smooth, fair and just administration of criminal justice. It certainly does not intend to defeat the end of justice. To take solace in the rule of procedure under section 259 of the Criminal Procedure Code to defeat justice without neutralizing or contradicting the evidence before the trial court is herculean task.

C In view of the foregoing, issue one is resolved in favour of the respondent.

D ISSUE 2:

E “Whether the court below was right to have upheld the decision of the trial court in view of the provisions of Section 269(1) of the CPC.”

F The contention on issue two is the same as issue one having been based on Section 269(1) of the Criminal Procedure Code which provides thus:

G “Every judgment shall contain the point or points for determination, the decisions thereon and the reasons for the decision and shall be dated and signed or sealed in the open court at the time of pronouncing it.”

H I re-adopt my earlier views and ruling on issue one which bordered on Section 259 of the CPC in resolving the essence and purport of section 269(1) of the same law. In addition, beyond contesting formalities, which is grossly misplaced, the appellant placed nothing before the court to indicate non compliance with the provisions of Section 269 of the Criminal Procedure Code (CPC). I align with the court below in affirming that the judgment delivered on 29th June, 2012 by the learned Chief Judge contains all the requisite requirements of a valid judgment and therefore valid for all

A intent and purposes. Assuming without conceding that the argument is logical, I'm yet to see why the dating and signature or sealing of a judgment by the trial Judge in the open court is made a strict requirement of the law to vitiate a trial or judgment. It would have made better sense if doing so or it

B lacks occasioned miscarriage of justice on the part of the appellant.

Enough said on the essence of the provisions of the CPC against substantial justice. Litigants should expect no technical but substantial justice from this court. We have said several times that we are not a

C workshop for technical justice. Over and over again, we have reiterated the need to do substantial justice and avoid delving into the error of technicalities. *See* for example the case of **National Revenue Mobilization Allocation and Fiscal Commission (N.R.M.A.F.C) Vs. Johnson (2007) 49 W.R.N Pages 169-170** where **Per Peter-Odili, JCA (As he then was)** opined as follows:

E “... The courts have deliberately shifted away from narrow technical approach to justice which characterized some earlier decisions to now pursue the course of substantial justice. *See* **Makeri Smelting Co. Ltd. Vs. Access Bank (Nig.) Plc(2002) 7 NWLR (Pt.766) 447 at 476-477. ... The attitude of the court has since changed against deciding cases on mere technicalities. The attitude of the courts now is that cases should always be decided, wherever possible on merit. Blunders must take place from time to time, and it is unjust to hold that because a blunder has been committed, the party blundering is to incur the penalty of not having the dispute between him and his adversary determined upon the merits.”**

I *See also* **Ajakaiye Vs. Idehia (1994) 8 NWLR (PT.364) 504, Artra Ind. Ltd Vs. NBCI (1997) 1 NWLR (PT483) 574, Dakat Vs. Dashe (1997) 12 NWLR (PT. 531) 46, Benson Vs. Nigeria AGIP Co. Ltd (1982) 5 S.C 1.**

A In view of the above, issue two is, like issue one, also resolved against the appellant and in favour of the respondent.

ISSUE 3

B

“Whether the Court below was right to have upheld the conviction and sentence of the appellant on the basis of his confessional statement and evidence adduced at the trial court.”

C

D This final issue answers the appellant's issue 3 and 4 and respondent's issue 3, all which contended for and against the effect of appellant's confessional statement and whether it amounts to a denial of fair hearing which renders the judgment impeachable. Fair trial or hearing is a strict rule. What must be added and emphatically stressed is the fact that the principle of fair hearing as enshrined under the Constitution of the Federal Republic of Nigeria, 1999 as amended (CFRN, 1999) is for the benefit of the appellant and respondent. Section 36 (1) of the CFRN, 1999 provides thus:

F

“In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality.”

G

H The burden of proof of a criminal offence is proof beyond reasonable doubt to secure conviction. The evidence at the trial and which was concurrently upheld by the court below is that the respondent has adduced enough, convincing evidence to prove beyond reasonable doubt, including the confessional statement of the appellant, the ingredients of the offence of culpable homicide not punishable with death as basis for convicting the appellant. The burden of proof in criminal offence, to all intent and purposes, remains proof beyond reasonable doubt to secure conviction.

I

A Section 138(1) and (2) of the Evidence Act also give the court power to make necessary inference as to admissibility of a piece of evidence, including, in my considered view, confessional statement whether or not same is subsequently denied by the maker. It states thus:

B

“138. Burden of proving fact necessary to be proved to make evidence admissible.

(1) The burden of proving any fact necessary to be proved in order to:-

C

(a) enable a person to adduce evidence of some other facts;

D

or
(b) prevent the opposite party from adducing evidence of some other fact, lies on the person who wishes to adduce, or to prevent the adduction of such evidence, respectively.

E

(2) The existence or non-existence of facts relating to the admissibility of evidence under this section is to be determined by the court.”

F The law is settled that the Supreme Court, this noble court, will not interfere with concurrent findings of facts made by the trial court and the Court of Appeal unless such findings are perverse; or are not supported by the evidence; or are reached as a result of a wrong approach to the evidence; or as a result of a wrong application of evidence; or as a result of wrong application of any principle of substantive law or procedure.” *See Arabambi Vs. Advance Beverages Ind. Ltd. (2005) 19 NWLR (Pt.959) 1PER Onnoghen, J.S.C (as then was) at (P.46, C-E).*

G

H In this case, there are two concurrent findings of facts of the lower courts on the issue. It is usual in this court, in such circumstances, to decline to review the evidence of a third time particularly when we are not convinced or persuaded, as in this case, that there has been a miscarriage of justice or a violation of some principles of law or procedure, or that the two finding of the trial court and the court next to us, is and/or was perverse. *See Ochiba Vs. State 2011 12 SC (PT. IV) P.79 Per Rhodes-Vivour, J.S.C.*

I

A (PP. 51-52, Paragraphs, F-B). See also Cameroon Airlines Vs. Otutuizu 2011 12 SC (Pt. III) P.200; Olowu Vs. Nig. Navy 2011 12 SC (Pt. II) P.1; Arowolo Vs. Olowookere & 2 Ors. 2011 11-12 SC (Pt. II) P.98.

B By virtue of the provisions of section 28 of the Evidence Act, confessional statement is tenable and admissible. The section describes a confessional statement thus:

C “A confession is an admission made at any time by a person, charged with a crime tending to show or suggest the inference that he committed the crime.”

D Confessional statement is the best evidence to ground conviction and, as held in a number of cases, it can be relied upon solely where voluntary. The criminal guilt of an accused person could be established by confessional statement, circumstantial evidence and evidence of an eye witness. A confessional statement of the appellant that was free and voluntary **E** regardless of the facts that he (the appellant) subsequently resiled from his voluntary confession at trial, is good evidence to ground conviction. A confessional statement does not become inadmissible simply because the accused person denied having made it. This has been the settled position in **F** our jurisprudence of criminal justice. See for example **Patrick Ikemson & 2 Ors Vs. The State (1989) 3 NWLR (PT. 110) 455 at 476 Para D; Joseph Idowu Vs. The State (2000) 7 SC 50 at 62; (2000) 12 NWLR (Pt. 680) at 48, Nkwuda Edamine Vs. The State (1996) 3 NWLR (Pt. 438) 530 at 537** **G Para D-E; Samuel Theophilus Vs. The State (1996) 1 NWLR (PT. 423) Page139 at 155 Para A-B; and Awopeju Vs. The State(2002) 3 MJSC 141 at 151.**

H This Court, and incidentally by no less a Jurist other than the Learned **Onnoghen (JSC)** (as he then was; and proudly the CJN) in **Peter Iliya Azabada Vs. The State (2014) All FWLR (P.751) 1620, PARA B** has made it abundantly clear in the following words:

I “The confessional statement of an accused, where it is direct, positive and unequivocal as the commission of the

- A** **crime charged, is the best evidence and can be relied upon solely for conviction of the accused person. An accused person can be convicted on his confessional statement alone, where the confession is constant with other**
- B** **ascertained facts which have been proved. Confession in criminal procedure is the strongest evidence of guilt on the part of an accused person. It is stronger than evidence**
- C** **of an eye witness because the evidence comes from the horse's mouth who is the accused person. There is no better evidence and there is no further proof. Therefore**
- D** **where an accused person confesses to a crime in the absence of an eye witness to the killing, he can be convicted on his confession alone once the confession is**
- E** **positive, direct and properly proved. In other words, a free and voluntary confession of guilt, direct and positive and if duly made and satisfactorily proved, is sufficient without corroborative evidence so long as the court is satisfied as to the truth of the confession.”**

- F** In view of the foregoing, it is my considered view that the judgment of the trial court cannot be faulted at all and the lower court was right in affirming and endorsing it. The appellant has failed to convince me that this is a situation in which this court should interfere.” *See also Mini Lodge Ltd. Vs. Ngei (2009) 18 NWLR (PT. 1173) 254 per Mustapher, J.S.C. (P.33,*
- G** **PARAS.B-D).**

- H** It is in view of the foregoing that issue three is also resolved against the appellant. This appeal fails on the whole. This appeal lacks merit and is accordingly dismissed. The conviction and sentence of the appellant by the court below are hereby reconfirmed. The judgment of the lower court dated 8th May, 2015 is hereby affirmed.

Sidi Dauda Bage,
Justice, Supreme Court

I

A NKANU ONNOGHEN, (CJN): I have had the benefit of reading in draft the lead Judgment of my learned brother **SIDI DAUDA BAGE, (JSC)** just delivered.

I agree with his reasoning and conclusion that the appeal lacks merit

B and I hereby adopt the Judgment.

I therefore order accordingly and affirm the Judgment of the lower court.

Appeals dismissed.

C I also agree that the Judgment of the Court of Appeal in appeal No. CA/A/586/2012 affirming the conviction and sentence of the appellants, as contained in the Judgment of Niger State High Court in the charge No. NSHC/MN/11c/2006 delivered on 29th June, 2012, be and is hereby
D affirmed.

Walter Samuel Nkanu Onnoghen
Chief Justice of Nigeria

E KEKERE-EKUN, (JSC): My learned brother, SIDI DAUDA BAGE, (JSC) obliged me with a copy of the judgment just delivered. I agree with the reasoning and conclusion that the appeal lacks merit and should be dismissed.

F One of the issues in contention in this appeal is whether the Court of Appeal, Abuja Division in its judgment delivered on 8th May 2015 rightly affirmed the judgment of the High Court of Niger State delivered on 29/6/2012 on the grounds that the appellant who was tried jointly with one
G Ahmed M.D. Dikko who absconded and was absent throughout the proceedings, in contravention of the provisions of Section 259(1) of the Criminal Procedure Code. It is the appellant's contention that the breach rendered the entire trial a nullity.

H Learned counsel for the appellant argued that trial in absentia is unknown to our law and a negation of the principle of fair hearing. It is also contended that in a joint trial involving several accused persons, the court has the power to stay the proceedings of the joint trial and separate the trial
I of the absent accused person from the trial of the others. It is further argued that the learned trial Judge did not strike out the name of the 2nd accused and

A that the record continued to reflect: **The State Vs. Garba Adamu & 3 Ors**, suggesting that the 2nd accused was still part of the trial. It is therefore submitted that the 2nd accused was tried along with the other accused persons in his absence thereby rendering the proceedings a nullity.

B In reaction, learned counsel for the respondent referred to Section 153 of the Criminal Code, which provides:

C **“Every accused person shall, subject to the provisions of section 154, be present in court during the whole of his trial unless he misconducts himself by so interrupting the proceedings or otherwise as to render their continuance in his presence impracticable.”** (*Underlining mine*)

D He argued that having regard to the fact that the 2nd accused absconded while receiving treatment in hospital, the court rightly stayed proceedings against him and he was thereafter excluded from the proceedings and this fact was duly noted by the learned trial Judge in the course of his judgment at page 145 of the record. He argued that there was no objection to the order staying proceedings against the 2nd accused and the appellant has failed to show that he suffered any miscarriage of justice in the circumstances.

E Although learned counsel for the appellant made extensive submissions on the issue, I am of the view that the issue is easily resolved by a careful examination of the record of proceedings.

F **Section 259(1) Criminal Procedure Code (C.P.C.) provides:**

G **“259(1). The court at any stage of the trial where there are several accused may by order in writing stating the reasons therefore stay the proceedings of the joint trial and may continue the proceedings against each or any of the accused separately.”**

H On 18/6/2007, the court was informed by learned counsel for the prosecution that the 2nd accused had absconded and urged the court to

A invoke the provisions of Section 259(1) of the CPC by staying proceedings against him to enable the trial continue in respect of the remaining accused persons. The court made the following order:

B **“In the light of the submission of the L/DPP that the 2nd**
C **accused has escaped from the General Hospital Minna**
D **where he was receiving treatment, I order and direct that**
E **Commissioner of Police, Niger State Command and all**
F **other Policemen under his command to arrest the said**
G **Ahmadu M. Dikko and produce him before me on or**
H **before the next hearing date which has been fixed to be 3rd**
I **July 2007. Furthermore, the proceedings against him**
J **(Ahmadu M. Dikko) is hereby stayed pending his arrest**
K **and arraignment before this court. This matter is hereby**
L **adjourned to 3/7/2007 for hearing.”** (*Emphasis supplied*)

E Thereafter, the proceedings continued against the 1st, 3rd and 4th accused to conclusion. In the judgment of the trial court at page 145 of the record, the court made specific note of the fact that proceedings against the 2nd accused were stayed and stated that *“trial therefore proceeded with the rest three*
F *accused persons namely: Garba Adamu, Dingi Mohammed and Hadi*
G *Sule.”* At the conclusion of the judgment, the court held:

G **“Consequently the following accused persons: - Garba**
H **Adamu, Dingi Mohammed and Hadi Sule are hereby**
I **sentenced to fifteen (15) years imprisonment each**
J **commencing from 17/10/2015 when they were remanded**
K **in police custody and later prison custody by the court.”**

H There is no reference in the sentence to the 2nd accused who, if indeed he was tried in absentia, would have been found either guilty or not guilty.

I It is noted that the charge was subsequently amended on 26/7/2007 and the pleas of the 1st, 3rd and 4th accused were taken afresh. It is also noted that the name of the 2nd accused, Ahmadu M. Dikko still featured in the

- A** amended charge. The law is trite that the amendment of a process takes effect from the date of the original document. *See A.G. Ekiti State & Ors. Vs. Adewumi & Ors. (2002) 1 SC 47; Jatau Vs. Ahmed & Ors. (2003) 4 NWLR (Pt.811) 498; Enigbokan Vs. A.I.I. Co. Nig. Ltd. (1994) 6 NWLR (Pt.348) 1 @ 15 – 16.* The order for stay of proceedings against the 2nd respondent therefore remained valid and subsisting.

- Although the heading continued to reflect: **The State Vs. Garba Adamu & Ors**, this in my view, as rightly held by the lower court was a technicality that did not affect the substance of the proceedings. The factual situation was that the trial was conducted in respect of the three remaining accused persons and no finding was made in respect of the 2nd accused. I also agree with the court below that the appellant has not shown that he has suffered any miscarriage of justice in the circumstances of this case. This court in a recent decision in **Olatubosun Vs. The State (2013) 7 SC (Pt.II) 1 @ 30; (2013) LPELR – 209 39 SC @ 21 E – G**, held that an appellate court will not quash a conviction on a mere technicality which caused no embarrassment or prejudice and where there has been no substantial miscarriage of justice.

- I adopt this view in the instant case. It is similarly applicable to the appellant's second issue challenging the judgment of the trial court on the grounds that it was undated, unsigned and unsealed and delivered after that court became *functus officio*. I am of the view that the contention of learned counsel in this regard is speculative to say the least. The court is bound by its record. The record, including the judgment of the trial court, was duly certified as a true copy of the proceedings before the trial court, as transmitted to the court below. Page 143 of the record clearly indicates that the judgment of the court was delivered on 29/6/2012. There is no affidavit before this court or the court below challenging the record. This complaint is another attempt to enthrone technicalities over substantial justice, which cannot be countenanced by this court.

- On the merits of the appeal, I agree with my learned brother, Bage, JSC that the appellant has not satisfied this court that the concurrent findings of fact by the two lower courts are perverse. I therefore find no merit in the appeal and dismiss it accordingly. I affirm the judgment of the

A lower court.

Kudirat M. O. Kekere-Ekun
Justice, Supreme Court

B EJEMBIEKO, (JSC): These are appeals against the judgment of the Court of Appeal, Abuja Division, delivered on 8th May, 2015 in the appeal **No. CA/A/586/2012**. The Court of Appeal had in the judgment affirmed the conviction and sentence of the appellants by the Niger State High Court upon the charge **No.NSHC/MN/11C/2006**.

C The appellants were being prosecuted jointly with one Ahmed M. Dikko, who later absconded. With theof the said Ahmed M. Dikko, the trial High Court stayed further proceedings against **D** him. It however, continued the proceedings against the remaining accused persons, including the appellants herein.

E In this further appeal, the appellants are complaining *inter alia* that trial and conviction, affirmed by the court below, were wrong in law in the absence of Ahmed M. Dikko, who was being jointly tried with them. This clearly is a wrong interpretation or appreciation of Section 259(1) of the Criminal Procedure Code Law of Niger State that provides

F **“That court may at any stage of the trial, where there are several accused, may by order in writing stating the reasons therefore, stay proceedings of the joint trial and may continue proceedings against each and any of the**
G **accused separately”**.

The trial court, faced with the situation under Section 259(1) CPC has two options. That is

- H**
- I**
 - i.** To stay further proceedings in the joint trial, apparently until the absconding accused is apprehended; or
 - ii.** to suspend or stay the proceedings against the absconding accused person and continue with the

A **proceedings in the trial of the remaining accused person(s).**

In the instant case, the trial High Court adopted the letter option. It continued with the proceedings in the trial of the appellants after suspending further proceedings against the fugitive Ahmed M. Dikko. There is nothing wrong with this. It acted perfectly within the letters and spirit of the law as enacted in Section 259(1) CPC. In any case, the appellants have not shown in what way or manner this procedure adopted by the trial High Court had occasioned any miscarriage of justice to them. The appeal, on this issue is flimsy and vexatious.

The appeal, on whether the judgment of the trial court complied with Section 259(1) CPC, is also, in my firm view, vexatious. Section 259(1) CPC requires that every judgment shall contain the point or points for determination, the decision thereon and the reasons therefore, and shall be dated and signed or sealed in the open court at the time of pronouncing it.

The complaint here is only that the learned trial Judge did not sign or seal the judgment with the date therein in open court. The appeal is not about the substance of the judgment, but about only the non-signing or sealing of the judgment and its non-dating.

Equity follows the law, and takes as done that which ought be done. This is what Section 168(1) Evidence Act 2011 is about when it provides that when any judicial act is shown to have been in a manner substantially regular, it is presumed that formal requisites for its validity were complied with. On this presumption, and without the appellants showing in what manner their rights have been compromised or prejudiced, or that they had suffered any miscarriage of justice, I hold that the trial court delivered its judgment wherein the appellants were convicted and sentenced for the offence(s) alleged against them on date the judgment was delivered in open court. The important is that the judgment was delivered in open court by the learned trial Judge before whom they were tried. This resort to arcane technicality has not impressed me. I will not allow the appeal on this issue.

On this presumption, and without the appellants showing in what manner their rights have been compromised or prejudiced, or that they had suffered any miscarriage of justice, I hold that the trial court delivered its judgment wherein the appellants were convicted and sentenced for the offence(s) alleged against them on date the judgment was delivered in open court. The important is that the judgment was delivered in open court by the learned trial Judge before whom they were tried. This resort to arcane technicality has not impressed me. I will not allow the appeal on this issue.

The important is that the judgment was delivered in open court by the learned trial Judge before whom they were tried. This resort to arcane technicality has not impressed me. I will not allow the appeal on this issue.

I, accordingly, resolve the issue against the appellants.

A I read in draft the judgment of my learned brother, SIDI DAUDA BAGE, **JSC**, in these appeal. It represents my views in the appeal. I hereby adopt the judgment.

B The appeals are hereby dismissed. The judgment of the Court of Appeal in appeal **No. CA/A/586/2012** affirming the conviction and sentence of the appellants, contained in the judgment of Niger State High Court in the charge **No. NSHC/MN/11^c/2006** delivered on 29th June, 2012, is hereby affirmed.

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Ejembi Eko
Justice, Supreme Court

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**GODSPOWER ORLU
(ALIAS ALHAJI ABUBAKAR ORLU)
AND
CHIEF GODWIN ONYEKA**

SC. 243/2007

**IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA**

FRIDAY, 28TH APRIL 2017

BEFORE THEIR LORDSHIPS

WALTER SAMUEL NKANU ONNOGHEN	CHIEF JUSTICE OF NIGERIA
MUSADATTIJO MUHAMMAD	JUSTICE, SUPREME COURT
KUDIRAT M. O. KEKERE-EKUN	JUSTICE, SUPREME COURT
EJEMBI EKO	JUSTICE, SUPREME COURT
SIDI DAUDA BAGE	JUSTICE, SUPREME COURT

APPEAL: Brief writing – Proliferation of issues for determination – Need to be avoided by parties.

APPEAL: Concurrent findings of two courts – Where sought to be displaced – Onus on appellant.

EVIDENCE: Burden of proof – Modes of establishing ownership of land in dispute – Relevant considerations thereof.

LAND INSTRUMENT REGISTRATION: Where a party registers documents of title to land – Implication.

LAND LAW: Traditional history – What claimant who relies on traditional history must prove.

LAND LAW: Trespass – Nature – When maintainable.

LAND LAW: Trespass to land – Onus on claimant – Whether the same standard of proof applies where defendant claims to be the owner.

PRACTICE AND PROCEDURE: Admissibility of exhibits – Where party did not object to the admissibility of documents at the trial court – Whether party can complain on appeal that it was wrong for the trial court to have relied on documents.

PRACTICE AND PROCEDURE: Pleadings – A party is required to prove only what he had pleaded – Whether pleadings in the absence of evidence to establish facts pleaded will not go to any issue.

PRACTICE AND PROCEDURE: Proof – Where a party relies on traditional history to prove ownership of land – What party must plead and prove.

PRACTICE AND PROCEDURE: Proof of ownership of land – Whether anyone of the five methods of establishing ownership of land in dispute will be sufficient to prove title – Relevant considerations thereof.

Issue for Determination

- (1) Whether the lower court was right in affirming the decision of the trial court that the plaintiff/respondent proved a better title to the land in question than the appellant?**
- (2) Whether the lower court was right in failing to consider the appellant's affidavit challenging parts of the record?**

Facts of the Matter

This is an appeal against the decision of the Court of Appeal, Port Harcourt Division, dismissing appeal No. CA/PH/16/2002 by the appellant herein and affirming the decision of the Rivers State High Court. The Judgment appealed against was delivered on 11th December 2006. The facts of the case that brought about the appeal are recounted below.

The respondent as plaintiff took out a writ on 26th day of October 1979 at the trial court against eight persons including the appellant claiming jointly and severally as follows:

- “(1) N10,000.00 general damages for trespass into plaintiff's land known and called Akwodo situate at mile 3, Diobu, Port Harcourt and registered as No. 71 at page 71 in vol. 38 of the lands Registry, Port Harcourt and as shown in plaintiff's plan filed with the statement of claim.**
- (2) Perpetual injunction restraining the defendants, their servants and agents from further entering or interfering in the plaintiff's said land.”**

Parties filed, exchanged, amended their pleadings and the suit went into full trial.

Plaintiff/respondent's case is that the land in dispute is part of a larger piece of land known and referred to as Akwodo more precisely No. 176/178 Ikwerre Road, Mile 3, Diobu Port Harcourt. Parties by their respective pleadings, paragraphs 3 and 6 of the amended statement of claim and paragraphs 2, 3, and 7 of the amended statement of claim are agreed on the identity and name of the land in dispute.

The plaintiff/respondent testified and called two other witnesses to prove his case. His case is that he became the owner of the land in dispute having purchased the land from, John Nweke and Chukwuma Nwobu, the rightful owners. This was on 25th November 1976. The transaction is evidenced by Exhibit 'A' executed in respondent/plaintiff's favour. The deed of conveyance,

was duly registered as No. 71 at page 71 in volume 38 of the Lands Registry, Port Harcourt.

The plaintiff/respondent asserts that on purchasing the land in dispute he took immediate possession whereupon he had the land surveyed and secured with survey pillars. The plaintiff/respondent, in his pleadings and evidence, insists that his vendors had acquired good title in and over the large piece of land called Akwodo from the Agbirigbe family the native owners through its head Enoch Agbirigbe since 18th March 1958. The transaction is evidenced by an indenture registered as No. 57 at page 57 in volume 103 of the Lands Registry at Enugu. Exhibit D, a judgment of a court of competent jurisdiction, the plaintiff/respondent further asserts, remains an unimpugned confirmation of the title of the plaintiff/respondent's vendors of the land in dispute.

The appellant/defendant, from his pleadings and evidence, claims ownership of the land in dispute through inheritance from his father, Ogbonda Orlu, who in turn inherited the land from his ancestor Ahanonu. It is part of his case that PW1 whom he claims to be his tenant has been selling fire wood on the disputed land since 1973. He also has other tenants on the land in dispute from whom he has been collecting rent as well. The Agbirigbe's family, whom the appellant claims to know, could only have sold the land in dispute to plaintiff/respondent vendors under false pretences. It is his further case that he built the land in dispute in 1972 and put his tenants thereon.

The trial judge, in a well considered judgment dated 17th April 1996, having found that the plaintiff/respondent has established a better title than the defendant, granted him the reliefs he claimed.

Aggrieved by the trial court's judgment, the 1st defendant/appellant appealed to the Court of Appeal on an amended notice containing twenty-two grounds. The 2nd 8th defendants chose not to appeal against the trial court's decision. The Court of Appeal heard the appeal and in its judgment delivered on 11th December 2006 dismissed same.

Dissatisfied with the judgment of the lower court, the 1st defendant/appellant has further appealed to the Supreme Court vide his notice of appeal filed on 15th February 2007 containing twenty grounds.

Held: (*Unanimously dismissing the appeal*)

1. *Parties should avoid proliferation of issues for determination*

It appears to me that appellant's 1st, 2nd and 4th issues are similar to respondent's 1st, 2nd and 3rd issues. Appellant's 3rd issue is clearly similar to respondent's 4th issue. It is again glaring that whereas appellant's 1st issue subsumes his 2nd and 4th issues respondent's 1st issue does same vis-à-vis his 2nd and 3rd issues. Put differently, whereas a determination of appellant's 1st issue would amount to a disposal of his 2nd and 4th issues as well, the determination of respondent's 1st issue will equally constitute a decision on his 2nd and 3rd issues combined. In this regard, therefore, the two sides stand in breach of the principle this Court repeatedly adhere to which frowns at proliferation of issues. It is indeed needless for any of the parties to this appeal to formulate their other two issues when the resolution of their 1st issue will provide for all the queries the two other issues raise. See Labiyi Vs. Anrelidea (1992) SCNJ 1 at 2, Chief Emmanuel Eyo Eto & Anor Vs. Elder Chief Okon H.A. Dazie (2013) LPELR 20136 (SC) and G.K.F. Investment Nig Ltd Vs. Nigeria Telecommunications Plc (2009) 15 NWLR (Pt. 1164) 344.

The application of the principle enunciated by this Court *inter-alia* in the foregoing cases, given the need for a more informed determination of the appeal, therefore, dictates the consideration of the more lucid 1st and 4th issues formulated by the respondent which issues are intrinsically the same as appellant's 1st and 3rd issues. (*Pp* 57–58 *Paras E–A*)

2. *Need to adhere to terms of pleading*

I entirely agree with learned respondent's counsel that for a party to succeed in his claim, he must not only plead the facts on the basis of which he claims but further lead evidence to establish the facts as pleaded.

Pleading, in the absence of evidence to establish the facts averred therein, goes to no issue. Furthermore, because parties are

bound by their pleadings, evidence led which stands at variance with a party's pleading goes to no issue. Such evidence must be disregarded. The fact that issues are joined in pleadings and not in evidence is ignored at the party's peril *See Elegushi Vs. Oseni (2005) 14 NWLR (Pt 945) 348, Aremu Vs. Adetoro (2007) 16 NWLR (Pt 1060) 244 and The Executors of the Estate of Gen. Sani Abacha (deceased) Vs. Samuel David Eke-Spiff & Ors (2009) LPELR-3152 (SC). (P 62 Paras– C)*

3. *The five methods of establishing ownership of land in dispute*
In the case at hand, the issue in controversy between the parties is the ownership of the land in dispute. The five methods by which the law says it may be established being by:

- (1) Traditional evidence;**
- (2) Production of documents of title which are duly authenticated;**
- (3) Acts of ownership, such as selling, leasing, renting, farming etc over a sufficient length of time, numerous and positive enough to warrant the inference of true ownership;**
- (4) Acts of long possession and enjoyment of the land;
and**
- (5) Proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would, in addition, be the owner of the land in dispute.**

A party may rely on any of the five methods and succeeds on such cogent satisfactory and conclusive evidence to prove his title. *See*

Aikhionbare Vs. Omoregie (1976) 12 SC 11 and Zacheus Falaye & Ors Vs. Rasheed Dada & Ors (2016) LPELR – 40297 (SC).

The respondent as plaintiff relies on documents, Exhibits A and E, in establishing his claim. The two have been duly registered in accordance with Section 48 of the Registration of Title to Land applicable to Rivers State where the land is situated.

(Pp 62 – 63 Paras D – A)

4. *Requirements of proof of land by traditional history*

The appellant, on the other hand, relies on traditional history, having inherited the land in dispute from his father who, in turn, inherited the land in dispute from his ancestors. Appellant did not lead any evidence to establish who the original founders of the land were and who the land devolved to his father from whom he inherited. (P 63 paras A – B)

5. *Where party did not object to the admissibility of documents at the trial court*

I cannot agree more with the lower court. The concurrent findings of the two courts are based on the pleadings of parties and the evidence on record in support of these pleadings. As rightly observed by the lower court, the appellant who was represented by counsel and did not object to the reception of the documents the plaintiff/respondent's tendered in support of his claim in evidence cannot now complain that it is wrong of the two courts to have relied on the unchallenged and uncontroverted evidence. The lower court's reliance on the decisions of this Court in *Mainage Vs. Gwamna (1997) 11 NWLR (Pt 528) 191* and *Nigeria Maritime Services Ltd Vs. Alhaji Bello Afolabi (1978) 2 SC 79* in this regard is well informed. In *Shurum Vs. The State 196 LRCN 199* this Court stated the principle more succinctly thus:

“When a counsel stands by and allows exhibits to sail smoothly through to become evidence without an

eyelid, then it becomes obvious that the counsel is comfortable with the evidence and sees no reason why he should challenge its admission.”

In the circumstance the trial court's duty, which the lower court rightly found to have been discharged, is to consider the pleadings of both sides and put the lawful evidence led on an imaginary scale and determine whose is weightier. Having not succeeded in establishing at the lower court where the trial court went wrong in evaluating the evidence of the two sides and ascribing, value to same, the appellant's expectation of any success here is baseless.

(P 65 Paras B–H)

6. *Nature of trespass*

Trespass is an infraction against possession. See Aboyeji Vs. Momoh (1994) 4 NWLR (Pt 341) 646 and Omorhirhi Vs. Enatevwere (1988) LPELR-2659. The law gives possession to the owner of the land against the whole world. Appellant has admitted being in possession of the land in dispute, the two courts below rightly adjudged the plaintiff/respondent the owner.

(Pp 65 – 66 paras H–A)

7. *How to displace concurrent findings of two courts*

By his appeal before this court, the appellant seeks to overturn the concurrent findings of fact made by the two lower courts in favour of the respondent. In order to dislodge the concurrent findings of the two lower courts, the appellant has the onerous task of satisfying this court that the findings are perverse, not supported by the evidence, or that there is an error of law or procedure which has occasioned a miscarriage of justice. See Lewis Vs. U.B.A. PLC (2016) 1 SC (Pt. 1) 96 @ 120 – 121; NICON Vs. Power & Industrial Eng. Co. Ltd. (1986) 1 NWLR (Pt. 14) 1; Ibodo Vs. Enarofia (1980) 5-7 Sc 42 @ 55; Michael Vs. The State (2008) 13 NWLR (Pt. 1104) 361.

(Pp 66 – 67 Paras I–B)

8. *How onus on a claimant to establish trespass is discharged*
The law is settled that a claim for trespass to land is generally rooted in exclusive possession. Therefore all that a claimant needs to prove is that he has exclusive possession or that he has the right to exclusive possession of the land. However, where a defendant claims to be the owner of the land, title to the land is put in issue and in order to succeed, the plaintiff must prove a better title. See Pius Amakor Vs. Benedict Obiefuna (1974) 3 SC (Reprint); Ogunleye Vs. Oni (1990) 2 NWLR (Pt. 135) 745; Omotayo Vs. C.S.A. (2010) 16 NWLR (Pt. 1218) 1. It is also settled that the plaintiff must succeed on the strength of his case and not on the weakness of the defence, if any, except where the weakness of the defendant's case strengthens the plaintiff's case. See Ngene Vs. Igbo (2000) 4 NWLR (Pt. 651) 131; Onwugbufor Vs. Okoye (1996) 1 NWLR (Pt. 424) 252; Adesanya Vs. Aderonmu & Ors (2000) 13 WRN 104 @ 115 lines 10 – 35. (P 68 paras D – G)
9. *Effects of Registration of Documents on Proof of Title*
In support of his claim, the respondent relied on documentary evidence, including Exhibit A Deed of Conveyance between him and his vendors; Exhibit B Survey Plan; Exhibit C letter written to the defendants by his solicitors warning them to desist from their acts of trespass; Exhibit D a judgment in a suit between the appellant and another party affirming the title of the respondent's vendors; Exhibit E CTC of the deed of conveyance between the respondent's vendors and the original owner of the land. It is to be noted that both Exhibits A and E are duly registered instruments. The law is that once a registrable instrument is duly registered in accordance with the relevant Registration Law, the effect of such registration is that the party registering same acquires a good title until a superior title is produced. See Oboro Vs. R.S.H. & P.D.A. (1997) 9 NWLR (Pt. 521) 425 @ 443-444 H-A. This decision of the Court of Appeal was affirmed by this court in Obulor & Anor. Vs. Oboro (2001) 8 NWLR (Pt. 714) 25. See also Section 48 (1) (a) of the Registration of Title

Law, Cap 114 Vol. VI Laws of Eastern Nigeria 1963 applicable to Rivers State.

Thus, the plaintiff/respondent had traced the root of his title through his vendors to the original owner of the land. Exhibit D was tendered to establish the fact that his vendors' title had been affirmed by a court of competent jurisdiction.

(Pp 66 - 69 Paras H–D)

10. *Pleadings and proof in respect of traditional history*
Where a party relies on traditional history to prove his title, he must plead and prove:

- a. **Who founded the land.**
- b. **How the land was founded; and**
- c. **Particulars of intervening owners.**

See Alli Vs. Aleshinloye (2000) 4 SCNJ 264 @ 284-285; Mogaji Vs. Cadbury Nig. Ltd. (supra); Elegushi Vs. Oseni (2005) 14 NWLR (Pt. 945) 348.

After a careful consideration of the evidence of the parties and the final addresses of counsel, the learned trial Judge found that the appellant failed to establish his title by traditional evidence.

(P 69 paras E–H).

Nigerian Cases Referred to in the Judgment

Aboyeji Vs. Momoh (1994) 4 NWLR (Pt 341) 646;
Adegoke Motors Ltd. Vs. Adesanya (1989) 3 NWLR (Pt. 109) 250;
Adepoju Odunsi Vs, Azeez Bamgbala & 3 Ors (1995) 1 NWLR (Pt 374) 641;
Adesanya Vs. Aderonmu (2000) 13 WRN 104;
Adomba Vs. Odiese (1990) 1 SCNJ 135;
Agusiobu Vs. Okagbue (2001) FWLR (Pt 78) 1162;
Aikhionbare Vs. Omoregie (1976) 12 SC 11;
Alade Vs. Awu (1975) 4 S 150;
Alhaji Latifu Ajuwon & Ors Vs. Madam Alimotu Adeoti (1990) 2 NWLR (Pt

132) 271;
Aliyu Vs. Sodipo (1994) 5 NWLR (Pt 342);
Alli Vs. Aleshinloye (2000) 4 SCNJ 264;
Anya Vs. Imo Concorde Hotels Ltd (2003) FWLR (Pt 138) 1306;
Aremu Vs. Adetoro (2007) 16 NWLR (Pt 1060) 244;
Bangboye Vs. Olarewaju (1991) 4 NWLR (Pt 184) 13;
Brard of Customs & Excise Vs. Barau (1982) 10 SC;
Bronik Motors Ltd & Anor Vs. Wema Bank Ltd (1983) 6 SC 158;
Bunge Vs. AG Rivers State (2006) ALL FWLR (Pt 325);
Chief Emmanuel Eyo Eto & Anor Vs. Elder Chief Okon H.A. Dazie (2013)
LPELR 20136 (SC);
Chukwu Versus Nneji (1990) 6 NWLR Pt. 156 P. 363;
Elegushi Vs. Oseni (2005) 14 NWLR (Pt 945) 348;
Fabunmi Vs. Abigail Ade Agbe (1985) 1 NWLR (Pt 2) 299 at 319;
Faith Enterprises Ltd Vs. Bast Nigeria Ltd (2001) 8 NWLR (Pt 714) 242;
Fidelis Kaigama Vs. Alhaji Abba Naninai (1997) 3 NWLR (Pt. 495) 549;
G.K.F. Investment Nig Ltd Vs. Nigeria Telecommunications Plc (2009) 15
NWLR (Pt. 1164) 344.
Gonzee Nig Ltd Vs. NERDC (2005) ALL FWLR (Pt 274) 238;
Ibodo Vs. Enarofia (1980) 5-7 Sc 42;
Idunndu Vs. Okumagba (1976) 9-10 SC. 227;
Isaac Omoregbe Vs. Daniel Lawani (1980) 3-4 SC 108;
Iwuoha Vs. Nipost (2003) FWLR (Pt 160) 1535 at 1539;
Jamal Steel Structures Ltd Vs. African Continental Bank Ltd (1973) 11 SC 77;
Labiyi Vs. Anrelidea (1992) SCNJ 1 at 2;
Lewis Vs. U.B.A. PLC (2016) 1 SC (Pt. 1) 96;
Madam Helen Obulor & Anor Vs. Linus Weso Oboro (2001) 8 NWLR (Pt 714)
2;
Mainage Vs. Gwamna (1997) 1 NWLR (Pt 528);
Mainagge Vs. Gwamna (1997) 1 NWLR (Pt. 528) 191;
Michael Vs. The State (2008) 13 NWLR (Pt. 1104) 361.
Mogaji Vs. Cadbury Nig. Ltd. (supra); Elegushi Vs. Oseni (2005) 14 NWLR
(Pt. 945) 348.
Ngene Vs. Igbo (2000) 4 NWLR (Pt. 651) 131;

- A** *NICON Vs. Power & Industrial Eng. Co. Ltd. (1986) 1 NWLR (Pt. 271) 1;*
Nigeria Maritime Services Ltd Vs. Alhaji Bello Afolabi (1978) 2 SC 79;
Nigeria Maritime Services Ltd Vs. Alhaji Bello Afolbi (sic) (1978) 2 SC 79;
Nwabuoku Vs. Onwordi (2006) ALL FWLR (Pt 331) 1236 at 1242;
- B** *Oboru Vs. R.S.H. & P.D.A. (1997) 9 NWLR (Pt. 521) 425;*
Obowole Vs. Williams (1996) 12 SCNJ 415;
Obulor & Anor. Vs. Oboro (2001) 8 NWLR (Pt. 714) 25;
Ogbonna Vs. Ad Imo State (1992) 1 NWLR (Pt 220) 647;
- C** *Ogunleye Vs. Oni (1990) 2 NWLR (Pt. 135) 745;*
Okolo Vs. Dallolo (2006) ALL FWLR (Pt 336) 201;
Okoye Vs. Santilli (1994) 4 SCNJ (Pt 2) 333;
Omorhirhi Vs. Enatevwere (1988) LPELR-2659;
- D** *Omotayo Vs. C.S.A. (2010) 16 NWLR (Pt. 1218) 1;*
Onwugbufor Vs. Okoye (1996) 1 NWLR (Pt. 424) 252;
Osuji Vs. Ekeocha (2009) 16 NWLR (Pt. 1166) 81;
Pius Amafor Vs. Benedict Obiefuna (1974) 3 SC (Reprint);
- E** *Samuel Onounju & Anor Vs. Attorney General, Anambra State & 2
 Ors (1998) 11 NWLR (Pt 573);*
Shurum Vs. The State 196 LRCN 199;
The Executors of the Estate of Gen. Sani Abacha Vs. Samuel David Eke-
- F** *Spiff & Ors (2009) LPELR-3152 (SC; and*
*Zacheus Falaye & Ors Vs. Rasheed Dada & Ors (2016) LPELR 40297
 (SC).*

G Nigerian Statutes Cited in this Judgment

*Registration of Title Law, Cap 114 Vol. VI Laws of Eastern Nigeria 1963
 applicable to Rivers State Section 48 (1) (a).*

H Representations:

H.D.D. UWOM for the appellant.

TUDURU EDE with him; E.C. Apia and C.C. Agidi, for the respondent.

I DATTIJO MUHAMMAD, (JSC) (Delivering the Leading Judgment):

This is an appeal against the decision of the Court of Appeal, Port Harcourt

A Division, hereinafter referred to as the lower court, dismissing appeal No. CA/PH/16/2002 by the appellant herein and affirming the decision of the Rivers State High Court, hereinafter referred to as the trial court. The Judgment appealed against was delivered on 11th December 2006. The

B facts of the case that brought about the appeal are recounted at once below.

The respondent as plaintiff took out a writ on 26th day of October 1979 at the trial court against eight persons including the appellant claiming jointly and severally as follows:

C

“(1) N10,000.00 general damages for trespass into plaintiff’s land known and called Akwodo situate at mile 3, Diobu, Port Harcourt and registered as No. 71 at page 71 in vol. 38 of the lands Registry, Port Harcourt and as shown in plaintiff’s plan filed with the statement of claim.

D

E (2) Perpetual injunction restraining the defendants, their servant and agents from further entering or interfering in the plaintiff’s said land.”

F Parties filed, exchanged, amended their pleadings and the suit went into full trial.

Plaintiff/respondent's case is that the land in dispute is part of a larger piece of land known and referred to as Akwodo more precisely No. 176/178

G Ikwerre Road, Mile 3, Diobu Port Harcourt. Parties by their respective pleadings, paragraphs 3 and 6 of the amended statement of claim and paragraphs 2, 3, and 7 of the amended statement of claim are agreed on the identity and name of the land in dispute.

H The plaintiff/respondent testified and called two other witnesses to prove his case. His case is that he became the owner of the land in dispute having purchased the land from, John Nweke and Chukwuma Nwobu, the rightful owners. This was on 25th November 1976. The transaction is

I evidenced by Exhibit 'A' executed in respondent/plaintiff's favour. The deed of conveyance, was duly registered as No. 71 at page 71 in volume 38

A of the Lands Registry, Port Harcourt.

The plaintiff/respondent asserts that on purchasing the land in dispute he took immediate possession whereupon he had the land surveyed and secured with survey pillars. The plaintiff/respondent, in his pleadings

B and evidence, insists that his vendors had acquired good title in and over the large piece of land called Akwodo from the Agbirigbe family the native owners through its head Enoch Agbirigbe since 18th March 1958. The transaction is evidenced by an indenture registered as No. 57 at page 57 in

C volume 103 of the Lands Registry at Enugu. Exhibit D, a judgment of a court of competent jurisdiction, the plaintiff/respondent further asserts, remains an unimpugned confirmation of the title of the plaintiff/respondent's vendors of the land in dispute.

D The appellant/defendant, from his pleadings and evidence, claims ownership of the land in dispute through inheritance from his father, Ogbonda Orlu, who in turn inherited the land from his ancestor Ahanonu. It is part of his case that PW1 whom he claims to be his tenant has been

E selling fire wood on the disputed land since 1973. He also has other tenants on the land in dispute from whom he has been collecting rent as well. The Agbirigbe's family, whom the appellant claims to know, could only have sold the land in dispute to plaintiff/respondent vendors under false

F pretences. It is his further case that he built the land in dispute in 1972 and put his tenants thereon.

The trial judge, in a well considered judgment dated 17th April 1996, having found that the plaintiff/respondent has established a better title than

G the defendant, granted him the reliefs he claimed.

Aggrieved by the trial court's judgment, the 1st defendant/appellant appealed to the court below on an amended notice containing twenty-two grounds. The 2nd 8th defendants chose not to appeal against the trial court's

H decision. The lower court heard the appeal and in its judgment delivered on 11th December 2006 dismissed same.

Dissatisfied with the judgment of the lower court, the 1st defendant/appellant has further appealed to this Court vide his notice of

I appeal filed on 15th February 2007 containing twenty grounds.

A In the amended appellant's brief settled by H.D.D. Uwom Esq, adopted and relied upon as their arguments in the appeal, the following four issues have been formulated for the determination of the appeal:

B **“(1) Whether the learned Justices of the Court of Appeal were right to have affirmed the findings/conclusions of the learned trial judge and to have decided that the plaintiff/respondent proved title and trespass over the land in dispute. (Grounds 2, 5, 8, 9, 16, 17 & 18).**

C

D **(2) Whether having regard to the pleadings, exhibits, grounds of appeal, issues and evidence in his case, the learned Justices of the Court of Appeal made the right inference and conclusions in their judgment. (Grounds 1, 3, 4, 7, 10, 19 and 20).**

E

F **(3) Whether the learned Justices of the Court of Appeal were right to have refused, while considering the evidence/exhibits in this case, to take judicial notice of and use the affidavit challenging part of the records which was filed on behalf of the appellant. (Ground 11).**

G **(4) Whether the learned Justices of the Court of Appeal did fully consider and pronounce on/resolve all material issues raised by the appellant before them. (Grounds 6, 12, 13, 14 and 15).”**

H At page 6 of the respondent's brief, the following four issues have been distilled as having arisen for determination in the appeal:

I **“(1) Whether the lower court was right in affirming the decision of the trial court that the plaintiff/**

- A** **respondent proved a better title to the land in question that the appellant?**
- B** **(2) Whether the lower court was right in affirming the decision of the trial court that plaintiff/respondent successfully proved his claim for damages for trespass which is based on exclusive possession of the land in dispute?**
- C** **(3) Whether the court below failed to consider all the issues raised before it by the appellant?**
- D** **(4) Whether the lower court was right in failing to consider the appellant's affidavit challenging parts of the record?"**
- E** It appears to me that appellant's 1st, 2nd and 4th issues are similar to respondent's 1st, 2nd and 3rd issues. Appellant's 3rd issue is clearly similar to respondent's 4th issue. It is again glaring that whereas appellant's 1st issue subsumes his 2nd and 4th issues respondent's 1st issue does same vis-à-vis his
- F** 2nd and 3rd issues. Put differently, whereas a determination of appellant's 1st issue would amount to a disposal of his 2nd and 4th issues as well, the determination of respondent's 1st issue will equally constitute a decision on his 2nd and 3rd issues combined. In this regard, therefore, the two sides stand
- G** in breach of the principle this Court repeatedly adhere to which frowns at proliferation of issues. It is indeed needless for any of the parties to this appeal to formulate their other two issues when the resolution of their 1st issue will provide for all the queries the two other issues raise. *See Labiyi*
- H** **Vs. Anrelidea (1992) SCNJ 1 at 2, Chief Emmanuel Eyo Eto & Anor Vs. Elder Chief Okon H.A. Dazie (2013) LPELR – 20136 (SC) and G.K.F. Investment Nig Ltd Vs. Nigeria Telecommunications Plc (2009) 15 NWLR (Pt. 1164) 344.**
- I** The application of the principle enunciated by this Court *inter-alia* in

- A** the foregoing cases, given the need for a more informed determination of the appeal, therefore, dictates the consideration of the more lucid 1st and 4th issues formulated by the respondent which issues are intrinsically the same as appellant's 1st and 3rd issues.
- B** On the 1st issue, learned appellants counsel submits that the lower court in affirming the trial court's decision that the plaintiff/respondent has proved his title and the fact of trespass over the land in dispute equally relied particularly on Exhibits A and E, the title documents between the plaintiff/respondent and his vendors and between the vendors and the original owners of the land. Reliance has also been placed on Exhibit B, a disputed survey plan made during the pendency of the instant case. The lower court, it is submitted, drew their inference from the defendant/appellant's failure to object to the admissibility of the exhibits on their being tendered in evidence at trial. The non objection to the reception of the documents in evidence, it is submitted, led to the lower court's wrong conclusion that the plaintiff/respondent has proved his title. The court, it is argued, arrived at the wrong inference because of its inability to strike a distinction between the issue of admissibility of the documents and the probative value the law allows to be ascribed to the documents. The mere reception of a document in evidence, it is further contended, neither makes the document outrightly worthy nor of the required probative value. Learned counsel calls in aid **Nwabuoku Vs. Onwordi (2006) ALL FWLR (Pt 331) 1236 at 1242** and **Okolo Vs. Dallolo (2006) ALL FWLR (Pt 336) 201 at 211**. Where the two courts below arrived at a wrong conclusion from their examination of a document, learned counsel submits, this Court has the duty, since the issue of credibility is not involved, to interfere by correctly evaluating the documentary evidence and drawing the correct inference. Learned counsel relies inter-alia on **Ogbonna Vs. Ad Imo State (1992) 1 NWLR (Pt 220) 647 at 676**, **Bunge Vs. AG Rivers State (2006) ALL FWLR (Pt 325) 1 at 6-7**, **Iwuoha Vs. Nipost (2003) FWLR (Pt 160) 1535 at 1539** and **Gonzee Nig Ltd Vs. NERDC (2005) ALL FWLR (Pt 274) 238 at 239** and insists that this Court interferes.
- I** Further arguing the issue, learned appellant's counsel insists that this Court's interference is a necessity because the lower court lacks the

- A** jurisdiction to affirm the trial court's perverse decision. The trial court's judgment the lower court affirmed, it is contended, never took into account evidence outside Exhibit A, B and E. Even at that, it is contended, the exhibits have unresolved contradictions in and between themselves.
- B** Furthermore, beyond the evidence that should inform the findings of the two courts, the pleadings of parties are equally essential in the decision the courts eventually make. The evidence the plaintiff/respondent gave at trial, it is argued, differs from the facts averred to in his pleadings. In the
- C** pleadings, it is submitted, the land in dispute the plaintiff/respondent bought from his vendors, as evidenced in Exhibit E, was originally owned by the Agbirigbe's family. Respondent's evidence at trial however, it is contended, is that the vendors acquired the land from one Enoch Agbirigbe
- D** instead. It follows, therefore, that there is a disconnect between the land in Exhibits E and A. a decision reached on such evidence that is in conflict with the plaintiff's pleaded facts cannot stand.

- Still on the issue, learned appellant's counsel submits that both
- E** parties admit that Exhibit B was made in 1979 during the pendency of the instant suit at the trial court. Plaintiff/respondent, it is contended, failed to call evidence to relate Exhibit B to Exhibit E to show that the land in dispute as referred to in Exhibit B is indeed part of the larger piece of land the
- F** plaintiff/respondent's vendor purchased from its original owners and sold part of it to the plaintiff/respondent. The concurrent findings of the lower court, on the authority inter-alia of **Agusiobu Vs. Okagbue (2001) FWLR (Pt 78) 1162, Adomba Vs. Odiese (1990) 1 SCNJ 135 at 143 – 145, Alade**
- G** **Vs. Awu (1975) 4 S 150 and Obowole Vs. Williams (1996) 12 SCNJ 415,** being perverse, learned counsel submits, deserve not to survive on appeal.

- Concluding, learned appellant's counsel submits that the plaintiff/respondent who is not in possession of the land in dispute and has
- H** not established a better title than the appellant is disentitled to succeed in the case. The victory purportedly given to the respondent by the concurrent findings of the two lower courts must be set-aside. This, argues learned counsel, is the import of the decisions in **Okoye Vs. Santilli (1994) 4 SCNJ (Pt 2) 333 at 381 Anya Vs. Imo Concorde Hotels Ltd (2003) FWLR (Pt 138) 1306 at 1332 and Bangboye Vs. Olarewaju (1991) 4 NWLR (Pt**
- I**

A 184) 13.

Responding to appellant's arguments under the 1st issue, learned counsel submits that, ordinarily, since respondent's **Vs. Monterey Maritime Corporation & Anor (1999) 9 NWLR (Pt 417) 1 at 27** and

B Adepoju Odunsi Vs, Azeez Bamgbala & 3 Ors (1995) 1 NWLR (Pt 374) 641.

Most importantly, it is further contended, the legal consequences of the registration of Exhibits A and E the plaintiff/respondent's relied on in proof of his title, is as provided for by Section 48(1) (a) of the Registration of titles Law, Cap 114, Vol. vi, Laws of Eastern Nigeria, 1963 applicable to Rivers State where the land in dispute is situate. Both courts are duty bound to give effect, learned counsel submits, to the clear and unambiguous words of the section in the applicable legislation. In support, learned counsel cites: **Bronik Motors Ltd & Anor Vs. Wema Bank Ltd (1983) 6 SC 158, Jamal Steel Structures Ltd Vs. African Continental Bank Ltd (1973) 11 SC 77, Brard of Customs & Excise Vs. Barau (1982) 10 SC** and more particularly **Madam Helen Obulor & Anor Vs. Linus Weso Oboro (2001) 8 NWLR (Pt 714) 25.**

The effect of registration of plaintiff/respondent's title deeds which *ipso facto* to recognize his title, to the exclusion of all others, apart, learned respondent's counsel further argues, Exhibit E alone, is sufficient evidence to support plaintiff/respondent's claim. Reliance is placed *inter-alia* on **Idunndu Vs. Okumagba (1976) 9 -10 SC, 227 and Aliyu Vs. Sodipo (1994) 5 NWLR (Pt 342).**

All the defects against Exhibits A and E the appellant raised in paragraph 5.1 B E at pages 11 19 of his brief, learned respondent's counsel submits, are misconceived and untenable. The defects, it is argued, were never raised in appellant's pleadings. The allegations levelled against the documents which are criminal in nature, forgery specifically, by Order 25 rule 6 sub rule (1) of the trial court's rules, learned counsel submits, must be particularly pleaded. Having not pleaded the facts which constitute the allegations the appellant makes, let alone to prove the pleaded facts, learned counsel submits, the allegation must be ignored. The court is referred to **Fabunmi Vs. Abigail Ade Agbe (1985) 1**

- A** **NWLR (Pt 2) 299 at 319 and Faith Enterprises Ltd Vs. Bast Nigeria Ltd (2001) 8 NWLR (Pt 714) 242 at 250** to buttress the point that since the appellant neither pleaded nor proved the irregularities he raised against plaintiff/respondent's root of title cannot do so without leave which he did
- B** not seek or obtain to raise the issue at the lower court or even in this court. Learned counsel relies on **Alhaji Latifu Ajuwon & Ors Vs. Madam Alimotu Adeoti (1990) 2 NWLR (Pt 132) 271, Fidelis Kaigama Vs. Alhaji Abba Naninai (1997) 3 NWLR (Pt. 495) 549 and Samuel Onounju & Anor Vs. Attorney General, Anambra State & 2 Ors (1998) 11 NWLR (Pt 573).**

- It is the law, learned respondent's counsel further submits, that, to succeed in his claim for determination of title to land, the
- D** plaintiff/respondent must establish the identity of the land. In the case at hand, outside Exhibit B, the survey plan, which appellant's counsel asserts has been made during the pendency of the instant suit, learned plaintiff/respondent's counsel submits, Exhibit E contains a plan that
- E** describes the land and defines its boundaries. The appellant by paragraph 4 of his amended statement of defence clearly shows that he knew the land in dispute. Where the identity of the land in dispute ceases to be in issue between the parties, learned plaintiff/respondent's counsel submits, proof
- F** of the identity of the land by the plaintiff ceases also to be necessary.

- Concluding, learned respondent's counsel concludes that having established their case on the preponderance of evidence the two courts below are right to have found for the respondent. Their concurrent findings
- G** drawn from the evidence on record, cannot be perverse. On the whole, learned counsel urges the resolution of the issue against the appellant and the dismissal of the appeal.

- My lords, in my firm and considered view, notwithstanding the
- H** intimidating sizes of the briefs of arguments of parties in this appeal, a sixty page amended appellant's brief, sixty-three page appellant's reply brief and eighty- five page respondent's brief, the issue this appeal raises is a very narrow one and it is this: are both courts below right in their findings that the
- I** plaintiff/respondent has proved his title to the land in dispute and, resulting from that, entitled to the reliefs he claimed and was obliged?

A I entirely agree with learned respondent's counsel that for a party to succeed in his claim, he must not only plead the facts on the basis of which he claims but further lead evidence to establish the facts as pleaded.

B Pleading, in the absence of evidence to establish the facts averred therein, goes to no issue. Furthermore, because parties are bound by their pleadings, evidence led which stands at variance with a party's pleading goes to no issue. Such evidence must be disregarded. The fact that issues are joined in pleadings and not in evidence is ignored at the party's peril *See* **C Elegushi Vs. Oseni (2005) 14 NWLR (Pt 945) 348, Aremu Vs. Adetoro (2007) 16 NWLR (Pt 1060) 244 and The Executors of the Estate of Gen. Sani Abacha (deceased) V. Samuel David Eke-Spiff & Ors (2009) LPELR-3152 (SC).**

D In the case at hand, the issue in controversy between the parties is the ownership of the land in dispute the five methods by which the law says it may be established being by:

- E** (1) **Traditional evidence;**
(2) Production of documents of title which are duly authenticated;
(3) Acts of ownership, such as selling, leasing, renting, farming etc over a sufficient length of time, numerous and positive enough to warrant the inference of true ownership;
F **(4) Acts of long possession and enjoyment of the land;**
G **and**
(5) Proof of possession of connected or adjacent land in circumstances rendering it probable that the owner of such connected or adjacent land would, in addition, be the owner of the land in dispute.
H

A party may reply on any of the five methods and succeeds on such cogent satisfactory and conclusive evidence to prove his title. *See* **I Aikhionbare Vs. Omoregie (1976) 12 SC 11 and Zacheus Falaye & Ors Vs. Rasheed Dada & Ors (2016) LPELR 40297 (SC).**

A The respondent as plaintiff relies on documents, Exhibits A and E, in establishing his claim. The two have been duly registered in accordance with Section 48 of the Registration of Title Land applicable to Rivers State where the land is situated. The appellant, on the other hand, relies on
B traditional history, having inherited the land in dispute from his father who, in turn, inherited the land in dispute from his ancestors. Appellant did not lead any evidence to establish who the original founders of the land were and who the land devolved to his father from whom he inherited. At the
C trial court the plaintiff/respondent, see page 48 lines 7-14 of the record of appeal, testified as follows:

D **“I bought the land from the owner by a Deed of Conveyance. The Deed of Conveyance is with the court. It was admitted sometime by the court. I bought it on 25th November, 1976. I registered the Deed of Conveyance as No. 71 at page 71 Volume 38 in the Lands Registry in Port Harcourt. If I see the Deed of Conveyance I will be able to recognize it. This is the Deed of Conveyance. Defence counsel has no objection. Deed of Conveyance registered as No.71 at page 71 in Volume 38 of the Lands Registry, Port Harcourt is admitted and marked EXHIBIT A.”**
E
F

He testified further thus:

G **“The names of my vendors of Exhibit A are John Nweke and Chukwuma Nwobu. From my findings, I discovered that my vendors bought the land from one Enoch Agbirigba, the original owner of the land. I applied for a certified true copy of the Deed of Conveyance between Enoch Agbirigba and John Nweke and Chukuma Nwobu. This is the certified true copy of the Deed of Conveyance. Counsel seeks to tender it. No objection by the defence counsel. Deed of Conveyance registered as No. 57 at page 57 in volume 103 of the Lands Registry at**
H
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A Enugu is admitted and marked Exhibit E.”

The trial court at page 99 lines 4 to 11 of the record *inter-alia* held as follows:

B

“... I agree with the submission of learned counsel for the plaintiff, that all the grants made by the plaintiff’s vendors including that of the plaintiff in this suit is consistent with ownership and agrees with Exhibit E which is the root of title I find therefore that the plaintiff has established a better title to the land in dispute than the defendant.”

C

D

In affirming the foregoing decision of the trial court the lower court at page 363 of the record held as follows:

E

“Respondent’s evidence was not at variance with his pleadings. The learned trial judge received Exhibit E which shows the valid deed of conveyance as No. 57 page 57 in volume 103 of the Land Registry at Enugu From the above evidence of the respondent at the lower court, Exhibits A and E, which the respondent acquire as title owners in respect of Akwodo land which is the land in dispute, were clearly tendered and admitted in the presence of appellant and his counsel in court.

F

G

The legal effect is that the appellant, by admitting respondent’s title documents Exhibits A and E as well as admitting Exhibit B which was a survey plan of the land in dispute is that the respondent had lawfully acquired the land in dispute

H

I

I am satisfied that the trial court was perfect in giving judgment in favour of the respondent whose pivotal point

- A** in respect of his root of title and survey plan were pleaded, testified and tendered without any challenge it was uncontroverted by the appellant.”
- B** I cannot agree more with the lower court. The concurrent findings of the two courts are based on the pleadings of parties and the evidence on record in support of these pleadings. As rightly observed by the lower court, the appellant who was represented by counsel and did not object to the
- C** reception of the documents the plaintiff/respondent's tendered in support of his claim in evidence cannot now complain that it is wrong of the two courts to have relied on the unchallenged and uncontroverted evidence. The lower court's reliance on the decisions of this Court in **Mainage Vs. D**
- D** **Gwamna (1997) 1 NWLR (Pt 528) and Nigeria Maritime Services Ltd Vs. Alhaji Bello Afolabi (1978) 2 SC 79** in this regard is well informed. In **Shurum Vs. The State 196 LRCN 199** this Court stated the principle more succinctly thus:
- E**
- F** **“When a counsel stands by and allows exhibits to sail smoothly through to become evidence without an eyelid, then it becomes obvious that the counsel is comfortable with the evidence and sees no reason why he should challenge its admission.”**
- In the circumstance the trial court's duty, which the lower court rightly
- G** found to have been discharged, is to consider the pleadings of both sides and put the lawful evidence led on an imaginary scale and determine whose is weightier. Having not succeeded in establishing at the lower court where the trial court went wrong in evaluating the evidence of the two sides and
- H** ascribing, value to same, the appellant's expectation of any success here is baseless. Trespass is an infraction against possession. *See* **Aboyeji Vs. Momoh (1994) 4 NWLR (Pt 341) 646 and Omorhirhi Vs. Enatevwere (1988) LPELR-2659**. The law gives possession to the owner of the land
- I** against the whole world. Appellant has admitted being in possession of the land in dispute, the two courts below rightly adjudged the

A plaintiff/respondent the owner. In the event, therefore, appellant is the trespasser and the concurrent findings of the two courts must for that reason endure. Appellant's 1st issue is accordingly resolved against him.

B The issue of title to the land in dispute and who is the trespasser is indeed the real issue in controversy between the parties in this appeal. I discountenance appellant's 3rd issue, respondent's 4th, challenging the authenticity of the exhibits relied upon by the plaintiff/respondent's at the lower court for the first time and without leave sought and obtained thereat.

C As a whole, I see no merit in the appeal and hereby dismiss same at a cost of N200,000.00k [two hundred thousand naira] against the appellant in favour of the respondent.

D The lower court's decision in appeal No. CA/PH/16/2002 is accordingly affirmed.

Musa Dattijo Muhammad,
Justice, Supreme Court

E NKANU ONNOGHEN, (CJN): I have had the benefit of reading in draft the lead Judgment of my learned brother **MUSA D. MUHAMMAD, JSC** just delivered.

F I agree with his reasoning and conclusion that the appeal is devoid of merit and should consequently be dismissed.

I therefore order accordingly and affirm the Judgment of the lower court and abide by the consequential orders made in the said lead Judgment including the order as to costs.

G Appeal dismissed.

Walter Samuel Nkanu Onnoghen
Chief Justice of Nigeria

H KEKERE-EKUN, (JSC): I have had the benefit of reading in draft the well considered judgment of my learned brother, **MUSA DATTIJO MUHAMMAD, JSC** just delivered. I agree with the reasoning and conclusion that the appeal lacks merit and should be dismissed.

I By his appeal before this court, the appellant seeks to overturn the concurrent findings of fact made by the two lower courts in favour of the

A respondent. In order to dislodge the concurrent findings of the two lower courts, the appellant has the onerous task of satisfying this court that the findings are perverse, not supported by the evidence, or that there is an error of law or procedure which has occasioned a miscarriage of justice. *See*

B **Lewis Vs. U.B.A. PLC (2016) 1 SC (Pt. 1) 96 @ 120 – 121; NICON Vs. Power & Industrial Eng. Co. Ltd. (1986) 1 NWLR (Pt. 271) 1; Ibodo Vs. Enarofia (1980) 5-7 Sc 42 @ 55; Michael Vs. The State (2008) 13 NWLR (Pt. 1104) 361.**

C The respondent herein, by a writ of summons filed on 26/10/1979 before the High Court of Rivers State, Port Harcourt Judicial Division sought the following reliefs jointly and severally against eight defendants including the appellant who was the 1st defendant:

D

1. N10,000 general damages for trespass into the plaintiff's land known and called Akwodo situate at Mile 3, Diobu, Port Harcourt and registered as No. 71 at page 71 in vol. 38 of the Lands Registry, Port Harcourt and as shown in plaintiff's plan filed with the Amended Statement of Claim.

E

F

2. Perpetual injunction restraining the defendants, their servants and agents from further entering or interfering in the plaintiff's said land.

G

It was the respondent's case at the trial court that he became the owner of the land in dispute by way of purchase from the rightful owners of the land, John Nweke and Chukwuma Nwobu. They executed a Deed of Conveyance dated 25/11/76 in his favour which was duly registered at the Lands Registry in Port Harcourt. It was admitted in evidence as Exhibit A.

H

They acquired a large parcel of land which includes the land in dispute from the original owner Enoch Agbirigba in 1958. The indenture evidencing the transaction between the respondent's vendors and Agbirigba was also registered. He testified that he engaged a surveyor who surveyed the land

I

and erected pillars thereon and that he remained in peaceful possession of

- A** the land until sometime in 1977 when the defendants, including the appellant trespassed thereon by entering upon the land and erecting temporary structures. They refused all entreaties to desist from their acts of trespass.
- B** On the part of the defendants, the appellant (1st defendant) claimed that he owned the land in dispute by virtue of inheritance from his father Ogbinda Orlu, who inherited it from his ancestor, Ahanonu. That he built on the land as far back as 1972 and put tenants thereon.
- C** Both sides gave oral and documentary evidence in support of their respective positions. At the conclusion of the trial, judgment was entered in favour of the respondent and the reliefs sought by him were granted. His appeal to the Court of Appeal was unsuccessful, hence the instant appeal.
- D** My comments in support of the lead judgment are on the issue of title and trespass. It is pertinent to note that the respondent's claim was for damages for trespass and injunction.
- E** The law is settled that a claim for trespass to land is generally rooted in exclusive possession. Therefore all that a claimant needs to prove is that he has exclusive possession or that he has the right to exclusive possession of the land. However, where a defendant claims to be the owner of the land, title to the land is put in issue and in order to succeed, the plaintiff must prove a better title. *See Pius Amafor Vs. Benedict Obiefuna (1974) 3 SC (Reprint); Ogunleye Vs. Oni (1990) 2 NWLR (Pt. 135) 745; Omotayo Vs. C.S.A. (2010) 16 NWLR (Pt. 1218) 1.* It is also settled that the plaintiff must succeed on the strength of his case and not on the weakness of the defence, if any, except where the weakness of the defendant's case strengthens the plaintiff's case. *See Ngene Vs. Igbo (2000) 4 NWLR (Pt. 651) 131; Onwugbufor Vs. Okoye (1996) 1 NWLR (Pt. 424) 252; Adesanya Vs. Aderonmu (2000) 13 WRN 104 @ 115 lines 10 – 35.*
- H** In support of his claim, the respondent relied on documentary evidence, including Exhibit A Deed of Conveyance between him and his vendors; Exhibit B Survey Plan; Exhibit C letter written to the defendants by his solicitors warning them to desist from their acts of trespass; Exhibit
- I** D a judgment in a suit between the appellant and another party affirming the title of the respondent's vendors; Exhibit E CTC of the deed of

A conveyance between the respondent's vendors and the original owner of the land. It is to be noted that both Exhibits A and E are duly registered instruments. The law is that once a registrable instrument is duly registered in accordance with the relevant Registration Law, the effect of such

B registration is that the party registering same acquires a good title until a superior title is produced. *See Oboru Vs. R.S.H. & P.D.A. (1997) 9 NWLR (Pt. 521) 425 @ 443-444 H-A.* This decision of the Court of Appeal was affirmed by this court in *Obulor & Anor. Vs. Oboro (2001) 8*

C *NWLR (Pt. 714) 25.* *See also* Section 48 (1) (a) of the Registration of Title Law, Cap 114 Vol. VI Laws of Eastern Nigeria 1963 applicable to Rivers State.

Thus, the plaintiff/respondent had traced the root of his title through

D his vendors to the original owner of the land. Exhibit D was tendered to establish the fact that his vendors' title had been affirmed by a court of competent jurisdiction.

The appellant on the other hand relied on traditional history to

E support his claim of ownership. His case, as stated earlier, was that he inherited the land from his father who inherited it from his ancestor, Ahanonu.

Where a party relies on traditional history to prove his title, he must

F plead and prove:

- G**
- a. **Who founded the land.**
 - b. **How the land was founded; and**
 - c. **Particulars of intervening owners.**

See Alli Vs. Aleshinloye (2000) 4 SCNJ 264 @ 284-285; Mogaji Vs. Cadbury Nig. Ltd. (supra); Elegushi Vs. Oseni (2005) 14 NWLR (Pt. 945) 348.

H

After a careful consideration of the evidence of the parties and the final addresses of counsel, the learned trial Judge found that the appellant failed to establish his title by traditional evidence. His Lordship held at

I pages 98-99 of the record as follows:

A **“However, the 1st defendant's claim to title over the entire**
Akwodo land on which all the aforesaid properties are
situate is based on his sole evidence that he inherited the
B **land from his father who inherited from his own father**
Ahanonu, the original owner and founder of the land. I
agree with Mr. Nworka that there is no evidence as to how
C **the 1st defendant's grandfather and ancestor Ahanonu**
founded the land in dispute whether it was by conquest or
by purchase and that those material facts that must be
D **pleaded and proved. See Chukwu Versus Nneji (1990) 6**
NWLR Pt. 156 P. 363 pp. 367 ratio 8. Besides, paragraph 4
of the Further Amended Statement of Defence was
E **abandoned by the defendant as there was no iota of**
evidence in proof of the averments contained therein and
in particular to the issue that the sale of the land in dispute
to Jown (sic) Nweke and Chukwuma Nwobu (plaintiff's
vendors) by Enoch Agbirigba was void because Enoch
Agbirigba had no title over the land in dispute.

F **In the light of the above, and the findings in EXHIBIT 'D'**
(the judgment in PHC/98/73) which is still subsisting and
binding, I agree with the submission of learned counsel for
the plaintiff, that all the grants made by the plaintiff's
G **vendors including that of the plaintiff in this suit is**
consistent with ownership and agrees with Exhibit 'E'
which is the root of title.

.....

H **I find therefore that the plaintiff has established a better**
title to the land in dispute than the defendant.”
(Underlining mine for emphasis)

I Upholding the above finding, the lower court held at pages 364-365 of the
record:

A “From the above evidence of the respondent at the lower court, Exhibits A and E, which the respondent and also vendors acquired as title owners in respect of AKWODO land which is the land in dispute, were clearly tendered and

B admitted in the presence of the appellant and his counsel in court. Despite this fact, the appellant did not make any objection whatsoever. The legal effect is that the appellant, by admitting respondent's title of documents Exhibits A and E as well as admitting Exhibit B which was a Survey Plan of the land in dispute, is that, the respondent had lawfully acquired the land in dispute, which was properly granted in the trial court's judgment. See Mainagge Vs. Gwamna(1997) 1 NWLR (Pt.528) 191, where this court said:

E “The documents tendered in court by the respondent, scaled through smoothly without any eyebrow being raised either by the defence counsel or the court could be presumed to be in order and therefore admissible. I cannot allow the

F appellant to retreat and abjure what he has voluntarily and skillfully too, accepted.

G In the instant appeal I cannot find any reason why the appellant or his counsel can now impugn on the respondent, who lawfully and in consideration of the rules of this Court, tendered his root of title i.e, Exhibits A and E which were deed of conveyance of the land in dispute, and the appellant and his counsel had clearly admitted these facts and failed to

H even make a feeble objection or challenge same. It is too late in the evening for the appellant to raise eyebrows. It is well established principle of law that where evidence given by a party to any proceedings have not been challenged or discredited by the opposing party who had the chance to do

I so, then it is open to the court hearing the matter, to act and rely on such unchallenged or opposed evidence as done by the trial court in this matter. I

A refer to the Supreme Court decision in **Isaac Omoregbe Vs. Daniel Lawani (1980) 3-4 SC 108; Nigeria Maritime Services Ltd Vs. Alhaji Bello Afolbi (sic) (1978) 2 SC 79.**

B From the above consideration and authoritative decision of the Apex Court, I am satisfied that the trial court was perfect in giving the judgment in favour of the respondent whose pivotal point in respect of his root of title and survey plan were pleaded, testified and tendered without any challenge, it was uncontroverted by the appellant. I therefore resolve issue C 1 in favour of the respondent.”

D On the issue of trespass, the court referred to the respondent's pleading in paragraphs 7, 8 and 9 of his amended statement of claim and his oral evidence in support. The court affirmed the findings of the trial court in the following terms:

E **“The above is enough evidence of establishment of the respondent's possession of the land in dispute. It is to be noted which I accept, that the respondent had earlier on, tendered Exhibits A, B and E which were the valid Deeds of Conveyance and Survey Plan which was not opposed to or challenged by the appellant. Appellant's admission and refusal to challenge or raise an objection is tantamount to accepting the plea and evidence of the respondent on issue of trespass, which he established. The trial Judge was therefore proper to rely on the contents of Exhibits A and E as well as B which clearly showed the beacon numbers RSF 580, RSF 581, RSF 582 and RSF 583 which was duly signed by the licensed surveyor who surveyed same. The act of survey plan and erection of the beacons by the respondent is a clear establishment, that he was in possession, and therefore entitled to damages for the acts of trespass committed by the appellant. I am satisfied that the trial Judge had properly evaluated the evidence of both parties in relation to the issue of trespass and the requisite damages as sought and proved by the respondent as shown**

A on pages 99 to 100 of the record.” (underlining mine)

After reproducing the findings of the learned trial Judge at pages 99 100 of the record, His Lordship, Istifanus Thomas, JCA in the lead judgment held:

B

“I have no business to temper (sic) and or reverse the findings of the trial court as in the instant appeal and even if on same evidence, I would have come to a different conclusion unless it had occasioned a miscarriage of justice.”

C

D I am of the view that the findings of fact by the two lower courts in this regard are unassailable. The appellant has failed to persuade me otherwise. What learned counsel for the appellant has sought to do in this appeal is to reopen the matter as if this were the trial court. He has made copious submissions on the probative value of the documentary evidence **E** tendered by the respondent at the trial court when he failed to take advantage of the hearing to challenge them. He also failed to seek leave to raise the issues now being canvassed as new issues before this court. An appeal is simply a continuation of the case put forward at the court of first **F** instance. It is not an opportunity for a party to make an entirely new case. **See: Osuji Vs. Ekeocha (2009) 16 NWLR (Pt. 1166) 81; Adegoke Motors Ltd. Vs. Adesanya (1989) 3 NWLR (Pt. 109) 250.**

G Learned counsel for the appellant has argued that notwithstanding the fact that the documents were admitted in evidence without objection, the court still has a duty to consider the weight to attach to them. In the instant case both lower courts were right when they held that the appellant failed to impugn the documentary evidence before the trial court. Also as **H** rightly observed by the trial court, the appellant failed to lead evidence in support of paragraph 4 of his Amended Statement of Defence wherein he pleaded that one of the respondent's vendors died in 1973 before the execution of Exhibit A. In the absence of any evidence to support the **I** pleading, it was rightly deemed abandoned. I also agree with both lower courts that there was no dispute at all as regards the identity of the land in

A dispute. Again the survey plan was admitted in evidence without objection.

I agree entirely with the concurrent findings of the two lower courts that the respondent proved a better title to the land in dispute and had established his entitlement to the reliefs granted in his favour.

B For these and the more elaborate reasons advanced in the lead judgment, I hold that the appeal is devoid of merit. It is hereby dismissed.

The judgment of the Court of Appeal, Port Harcourt Division delivered on 11/12/2006 affirming the judgment of the trial court delivered on 17/4/96 is

C further affirmed. I abide by the order on costs as made in the lead judgment.

Kudirat M. O. Kekere-Ekun

Justice, Supreme Court

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**HADI SULE
VS
THE STATE**

SC.405/2015

**IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA**

FRIDAY, 7TH APRIL, 2017

BEFORE THEIR LORDSHIPS

WALTER SAMUEL NKANU ONNOGHEN	CHIEF JUSTICE OF NIGERIA
MUSA DATTIJO MUHAMMAD	JUSTICE, SUPREME COURT
KUDIRAT M. O. KEKERE-EKUN	JUSTICE, SUPREME COURT
EJEMBI EKO	JUSTICE, SUPREME COURT
SIDI DAUDA BAGE	JUSTICE, SUPREME COURT

CONSTITUTIONAL LAW: Fair hearing – Nature and purport – Principle is for the benefit of appellant and respondent – S. 36 of CFRN 1999 – Relevant considerations thereof.

COURT: Supreme Court – Concurrent findings – Where not perverse nor occasioned miscarriage of justice – Attitude of Supreme Court thereto.

CRIMINAL LAW AND PROCEDURE: Burden of proof in criminal cases – Whether proof beyond reasonable doubt – Principles thereof.

CRIMINAL LAW AND PROCEDURE: Power of court to stay proceedings in respect of an absconding accused – S. 259(1) Criminal Procedure Code – Requirements thereof.

CRIMINAL LAW AND PROCEDURE: Signing, dating and sealing of judgment in the open court – S.269(1) of the Criminal Procedure Code

– Alleged non compliance thereof – No materials placed before court to arrive at such conclusion – Whether breach has not occasioned any miscarriage of justice.

*CRIMINAL LAW AND PROCEDURE: Conviction – Where a confessional statement is positive, direct and equivocal – Whether can be relied solely for the conviction of the accused – The principles in **Peter Illiya Azabada Vs. The State (2014) All FWLR (Pt. 781) 1620.***

EVIDENCE: Confessional statement – Definition, nature and relevance of a confessional statement – S. 28 of the Evidence Act 2011 – Relevant considerations thereof.

EVIDENCE: Power of court to make necessary inference as to admissibility of certain exhibits – S 138 (1) and (2) of the Evidence Act, 2011.

*RULES OF COURT: Purpose thereof – Whether they are aids to the court and not masters of the court – The Principles in **Adeyela Vs. Adeyeye (2010) W.R.N. 42.***

*STATUTES: Interpretation – General principles thereof – Whether words and phrases are to be construed according to the rule of grammar – The principles in **A.G. Federation Vs. Abukakah (2007) 20 W.R.N 1SC.***

STATUTES: Interpretation – Provisions of the law how interpreted – Relevant principles thereof.

STATUTES Criminal Procedure Code – S. 259 (1) – Power of Court to stay criminal proceedings against an absconding accused – Extent, purport and imperatives.

Issue for Determination

- 1. Whether the court below was right in upholding the conviction and sentence of the appellant despite staying proceedings against the 2nd accused Ahmed M. Dikko who is reported to be at large.**
- 2. Whether the court below was right to have upheld the decision of the trial court in view of the provisions of Section 269(1) of the CPC.**
- 3. Whether the court below was right to have upheld the conviction and sentence of the appellant on the basis of his confessional statement and evidence adduced at the trial court.**

Facts of the Matter

This appeal arose from the decision of the Court of Appeal, Abuja Judicial Division, delivered on the 8th day of May, 2015 in Appeal No. CA/A/586C2/2012. In the appeal, the court, affirmed the conviction of, and sentence imposed on the appellant by the High Court of Niger State presided over by the chief judge, Hon Justice Jibrin N. Ndajiwo in Suit No. NSHC/MN/11C/2006 delivered on 29th June, 2012.

The appellant herein was charged as the 3rd accused person respectively in Charge No. NHSC/MN/11C/2006. He was arraigned alongside with three others, including one Ahmed M. Dikko, (who later absconded from his sick bed but was consequently declared wanted for being at large). The fugitive Dikko was absent throughout the proceedings at the trial court. This unfortunate development was not to be treated with levity, as proceedings continued despite having excused him in a ruling on ground of his unholy act of absconding from facing justice for the criminal allegations against him. His “co-travellers” journeyed-on in the proceedings, as trial continued against his allied-accused persons who were tried on a two count charge of culpable homicide not punishable with death and conspiracy contrary to Sections 224 and 97 of the

Penal Code respectively. The said Ahmed M. Dikko was the 2nd accused while Dingi Mohammed is the 1st accused person. The charges proffered against the accused persons are indicated in the body of the lead judgment.

It needs to be reiterated for obvious reasons as to be discovered below. During the course of the trial, Mr. Ahmadu Dikko escaped and the prosecution sought and obtained the order of the trial court to stay proceedings against the 2nd accused but proceeded against the three remaining accused persons. The order was granted on 18th June, 2007. Thereafter, the prosecution amended the charge and the plea of the three accused persons, including the present appellant were taken to the amended charge. The prosecution called a total of 8 witnesses and each of the three accused persons testified in defence. The appellant in the instant appeal testified as DW.3.

The ship of the trial sailed smoothly, but not without the wind of technicalities, objections, counter objections and related procedural gymnastics that should, by now, have no place in our civil and criminal jurisprudence. This, regardless, at the conclusion of trial formalities, parties adopted their respective written addresses and matter adjourned for judgment. On the day of judgment, the learned trial judge found that the offence of conspiracy was not proved and discharged and acquitted the accused persons on that head of charge.

However, the learned chief judge, found the three accused persons guilty of the offence of culpable homicide not punishable with death. He reasoned that the offence of “culpable homicide not punishable with death” has been proved by the prosecution beyond reasonable doubt.

Being dissatisfied with the judgment, the appellant sought to overturn the decision by lodging an appeal at the Court of Appeal, Abuja Division. The Court of Appeal affirmed the decision of the trial court as embedded in the judgment dated 29 June, 2012. The Court of Appeal also affirmed the conviction and sentence of the trial court. Still not satisfied, the appellant appealed to the Supreme Court.

Held: *(Unanimously dismissing the appeal)*

1. *Power of Court to stay proceedings under S. 259 Criminal Procedure Code*

The contention of the appellant is largely hinged on the effect or purport of the provisions of Section 259 of the CPC which provides thus:

“The court at any stage of the trial, where there are several accused may by order in writing stating the reasons therefore, stay proceedings of the joint trial and may continue proceedings against each and any of the accused separately.”

It is not in contention that the trial court granted and indeed stayed proceedings against the fugitive 2nd accused person who absconded. From the record of proceedings, and as rightly argued by respondent counsel, at no point in time after the grant of stay of proceeding was the name of the 2nd accused person, the absconding accused person, mentioned in the proceedings. It would appear that the contention of the appellant, on the basis of which he asked us to set aside the decision of the court below, and by necessary implications, that of the trial court, is that the trial court ought to have struck-out the name of the absconded 2nd accused person. Although doing so may be appropriate, I see no reason why it becomes procedurally imperative in view of the very clear and unambiguous provisions of section 259(1) of the CPC quoted above. (Pp 99–100 paras G–C)

2. *In the interpretation of statutes words and phrases are to be construed according to the rules of grammar in their ordinary simple meaning*
This court, also in the case AG. Federation Vs. Abubakar (2007) 20 W.R.N. 1 SC, per Akintan, JSC restated the position as follows:

“It is necessary to say something about the general principle of interpretation of statutes, including constitutions. The generally accepted rule of

construction is that it is to be assumed that the words and phrases of technical legislation are used in their technical meaning if they have acquired one, and otherwise in their ordinary meaning. Phrases and sentences are to be constructed according to the rules of grammar. If there is nothing to modify, alter or qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences. This approach is regarded as 'literal interpretation' or characterized as the 'positivist approach'....”

(Pp 100 - 101 paras H–D)

3. *The purport and requirements of S. 259 of Criminal Procedure Code*
To my view, the above provisions are fully complied with. It is not within the contemplation of section 259 of the CPC that the name of the absconded 2nd accused person must, *willy-nilly*, be deleted. The grant of an order of stay of proceedings against the 2nd accused, in our considered view, neither meant that the 2nd accused person was tried and convicted along with the appellant nor vitiate the order staying proceeding itself. The logic of the appellant's contention, which he failed to effectively sell; or sold but we did not buy, not for the lack of means but because subscribing to such would amount to technical justice, is that the requirement of Section 259 of the Criminal Procedure Code does require mandatory separate trial of the accused persons. This is reading extraneous meaning to the above provisions as proceedings against any accused persons which is stayed as required by law needs not be isolated or his name struck-out. As I had said above, striking out his name may be appropriate but not crucial as he ceased being part of the proceedings upon the grant of stay. *(Pp 101 – 102 paras D – H)*

Per Baje (JSC)

“I also wish to add a point on the effect of rules of procedures like the CPC, which, unwittingly may, or now increasingly being cited to sway the outcome of criminal trial beyond the merit of the case. In the famous case of *Ariori & Ors. Vs. Muraimo Elemo & Ors. (1983) 1 SC 13 at 24 per Obaseki JSC*, this court opined that fair hearing means a trial conducted according to all the legal rules formulated to ensure that justice is done to the parties to the cause. *See also Idakwo Vs. Ejiga (2005) 48 WRN 19SC at ratio 5, page 35 to 36.*

Elsewhere, in the case of *Adeyela Vs. Adeyeye (2010) W.R.N. 42 at pages 70 to 71* had opined, and remain so persuaded without having cause to change my view, that:

“Rules of procedure are made for the convenience and orderly hearing of cases in court. They are made to help the cause of justice and not to defeat justice. The rules are therefore aids to the court and not masters of the court. For courts to read rules in the absolute without recourse to the justice of the cause, to my mind, will be making the courts slavish to the rules. This certainly is not the reason of the rules of court.”

The provision of the CPC is intended, in this case and indeed all criminal proceedings, to aid in the smooth, fair and just administration of criminal justice. It certainly does not intend to defeat the end of justice. To take solace in the rule of procedure under section 259 of the Criminal Procedure Code to defeat justice without neutralizing or contradicting the evidence before the trial court is herculean task.” (Pp 101 – 102 paras H – F)

4. *The nature and application of S. 269 (1) Criminal Procedure Code*
The contention on issue two is the same as issue one having been based on Section 269(1) of the Criminal Procedure Code which

provides that:

“Every judgment shall contain the point or points for determination, the decisions thereon and the reasons for the decision and shall be dated and signed or sealed in the open court at the time of pronouncing it.”

I re-adopt my earlier views and ruling on issue one which bordered on Section 259 of the CPC in resolving the essence and purport of section 269(1) of the same law. In addition, beyond contesting formalities, which is grossly misplaced, the appellant placed nothing before the court to indicate non compliance with the provisions of Sections 269 of the Criminal Procedure Code (CPC). I align with the court below in affirming that the judgment delivered on 29th June, 2012 by the learned chief judge contains all the requisite requirements of a valid judgment and therefore valid for all intent and purposes. Assuming without conceding that the argument is logical, I'm yet to see why the dating and signature or sealing of a judgment by the trial judge in the open court is made a strict requirement of law to vitiate a trial or judgment. It would have made better sense if doing so or it lacks occasioned miscarriage of justice on the part of the appellant. (*Pp 102–103 paras H–E*)

Per Baje (JSC)

“Litigants should expect no technical but substantial justice from this court. We have said several times that we are not a workshop for technical justice. Over and over again, we have reiterated the need to do substantial justice and avoid delving into error of technicalities. See for example the case of National Revenue Mobilization Allocation and Fiscal Commission (N.R.M.A.F.C) Vs. Johnson (2007) 49 W.R.N Pages 169-170 where Per Peter-Odili, JCA (As he then was) opined as follows:

“.... The courts have deliberately shifted away from narrow technical approach to justice which characterized some earlier decisions to now pursue the course of substantial justice. See *Makeri Smelting Co. Ltd. Vs. Access Bank (Nig) Plc.* (2002) 7 NWLR (Pt.766) 447 at 476-477.... The attitude of the courts has since changed against deciding cases on mere technicalities. The attitude of the courts now is that cases should always be decided, wherever possible on merit. Blunders must take place from time to time, and it is unjust to hold that because a blunder has been committed, the party blundering is to incur the penalty of not having the dispute between him and his adversary determined upon the merits.”

***See also Ajakaiye Vs. Ideha* (1994) 8 NWLR (Pt. 364) 504, *Artra Ind. Ltd Vs. NBCI* (1997) 1 NWLR (Pt.483) 574, *Dakat Vs. Dashe* (1997) 12 NWLR (Pt.531) 46, *Benson Vs. Nigeria Agip Co. Ltd.* (1982) 5 S.C 1.” (Pp 103–104 paras E–C)**

5. *The nature and purport of fair hearing*

Fair trial or hearing is a strict rule. What must be added and emphatically stressed is the fact that the principle of fair hearing as enshrined under the Constitution of the Federal Republic of Nigeria, 1999 as amended (CFRN, 1999) is for the benefit of the appellant and respondent. Section 36(1) of the CFRN, 1999 provides thus:

“In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and

impartiality.” (P 104–105 paras C–A)

6. *The burden of proof is beyond reasonable doubt to secure conviction.*
The burden of proof of a criminal offence is proof beyond reasonable doubt to secure conviction. The evidence at the trial and which was concurrently upheld by the courts below is that the respondent has adduced enough, convincing evidence to prove beyond reasonable doubt, including the confessional statement of the appellant, the ingredients of the offence of culpable homicide not punishable with death as basis for convicting the appellant. The burden of proof in criminal offences, to all intents and purposes, remains proof beyond reasonable doubt to secure conviction. (P 105 Paras B–C)
7. *Power of court to make necessary inference as to the admissibility of a piece of evidence*
Sections 138(1) and (2) of the Evidence Act also give the court power to make necessary inference as to admissibility of a piece of evidence, including, in my considered view, confessional statement whether or not same is subsequently denied by the maker. It states thus:
- “138. Burden of proving fact necessary to be proved to make evidence admissible.**
- (1) The burden of proving any fact necessary to be proved in order to:-**
- (a) enable a person to adduce evidence of some other fact; or**
- (b) prevent the opposite party from adducing evidence of some other fact, lies on the person who wishes to adduce, or to prevent the adduction of such evidence, respectively.**
- (2) The existence or non existence of facts relating to the admissibility of evidence under this section is to be determined by the court.”** (P 105 paras D–H)

8. *Supreme Court will not interfere with concurrent findings that are not perverse or has led to a miscarriage of justice*

The law is settled that the Supreme Court, this noble court, will not interfere with concurrent findings of facts made by the trial court and the Court of Appeal unless such findings are perverse; or are not supported by the evidence; or are reached as a result of a wrong approach to the evidence; or as a result of a wrong application of evidence; or as a result of a wrong application of any principle of substantive law or procedure.” See Arabambi Vs. Advance Beverages Ind. Ltd. (2005) 19 NWLR (Pt.959) 1 PER Onnoghen, J.S.C (as he then was) at (P. 46, C-E).

In this case, there are two concurrent findings of facts of the lower courts on the issue. It is usual in this court, in such circumstances, to decline to review the evidence a third time particularly when we are not convinced or persuaded, as in this case, that there has been a miscarriage of justice or a violation of some principles of law or procedure, or that the two findings of the trial court and the court next to us, are and/or were perverse. See Ochiba Vs. State (2011) 12 SC (Pt. 1V) P.79 Per Rhodes-Vivour, J.S.C (PP. 51-52, Paragraphs F-B). See also Cameroon Airlines Vs. Otutuizu (2011) 2 SCNJ 96 (Pt. III) P.200; Olowu Vs. Nig. Navy (2011) 12 SC NJ 43 (Pt. II) P.1; Arowolo Vs. Olowookere & Ors. (2011) 11-12 SC NJ 289 (Pt. II) P.98. (Pp 105–106 paras I–D)

9. *The nature, definition and relevance of a confessional statement*

By virtue of the provisions of sections 28 of the Evidence Act, confessional statement is tenable and admissible. The section describes a confessional statement thus:

“A confession is an admission made at any time by a person, charged with a crime tending to show or suggest the inference that he committed the crime.”

Confessional statement is the best evidence to ground conviction and, as held in a number of cases, it can be relied upon solely where voluntary. The criminal guilt of an accused person could be established by confessional statement, circumstantial evidence and evidence of an eye witness. A confessional statement of the appellant that was free and voluntary regardless of the facts that he (the appellant) subsequently resiled from his voluntary confession at trial, is good evidence to ground conviction. A confessional statement does not become inadmissible simply because the accused person denied having made it. This has been the settled position in our jurisprudence of criminal justice. See for example Patrick Ikemson & 2 Ors Vs. The State (1989) 3 NWLR (PT. 110) 455 AT 476 Para D; Joseph Idowu Vs. The State (2000) 7 SC 50 AT 62; (2000) 12 NWLR (Pt.680), at 48, Nkwuda Edamine Vs. The State (1996) 3 NWLR (Pt. 438) 530 at 537 Para D-E; Samuel Theophilus Vs. The State (1996) 1 NWLR (PT.423) Page 139 at 155 Para A-B; and Awopeju Vs. The State (2002) 3 MJSC 141 at 151.

(Pp 106 – 107 Paras E – B)

10. *Confessional statement can be relied solely for the conviction of the accused, where it is direct, possible and equivocal*

This court, and incidentally by no less a Jurist other than the learned Onnoghen JSC (as he then was; and proudly the CJN) in Peter Iliya Azabada Vs. The State (2014) All FWLR (P.751) 1620, Para B has made it abundantly clear in the following words:

“The confessional statement of an accused, where it is direct, positive and unequivocal as to the commission of the crime charged, is the best evidence and can be relied upon solely for conviction of the accused person. An accused person can be convicted on his confessional statement alone, where the confession is consistent with other ascertained facts which have been proved. Confession in criminal procedure is the strongest

evidence of guilt on the act of an accused person. It is stronger than evidence of an eye witness because the evidence comes from the horse's mouth who is the accused person. There is no better evidence and there is no further proof. Therefore where an accused person confesses to a crime in the absence of an eye witness to the killing, he can be convicted on his confession alone once the confession is positive, direct and properly proved. In other words, a free and voluntary confession of guilt, direct and positive and if duly made and satisfactorily proved, is sufficient without corroborative evidence so long as the court is satisfied as to the truth of the confession.”

In view of the foregoing, it is my considered view that the judgment of the trial court cannot be faulted at all and the lower court was right in affirming and endorsing it. The appellant has failed to convince me that this is a situation in which this court should interfere.” See also Mini Lodge Ltd Vs. NGEI (2009) 18 NWLR (Pt. 1173) 254 per Musdapher, J.S.C (P.33, Paras B-D).

(Pp 107 – 108 paras B – B)

11. *Court has power to stay proceeding of an accused in a joint trial*
“Section 259(1) of the Criminal Procedure Code Law of Niger State that provides:

“The court may at any stage of the trial, where there are several accused, may by order in writing stating the reasons therefore, stay proceedings of the joint trial and may continue proceedings against each and any of the accused separately”.

The trial court, faced with the situation under Section 259(1) CPC has two options. That is:

- i. To stay further proceedings in the joint trial, apparently until the absconding accused is apprehended or**
- ii. To suspend or stay the proceedings against the absconding accused person and continue with the proceedings in the trial of the remaining accused person(s).**

In the instant case, the trial High Court adopted the latter option. It continued with the proceedings in the trial of the appellants after suspending further proceedings against the fugitive Ahmed M. Dikko. There is nothing wrong with this. It acted perfectly within the letters and spirit of the law as enacted in Section 259(1) CPC. In any case, the appellants have not shown in what way or manner this procedure adopted by the trial High Court had occasioned any miscarriage of justice to them. The appeal, on this issue is flimsy and vexatious. (Pp 109–110 paras F–D)

12. *Judgment delivered in open court by the trial judge before whom the accused was tried is presumed regular*

The appeal, on whether the judgment of the trial court complied with Section 269(1) CPC, is also, in my firm view, vexatious. Section 269(1) CPC requires that every judgment shall contain the point or points for determination, the decision thereon and the reasons therefore, and shall be dated and signed or sealed in the open court at the time of pronouncing it. The complaint here is only that the learned trial Judge did not sign or seal the judgment with the date therein in open court. The appeal is not about the substance of the judgment, but about only the non-signing or sealing of the judgment and its non-dating.

Equity follows the law, and takes as done that which ought be done. This is what Section 168(1) Evidence Act 2011 is about when it provides that when any judicial act is shown to have been in a

manner substantially regular, it is presumed that formal requisites for its validity were complied with. On this presumption, and without the appellants showing in what manner their rights have been compromised or prejudiced, or that they had suffered any miscarriage of justice, I hold that the trial court delivered its judgment wherein the appellants were convicted and sentenced for the offence(s) alleged against them on the date the judgment was delivered in open court. The important fact is that the judgment was delivered in open court by the learned trial Judge before whom they were tried. This resort to arcane technicality has not impressed me. I will not allow the appeal on this issue. I, accordingly, resolve the issue against the appellants. (Pp 110 – 111 Paras D – A)

Nigerian cases cited in this Judgment

Adeoye Vs. State (1996) 6 NWLR (Pt. 605) 74;
Adeyela Vs. Adeyeye (2010) W.R.N. 42;
AG. Federation Vs. Abubakar (2007) 20 W.R.N.;
Ajekaiye Vs. Idehia (1994) 8 NWLR (PT. 364) 504;
Alintah Vs. Federal Republic of Nigeria (2008) All FWLR (Part 436) 1999;
Arabambi Vs. Advance Beverages Ind. Ltd. (2005) 19 NWLR (Pt. 959);
Ariori & Ors. Vs. Muraimo Elemo & Ors. (1983) 1 SC 13;
Arowolo Vs. Olowookere & Ors. (2011) 11-12 SC (Pt. II) P.98;
Artra Ind. Ltd Vs. NBCI (1997) 1 NWLR (PT.483) 574;
Awoniyi Vs. Aleshinloye (1998) 9 NWLR (Pt. 564) 71;
Awopeju Vs. The State (2002) 3 MJSC 141;
Benson Vs. Nigeria Agip Co. Ltd. (1982) 5 S.C 1;
Cameroon Airlines Vs. Otutuizu (2011) 12 SC (Pt. III) P.200;
Chief of Air Staff Vs. Iyen (2005) 6 NWLR (NWLR) (Pt. 922) 496;
Dakat Vs. Dashe (1997) 12 NWLR (PT.531) 46;
Doma Vs. Origi (1998) 3 NWLR (PART 541) Pages 256;
Eyorokooromo Vs. The State (1979) 6-9 SC 3;
GE Int'l Operation Ltd. Vs. Q-O & Serv (2014) ALL FWLR (PT 761) Page 1509;
Haruna Vs. University of Agriculture, Makurdi (2006) All FWLR (Part 304)

- A** 432;
Idakwo Vs. Ejiga (2005) 48 WRN;
Joseph Idowu Vs. The State (2000) 7 SC 50 (2000) 12 NWLR (Pt.680);
Makeri Smelting Co. Ltd. Vs. Access Bank (Nig) Plc (2002) 7 NWLR
B (Pt.766) 447;
Mini Lodge Ltd Vs. NGEI (2009) 18 NWLR (PT. 1173) 254;
National Revenue Mobilization Allocation and Fiscal Commission
(N.R.M.A.F.C) Vs. Johnson (2007) 49 W.R.N 169;;
C *Nkwuda Edamine Vs. The State (1996) 3 NWLR (Pt. 438) 530;*
Ochiba Vs. State (2011) 12 SC (PT. 1V) P.79;
Ochu Vs. FRN (2011) All FWLR (Pt. 563);
Okonji Vs. Njokanma (1991) 7 NWLR (Pt.202) 131;
D *Olowu Vs. Nig. Navy (2011) 12 SC (Pt. II) P.1;*
Opayemi Vs. State (1985) 2 NWLR (Pt.5) 101;
Patrick Ikemson & 2 Ors Vs. The State (1989) 3 NWLR (PT. 110) 455;
Peter Iliya Azabada Vs. The State (2014) All FWLR (P. 751) 1620;
E *Samuel Theophilus Vs. The State (1996) 1 NWLR (PT.423) Page 139;*
Sunday Vs. State (2011) ALL FWLR (PART 568) 922;
The State Vs. Lawal (2013) 7 NWLR (Pt. 1354) 565; and
Uka Vs. Irolo (1996) 4 NWLR (Pt. 441).
F
Nigerian Statutes cited in this Judgment
Criminal Procedure Code (CPC) Sections 268 and 269;
Criminal Procedure Code Sections 153 and 259(1);
G *Evidence Act 2011 Sections 138(1) and (2); Section 168(1); and*
Penal Code Section 97(1).

Representations

- H** **Charles Ihua-Maduenyi and Cindy Ihua-Maduenyi** for the appellant.
A.A. Ibrahim with M.A. Ebute, A. Apeh B.E. Sheyin (Mrs.) and O. Ademola for the respondent.
- I** **DAUDA BAGE, (JSC) (Delivering the Lead Judgment):** This appeal arose from the decision of the Court of Appeal, Abuja Judicial Division,

A delivered on the 8th day of May, 2015 in Appeal No. CA/A/586C2/2012. In the appeal, the court, affirmed the conviction of, and sentence imposed on the appellant by the High Court of Niger State presided over by the chief judge, Hon Justice Jibrin N. Ndajiwo in Suit No. NSHC/MN/11C/2006
B delivered on 29th June, 2012.

The facts of the case are, unlike its convoluted history, direct. The appellant herein was charged as the 3rd accused person respectively in Charge No. NHSC/MN/11C/2006. He was arraigned alongside with three
C others, including one Ahmed M. Dikko, (who later absconded from his sick bed but was consequently declared wanted for being at large). The fugitive Dikko was absent throughout the proceedings at the trial court. This unfortunate development was not to be treated with levity, as proceedings
D continued despite having excused him in a ruling on ground of his unholy act of absconding from facing justice for the criminal allegations against him. His “co-travellers” journeyed-on in the proceedings, as trial continued against his allied-accused persons who were tried on a two count charge of
E culpable homicide not punishable with death and conspiracy contrary to Sections 224 and 97 of the Penal Code respectively. The said Ahmed M. Dikko was the 2nd accused while Dingi Mohammed is the 1st accused person. The aforementioned accused persons were charged with the
F following offences, as amended, quote:-

1st COUNT

G **That you Garba Adamu. Ahmadu M. Dikko, Dingi Mohammed and Hadi Sule on or about 14th day of October, 2005 at Maikunkele via Minna within Minna Judicial Division committed culpable homicide not punishable with**
H **death in causing the death of Manu Hassan in a sudden fight by doing an act to wit by inflicting bodily injuries on him by means of a cutlass which you know was likely to cause his**
I **death and thereby committed an offence punishable under Section 224 of the Penal Code.**

A 2nd COUNT

B That you Garba Adamu. Ahmadu M. Dikko, Dingi Mohammed and Hadi Sule on or about 14th day of October, 2005 at Maikunkele via Minna within Minna Judicial Division agreed to do an illegal act, to wit to cause bodily injuries to Manu Hassan and same act was done in pursuance of the agreement and that you thereby committed an offence punishable under section 97(1) of the Penal Code.

It needs to be reiterated for obvious reasons as to be discovered below.

D During the course of the trial, Mr. Ahmadu Dikko escaped and the prosecution sought and obtained the order of the trial court to stay proceedings against the 2nd accused but proceeded against the three remaining accused persons. The order was granted on 18th June, 2007.

E Thereafter, the prosecution amended the charge and the plea of the three accused persons, including the present appellant were taken to the amended charge. The prosecution called a total of 8 witnesses and each of the three accused persons testified in defence. The appellant in the instant appeal testified as DW.3.

F The ship of the trial sailed smoothly, but not without the wind of technicalities, objections, counter objections and related procedural gymnastics that should, by now, have no place in our civil and criminal jurisprudence. This, regardless, at the conclusion of trial formalities, parties adopted their respective written addresses and matter adjourned for judgment. On the day of judgment, the learned trial judge found that the offence of conspiracy was not proved and discharged and acquitted the

G accused persons on that head of charge.

H However, the learned chief judge, found the three accused persons guilty of the offence of culpable homicide not punishable with death. He reasoned that the offence of “culpable homicide not punishable with death”

I has been proved by the prosecution beyond reasonable doubt.

A Being dissatisfied with the decision of the trial court, the appellant appealed to the lower court which confirmed the conviction and sentence of the appellant. The judgment of the trial court convicting and sentencing the appellant to 15 years imprisonment is at Pages 134176 of the record of appeal while the judgment of the lower court affirming the decision of the trial court is at pages 316 338 of the Record of Appeal.

B Being dissatisfied with the judgment, the appellant sought to overturn the decision by lodging an appeal at the Court of Appeal, Abuja Division.

C The Court of Appeal affirmed the decision of the trial court as embedded in the judgment dated 29 June, 2012. The court directly below ours, in its judgment of May 8, 2015 also affirmed the conviction and sentence of the trial court, meaning the appellant was twice unlucky. Still not satisfied, the appellant appealed to this court.

D In this appeal, the appellant filed his brief of argument dated 2/7/15 wherein four issues were formulated for the determination of this case, thus:

E

1. Whether the court below was right when it affirmed the trial by the trial court of the appellant jointly with Ahmed M. Dikko who was reported to be at large and was absent throughout the proceedings at the trial court in violation of the provisions of Section 259(1) of the Criminal Procedure Code and thereby rendered the whole trial a nullity”.

F

G

2. Whether the court below was right when it held that the judgment/decision of the trial High Court copied at pages 144 176 of the record of appeal which was undated, unsigned and unsealed and was delivered after the court had become *functus officio* in the matter is not *ab initio* null and void and of no effect whatsoever.

H

I

- A** **3. Whether the decision of the court below was right when it refused to impeach the decision of the learned trial chief judge as a result of his failure to consider and pronounce on the appellant's defence to the confessional statements tendered against him as well as his perverse position on the alleged failure of appellant's counsel to file a further address in reply to the address of the learned prosecuting counsel.**
- B**
- C**
- D** **4. Whether the court below was right when it affirmed that the learned trial chief judge properly assessed, evaluated and measured on the imaginary scale the various pieces of evidence laid before him by the parties before proceeding to find the appellant guilty of culpable homicide not punishable with death.**
- E**

Learned counsel for the respondent filed his brief of argument on 27/10/15 and raised three (3) issues for determination, thus:

- F** **“1. Whether the Court of Appeal was right when the court upheld the conviction and sentence of the appellant notwithstanding the absence of the 2nd accused (Ahmed M. Dikko) reported to be at large?”**
- G**
- H** **2. Whether the Court of Appeal was right to have affirmed the conviction and sentence of the appellant by the trial court having regard to the allegation that the judgment copied at page 144 of the record, was undated, unsigned, unsealed and equally delivered after the court had become *functus officio* in the matter?**
- I**

A 3. Whether the Court of Appeal was right when it upheld the conviction of the appellant on the basis of evidence adduced at the trial court.”

B Taking a very close look at the contention of the appellant in the instant appeal leaves one with a clear message from the displeased party. Their message is not only loud but also very clear. His contention is to the effect that the judgment of the court below was, and perhaps still is, a nullity because the appellant was tried together with an absentee accused person.

C Learned counsel to the appellant reiterated the settled principle of law that the trial of an accused in absentia is not only unknown to Nigerian law but also a nullity. In support of this proposition, learned counsel relied heavily on Section 153 of the Criminal Procedure Code and case law authorities of **Chief of Air Staff Vs. Iyen (2005) 6 NWLR (NWLR) (Pt. 922) 496; Ochu Vs. FRN (2011) All FWLR (Pt. 563)**. Counsel also cited and relied on the case of **Alintah Vs. Federal Republic of Nigeria (2008) All FWLR (Part 436) 1999**. Counsel to the appellant further argued that except as permitted under Section 259(1) of the Criminal Procedure Code, the trial of one or more accused person(s) in a joint trial involving several accused persons where one of the accused person was absent offends the provisions of Section 259(1) of the Criminal Procedure Code and rendered the entire proceedings which culminated in the conviction and sentence of the accused person a nullity.

D It was his submission that once a stay of proceedings is granted by the trial court in respect of the absentee accused person, the remaining accused persons should be tried separately and should not be tried jointly with the absentee (I'm minded to add 'fugitive') accused person. The trial of the appellant with the absentee 2nd accused person in absentia, in the considered opinion of counsel, was a serious fundamental flaw which renders the entire proceedings a nullity. To beef-up his position and 'sell' his proposition of law on this issue, counsel also heavily relied on the **Adeoye Vs. State (1996) 6 NWLR (Pt. 605) 74 at 76-79; Eyorokooromo Vs. The State (1979) 6-9 SC 3 at p. 9 and State Vs. Lawal (2013) 7 NWLR (Pt. 1354) 565 at 595-596**.

- A** Learned counsel to the respondent presented his argument by urging the court to affirm the judgment and conviction of the appellant by the court below on the ground that the appellant was neither tried in absentia nor denied fair hearing. He submitted that the Supreme Court decision in **Chief**
- B of Air Staff Vs. Iyen (supra)** and other authorities cited by the appellant's counsel were inapplicable to the circumstances of this case. This is because the appellant was physically present all through the trial and was duly represented by counsel.
- C** In countering the submission of the learned counsel to the appellant on the contention that the appellant was tried jointly with the absentee 2nd accused person, the learned counsel to the respondent further drew the attention of this honourable court to pages 54-143 of the Record of Appeal
- D** and submitted that at no point in time after the grant of stay of proceedings was the name of the 2nd accused person, the absconding accused person, included in the proceedings. He amplifies his position further by arguing that, the trial court's judgment at page 144-176 particularly at page 145
- E** lends credence to the fact that the trial chief judge pointed out and acknowledged the fact that proceedings against the 2nd accused were stayed and by necessary implication and direct act, excluded. He submitted, by way of further clarifications, that the grant of an order of stay of
- F** proceedings against the 2nd accused neither meant that the 2nd accused person was tried and convicted along with the appellant nor suggests that the order staying proceeding was a nullity. Learned counsel to the respondent differs sharply with the position of the appellant's counsel. The
- G** point of divergence is that, according to the former, the requirement of section 259 of the Criminal Procedure Code does not involve mandatory separate trial of the accused persons and that all the law required is that proceedings against any accused persons at large be stayed. (My
- H** understanding also, meant without being necessarily isolated by striking-out his name).

ISSUE TWO

- I** Learned counsel for the appellant in his Brief of Argument submitted that the judgment of trial court which was affirmed by the lower court was

A unsigned and undated in an open court as required under section 269(1) of the CPC. The Section in question, that is Section 269(1) of the Criminal Procedure Code provides that:

B **“Every judgment shall contain the point or points for determination, the decisions thereon and the reasons for the decision and shall be dated and signed or sealed in the open court at the time of pronouncing it.”**

C Counsel posited in his arguments that the dating and signature or sealing of a judgment by the trial Judge in the open court are strict requirements. Relying on the authorities of **Haruna Vs. University of Agriculture, Makurdi (2006) All FWLR (Part 304) 432; Sunday Vs. State (2011) ALL FWLR (PART 568) 922** and **Awoniyi Vs. Aleshinloye (1998) 9 NWLR (Pt. 564) 71**.

E On his part, the respondent's counsel countered that the learned trial judge dutifully complied with the provisions of section 269(1) and that the court below was right to have upheld the decision of the trial court. The learned counsel emphasized that the appellant placed nothing before the court to indicate non-compliance with the provisions of Sections 268 and 269 of the Criminal Procedure Code (CPC). Counsel relied on the case of **Doma Vs. Origi (1998) 3 NWLR (PART 541) Pages 256; GE Int'l Operation Ltd. Vs. Q-O & Serv (2014) ALL FWLR (PT 761) Page 1509 at 1529** and submitted that the judgment delivered on 29th June, 2012

F contains all the requisite requirements of a valid judgment and therefore

G valid for all intent and purposes.

Issues 3 and 4 formulated by the appellant revolved around weight and evaluation of evidence before the trial court. However, the third issue

H formulated by the Respondent also centres on evidentiary issues.

On his part, the appellants' counsel argued his issues 3 and 4 together and contended that although the appellant's confessional statement was tendered and admitted in evidence, the trial court failed to advert his

I attention to the fact that the appellant had denied same on the ground that it was coercive and made involuntarily, as he was tortured by the police. He

A contended that the defence of the appellant to the so-called confessional statements tendered against the accused persons were clearly unchallenged and remained firm and unshaken even under cross-examination and that the trial judge failed woefully to consider same in his judgment before coming

B to the conclusion that the appellant was the maker of the said confessional statement. The learned counsel relied on **Opayemi Vs. State (1985) 2 NWLR (Pt.5) 101; Okonji Vs. Njokanma (1991) 7 NWLR (Pt.202) 131; Uka Vs. Irolo (1996) 4 NWLR (Pt. 441)** in submitting that failure of the

C trial judge to consider the aforesaid defence of the appellants amounts to denial of fair hearing and renders the judgment impeachable.

On his part, the respondent's counsel argued (on his issue 3) that the burden of proof of a criminal offence is proof beyond reasonable doubt of a

D criminal offence is proof beyond reasonable doubt to secure conviction. The learned counsel stressed further that proof beyond reasonable doubt is not therefore proof beyond all possible or imaginary doubt. The learned counsel cited the provisions of sections 28 and 138(1) of the Evidence Act

E in asserting that confessional statement is the best evidence to ground conviction and can be relied upon solely where voluntary. He cited the case: **Peter Iliya Azabada Vs. The State (2014) All FWLR (P. 751) 1620, para. B Per Onnoghen JSC (as then was; now CJN).**

F *Determination of the issues*

The evaluation of arguments respectively put forward by both the learned counsel for the appellant and respondent on the issues he formulated for the

G determination in this appeal reveals that the central contention of the parties bordered on: (1) the trial of the absconding Ahmed M. Dikko; (2) alleged failure to comply with section 259(1) of the CPC on mode of delivering judgment, and (3) effect of confessional statement of the appellant. All

H other issues and arguments are ancillary and/or appurtenant to the three points of contention, which, as I can deduce, border on three cardinal aspects of our jurisprudence: procedure; evidence and judgment. To anchor and resolve the respective contentions put forward by the parties, I have

I formulated three issues for determination thus:

A It is not in contention that the trial court granted and indeed stayed proceedings against the fugitive 2nd accused person who absconded. From the record of proceedings, and as rightly argued by respondent counsel, at no point in time after the grant of stay of proceeding was the name of the 2nd accused person, the absconding accused person, mentioned in the proceedings. It would appear that the contention of the appellant, on the basis of which he asked us to set aside the decision of the court below, and by necessary implications, that of the trial court, is that the trial court ought to have struck-out the name of the absconded 2nd accused person. Although doing so may be appropriate, I see no reason why it becomes procedurally imperative in view of the very clear and unambiguous provisions of section 259(1) of the CPC quoted above.

D I wish to add that the above provision is very clear and unambiguous. The word “**MAY**” is used twice in that simple provision to connote discretionary rules. The court 'may' by order stay proceedings of joint trial...”, which the trial court did, apparently and (for deliberate tautology) obviously and in writing within the precinct of the section that says “**may**” by order in writing.....”

F This court stated times without number, that the law is settled that express written provision of the law must be given its literary meaning irrespective of flowery embellishments in counsel's written argument. *See Calabar Central Co-operative Thrift and Credit Society Limited & 2 Ors Vs. Bassey Ekpong Ekpo (supra)* where **Onnoghen JSC** (as he then was) at page 29, lines 40-45, stated thus:

G **It is settled law that where the words of a statute or Constitution are clear and unambiguous, they call for no interpretation, the duty of the court in such a circumstance being to apply the words as used by the legislature.**

H

I This court, also in the case **AG. Federation Vs. Abubakar (2007) 20 W.R.N., per Akintan, JSC** restated the position as follows:

- A** It is necessary to say something about the general principle of interpretation of statutes, including constitutions. The generally accepted rule of construction is that it is to be assumed that the words and phrases of
- B** technical legislation are used in their technical meaning if they have acquired one, and otherwise in their ordinary meaning. Phrases and sentences are to be constructed
- C** according to the rules of grammar. If there is nothing to modify, alter or qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences. This approach is regarded as 'literal interpretation' or characterized as the
- D** 'positivist approach'....”

- To my view, the above provisions are fully complied with. It is not within the contemplation of section 259 of the CPC that the name of the absconded
- E** 2nd accused person must, *willy-nilly*, be deleted. The grant of an order of stay of proceedings against the 2nd accused, in our considered view, neither meant that the 2nd accused person was tried and convicted along with the appellant nor vitiate the order staying proceeding itself. The logic of the
- F** appellant's contention, which he failed to effectively sell; or sold but we did not buy, not for the lack of means but because subscribing to such would amount to technical justice, is that the requirement of section 259 of the Criminal Procedure Code does require mandatory separate trial of the
- G** accused persons. This is reading extraneous meaning to the above provisions as proceedings against any accused persons which is stayed as required by law needs not be isolated or his name struck-out. As I had said above, striking out his name may be appropriate but not crucial as he ceased
- H** being part of the proceedings upon the grant of stay.

- I also wish to add a point on the effect of rules of procedures like the CPC, which, unwittingly may, or now increasingly being cited to sway the outcome of criminal trial beyond the merit of the case. In the famous case of
- I** **Ariori & Ors. Vs. Muraimo Elemo & Ors. (1983) 1 SC 13 at 24 per Obaseki JSC**, this court opined that fair hearing means a trial conducted

A according to all the legal rules formulated to ensure that justice is done to the parties to the cause. *See also Idakwo Vs. Ejiga (2005) 48 WRN at ratio 5, page 35 to 36.*

B Elsewhere, in the case of **Adeyela Vs. Adeyeye (2010) W.R.N. 42 at pages 70 to 71** I had opined, and remain so persuaded without having cause to change my view, that:

C **“Rules of procedure are made for the convenience and orderly hearing of cases in court. They are made to help the cause of justice and not defeat justice. The rules are therefore aids to the court and not masters of the court. For courts to read rules in the absolute without recourse to the justice of the cause, to my mind, will be making the courts slavish to the rules. This certainly is not the reason of the rules of court.”**

E The provision of the CPC is intended, in this case and indeed all criminal proceedings, to aid in the smooth, fair and just administration of criminal justice. It certainly does not intend to defeat the end of justice. To take solace in the rule of procedure under section 259 of the Criminal Procedure Code to defeat justice without neutralizing or contradicting the evidence before the trial court is herculean task.

F In view of the foregoing, issue one is resolved in favour of the respondent.

G *Issue 2:*

H **“Whether the court below was right to have upheld the decision of the trial court in view of the provisions of Section 269(1) of the CPC.”**

I The contention on issue two is the same as issue one having been based on Section 269(1) of the Criminal Procedure Code which provides that:.

A **“Every judgment shall contain the point or points for determination, the decisions thereon and the reasons for the decision and shall be dated and signed or sealed in the open court at the time of pronouncing it.”**

B

I re-adopt my earlier views and ruling on issue one which bordered on Section 259 of the CPC in resolving the essence and purport of section 269(1) of the same law. In addition, beyond contesting formalities, which is grossly misplaced, the appellant placed nothing before the court to indicate non compliance with the provisions of Sections 269 of the Criminal Procedure Code (CPC). I align with the court below in affirming that the judgment delivered on 29th June, 2012 by the learned chief judge contains all the requisite requirements of a valid judgment and therefore valid for all intent and purposes. Assuming without conceding that the argument is logical, I'm yet to see why the dating and signature or sealing of a judgment by the trial judge in the open court is made a strict requirement of law to vitiate a trial or judgment. It would have made better sense if doing so or it lacks occasioned miscarriage of justice on the part of the appellant.

Enough said on the essence of the provisions of the CPC against substantial justice. Litigants should expect no technical but substantial justice from this court. We have said several times that we are not a workshop for technical justice. Over and over again, we have reiterated the need to do substantial justice and avoid delving into error of technicalities. See for example the case of **National Revenue Mobilization Allocation and Fiscal Commission (N.R.M.A.F.C) Vs. Johnson (2007) 49 W.R.N Pages 169-170** where **Per Peter-Odili, JCA** (As he then was) opined as follows:

H **“.... The courts have deliberately shifted away from narrow technical approach to justice which characterized some earlier decisions to now pursue the course of substantial justice. See *Makeri Smelting Co. Ltd. Vs. Access Bank (Nig) Plc (2002) 7 NWLR (Pt.766) 447 at 476-477.... The attitude of the courts has since changed against***

I

- A** **deciding cases on mere technicalities. The attitude of the courts now is that cases should always be decided, wherever possible on merit. Blunders must take place from time to time, and it is unjust to hold that because a**
- B** **blunder has been committed, the party blundering is to incur the penalty of not having the dispute between him and his adversary determined upon the merits.”**
- C** *See also Ajekaiye Vs. Idehia (1994) 8 NWLR (Pt. 364) 504, Artra Ind. Ltd Vs. NBCI (1997) 1 NWLR (Pt.483) 574, Dakat Vs. Dashe (1997) 12 NWLR (Pt..531) 46, Benson Vs. Nigeria Agip Co. Ltd. (1982) 5 S.C 1.*
- D** In view of the above, issue two is, like issue one, also resolved against the appellant and in favour of the respondent.

ISSUE 3:

- E** **“Whether the court below was right to have upheld the conviction and sentence of the appellant on the basis of his confessional statement and evidence adduced at the trial court.”**
- F** This final issue answers the appellant's issues 3 and 4 and respondent's issue 3, all which contended for and against the effect of appellant's confessional statement and whether it amounts to a denial of fair hearing
- G** which renders the judgment impeachable. Fair trial or hearing is a strict rule. What must be added and emphatically stressed is the fact that the principle of fair hearing as enshrined under the Constitution of the Federal Republic of Nigeria, 1999 as amended (CFRN, 1999) is for the benefit of
- H** the appellant and respondent. Section 36(1) of the CFRN, 1999 provides thus:
- I** **“In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a**

- A** **fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality.”**
- B** The burden of proof of a criminal offence is proof beyond reasonable doubt to secure conviction. The evidence at the trial and which was concurrently upheld by the courts below is that the respondent has adduced enough, convincing evidence to prove beyond reasonable doubt, including the
- C** confessional statement of the appellant, the ingredients of the offence of culpable homicide not punishable with death as basis for convicting the appellant. The burden of proof in criminal offences, to all intents and purposes, remains proof beyond reasonable doubt to secure conviction.
- D** Sections 138(1) and (2) of the Evidence Act also give the court power to make necessary inference as to admissibility of a piece of evidence, including, in my considered view, confessional statement whether or not same is subsequently denied by the maker. It states thus:
- E** **“138. Burden of proving fact necessary to be proved to make evidence admissible.**
- F** **(1) The burden of proving any fact necessary to be proved in order to:**
- G** **(a) enable a person to adduce evidence of some other fact; or**
- G** **(b) prevent the opposite party from adducing evidence of some other fact, lies on the person who wishes to adduce, or to prevent the adduction of such evidence, respectively.**
- H** **(2) The existence or non existence of facts relating to the admissibility of evidence under this section is to be determined by the court.”**
- I** The law is settled that the Supreme Court, this noble court, will not interfere with concurrent findings of facts made by the trial court and the Court of

A Appeal unless such findings are perverse; or are not supported by the evidence; or are reached as a result of a wrong approach to the evidence; or as a result of a wrong application of evidence; or as a result of a wrong application of any principle of substantive law or procedure.” *See*

B Arabambi Vs. Advance Beverages Ind. Ltd. (2005) 19 NWLR (Pt.959) 1 PER Onnoghen, J.S.C (as he then was) at (P. 46, C-E).

In this case, there are two concurrent findings of facts of the lower courts on the issue. It is usual in this court, in such circumstances, to decline to review the evidence a third time particularly when we are not convinced or persuaded, as in this case, that there has been a miscarriage of justice or a violation of some principles of law or procedure, or that the two findings of the trial court and the court next to us, are and/or were perverse. *See Ochiba*

D Vs. State (2011) 12 SC (PT. 1V) P.79 PER RHODES-VIVOUR, J.S.C (PP. 51-52, Paragraphs F-B). See also Cameroon Airlines Vs. Otutuizu (2011) 12 SC (Pt. III) P.200; Olowu Vs. Nig. Navy (2011) 12 SC (Pt. II) P.1; Arowolo Vs. Olowookere & Ors. (2011) 11-12 SC (Pt. II) P.98.

E By virtue of the provisions of sections 28 of the Evidence Act, confessional statement is tenable and admissible. The section describes a confessional statement thus:

F **“A confession is an admission made at any time by a person, charged with a crime tending to show or suggest the inference that he committed the crime.”**

G Confessional statement is the best evidence to ground conviction and, as held in a number of cases, it can be relied upon solely where voluntary. The criminal guilt of an accused person could be established by confessional statement, circumstantial evidence and evidence of an eye witness. A

H confessional statement of the appellant that was free and voluntary regardless of the facts that he (the appellant) subsequently resiled from his voluntary confession at trial, is good evidence to ground conviction. A confessional statement does not become inadmissible simply because the

I accused person denied having made it. This has been the settled position in our jurisprudence of criminal justice. *See* for example **Patrick Ikemson &**

- A 2 Ors Vs. The State (1989) 3 NWLR (PT. 110) 455 AT 476 Para D; Joseph Idowu Vs. The State (2000) 7 SC 50 AT 62; (2000) 12 NWLR (Pt.680), at 48, Nkwuda Edamine Vs. The State (1996) 3 NWLR (Pt. 438) 530 at 537 Para D-E; Samuel Theophilus Vs. The State (1996) 1 NWLR (PT.423) Page 139 at 155 Para A-B; and Awopeju Vs. The State (2002) 3 MJSC 141 at 151.**

C This court, and incidentally by no less a Jurist other than the learned **Onnoghen JSC** (as he then was; and proudly the CJN) in **Peter Iliya Azabada Vs. The State (2014) All FWLR (P.751) 1620, PARA B** has made it abundantly clear in the following words:

D “The confessional statement of an accused, where it is direct, positive and unequivocal as to the commission of the crime charged, is the best evidence and can be relied upon solely for conviction of the accused person. An accused person can be convicted on his confessional statement alone, where the confession is consistent with other ascertained facts which have been proved. Confession in criminal procedure is the strongest evidence of guilt on the act of an accused person. It is stronger than evidence of an eye witness because the evidence comes from the horse's mouth who is the accused person. There is no better evidence and there is no further proof. Therefore where an accused person confesses to a crime in the absence of an eye witness to the killing, he can be convicted on his confession alone once the confession is positive, direct and properly proved. In otherwords, a free and voluntary confession of guilt, direct and positive and if duly made and satisfactorily proved, is sufficient without corroborative evidence so long as the court is satisfied as to the truth of the confession.”

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A In view of the foregoing, it is my considered view that the judgment of the trial court cannot be faulted at all and the lower court was right in affirming and endorsing it. The appellant has failed to convince me that this is a situation in which this court should interfere.” *See also Mini Lodge Ltd*
B **Vs. NGEI (2009) 18 NWLR (PT. 1173) 254 per Musdapher, J.S.C (P.33, Paras B-D).**

It is in view of the foregoing that issue three is also resolved against the appellant. This appeal fails on the whole. This appeal lacks merit and is accordingly dismissed. The conviction and sentence of the appellant by the
C court below are hereby reconfirmed. The judgment of the lower court dated 8th May, 2015 is hereby affirmed.

D **Sidi Dauda Bage,**
Justice, Supreme Court

NKANU ONNOGHEN, (CJN): I have had the benefit of reading in draft the lead Judgment of my learned brother **SIDI DAUDA BAGE**, JSC just
E delivered.

I agree with his reasoning and conclusion that the appeal lacks merit and I hereby adopt the judgment.

F I therefore order accordingly and affirm the Judgment of the lower court.

Appeals dismissed.

G I also agree that the judgment of the Court of Appeal in appeal No. CA/A/586/2012 affirming the conviction and sentence of the appellants, as contained in the judgment of Niger State High Court in the charge No. NSHC/MIN/11c/2006 delivered on 29th June, 2012, be and is hereby affirmed.

H **Walter Samuel Nkanu Onnoghen**
Chief Justice of Nigeria

KEKERE-EKUN, (JSC): I have had the benefit of reading in draft the judgment of my learned brother SIDI DAUDA BAGE, JSC just delivered.
I This appeal is a sister appeal to Appeal No. SC 404/2015: Garba Adamu Vs The State just delivered this morning in which I concurred with the

A reasoning and conclusion of my learned brother that the appeal was devoid of merit. I adopt the same reasoning and conclusion in the instant appeal. I hold that the appeal lacks merit. I accordingly dismiss it and affirm the judgment of the Court of Appeal, Abuja Division delivered on 8/5/2015.

B **Kudirat M. O. Kekere-Ekun**
Justice, Supreme Court

C **EJEMBI EKO, (JSC):** These are appeals against the judgment of the Court of Appeal, Abuja Division, delivered on 8th May, 2015 in the appeal No. CA/A/586/2012. The Court of Appeal had in the judgment affirmed the conviction and sentence of the appellants by the Niger State High Court upon the charge No. NSHC/MN/11C/2006.

D The appellants were being prosecuted jointly with one Ahmed M. Dikko, who later absconded. With the absconsion of the said Ahmed M. Dikko, the trial High Court stayed further proceedings against him. It however, continued the proceedings against the remaining accused persons, including the appellants herein.

E In this further appeal the appellants are complaining *inter alia* that trial and conviction, affirmed by the court below, were wrong in law in the absence of Ahmed M. Dikko, who was being jointly tried with them. This clearly is a wrong interpretation or appreciation of Section 259(1) of the Criminal Procedure Code Law of Niger State that provides:

G **“The court may at any stage of the trial, where there are several accused, may by order in writing stating the reasons therefore, stay proceedings of the joint trial and may continue proceedings against each and any of the accused separately”.**

H The trial court, faced with the situation under Section 259(1) CPC has two options. That is:

I **i. To stay further proceedings in the joint trial, apparently until the absconding accused is**

- A** **apprehended or**
- ii. To suspend or stay the proceedings against the**
- B** **absconding accused person and continue with the**
- proceedings in the trial of the remaining accused**
- person(s).**

C In the instant case, the trial High Court adopted the latter option. It continued with the proceedings in the trial of the appellants after suspending further proceedings against the fugitive Ahmed M. Dikko. There is nothing wrong with this. It acted perfectly within the letters and spirit of the law as enacted in Section 259(1) CPC. In any case, the

D appellants have not shown in what way or manner this procedure adopted by the trial High Court had occasioned any miscarriage of justice to them. The appeal, on this issue is flimsy and vexatious.

E The appeal, on whether the judgment of the trial court complied with Section 269(1) CPC, is also, in my firm view, vexatious. Section 269(1) CPC requires that every judgment shall contain the point or points for determination, the decision thereon and the reasons therefore, and shall be dated and signed or sealed in the open court at the time of pronouncing it.

F The complaint here is only that the learned trial Judge did not sign or seal the judgment with the date therein in open court. The appeal is not about the substance of the judgment, but about only the non-signing or sealing of the judgment and its non-dating.

G Equity follows the law, and takes as done that which ought be done. This is what Section 168(1) Evidence Act 2011 is about when it provides that when any judicial act is shown to have been in a manner substantially regular, it is presumed that formal requisites for its validity were complied

H with. On this presumption, and without the appellants showing in what manner their rights have been compromised or prejudiced, or that they had suffered any miscarriage of justice, I hold that the trial court delivered its judgment wherein the appellants were convicted and sentenced for the

I offence(s) alleged against them on date the judgment was delivered in open court. The important fact is that the judgment was delivered in open court

A by the learned trial Judge before whom they were tried. This resort to arcane technicality has not impressed me. I will not allow the appeal on this issue. I, accordingly, resolve the issue against the appellants.

I read in draft the judgment of my learned brother, SIDI DAUDA
B BAGE, **JSC**, in these appeal. It represents my views in the appeal. I hereby adopt the judgment.

The appeals are hereby dismissed. The judgment of the Court of Appeal in appeal **No.CA/A/586/2012** affirming the conviction and sentence of the appellants, contained in the judgment of Niger State High Court in the charge **No. NSHC/MN/11^C/2016** delivered on 29th June, 2012, is hereby affirmed.

D

Ejemi Eko,
Justice, Supreme Court

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HON. SUMBO OLUGBEMI

AND

- 1. HON. OLUJIDE ADEWALE LAWRENCE**
- 2. ALL PROGRESSIVE CONGRESS (APC)**
- 3. THE CHAIRMAN, ALL PROGRESSIVE CONGRESS, OYO STATE**
- 4. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)**

SC. 993/2016

**IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA**

FRIDAY, 28TH APRIL 2017

BEFORE THEIR LORDSHIPS

**IBRAHIM TANKO MUHAMMAD
MARY UKAEGO PETER-ODILI
KUMAI BAYANGAKAAHS
AMINA ADAMU AUGIE
PAUL ADAMU GALINJE**

**JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT**

APPEAL: Current Findings – Where appellant did not challenge the concurrent findings of two lower courts – Effect.

CASE LAW: Principles in PDP Vs. Sylva (2012) 12 NWLR (Pt 1316) 85

CASE LAW: Principles in Kakih Vs. PDP (2014) 15 NWLR (Pt 1430) 374

COURT: Jurisdiction – How determined.

COURT: Jurisdiction – Where two courts have concurrent jurisdiction in respect of a subject matter – Significance thereof.

COURT: Jurisdiction of Federal High Court in pre-election matters exercisable based on the distinction between main and auxiliary claims.

COURT: Jurisdiction of Federal High Court in pre-election matters – Whether the Federal Government or any of its agencies must be a party before the Federal High Court is competent to exercise its jurisdiction under S. 87 (9) of the Electoral Act.

COURT: Jurisdiction of Federal High Court to entertain pre-election matters – Section 87(9) of Electoral Act 2010 – Purport and imperatives.

COURT: Source of jurisdiction of the Federal High Court in pre-election matters.

ELECTION: Pre-election disputes – S. 87(9) of Electoral Act 2010 (as amended) – When avails a party – Relevant considerations thereto.

STATUTE: Section 87 (9) of Electoral Act 2010 (as amended) – Purport.

Issues for Determination

All the issues, as differently crafted ask the same question which is really whether the Court below was right in holding that the trial court had jurisdiction to try the case in spite of the reliefs sought by the 1st respondent.

Facts of the Matter

The plaintiff (now 1st respondent) had instituted an action at the Federal High Court, Ibadan claiming that he was one of the four candidates who vied for the nomination of the All Progressive Congress (APC) to represent Oluyole Federal Constituency of Oyo State in the February, 2015 General Elections and polled the majority of lawful votes cast in the primary election conducted by the 2nd defendant on 7/12/2014 and was so declared as the winner. Despite his

being declared the winner the 2nd defendant/respondent submitted the name of the 1st defendant/appellant to the 4th defendant/respondent as the candidate of the Party to contest the election. He thereby lodged a complaint with the 3rd defendant about the manipulation which led to the 2nd defendant forwarding the name of the 1st defendant as candidate for the election but his grievance was not addressed and as a result he instituted the action in the Federal High Court seeking the following reliefs against the defendants in the amended statement of claim:

- “(i) A DECLARATION that the plaintiff is the duly elected flag bearer of the 2nd defendant for February, 2015 general elections into the House of Representatives to represent Oluyole Federal Constituency Ibadan, Oyo State having polled a majority of lawful votes cast at the primary election conducted by the 2nd defendant on the 7th December, 2014 and was so declared the winner.**
- (ii) A DECLARATION that the nomination of the 1st defendant as the 2nd defendant's candidate or flag bearer for the February, 2015 general election for the seat of the member of House of Representatives to represent Oluyole Federal Constituency is ultra-vires, null and void.**
- (iii) AN ORDER nullifying the nomination of the 1st defendant and the substitution of the plaintiff by the 2nd defendant as its candidate for the election into the National Assembly for the seat of a member of the House of Representatives representing Oluyole Federal Constituency, Ibadan.**
- (iv) AN ORDER directing the 2nd and 3rd defendant to forthwith accord the plaintiff due recognition as their**

flag bearer for the February, 2015 general election into the House of Representatives to represent Oluyole Federal Constituency Ibadan.

- (v) AN ORDER of perpetual injunction restraining the 2nd and 3rd defendants from recognizing, acting or doing anything in recognition of the nomination and selection of the 1st defendant as the 2nd defendant's candidate for the forthcoming February, 2015 general election into the House of Representatives to represent Oluyole Federal Constituency Ibadan, Oyo State.**
- (vi) AN ORDER nullifying the purported nomination of the 1st defendant by the 2nd defendant as its flag bearer to contest for the seat of the House of Representatives to represent Oluyole federal Constituency Ibadan in the forthcoming general election scheduled to hold in February, 2015.**
- (vii) AN ORDER directing the 4th defendant not to recognize or accord any recognition to the name of Hon. Olasumbo Olugbemi or any person other than the name of Hon. Oluyide Adewale Lawrence as the 2nd defendant's candidate for the House of Representatives to represent Oluyole Federal Constituency Ibadan, Oyo State.**
- (viii) AN ORDER of this Honourable Court nullifying the nomination and election of the 1st defendant into the Oluyode Federal Constituency Legislative Seat Ibadan, Oyo State of the House of Representatives.**
- (ix) AN ORDER Declaring the claimant as the lawful**

candidate of the 2nd defendant at the general election held on the 28th day of March, 2015 for Oluyole Federal Constituency Legislative seat (Oyo State) of the House of Representatives, National Assembly of the Federal Republic of Nigeria.

- (x) AN ORDER directing the 4th defendant to immediately withdraw the certificate of return it issued to the 1st defendant as the candidate of the 2nd defendant in the general election held on the 28th day of March, 2015 into the Oluyole Federal constituency Legislative seat (Oyo State) of the House of Representatives, National Assembly of the Federal Republic of Nigeria.**
- (xi) AN ORDER directing the 4th defendant to immediately issue a certificate of return to the claimant as the lawful elected candidate of the 2nd defendant in the general election held on the 28th day of March, 2015 for the Oluyole Federal Constituency Legislative Seat (Oyo State) of the House of Representatives National Assembly of the Federal Republic of Nigeria.**
- (xii) OR IN THE ALTERNATIVE to paragraph Xi above AN ORDER of this Honourable Court ordering the 4th respondent to conduct a fresh general election into the Oluyole, Ibadan, Oyo State, Federal Constituency Legislative Seat of the House of Representatives, Federal Republic of Nigeria”.**

Reliefs (viii) (xi) were added after the general election had taken place. At a glance reliefs (vii), (viii), (x) and (xi) are directed at the 4th defendant but before the Statement of Claim was amended it was only relief (vii) that had anything to do with the 4th defendant. It is the spill over of the case after the general election

that necessitated the amendment which was granted on 9th December, 2015 the trial court. Earlier the appellant (then 1st defendant) had applied by motion on notice dated 11/11/2015 to strike out the suit for being incompetent as the reliefs sought were said to be ungrantable. But in the ruling delivered on 9th December, 2015 by the trial court refused to accede to the prayers sought in the motion and thereby struck out the application.

The complaint of the 1st respondent (as plaintiff) was that he contested the primaries and secured the highest number of votes and as a result his party ought to have forwarded his name to the 4th defendant as the candidate of the party for the 2015 general election for the Oluyole Federal Seat of the House of Representatives but instead it was the name of the appellant (as 1st defendant) that was sent. This is the situation envisaged by section 87(4) of the Electoral Act 2010 (as amended). Where such a situation occurs, the aggrieved party has a right to seek remedy in the appropriate court which could be a State High Court or the Federal High Court as stipulated in section 87(9).

Held: *(Unanimously dismissing the appeal)*

- 1) *The jurisdiction of Federal High Court to entertain pre-election matters*
In the case of Lokpobiri Vs. Ogola & Ors (2015) 10-11 MJSC Pg. 74 at 93-94, Paras G to G, this Court said:

“I want us to also note that both the opening of Section 251 (1) and paragraph 'S' of the subsection confer authority on the National Assembly, in addition to the general provision of legislative powers in Section 4 of the 1999 Constitution, as any dissatisfied contestant at the primary is now empowered by Section 87 (9) of the Electoral Act, 2010 (as amended) to ventilate his complaint before the Federal High Court or High Court of a State or of the Federal Capital Territory; People's Democratic Party Vs. Timipre Silva. The said Section 87 (9) is clear and unambiguous, the courts are enjoined to give them their ordinary grammatical

meaning: Egbe Vs. Yusuf (1992) 6 NWLR (Pt. 245) 1. By inserting this new provision into the Electoral Act, the legislature has made its intention very clear as to the reason, and purport, that a member of a political party who contested the primary election is entitled to challenge a breach of the party constitution or Guidelines or Electoral Act, by filing an action at the Federal High Court or State High Court or the Federal Capital Territory High Court, simpliciter.”
(Pp 137–138 Paras D–B)

- 2) *The exercise of jurisdiction of the Federal High Court in election matters is not dependent on the distinction between main and ancillary claims per Peter Odili (JSC)*

The appellant really made a lot of fuss on main or principal relief as against ancillary relief upon which jurisdiction of court may or may not be activated. Perhaps this court had in a clairvoyant manner gone to great lengths in dealing with this attempt at creating boundaries of main and ancillary reliefs in relation to jurisdiction of court in the case of Lokpobiri Vs. Ogola (2016) 3 NWLR (Pt. 1499) 328 at 366. The Court said:

“To me, it is erroneous to say that for the Federal High Court to entertain a pre-election matter, the main relief(s) must be shown to fall within the exclusive jurisdiction of the court because both jurisdictions are different. In a concurrent jurisdiction, if court 'A' has jurisdiction to hear all the reliefs claimed, it necessarily follows that court 'B' must have the same jurisdiction otherwise it means giving something to someone with one hand and taking it away with the other hand. It is settled law that election and election related matters are sui generis (sic) and that the jurisdiction to provisions of the Electoral Act, 2010 as amended,

earlier reproduced in this judgment. In respect of matters relating to post election jurisdiction of the court, see Section 251 (4) of the 1999 Constitution, as amended also supra. If we insist on the jurisdiction of the Federal High Court on pre-election and/or post election matters being exercisable only where the main claim(s) is/are within the exclusive jurisdiction of the Federal High Court, it will result in injustice on the litigants which is clearly not the intention of the legislature. It is therefore very clear that the concurrent jurisdiction conferred on the Federal High Court to hear and determine pre-election and even post election matters is clearly outside the exclusive jurisdiction of the court under Section 251 of the 1999 Constitution as amended but in addition to the said exclusive jurisdiction and consequently subject to different consideration.

It is therefore my considered opinion when the Federal High Court's pre-election jurisdiction is invoked, the parties claims and relief(s) must be in conformity with the provisions of the Electoral Act, 2010, as amended, not under the provisions of Section 251 of the 1999 Constitution, as amended. In fact, INEC may be a nominal party or be liable to an ancillary claim in a pre-election or post elections jurisdiction of the Federal High Court.

The position I have taken on this issue is advised by the decision of this court in *Jev Vs. Iyortom* (2014) 14 NWLR (Pt. 1428) 575 at 611-613; 626-627, 630 and 631-632.

My attention has been drawn by learned counsel for the Respondent to the decision of this court in PDP Vs. Sylva (2012) B.13 NWLR (Pt. 1316) 85 and Kakih Vs. PDP (2014) 15 NWLR (Pt. 1430) 374 said to be in support of their contention that for the Federal High Court to exercise its pre-election jurisdiction under the Electoral Act, 2010, as amended, the main claim(s) or reliefs of the plaintiff must be within the purview of the provisions of Section 251 of the 1999 Constitution, as amended. A detailed reading of the facts of PDP Vs. Sylva supra does not support that contention. The case simply held that Sylva who was not screened by his party (PDP) for the primaries in question nor participated in the said primaries, failed to bring himself within the provisions of Section 87 (9) of the Electoral Act, 2010, as amended and as such he had no locus standi to institute an action under the Section 87 (9) in any Court in Nigeria as his complaints were within the internal affairs of a political party which are not justiciable. So, the reliefs claimed in that action were incapable of invoking the jurisdiction of the court see pages 127 & 137-139 of the report. It must be pointed out that the effect of the decision in Sylva's case is that the action as constituted was not a pre-election matter and as such, it could not be entertained in any court. Any other thing said is clearly obiter.

With respect to the decision of this Court in the case of Kakih Vs. PDP, supra, I wish to emphasize that the court did not hold the Federal High Court does not have jurisdiction to hear and determine pre-election matters. It held that it does but that the jurisdiction so conferred is exercisable by that court when the main claim of the plaintiff falls within the provisions of

Section 251 of the 1999 Constitution and not when the claim against an agency of the Federal Government is ancillary.

Having regard to what I have stated earlier in this judgment with respect to the Sui generic nature of an election or election related matters and the jurisdiction of the courts to entertain them, which are special statutory jurisdictions, the fact that the Federal High Court, by operation of Section 251 (4) of the 1999 Constitution is also clothed with jurisdiction to entertain post election matters whose claims or reliefs may not necessarily involve/affect the Federal Government or any of its agencies, it is clear that the intention of the legislature in conferring the additional jurisdiction of the Federal High Court in relation to pre-election and post-election matters is clearly that the additional jurisdiction is to be exercised by the court in accordance with Electoral Act, 2010, as amended, creating the jurisdiction as well as Section 251 (4) of the 1999 Constitution. It is therefore clear that Kaki's case as regard the issue of the jurisdiction of the Federal High Court in pre-election matters is limited to its peculiar facts and circumstances having regard to the decision in *Jev Vs. Iyortyom supra*".

It follows therefore that once an aggrieved party comes within the ambit of Section 87 (9) of the Electoral Act, 2010 (as amended), the issue of main relief as against an ancillary one does not come into play or arise. Removing jurisdiction for some of the reliefs and endowing for other reliefs to a court will lead to confusion as one court will be dealing with a particular relief while the other court is sorting out the reliefs allotted to it in a severance method that beats the imagination. It would produce a never ending dispute since the

facts in the two courts are the same arising from the same base.

What is obtaining in the matter at hand as 1st respondent as plaintiff has his claim well positioned under Section 87 (9) of the Electoral Act, 2010 as amended, the original claims as captured in the Writ of summons and statement of claim and thereafter the Amended Statement of Claim. The said Section 87 (9), is opened with the word “aspirant” which the 1st respondent is as defined under Section 156 of the said Electoral Act to mean a person who aspires or seeks or strives to contest in election to a political office. (Pp 138–142 paras B–H)

- 3) *The nature of the jurisdiction of the Federal high Court under S. 87(9) Electoral Act 2010 (as amended)*

Also to be noted is that reliefs 15 (vii), (x), (xi) and (xii) in the amended statement of claim which are to direct the 4th defendant, INEC, a Federal Agency not only to deny recognition to the 1st defendant and party but to direct the said 4th defendant to withdraw the certificate of return already issued to the 1st defendant as candidate of 2nd defendant and to issue the certificate to the plaintiff. Certainly what is sought in those reliefs cannot in all honesty be treated with the levity to which an ancillary claim would be labelled as they are principal or major claims and prayers. Again I seek refuge in the case of this court in Lokpobiri Vs. Ogola supra at page 106 Paras A-D, The Supreme Court said:

“In Section 251 (1) and (s) of the Constitution (supra) read together with Section 31 (5) and Section 87 (9) of the Electoral Act (supra), it is specious and spurious to argue, as the respondent did, that the Federal High Court has no jurisdiction, if the claim brought pursuant to Section 87 (9) of the Act (supra) does not involve the Federal Government or any of its agencies is a party the claim against it must be a principal relief

and not a mere subsidiary thereof. This is a fallacy created by skewed construction of the provisions of th Constitution (supra) and the Electoral Act (supra).
(Underlining mine).

In my humble view, the Federal Government or any of its agencies does not have to be a party in suit brought pursuant to Section 31 (5) and 87 (9) of the Electoral Act (supra) before the Federal High Court can exercise the jurisdiction conferred on it.

To hold the contrary view is to render inoperative and unnecessary the underlined portions of Section 251 (1) and (8) of the Constitution (supra)”.

(Pp 141 – 142 paras H – G)

4) *Where concurrent findings are not challenged*

Clearly, appellant had cited *Kakih Vs. PDP (2014) 15 NWLR (Pt. 1430) 374* out of context for the facts therein are not on all fours with what we are here faced with.

Indeed, the matter herein is laid to rest as the two courts below were right in holding that the Federal High Court was seised with jurisdiction to hear the pre-election matter before that Federal High court pursuant to Section 87 (9) of the Electoral Act, 2010 (as amended). The controversy on the issue of main or principal or ancillary relief does not arise and this appeal definitely lacks merit as the concurrent findings and conclusion of the two courts below are not to be tampered with, the exceptions that would have empowered this Apex Court to so interfere, upset, disturb those findings and conclusion do not exist. The appeal is therefore dismissed. *(Pp 142 – 143 Paras H – B)*

5) *The purpose and significance of S. 87(9) of Electoral Act 2010 as amended*

Section 87 (9) of the Electoral Act, 2010 (as amended) plays a central role in this Appeal. The said provision opened the doors of the Federal High Court and the High Courts of the States/FCT to aspirants for political office, who are short-changed in the process of being selected or nominated as candidates, to seek redress.

The said Section 87 (9) of the Electoral Act clearly says that an aspirant, who claims that any of the provisions of the Electoral Act and guidelines of a political party has not been complied with, in the selection and nomination of a candidate of a political party for election, may apply to the Federal High Court or a High Court of a State or the Federal Capital Territory, for redress.

The question in this case is whether it is Federal High Court, wherein the first respondent instituted an action challenging the nomination of the appellant as the candidate or flag bearer of the second respondent or Oyo State High Court that has jurisdiction.

(P 149 paras D – G)

6) *How to determine jurisdiction of a court*

It is settled that jurisdiction of a court is determined by the plaintiff's claims rather than a defendant's statement of defence. In other words, it is the claim before the Court that is examined to see whether it comes within the jurisdiction conferred on it. See *Ohakim Vs. Agbaso (2010) 19 NWLR (Pt. 1226) 172 SC* and *Elelu-Habeeb Vs. A.G. Fed. (2012) 13 NWLR (Pt. 1318) 423 SC*.

In this case, in addition to claims touching on the nomination of the appellant by the second respondent as its said candidate, the first respondent also claimed some four reliefs against INEC, which brought on the controversy of which Court had jurisdiction. The said reliefs include prayers for two Orders directing the INEC “to immediately withdraw the Certificate of Return” it issued to the appellant; and “to immediately issue a Certificate of Return to the Claimant as the lawfully elected candidate of the 2nd Defendant”- see

paragraph 15 (x) and (xi) of the Amended Statement of Claim.
(Pp 149–150 paras H–C)

- 7) *Source of jurisdiction of the Federal High Court in Election matters*
I agree that the lower court was right when it held that the Federal High Court has concurrent jurisdiction with the FCT and State High Court to hear and determine pre-election matters arising from primary elections of political parties. Section 251 (1)(s) of the Constitution of the Federal Republic of Nigeria 1999 clearly conferred authority on the National Assembly in addition to the general provision of legislative powers in Section 4 of the 1999 Constitution as amended to enact an Act conferring additional jurisdiction on the Federal High Court either exclusively or concurrently with the Federal Capital Territory and State High Courts. It is on the basis of this constitutional provision, particularly subsection 1 paragraph 5 of Section 251 of the Constitution that the National Assembly enacted Section 87 (9) of the Electoral Act 2010 which conferred concurrent jurisdiction in pre-election matters on the Federal High Court. The latest decision of this court on the issue of the Federal High Court jurisdiction on pre-election matters are the ones delivered in the case of Lokpobiri Vs. Ogola & Ors (2015) 10-11 MJSC 74; Jev Vs. Iyortyom (2014) ALL FWLR. These decisions seem to have overruled some aspects of the decisions in PDP Vs. Sylva (2012) 13 NWLR (Pt. 1316) 85 and Kakih Vs. PDP (2014) 15 NWLR (Pt. 1430) 374.
(Pp 153–154 paras G–C)

8. *Per Galinge (JSC) When does S. 87 (9) apply*
The provision of Section 87 of the Electoral Act 2010 as reproduced hereinabove are very clear and holds no ambiguity that will require any interpretation. It is mandatory for political parties to forward only names of the candidates who win their primaries. This is clearly a provision of Electoral Act which is justiciable under Section 87 (9) of the Electoral Act. In Uzodinma Vs. Izunaso (No. 20)

(2011) 17 NWLR (Pt. 1275) 30 at 60 paragraph B-E, this court, per Rhodes-Vivour. JSC, said:

“The nomination of a candidate to contest an election is the sole responsibility of the political party concerned. The courts do not have jurisdiction to decide who should be sponsored by any political party as its candidate in an election. But where the political party nominates a candidate for an election contrary to its own constitution and guidelines a dissatisfied candidate has every right to approach the court for redress. In such a situation, the courts have jurisdiction to examine and interpret relevant legislations to see if the political party complied fully with the legislation on the issue of nomination. The courts will never allow a political party to act arbitrarily or as it likes. Political party must obey their own constitution and once this is done there would be orderliness, and this would be good for politics and the country.”

The only instance where the name of a candidate other than the candidate that won the primary election will be forwarded to INEC, is where the candidate that won the election withdraws his candidature by notice in writing signed by him and delivered by himself to the political party that nominated him for the election, or where he dies before his name is submitted to INEC or after the name has been submitted and before the elections. See Section 35 and 36 of the Electoral Act 2010. These substitutions must follow due process.

In the instance case, the complaint is that Section 87(4)(c)(i)(ii) was not complied with. This complaint falls squarely within the provision of Section 87(9) of the Electoral Act, which I have reproduced elsewhere in this judgment. The Federal High

Court has the requisite jurisdiction to hear and determine this case.
(Pp 154–155 paras H–H).

Nigerian cases cited in the Ruling

Adani Vs. Igwe (1957) SCNLR 396;
Adenuga Vs. Odemeru (2007) SC (Pt. 1) 103 at 115-116;
Adetayo Vs. Ademola (2010) 15 NWLR (Pt. 1215) 169 at 191;
Adeyemi Vs. Opeyori (1976) 9-10 SC 31 at 51;
Egbe Vs. Yusuf (1992) 6 NWLR (Pt. 245) 1;
Elelu-Habeeb Vs. A.G. Fed. (2012) 13 NWLR (Pt. 1318) 423 SC;
Elugbe Vs. Omokhafa (2004) 18 NWLR (Pt. 905) 319 at 322;
Gbilere Vs. Addingi (2014) 16 NWLR (Pt. 1430) 394;
Gwede Vs. INEC (2014) 18 NWLR (Pt. 1438) 56;
Ibrahim Vs. Lawal (2015) 17 NWLR (Pt. 1489) 490 at 524-525;
James Vs. INEC (2015) 12 NWLR (Pt. 1474) 538 at 597;
Jev Vs. Iyortom (2014) All FWLR (Pt. 747) 749 at 773-774;
Jev Vs. Iyortom (2014) 14 NWLR (Pt. 1428) 575 at 611-613; 626-627 630 and 631-632;
Kakih Vs. PDP (2014) 15 NWLR (Pt. 1430) 374 at 415 416;
Lokpobiri Vs. Ogola & Ors (2015) 10-11 MJSC 74 at 93-94;
Lokpobiri Vs. Ogola & Ors. (2016) 3 NWLR (Pt. 1499) 326 SC;
Ohakim Vs. Agbaso (2010) 19 NWLR (Pt. 1226) 172 SC;
Okulate Vs. Awosanya (2000) 2 NWLR (Pt. 646) 530 at 555-556;
Owners of Mv “Arabella” Vs. NAIC (2008) 11 NWLR (Pt. 1097) 182 at 121;
PDP Vs. Sylva (2012) 13 NWLR (Pt. 1316) 85;
People's Democratic Party Vs. Timipre Silva;
Tukur Vs. Governor of Gongola State (1997) 6 NWLR (Pt. 510) 549 at 582-583;
Uzodinma Vs. Izunaso (No. 20) (2011) 17 NWLR (Pt. 1275) 30 at 60

Nigerian Statutes cited

Section 251 (1) (5) of the 1999 Constitution
Section 251 (i) (r) of the 1999 Constitution;
Section 31 (5) and Section 87 (9) of the Electoral Act (supra)
 Section 35 and 36 of the Electoral Act 2010

A *Section 87(3)(4)(c) and (9) of the Electoral Act 2010*

Representations:

KAZEEMA. GBADAMOSI for appellant.

B **OLAKUNLE FAOKUNLA** for the 1st respondent.

O. O. OLOWOLAFE for the 2nd respondent.

OTUNBA OLAYINKA BOLANLE for the 3rd respondent.

4th Respondent absent and not represented.

C

PETER-ODILI, (JSC) (Delivering the Lead Judgment): This is an appeal against the judgment of the Court of Appeal Ibadan Division or Court below or Lower Court, Coram: Monica B. Dongban-Mensem, Modupe Fasanmi, Chinwe Eugenia Iyizoba JJCA with Fasanmi JCA delivering the lead judgment on the 28th day of October, 2016.

D

The appellant being dissatisfied with the said judgment filed an appeal to this court vide his Notice of Appeal of two grounds.

E

Facts briefly stated:

The 1st respondent filed an action before the Federal High Court, Ibadan on the 24th day of October, 2014 wherein he sought two declaratory reliefs and five ancillary orders. The pleadings and claims of the 1st respondent as plaintiff are as contained in the Writ of Summons and Statement of Claims in the said pleadings to throw light into what are at stake, thus:

F

G

“i. A DECLARATION that the plaintiff is the duly elected flag bearer of the 2nd defendant for February, 2015 general elections into the House of Representatives to represent Oluyole Federal Constituency Ibadan, Oyo State having polled the majority of lawful votes cast at the primary election conducted by the 2nd defendant on the 7th day of December, 2014, and was so declared the winner.

H

I

- A** **ii.** **A DECLARATION that the nomination of the 1st defendant as the 2nd defendant's candidate or flag bearer for the February, 2015 general elections for the seat of the member of House of Representative to represent Oluyole Federal Constituency is ultra-vires, null and void.**
- B**
- C** **iii.** **AN ORDER nullifying the nomination of the 1st defendant and the substitution of the plaintiff by the 2nd defendant as its candidate for the representative representing Oluyole Federal Constituency, Ibadan.**
- D**
- E** **iv.** **AN ORDER directing the 2nd and 3rd defendants to forthwith accord the plaintiff his due recognition as their flag bearer for February 2015 general election into the House of Representatives to represent Oluyole Federal Constituency, Ibadan.**
- F**
- G** **v.** **AN ORDER of perpetual injunction restraining the 2nd and 3rd defendants from recognizing, acting or doing anything in recognition of the nomination and selection of the 1st defendant as the 2nd defendant's candidate for the forthcoming February,2015 elections into the House of Representatives to represent Oluyole Federal Constituency, Ibadan, Oyo State.**
- H** **vi.** **AN ORDER nullifying the purported nomination of the 1st defendant by the 2nd defendant as its flag bearer to contest for the seat of the House of Representatives to represent Oluyole Federal Constituency Ibadan in the forthcoming general**
- I**

- A** election scheduled to hold in February, 2015.
- vii.** **AN ORDER directing the 4th defendant not to recognize or accord any recognition to the name of SUMBO OLUGBEMI or any person other than the name of Hon. OLUJIDE ADEWALE LAWRENCE as the 2nd defendant's candidate for the House of Representatives to represent Oluyole Federal Constituency Ibadan, Oyo State.**
- B**
- C**
- viii.** **AN ORDER of this Honourable Court nullifying the nomination and election of the 1st defendant into the Oluyole Federal Constituency Legislative Seat, Ibadan, Oyo State of the House of Representatives.**
- D**
- ix.** **AN ORDER declaring the Claimant as the lawful Candidate of the 2nd defendant at the general election held on the 28th day of March, 2015 for Oluyole Federal Constituency Legislative seat (Oyo State) of the House of Representatives, National Assembly of the Federal Republic of Nigeria.**
- E**
- F**
- x.** **AN ORDER directing the 4th defendant to immediately withdraw the certificate of return it issued to the 1st defendant as the candidate of the 2nd defendant in the general election held on the 28th day of march, 2015 into the Oluyole Federal Constituency Legislative seat (Oyo State) of the House of Representatives, National Assembly of the Federal Republic of Nigeria.**
- G**
- H**
- xi.** **AN ORDER directing the 4th defendant to immediately issue a certificate of return to the Claimant as the lawfully elected candidate of the 2nd defendant in the**
- I**

**A general election held on the 28th day of March, 2015
for the Oluyole Federal Constituency Legislative
seat (Oyo State) of the House of Representatives,
National Assembly of the Federal Republic of
B Nigeria.**

**xii. OR IN THE ALTERNATIVE to paragraph XI
above, AN ORDER of this Honourable Court
C ordering the 4th respondent to conduct a fresh
general election into the Oluyole, Ibadan, Oyo State,
Federal Constituency Legislative Seat of the House
of Representatives, Federal Republic of Nigeria.**

D xiii. Cost of this action”.

**E Subsequent to the amendment, the appellant herein filed an application to
challenge the jurisdiction of the trial court to entertain the claims of the 1st
respondent vide his application dated 11th November 2015 and filed on 12th
November 2015. The trial court took the application and his Lordship Hon.
Justice N. Ayo Emmanuel dismissed the application on the 9th December,
F 2015.**

The appellant being dissatisfied with the decision of the trial court
appealed against the same vide his Notice of Appeal of 23rd December,
2015.

**G At the Court below, the appellant sought and was granted leave to
amend his notice of appeal, which amended Notice of Appeal dated 1/4/16
was deemed properly filed on 4/4/16.**

**H On the 1st of February, 2017 date of hearing, learned counsel for the
appellant, Kazeen A. Gbadamosi adopted his brief of argument filed on
1/12/2016 and in it he crafted a single issue, viz:**

**I Whether having regards to the pleadings and the reliefs
claimed by the 1st respondent, the learned Justices of the**

- A Court below were wrong in dismissing the appellant's appeal by holding that the Federal High Court had jurisdiction over the claim of the plaintiff and that the main reliefs sought by the 1st respondent were against a Federal Government Agency (INEC) covers grounds 1 and 2 of the notice of appeal.**

C Learned counsel for the 1st respondent, Olakunle A. Faokunla Esq. adopted his brief of argument filed on 11/1/2017 and formulated a sole issue, viz:

- D Whether the learned Justices of the Court of Appeal, Ibadan Division were right by holding that the Federal High Court has jurisdiction to hear and determine the 1st respondent's claim having regards to the provisions of Section 251(1) of the Constitution of the Federal Republic of Nigeria 1999, as amended, and Section 87 (9) of the Electoral Act, 2010 as amended.**

F Olasoji O. Olowolafe Esq. of counsel for the 2nd respondent adopted its brief of argument filed on 31/1/17 and deemed filed on 1/2/17 and in it crafted a single issue as follows:

- G Whether the Lower court was right in holding that the trial court had the jurisdiction to try the case inspite of the reliefs sought by the 1st respondent.**

H Learned counsel for the 3rd respondent adopted his brief of argument filed on 19/1/17 and also adopted the issue as crafted by the appellant for the determination of the appeal.

- I** All the issues, as differently crafted ask the same question which is really whether the Court below was right in holding that the trial court had jurisdiction to try the case inspite of the reliefs sought by the 1st respondent. Pushing forward the position of the appellant, learned counsel,

- A** Kazeem Gbadamosi contended that from the totality of the reliefs sought by the 1st respondent, the 1st and 2nd reliefs of the 1st respondent which are declaratory in nature are the main reliefs and the other reliefs are ancillary as they are dependent on the grant of the 1st and 2nd reliefs. That the
- B** dichotomy between the main relief and ancillary relief is borne out of whether a relief can be granted independent of the other; while reliefs 1 and 2 can be granted and the other reliefs will follow. That if reliefs 1 and 2 are refused then it follows that all the other reliefs iii-xi and xii, the alternative
- C** relief which are dependent, will have to be dismissed. He cited **Tukur Vs. Governor of Gongola State (1997) 6 NWLR (Pt. 510) 549 at 582-583; Adenuga Vs. Odemeru (2007) SC (Pt. 1) 103 at 115-116.**

- Learned counsel for the appellant submitted that from the decisions
- D** of the Supreme Court cases cited above, reliefs 15 (vii) (x) (xi) and (xii) of the 1st respondent's amended statement of claim against the 4th respondent are dependent on reliefs 1 and 2 as the reliefs above are ancillary. That based on that, the lower court was wrong when it held that relief 15 (vii) (x)
- E** (xi) and (xii) of the 1st respondent's amended statement of claim against the 4th respondent are principal reliefs and subject to the jurisdiction of the Federal High Court by virtue of Section 251 (1) (r) of the 1999 Constitution and Section 87 (9) of the Electoral Act 2010 as amended.

- F** Learned counsel for the appellant stated that as ancillary reliefs cannot stand on their own and cannot metamorphose to become the principal or the main relief. He referred to **Kakih Vs. PDP (2014) 15 NWLR (Pt. 1430) 374 at 415 416.**

- G** That reliefs 3 and 9 which are against INEC are not fundamental are ancillary claims. That reliefs 1 8 and all the alternative claims question pre-primary election affairs of the party which no court had jurisdiction to entertain.

- H** It was concluded for the appellant that this appeal should be allowed on the principle in **Kakih Vs. PDP (supra)** and set aside the decision of the lower court and to hold that the Federal High Court lacked jurisdiction over the substantive matter placed before it in view of 1st and 2nd reliefs which
- I** ought to be the main reliefs.

- A** Mr. Faokunla for the 1st respondent submitted that the Federal High Court, State High Court and the High Court of the Federal Capital Territory have jurisdiction in respect of pre-election matters and so since Section 87 (9) of the Electoral Act, 2010 (as amended) is at play, the matter of main claim or relief and ancillary claims are not applicable. He cited **Jev Vs. Iyortom (2014) All FWLR (Pt. 747) 749 at 773-774; Lokpobiri Vs. Ogola & Ors (2015) 10-11 MJSC 74 at 93-94; Section 251 (1) (5) of the 1999 Constitution** (as amended).
- B**
- C** He stated that the Federal High Court possessed the necessary jurisdiction to entertain the 1st respondent's claim in line with the decision of this court in **Lokpobiri Vs. Ogola (supra)** as the claims are brought under Section 87 (9) of the Electoral Act, 2010 as amended).
- D** Learned counsel for the 2nd respondent stated that because of the fundamental importance of the issue of jurisdiction, it could be said at any time and by anybody during the proceedings as time does not run out on the issue of jurisdiction. That raising the issue at this level of appeal is covered.
- E** That jurisdiction of court is a matter of law, statute and constitution and it is ascertained by taking a look at the claim of the plaintiff. He referred to the cases of **Ibrahim Vs. Lawal (2015) 17 NWLR (Pt. 1489) 490 at 524-525; Elugbe Vs. Omokhafa (2004) 18 NWLR (Pt. 905) 319 at 322, Adani Vs. Igwe (1957) SCNLR 396; Adeyemi Vs. Opeyori (1976) 9-10 SC 31 at 51; Okulate Vs. Awosanya (2000) 2 NWLR (Pt. 646) 530 at 555-556.**
- F** The 2nd respondent towed the line of 1st respondent's argument that it is the claim of the plaintiff that is considered to ascertain if the jurisdiction of the Federal High Court, State High Court or High Court of the Federal Capital Territory could be ignited. He relied on **Adetayo Vs. Ademola (2010) 15 NWLR (Pt. 1215) 169 at 191; James Vs. INEC (2015) 12 NWLR (Pt. 1474) 538 at 597** etc.
- G**
- H** That the trial High Court lacked jurisdiction to entertain this case because the main claim had nothing to do with the 4th respondent, who though a Federal agency would not suffice in activating the jurisdiction sought. He cited the case of **Owners of Mv "Arabella" Vs. NAIC (2008) 11 NWLR (Pt. 1097) 182 at 121.**
- I**

A For the 3rd respondent, it was contended that the Court below ought to have struck out the case for a lack of jurisdiction in line with **Kakih Vs. PDP & 3 Ors (2014) 15 NWLR (Pt. 1430) 374.**

B The stance of the appellant in brief is that the appeal be allowed and the decision of the Court below set aside and this court hold that the trial court has no jurisdiction to entertain the 1st respondent's claim.

The position of the 1st respondent is that this appeal be dismissed and the two courts below correct.

C The 2nd and 3rd respondents towed the line of the appellant and urged the court to reverse the decision of the Court of Appeal and order a striking out of this case.

D At the Court of trial, it was held on this issue of principal or main or ancillary relief stated thus:

E **“It is however my opinion that it is the magnitude of a relief that would determine whether such relief ought to be classified as principal or ancillary and in addition what should determine whether a relief is principal or not is the character of the relief which consist in the substance and weight thereof. Learned counsel to the applicant has not put forward or convinced me what makes the above referred reliefs auxiliary. I therefore find and hold that reliefs 15 (vii), (x), (xi) and (xii) of the plaintiff's amended statement of claim against the 4th defendant are principal reliefs and therefore subject to the jurisdiction of this court by virtue of Section 251 (i) (r) of the 1999 Constitution and Section 87 (9) of the Electoral Act (as amended). Prayer on the application is hereby refused”.**

H Modupe Fasanmi, learned JCA, of the Court of Appeal affirmed that trial court's decision and stated as follows:

I

- A** “After a thorough reading of the 1st respondent's claim in his amended statement of claim reproduced earlier in this judgment, I am on the same page with the learned trial Judge that reliefs 15 (vii), (x), (xi) and (xii) of the 1st respondent's amended statement of claim against the 4th respondent are principal reliefs and therefore subject to the jurisdiction of the Federal High Court by virtue of Section 251 (i) (r) of the 1999 Constitution and Section 87 (9) of the Electoral Act 2010 as amended.

A revisit of the amended statement of claim of the plaintiff/1st respondent at the Court of trial would have a refreshing effect to the mind lest we forget what is at stake.

The appellant had sought to guide the court into the realm of Section 251 (1) of the 1999 Constitution and its limitations towards producing a dichotomizing effect in the main or principal reliefs or ancillary reliefs issue. That is that because according to the appellant and supporters, the 2nd and 3rd respondents, the reference in the claim connecting a Federal Agency, in this instance INEC, the Independent Electoral Commission being ancillary to the main relief which did not connect that Agency, the jurisdiction of the Federal High Court was and cannot be activated in the suit herein.

I shall quote the relevant part of Section 251 of the Constitution which is thus:

- G** **Section 251 (1) (5):**
- H** **“1. Notwithstanding anything to the contrary contained in this constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other Court in civil cases and matters” (underlining mine).**
- I**

A **“S such other jurisdiction civil or criminal and whether to the exclusion of any other Court or not as may be conferred upon it by an Act of the National Assembly”.**(Underlining mine).

B

Section 87 (9) of the Electoral Act, 2010 as amended states:

C **“Notwithstanding the provisions of the Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party has not been complied within the selection or nomination of a candidate of a political party for election, may apply to**

D **the Federal High Court or the High court of a State or FCT, for redress”.**

E In the case of **Lokpobiri Vs. Ogola & Ors (2015) 10-11 MJSC Pg. 74 at 93-94, Paras G to G**, this Court said:

F **“I want us to also note that both the opening of Section 251 (1) and paragraph 'S' of the subsection confer authority on the National Assembly, in addition to the general provision of legislative powers in Section 4 of the 1999 Constitution, as any dissatisfied contestant at the primary is now empowered by Section 87 (9) of the**

G **Electoral Act, 2010 (as amended) to ventilate his complaint before the Federal High Court or High Court of a State or of the Federal Capital Territory; People's Democratic Party Vs. Timipre Silva. The said Section 87**

H **(9) is clear and unambiguous, the courts are enjoined to give them their ordinary grammatical meaning: Egbe Vs. Yusuf (1992) 6 NWLR (Pt. 245) 1. By inserting this new provision into the Electoral Act, the legislature has**

I **made its intention very clear as to the reason, and**

**A purport, that a member of a political party who
contested the primary election is entitled to challenge a
breach of the party constitution or Guidelines or
B Electoral Act, by filing an action at the Federal High
Court or State High Court or the Federal Capital
Territory High Court, simpliciter.”**

The appellant really made a lot of fuss on main or principal relief as against
C ancillary relief upon which jurisdiction of court may or may not be
activated. Perhaps this court had in a clairvoyant manner gone to great
lengths in dealing with this attempt at creating boundaries of main and
ancillary reliefs in relation to jurisdiction of court in the case of **Lokpobiri
D Vs. Ogola (2016) 3 NWLR (Pt. 1499 328 at 366.** The Court said:

**“To me, it is erroneous to say that for the Federal High
Court to entertain a pre-election matter, the main relief(s)
E must be shown to fall within the exclusive jurisdiction of
the court because both jurisdictions are different. In a
concurrent jurisdiction, if court 'A' has jurisdiction to
hear all the reliefs claimed, it necessarily follows that
F court 'B' must have the same jurisdiction otherwise it
means giving something to someone with one hand and
taking it away with the other hand.**

**G It is settled law that election and election related matters
are sui generic (sic) and that the jurisdiction to provisions
of the Electoral Act, 2010 as amended, earlier reproduced
in this judgment. In respect of matters relating to post
H election jurisdiction of the court, see Section 251 (4) of the
1999 Constitution, as amended also supra. If we insist on
the jurisdiction of the Federal High Court on pre-election
and/or post election matters being exercisable only where
I the main claim(s) is/are within the exclusive jurisdiction
of the Federal High Court, it will result in injustice on the**

A litigants which is clearly not the intention of the legislature. It is therefore very clear that the concurrent jurisdiction conferred on the Federal High Court to hear and determine pre-election and even post election matters is clearly outside the exclusive jurisdiction of the court under Section 251 of the 1999 Constitution as amended but in addition to the said exclusive jurisdiction and consequently subject to different consideration.

B

C It is therefore my considered opinion when the Federal High Court's pre-election jurisdiction is invoked, the parties claims and relief(s) must be in conformity with the provisions of the Electoral Act, 2010, as amended, not under the provisions of Section 251 of the 1999 Constitution, as amended. In fact, INEC may be a nominal party or be liable to an ancillary claim in a pre-election or post elections jurisdiction of the Federal High Court.

D

E

F The position I have taken on this issue is advised by the decision of this court in *Jev Vs. Iyortom* (2014) 14 NWLR (Pt. 1428) 575 at 611-613; 626-627, 630 and 631-632.

G My attention has been drawn by learned counsel for the Respondent to the decision of this court in *PDP Vs. Sylva* (2012) B.13 NWLR (Pt. 1316) 85 and *Kakih Vs. PDP* (2014) 15 NWLR (Pt. 1430) 374 said to be in support of their contention that for the Federal High Court to exercise its pre-election jurisdiction under the Electoral Act, 2010, as amended, the main claim(s) or reliefs of the plaintiff must be within the purview of the provisions of Section 251 of the 1999 Constitution, as amended. A detailed reading of the facts of *PDP Vs. Sylva supra* does not support that contention. The case simply held that

A Sylva who was not screened by his party (PDP) for the primaries in question nor participated in the said primaries, failed to bring himself within the provisions of Section 87 (9) of the Electoral Act, 2010, as amended and

B as such he had no locus standi to institute an action under the Section 87 (9) in any Court in Nigeria as his complaints were within the internal affairs of a political party which are not justiciable. So, the reliefs claimed in

C that action were incapable of invoking the jurisdiction of the court see pages 127 & 137-139 of the report. It must be pointed out that the effect of the decision in Sylva's case is that the action as constituted was not a pre-election

D matter and as such, it could not be entertained in any court. Any other thing said is clearly obiter.

E With respect to the decision of this Court in the case of Kakih Vs. PDP, supra, I wish to emphasize that the court did not hold the Federal High Court does not have jurisdiction to hear and determine pre-election matters. It held that it does but that the jurisdiction so conferred is

F exercisable by that court when the main claim of the plaintiff falls within the provisions of Section 251 of the 1999 Constitution and not when the claim against an agency of the Federal Government is ancillary.

G Having regard to what I have stated earlier in this judgment with respect to the Sui generic nature of an election or election related matters and the jurisdiction of

H the courts to entertain them, which are special statutory jurisdictions, the fact that the Federal High Court, by operation of Section 251 (4) of the 1999 Constitution is also clothed with jurisdiction to entertain post election

I matters whose claims or reliefs may not necessarily involve/affect the Federal Government or any of its

- A agencies, it is clear that the intention of the legislature in conferring the additional jurisdiction of the Federal High Court in relation to pre-election and post-election matters is clearly that the additional jurisdiction is to be exercised by the court in accordance with Electoral Act, 2010, as amended, creating the jurisdiction as well as Section 251 (4) of the 1999 Constitution. It is therefore clear that Kakih's case as regard the issue of the jurisdiction of the Federal High Court in pre-election matters is limited to its peculiar facts and circumstances having regard to the decision in Jev Vs. Iyortyom supra”.**
- B**
- C**
- D** It follows therefore that once an aggrieved party comes within the ambit of Section 87 (9) of the Electoral Act, 2010 (as amended), the issue of main relief as against an ancillary one does not come into play or arise. Removing jurisdiction for some of the reliefs and endowing for other reliefs to a court will lead to confusion as one court will be dealing with a particular relief while the other court is sorting out the reliefs allotted to it in a severance method that beats the imagination. It would produce a never ending dispute since the facts in the two courts are the same arising from the same base.
- E**
- F** What is obtaining in the matter at hand as 1st respondent as plaintiff has his claim well positioned under Section 87 (9) of the Electoral Act, 2010 as amended, the original claims as captured in the Writ of summons and statement of claim and thereafter the Amended Statement of Claim. The said Section 87 (9), is opened with the word “aspirant” which the 1st respondent is as defined under Section 156 of the said Electoral Act to mean a person who aspires or seeks or strives to contest in election to a political office.
- G**
- H** Also to be noted is that reliefs 15 (vii), (x), (xi) and (xii) in the amended statement of claim which are to direct the 4th defendant, INEC, a Federal Agency not only to deny recognition to the 1st defendant and party but to direct the said 4th defendant to withdraw the certificate of return already issued to the 1st defendant as candidate of 2nd defendant and to issue
- I**

A the certificate to the plaintiff. Certainly what is sought in those reliefs cannot in all honesty be treated with the levity to which an ancillary claim would be labelled as they are principal or major claims and prayers. Again I seek refuge in the case of this court in **Lokpobiri Vs. Ogola supra at page**
B 106 Paras A-D, The Supreme Court said:

C **“In Section 251 (1) and (s) of the Constitution (supra) read together with Section 31 (5) and Section 87 (9) of the Electoral Act (supra), it is specious and spurious to argue, as the respondent did, that the Federal High Court has no jurisdiction, if the claim brought pursuant to Section 87 (9) of the Act (supra) does not involve the Federal Government or any of its agencies is a party the claim against it must be a principal relief and not a mere subsidiary thereof. This is a fallacy created by skewed construction of the provisions of th Constitution (supra) and the Electoral Act (supra).(Underlining mine).**
D
E

F **In my humble view, the Federal Government or any of its agencies does not have to be a party in suit brought pursuant to Section 31 (5) and 87 (9) of the Electoral Act (supra) before the Federal High Court can exercise the jurisdiction conferred on it.**

G **To hold the contrary view is to render inoperative and unnecessary the underlined portions of Section 251 (1) and (8) of the Constitution (supra)”.**

H Clearly, appellant had cited **Kakih Vs. PDP (2014) 15 NWLR (Pt. 1430) 374** out of context for the facts therein are not on all fours with what we are here faced with.

I Indeed, the matter herein is laid to rest as the two courts below were right in holding that the Federal High Court was seised with jurisdiction to

- A** hear the pre-election matter before that Federal High court pursuant to Section 87 (9) of the Electoral Act, 2010 (as amended). The controversy on the issue of main or principal or ancillary relief does not arise and this appeal definitely lacks merit as the concurrent findings and conclusion of
- B** the two courts below are not to be tampered with, the exceptions that would have empowered this Apex Court to so interfere, upset, disturb those findings and conclusion do not exist. The appeal is therefore dismissed.

- C** I award the sum of N250,000.00 as costs to the 1st respondent to be paid by the appellant.

Mary Ukaego Peter-Odili
Justice, Supreme Court

- D BAYANG AKAAHS (JSC):** I read in draft the judgment of my learned brother, Peter-Odili JSC dismissing the appeal as lacking in merit. I equally find no merit in the appeal and I hereby dismiss it.

- E** The plaintiff (now 1st respondent) had instituted an action at the Federal High Court, Ibadan claiming that he was one of the four candidates who vied for the nomination of the All Progressive Congress (APC) to represent Oluyole Federal Constituency of Oyo State in the February, 2015 General Elections and polled the majority of lawful votes cast in the
- F** primary election conducted by the 2nd defendant on 7/12/2014 and was so declared as the winner. Despite his being declared the winner the 2nd defendant/respondent submitted the name of the 1st defendant/appellant to the 4th defendant/respondent as the candidate of the Party to contest the
- G** election. He thereby lodged a complaint with the 3rd defendant about the manipulation which led to the 2nd defendant forwarding the name of the 1st defendant as candidate for the election but his grievance was not addressed and as a result he instituted the action in the Federal High Court seeking the
- H** following reliefs against the defendants in the amended statement of claim:

- I** “(i) **A DECLARATION that the plaintiff is the duly elected flag bearer of the 2nd defendant for February, 2015 general elections into the House of Representatives to represent Oluyole Federal**

- A** **Constituency Ibadan, Oyo State having polled a majority of lawful votes cast at the primary election conducted by the 2nd defendant on the 7th December, 2014 and was so declared the winner.**
- B**
- (ii)** **A DECLARATION that the nomination of the 1st defendant as the 2nd defendant's candidate or flag bearer for the February, 2015 general election for the seat of the member of House of Representatives to represent Oluyole Federal Constituency is ultra-vires, null and void.**
- C**
- D** **(iii)** **AN ORDER nullifying the nomination of the 1st defendant and the substitution of the plaintiff by the 2nd defendant as its candidate for the election into the National Assembly for the seat of a member of the House of Representatives representing Oluyole Federal Constituency, Ibadan.**
- E**
- F** **(iv)** **AN ORDER directing the 2nd and 3rd defendant to forthwith accord the plaintiff due recognition as their flag bearer for the February, 2015 general election into the House of Representatives to represent Oluyole Federal Constituency Ibadan.**
- G**
- (v)** **AN ORDER of perpetual injunction restraining the 2nd and 3rd defendants from recognizing, acting or doing anything in recognition of the nomination and selection of the 1st defendant as the 2nd defendant's candidate for the forthcoming February, 2015 general election into the House of Representatives to represent Oluyole Federal**
- H**
- I**

- A**
- (vi) **Constituency Ibadan, Oyo State.**
AN ORDER nullifying the purported nomination of the 1st defendant by the 2nd defendant as its flag bearer to contest for the seat of the House of Representatives to represent Oluyole federal Constituency Ibadan in the forthcoming general election scheduled to hold in February, 2015.
- B**
- C**
- (vii) **AN ORDER directing the 4th defendant not to recognize or accord any recognition to the name of Hon. Olasumbo Olugbemi or any person other than the name of Hon. Oluyide Adewale Lawrence as the 2nd defendant's candidate for the House of Representatives to represent Oluyole Federal Constituency Ibadan, Oyo State.**
- D**
- E**
- (viii) **AN ORDER of this Honourable Court nullifying the nomination and election of the 1st defendant into the Oluyode Federal Constituency Legislative Seat Ibadan, Oyo State of the House of Representatives.**
- F**
- (ix) **AN ORDER Declaring the claimant as the lawful candidate of the 2nd defendant at the general election held on the 28th day of March, 2015 for Oluyole Federal Constituency Legislative seat (Oyo State) of the House of Representatives, National Assembly of the Federal Republic of Nigeria.**
- G**
- H**
- (x) **AN ORDER directing the 4th defendant to immediately withdraw the certificate of return it issued to the 1st defendant as the candidate of the 2nd defendant in the general election held on the 28th**
- I**

- A** day of March, 2015 into the Oluyole Federal constituency Legislative seat (Oyo State) of the House of Representatives, National Assembly of the Federal Republic of Nigeria.
- B**
- (xi)** AN ORDER directing the 4th defendant to immediately issue a certificate of return to the claimant as the lawful elected candidate of the 2nd defendant in the general election held on the 28th day of March, 2015 for the Oluyole Federal Constituency Legislative Seat (Oyo State) of the House of Representatives National Assembly of the Federal Republic of Nigeria.
- C**
- D**
- (xii)** OR IN THE ALTERNATIVE to paragraph Xi above AN ORDER of this Honourable Court ordering the 4th respondent to conduct a fresh general election into the Oluyole, Ibadan, Oyo State, Federal Constituency Legislative Seat of the House of Representatives, Federal Republic of Nigeria”.
- E**

Reliefs (viii) (xi) were added after the general election had taken place. At a glance reliefs (vii), (viii), (x) and (xi) are directed at the 4th defendant but before the Statement of Claim was amended it was only relief (vii) that had anything to do with the 4th defendant. It is the spill over of the case after the general election that necessitated the amendment which was granted on 9th December, 2015 the trial court. Earlier the appellant (then 1st defendant) had applied by motion on notice dated 11/11/2015 to strike out the suit for being incompetent as the reliefs sought were said to be ungrantable. But in the ruling delivered on 9th December, 2015 by the trial court refused to accede to the prayers sought in the motion and thereby struck out the application.

The complaint of the 1st respondent (as plaintiff) was that he contested the primaries and secured the highest number of votes and as a result his party ought to have forwarded his name to the 4th defendant as the candidate of the

A party for the 2015 general election for the Oluyole Federal Seat of the House of Representatives but instead it was the name of the appellant (as 1st defendant) that was sent. This is the situation envisaged by section 87(4) of the Electoral Act 2010 (as amended). Where such a situation occurs, the

B aggrieved party has a right to seek remedy in the appropriate court which could be a State High Court or the Federal High Court as stipulated in section 87(9). The relevant provision in section 87(3)(4)(c) and (9) of the Electoral Act 2010 (as amended) and it provides as follows:

C

'S.87(3) A political party that adopts the direct primaries procedure shall ensure that all aspirants are given equal opportunity of being voted for by members of the party.

D

(4) A political party that adopts the system of indirect primaries for the choice of its candidate shall adopt the procedure outlined below:

E

(c) in the case of nominations to the position of a Senatorial candidate, House of Representatives and State House of Assembly a political party shall, where it intends to sponsor candidates:

F

G

(i) hold special congress in the Senatorial district, federal constituency and the state assembly constituency respectively, with delegates voting for each of the aspirant in designated centre or centres of specified dates.

H

(ii) The aspirant with the highest number of votes at the end of voting shall be declared the winner of the primaries of the party and the aspirant's name shall

I

A **be forwarded to the Independent National Electoral Commission as the candidate of the party.**

B **(9) Notwithstanding the provisions of the Act or rules of a political party, on aspirant who complains that any of the provisions of this Act and the guidelines of a political party has not been**
C **complied within the selection or nomination of a candidate of a political party for election, may apply to the Federal High Court or the High Court of a State or FCT for redress”.**

D The plaintiff complained that he emerged the winner of the primaries held on 7th December, 2014 but instead of forwarding his name to the 4th defendant as the flag bearer of the party, the 2nd respondent sent that of the
E appellant instead; hence he instituted the action seeking the reliefs which I earlier reproduced in the judgment. The Federal High Court refused the motion to strike out the suit and the appellant appealed to the Court below which dismissed the appeal as devoid of merit and the appellant further
F appealed to this Court.

As stated by the lower court at page 265 of the record:

G **“The jurisdiction of a Court to hear and determine the plaintiff's action depends on the claim(s) in the Writ of Summons and his pleadings The Amended Statement of claim has made the reliefs against the 4th respondent i.e. INEC principal relief.....”**

H Both the learned trial Judge and the court below were right to, hold that reliefs 15(vii), (x) (xi) and (xii) of the 1st respondent's amended statement of claim against the 4th respondent are principal reliefs and therefore subject to
I the jurisdiction of the Federal High Court by virtue of section 251(1)(I)(r) of the 1999 Constitution and section 87(9) of the Electoral Act 2010 as

A amended.

It is on account of this and the more detailed reasons contained in the judgment of my learned brother, Peter-Odili JSC that I found no merit in the appeal and accordingly dismissed it. The appeal is hereby dismissed with

B N250,000.00 as costs in favour of the 1st respondent against the appellant.

K.B. Akaahs
Justice, Supreme Court

C ADAMU AUGIE, (JSC): I had a preview of the Judgment just delivered by my learned brother **Peter-Odili, JSC**, and I agree with him completely that there is no reason to set aside the concurrent findings of the two lower Courts that the Federal High Court, Ibadan, had jurisdiction. He said all there is to say, and I will only add a few words of mine.

D Section 87 (9) of the Electoral Act, 2010 (as amended) plays a central role in this Appeal. The said provision opened the doors of the Federal High Court and the High Courts of the States/FCT to aspirants for political office, who are short-changed in the process of being selected or nominated as candidates, to seek redress.

E The said Section 87 (9) of the Electoral Act clearly says that an aspirant, who claims that any of the provisions of the Electoral Act and guidelines of a political party has not been complied with, in the selection and nomination of a candidate of a political party for election, may apply to the Federal High Court or a High Court of a State or the Federal Capital Territory, for redress.

F The question in this case is whether it is Federal High Court, wherein the first respondent instituted an action challenging the nomination of the appellant as the candidate or flag bearer of the second respondent or Oyo State High Court that has jurisdiction.

G It is settled that jurisdiction of a court is determined by the plaintiff's claims rather than a defendant's statement of defence. In other words, it is the claim before the Court that is examined to see whether it comes within the jurisdiction conferred on it *See Ohakim Vs. Agbaso (2010) 19 NWLR (Pt. 1226) 172 SC and Elelu-Habeeb Vs. A.G. Fed. (2012) 13 NWLR (Pt. 1318) 423 SC.*

- A** In this case, in addition to claims touching on the nomination of the appellant by the second respondent as its said candidate, the first respondent also claimed some four reliefs against INEC, which brought on the controversy of which Court had jurisdiction. The said reliefs include
- B** prayers for two Orders directing the INEC **“to immediately withdraw the Certificate of Return”** it issued to the appellant; and **“to immediately issue a Certificate of Return to the Claimant as the lawfully elected candidate of the 2nd Defendant”**- see paragraph 15 (x) and (xi) of the
- C** Amended Statement of Claim.

- After the first Respondent amended his Statement of Claim, the Appellant filed an application praying *inter alia* for an Order *“striking out the Suit for being incompetent as the reliefs sought are ungrantable”*. One
- D** of the Grounds for the said application is that *“the reliefs sought are not against the 4th Defendant INEC”*. It was averred in paragraph 4 of the affidavit in support thereof that:

- E** *The cause of action is an intra-party issue, which the 4th Defendant [INEC] has no business with.*

- The arguments for and against this application at the trial Court [Federal
- F** High Court, Ibadan] boiled down to whether the claims against the fourth respondent, were principal or ancillary reliefs. In his Ruling, the learned trial Judge, Ayo-Emmanuel, J., Stated:

- G** **Four notable Supreme Court cases decided of recent dealt with the referred provisions of the Electoral Act viz:**
- H** 1) **Jev Vs. Iyortyom (2014) 14 NWLR (Pt. 1428) 575**
- 2) **Kakih Vs. PDP (2014) 15 NWLR (Pt. 1430) 374**
- 3) **Gbilere Vs. Addingi (2014) 16 NWLR (Pt. 1430) 394**
- 4) **Gwede Vs. INEC (2014) 18 NWLR (Pt. 1438) 56**

- I** **All the above cited authorities, aside from Kakih Vs. PDP**

- A** gave a literal interpretation to Section 87 (9) of the Electoral Act, 2010 (as amended) and confirmed the jurisdiction of the Federal High Court in pre-election cases irrespective of whether the claim against the Agency of the Government made party to the Suit is principal or ancillary. However, the case of *Kakih Vs. PDP* (supra) in interpreting Section 87 (9) of the Electoral Act, focused on the specific provision of Section 251 (1) (r) of the 1999 Constitution and further determined that if the Agency of the Federal Government is made a party to the Suit, the principal claims must be against such Agency before Federal High Court can assume jurisdiction. This in my view means that the Court has a duty to ascertain that it is the principal reliefs in the matter that is against the Federal Government or any of its agencies and not the ancillary reliefs. This, therefore, means that each case must be considered upon its peculiar facts and circumstances to determine whether a relief thereof is principal or ancillary.
- B**
- C**
- D**
- E**
- F** The learned trial Judge examined Reliefs 15 (vii), (x), (xi) and (xii) touching on the 4th respondent [INEC] and concluded as follows:
- G** It is, however, my opinion that it is the magnitude of a relief that would determine whether such a relief ought to be classified as principal or ancillary and in addition, what should determine whether a relief is principal or not is the character of the relief, which consists in the substance or weight thereof. Learned counsel to the Applicant has not put forward or convinced me what makes the above referred Reliefs auxiliary. I, therefore, find and hold that Reliefs (vii), (x), (xi) and (xii) of the Plaintiff's Amended Statement of Claim against the 4th Defendant are principal
- H**
- I**

A reliefs and therefore subject to the jurisdiction of this Court by virtue of Section 251 (1) ((r) of the 1999 Constitution and Section 87 (9) of the Electoral Act (as amended).

B

The appellant appealed but to no avail because the Court below, relied on the same authorities as the trial Court and the case of **Lokpobiri Vs. Ogola & Ors. (2016) 3 NWLR (Pt. 1499) 326 SC**, where this Court per

C Onnoghen, JSC (as he then was) observed:

D I want us to also note that both the opening of Section 251 (1) and paragraph 'S' of subsection 1 confer authority on the National Assembly, in addition to the general provision of legislative powers in Section 4 of the 1999 Constitution (as amended) to enact an Act conferring additional jurisdiction on the Federal High Court either

E exclusive or concurrently with State and Federal Capital Territory High Courts. It is on the basis of the above constitutional provision particularly sub-section (1) paragraph (s) of Section 251 of the 1999 Constitution that

F the National Assembly enacted the Electoral Act, 2010 (as amended) and conferred concurrent jurisdiction in pre-election matters on the Federal High Court and State and Federal Capital High Courts --

G

The court below distinguished the case of **Kakih Vs. PDP** (*supra*) from this case, and said that learned counsel for the Appellant misconceived the Application of the case of **Kakih Vs. PDP** (*supra*), because a pre-election matter is limited to its peculiar facts and circumstances to decide whether a relief is principal or ancillary.

H

At the end of the day, the court below aligned itself with the position taken by the trial court, and it concluded as follows:

I

A subsection 1 paragraph 5 of Section 251 of the Constitution that the National Assembly enacted Section 87 (9) of the Electoral Act 2010 which conferred concurrent jurisdiction in pre-election matters on the Federal High Court. The latest decision of this court on the issue of the Federal High Court jurisdiction on pre-election matters are the ones delivered in the case of **Lokpobiri Vs. Ogola & Ors (2015) 10-11 MJSC 74; Jev Vs. Iyortyom (2014) ALL FWLR**. These decisions seem to have overruled some aspects of the decisions in **PDP Vs. Sylva (2012) 13 NWLR (Pt. 1316) 85** and **Kakih Vs. PDP (2014) 15 NWLR (Pt. 1430) 374**. Section 87 (4) of the Electoral Act 2010 (as amended) provides as follows:

D **“A political party that adopts the system of indirect primaries for the choice of its candidates shall adopt the procedure outlined below:**

E **(a) In the case of nomination to the position of a candidate to the senate, House of Representative and State House of Assembly, a political party shall, where it intends to sponsor candidates:**

F **(i) Hold special congresses in the Senatorial District, Federal Constituency and the State Assembly Constituency, respectively, with delegates voting for each of the aspirant in designated centre on specified dates; and**

G **(ii) The aspirant with the highest number of votes at the end of voting shall be declared the winner of the primaries of the party and the aspirant's name shall be forwarded to the commission as the candidate of the party.”**

H The provision of Section 87 of the Electoral Act 2010 as reproduced hereinabove are very clear and holds no ambiguity that will require any interpretation. It is mandatory for political parties to forward only names of the candidates who win their primaries. This is clearly a provision of Electoral Act which is justiciable under Section 87 (9) of the Electoral Act.

I

A In **Uzodinma Vs. Izunaso (No. 20) (2011) 17 NWLR (Pt. 1275) 30 at 60 paragraph B-E**, this court, per Rhodes-Vivour. JSC, said:

B **“The nomination of a candidate to contest an election is the sole responsibility of the political party concerned. The courts do not have jurisdiction to decide who should be sponsored by any political party as its candidate in an election. But where the political party nominates a candidate for an election contrary to its own constitution and guidelines a dissatisfied candidate has every right to approach the court for redress. In such a situation, the courts have jurisdiction to examine and interpret relevant legislations to see if the political party complied fully with the legislation on the issue of nomination. The courts will never allow a political party to act arbitrarily or as it likes. Political party must obey their own constitution and once this is done there would be orderliness, and this would be good for politics and the country.”**

F The only instance where the name of a candidate other than the candidate that won the primary election will be forwarded to INEC, is where the candidate that won the election withdraws his candidature by notice in writing signed by him and delivered by himself to the political party that nominated him for the election, or where he dies before his name is submitted to INEC or after the name has been submitted and before the elections. See Section 35 and 36 of the Electoral Act 2010. These substitutions must follow due process.

H In the instance case, the complaint is that Section 87(4)(c)(i)(ii) was not complied with. This complaint falls squarely within the provision of Section 87(9) of the Electoral Act, which I have reproduced elsewhere in this judgment. The Federal High Court has the requisite jurisdiction to hear and determine this case.

I For these few words and the fuller reasons in the lead judgment, I too

A dismiss the appeal and endorse all the consequential orders made by my learned brother Mary Ukaego Peter-Odili, JSC.

Paul Adamu Galinje
Justice, Supreme Court

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1. **H.R.H OBA SAMUEL ADEBAYO ADEGBOLA
(ELERUWA)**
2. **CHIEF JACOB SALAKO ADEWUSI
(THE ODOFIN ERUWA) (DECEASED)**
3. **CHIEF FEMI ATANDA-JAGUN OF ERUWA**
4. **CHIEF I. O. OLABODE OLUKOTUN OF ERUWA**
5. **CHIEF IDOWU OKEOWO ASIPA OF ERUWA**
6. **CHIEF E. OJEBISI BALE AGBE OF ERUWA**
7. **MR. KASALI SANGOTIKUN**

AND

1. **MR. JAMES OLATUNDE IDOWU
(For himself and on behalf of Laribikusi Ruling
House excepting Lasubu family or Section of
Laribikusi Ruling House/Quarters)**
2. **ALHAJI RASHEED OYEDEPO AJAO**
3. **THE GOVERNOR OF OYO STATE**
4. **THE ATTORNEY GENERAL OF OYO STATE**
5. **IBARAPA EAST LOCAL GOVERNMENT**

SC. 584/2013

**IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA**

THURSDAY, 13TH APRIL, 2017

BEFORE THEIR LORDSHIPS

**OLABODE RHODES-VIVOUR
CLARA BATA OGUNBIYI
AMIRU SANUSI
EJEMBI EKO
PAUL ADAMU GALINJE**

**JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT**

PRACTICE AND PROCEDURE: Argument of motions – Where issues are formulated for determination – Whether not cognizable under Supreme Court Rules – Whether motions are properly argued on the basis of grounds predicated thereon.

ACTION: Application for extension of time – Discretionary thereof – Onus on applicant.

PRACTICE AND PROCEDURE: Affidavit – Deposition nature thereof – Where a total stranger deposes to an affidavit – Whether it is proper to put him on notice therewith – Failure to comply thereto – Implication.

SERVICE: Address for service – Need to endorse an address for service on a process – Or. 2 Rule 1(3) Supreme Court Amendment Rules 2014).

PRACTICE AND PROCEDURE: Application for extension of time – Reasons for delay if ill health of counsel – Need to be supported by medical report.

COURT: Interlocutory applications – Need to avoid delving into substantive issues.

COURT: Jurisdiction – Fundamental nature thereof – Whether can be raised at any stage of the proceedings.

PRACTICE AND PROCEDURE: Application for extension of time – Where an appellant is out of time in filing his brief – Whether he can file an application for extension of time – Or. 2 Rule 31, Supreme Court Rules 1988 as amended.

PRACTICE AND PROCEDURE: Raising of fresh issue – Where it involves issue of jurisdiction – Procedure thereof – Whether notice is required to be given to the adverse party.

RULES OF COURT: Purpose – Where rules provide time frame for an act – Failure to comply therewith – Effect.

WORDS AND PHRASES: 'Exceptional' – Meaning.

RULES OF COURT: Strict compliance – Whether makes administration of justice quicker.

Issues for Determination

- (a) Whether the appellants/applicants have placed good, substantial and exceptional, sufficient and cogent reasons before the court to deserve granting of an extension of time to file the Appellants' Brief of Argument.**
- (b) Whether the order/reliefs 2, 3 and 4 of this application are supported by law or grantable by this Honourable Court in the circumstances of this application.**

Facts of the Matter

By a motion on notice dated 22nd April, 2014 and filed on the 23rd April, 2014 the appellants/applicants herein sought for the following reliefs:-

- 1. Extension of time to file the appellants/applicants' brief of argument attached to the affidavit and marked Exhibit A.**
- 2. Granting leave to the Appellants/Applicants to raise a new issue/a new point of law not raised either in the High Court or the Court of Appeal to wit:
“Whether or not the learned trial judge and the Court of Appeal have jurisdiction to entertain this action which was instituted in a non-judicial division to wit:**

“Eruwa Judicial Division”.

- 3. Granting leave to the appellants/applicants to incorporate argument on the new issue/fresh point of law in the Appellants' Brief of argument (Exhibit A).**
- 4. To deem as properly filed and served the appellants' Brief of Argument (Marked Exhibit A) already filed and served.**

This motion is predicated on seven grounds and supported by a four paragraphs affidavit sworn to by one SaheedRaji, a legal secretary in the law firm of R. AOgunwole SAN & CO. Solicitors to the appellants/applicants.

In opposition to this application, the 1st and 2nd respondents filed a 28 paragraphs counter-affidavit on 24th May, 2016 and a further counter-affidavit to the same motion on notice on the 3rd June, 2016.

In line with the relevant rules of this court parties filed written addresses.

The appellants/applicants written address settled by Mr. R. A. Ogunwole SAN is dated 22nd April, 2014.

Held:*(Unanimously allowing the appeal)*

- 1. Motions are argued on the basis of grounds upon which they are predicated and not issues formulated for determination.*

Motions are generally argued on the basis of the grounds upon which they are predicated, the supporting affidavits and counter affidavits. I am not aware of any provisions in the rules of this court that authorize formulation of issues upon which applications are argued. Applicants are not allowed allows a party to proffer arguments on facts not deposed to in their affidavit. Issues in appeals arise from grounds of appeal, which in turn must be related to the decisions against which appeals lie. On cases of applications where do these issues arise? applicants certainly cannot formulate issues that are at variance with the contents of their affidavits and expect a favourable endorsement from the courts.

The applicants' issue in the instant application does not seem to have covered the depositions in their supporting affidavit. The application will therefore be considered in relation to the supporting affidavit. (P 175 .paras E – H).

2. *Onus on an appellant in an application for extension of time.*
I wish to state clearly that a grant or refusal of this application is within the discretionary powers of this court. It is the law that this discretionary powers must not only be exercised judicially but must be exercised judiciously also. An application for extension of time to file a Brief of Argument is not granted as a matter of course. An applicant who desires that the court's discretion be exercised in his favour in an application for extension of time must give good reasons and place sufficient materials before the court in order to earn the discretion of the court in his favour. (Pp 176 – 177 paras I – B)

3. *Where a stranger deposes to an affidavit, the deponent shall be put on notice.*
Learned counsel contended that the averments contained in paragraph 3(i)-(xii) of the affidavit in support of the appellants/applicants' motion on notice are most untrue and are complete fabrication that were concocted to mislead the court. Learned counsel deposed at paragraph 8 of the counter-affidavit that the information that led to his belief that the appellants' deposition at paragraph 3 of the affidavit in support were most untrue was given to him by one TundeAdegbola, a journalist of Olorunsogo, Akanran Road Ibadan. He set out the information from TundeAdegbola at the paragraphs of the counter-affidavit reproduced above. Learned counsel neither disclosed the relationship between TundeAdegbola and Ogunwole SAN, nor is there evidence that the counter-affidavit was served on the said TundeAdegbola. An affidavit in which a total stranger to a case is mentioned as an informant, that stranger must be put on notice. There is no address for service on TundeAdegbola on the counter-affidavit, as such it is very clear that he was not served. In absence of address for service, this court has no basis upon which the informant could be called to verify the depositions alluded to by the 1st and 2nd

respondents' counter-affidavit. I do therefore think the paragraphs of that counter-affidavit reproduced above have countered nothing, since there is no way to verify the depositions aforesaid.

(Pp 182–183 paras E–A)

4. *It is fatal where an address for service is not endorsed on a process. The law is very clear that where any notice or any other process is required to have an address for service endorsed on, it shall not be deemed to have been properly filed unless such address has been endorsed on it. See Order 2 Rule 1 (3) of the Supreme Court Rules 2014 (as amended). Since the information supplied by the 1st and 2nd respondents are incapable of being verified, they therefore go to no issue.**(P 183 paras B–C)*

5. *The averment of the counsel's illness was not supported by medical report.*

The first prayer in the applicants' application is for extension of time to file a brief of argument. The only viable reason advanced for failure to file the brief of argument within the prescribed period is that the learned senior counsel who is handling the case suddenly developed some problems in his eyes and his doctor advised him to take some rest to avoid straining the eyes. There is no medical report in support of this deposition and the doctor has also not been put on notice in respect of the allegation concerning him. In an application to appeal, this court has held that it may not amount to sufficient reason merely to say that the counsel was ill or that there was dereliction of duty on the part of his junior or that the volume of chamber work made the counsel forget to file the appeal. See *Omoriegbe Vs. Emovon* (1987) 6 SC 6; *Benson Vs. Nigerian Agip Oil Co. Ltd.* (1982) 5 SC 1. However, it is accepted as good reason where counsel commits error of judgment and fails to do what he is supposed to do.

In this respect, counsel's carelessness cannot be visited on the litigant where such carelessness is pardonable. See *Doherty Vs. Doherty* (1964) 1 ALL NLR 299; *Bowaje Vs. Adediwura* (1976) 6 SC 143. *(P 183 paras C–G.)*

6. *In an appeal the court's discretion should always be exercised on hearing the parties on the merit.*
In an appeal, the court's discretion should always be exercised towards hearing the parties on the merit. This court can therefore not shut out the appellants when they have shown that the brief is available for deeming. I am therefore of the firm view that justice will be better served if this application for extension of time to file the appellants' brief of argument is granted as prayed.
(P 183 .paras G–I.)
7. *Court cannot determine the main appeal during an interlocutory application.*
Now the issues raised by learned counsel in the paragraphs of the counter-affidavit are matters to be considered at the hearing of the appeal. Learned counsel has submitted that the new issues touch on the jurisdiction of the court. At this point the court cannot go into the determination of whether 'Eruwa Judicial Division' exist or not, as doing so will amount to a determination of the main appeal, at interlocutory stage, which this court is not allowed to do.
(P 184 .paras F–G)
8. *Issue of jurisdiction can be raised at any time.*
The law is settled that issue of jurisdiction, being the soul of litigation can be raised at any time even in this court for the first time. See Bronik Motors Vs. Wema Bank Nig Ltd (1983) 1 SCNLR 296; Oredoyim Vs. Arowolo (1989) 4 NWLR (Pt.114) 172; Gen. Electric Motors Vs. Akande (1999) 1 NWLR (Pt.588) 532.(P 184 paras G–H)
9. *A party who is out of time in filing his brief can file an application for extension of time.*
Where, as in this case the applicants' were unable to file their brief within 10 weeks as prescribed by Order 6 Rule 5 (1)(a) of the Supreme Court Rules, they can still file their brief if they file an application under Order 2 Rule 31 of the Supreme Court seeking extension or enlargement of time to file appellants' brief.
For an application for extension of time to file brief to succeed the applicant must by affidavit evidence show good and substantial

reasons for failure to file brief within the prescribed period. This is premised on the law that when no credible excuse is given no indulgence can be granted. Affidavit evidence must show something which entitles the applicants' to the courts discretion e.g. mistake, inadvertence or error of judgment of counsel. (Pp 186–187 paras H–B)

Per Rhodes Vivour (JSC)

“Under Order 2 Rule 31 of the Supreme Court Rules this court may extend the period prescribed under Order 6 Rule 5(1)(c) for filing brief. This is a discretion which must be exercised judicially and judiciously. That is with correct and convincing reasons and not arbitrarily or at the whim and fancies of the judge.

Affidavit evidence accepted by this court reveals that learned counsel or the applicants' was careless while taking steps to perfect the applicants' appeal. Such carelessness is pardonable since no delay is envisaged as the applicants' have already filed their brief and it would be wrong to punish the applicants' for lapses by their counsel. Relief No.1 is granted.” (P 187 paras B–E)

10. *Fresh issue on jurisdiction can be raised for the first time on appeal without leave*

Relief 2

The well laid down position of the law is that leave must be obtained from the Supreme Court before a fresh issue not canvassed in the lower courts can be argued, but where the fresh issue relates to the issue of jurisdiction it must be brought to the notice of the adverse party and can be argued with or without the leave of this court even if it is coming before this court for the first time. *See Obiakor Vs. State (2002) 6SC (Pt.II) p.33.* Jurisdiction is a substantial question of law. It can only be ousted by clear provisions of the constitution or statute. It is a threshold matter, so once raised even for the first time in the top court it must be determined quickly as it is the life wire of the court. *See Madukolu Vs. Nkemdilim (1962) 2NSCC p.374; Obiweubi Vs. CBN (2011) 2-3 SC (Pt.I) p.46*

The respondents' have been given good notice of the applicants' intention to raise the issue of jurisdiction and have gone

the extra mile to seek leave from this court which is graciously granted.(*P 187 paras E–I*)

Per Ogunbiyi (JSC)

“The reliefs are also within the jurisdiction of this court and hence the reference made to Order 6 Rule 5(B); Order 2 Rule 31 of the Rules of this court and also under its inherent jurisdiction. However, I seek to restate the position of the law, that the granting of the application is not as a matter of course. It must be based on the governing principles of good and substantial reasons.

In other words, it is pertinent to emphasize that the grant of such application, although it is at the discretion of the court, such must be exercised judicially and judiciously. When a court is called upon to make an order of extension of time within which to do certain things, prescribed by the rules of court for taking certain procedural steps, the court ought always to bear in mind that the rules of court must, *prima facie*, be obeyed.

It therefore follows, that in order to justify the exercise of the court's discretion in extending the time, there must be some material upon which to base the exercise of that discretion. *See Williams Vs. Hope Rising voluntary Funds Society (1982) 2 SC 145; Elobisi Vs. Onyeonwu (1989) 5 NWLR (Pt.120) 224; Doherty Vs. Doherty (1964) 1 All NLR 299; Ogar Vs. James (2001) 10 NWLR (Pt.722) 621 and Sanusi Vs. Ayoola (1992) 9 NWLR (Pt.265) 275.*

In further emphasis, the grounds predicating the application as well as the affidavit deposing to the facts thereon must be convincing so as to warrant the exercise of discretion in favour thereof. *See also Nwora Vs. Nwabueze (2011) 15 NWLR (Pt.1271) See page 467.*

On the totality of the application, it is obvious that the delay sought to be remedied was caused by the act of the counsel and same should not be visited on the client.” (*P 188 paras C–I*)

11. *The best of adjudication is one which allows the participation of all parties.*

The law is also well settled that the best of adjudication which should earn the justice of a case is that which is decided on the participation by all parties in a proceeding. Section 36(1) of 1999 Constitution, on the concept of fair hearing, is very well enshrined into our constitution and hence judicial system. In the case at hand, it is not out of place therefore for the court to bend backwards for the sake of doing justice.

This is more so especially where there is no evidence that the other party, is either, or will be prejudiced if the application is granted. (P 189 paras A–B).

12. *The new issue relates to jurisdiction which can be raised at any stage.*

On the question of the new issue/a new point sought to be raised, same relates to a question of jurisdiction which the law says, it can be raised at any stage of a proceeding, even before judgment. This is because jurisdiction is known to be the bed rock or hall mark of adjudication, without which, there can be no valid proceeding. The issue in question is substantive and not procedural. It is very fundamental and cannot be trivialised. (P 189 paras C–D)

Per Sanusi (JSC)

“In this instant application, the learned applicants' counsel gave his reasons for the delay in filing the appellant's brief in Paragraph 3 of the affidavit supporting his motion, which he gave as principally because of his eye problem to the extent that during the period he was supposed to work on the brief of argument and prepare it he had eye problem and was advised to rest. Conversely, in Paragraph 8 of the counter-affidavit filed by first and second respondents, the learned counsel for the two respondents tried to debunk such reasons given by the learned senior counsel for the applicants by deposing that during the period of the supposed rest by the learned

silk, he was seen personally conducting other cases in various courts despite the alleged eye problem. It seems to me that the averments in the counter-affidavit trying to debunk the applicants counsels' averment in the support affidavit, appear to be erroneous because the affidavit appeared not to have been served on the learned senior counsel for the applicants and also the deponent of the averments in the counter-affidavit Mr. TundeAdegbola, had no connection whatsoever in the case and appeared to be a total stranger in the case or at least, can be regarded as a “busy-body”. There is also no any disclosure in the averments of TundeAdegbola, of any connection or relationship whatsoever between him and Mr. Ogunwole, SAN. Also, there was no identifiable address of service of TundeAdegbola in the said counter-affidavit.

It must however be stated here, that the reason given by the learned senior advocate for the applicants as cause of his inability to file the Brief timeously are not very sound. Even if it was true that he was sick he is expected to show medical evidence to support his averments. Reason of ill-health or fault of junior counsel in the chambers is not enough. However, there is no dispute whosoever that the applicants' counsel was careless and negligent.”

(Pp 193 – 194 paras D – B)

13. *Carelessness of counsel can be accepted as reason for delay*

At any rate, this court in multiplicity of decided authorities held that negligence or carelessness of counsel can still serve as acceptable explanation for delay to apply for extension of time to appeal. See the cases of Shany Vs. Afribank Nigeria Plc (2000) 18 WRN1 or (2000) 13 NWLR (Pt.684) 392 at 403; Alasbe Vs. His Highness S. Abinbola & Ors (1978) NSCC 84 or (1978) 2 SC 139; Dokoly Vs. Dokoly (1976) 1 All NLR 399; Bowaje Vs. Adediwura (1976) 6 SC 143; Akinyede Vs. The Appraiser (1971) 1 All NLR 162.

(P 194 paras B – D)

14. *Exercise of discretion must be geared towards substantial justice*
As I said above, the exercise of discretion must be judicially and judiciously done. The cardinal principle is always that the discretion to be exercised must be geared towards doing substantial justice in the surrounding circumstances of the case. The justice of the case is to avoid the appellants or party making them to suffer from the negligence, inadvertence or mistake of their counsel due to no fault of theirs. To put it in another words, they should not be visited with the lapse, negligence or mistake of their counsel. The justice of this application is that the extension of time sought should be granted to enable them file their Brief of Argument, rather than to hinder them as that tantamount to shutting them out and preventing them from ventilating their grievances on the judgment they are desirous of appealing against. This prayer therefore ought to be and is hereby accordingly granted by me. (P 194 paras D – G).

The second prayer has to do with the grant of leave to raise fresh or new issue not raised or canvassed at the two lower courts. it appears to me that the issue sought to be freshly or newly raised relates to point of jurisdiction. The law is trite, that issue that relates to jurisdiction before being raised, the adverse party must as of necessity be put on notice and such notification can only be effectively done by obtaining the leave of this court, since it is sought to be raised for the first time in this court.

It is also settled law that, though question of law and jurisdiction can be raised at any time in the proceedings, however in view of the importance and fundamental nature of the topical issue of jurisdiction which is the live wire or spinal cord of any case or matter, the law requires that parties must be given opportunity to address it on that in order not to breach the time-honoured principle or rules of fair hearing. It is basically in view of that principle of law, that where a party to an appeal is desirous of raising new or fresh issue on jurisdiction which has never been raised in any of the two courts below, should and indeed must seek and obtain leave of court where he intends to raise it. It is sequel to that that, I find it appropriate to grant this prayer. (Pp 194 – 195 paras H – C).

Per Eko (JSC)

“It is trite that rules of court are not made for fun. They are made to be complied with.

Where the purpose of the rules is to provide time-table for conduct of litigation there must be strict compliance with the rules; because to do otherwise will defeat the purpose of the rules. *See Ratnam Vs. Cumarasamy (1964) 3 ALL E.R. 933 at 935.*

The obligation of the litigant and/or his counsel to comply with the rules of court has been re-stated by this court in a number of cases including *Ezeigbo Vs. F.A.T.B. Ltd. (1992) 1 NWLR (pt.216) 197; Iroegbu Vs. Okwordu (1990) 6 NWLR (pt.159) 648; C.C.B. (NIG.) Plc Vs. A.G. Anambra State (1992) 8 NWLR (PT.261) 526; Dingyadi Vs. INEC No.2 (2010) 18 NWLR (PT.1224) 154.* The point in all these cases is that it must be appreciated that where the exercise of a right is circumscribed or limited by a rule of practice, except where it is satisfactorily shown that compliance with such a rule has been raised, then the rule must be complied with, and that the Rules are meant to be obeyed.

Per Eko (JSC)

“The rules of this court made pursuant to Section 236 of the 1999 Constitution, as amended, not only do they partake of the nature of subsidiary Legislation by virtue of Section 18(1) of the Interpretation Act (per *Ogbuagu, JSC in M.V Arabella Vs. NAIC (2009) 4 5 SC. (pt.2) 189 AT (205206)*); they are accordingly entitled to be given purposive interpretation. Whereby effect is given to the true purpose of the legislation. *See Nafiu Rabui Vs. The State (1980) 8-11 SC 130; Onyema Vs. Oputa (1987) 6 SC 362 at 371; F.B.N. PLC Vs. Maiwada (2012) LPELR 9713 (SC).*” (*Pp 196–197 paras E–B*)

15. *The need for strict compliance with rules for effective administration of justice*

One of the causes of the baneful situation or the quagmire of the congestion we have found ourselves in this court presently is tardy or sloppy attitude of lawyers and litigants to rules providing time table for conduct of litigation. We are in dire situation. As Shakespeare would put it, “desperate malady deserves desperate remedy.” The panacea appears to what this court stated in SolankeVs. Somefun (1974) 1 AL NLR 586 at 592; F.B.N. Plc. Vs. Abraham (2008) 362 NSCQR 1058 at 1076. That is, strict compliance with the rules of court makes administration quicker. The extant rules of this court provides in the proviso to Order 2 Rule 31 that when time within which anything provided by the said rules shall be done enlargement of time for doing such a thing may be granted only in exceptional circumstances. That is that such indulgence may only be granted in very unusual circumstances. The adjective, exceptional means “very unusual”. See *Oxford Advanced Learner's Dictionary*. The proviso to Order 2 Rule 31 therefore demands that the appellants who have failed, neglected or refused to file their Brief of Argument within 10 weeks provided by Order 6 Rule 5, it is only upon his showing exceptional or very unusual circumstances that they may be allowed extension of time within which to file the said brief of argument.(P 197 paras C – G)

Per Eko (JSC)

“For the appellants, the reason given in the affidavit for the 24 week delay in filing the Appellant's Brief is that his counsel, Mr. Ogunwole, SAN, developed serious eye problems just at the time he had commenced working on the brief. I grudgingly accept this reason. The counter-affidavit which seeks to prove a lie of the reason for delay as proffered by Mr. Ogunwole, SAN, suggests that Mr. Ogunwole SAN, in spite of the alleged eye problems was actively in courts in other cases. My learned brother, PAUL A. GALINJE,

JSC, in the Lead Ruling, has dismissed the counter-affidavit and given reasons for not acting on it. I agree with him.

The learned Senior Counsel, however, may not be that lucky some other time. As a Senior Advocate he is expected to have other counsel in his Chambers. If for any reason any counsel in the Chambers, including himself, is unable to do a thing within the statutory time or period prescribed any other counsel within the Chambers should be above to take over and to do the needful. See A.J.Adeka Vs. M.A. Vaatia (1987) 1 NWLR (pt.487) 134. In a firm of legal practitioners when one legal practitioner is unable to perform an assigned responsibility for any reason, including sickness; in an application for extension of time within which to do that thing prescribed by the rules of court, proper account of not only the counsel assigned but also of other counsels in the Chambers should be given.”(Pp 197–198 paras G–D)

16. *The fresh issue to be raised which touches jurisdiction on is substantial.*

The application also seeks leave to raise the issue of jurisdiction for the first time in this court. It would not require adducing fresh evidence on the evidence or facts available in the printed record. That issue can be determined without the necessity for fresh evidence. I agree with the appellants that the new issue touches on the jurisdiction of the trial to entertain the suit. It is a threshold issue, and it is *prima facie* substantial. Counsel for the respondents seems to suggest that it is a non-issue. His submission, backed by paragraphs 22 and 23 of the counter-affidavit, is that it is a notorious fact that Eruwa Judicial Division is also known and called Ibarapa Judicial Division in Oyo State. As I am satisfied that my agreeing with the 1 – 2nd respondent's counsel would prematurely lead only to dabbling in the issues in the substantive appeal. I hereby impose self restraint.

I am, like my learned brother PAULA. GALINJE, JSC, ready to grant appellants leave to raise and argue the fresh point or issue in the appellants' Brief. I also grant appellants' extension of time

within which to file thier Brief of Argument as in Exhibit A.
(P 198 paras D – H)

Nigerian cases cited in this Judgment

A.I.C Ltd Vs. NNPC (2005) 5 SC (Pt.11) 60;
A.I.C. Ltd Vs. NNPC (2005) 5SC (Pt.11) 60;
A.J. Adeka Vs. M.A. Vaatia (1987) 1 NWLR (pt.487) 134;
AIC Ltd. Vs. NNPC (2005) 5 SC (Pt.II) 60;
Akinyede Vs. The Appraiser (1971) 1 All NLR 162;
Alasbe Vs. His Highness S. Abinbola & Ors (1978) NSCC 84;
Benson Vs. Nigerian Agip Oil Co. Ltd. (1982) 5 SC 1;
Bowaje Vs. Adediwura (1976) 6 SC 143;
Bowaje Vs. Adediwura (1976) 6 SC 143;
Bronik Motors Vs. Wema Bank Nig Ltd (1983) 1 SCNLR 296; Oredoyim Vs. Arowolo (1989) 4 NWLR (Pt.114) 172;
C.C.B. (NIG.) Plc Vs. A.G. Anambra State (1992) 8 NWLR (PT.261) 526;
Chief T.O.S. Benson Vs. Nigerian Agip Oil Co. Ltd (1982) 5 SC 1;
Dingyadi Vs. INEC No.2 (2010) 18 NWLR (PT.1224) 154;
Doherty Vs. Doherty (1964) 1 ALL NLR 299;
Doherty Vs. Doherty (1964) 1 All NLR 299;
Dokoly Vs. Dokoly (1976) 1 All NLR 399;
Elobisi Vs. Onyeonwu (1989) 5 NWLR (Pt.120) 224;
Ezeigbo Vs. F.A.T.B. LTD (1992) 1 NWLR (pt.216) 197;
F.B.N. PLC Vs. Maiwada (2012) LPELR 9713 (SC);
F.B.N. Plc. Vs. Abraham (2008) 362 NSCQR 1058;
Gen. Electric Motors Vs. Akande (1999) 1 NWLR (Pt.588) 532;
Iroegbu Vs. Okwordu (1990) 6 NWLR (pt.159) 648;
Isaka Vs. Ogundimu (2006) 13 NWLR (Pt.997) No.1;
Isiaka Vs. Ogundimu (2006) 13 NWLR (Pt.997) 401;
M.V. Arabella Vs. NAIC (2009) 4 5 SC. (pt.2) 189;
Madukolu Vs. Nkemdilim (1962) 2NSCC p.374;
Nafiu Rabui Vs. The State (1980) 8-11 SC 130;
Nwora Vs. Nwabueze (2011) 15 NWLR (Pt.1271) 467;
Obiakor Vs. State (2002) 6SC (Pt.II) p.33;

- A** *Obiuweubi Vs. CBN (2011) 2-3 SC (Pt.I) p.46;*
Ogar Vs. James (2001) 10 NWLR (Pt.722) 621;
Omoregie Vs. Emovon (1987) 6 SC 6;
Onyema Vs. Oputa (1987) 6 SC 362;
- B** *Ratnam Vs. Cumarasamy (1964) 3 ALL E.R. 933;*
Sanusi Vs. Ayoola (1992) 9 NWLR (Pt.265) 275;
Shany Vs. Afribank Nigeria Plc (2000) 18 WRN1 or (2000) 13 NWLR (Pt.684) 392;
- C** *Solanke Vs. Somefun (1974) 1 ALNLR 586;*
Udo Vs. the Registered Trustees of the Brotherhood of the Cross and Star (2013) LPELR 19910 (SC);
Williams Vs. Hope Rising voluntary Funds Society (1982) 2 SC 145; and
- D** *Yekini Sanusi Ida & 2 Ors Vs. Oladepo Fakunle & Anor.*

Nigerian Statutes cited in this Judgment

- Interpretation Act Section 18(1);*
- E** *1999 Constitution, as amended Sections 36(1) and 236.*

Representation

- Mr. R. A. Ogunwole, SAN** and Ahmed Raji, SAN with the rest of counsel
- F** as per the attached lists for the appellants/applicants.
Mr. M. K. Raji for the 1st and 2nd respondents.
MR. O. A. Oguniran for the 3rd and 4th respondents. He is Director of Legal Services Oyo State.
- G** 5th Respondents not represented.

- ADAMU GALINJE, (JSC) (Delivering the Lead Judgment):** By a
- H** motion on notice dated 22nd April, 2014 and filed on the 23rd April, 2014 the appellants/applicants herein sought for the following reliefs:

- I** 1. **Extension of time to file the appellants/applicants' brief of argument attached to the affidavit and marked Exhibit A.**

A

2. **Granting leave to the Appellants/Applicants to raise a new issue/a new point of law not raised either in the High Court or the Court of Appeal to wit:**

B

“Whether or not the learned trial judge and the Court of Appeal have jurisdiction to entertain this action which was instituted in a non-judicial division to wit: “Eruwa Judicial Division”.

C

3. **Granting leave to the appellants/applicants to incorporate argument on the new issue/fresh point of law in the Appellants' Brief of argument (Exhibit A).**

D

4. **To deem as properly filed and served the appellants' Brief of Argument (Marked Exhibit A) already filed and served.**

E

This motion is predicated on seven grounds and supported by a four paragraphs affidavit sworn to by one SaheedRaji, a legal secretary in the law firm of R. A Ogunwole SAN & CO. Solicitors to the appellants/applicants.

F

In opposition to this application, the 1st and 2nd respondents filed a 28 paragraphs counter-affidavit on 24th May, 2016 and a further counter-affidavit to the same motion on notice on the 3rd June, 2016.

G

In line with the relevant rules of this court parties filed written addresses.

The appellants/applicants written address settled by Mr. R. A. Ogunwole SAN is dated 22nd April, 2014. Learned senior counsel formulated one issue for determination of this application and it reads as follows:

H

I “Whether or not the court may exercise its discretion in

A favour of the Appellants/Applicants by granting the application”.

B Mr. KolapoRaji Esq.counsel to the 1st and 2nd respondents submitted two issues for determination of the application. These issues are reproduced hereunder as follows:

C (a) Whether the appellants/applicants have placed good, substantial and exceptional, sufficient and cogent reasons before the court to deserve granting of an extension of time to file the Appellants' Brief of Argument.

D (b) Whether the order/reliefs 2, 3 and 4 of this application are supported by law or grantable by this Honourable Court in the circumstances of this application.

E Motions are generally argued on the basis of the grounds upon which they are predicated, the supporting affidavits and counter affidavits. I am not aware of any provisions in the rules of this court that authorize formulation of issues upon which applications are argued. Applicants are not allowed to proffer arguments not deposed to in their affidavit. Issues in appeals arise from grounds of appeal, which in turn must be related to the decisions against which appeals lie. On cases of applications where do these issues arise? applicants certainly cannot formulate issues that are at variance with the contents of their affidavits and expect a favourable endorsement from the courts.

F The applicants' issue in the instant application does not seem to have covered the depositions in his supporting affidavit. The application will therefore be considered in relation to the supporting affidavit.

G In arguing this application Mr. Ogunwole, learned senior counsel for the appellants/applicants relied on all the paragraphs of the affidavit, particularly paragraph 3 thereof and submitted that a court of law would

H

I

A normally exercise its discretion in favour of an applicant where his being out of time is due to pardonable inadvertence and/or negligence caused by his counsel. In aid, learned senior counsel cited **Isiaka Vs. Ogundimu (2006) 13 NWLR (Pt.997) 401 at 414 paragraphs F-G.**

B On whether the appellants can raise fresh issue or fresh point of law under Order 6 Rule 5(b) of the Supreme Court Rules, learned senior counsel submitted that the fresh issue that is sought to be raised in this application touches on the jurisdiction of the court. According to the
C learned senior counsel the fresh issue is substantial and no fresh evidence will be called to establish it. In aid, learned senior counsel cited **A.IC Ltd Vs. NNPC (2005) 5 SC (Pt.11) 60 at page 68.** Finally, learned senior counsel urged this court to grant the application.

D Mr. Kolapo Raji, learned counsel for the 1st and 2nd respondents submitted that the appellants/applicants have not disclosed any fact as good, substantial, exceptional and convincing reasons for late filing of the Brief of Argument to deserve extension of time to file their Brief of
E Argument. In a further argument, learned counsel submitted that the learned senior counsel was throughout the period he claimed to have eye problems, engaged inactive practice in courts and that apart from this, there were other counsels in the Chambers of Ogunwole SAN, who were
F competent to file the Appellants' Brief of Argument. Learned counsel urged the court to refuse prayers one as the appellants/applicants have failed to place sufficient materials before the court.

On the appellants' prayer to raise fresh issue or fresh point of law
G before this court, learned counsel submitted that the appellants/applicants have not satisfied the conditions for doing so. In aid, learned counsel cited the decision of this court in **Udo Vs. the Registered Trustees of the Brotherhood of the Cross and Star (2013) LPELR 19910 (SC).** Learned
H counsel further submitted that the applicants have not placed all the relevant facts pertaining the new point being sought to be raised before this court. Learned counsel raised so many issues which are irrelevant at this stage. I do not need to consider them, as doing so will have the effect of
I determining the appeal at the interlocutory level.

I wish to state clearly that a grant or refusal of this application is

- A within the discretionary powers of this court. It is the law that this discretionary powers must not only be exercised judicially but must be exercised judiciously also. An application for extension of time to file a Brief of Argument is not granted as a matter of course. An applicant who
- B desires that the court's discretion be exercised in his favour in an application for extension of time must give good reasons and place sufficient materials before the court in order to earn the discretion of the court in his favour.
- C In the instant application, learned senior counsel for the applicant relies on all the paragraphs of the supporting affidavit, particularly paragraph 3 thereof which he says contains the reasons for delay in filing the Appellant's Brief of Argument within the prescribed period. Paragraph
- D 3 of the supporting affidavit is hereunder reproduced as follows:

- E **“3. That Mr. R.A. Ogunwole, SAN, the lead counsel in this Appeal told me and I verily belief in our law office on Saturday 19th April, 2014 at about 4.00pm as follows:**
- F **i. That he was served with the Records of Appeal on the 23/10/2013.**
- G **ii. That he commenced work on the preparation of the Appellant's Brief of Argument when he suddenly developed some problem in his eyes and his Doctor advised him to take some rest to avoid straining the eyes.**
- H **iii. That during the period, he could not do much reading, the time for filing the Brief of Argument has (sic) expired.**
- I **iv. That he has fully resumed his legal practice and he had completed the Appellants' Brief of Argument which has been filed.**
- v. That the delay was caused by the appellants' counsel which is deeply regretted**
- vi. That in the cause of reading the Records of Appeal, he discovered that the writ of summons, the statement of claim and all court**

- A** processes filed by the plaintiffs were titled 'in the Eruwa Judicial Division' which is non-existence in Oyo State.
- B** vii. That all the facts in support of the new point of law are contained in the Records of Appeal before this Honourable Court.
- viii. That no further evidence is required which could have affected the decision of this Honourable Court.
- C** ix. That it is in the interest of justice to grant this application so as to prevent obvious miscarriage of justice.
- x. That to avoid further delay, the new issue/new point of law has been incorporated in the Appellant's Brief of Argument already filed and copy of which is herewith attached and marked Exhibit A.
- D** xi. That the respondents will not be prejudiced if the application is granted.
- E** xii. That it is in the interest of Justice to grant the application.

F Learned counsel for the 1st and 2nd respondents contradicted the averments reproduced above at paragraphs 8 – 21 of their counter affidavit. These paragraphs of the counter affidavit are hereunder reproduced as follows:

- G** 8. On 23/5/2016 at 2.00pm at No.24 Adeoyo Hospital Road, Off Ring Road, Ibadan one Mr. TundeAdegbola, a journalist of Olorunsogo, Akanran Road, Ibadan informed me and I verily
- H** believed him as follows:
- i. That Mr. R.A. Ogunwole, SAN, is counsel to the defendants in a pending Civil Suit No. 1/192/2008 before Honourable Justice M. L. Abimbola of High Court of Oyo State, Ibadan
- I** Judicial Division and that the suit is between

- A** as conversant with the relevant laws that are involved in this case/Appeal.
- B** 12. Based on the facts and circumstances deposed to in paragraphs 9, 10 and 11 above I believe that the said J.D. Olaniyan Esq. or any of the above-mentioned legal practitioners in the employment of Mr. R. A. Ogunwole, SAN, could within time required by the rules, prepare and file the appellants' brief of argument in this appeal.
- C**
- D** 13. Also, during the period from 23/10/2013 to 23/4/2014 more particularly on 10/1/2014, the 1st and 2nd respondents through their counsel (Abdur-Raheem Adebayo Shittu Esq), pursuant to the judgment of the trial court in this case/appeal filed an application by Motion of Notice dated 10/1/2014 before the trial court. A copy of the said motion is herewith attached and marked as Exhibit ROA1.
- E**
- F** 14. On 15/1/2014 the said J.D. Olaniyan Esq of Mr. R. A. Ogunwole, SAN's law firm, mentioned above prepared and filed a counter-application by a Motion on Notice (dated and filed on 15/1/2014) to strike out the application in Exhibit ROA1 above. A copy of the counter-application/motion referred to in this paragraph is herewith attached and marked as Exhibit ROA2.
- G**
- H** 15. Upon filing and service of a counter-application filed by the 1st and 2nd respondents to the counter-application (i.e. Exhibit ROA2 above), the counter-affidavit which is herewith attached and marked as Exhibit ROA3; it was Mr. R. A. Ogunwole, SAN, himself that personally prepared and filed on 30/1/2014, a further affidavit and a written address in support of the Exhibit ROA2 mentioned above. A copy of the said further affidavit and written
- I**

- A** address so prepared by Mr. R.A. Ogunwole, SAN, himself is hereby with attached and marked as Exhibit ROA4.
- B** 16. On 10/10/2013 appellants/applicants through their counsel, Mr. R.A. Ogunwole, SAN, pursuant to the judgment of the lower court filed before the Court of Appeal, Ibadan an application by Motion on Notice dated 10/1/2014. A copy of the said Motion is herewith attached and marked as Exhibit ROA5.
- C**
- D** 17. The said Motion i.e. Exhibit ROA5 of this affidavit was fixed by the Court of Appeal, Ibadan for hearing 10/4/2014. A copy of the hearing notice of the application served on the 1st and 2nd respondents is herewith attached and marked as Exhibit ROA6.
- E** 18. On 10/4/2014 Mr. R.A. Ogunwole, SAN, was present in the Court of Appeal and participated actively in the proceeding of the court.
- F** 19. Based on the facts deposed to in paragraphs 8i-iii and 9-18 above, I verily believed as follows:
- G** i. That Mr. R. A. Ogunwole, SAN, did much reading to prepare and file the said Exhibit ROA1, ROA2, and ROA3 above as well as several relevant case laws to prepare and file Exhibit ROA4 attached to this affidavit.
- H** ii. That Mr. R.A. Ogunwole, SAN, did much reading to prepare and file the said Exhibit ROA4.
- I** iii. That Mr. R.A. Ogunwole, SAN, did not develop any problem in his eyes and he could do much reading with his eyes during the period from 23/10/2013 to 23/4/2014 to prepare and file within time, the appellants brief of argument in this appeal.
- iv. That between the period of 23/10/2013 and

A depositions alluded to by the 1st and 2nd respondents' counter-affidavit. I do therefore think the paragraphs of that counter-affidavit reproduced above have countered nothing, since there is no way to verify the depositions aforesaid.

B The law is very clear that where any notice or any other process is required to have an address for service endorsed on, it shall not be deemed to have been properly filed unless such address has been endorsed on it. See Order 2 Rule 1 (3) of the Supreme Court Rules 2014 (as amended).

C Since the information supplied by the 1st and 2nd respondents are incapable of being verified, they therefore go to no issue.

The first prayer in the applicants' application is for extension of time to file a brief of argument. The only viable reason advanced for failure to file the brief of argument within the prescribed period is that the learned senior counsel who is handling the case suddenly developed some problems in his eyes and his doctor advised him to take some rest to avoid straining the eyes. There is no medical report in support of this deposition and the doctor has also not been put on notice in respect of the allegation concerning him. In an application to appeal, this court has held that it may not amount to sufficient reason merely to say that the counsel was ill or that there was dereliction of duty on the part of his junior or that the volume of chamber work made the counsel forget to file the appeal. *See Omoregie Vs. Emovon (1987) 6 SC 6; Benson Vs. Nigerian Agip Oil Co. Ltd. (1982) 5 SC 1.* However, it is accepted as good reason where counsel commits error of judgment and fails to do what he is supposed to do.

G In this respect, counsel's carelessness cannot be visited on the litigant where such carelessness is pardonable. *See Doherty Vs. Doherty (1964) 1 ALLNLR 299; Bowaje Vs. Adediwura (1976) 6 SC 143.*

H In an appeal, the court's discretion should always be exercised towards hearing the parties on the merit. This court can therefore not shut out the appellants when they have shown that the brief is available for deeming. I am therefore of the firm view that justice will be better served if this application for extension of time to file the appellant's brief of argument is granted as prayed.

I The second prayer is for leave to the appellants/applicants to raise a

A new issue/a new point of law not raised either in the High Court or the Court of Appeal and to incorporate argument on the new issue/fresh point of law in the appellant's brief of argument. The new issue which the applicants wish to raise has been reproduced elsewhere in this ruling. Learned senior

B counsel submitted that the new issue touches on the jurisdiction of the court and that no new evidence will be called. In aid, learned senior counsel cited **A.I.C. Ltd Vs. NNPC (2005) 5SC (Pt.11) 60 at 68.**

C In opposition, learned counsel for the 1st and 2nd respondents deposed at paragraphs 22 and 23 of the counter affidavit as follows:

“22. Conventionally 'the Eruwa Judicial Division' is in existence in Oyo State.

D

23 In Oyo State, the litigants, the Bar and the Bench conventionally know, call, refer to and addressed Ibarapa Judicial Division of Oyo State High Court as Eruwa Judicial Division between the official place of sitting of the Division is High Court of Oyo State at Eruwa, Oyo State.

E

F Now the issues raised by learned counsel in the paragraphs of the counter-affidavit are matters to be considered at the hearing of the appeal. Learned counsel has submitted that the new issues touch on the jurisdiction of the court. At this point the court cannot go into the determination of whether

G **'Eruwa Judicial Division'** exist or not, as doing so will amount to a determination of the main appeal, at interlocutory stage, which this court is not allowed to do. The law is settled that issue of jurisdiction, being the soul of litigation can be raised at any time even in this court for the first

H time.

See Bronik Motors Vs. Wema Bank Nig Ltd (1983) 1 SCNLR 296; Oredoyim Vs. Arowolo (1989) 4 NWLR (Pt.114) 172; Gen. Electric Motors Vs. Akande (1999) 1 NWLR (Pt.588) 532.

I For this reason, I am also prepared to grant the applicant's second prayers. On the whole, I grant the application in the following terms.

A

1. Applicants are hereby granted extension of time to today to file the Appellants brief of argument.

B

2. Leave is hereby granted to the Appellants/ Applicants to raise new issue/a new point of law not raised either in the High Court of the Court of Appeal to wit:

C

“Whether or not the learned trial judge and the Court of Appeal have jurisdiction to entertain this action which was instituted in a non-Judicial Division to wit: “Eruwa Judicial Division”.

D

3. Leave is hereby granted to the appellants/applicants to incorporate argument on the new issue/fresh point of law in the Appellant's Brief of Argument (Exhibit A).

E

4. Exhibit A, the appellants' brief of argument is deemed properly filed and served today.

F

Paul Adamu Galinje
Justice, Supreme Court

G

RHODES-VIVOUR, (JSC): I have had the benefit of reading in draft the leading Ruling delivered by my learned brother, **Galinje JSC**. I agree with his lordship that the application should be granted. The applicants seek the following reliefs:

H

1. Extension of time to file the appellants/applicants' brief of argument attached to the affidavit and marked exhibit A.

I

2. Granting leave to the appellants/applicants to raise a new issue/a new point of law not raised either in the High Court or the Court of Appeal to wit;

A “Whether or not the learned trial judge and the Court of Appeal have jurisdiction to entertain this action which was instituted in a non-judicial division to wit. “Eruwa Judicial Division”.

B 3. Granting leave to the appellants/applicants' to incorporate argument on the new issue/fresh point of law in the appellants' brief of argument (exhibit A).

C 4. To deem as properly filed and served the appellants' brief of argument (marked exhibit A) already filed and served.

D **Hon. Justice Galinje** examined the affidavit in support of the application and the counter-affidavit filed in opposition and came to a conclusion which is gratefully accepted. I shall have cause in this Ruling to refer to his lordships conclusions. Reliefs 3 and 4 can only be granted if reliefs 1 and 2 succeed.

E *Relief 1*

F **Order 6 Rule 5(1)(a) of the Supreme Court Rules state that:**
G **5(1)(a) The appellant shall within ten weeks of the receipt of the Record of Appeal..... file in the court and serve on the respondent a written brief being a succinct statement of his argument in the appeal.**

H Where, as in this case the applicants' were unable to file their brief within 10 weeks as prescribed by Order 6 Rule 5 (1)(a) of the Supreme Court Rules, they can still file their brief if they file an application under Order 2 Rule 31 of the Supreme Court seeking extension or enlargement of time to file appellants' brief.

I For an application for extension of time to file brief to succeed the

- A** applicant must by affidavit evidence show good and substantial reasons for failure to file brief within the prescribed period. This is premised on the law that when no credible excuse is given no indulgence can be granted. Affidavit evidence must show something which entitles the applicants' to the court's discretion e.g. mistake, inadvertence or error of judgment of counsel.

- B** Under Order 2 Rule 31 of the Supreme Court Rules this court may extend the period prescribed under Order 6 Rule 5(1)(c) for filing brief. This is a discretion which must be exercised judicially and judiciously. That is with correct and convincing reasons and not arbitrarily or at the whim and fancies of the judge.

- C** Affidavit evidence accepted by this court reveals that learned counsel or the applicants' was careless while taking steps to perfect the applicants' appeal. Such carelessness is pardonable since no delay is envisaged as the applicants' have already filed their brief and it would be wrong to punish the applicants' for lapses by their counsel. Relief No.1 is granted.

Relief 2

- F** The well laid down position of the law is that leave must be obtained from the Supreme Court before a fresh issue not canvassed in the lower courts can be argued, but where the fresh issue relates to the issue of jurisdiction it must be brought to the notice of the adverse party and can be argued with or without the leave of this court even if it is coming before this court for the first time. **See Obiakor Vs. State (2002) 6SC (Pt.II) p.33.** Jurisdiction is a substantial question of law. It can only be ousted by clear provisions of the constitution or statute. It is a threshold matter, so once raised even for the first time in the top court it must be determined quickly as it is the life wire of the court. **See Madukolu Vs. Nkemdilim (1962) 2NSCC p.374; Obiuweubi Vs. CBN (2011) 2-3 SC (Pt.I) p.46**

- I** The respondents' have been given good notice of the applicants' intention to raise the issue of jurisdiction and have gone the extra mile to seek leave from this court which is graciously granted. It is for these brief reasons as well as those more fully given by my learned

A brother **Galinje, JSC** that I too grant the application.

Olabode Rhodes-Vivour
Justice, Supreme Court

B **BATA OGUNBIYI, (JSC):** I have had the privilege of reading in draft the lead ruling just delivered by my learned brother Galinje, JSC. I agree that the application at hand has merit and should be obliged.

C The application, has been spelt out clearly in the lead Ruling of my learned brother. The reliefs are also within the jurisdiction of this court and hence the reference made to **Order 6 Rule 5(B); Order 2 Rule 31** of the Rules of this court and also under its inherent jurisdiction. However, I seek to restate the position of the law, that the granting of the application is not as
D a matter of course. It must be based on the governing principles of good and substantial reasons.

E In other words, it is pertinent to emphasize that the grant of such application, although it is at the discretion of the court, such must be exercised judicially and judiciously. When a court is called upon to make an order of extension of time within which to do certain things, prescribed by the rules of court for taking certain procedural steps, the court ought always to bear in mind that the rules of court must, *prima facie*, be obeyed.

F It therefore follows, that in order to justify the exercise of the court's discretion in extending the time, there must be some material upon which to base the exercise of that discretion. *See Williams Vs. Hope Rising voluntary Funds Society (1982) 2 SC 145; Elobisi Vs. Onyeonwu (1989) 5 NWLR (Pt.120) 224; Doherty Vs. Doherty (1964) 1 All NLR 299; Ogar Vs. James (2001) 10 NWLR (Pt.722) 621 and Sanusi Vs. Ayoola (1992) 9 NWLR (Pt.265) 275.*

G In further emphasis, the grounds predicating the application as well
H as the affidavit deposing to the facts thereon must be convincing so as to warrant the exercise of discretion in favour thereof. *See also Nwora Vs. Nwabueze (2011) 15 NWLR (Pt.1271) See page 467.*

I On the totality of the application, it is obvious that the delay sought to be remedied was caused by the act of the counsel and same should not be visited on the client.

A The law is also well settled that the best of adjudication which should earn the justice of a case is that which is decided on the participation by all parties in a proceeding. Section 36(1) of 1999 Constitution, on the concept of fair hearing, is very well enshrined into our constitution and hence
B judicial system. In the case at hand, it is not out of place therefore for the court to bend backwards for the sake of doing justice.

This is more so especially where there is no evidence that the other party, is either, or will be prejudiced if the application is granted.

C On the question of the new issue/a new point sought to be raised, same relates to a question of jurisdiction which the law says, it can be raised at any stage of a proceeding, even before judgment. This is because jurisdiction is known to be the bed rock or hall mark of adjudication,
D without which, there can be no valid proceeding. The issue in question is substantive and not procedural. It is very fundamental and cannot be trivialised.

For all intents and purposes, **paragraph 3 sub-paragraphs (viii), (ix), (xi) and (xii)** of the affidavit in support of the application are specific and relevant to this application and the facts are as follows:

F **“(viii) That no further evidence is required which could have affected the decision of this Honourable Court.**

G **(ix) That it is in the interest of justice to grant this application so as to prevent obvious miscarriage of justice.**

H **(xi) That the respondents will not be prejudiced if the application is granted.**

(xii) That it is the interest of justice to grant the application”.

I With the foregoing few words of mine and more particularly and relying on

A address raised lone issue for the determination of their application as follows:

B **“Whether or not the court may exercise its discretion in favour of the applicants by granting same”.**

As for the respondents, two issues were proposed for the determination of the application to wit:

C (i) **Whether the appellants/applicants have placed substantial and exceptional sufficient and cogent reasons before the court to deserve granting of an extension of time to file the appellants' brief of argument.**

E (ii) **Whether order/reliefs 2, 3, and 4 of this application are supported by law or grantable by this Honourable Court in the circumstances of this application.**

F In his oral argument, the learned senior counsel for the applicants' referred to paragraph 3 of the supporting affidavit to the effect that the delay in filing their brief of argument was caused by the negligence and inadvertence of the counsel and he argued that in such situation court can exercise its discretion to grant the application especially in a situation where non-filing of brief within time was due to pardonable inadvertence caused by counsel. He cited the case of **Isaka Vs. Ogundimu (2006) 13 NWLR (Pt.997) No.1 at 44.**

H Regarding the relief that has to do with raising fresh or new issue, he referred to the case of **AIC Ltd. Vs. NNPC (2005) 5 SC (Pt.II) 60 at 68.**

I On their part, the respondents as I stated supra, opposed the grant of this application vehemently. Their learned counsel argued that the applicants failed to disclose any facts as good, substantial, exceptional and convincing reason for late filing of their Brief of Argument to deserve being

A granted the relief sought. He argued that in their counter-affidavit, they showed and established that the learned counsel to the applicants/appellants Mr. R. A. Ogunwole, SAN, was during the period stated, had eye problem and was advised to take some rest. The same

B learned senior counsel for the applicants had been appearing in courts conducting his cases. He stated that all the facts or reasons deposed to were mere fabrication and most untrue as they stated to in the counter affidavits of 1st and 2nd respondents. He said even if what he said about his eye

C problem was true, the learned SAN for the applicants had other able learned counsel on employment in his chambers who could timeously prepare the appellants brief of argument. He then urged this court to hold that the applicants did not show cogent and substantial reason for the delay in filing

D the appellants' brief of argument.

With regard to the prayer for leave to raise fresh or new issue, the respondents' counsel submitted that such relief was also not grantable because the three conditions for grant of such relief were not satisfied. He

E mentioned those conditions to include the followings:

- (a) That the court had all relevant facts relating to the new/fresh point.**
- (b) That if the points were raised at the lower court, it would have remained unsatisfactorily determined.**
- (c) That the point being sought to be raised is substantial point of law, be it procedural or substantive.**

H Learned counsel for the respondents went ahead to delve into some facts in his argument which if considered will be prejudicial or pre-emptory to the determination of the fresh or new issue sought to be raised. The learned respondents' counsel finally urged this court to refuse and dismiss the applicants' application.

I In the first prayer, the applicant herein, is seeking the indulgence of

- A** this court to extend time for them to file their brief out of time. For this court and indeed any appellate court to grant such prayer the applicant must establish good, substantial or exceptional reasons or circumstances explaining satisfactorily, the delay in filing his brief as would justify the
- B** grant of such extension of time applied for. Of course this court always has the discretion to grant or refuse such application but such discretion must be exercised judicially and judiciously. That is to say, before granting such relief, the court must ascertain that there are some concrete material upon
- C** which to base such exercise of discretion. In actual fact, the bottom line is that in granting such extension of time, the court must have in its mind the aim of doing substantial justice to the parties, because that is the cardinal determining factor. *See Chief T.O.S. Benson Vs. Nigerian Agip Oil Co. Ltd (1982) 5 SC 1.*
- D**

- In this instant application, the learned applicants' counsel gave his reasons for the delay in filing the appellant's brief in Paragraph 3 of the affidavit supporting his motion, which he gave as principally because of his
- E** eye problem to the extent that during the period he was supposed to work on the brief of argument and prepare it he had eye problem and was advised to rest. Conversely, in Paragraph 8 of the counter-affidavit filed by first and second respondents, the learned counsel for the two respondents tried to
- F** debunk such reasons given by the learned senior counsel for the applicants by deposing that during the period of the supposed rest by the learned silk, he was seen personally conducting other cases in various courts despite the alleged eye problem. It seems to me that the averments in the counter-
- G** affidavit trying to debunk the applicant counsel's averment in the support affidavit, appear to be erroneous because the affidavit appeared not to have been served on the learned senior counsel for the applicants and also the informant of the averments in the counter-affidavit Mr. Tunde Adegbola,
- H** had no connection whatsoever in the case and appeared to be a total stranger in the case or at least, can be regarded as a "busy-body". There is also no any disclosure in the averments of Tunde Adegbola, of any connection or relationship whatsoever between him and Mr. Ogunwole,
- I** SAN. Also, there was no identifiable address of service of Tunde Adegbola in the said counter-affidavit.

A It must however be stated here, that the reason given by the learned senior advocate for the applicants as cause of his inability to file the brief timeously are not very sound. Even if it was true that he was sick he is expected to show medical evidence to support his averments. Reason of
B ill-health or fault of junior counsel in the chambers is not enough. However, there is no dispute whosoever that the applicants' counsel was careless and negligent.

C At any rate, this court in multiplicity of decided authorities held that negligence or carelessness of counsel can still serve as acceptable explanation for delay to apply for extension of time to appeal. *See* the cases of **Shany Vs. Afribank Nigeria Plc (2000) 18 WRN1 or (2000) 13 NWLR (Pt.684) 392 at 403; Alasbe Vs. His Highness S. Abinbola & Ors (1978) NSCC 84 or (1978) 2 SC 139; Dokoly Vs. Dokoly (1976) 1 All NLR 399; Bowaje Vs. Adediwura (1976) 6 SC 143; Akinyede Vs. The Appraiser (1971) 1 AllNLR 162.**

E As I said above, the exercise of discretion must be judicially and judiciously done. The cardinal principle is always that the discretion to be exercised must be geared towards doing substantial justice in the surrounding circumstances of the case. The justice of the case is to avoid the appellants or party making them to suffer from the negligence,
F inadvertence or mistake of their counsel due to no fault of theirs. To put it in another words, they should not be visited with the lapse, negligence or mistake of their counsel. The justice of this application is that the extension of time sought should be granted to enable them file their Brief of
G Argument, rather than to hinder them as that tantamount to shutting them out and preventing them from ventilating their grievances on the judgment they are desirous of appealing against. This prayer therefore ought to be and is hereby accordingly granted by me.

H The second prayer has to do with the grant of leave to raise fresh or new issue not raised or canvassed at the two lower courts. it appears to me that the issue sought to be freshly or newly raised relates to point of jurisdiction. The law is trite, that issue that relates to jurisdiction before
I being raised, the adverse party must as of necessity be put on notice and such notification can only be effectively done by obtaining the leave of this

A court, since it is sought to be raised for the first time in this court.

It is also settled law that, though question of law and jurisdiction can be raised at any time in the proceedings, however in view of the importance and fundamental nature of the topical issue of jurisdiction which is the live

wire or spinal cord of any case or matter, the law requires that parties must be given opportunity to address it on that in order not to breach the time-honoured principle or rules of fair hearing. It is basically in view of that principle of law, that where a party to an appeal is desirous of raising new or fresh issue on jurisdiction which was never been raised in any of the two courts below, should and indeed must seek and obtain leave of court where he intends to raise it. it is sequel to that that, I find it appropriate to grant this prayer.

Thus, in the light of these few remarks and for the fuller and more detailed reasons contained in the lead ruling of my learned brother Paul Adamu Galinje JSC which I entirely agree, with that I too see merit in this application. It is accordingly granted by me. I abide by all the consequential orders made in the lead Ruling.

Amiru Sanusi

Justice, Supreme Court

EJEMBI EKO, (JSC): On 23rd April, 2014 the appellant/applicants filed a motion wherein they are seeking:

1. Extension of time to file appellants/applicants' brief of argument attached to the affidavit and Marked Exhibit A.

2. Granting leave to the appellants/applicants to raise a new issue/a new point of law not raised either in the High Court or the Court of Appeal to wit:

Whether or not the learned trial judge and the Court of Appeal have jurisdiction to entertain this action which was instituted in a non-judicial division to wit: Eruwa Judicial Division.

A

3. **Granting leave to the appellants/applicants to incorporate argument on the new issue/fresh point of law in the appellants' brief of argument [Exhibit A]**

B

4. **To deem as properly filed and served the appellants' brief of argument (marked Exhibit A) already filed and served.**

C

There are two main segments of the application, that is: extension of time within which to file appellants' brief of argument Exhibit A, and leave to raise a fresh or new point or issue that was not raised at the trial court and the Court of Appeal, The two are within the discretion of this Court to grant.

D

The appellant in every appeal has 10 weeks of the receipt of the record of appeal within which to prepare, files and serve his brief of argument. The period is big enough for any serious minded appellant or his counsel to prepare, file and serve his brief of argument. It is trite that rules of court are not made for fun. They are made to be complied with.

E

Where the purpose of the rules is to provide time-table for conduct of litigation there must be strict compliance with the rules; because to do otherwise will defeat the purpose of the rules. *See Ratnam Vs. Cumarasamy (1964) 3 ALL E.R. 933 at 935.*

F

The obligation of the litigant and/or his counsel to comply with the rules of court has been re-stated by this court in a number of cases including *Ezeigbo Vs. F.A.T.B. LTD (1992) 1 NWLR (pt.216) 197; Iroegbu Vs. Okwordu (1990) 6 NWLR (Pt.159) 648; C.C.B. (Nig.) Plc Vs. A.G. Anambra State (1992) 8 NWLR (PT.261) 526; Dingyadi Vs. INEC No.2 (2010) 18 NWLR (PT.1224) 154.* The point in all these cases is that it must be appreciated that where the exercise of a right is circumscribed or limited by a rule of practice, except where it is satisfactorily shown that compliance with such a rule has been raised, then the rule must be complied with, and that the Rules are meant to be obeyed.

G

H

I

The rules of this court made pursuant to Section 236 of the 1999

- A** Constitution, as amended, not only do they partake of the nature of subsidiary Legislation by virtue of Section 18(1) of the Interpretation Act (per Ogbuagu, JSC in **M.V Arabella Vs. NAIC (2009) 4 5 SC. (pt.2) 189 AT (205206)**); they are accordingly entitled to be given purposive
- B** interpretation. Whereby effect is given to the true purpose of the legislation. *See* **Nafiu Rabui Vs. The State (1980) 8-11 SC 130; Onyema Vs. Oputa (1987) 6 SC 362 at 371; F.B.N. PLC Vs. Maiwada (2012) LPELR 9713 (SC).**
- C** One of the causes of the baneful situation or the quagmire of the congestion we have found ourselves in this court presently is tardy or sloppy attitude of lawyers and litigants to rules providing time table for conduct of litigation. We are in dire situation. As Shakespeare would put it, “desperate malady deserves desperate remedy.” The panacea appears to
- D** what this court stated in **Solanke Vs. Somefun (1974) 1 AL NLR 586 at 592; F.B.N. Plc. Vs. Abraham (2008) 362 NSCQR 1058 at 1076.** That is, strict compliance with the rules of court makes administration quicker. The
- E** extant rules of this court provides in the proviso to Order 2 Rule 31 that when time within which anything provided by the said rules shall be done enlargement of time for doing such a thing may be granted only in exceptional circumstances. That is that such indulgence may only be
- F** granted in very unusual circumstances. The adjective, exceptional means “very unusual”. *See Oxford Advanced Learner's Dictionary.* The proviso to Order 2 Rule 31 therefore demands that the appellant who has failed, neglected or refused to file his Brief of Argument within 10 weeks provided
- G** by Order 6 Rule 5, it is only upon his showing exceptional or very unusual circumstances that he may be allowed extension of time within which to file the said brief of argument.
- For the appellant, the reason given in the affidavit for the 24 week
- H** delay in filing the appellant's Brief is that his counsel, Mr. Ogunwole, SAN, developed serious eye problems just at the time he had commenced working on the brief. I grudgingly accept this reason. The counter-affidavit which seeks to prove a lie of the reason for delay as proffered by
- I** Mr. Ogunwole, SAN, suggests that Mr. Ogunwole SAN, inspite of the alleged eye problems was actively in courts in other cases. My learned

A brother, PAUL A. GALINJE, **JSC**, in the Lead Ruling, has dismissed the counter-affidavit and given reasons for not acting on it. I agree with him.

The learned senior counsel, however, may not be that lucky some other time. As a Senior Advocate he is expected to have other counsel in his
B Chambers. If for any reason any counsel in the Chambers, including himself, is unable to do a thing within the statutory time or period prescribed any other counsel within the Chambers should be able to take over and to do the needful. *See A.J. Adeka Vs. M.A. Vaatia (1987) 1*
C **NWLR (pt.487) 134.** In a firm of legal practitioners when one legal practitioner is unable to perform an assigned responsibility for any reason, including sickness; in an application for extension of time within which to do that thing prescribed by the rules of court, proper account of not only the counsel assigned but also of other counsels in the Chambers should be given.
D

The application also seeks leave to raise the issue of jurisdiction for the first time in this court. It would not require adducing fresh evidence on the evidence or facts available in the printed record that issue can be
E determined without necessity for fresh evidence. I agree with the appellant that the new issue touches on the jurisdiction of the trial to entertain the suit. It is a threshold issue, and it is *prima facie* substantial. Counsel for the respondents seems to suggest that it is a non-issue. His submission, backed
F by paragraphs 22 and 23 of the counter-affidavit, is that it is a notorious fact that Eruwa Judicial Division is also known and called Ibarapa Judicial Division in Oyo State. As I am satisfied that my agreeing with the 1st Respondent's counsel would prematurely lead only to dabbling in the issues
G in the substantive appeal. I hereby impose self restraint.

I am, like my learned brother PAUL A. GALINJE, **JSC**, ready to grant appellant leave to raise and argue the fresh point or issue in the appellant's brief. I also grant appellants extension of time within which to
H file their Brief of Argument as in Exhibit A. The Appellants' Brief of Argument filed and served on the respondents is hereby deemed properly filed and served today.

I

Ejembi Eko,
Justice, Supreme Court