



CHAPTER THREE



NOTABLE DECISIONS II



This chapter provides insight into the Court's position on certain subject matters, derived from notable declarations in different cases.

Degree of Participation of a Court in the Conduct of a Case

Notable Pronouncement per CHIGBUE JCA at page 633, paragraphs C — D

"...the law is precise on the degree of participation of a court in the conduct of a case. It is, however, wrong for a judge to descend into the arena and give the impression of acting as an advocate. This often does more harm than good, but whether such interventions can affect the fate of a case depends on the degree and what they are directed to and what their effects would be. Interventions to clear ambiguities to enable the court maintain an accurate note are indeed and perfectly justified; and those to elucidate and throw more light on the facts of the case are also permissible."

Ekanem .v. Akpan (1991) 8 NWLR (pt. 211) 616

Leading Judgment delivered by Chigbue, JCA
Court of Appeal, Enugu.

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Need for Court to adhere to and Give Effect to its Previous Decision

Notable Pronouncement per TOBI, JCA at page 247, paras. F-G

"The law is trite that a judge should, on no account, ridicule his own judgment or the judgment of other courts. On the contrary, a judge is bound to give teeth to his own judgment by pronouncing enforcement and/or enforceable terms where the need arises. The moment a judge reduces his own judgment to the level the learned trial judge in this case did, then the strengths and heights the judiciary have acquired and attained over and through the years will come to naught. Let us not be our own enemies. That is not good. Let us give teeth to our own judgments. The Legislature cannot. The Executive cannot. It is only we who can. Why should we not be our own keepers, if we cannot be our brother's keepers?"

S.G.B. (Nig.) Ltd. v. Awaye Motors Ltd (1992) 4NWLR (Pt. 234) 231

Leading judgment delivered by Kalgo, JCA
Court of Appeal Lagos.

Need for the Supreme Court to Clarify the Options open to a lower Court when faced with Conflicting Decisions of a Superior Court.

**Notable Pronouncement per UBAEZONU, JCA
at page 695, paragraph F-H**

"When a lower court is faced with conflicting decisions of a higher court, what does the lower court do? It must follow one of the decisions of the higher court and necessarily refused to follow the other. Would such a court be accused of a breach of the principle of stare decisis because it has refused to follow that other decision? There is a school of thought that the inferior court should follow the later decision; suppose the later decision was given per incuriam the earlier decision, what does the inferior court do? These are some of the intriguing legal questions in our jurisprudence which call for clarification from our apex court."

Nwangwu .v. Ukachukwu (2000) 6 NWLR (pt. 662) 674

Leading judgment delivered by

M. D. Muhammad, JCA

Court of Appeal, Enugu.

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Need for Trial Courts to Desist from Attempting to Circumvent the Decisions of Superior Courts

Per FABIYI, JCA at page 696-697, paragraphs F-D

Trial court judge who always attempt to dance round in a bid to circumvent the decision of our apex court ... for no just cause should beware. With the humane and unassuming posture of those who constitute our apex court, one may be tempted to say that they cannot hurt a fly. But I dare say that for a flagrant transgression of the doctrine of stare decisis by a trial judge, they may 'sting like a bee'. I refer to Prince J.S Atolagbe & Anor .v. Albaji Ahmadu Awuni and 2 Ors (1997) 9 NWLR (pt. 522) 536, 7 SCNJ 1 at PP20, 21, 24 and 35. Herein the trial judge said he was not bound by the decision of the court of Appeal but preferred that of the Supreme Court in a case which appeared not to be on all fours. He had it raw and I need to quote the strictures dished out for education.

"The CJN, Uwais M.L., at page 20 lines 25-29 had this to say on the conduct of the trial judge:

'With regard to the learned trial judge's refusal to follow the decision of the court of Appeal in Gambari's case (Supra) in preference to the decision of this court in Bakare's case (supra), I am of the view that the learned trial judge's insubordination calls for deprecation.'

"Wali JSC, at page 21 lines 38-39 without any reservation said:

'The action of the judge is not only wrong but amounts to arrogance and judicial irresponsibility which must be deprecated.'

"U. Mohammed, JSC at page 24 lines 13-17 in a more ruthless fashion said:

'agree entirely that Orilonishe, J. by refusing to abide by the decisions of a superior court had committed an abominable act contrary to the ethics of his appointment. Such behaviour should not be condoned. Even if he disagrees with the decision of the court of Appeal, under the doctrine of stare decisis, he is bound to follow it.'

"Onu, JSC at page 2-24 said:

'The learned trial judge was therefore guilty of judicial impertinence and insubordination to say he was not bound.'

Per incuriam

The Latin word Per incuriam means "through lack of care."

Any verdict of court which has not followed a previous judgment that is related/applicable or even relevant is said to have been decided Per incuriam. It has not followed precedent.

"Adio, JSC of blessed memory, agreed with the lead judgment delivered by the CJN. I must state that the trial judge had a saving grace in the fact that Ogundare and Ogwuegbu JSC dissented. I have tried to show that the doctrine of stare decisis is good. It is worthwhile to strictly abide by it. It should not be taken lightly. It should not be dealt with by trial courts with levity or reckless abandon."

Nwangwu .v. Ukachukwu (2000)6 NWLR (pt. 662) 674

Leading judgment delivered by M.D. Muhammad, JCA
Court of Appeal, Enugu

Issue of slavery in Nigeria

Notable Pronouncement per TOBI, JCA at page 785, paras E-F

"It is rather sad, very sad indeed that 20th century Nigeria, moving majestically towards the 21st century in a matter of some nine years or so from now, is still battling with the issue of slavery and all that. It is even sadder that Nigeria, which attained independence a little over three decades ago, is still facing this social malady and stigma. I feel bad that the courts of this land are still worried with slavery matters."

Per NASIR, PCA at page 773, paras E-G on Courts and Socio-Political Problems.

"The problem in Atani, as in many other places, is socio-political and the real and effective solution cannot be found in a court of law. We know, and it has been said over and over again, that customs die hard. It seems clear to me that the first real step to solution depend on the leadership of the two opposition sides. I cannot see how members of group B, in this year and age, can do credit to their honour and their society if in facts they insist in treating the appellants as slaves or of slave descent. On the other hand, the members of Group A must appreciate that they cannot obliterate history. If in fact some of them were of slave descent that is only a historical fact. The social stigma is best forgotten and reduced if "Cut throat" antagonism is not encouraged..."

"It is clear that government has not consistently and continuously assisted the parties to reach solutions. It does not give much hope for the future if people cannot lay hands on solutions save the attempt by the colonial resident in 1943. I believe there are possible solutions to

this social problem or at least make it possible to move, on the part of solving it. The success in Atani will throw a lot of light and open highly welcomed avenues in other areas."

Uzoukwu v. Ozeonu II (1991) 6 NWLR (Pt. 200) 708

Leading judgment delivered by Nasir, PCA.
Court of Appeal, Enugu.

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Duty on Court to Protect the Legal Rights of Parties

Notable Pronouncement per ACHIKE, JCA at page 345, paragraph E

"The court, particularly an appellate court, cannot stand aloof and watch with insensitivity the legal rights of the parties being plunged into a quagmire or grounded in a state of impasses. That will surely be injustice which a court of equity must denounce."

Dantata & Sawoe Const. v. Egbe (1993) 4 NWLR (pt. 287) 335

Leading judgment delivered by Okunola, JCA
Court of Appeal, Kaduna.

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Role of the Court in Dispensation of Justice

Notable Pronouncement per UWAIFO, JCA at page 220, paragraphs B-D

"I think we have come a long way in this country to ought to find no necessity to sound a warning that our sense of approach to justice in our courts should not be seen to be in any way underhand, such as is employed as if to take the society for a ride. The dispensation of justice is not left to whims and caprices of any judge, founded on shabby reasoning and perfunctory performance. It is not too much to expect the judiciary to set the pace in the quest for excellence in the discharge of public duty.

"It should be a sort of modulator of varying forces of change in a sociopolitical environment towards positive and beneficial ends.

"This is the sense in which the law is expected to be the catalyst of social values, attitudes and development. Much of the living aspect of the law depends on the alertness of Judges.

But if the judiciary takes a back seat through unsatisfactory input by the judges even of superior courts, it will sooner become a lame duck and irrelevant in the reckoning of the astute or even the common man."

State .v. Akpabio (1993) 4 NWLR (Pt.286) 204

Leading judgment delivered by Uwaifo, JCA
Court of Appeal, Enugu.

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Duty on Court to be Wary of 'Gold Diggers' in Award of Damages

Notable Pronouncement per FABIYI, JCA at page 480, paragraphs F-G

"The claim of the respondent in respect of the alleged loss of credit facilities and the like, to say the least, appears gold-digging and speculative. The award of N3.5 million appears, in the same vein, capricious and arbitrary. "Gold-diggers" should keep off from the court of law as well as that of equity.

"And the court should always be wary of "gold-diggers" and not allow the institution to be used unwillingly as instrument for attaining their nefarious and mundane desires. A party who is entitled to a "pound of flesh" should not be given one hundred of same as a judge is not a Father Christmas. I say no more."

Oceanic Bank Int'l (Nig.) Ltd. v. G. Chitext Ind. Ltd (2000) 6 NWLR (pt.661) 464

Leading judgment delivered by Fabiyi, JCA
Court of Appeal, Enugu.

Duty of Persons to Honour Contractual Obligations and Rationale for it

Akanga Dugeri leased a portion of land to Vee Networks Limited and Airtel Networks Limited. He executed a lease agreement which stipulated a term of 15 years in the first instance and provided payment period of 5 years. Subsequently, Dugeri claimed he was an illiterate and that he signed the lease agreement without understanding that it provided for more than 5 years tenure.

So, he sued Vee Networks and Airtel at the High Court, claiming a declaration that the lease agreement was null. He equally claimed for mesne profit and possession of the land.

The organisations insisted that the Dugeri was literate in English Language; that he demonstrated his literacy during various meetings; and he signed series of documents written in English Language. These documents were tendered in evidence. One of such documents was the cheque leaf given to him; at back of which he wrote: "original copy collected by me," with his name, date and signature.

In a considered judgment, the trial court found the suit to be an afterthought, frivolous and a gold digging exercise. However, Akanga Dugeri went on appeal. Judgment was delivered on 8th July, 2014 and he lost.

Hon. Justice Joseph Olubunmi Kayode Oyewole at page 49, paragraphs C-E notably stated:

Mesne profits are profits which have accrued while there was a dispute over land ownership. If it is determined the party using the land did not have legal ownership, the true owner can sue for some or all of the profits made in the interim by the illegal tenant, which are thus called "mesne profits."

"I agree with the learned trial judge that the entire exercise embarked upon by the Appellant is a gold digging exercise. It is essential that honour and decency form an integral part of commercial transactions to foster needed economic developments. He had collected rents for the first 5 years of the lease as contained in the agreement between the parties. He is entitled to further rents and increment as stipulated in the said lease agreement and the Respondents are duty bound to honour their obligations under the said lease agreement or be appropriately indemnified."

Dugeri .v. VEE-Networks Ltd. (2015) 2NWLR (Part 1442)30

Leading Judgment delivered by Hon. Justice Joseph Olubunmi Kayode Oyewole, JCA Court of Appeal Makurdi division.

Fallibility of Courts and How Mistakes Made by Courts can be Corrected

Notable Pronouncement per OGEBE, JCA at page 64, paragraphs H

"Courts of laws are human institutions in which mistakes are made from time to time. Some of these mistakes can be corrected as the cases progress from the trial courts through the appellate courts. Others can only be corrected in future cases by avoiding such errors or blunders."

Ukachukwu .v. Uba (2005) 18 NWLR (pt. 956) 1

Leading Ruling delivered by Mika' ilu, JCA.

Court of Appeal, Enugu.

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Need for Court to Follow rule of Law in all Cases

Notable pronouncement per OGUNWUMIJU, JCA at page 153-154, paragraphs E.A

"One appreciates the delicate balancing act which Hon. Chief judge has to engage in, while navigating the potentially stormy political waters when called upon by the provisions of the constitution take up a not too palatable role as a referee in a political quarrel. It is indeed not an enviable position. However, the doctrine of separation of powers entrenched in the 1999 constitution in this instance should not be lightly ignored in this case which is of utmost importance to the entrenchment of the rule of law and the proper practice of the presidential system of government. The courts are at all times to be impartial arbiters between the citizenry, and the state machinery.

The rule of law must be followed though the heavens may fall. The rule of law in this instance is that immediately the Hon. Chief Judge was properly served with process preventing him from taking further steps in the matter in controversy, he ought to have abstained from doing so no matter whose ox was gored.

"The Chief Judge is the custodian of the rule of Law in Kwara State. The circumstances of this case shout from the roof tops the rape on the judiciary and judicial powers.

"We judges should not be the ones to rape the judiciary and violate its hallowed portals by willful neglect and/or a show of contempt for the judicial process. The Hon. Chief Judge's show of contempt for the judicial process in spite of being served as a party when a notice of motion for injunction and substantive matter was pending is not good enough."

Abiodun .v. CJ. Kwara State (2007) 18 NWLR (pt. 1065) 109

Leading judgment delivered by Abdullahi, PCA
Court of Appeal, Ilorin

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Need for Court to be Circumspect and to Exercise Caution in Impeachment Matters

Per AGUBE, J.C.A at pages 160-161, paragraphs E-H

"The gale of impeachments of Governors which has blown with such ferocious and obnoxious notoriety across states like Bayesa, Plateau, Oyo, Ekiti, Anambra and Adamawa appears to be spilling over to the Local Government System as has been exemplified in the case at hand. Hitherto, and even now, in spite of the revolutionary judgments of our learned brothers of the Ibadan and Enugu divisions of the Court of Appeal in the celebrated cases of Hon. Adeleke & 2 Ors .v. Oyo State House of Assembly & 17 Ors. (2006) 16 NWLR (pt. 1006) 608 and Balonwu .v. Pet Obi (2007) 5 NWLR (pt. 1028) 488 which have been given judicial assent by the supreme court, there were/are ardent apostles of the often-quoted dictum of pats-Acholonu, JCA (as he then was) that courts have no business plunging themselves into the murky waters or miasmic cauldron of what has now become the pastime of political gladiators and their goons in impeachment proceedings.

"The erudite justice of blessed memory had apocalyptically warned that to brazenly enter into the miasma of political cauldron would leave the court bloodied, as they would lose their respect in their quest to playing what he termed 'Don Quixote De La Manche'".

'There is no doubt that his prediction has come to pass when one considers the fact that in spite of the accolades and encomiums being lavished on the judiciary as a result of these landmark judgments on impeachment proceedings, only undiscerning minds would fail to realize how bloodied the judiciary has been in the hands of those who are expected to enforce her judgments. The case of Governor Ladoja which was re-enacted in recent times by the outright neglect and/or refusal to restore Governor Peter Obi's security details, and premature retirement and/or dismissal of Chief Judges are clear manifestations of his Lordship's warning in Abaribe .v. Abia State House of Assembly (2001) 1 CHR 225 at 236-237; (2002) 14 NWLR (pt. 788) 466 that:

'Beyond exercising its judicial powers as conferred on it by the constitution to ensure equilibrium in the distribution of functions of Government, the court should exercise caution in invading the area that is prohibited by the constitution.'

In terrorem, Latin for "into/about fear", is a legal threat, usually one given in hope of compelling someone to act without resorting to a lawsuit or criminal prosecution.

'The need for the courts to be circumspect and act with trepidation in matters of this sort was emphasized by Ademola, JCA in Albaji Balarabe Musa .v. Anta Hawa (1983) 3 NCLR 229 at 247 where he quoted in extensor the words of Felix Frank Further in Baker .v. Carr (1962) 369 US 186 which in part was to the effect that in impeachment matters relief lies not in the courts but to popular conscience that sears the conscience of the people's representatives and that it would be self-defeatist to make in terrorem pronouncement and indulge in rhetoric full of promise but disappointing in hope.

'The rationale behind the stance of the old school of thought as adumbrated in the words of Pats Acholonu, JCA again in Abaribe's case (supra) at 237 and Minister of Home Affairs .v. Fisher (1989) AC 319 at 329 is that: 'It must be realized that in a matter relating to proceedings on impeachment, the House of Assembly is exercising a judicial functions.' "

Abiodun .v. CJ. Kwara State (2007) 18 NWLR (pt. 1065) 109

Leading judgment delivered by Abdullahi, PCA
Court of Appeal, Ilorin

What Role of Judges should be in the Administration of Justice

Notable Pronouncement by Onalaja, JCA

"This appeal raised the attitude of judges in the dispensation and administration of justice and a reminder of the judicial oath to dispense justice without fear or favour, ill will or affection. The role of the Judge being to keep the scale of justice in the balance without tilting it to favour a party or tilting it in disfavor of the other party. It is this concept of the role of the judge that gave rise to the often quoted dictum of Chief Justice Hewart that justice should not be seen to be done but manifestly seen to have been done. As a judge to keep the stream of justice clean and unpolluted must live up to his Judicial Oath as an impartial arbiter. A breach of the above ideals wherein a judge descends into the arena of litigation denies the party fair hearing. Justice is rooted in confidence, once there is loss of confidence in the judge, then there is breach of fair hearing."

Uzundu .v. Uzundu (1997) 9 NWLR (pt. 521) 466 C.A

Leading judgment: Rowland, JCA
Port-Harcourt division.

Administration of Criminal Justice

Notable Pronouncement per TOBI, JCA at page 107, paragraphs G-H

"The criminal law in this country and indeed of any country is predicated on the commission of an offence. It is not predicated on some assumption or speculation that an offence has been committed. While such assumption or speculation of commission of an offence may be useful in some other areas of human activity, it is not good enough for a court of law in adjudicating on guilt. In determining guilt, the interest of the court, and only interest for that matter, is whether the prosecution has proved the legal ingredients of the offence. And in the context of this case whether a prima-facie case has been made out against the accused to warrant his defence."

Onagoruwa .v. State (1993) 7 NWLR (Pt. 303) 49

Leading judgment delivered by Tobo, JCA
Court of Appeal, Lagos.

Duty on Prosecution to have Audience upon which to base Decision to Prosecute

Notable Pronouncement per TOBI, JCA at page 107, paragraphs D-G

"I want to say by way of recapitulation that it is elementary but most vital requirement of our adjectival law that before the prosecution takes the decision to prosecute, which is a forerunner or precursor to the charge decision, it must have at its disposal all the evidence to support the charge. In a good number of cases, the police in this country rush to court on what they generally refer to as holding charge, even before they conduct investigations, although there is nothing known to in law as a 'Holding Charge'.

"Happily that was not the situation in this matter. Where the investigation does not succeed in assembling the relevant evidence to prosecute the accused to secure conviction, the best discretion is to abandon the matter and throw in the towel. That to me is commendable decision of courage and it is the best decision. On no account should the prosecution go out of its way in search for evidence to prosecute when it is not there. When it degenerates to such a situation of 'hunting down', the prosecution is no more regarded as the prosecutor but as a persecutor. And that is not consistent with the philosophy of our adversary system of adjudication."

At page 108, paragraphs B-E on criminal prosecution against legal practitioners

"Where the conduct of a legal practitioner borders essentially on professional ethics with criminal flavour, I think the police and the office of the Director of Public Prosecutions should allow the appropriate professional body to handle the matter in the best traditional methods. I am not in any way saying that such is the situation here. I cannot say so because there is no evidence before me to say so.

"But the point I am struggling to make is that it is not every aberrant conduct of the legal practitioner that should attract criminal prosecution in a court of law.

"There should be some deliberate effort in the prosecution's decision to carefully remove the chaff from the grain and see whether there is enough in the grain to deserve and sustain criminal prosecution. I do not want to be understood as saying that the criminal law of the land should succumb to the professional ethics of our profession, far from it.

Mala fide is a Latin term which means 'in bad faith.'

That cannot be the position. All I am saying is that in order to give the Nigerian Legal practitioner a freer hand to perform his duties, he should not be constantly reminded or intimidated that at the slightest slip, however Mala fide, must be policed by criminal law of the land and must at the end of the day attract criminal sanction. No legal practitioner will feel free in the performance of his professional duties in such circumstance. Let that day not come in the history of the administration of justice in this country."

Onagoruwa .v. State (1993) 7 NWLR (Pt. 303) 49

Leading judgment delivered by Tobi, JCA
Court of Appeal, Lagos.

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Duty on Trial Courts in Evaluation of Evidence

Notable Pronouncement: UWAIFO, JCA at page 90, paragraphs C-G

"This method employed by the learned trial judge in the consideration of the evidence is very simplistic. It gives a wrong impression that judicial function of evidence evaluation involves neither intellectual commitment nor perception. It certainly arouses a sensitivity which, unfortunately, tends to regard the exercise as suspect. This reminds me of some remarks about court judgment in the book of English Law (1920, reprinted in 1946) by Jenks at pages 101 to 102 inter alia:

"The judgment of the court is delivered in public, and even where a nonprofessional judge is presiding (cogent) reasons are given for it. The latter fact is of great importance, on two grounds. In the first place, it has a material influence on the mind of the judge; for it compels him to justify the conclusion at which he had arrived, by a process of reasoning which will stand the fire of instructed criticism...In the second place...a bare announcement of a decision (without a chain of reasoning which will justify his conclusions) will leave the legal profession guessing at the principles on which it was based, and might well give rise, in addition, to a suspicion of partiality, or at least, caprice."

"I fully endorse these observations. It cannot therefore be overemphasized that a trial judge has a sacred duty to perform in the evaluation of evidence. He must minutely examine the evidence thoroughly understand the issues he has to resolve in the case before him based on that evidence and accordingly resolve them. His office demands this; the parties deserve it; so does the legal profession expect it. That is what accords sublimity to our judicial sense of adjudication. Without it, the judiciary will not be

respected but merely tolerated. That is a prelude to placing the posture of Law and order upside down."

Chime .v. Ude (1993)3 NWLR (Pt. 279) 78

Leading judgment delivered by Uwaifo, JCA

Court of Appeal, Enugu.

Duty on court with respect to impartial adjudication

Notable pronouncement: Aderemi, JCA

"It must be remembered that a judge or an adjudicator exists to determine disputes and to examine with due care and true sense of fairness all matters before him in the pursuit of justice. He is not sitting in the Citadel of justice to trap any of the parties or to set in motion what the parties have not presented before him. He is certainly not an inquisitor. And if he gives the slightest colouration of an inquisitor he over steps his jurisdiction. He has ceased to serve the interest of justice which is his primary pre-occupation in the citadel of justice. He may unwittingly be submitting himself to be tried in the people's court.

"Let it be said that adjudicators generally are and should be no more immune from criticism than any other person, particularly in a democratic setting. The magistrate by that his 'judgment' gave an impression of a goal setter and free for all fighter. He has therefore exceeded his jurisdiction and his deeds need to be given some judicial supervision."

COP .v. Agoro

In RE: Mrs. Rose Nwankwo v. His Lordship F.A Shitta-Bey Esq.

(1999) 10 NWLR (pt. 621) 75

Leading judgment: Aderemi, JCA

Court of Appeal: Lagos division

Need for Substantial Justice Over Technicalities

Notable Pronouncement: Olagunju, JCA

"The peculiar circumstances of this case with the moral undertakes and implications for the business and commercial environment of this country must be under-scored without any reflection on the 1st respondent whose innocence in the matter is neither determined nor anticipated by this judgment that is concerned only with giving the appellant a banking company, was conducted in a hole and corner way. It was an open transaction with a faceless business organization masquerading under the colour of public incorporation to provide services for valuable consideration which she failed to discharge in full by refusing to refund the balance of the deposit paid when she was asked to do so.

"The machinery of justice will become a mockery if in such a factorial situation it provides leeway for such a forceless business concern to hang to the technical twig of the law to escape being called upon to disgorge the windfall or bonanza which she is not entitled to retain.

"A court of law and equity cannot be allowed what would amount to pandering to a raw swindle by turning a blind-eye to the menace of the deadly virus of sharp business practice under the aegis of an establishment using the colours of incorporation as a common flag.

Indeed in this era of business and commercial intercourse in the global village to which the world has been contracted to slam the door of justice against one who prima-facie has a right of action without the benefit of hearing would portray our legal system in a poor light. That will to be taking a retrograde step that would set the law back to its primordial state; to a judicial backwater that will be hostile to advancement in a modern environment where nations are striving to redouble their efforts to keep strides with honour and uprightness in the conduct of public affairs with business and commerce at the forefront. This is a crusade in the vanguard of which the law must be positioned so as to prevent our jurisprudence from sliding to the dogs."

ECO Bank Nig. Plc. v. Gateway Hotel Nig. Ltd., (1999) 11 NWLR (pt. 627)39.

Leading judgment: Onalaja, JCA
Court of Appeal Ibadan

Prima Facie

[Latin, On the first appearance.] A fact presumed to be true unless it is disproved.

In common parlance the term prima facie is used to describe the apparent nature of something upon initial observation. In legal practice the term generally is used to describe two things: the presentation of sufficient evidence by a civil claimant to support the legal claim (a prima facie case), or a piece of evidence itself (prima facie evidence).

<http://legal-dictionary.thefreedictionary.com/prima+facie>

Whether it is Duty of the Trial Court to Evaluate Evidence and Ascribe Probative Value to such Evidence

Per Muhammad, JCA (P. 21, paras. C-F)

"A trial court, no doubt, is a court of law and facts. It has no other sources of generating its decision except from the solid facts established before it and from the law governing the subject matter of litigation before it. It is its primary role therefore to even handedly evaluate the evidence placed before it by the parties not only through witnesses but including evidence by affidavits. A trial court, in other words, has the primary duty to fully and consciously consider the totality of the evidence proffered by all the parties before it in whatever way, ascribe probative value to it and put it on the imaginary scale of justice in order to determine the party in whose favour the balance tilts. Certainly where a trial court has creditably done that, no appeal court has any business to tamper with its evaluation."

Yahaya Farouk Chedi & Anor. v. Attorney General of the Federation (2006) LPELR-11806(CA)

Leading judgment: Tanko Muhammad, JCA
Court of Appeal Abuja

Limit of Constitutional Provision on Right to Liberty

Notable Pronouncement per Muhammad, JCA at page 326, paragraphs B-C

"The right to liberty had, in the most palpable and lawful manner, only been exposed for what it has always been. The right has always been conditional rather than the absolute one which appellant's counsel would want us to believe. No organized society can afford the luxury in the concept and danger in the existence of absolute rights. It is for the orderly existence of societies that constitutions provide such suspension or even complete deprivation of those rights which appeared to appellant's counsel absolute."

Per Olagunju, JCA at page 329, paragraphs B-D

"With the strict bail conditions stipulated in subsection 18 (1) of the Decree considered to be the accomplishment of the goal of that special legislation it would be a disservice to hide under the constitutional personal liberty to undermine the efficacy of the substantive legislation. The sanctity

of constitutional right to personal liberty cannot be vindicated under a cloak or cover nor is the right meant, in the words of Irikefe, JSC (as he then was) to provide an accused with a gratuitous escape route to freedom. See Echeazu .v. commissioner of police (1974) NWLR 308, 314."

Udeh .v. F.R.N. (2001)5 NWLR (pt.706) 312

Leading judgment delivered by Muhammad, JCA
Court of Appeal, Enugu.

Need for Court to Ensure Impartiality and Fair Hearing

Notable Pronouncement per ADEREMI, JCA. at pages 224- 225, paragraphs E-F

"Under section 13 1(2) of the Decree, the Chief of Army Staff was the convener of the General Court Martial (GCM) set up to try the appellant; he appointed the members of GCM., the Judge Advocate. He is also the confirming authority of the judgment of the GCM. Can the appellant be reasonably expected to believe that he will have fair hearing before such a body? Can the members of the GCM themselves claim to be impartial and seen to be so? It must not be forgotten that the composition of the GCM. carries with it the authority to exercise judicial powers by it members impartiality is the greatest attribute which any adjudicating body must always lay claim to. This means that not only must the judge not appear to favour either party, he must not take sides on any political issues. The Judge is seen essentially as a an arbiter in conflicts whether between individuals or between individuals and the state and as having no position of his own, no policy even in the widest sense of that word.

"In criminal law, it seems to me that judges must regard themselves as at least as much concerned as the executive with the preservation of law and order. Let it be said that the prestige of the judiciary, their reputation for stark impartiality to be kept up in appearance as well as in conduct, is not at the disposal of any government; it is an asset that inures to the benefit of the entire citizenry including the judges themselves. But judges are human beings and like the rest of the people, they are not all of a piece. They are liable to be swayed by emotional prejudices.



Even in the military, a situation where a junior officer will suddenly find himself sitting in judgment over his superior may provide him a long awaited opportunity to take vengeance over a perceived over-bearing erstwhile superior officer. This is true of any judicial body or quasijudicial body so set up to perform judicial performs. A situation where the accusers shall be the prosecutors and the judge at the same time can never guarantee fair hearing or fair trial. Such tribunal or adjudicating body constitutes a serious infringement on the principle of natural justices which demand that party must be heard before the case against him is determined -audi alteram partem; that no one shall be a judge in his own cause - nemo debet esse judex in propria causa. See Fawehinmi .v. The Legal Practitioner's Disciplinary Committee (1985) 2 NWLR (Pt.7) 300."

Need for all Parties in a Criminal Trial to have Access to Facts and Legislations, page 222, paras. D-E

"Let it be said that it is especially important for the healthy development of our criminal jurisprudence that there is the assurance that the door that may lead to the truth remain unlocked to all the parties."

N.N.P.C. v. Anwuta (2000) 13 NWLR (PL6S4) 363

Leading judgment delivered by Aderemi, JCA.

Court of Appeal, Port Harcourt



Need to Strictly Enforce Right to Fair Hearing

Notable pronouncement per MUNTAKA-COOMASSIE, JCA at page 446, paras. A-E

‘My only advice to the lower courts is to be cautious in adopting cheap and quick procedure where the law or the statute demands that fair hearing shall be observed. It is manifest in this appeal that the procedure adopted by the respondent in hurriedly dismissing the appellant, thereby ruining his career, may only serve their short term purpose for a short period but the spirit of justice and indeed nemesis will certainly haunt and eventually catch up with them thereby making what initially appeared to be a short-cut a longer and tedious journey. In Olaniyan .v. University of Lagos (1985) 2 NWLR (pt. 9) 599 at 654. Aniagolu JSC has this to say:

‘The procedure adopted by the council may be quick, convenient and time saving, but the dictates of justice demand that the legal principle of Audi Alteram Partem must be obeyed no matter how cumbersome and inconvenient it may appear to the council.’

‘In amplification of this stance, he recalled his earlier statements in similar situations elsewhere thus:-

‘...instances may exist where short-cuts may prove invaluable and achieve their objectives. It is, however, generally to be recognized that in legal matters and particularly in matters of natural justice, short-cuts many times prove counter-productive, by short-circuiting legal norms and norms of natural justice, and rendering the whole exercise of futility. In that case the short-cut becomes the ineffective longer route.’ ” (State Civil Service Commission & Anor .v. Alexus Ikechukwu Buzugbe (1984) 7 S/C P. 19/40).

Egwu .v. Uniport (1995) 8 NWLR (pt. 414) 419

Leading judgment delivered by Muntaka-Coomassie, JCA
Court of Appeal, Port Harcourt.

Origin of the Rule of Natural Justice

Notable Pronouncement per SALAMI, JCA at page 529, paragraphs E-H

‘The rule of natural justice has been with us from creation. Even God himself did not pass sentences upon Adam before he was called upon to enter on his defence see R v. Chancellor of Cambridge University (1716) 1 Str.557. The Almighty God called upon Adam, ‘have you eaten from the tree I warned you about?’ Genesis 3:1. The Lord gave him opportunity to defend himself before passing sentence on him.

Even the Romans, as it is borne out in the New Testament, Acts chapter 25:16 during the trial of St. Paul upheld the Maxim of audi alteram partem as follows:

‘It is not the manner of Romans to deliver any man to die, before that he which is accused have the accusers face to face, and have licence to answer for himself concerning the crime laid against him.’ ”

Awuse .v. Odili (2005) 16 NWLR (pt.952) 515

Leading judgment delivered by Salami, JCA
Court of Appeal, Port Harcourt

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Duty on Courts as Guardians of Justice and the Need to Ensure Fair Hearing to Parties before them

Per OGUNBIYI, JCA at pages 541-542, paragraphs F-A

“A just fair and organized society is that built upon a concept of natural justice, equity and good conscience. The said phenomenal principle is inbuilt and enshrined in the foundational framework existing and forming the basis of our Constitution. If the courts as guardians of justice should neglect to discharge the very purpose for which they have been set up, their failure in abdicating the sacred duty would amount to defeating their very function, thus bringing them into disrepute and therefore good for nothing.



"It is also pertinent to restate that the best of decisions and even settlements of ordinary disputes are those wherein both parties have been given the opportunity to be heard. In other words, where there has been the compliance with the cardinal principle of fair hearing and thus fulfilling the ultimate purpose of the law, which has been put in place for the good of the society."

Awuse .v. Odili (2005) 16 NWLR (pt.952) 515

Leading judgment delivered by Salami, JCA
Court of Appeal, Port Harcourt

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Misconception about real Import of Fair Hearing

Notable Pronouncement: Chukwuma -Eneh, JCA at page 668, paragraphs B-E

"The question of fair hearing cannot avail the appellants who have been over-indulged in the course of this matter. The appellants have been given every opportunity as found in the ruling of 2/5/94 to put their case as best as they could. They failed to do so for 10 years this matter has been hanging in the balance. They cannot be heard to complain. The issue of denial of fair hearing as a defence has become the whipping point of most litigants to a degree that it is now being dragged into every controversy all in the name of misconceived notion of its real import. For its import, see Otapo .v. Sunmonu (1987) 2 NWLR (pt. 58) 587. Fair hearing does not contemplate a standard of justice which is biased in favour of one party and to the prejudice of the other."

Ansa .v. Cross Lines Ltd (2005) 14 NWLR (pt.946)645

Leading judgment delivered by Chukwuma -Eneh, JCA
Court of Appeal, Calabar

Right of Accused Persons to Decent Accommodation during Custody Pending Trial

Notable pronouncement: Adekeye, JCA at pages. 153-154, paras. H-A

"I however, make bold to remind the authorities that the Constitution presumes that everyone charged with an offence is presumed innocent until proven guilty."

"The practice of keeping suspects in deplorable conditions while in custody pending their trial is a glaring misinterpretation of the constitution. It is akin to running a modern age Gestapo – a concentration camp. The applicants are entitled to decent accommodation and environment while in custody pending the hearing and determination of their case and this court hereby orders."

Fasehun .v. AG Federation (2006) 6 NWLR (pt. 975) 141

Leading judgment: Adekeye, JCA

Court of Appeal Abuja

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How Justice delayed is Justice Denied

Notable Pronouncement: Onalaja, JCA, at pages 329-330, paras. E-A

"The ancient philosophers stated that: 'Justice Delayed is Justice Denied' which was incorporated in the great Magna Carta of 19th June 1215 chapter 40 that: 'To No One will we Deny or Delay Right or Justice' whilst Shakespeare put in laconically in Hamlet Act111 Scene 1:-

'All through the years men have protested at the law's delay, counted as a grievous wrong, hard to bear among the whips and scorns of time.'

"Also Charles Dickens made a parody of the inordinate delay of trials in court of equity over a century ago in his book 'Bleak House' Chapter 1 that:-

'Delay of trial exhausts finances, patience, courage and hope.'

"To ameliorate delays of trials and judgments conscious of its injustice, made the draftsman of 1979 CFN to provide S.258 (1) that:

'Every court established under this constitution shall deliver its decision in writing not later than 3 months after the conclusion of evidence and final addresses and furnish all parties to the cause or matter determined with duly authenticated copies of



the decision on the date of the delivery thereof.'

"See Amori .v. Elemo (1983) 1 SCNLR 1 wherein the Supreme Court frowned on inordinate delay of trials."

Hyacinth Nzeribe .v. AG Imo State (1996) 10 NWLR (pt. 478) 322

Leading judgment: Onalaja, JCA
Court of Appeal Port Harcourt.

Duty on Court Registrars to Promptly inform Justices on Delayed Cases

Notable Pronouncement per AKANBI, P.C.A at page 352, paragraphs C-D

"I must observe that this case suffered a lot of delay both in this court and the trial court, due to a combination of circumstances. Justices of this court who initially heard the appeal either went on retirement or were elevated before their judgment could be produced.

"The result was that the appeal went into limbo and this panel had to be assembled when the matter came to my notice to deal with it. It will be desirable for registrars of court in future to keep record of such events and bring them to the notice of their presiding justices for action. This will ensure that no case is kept in the cooler longer than is absolutely necessary."

Ogunye .v. State (1995) 8 NWLR (pt. 413) 333

Leading judgment delivered by Akanbi, PCA
Court of Appeal, Lagos.



Need for Caution in Cases involving Judges

Notable Pronouncement per Kolawale, JCA at page 489, paragraphs C-E

"I think it is important to warn that trial judges should exercise some restraint when matters involving their brother judges are brought before them. Every step taken by them must be calculated to ensure that they are not accused of bias in favour of a brother judge. This is more so in a divorce proceeding where the judge and the wife are so estranged and tense of stress and strain. The learned judge hearing the case, while it is his duty to deal with the matter before him expeditiously must strive to accommodate the respondent's wife with patience and understanding and to endeavour to give her the opportunity of obtaining substantial justice in the shape of the case being granted a fair hearing on its merit. When it appears that the judge is over hasty, the fear of lack of fair hearing will be instilled in the opposing party. The opposing party may then entertain fear, rightly or wrongly, that she faces a steam-rolled justice."

Ononuju .v. Ononuju (1991) 5 NWLR (Pt.192) 479

Leading judgment delivered by Kolawale, JCA
Court of Appeal, Port Harcourt

Fallibility of Judges

Notable Pronouncement: ACHIKE, JCA at pages 96-97, paras. H-A

"Very often, learned counsel regard judges on the bench, on the pedestal of angels, who must be presumed to be infallible. That, of course, is not only sacrilegious but untenable. The judge on the bench is not imbued with infallibility. It is common knowledge that although judges on the bench may be upright and their character impeccable, their competence in adjudicatory process generally cannot be rationalized in terms of their uprightness and impeccability. Little wonder that grounds of appeal in our various courts exercising appellate jurisdiction are replete with the professional jargon that the learned trial judge erred in Law."

Chukwujekwu .v. Olalere (1992) 2 NWLR (Pt. 221) 86

Leading judgment delivered by Achike, JCA
Court of Appeal Kaduna



Duty on Judges in Conduct of Trial of Cases

Notable Pronouncement: UBAEZONU JCA at pages 768-769, paragraphs H-A

"....under our adversary system, the trial judge is an impartial umpire/arbiter, and must act and be seen to be so, neither aiding nor suggesting to either of the parties or their counsel how to conduct their case. But the judge is not a robot, a dummy or a statue which will just look on bearing nothing and saying nothing at the expenses of justice. Proceedings in our courts are not a chess game or a draft game each party looking for a chance to outwit the other. It is when the facts are placed before the court that the court can do substantial justice."

Per TOBI, JCA at page 772, paragraphs C-F

"I only want to add this bit in respect of the complaint on the conduct of the trial judge. It has almost become a style, if not a style, for counsel to complain about the slightest trial conduct of a judge that he descended into the arena. By our adversary system of jurisprudence, a judge plays a role which can lazily be likened to an independent umpire of a game. He is expected to hold the balance between the parties in the litigation process. He is expected not to take sides. His only interest should be the interpretation of the law to the facts before him. He cannot do more. He cannot do less too. The position is as stringent as that."

"An allegation that a trial judge descends into the arena means that he leaves his highly exalted position in court to flirt with the parties in the judicial process. By descending, into the arena, the judge moves in and out of the proceedings by raising issues suo motu at will and randomly to the annoyance of one of the parties. He makes delicate and decisive suggestions to one of the parties with a view to giving him victory. That is the aspect of descending into the arena as it relates to the charge of bias."

Suo motu, meaning "on its own motion," is a Latin legal term... used where a government agency acts on its own cognizance, as in "the Commission took suo motu control over the matter."

www.collinsdictionary.com/submission/8861/suo+motu



Per TOBI, JCA at page 773, paragraph C-D

"A judge has a good brain and a mouth to talk and he should talk in the course of the proceedings in appropriate cases. No court proceedings can successfully come to an end when a judge does not utter a word. He has a duty to guide and guard the proceedings and so he must talk. And as long as he does so within the limits of our adversary system and to the egalitarian advantage of the parties, he cannot be faulted."

Lamina .v. Ikeja Local Government (1993)8 NWLR (pt. 314) 758

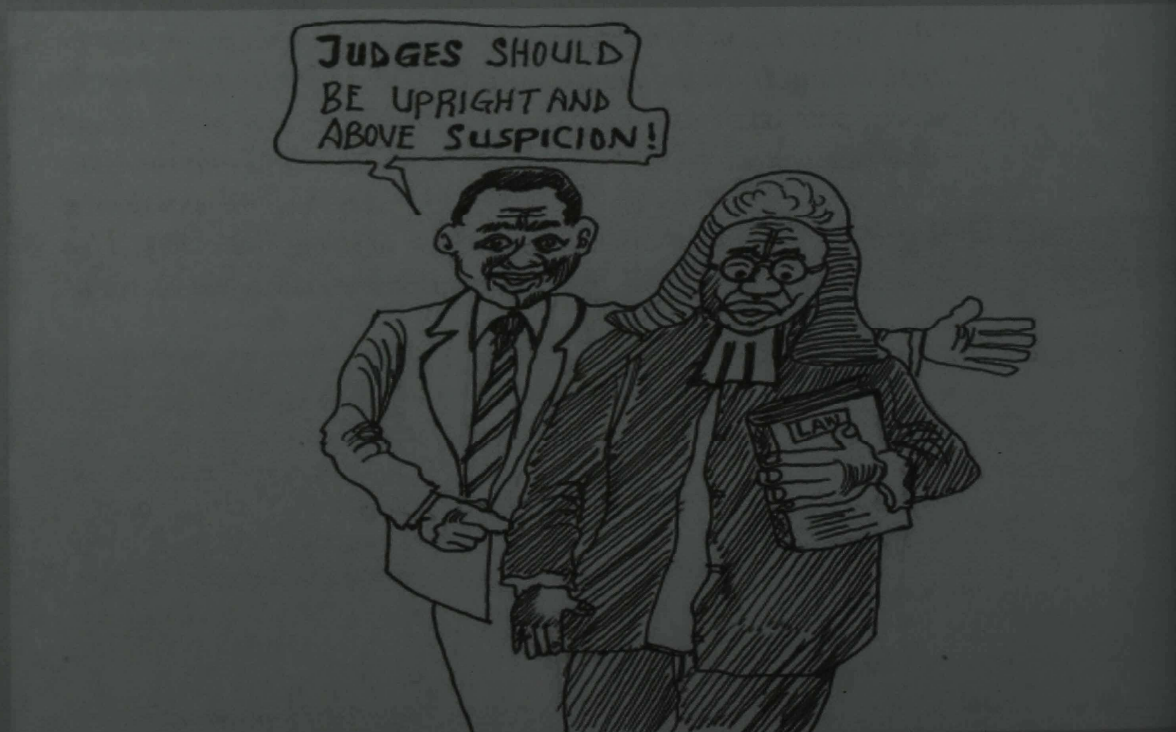
Leading judgment delivered by Ubaezonu, JCA
Court of Appeal, Lagos.

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Duty on Judge to be Upright and Above Suspicion

Per Tobí JCA at page 643, paras. E-B

"Both Chief Ikeazor, SAN and Bawa Esq. resized the issue of bias or likelihood of bias against Anta, J. They cited a number of authorities. A Judge by the nature of his position and professional calling is expected to be straight forward, upright, diligent, consistent and open in whatever he does in court and in any other place of human interaction and human endeavour that he happens to find himself."



"This is because his character as a judge is public property. He is the cynosure of the entire adjudication in the court, and like caesar's wife of Ancient Rome, he is expected to live above board and above suspicion, if the judicial process should not experience any reverse or suffer any detriment. A judge should know that by the nature of his judicial functions, on trial for any improper conduct immediately before, during and immediately after the trial of a case. Bakare .v. Apena (1986) 4 NWLR (pt. 33)1. Obasaki JSC said that 'a trial judge out to know that he is on trial for any improper conduct during the trial of a case before him and immediately thereafter By his judicial function, a judge is expected to hold the balance be overtly seen as holding the balance evenly.'"

Per Fabiyi JCA at page 646 paragraphs F-G

"It has always been my considered view that sobriety should be the fair watch-word for anyone who, per chance finds himself in the exalted position of being talkative or loquacious. He should be polite to witnesses and lawyers who appear before him. Above all a judge should not be biased under any guise. It needs no further gain-saying that discharge of his judicial function."

Dr. Eriobuna & Ors. v. Ikechukwu Obiorah (1999) 8 NWLR (pt. 616) 622

Leading judgment: Tobi, JCA

Court of Appeal Enugu Division

Duty on Bench and Bar in Efficient Administration of Justice

Notable Pronouncement per Abdullahi, JCA at page 129, paragraphs G-H

"Before I put the final dot in this judgment, I am constrained to reflect the time it took to get this case to this level. It is almost twenty years now since it was commenced before a High court, just one step lower to this court. I think this kind of situation calls for genuine concern to the authorities whose responsibilities it is to lubricate the wheel of administration of justice in this country; primarily, the Bench and the Bar if the role expected of the institutions is to remain relevant and in line with expectations of the members of the society."

Reynolds Const. Co. .v. R.B.B (1993) 6 NWLR (pt.297) 122

Leading judgment delivered by Abdullahi, JCA

Court of Appeal, Enugu.

Judicial Attitude to Nigerian International Fraudsters

Notable Pronouncement per FABIYI, JCA at page 187, paragraph A

"Nigerian judges do not operate in Utopia. We operate in Nigeria. And no Nigerian judge can rightly claim he has not heard that transparency international rates our nation-state as the most corrupt in the whole universe in the year 2000. This is ear-aching. Should judges, in the prevailing circumstances, pat Advance Fee Fraud accused persons on the back under the cloak of human right? I think not."

Ekwenugo .v. F.R.N (2001) 6 NWLR (pt. 708) 171

Leading judgment delivered by Fabiyi, JCA
Court of Appeal, Enugu

Duty on Nigerian Judges to the Society

Per FABIYI J.C.A at page 187 paragraphs B-C

"I have always held the view by which I should continue to stand that, in reality, judges should strive to operate the law for the attainment of social engineering. It is by so doing that our desire to attain national rebirth and regeneration can become concretised. The national psyche can then start to develop positively once again and lesser mortals in other lands will stop looking at our undoubtedly respected citizens with utter disdain on presentation of our green passports as 'exhibit' before them."

Ekwenugo .v. F.R.N (2001) 6 NWLR (pt. 708) 171

Leading judgment delivered by Fabiyi, JCA
Court of Appeal, Enugu

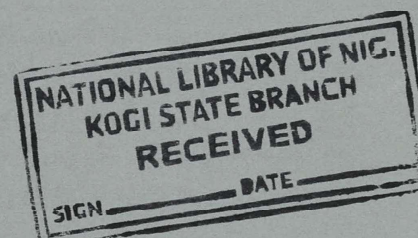
Unwarranted Luxury of Precluding a Judge from Ever Sitting on a Case Merely Because He had Earlier Ruled on one Aspect of it

Notable Pronouncement per IKONGBEH, JCA at page 250, paragraphs B-D

"Precluding a judge from ever sitting on a case merely because he had earlier ruled on one aspect of it is undoubtedly an unwarranted luxury that this, or for that matter, any country can ill-afford, if its judicial system is not to knuckle under. We will soon run out of judges if a judge can only handle one aspect of a case and no more, especially considering the high turn-over in the number of interlocutory matters that beset our courts and call for decision on the cases and the limited member of judges that there are. I said it is unwarranted because it need not be so. Some may regard the law as an ass, but I do not think that the asinine characteristics of the law have reached the stage where it could do things or require things to be done just for the sake of having them done, but for no other positive purpose."

P.D.P .v. K.S.LE.C (2005) 15 NWLR (pt. 948) 230

Leading Ruling delivered by Muntaka-coomassie, JCA
Court of Appeal, Ilorin



Need to Protect Independence and Integrity of Judiciary from Politicians

Notable Pronouncement at page 398, paragraphs A-B

"This court has gone through most unfortunate phases in the judicial annals of this great country, for this court to be disrupted by partisan politicians in the course of delivering its judgment. It is hope this will not happen again. Well-meaning citizens should rally round the court to protect its independence and integrity for the assurance and continuation of orderly society."

Ukachukwu .v. Uba (No.2) (2005) 9 NWLR (pt. 930)370

Leading ruling delivered by Galadima, JCA
Court of Appeal, Enugu.

Need for Legislators and Governors to insulate Chief Judges of States from Political Intrigues in Course of Removal of Governors from Office

Notable Pronouncement: DENTON-WEST, JCA at page 562, paras. D-H

"I do not intend to comment but to mention that the contenders in this appeal should however realize that their action for whatever reason has actually led to the suspension of the holder of the office of the chief judge of the state.

"The Hon. Justice C.J. Okoli who was and had been the Chief Judge at the inception of this action, and the after effects of the suspension thereof. This is sad development and so I exhort you not to toy or drag our judges to political subjection and dispute for it is unfair for holder of the office of the sacred duty of judge to face undue humiliation in the discharge of their duty because of political wrangling if and when they have duly acted in accordance with their oath of office to discharge justice without fear of favour under the constitution. There was no doubts that he was chief judge, a fact not in dispute even by the respondents and their counsel.

"Judicial notice is taken on what had happened to this Chief Judge and other Chief Judges in the country. If this trend is not checked, our Chief judges in the country would be subjected to fear in the discharged of their duties under this section 188 (1) -(10) of the 1999 constitution pertaining to the 1999 constitution pertaining to the removal of a governor in deserving cases and this is not good."

Balonwu .v Obi (2007)5 NWLR (pt. 1028) 488

Leading judgment delivered by Bada, JCA
Court of Appeal, Enugu

Need for Good Leadership and Followership in Nigeria

DENTON-WEST, JCA at pages 561-562, paragraph F-D

"We lack good leadership in our body politic. A good leader is someone who is able to led and has the ability to influence his people positively to attain and achieve greater heights or the good of humanity. A good leader is selfless and has only the interest of the people he is leading at heart.

"A leader's action always has a rippling effect on the society. The leadership's wrong actions can destroy the society and bring it to naught, whilst the acts of good seasoned leaders could catapult our country Nigeria to the country we will all dream about. It is great men and great leaders like Indira Ghandi, Roosevelt, Mrs. Thatcher, the Kennedys, the Nkrumahs, Nelson Mandela that have made their country the pride with which we all adore their country.

"These men were all people of great standing who acquired the moral right to lead their people and as much as possible they kept to this moral right and immediately a leader loses this moral right, the ceases to be a leader. A good leader should adhere to law and observe same. Leaders cannot exist without followership and so everyone must observe the constitution and obey state authorities, because no authority exists without God's permission, and the existing authorities have been put in place by God which had allowed them to swear to an oath to uphold the constitution.

"Therefore the followership should endeavour not to oppose the existing authority for whoever opposes them unduly have himself to face the wrath of the law. Therefore, I enjoin the followership to love their leaders and pray for them to do good and the followership should refrain from acts that are calculated to stop the smooth running of the affairs of government so that together and in love with their leaders, a very strong and indivisible state shall henceforth emerge where the 1991 constitution of the Federal Republic of Nigeria shall be adhered to."

Balonwu .v Obi (2007)5 NWLR (pt. 1028) 488
Leading judgment delivered by Bada, JCA
Court of Appeal, Enugu

Right to Resort to Self-Help viz-a'-viz the Rule of Law

Notable pronouncement per Oguntade, JCA at pages 347, paras F-H; 348, paras B-C

"The right to resort to self-help ends once parties have turned their dispute over to the courts for determination. Consequently, it is not permissible for one of the parties to take any step during the pendency of the suit which may have the effect of foisting upon the court a situation of complete helplessness, or which may give the impression that the court is being used as a more subterfuge, to tie the hands of one party while the other party helps himself extra-judicially.

"Both parties are expected to await the result of the litigation and the appropriate order of court before acting further."

Nwakire v. C.O.P (1991) 1 NWLR (pt. 167) 332

Leading judgment delivered by Oguntade, JCA
Court of Appeal, Enugu

Impropriety of Resort to Self-Help.

Notable pronouncement per Babalakin, JCA at page 199, paragraphs G-H

"The conduct of the applicant in regaining the possession of the premises by force by changing the lock of the doors of the premises is most reprehensible particularly when he himself is a legal practitioner. His action is viewed with utmost disgust. He resorted to the use of force to the detriment of all concerned. He failed to obey the law which he practices. This to say the least, is a brutal behavior."

Per Tobi, JCA at page 200, paragraphs E-G



"In a democracy like ours, the rule of law must triumph not only in our legal system but in our body politic; parties in litigation must accept the decision of the court in good fate, subject only to the appeal process available in law. No litigant can employ self-help to disrespect or disparage any court order. The Supreme Court and this court have time without number condemned self-help on the part of litigants in matters in which the courts are seised. The case of Governor of Lagos state and another .v. Chief Ojukwu (1986), NWLR (pt. 18) 621, is one in point. The appellant/applicant, a member of the honourable legal profession has taken the law into his hands, broke into a premises which by a legitimate court order was not his and took over possession. This is a most unfortunate conduct, to say the least. I expected a legal practitioner to have some regard for the court where he practices his profession daily."

Emeshie v. Abiose (1991) NWLR (pt. 172) 192

Leading judgment delivered by Babalakin, JCA
Court of Appeal Lagos.

Attitude of Court to Self-Help by Parties to a Suit.

Notable pronouncement per UWAIFO, JCA at page 713, paragraphs, E-G

"While the appellant/applicant had taken steps in court to contest the order of custody, it would appear that the respondent eager to enjoy the fruit of his judgment in relation thereto forcibly took custody of the children. I think it was on their way to or from school. This went beyond what could lawfully be done by the respondent. See Governor of Lagos State .v. Ojukwu (1986) 1 NWLR (pt. 18) 621 at 623; Registered trustees, Apostolic Church .v. Olowoleni (1990) 6 NWLR (pt. 158) 514 at 532. It is contrary to the rule of Law to resort to self-help particularly when parties have banded in their dispute to the court for settlement. Self-help involves the use or intended use of force most times. If it is itself confronted or countered by the other party, it grows into, or is likely to result in violence. There is no knowing that at that point how it would end but certainly the stage is set for social disorder because violence begets violence. It is an ill-wind which blows no one any good. It is against the norm of civilized behaviour and ought always to be discouraged."

Odogwu .v. Odogwu (1994) 1 NWLR (pt. 323) 708

Leading Ruling delivered by Uwaifo, JCA
Court of Appeal, Lagos

Purpose of Law in Society

Notable pronouncement per PATS ACHOLONU, JCA at page 468, paragraphs D-F

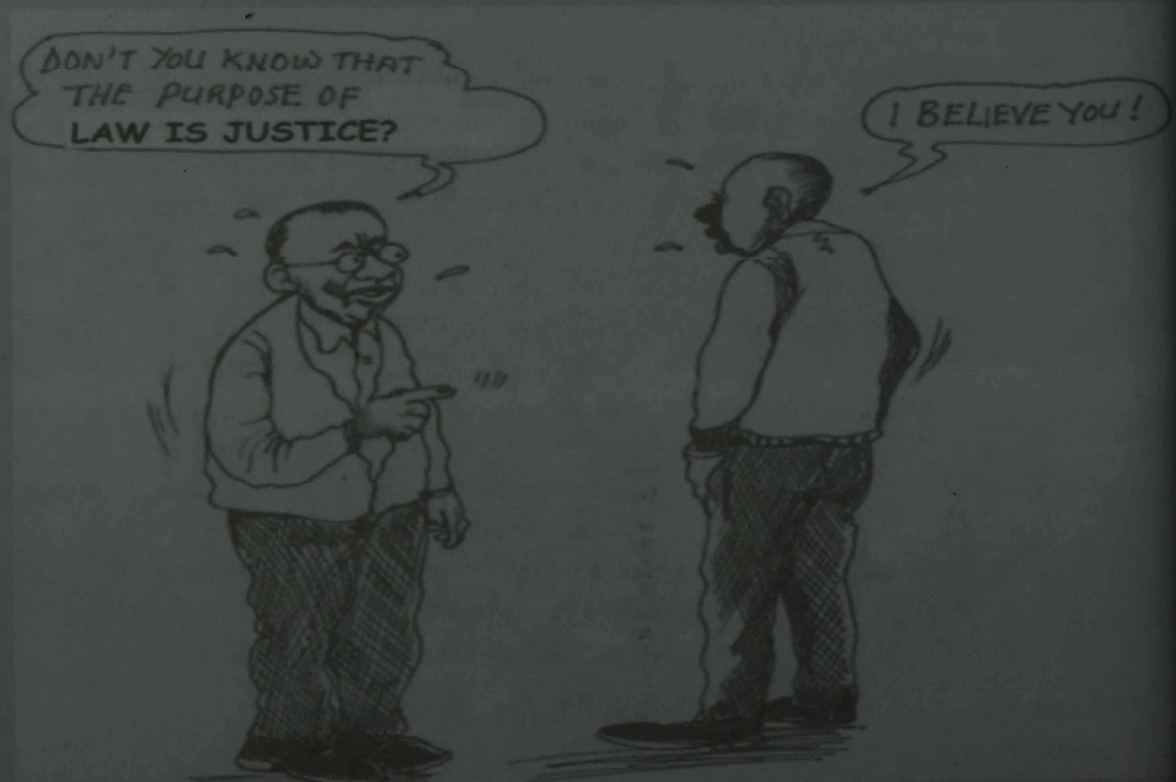
"It must be stated here that the purpose of the law in any society claiming to be civilized is to bring order, stability and interdependence consciousness in a given society. To that end, the courts through the well oriented, reasoned and seasoned legal activism and social engineering will by their liberal interpretative powers focus on the egalitarian aspect of the life of the society and make the society become responsive to the norms and demands of some philosophical tenets which guarantee the well-being and orderliness of the community.

"Therefore the appellant will simply not be allowed to opt out of a situation they themselves helped in no small measure to bring to existence. Having induced the plaintiffs/respondents/cross-appellants to perform the contract by agreeing to release the money when so mandated, they would be stopped from denying liability and rest their defence on a porous ground that they were not party to the contract."

NBN Ltd .v. Savol W.A Ltd (1994) 3 NWLR (pt.333) 435

Leading judgment delivered by Uwaifo, JCA

Court of Appeal, Lagos.





Purpose and Aim of Law

Notable pronouncement per OGUNBIYI JCA at page 635, paragraphs B-C

"The purpose and aim of law is to serve the same contempt in all human endeavours. It is immaterial therefore whether the application is in England, Nigeria, America or whereso ever. The set goal to be achieved must be one, the same and the only one. It is needles to restate that the goal is to do justice without fear or favour to all manner of person in all spheres of life and situations."

"The appeal was eventually dismissed for non-compliance of one month statutory pre-action notice to be given by the appellant to the respondent before filing action in the lower court."

I.T.C Plc. v. NAFDAC (2007) 10 NWLR (pt. 1043) 613

Leading judgment delivered by Ogunbiyi, JCA
Court of Appeal, Lagos

What Rule of Law Ought to Be

Notable pronouncement per PATS-ACHOLONU, JCA at page 473, paragraph F



"The rule of law in a free society is that it affords the common man and any citizen with opportunity to seek redress of wrongs, to declare his rights, to stand before the court of justice and ask for justice to be done i.e., justice that is without blemish based on reason and good conscience."

Fawehinmi .v. Akilu (1994) 6 NWLR (pt. 351)387

Leading judgment delivered by Uwaifo, JCA
Court of Appeal Lagos.

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Connotation of Unlimited Right of Access to Court

Per PATS-ACHOLONU, JCA at page 474, paragraphs B-C

"The constitutional guarantee or right of accessibility to law connotes unlimited opportunity for a citizen to readily seek a remedy or defend a cause in the court of law on the premise he should be given a chance of putting whatever is his case across to the court. This equally means that justice must be even-handed. It will indeed be a truncated justice were the court or any tribunal of justice, resort to summary trial of a case that is weighty when one of the parties to the case cannot be said to have lost interest in continuing with the trial of the case. It must always be borne in mind that implicit in the judgment of any court is the fact that the public will carefully, mercilessly and pitilessly scrutinize and methodically weigh any judgment given to discern whether it is in accord with fair play as could be acceptable to the right thinking members of the society."

Fawehinmi .v. Akilu (1994) 6 NWLR (pt. 351)387

Leading judgment delivered by Uwaifo, JCA
Court of Appeal Lagos.

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Need for Employment of Equity to Prevent Unjust Enrichment

Notable Pronouncement: Pats-Acholonu

"...as the 1st and 2nd respondents have received the money; might equity not come to the rescue for unjust, enrichment. I think the principle of unjust enrichments which unfortunately is not well developed in English law as both in US and Scotland should of necessity be nurtured to growth in a new and complex society like ours where people can easily at a whiff of breach resort to law to ward off debt or other enrichments they have had, at the expense of the other. This is a specie of constructive trust which is an instrument which the court of equity may employ to prevent undue enrichment. I believe that when a person is

holding tight that which is subject of equity he should not be allowed to hold it firmly. Therefore where a party unjustly enriches himself at the expense of the plaintiff he must be made to disgorge it. Our legal system should at this instance learn move to US Law on this principle than in England where the principles is yet to assume a wider dimension.

'Thus Lord Porter in Reading .v. AG 1951 AC 507-513-4 said:

'My Lords the exact status of the law of unjust enrichment is not yet assured. It holds a predominant place in the law of Scotland and I think of the US.'

'The premise behind the doctrine of restituting an unjust enrichment is that justice be done. That being the case, it seems to me that we ought to lean overly to US legal practice to effectuate justice. Therefore in consonance with the principles enshrined in the restitution a remedy shall be available whenever the defendant is unjustly enriched at the expense of the plaintiff. In this the respondents must be made to vomit out what they have taken (unjustly).'"

Eboni Finance & Securities Ltd .v.Wole Ojo Technical Services Ltd.

(1996) 7 NWLR (pt. 461) 464

Leading judgment: R.D Muhammad, JCA

Need for Counsel to Guard their Utterances in Respect of Subsisting Court Judgments

Notable Pronouncement per UBAEZONU, JCA at page 116-117, paragraphs H-C

"Diverse acts of contempt were alleged against the applicant in the counter-affidavit for which the members of the applicant's family were charged to the magistrate's court. Although the allegations of contempt were denied by the applicant in his further affidavit, yet there are inescapable facts to show that the applicant and his family and agents have shown intentional disrespect to the judgment of the lower court. Part of exhibit B2, a letter written by the applicant's solicitor reads as follows:-

'we would like to use this opportunity to inform you that there is still an application for a stay of the so-called judgment you were referring to. However, an appeal has already been filed and we are very optimistic of getting judgment for our client (italics mine).'

"The letter was signed by one Adefope Ajayi, Esq., (solicitor) in the chambers of Deji Adegoroye & Co. of 29, New Hospital Road, Akure. For a legal practitioner duly admitted to the Bar to refer a judgment

of a superior court of record as the so-called judgment' is, to say the least, reprehensible. He must be a very inexperienced solicitor in the aforementioned chambers. Counsel must guard the tongues and pen in and out of the court in their references to judgments of court. This sort of remarks serves no useful purpose but merely reduces the integrity of the courts before litigants. By all means, counsel have a right to criticize judgments of courts in all appellate court or in a legal journal but such or any other criticism of a judgment must be devoid of the use of crude language. In Iron products Ltd .v. Sentinel Assurance Co. Ltd (1992)4 NWLR (pt.238) 738, this court had cause to warn learned counsel about their choice of words against the judges of the lower court. I regret to have to repeat the warning here. I do hope that the warning will get to the quarters for which it is meant."

Akinduro .v. Iwakun (1994) 3 NWLR (pt. 30) 106

Leading Ruling delivered by Ubaezonu, JCA
Court of Appeal, Benin

Whether Every View Expressed by Court in a Proceeding is Appealable

Notable Pronouncement per OLAGUNJU, JCA at page 345, paragraph D-H

"The benefit afforded by the hindsight of this appeal is the danger of cynicism; of the conduct of a case by counsel who from momentary swing of arguments in the course of proceedings became obsessed with suspicion and distrust that the decision might not go in his favour and began to scheme well in advance of any decision about how to get even with the trial judge on appeal. It is a vindication of the symbolic frustration of the bench aptly portrayed in United Agro Ventures Ltd .v. First City Merchant Bank Ltd, (supra), at page 564, Pats Acholonu, JCA., who lamented that:

It is becoming upsetting that some counsel has formed the habit of appealing against anything the court below does. If the judge sneezes there will be an appeal showing that he ought not to have sneezed at the time. If he coughs it will be treated as if he is being most cynical and an appeal will lie. The effect is that the court is more often than not inundated with appeals that have no merits whatsoever and seem to have been embarked upon to lift the jingoism of the appellant counsel.

'Such an unprofessional disposition is common to an insignificant clan of advocates who are predisposed to cynicism and to whom the assessment of whether justice is done in any given case is measured by whether the decision went in their

favour. The tendency and its aftermath is a clog in the wheels of judicial administration but on the human side of it is a pest on the nervous system of any judge who falls victim of such machination.”

Okeke .v. Uzochukwuka Motors (2001)3 NWLR (pt.700) 338

Leading judgment delivered by Olagunju, JCA
Court of Appeal, Enugu

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Need for Counsel Not to Let Ambition Lead to Negative Consequences for his Client

Notable Pronouncement per Ogundare, JCA at page 369 paragraphs A-B

“It is a matter of regret that matters like the one in hand are filed in the Federal High Court, involving as it does, the litigant in wasteful and unnecessary expenditure to satisfy the ambition of counsel to break new grounds in the interpretation of provision of the constitution on which the Supreme Court had made authoritative pronouncements.”

Oamen v. Owenan (1993) 8 NWLR (pt. 311) 358

Leading judgment delivered by Ogebe, JCA
Court of Appeal, Benin

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Plea Bargain and Duty on Courts not to Allow Criminals Enjoy the Proceeds of Crime

Chief Emmanuel Nwude and four other persons were arraigned before the High Court of Lagos state for obtaining money by false pretences, transportation of illegal funds under section 1 (3) and 7 of the Advance Fee Fraud and Other Fraud Related Offences Act; 1995 and for the offences of forgery and altering of false documents under section 267 and 268 of the Criminal Code. Nwude and his co-accused persons pleaded not guilty and trial commenced.

After the prosecution had called six witnesses, Nwude and two of his co-accused persons (company of which the Appellant was a director) approached the prosecution and offered to give up some of their assets and to change their plea if the prosecution agreed to amend the information against them to contain offences with lesser punishments. He later sent the prosecution a list of assets which jointly belonged to him and the two companies.



On receipt of the list, the prosecution amended the information against the appellant to contain charges of conspiracy and obtaining property by false pretences contrary to sections 516 and 419 Criminal Code respectively. However, the charges against the two companies were under the Advance Fee Fraud and Other Fraud Related Offences Act of 1995.

At the resumption of hearing, Nwude's counsel and the prosecution applied to see the trial judge in chambers to inform him of the developments in the case. After the meeting, the amended information was read to the accused persons and Nwude pleaded guilty for himself and on behalf of the two companies.

They were accordingly convicted on the amended information. Nwude was sentenced to five years imprisonment without option of fine. The trial court also ordered him and the two companies to forfeit the sum of \$100 million to the victims of the crime for which they were convicted. He and the two companies were also ordered to forfeit their properties on the list he signed and submitted to the prosecution. Next, he appealed the judgment insisting that:

- The proceedings of the trial Court was a nullity because he was not properly arraigned for the amended information in accordance with the provisions of sections 215, 216 and 285 of the Criminal Procedure Act before he was convicted.
- The statutory provisions under which he was charged, tried and convicted did not provide for the punishment of forfeiture and that the order forfeiture was beyond the punishment stipulated in the statutory provisions and was therefore in breach of section 36 (8) of the 1999 Constitution.
- The order of forfeiture and term of imprisonment without option of fine imposed on him amounted to double jeopardy.
- The statutory provisions under which he was charged, tried and convicted did not empower the trial court to make the order of forfeiture in favour of the victims of the crime.
- Even if the order of forfeiture was made under the Criminal Procedure Act it was improper to have executed same while his appeal was pending;
- By virtue of section 43 and 44 of the 1999 Constitution, he could not be divested of his property except as strictly provided under the provisions of a written law.

The 1st Respondent raised a Preliminary Objection to the appeal. It argued that the appeal was incompetent because the order of forfeiture was a consent judgment and that the appellant ought to have obtained leave of Court of Appeal against the judgment. The

Respondents also argued that the arraignment, trial conviction and sentence imposed on the appellant were in accordance with the applicable constitutional and statutory provisions.

The appeal was dismissed on 26th June, 2015. Uzo Ndukwe-Anyanwu, JCA, notably held at page 515, paragraphs A-B as follows:

“An appellant cannot be allowed to enjoy the proceeds of his crime. The Court has a social duty to help in sounding a note of warning and frowning at criminals who think that the long arm of the law would not get them. What is the point of convicting a criminal and leaving him with the proceeds of his crime? Where then lies the Justice? Criminals must not be allowed to enjoy the proceeds of their crime in total disregards of the plight of the Victims. Forfeiture of proceeds of crime would serve as deterrent to intending criminals that the long arm of the law will always catch up with them”.

Nwude .v. F.R.N (2016) 5NWLR (Part 1506) 471

Leading judgment delivered by Uzo Ndukwe-Anyanwu, JCA
Court of Appeal, Lagos Division.

Virtue of a Worthy Legal Practitioner

Notable pronouncement per PATS-ACHOLONU, JCA at page 115, paragraphs B-C

“We all agree that the Attorney whose professional thought begins and ends with his own private client is a pitiable mockery of what a great lawyer really is and that only by taking part in the movements for the betterment of the law of the profession can he practice law in the grand manner the only way it is worth practicing.”

Williams .v. Akintude (1995)3 NWLR (pt. 381)101

Leading judgment delivered by Ayoola, JCA
Court of appeal, Lagos

On Need to Resolve the Conflicts in the Nigerian Bar Association Amicably

Per PATS -ACHOLONU, JCA at page 114-115, paragraphs H-B

“The profession ought not to wait for the military administration to put its house in order. Writing in American Bar Association journal in January, 1955 (41 ABA 18) a great jurist J. Wesley Mc Williams wrote as follows in the article he titled ‘The law a dynamic profession:’

'We belong to an ancient, to a great, to an honoured profession. The practice of law is a worthy calling. It has rewarded us with financial success and with prestige and Leadership in our communities. It has given us much happiness and good life. From it, we have received the gratitude and respect of our friends and neighbours whom we have served. Our words afford intellectual pleasure with dignity and independence, in competition with our fellow lawyers with whom we have cemented warm friendships and enjoyed happy companionships. For these blessing, we cannot but have a sense of gratitude and of obligation. The most productive, unselfish and wholly satisfying repayment of the obligation is constructive work to increase the effectiveness of our judicial system and the welfare of the profession.' "

Williams .v. Akintude (1995)3 NWLR (pt. 381)101

Leading judgment delivered by Ayoola, JCA
Court of Appeal, Lagos

Importance of Pleading

Notable Pronouncement per UBAEZONU JCA at page 369, paragraphs G-H

"This appeal, once again, brings into focus the importance of pleadings in cases in the High Court which are conducted on pleadings. It also emphasizes the attention which counsel conducting a case should give to pleadings. An otherwise good case may be lost as a result of bad pleadings. Counsel should therefore pay attention to the pleadings and satisfy himself that he had pleaded everything necessary to prove his case and has left out any unnecessary materials that could ruin his case."

Yesufu .v. Gbadamosi (1993) 6 NWLR (pt. 299) 363

Leading judgment delivered by Ubaezonu, JCA
Court of Appeal, Lagos

Disregard of Court Orders by the Government

Notable Pronouncement per Sulu Gambari, JCA at page 60, paras C-E

"It is a matter of grave concern for the Executive Governor of Oyo State to be seen to disregard lawful order decreed by a court of law ... By treating the court order with levity and contempt, the government is tacitly exposing the court to ridicule and thereby eroding the confidence of the citizens in the judiciary. Such acts would necessarily have the consequence of replacing the rule of law with chaos and anarchy. It must be borne in mind the maxim - NIHIL IN RRA REGNUM SUBDITOS BAGIS CONSERVAT IN TRANQUILITATE ET CONCORDIA QUAM DEBITA LEGUM ADMINISTRATIONE - Nothing more preserves in Tranquility and concord those subjected to the Government than due administration of the law."

Tewogbade & Sons Ltd .v. Governor of Oyo State
(1991) 2 NWLR (Pt. 171) 52

Leading judgment delivered by Sulu-Gambari, JCA
Court of Appeal, Ibadan



Disobedience of Court Orders by the Executive Arm of Government

Notable Pronouncement per Tanko Muhammad, JCA

'I am of the firm view that for a nation such as ours to have stability and respect for democracy, obviously the rule of law must be allowed to follow its normal course unencumbered. If for any reason, the executive arm of government refuses to comply with court orders, I am afraid that arm is promoting anarchy and executive indiscipline capable of wrecking the organic framework of the society. The corporate existence of Nigeria, it must be admitted, postulates the principle of co-operation between the three arms of government (Executive, Legislative and Judiciary). Where these work together in the same framework, then the rule of law shall prevail in that society. But where each selects to work in isolation and/or in utter disdain of the other, then havoc wrecks the society. Thus by this unique position, each knowing the limits of its powers and not to attempt to enter brusquely into the preserve of the other or ride rough shod of the powers of the other, then their rule of law has achieved its purpose which is ensuring respect for the law.

'It is only then that government or authority by whatever name called shall rule by the principles recognized in civilized societies and bound by the pronouncement of the courts. I must not drop pen without deprecating the behaviour of the Niger state Attorney General, Chief Law officer and Commissioner for Justice. He should not have forgotten his primary responsibility to the court as by his calling, he is an officer of the court. As a commissioner of State, the Niger State Attorney General, under 5. 174 (c) of the 1979 Constitution is bound to advise the Military Administrator generally in the discharge of his Executive functions other than those functions with respect to which the Military Administrator is required by the Constitution to seek the advice or act on the recommendation of any other person or body.

'It is inconceivable to say for instance that a Governor or Military Administrator of a State would refer a Court's ruling or statute for advice or interpretation to the Commissioner of Finance, as interpretation or offering legal advice are not synonymous with liquidity of cash. It must be referred to its rightful place and that is the Ministry of Justice. Any legally qualified person holding the esteemed office of the Attorney-General cannot allow himself to psychopathic. His own responsibility is to offer his candid advice according to how he understands the issue involved uninfluenced by any consideration. It is then left for the Governor or Military Administrator to take whatever course he deems appropriate, that will not in anyway, shake the integrity, confidence and professional dexterity of the Attorney-General. And I think it is more honourable always in a situation where you cannot

beat them, then you better budge out instead of following them. I am not in any way impressed by the role played by the Niger State Attorney-General."

Ibrahim & Ors. v. Emein (1996) 2 NWLR (pt. 430) 322

Leading judgment: Abdullahi, JCA
Court of Appeal Kaduna

Need for Government to Obey its Own Laws

Notable Pronouncement per PATS-ACHOLONU, JCA at page 741, paragraphs B-C

"The Federal Military Government is not above the law it has established. Until such a law is abolished or repealed, it must abide by it. That is the part of the Rule of law. It must therefore conduct its affairs according to the laid down law... Suppose the statute that empowers stray dogs to be killed contains an ouster clause as in this case. Adherent to unquestioning application of ouster clauses would say that the court has no jurisdiction to examine such questions. I disagree. When exercising jurisdiction to inquire into character and boundaries of power given to a person or authority under a statute or regulation and into whether the exercise of such power is within the empowering statute, the court rather than being against the law-maker is on the same side as the law-maker. No reasonable law-maker will be presumed to have granted powers which can be abused or misused or whose boundaries can be transgressed with impunity.

"In my judgment, rule of law is not preserved by withdrawing protection of law from the citizen and construing ouster clauses in such a way as to obliterate the operation of the doctrine of separation of powers. As was stated by a learned contributor to the Harvard Law Review: 'Legislative provisions that preclude the judiciary from reviewing executive compliance with limits on executive authority... contradicts the separation of powers doctrine. Madison argued that the objective of separation of powers is to provide some practical security for each (branch) against invasion by the others (The Federalist No.8 at 332). A Statutory preclusion provision represents just such an invasion; through the provision congress abolishes the independent juridical check on the executive and (allows the executive to judge the 'Judge' itself.

'Judicial difference to a preclusion provision effectively turns our tripartite systems of government into a bipartite one with respect to the federal programs to which the preclusion applies.' (1984) 97 Harvard Law Review 778 at 786)."



"In my view, notwithstanding that the ouster clauses in the two instruments were couched in the widest possible terms, the court still has jurisdiction to construe its terms and determine whether the action complained of falls within the terms of the ouster clause. Where the right of citizens is concerned the court should not abdicate its role of providing remedies for wrongs and reliefs from unjust treatment without ensuring, if ever such is possible, that the true intention of the law-maker is to deny the citizen of all remedies.

"In this case even if the two instruments (Decrees No 8 and No 12 of 1994) are effective as Decrees, the Federal High court ought not to have declined jurisdiction at the stage it did without further inquiry. Ouster of the jurisdiction of a court does not preclude it from exercising jurisdiction to interpret the ouster clause itself or to determine whether or not the action in question comes within the scope of power or authority conferred by the enabling statute."

Guardian Newspapers Ltd .v. Ag. Federal (1995) 5NWLR (Pt. 398) 703

Leading judgment delivered by Pats-Acholonu, JCA

Court of Appeal, Lagos

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Need to Give Practical Effect to Doctrine of Democracy

Notable Pronouncement per OGUNWUMIJU, JCA at pages 513-514, paragraph H-F

"My Lords democracy is not an esoteric or fanciful concept too difficult to grasp. It is practical and down to earth. It conceives of the will of the majority against the tyranny of the minority in whatever context. A candidate of whatever status starts the journey from being nominated by his supporters at his ward level, then going through all the levels of the party primaries to be nominated or sponsored by the party for a particular elective office to INEC.

"The candidate is then screened and cleared by INEC to run for election. Inexplicably, on the day of the polls, his name and/or the name of his party are not on the ballot papers either because the party or INEC decided at the last minute to play a fast one on the electorate.

Let us not forget that it is not party officials or INEC who vote for candidates on polling day but party faithful who believe from the ward level



upwards to state and federal party primaries that the particular candidate they voted for and intend to vote at the general election would actualize the manifesto of the party to deliver the dividends of democracy which is the greatest good of the greatest number."

"There is perhaps no question more fundamental in the whole process of adjudication than that of access to justice-access to the courts. He who cannot ever reach the courts cannot talk of justice from those courts.

"The whole essence of our democracy is grounded on the rule of law. Where parties with interest are denied access to court especially in a matter like election in which the public at large have a high emotion at interest; it does not bode well for our fledging democracy. How can we contribute meaningfully to the development of democracy if we bar litigants from the judgement seat and prevent access to justice by denying locus standi to candidates who claim to have had a right to contest the election? We are here concerned only with their right of access to justice. Whether they can prove their claim to valid nomination and unlawful exclusion is for the tribunal hearing them to determine.

Per MUNTAKA COOMASSIE, J.C.A at pages 517-518 paragraphs G-C

"If we were really serious about the rule of law in this country, parties who can show that they have some legal rights and interest should not be loosely and carelessly denied access to our law courts or tribunals especially where it affects these all important matters of election petitions. We should not be seen as employing locus standi Saga to stultify citizens efforts to have access to court or tribunal, we should make sure citizen are allowed opportunity to freely ventilate his/ her point. These legal right are not favour to be done to the litigants, they are their constitutional rights S.6(1) (3) & (6) of the 1999 constitution.

"The important and urgent one, for that matter, in this appeal is the right of access to court or tribunal which culminates in the Latin phrase of locus standi. Allow the appellants to file their petition for whatever it is worth. The lady may win or lose that cannot be our immediate headache here on appeal. It is the prerogative of the lower tribunal to thrash same out."

"C.P.P.A .v. Saraki (2007) 17 NWLR (pt. 1064) 453

Leading judgment delivered by Ogunwumiju, JCA
Court of Appeal, Ilorin

Need to Adhere to the Separation of Powers Under the Constitution

Notable Pronouncement per UWAIFO, JCA at page 586, paragraphs B-C

"In a democratic society governed by a democratically elected government under the law and the constitution, this illegality, no matter its salutary intention, should not be permitted. Once a situation like that is allowed to go unchallenged by whoever is affected, more serious infractions will soon be committed. In due course, the constitution is rendered irrelevant. That means a slide into authoritarianism. All this can come about just because the law and the constitution were not observed and the non-observance was connived at or acquiesced in, and the court in a competent action did nothing about it. That does not augur well for democracy and the rule of Law. It rather weakens their framework and their practice."

Per UWAIFO, J.C.A at page 586, paragraphs D-F

"If we must practice democracy at the stage and on the platform of due process and the rule of law, we must learn to know the limits of our powers and acknowledge the extent of the powers of others. The first lesson is that institutions which ensure democracy must not be allowed to take any other form and be personalized. If they are, they become open to grave abuse. All this applies as much to the doctrine of separation of powers as to the powers of the different tiers of government in a true federalism. No organ should be able to treat another as an underling when it comes to the question of allocated jurisdiction of the observance of lawfully agreed terms and conditions in any given situation."

"There is, of course, the need to accommodate the 'learning processes' in a fledging polity such as ours, made so by avoidable circumstances. That has been much canvassed in our situation, and I suppose with some justification."

But I do not think it should be the type that ignores standards. That is no learning process but organized duplicity. Those who care must feel sick, and tired of such a 'learning process' which is palpably retrogressive, wearily imperceptible and embarrassingly misguided. In appropriate circumstances where this tends to subvert the constitution, the courts will and must act firmly. That may be the 'little flicker of a saving grace' much needed, lest a society will at best be marking time but most probably be searching uncontentedly for a democratic order."



Bamidele .v. Comm. for Local Government (1994) 2 NWLR (pt. 328) 568

Leading judgment delivered by UWAIFO, JCA

Court of Appeal, Lagos

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Despicable Behaviour of Oyo State Government Compulsorily Acquiring Land from a Citizen on Guise of Public Use and Giving Same to Another Citizen for Private Use.

Notable Pronouncement per OGUNTADE, JCA at page 606, paragraphs E

"The position is that Oyo State government in the guise of using the land for public purpose seized the land of a citizen and gave it away to another citizen or some other citizens. It is nauseating in the extreme to think that a state government could act with such insensitivity. The action of the state government must be deprecated without reservation. I so do."

Olatunji .v. Mil. Government, Oyo state (1995) 5 NWLR (pt. 397) 586

Leading judgment delivered by Salami, JCA

Court of Appeal, Ibadan

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Duty on Attorney-General in Murder Trial to Ensure That the State is Represented

Notable Pronouncement per AKAAHS, JCA at page 422, paragraphs G-H

"In a matter involving life, it is incumbent on the respondent as a minister of justice to ensure that a state counsel appears before the appellate court to present his arguments in support of or against conviction. The DPP (Director of Public Prosecution) is paid from tax payers' money and he should justify his pay by taking his work seriously. I hope there will be a change of attitude to work by the officer concerned."

Ani .v. State (2001) 17 NWLR (pt. 742) 411

Leading judgment delivered by Akaahs, JCA

Court of Appeal, Benin

Impropriety of Dismissing a Public Servant who has Almost Attained the Age of Retirement

Notable pronouncement per OGBE, J.C.A at pages 86-87, paragraphs H-B

"There was evidence that the appellant has put in 28 years' service before his purported dismissal from the service and was virtually on the verge of his compulsory retirement from the civil service at the age of 60 years as stipulated by section 4 of the pensions Act, 1991 made applicable to the Bendel State by section 2 of its own Pensions law, Cap.115 Laws of Bendel State, 1976. Whatever was the nature of the appellant's misconduct, such a man who was in his way out after 28 years' service should not be dismissed with a wave of the hand. The dismissal was improper and it is hereby declared null and void. The Edo State Government which has inherited the case from the defunct Bendel State should pay the appellant all his entitlements."

Ofomaja .v. Comm. for Education (1995) 8 NWLR (Pt.411) 69

Leading judgment delivered by Ige, JCA
Court of Appeal, Benin

Illegality of Arbitrary Exercise of Power in Breach of the Entrenched Right of Citizens.

Notable Pronouncement per IKONGBEH JCA at pages 560-561, paragraphs E-C

"The court, per Elias, CJN, in condemning the conduct of the defendants observed and held at P.533: 'We are of the view that, even if the police have been shown to have removed the mill at the defendants' instance, the defendants would nevertheless have been liable for the seizure of the mill, since they would then have set in motion a ministerial act as opposed to a judicial one...."

"It cannot be over emphasized to both high and low that every person resident in this country has a right to go about his or her lawful business unmolested or unhampered by anyone else, be it a government functionary or a private individual. The courts will frown upon any manifestation of arbitrary power assumed by anyone over the life or the property of another even if that other is suspected of having breached some law or regulation."



'People must never take the law into their own hands by attempting to enforce what they considered to be their right or entitlement. It is, therefore, wrong, very wrong for a group of persons to go to the workshop of another ..., effect a forcible entry into it, beat up his employee and remove the morning's takings, all in the purported but misguided exercise of power on behalf, ostensibly, of a local branch of a trade union.'

'It is even more wrong for such person to claim immunity for their action on the pretence that it was a police officer that they had employed to remove the pepper mill. The law of Nigeria is that those who set a ministerial rather than a judicial officer in motion in this way are as liable for the wrongful seizure of another's property as if they had done it themselves. Police officers must, therefore be wary of being inveigled into a situation in which they find themselves becoming partisan agents of wrong-doers in the pursuit of a private vendetta. This kind of show of power which is becoming too frequent in our society today must be discouraged by all those who set any store by civilized values.'

'The poor pepper mill owner is as entitled to his workshop and his humble means of livelihood as is the owner of a mansion and a share certificate not to be deprived of them even for one day. There will accordingly be judgment in favour of the mill owner for the loss of his earnings during the period when his mill was wrongfully withheld by the defendants.' "

Nkpa .v. Nkume (2001) 6 NWLR (pt.710) 543

Leading judgment delivered by Ikongbeh, JCA.

Court of Appeal, Port Harcourt

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Need for Nigerian Public Officers to be Patriotic

Notable Pronouncement per ABOKI, JCA at page 341, paras E-F

'It is a notorious fact that at times this country employs expatriates with expert knowledge but the 3rd and 4th defendants are not expatriates but a daughter and a son of the soil who can even on patriotic grounds offer their services free of charge in the interest of their fatherland.'



"They should have declined the offer of such a high salary in foreign currency which they know or ought to know is a violation of the provisions of the constitution and the laws of this country. Ignorance of the law is no excuse."

Fawehinmi .v. president, F.R.N (2007) 14 NWLR (pt.1054) 275

Leading judgment delivered by Aboki, JCA
Court of Appeal, Abuja

NOTE: Holding of the court: Appeal allowed. Court of Appeal held that the appellant being a Senior Advocate of Nigeria, a tax payer, a good citizen who represents the conscience of the people has the locus standi to sue. This authority, rests as of today, the impediment caused by locus standi in our legal system, in that acts of government or public officers can now be challenged by private citizenry.

Need to Amend Constitution to Allow Unrestricted Access to Court

Per ABOKI, J.C.A at page 343, paragraphs C-D

"It will be at this point to proffer that for this country to remain governed under the rule of law and in view of the controversies the problem of locus standi has generated especially in constitutional matters, it is suggested that any future constitutional amendment should provide for access to court by any Nigerian in order to preserve; protect and defend the constitutions."

Fawehinmi .v. President, F.R.N (2007) 14 NWLR (pt.1054) 275

Leading judgment delivered by Aboki, JCA
Court of Appeal, Abuja

Need to Extend Frontiers of Locus Standi to Enforce or Protect Constitution

Per ABOKI, JCA at page 334-336, paragraphs B-F

"In our present reality, the Attorney-General of Federation is also the minister of justice and a member of the executive cabinet. He may not be disposed to instituting an action against the Government in which he is part of, it may tantamount to the Federal Government suing itself. Definitely he will not perform such a duty."

Importantly too, there is no provision in the 1999 constitution for the state to sue itself. Since this country attained independence from the British Colonial Administration almost forty seven years ago, I know of no reported case of any superior court in Nigeria where the Attorney General of the Federation has instituted an action against the Federal Government or an Attorney General of a state suing his state Government on account of a violation of the provisions of the constitution or a legislation contrary to the provisions of the constitution. I may however be wrong in this historical assessment.

‘The question now is who will approach the court to challenge the government where it violates or fails to enforce any provisions of the constitution or the Laws where an attorney General will not?’

‘In this country where we have a written constitution which established a constitutional structure involving a tripartite allocation of power to the judiciary, Executive and Legislature as the coordinate organs of Government, judicial function must primarily aim at preserving legal order by confining the legislative and executive within their powers in the interest of the public and since the dominant objective of the rule of law is to ensure the observance of the law, it can best be achieved by permitting any person to put the judicial machinery in motion in Nigeria whereby any citizen could bring an action in the respect of a public derelict. Thus the requirement of locus standi becomes unnecessary in constitutional issues as it will merely impede judicial functions...’

‘It has been deposed on behalf of the appellant in paragraph 6 of the affidavit in support of the originating summons and in paragraph 5 of the further affidavit in support of the originating summons thus:

‘That the plaintiff is the chairman of the National Conscience Party (N.C.P), former presidential candidate, a tax payer who is bound by the provisions of the constitution of the Federal Republic of Nigeria, 1999’.

In paragraph 5 of the further affidavit in support of the originating summons, it has also been disposed on behalf of the appellant thus:

‘That I was informed by the plaintiff, Chief Gani Fawehinmi, SAN in our Chambers on Thursday 22nd April, 2004, at about 6.pm and I verily believe him that on the 10th day of September, 2001 when he

was sworn in as Senior Advocate of Nigeria, (SAN) he swore to an oath before the Chief Justice of Nigeria and other justices of the supreme Court there present on the occasion of the conferment of the rank of Senior Advocate of Nigeria on him. A copy of the oath is attached and marked exhibit Gani 1.'

'Exhibit Gani 1 has been earlier reproduced in this judgment. The plaintiff appellant is a political elite in Nigeria and represents the conscience of the people and by the averments in paragraph 6 of the affidavit in support of the originating summons and paragraph 5 of the further affidavit, he qualifies as a person who has sufficient interest to bring an action in court in respect of an infraction of the provisions of "Certain political, public and judicial office Holders (Salaries and Allowances, etc.) Act No. 6 of 2002, promulgated on 13th December, 2002 and deemed to have come into force on 29th May, 1999."

Fawehinmi .v. president, F.R.N (2007) 14 NWLR (pt.1054) 275

Leading judgment delivered by Aboki, JCA
Court of Appeal, Abuja

On Conduct Expected of Holder of Public Office

Notable pronouncement per ADEREMI, JCA at 530, paragraphs F-H

"Let us say in closing treatment of the two issues formulated for determination by the appellant that public office is public property. And because that office inures to the benefit of the society, it must remain sacrosanct. It follows that all those who aspire or are called upon to occupy such offices must like Caesar's wife, be above board.

"It is not only important but it is divinely commanded that all holders of public and even private offices which offices have to relate with society must by their conduct, thoughts, action and appearance, sanctify such offices in answering the question which I posed above, I have no hesitation in saying that the constitutional provision which confers immunity from prosecution on the government cannot be breached if the Governor is investigated".

Fawehinmi .v. IGP (2000) 7 NWLR (pt. 665) 481

Leading judgment delivered by Oguntade, JCA
Court of Appeal, Lagos

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Propriety of Killing as a Form of Force Discipline

Notable Pronouncement per TOBI, JCA at page 487, paragraphs F-H

"This is a gruesome murder of a defenseless police constable, Francis Madu, by the appellant who is a superior police officer. He is an Assistant Superintendent of police. He had all the official world at his feet to either recommend disciplinary measures or discipline the deceased if he had found his conduct unprofessional but he decided to open fire at him which resulted in death. So much will be wrong with force discipline if the only procedure for a superior officer to discipline his subordinate is to kill him in the way the appellant did. As a superior police officer, I expected the appellant to know better, but he did not. He was blood thirsty and he should go in for it."

Abogede .v. State (1995)1 NWLR (pt. 372) 473

Leading judgment delivered by Achike, JCA
Court of Appeal, Enugu

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Scope of Demeanor of Witness in Attaching Credibility to his Evidence

Notable Pronouncement per NSOFOR, JCA at pages 595, paragraphs E-H

"But let me for now deal with the question of the demeanour of which the learned trial judge heavily relied to disbelieve the appellants to convict them. He relied on the demeanour of the 4th defendant to hold that: 'There was nothing in his demeanour or composure suggesting that he was lying.'

"Now, demeanour and bearing of a particular witness can be a useful guide to discovering the truth. But to hoist belief or disbelief of a witness solely on demeanour can be dangerous and may be a cover for a multitude of sins. One or more factors may influence and affect the

demeanour of a witness in the witness box. And there is no art of finding the mind's construction on the face. If for instance a witness deposes that two plus two make five, his arithmetic certainly will always continue to be wrong and it does not matter that the mathematical witness testified with optimum candour and bearing and that his demeanour was perfect and impeccable. All I am trying to say is this- demeanour, impression, candour etc., are not always each an index of truth.

"They are merely aids to credibility. But they are not infallible aids. There are other aids perhaps more potent. One such aid is probability. If the defence of alibi set by the appellants or any other of the defendants could probably be true, the accused in my opinion would be entitled to be discharged. Because as Aristotle said many years ago: 'probability has never been caught bearing a false testimony.'"

Ajilore .v. State (1993) 4 NWLR (pt. 289) 572

Leading judgment delivered by Salami, JCA
Court of Appeal, Ibadan

Propriety of government interfering with the affairs of a limited liability company

Notable pronouncement per OLAGUNJU JCA at pages 280 - 281, paragraphs H-E

"The respondent which as a minority shareholder seized the property of the appellant jointly owned with other shareholders without consulting the other shareholders rode roughshod over the majority shareholders exploiting the advantage of the operation of the company being situated at its territory.

"This is grossly unfair bordering on illegality, a form of expropriation of propriety of the citizenry that is prohibited by section 40 of the constitution of the Federal Republic of Nigeria, 1979. Surreptitiously enlisting the support of the Nigeria Police Force to sustain what appears to be chauvinism is a serious abuse of political power from which the judiciary should distance itself the brink to which the decision of the court below appears to be steering imperceptibly albeit without the least intension to do so on the part of the learned trial judge.

"Indeed, from the record of the court below evidence abound that not only did the respondent interfere in the affairs of the appellant, a public liability



company, with impunity, it also intimidated the company, taking the advantage of the operation of the appellant on the respondent's territory to employ the coercive machinery at its command, the police backed up by a raw appeal to chauvinism, a subtle but contemptible brand of statism.

"It is possible that the organization of the appellant as a company was rife with mismanagement to provide occasion for probing its activities as the respondent qua the state government did or attempted to do. But this can only be done by a recourse to the appropriate machinery provided for doing so which, in this regard, is by taking any of the steps outline in companies and Aliened matters Act, a legislative or regulatory field from which the respondent, qua the state government, is by operation of section 4 and item 31 of part 1 of the constitution of the Federal Republic of Nigeria, 1979, excluded. What the respondent has no capacity to do is to indulge in a measure of self-help."

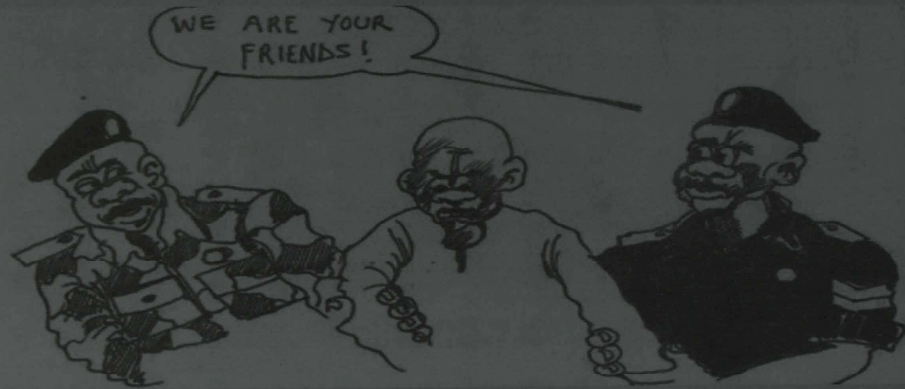
**AVOP PLC .v. Attorney - General of Enugu State
(2000) 5 NWLR (Pt. 656) 178 at 203**

Leading judgment delivered by Ubaezonu, JCA
Court of Appeal Enugu

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Need for Military and Police Officers to Act in Civilized Manner

Notable Pronouncement per UBAEZONU JCA at pages 13-14, paragraphs H-B

"Let me touch briefly on a point which leaves a sour taste in this case. It is the question of abuse of power by persons in authority. As soon as the smugglers were asked whether they were Hausas and they said 'No', they were asked whether they were Yorubas they said 'No', the appellant and his other colleagues concluded that they were fit person for brutalization.



They were made to frog-jump, kicked, and searched. One of them (PW 7) was tied hands and feet and threatened to be thrown into the sea. Their money in US Dollars, French Francs and Nigerian Naira was seized. It is this type of conduct by persons in authority that gives a bad name to our establishments.

"It is not only in the Army that one finds this type of abuse. It is also found in the police force particularly in those known as the mobile police. Pointing of guns indiscriminately to innocent civilians by those police men on escort to some of our big wigs must stop. Such a practice is primitive and is not found in civilized countries. Unfortunately, however, our big wigs do not read the law reports so my views may never get to them."

Per OLAGUNJU, JCA at pages 21-22 paragraphs F-B

"But some damning tell-tale evidence which is lurking in the appeal record paints a more gory picture of the appellant's bravado. The display of treachery and ruthlessness in which the drama of luring and dispossessing the victims of their possession gives the act of the appellant a touch of tragedy-comedy.

"Evidence of the 5pw, 6pw & 7pw established that while the boat in which the appellant's men were cruising at sea broke down there was a gunshot from the boat as a sign of distress to attract the boat in which the victims ran to the aid of the soldiers and towed their boat to shore for them. To have to enlist the help of the hapless victims to bail the appellant's men out of their marooned position on the rough seas only for soldiers to turn the salvaging mission by the victims to one of a decoy by tricking the victims to the shore on the pretext that they are smugglers smacks of bad faith and an unparalleled act of ingratitude unbecoming of the officers and men of the Nigerian Army.

Trespass vi et armis was a kind of lawsuit at common law called a tort. The cause of action alleged a trespass upon person or property 'V et armis, Latin for "by force and arms."



"To descend on the victims as birds of prey and seize their property and money running into millions of Naira vi et armis is despicable and the height of infamy. It is an act of piracy that portrays the appellant as the modern day 'Captain Kidd'. Indeed, it is a serious indictment on the Armed forces established under the constitution of this country that put such a freakish freebooter under arms and in the uniform of the Nigerian Army.

"The evidence against the appellant is overwhelming portraying him as a bandit sailing under false colours as officers of the Nigerians Army. Therefore, the execution of the appellant on the charge of extortion by the court martial is justified by and legally unexceptionable. The vindication of his conviction on the second charge is self-evident as nothing can be more prejudicial to the Nigerian Army than having an out and out renegade and a robber as one of its officers."

Akande .v. Nigerian Army (2001) 8 NWLR (pt. 714)1

Leading judgment delivered by Ubaezonu, JCA

Court of Appeal, Enugu

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Trade Unions

Per Awogu JCA: Notable pronouncement

"This appeal deals with the problem of the trade union officials who fight over positions rather than carry out the sacred trust placed upon them by the members of the union. Such fighting creates the erroneous impression of the existence of a union 'cake' to be shared. The law reports of this country and now replete with disputes of this nature."

Solade v. Imagie (1989) 4 NWLR (pt. 114) 250

Leading Ruling delivered by Awogu, JCA

Court of Appeal Lagos Division



Potency and Applicability of Customary Arbitration Under Nigeria's Legal System

Notable Pronouncement per NDOMA-EGBA, J.C.A at pages 309-310, paragraphs H-A

"Arbitrations are indeed, a short cut to early determination of cases amongst the natives with our courts becoming increasingly congested. Customary arbitration may stay in our accusatory system of jurisprudence but should however always operate within our rules of evidence."

Nwuka .v. Nwaeche (1993 5 NWLR (pt. 293) 295

Leading judgment delivered by Ndoma - Egba, JCA
Court of Appeal, Port-Harcourt

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Need for Fear of Allah in Making Claims Under Islamic Law

Notable Pronouncement: Tanko Muhammad, JCA at pages 435, Para. F-H

"I am in full concurrence with panel of the learned Kadis of the Sharia Court of Appeal that heard and determined the appeal to its finality. I commend their sound reasoning and in-depth diagnosis of the matter before their honourable court. I will have had nothing more to add on their judgment save the few words which I consider pertinent. And this is that, under Islamic Law (Sharia) dispensation, Takwa (piety) or fear of Allah should be the premier occupant of a Muslim mind. Therefore a Muslim should not lay a vexatious claim in order to justify that which, does not belong to him. Even if he takes such a possession through the cleverness or prevarications, he is taking a portion of the hell-fire. This is certain and categoric from the Prophet's traditions. When litigants came to him, the Prophet (phub) used to warn them in the following words:

'You came to me for adjudication; perhaps some of you are cleverer in argument than the other. If I adjudicate in favour of a person against his brother depending upon the former statements while the latter in reality is in the right then I would only be handing the former a piece of hell. Let him not take it...' "

Mamuda Biri & Anor. .v. Tukur Mairuwa & I Or.

(1996) 8 NWLR (pt. 467) 425

Leading judgment by Tanko Muhammad, JCA

Dissimilarities Between the Status of Visitor of Universities in England and Universities in Nigeria

Notable Pronouncement per TABAI, JCA at page 131, paragraphs A-F

"I take this view particularly having regard to the dissimilarities in circumstances and standards in England and our country. Speaking of the qualities and status of visitors to England Universities in Thomas .v. University of Bradford (Supra) at page 849, Lord Griffiths said:

'Today the visitors of Universities either are or include independent persons of the highest judicial eminence.

'Would not most people consider it to better accept the decision of such a person rather than face the risk of the matter dragging on through the years until the appellate process has finally ground to a halt?'

"In England the Lord Chancellor invariably sits as the visitor of a university on behalf of the crown and there is no doubt that he is a jurist and a person of the highest judicial eminence in his own rights. It is not surprising therefore that in the Thomas case learned counsel for Miss Thomas relied on the opinion of the Lord Chancellor of Britain at that time Lord Hailsham sitting as visitor in Cassaon .v. University of Aston in Birmingham (1983) 1 All ER 88 at page 91, the Lord Chancellor relying on an article by Dr. Peter M. Smith which in his opinion was exhaustive and up-to-date concluded:

I agree however, with Dr. Smith that a visitor can have no jurisdiction in any matter governed by the common law, e.g. contract (see 97 LQR 610 at 613). I regard each of the petitions as claims for damages for breach of a contract entered into before the petitioners became members of the university and for nothing else.'

"In English jurisdiction therefore in terms of dispensing justice in disputes between a university and its employee, an appeal to the visitor is nearly as dependable as recourse to the courts of law. I do not think that the same standards obtain in this country. Here, the visitor of the Federal Universities is the Head of State of this country. While that of a state university is the Governor of that state. In my considered view these people do not, with respect strictly fall within persons of the highest judicial eminence for the purpose of dispensing justice in disputes between a university and its staff, as in this case."

Fetuga .v. University of Ibadan (2000) 13 NWLR (pt. 683) 118

Leading judgment delivered by Tabai, JCA
Court of Appeal, Ibadan

Need for INEC to Thoroughly Supervise its Officials

Notable Pronouncement: Per Fabiyi JCA at page 240, paras. E-F

"Election in a democratic society is principally aimed at producing true and clear winners. After all, a winner is going to represent the people of the constituency in legislative duties to maintain the cohesion of the polity and protect the well-being of the society at large... INEC should keep a close watch over its officials ... especially returning officers at ward levels. I say no more."

Per. Galadima JCA at page 241, paras. C-D

"These officers should be thoroughly supervised by the Independent National Electoral Commission in future elections at various ward levels. This is to ensure clear winners at all level of Election in this country and to checkmate their extremely nefarious conduct."

Nnadi .v. Ezike (1999) 10 NWLR (pt. 622) 228

Leading judgment: Fabiyi, JCA
Court of Appeal, Enugu Division

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Need to Delete any Provision for Substitution from the Electoral Act

Notable pronouncement per ADEKEYE, JCA at pages 165- 166, paragraphs G-A

"The learned senior counsel for the 2nd and 3rd respondents is of the opinion that the new section 34 is only cosmetic in context, bare and barren devoid of any legal sanction. I do not agree with them and I regard that impression as misconstruing the intention of the lawmakers in promulgating section 34. I however agree that the lawmakers must go a step further in the framing of the provision particularly in the area of implementation and sanction for noncompliance or once it is established that a candidate is not disqualified under the constitution of the Electoral Act; and if he has won in the party primaries his or her nomination should not be subject of any substitution. Any provision of substitution should be deleted in the Electoral Acts. A political party must not be allowed to approbate and reprobate."

Ararume .v. INEC (2007) 9 NWLR (pt. 1038) 127

Leading judgment delivered by Adekeye, JCA
Court of Appeal, Abuja



Impropriety of Conducting Legislative Meetings of State House of Assembly in an Hotel

Notable Pronouncement per Chukwuma-Eneh, JCA at page 701, paras. C-F

"The proceedings have been conducted at the D'Royal Hotel, Ring Road, Ibadan outside the official designated House chambers. This act by itself is infra dig and a show of shame as trivializing the purported impeachment proceedings by the said eighteen member 'House.' Even though section 188 is silent as to the venue for impeachment proceedings, in this regard it would be inconceivable to contemplate such serious business holding in an hotel when the official house Chambers where legislative business ordinarily holds is available for use. One can only hope it does no denigrate further. It points to clandestine nature of the purported impeachment proceedings; it has roundly deprecated."

Hon. Adeleke .v. O.S.H.A
(2006) 16 NWLR (pt. 1006) 608 C.A

Leading judgment Ogebe, JCA
Court of Appeal, Ibadan

Probable Effect of Indiscriminate Impeachment Proceedings on Democracy

Per Akaahs, JCA at page 676, paras. B-C

"The spate of impeachments under the present democratic dispensation has assumed frightening dimension which if not properly handled will throw this country in a state of anarchy."

Hon. Adeleke .v. O.S.H.A
(2006) 16 NWLR (pt. 1006) 608 C.A

Leading judgment Ogebe, JCA
Court of Appeal, Ibadan

Need for Candidate Defeated in an Election to Accept Defeat Gloriously

Notable Pronouncement per NDOMA EGBA, JCA at page 128, paras C-D

"It now appears as a matter of general knowledge that defeated candidates in some election are unwilling to concede defeat. They take the opportunity even on sliding stones to fight on until they drown. If some of them had the courage to acknowledge the success of their opponents, the transitional arrangements would have clinched and the country set on the path of 'true greatness'-unity and prosperity".

Okoroji v. Ngwu (1992) 9 NWLR (Pt. 263) 113

Leading judgment delivered by NDOMA-EGBA, JCA
Court of Appeal Port Harcourt

Propriety of Employing a Used Aircraft that had Remained Stationary for Commercial Air Transportation in Nigeria

Notable Pronouncement: Per Alagoa, JCA; at pages 24-25, paras. H-B

"The propriety of employing a used aircraft that had remained stationary and unused for commercial air transportation to say the least is mind boggling and quite frightening. I would imagine that even a brand new aircraft or indeed any other machinery that had remained inoperative for such a long time would have serious maintenance and repair problems and this may well be part of the explanation for the rather frequent air mishaps in this country. It has become imperative for the authorities to take a closer look at this area of public transportation in this country."

F.I.E.D.C Nig. Ltd. .v. E.A S Ltd. (2006) 6 NWLR (pt. 975)1

Leading judgment: Alagoa, JCA
Court of Appeal Kaduna Division

Need for a Free and Responsible Press

Per Aderemi, JCA at pages 311 -312, paras. G-A

"Perhaps I should here say that it is much to be desired that newspapers and television or news media generally should be free to bring to the notice of the public any matter of public interest or concern. But in order to be deserving of that freedom, the press must show itself worthy of it. A free press cannot be deserving of that appellation unless it is a responsible press. The power of the press is enormous. It must not abuse that power. If a newspaper should act irresponsibly then it forfeits any claim to the defence of qualified privilege. The press in a society that upholds the rule of law as a way of life, has a solemn duty to feed the society with true facts and honest comments. That crucial function is in my view, tantamounts to moulding positively any public opinion."

Per Pats -Acholonu, JCA at page 313, paras. A-C

"It is important that it is always to be borne in mind that in a well ordered society, anyone holding a public office is in the public gaze- nay the media which is the mouth piece of the public. All his actions are subject to merciless scrutiny and critical analysis. That being the case the media is duty bound to explore in the course of investigative journalism where there have been lapses in the performance of public duty and publish matters of interest to the public officer. In the performance of such constitutional duty, it is educating the public and at the same time informing the citizenry of certain sinister findings and unbecoming conduct found out by a body of inquisitors or board enquiry. In such circumstances it holds a privileged position though qualified as it is performing a public duty without bias or malice attributable to the publication."

Alhaji M. O Gomes .v. Punch Nig. Ltd & Balogun (1999)5 NWLR (pt. 602) 303

Leading judgment: Aderemi, JCA
Court of Appeal Division, Lagos



Employer –Employee Relationship

Notable pronouncement per Uwaifo J.C.A at page 492, paragraphs E-G

“Some employers may literally knock some of their employees about; they may treat them inhumanely without paying due regard to their contributions toward making a success of the businesses. They forget about the value and virtue of esprit de corps between employers and employees. They think strictly of master and servant relationship with an accent on the servant-ship factor instead of the service rendered. There could be callousness involved. It is certainly not good for promising labour relations. Most times, some may get away with it.

“Some do not and must not be allowed to, on a proper consideration of the conditions of service. On the other hand, some employees do not show dedication but act to frustrate their employers. That is why the right to relieve an employee of his employment is reserved in the employer. There are always consequences of improper or invalid termination of any employment depending on the terms and conditions of service.”

esprit de corps is a feeling of pride and mutual loyalty shared by the members of a group.

Udemah v. Nigerian Coal Corporation (1991) 3 NWLR (Pt. 180) 477

Leading judgment was delivered by Uwaifo, JCA
Court of Appeal, Enugu.

On need for Employee to be Given a Fair Hearing Before Termination of his Appointment

Notable Pronouncement per UWAIFO, J.C.A at page 56, paragraphs A-C

“I do not conceive, for instance, that a person, say a professor, who served meritoriously to retirement but accepted a contract appointment thereafter to maintain some decent standard of living can be allowed to be indicted of dishonesty and the contract of employment terminated without a proper hearing. And then to be told that he is merely entitled to sue for breach of contract. I think in the interest of his name, he can ask that the method by which he was removed without being heard be declared null and void even if he forgoes his entitlement arising from the breach. It is a constitutional right.”



UWAIFO, JCA dissented. The learned judge is of the view that arising from the facts and circumstances of this case, the appellant's appeal ought to be allowed.

David-Osuagwu .v. A-G, Anambra state (1993) 4 NWLR (Pt.285) 13

Majority judgment delivered by Awogu, JCA
Court of Appeal, Enugu

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Duty on Counsel Signing Court Processes on Behalf of Principal Partner in Chambers

Per Mukhtar JCA at page 1513 paras. C-E:

"Any person signing process on behalf of a principal partner in chambers must state his name and designation to show that he is a legal practitioner.

"This is to avoid a situation where a clerk, messenger or secretary would sign processes filed in court on behalf of principal partner in chambers. Nobody is saying a junior counsel in chambers cannot sign or file processes on behalf of a principal partner, but his identity must be stated. It is not enough to just sign the process without indicating the name and designation of such person."

***Onward Enterprises Ltd. v. Olam International & 2 Ors.*
(2010) ALL FWLR (PT 531) 1506**

Leading judgment delivered by Mukhtar, JCA
Court of Appeal Lagos Division

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Need Not to Infect the Political System with Filth in Quest for Power and Fame

Emmanuel O. Adedeji was Labour party candidate for the House of Representatives election held on the 21st of April 2007 in the Ile-Iluji/Oke-Igbo/Odigbo Federal Constituency. After the elections, Johnson Akinola Adeoba was declared winner. He was the PDP (Peoples' Democratic Party) candidate.

Aggrieved, Adedeji petitioned the Election Tribunal and succeeded. A bye election was ordered but Adeoba appealed. At the Appeal Court arose the issue of the Election Tribunal's jurisdiction to entertain Adedeji's petition in the first place. Adeoba argued that the result of the election was declared on the 21st of April 2007 while Emmanuel Adedeji's petition was filed on the 21st of May 2007; 31 days after the declaration of the result, thereby rendering the petition statute barred.



Despite the fact that at the tribunal, the parties were in agreement in their pleadings and evidence led that the result of the election was declared on 21st of April 2007, Adedeji threw a punch. He filed a Motion on Notice alleging that the INEC Form EC8C(ii), the Odigbo Local Government collation result sheet exhibit PPP which had the date 22/04/07 showing that result was declared on the 22nd of April 2007, was defaced and obliterated sometime after judgment was delivered by tribunal. He then sought an Order of Court to adduce fresh evidence to support his contention that the date on the allegedly defaced exhibit PPP was 22/04/07.

Delivering the leading ruling on Monday 6th December 2010 however, Hon Justice Nwali Sylvester Ngwuta held:

"The facts of this matter constitute a sad commentary on the integrity of some, mercifully not all Nigerians. There is a popular saying that politics is a dirty game. It need not be so. Dirt is not inherent in politics. It is the players who infect the system with the filth they accumulated in their quest for power and fame. This is a new trend and it should be uprooted before it does more harm to our electoral and judicial processes." (pages 329, paras. C-D)

Adedeji .v. Adeoba (2011) 10 NWLR (Part 1255)316

Leading Ruling: Ngwuta, JCA
Court of Appeal Akure

Need to amend Section 251 (1) (R) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended)

On the 7th of September, 2010, the Executive Committee Members of Nospetco Investors Forum filed an Originating Application against Nespenco Oil and Gas limited, Securities and Exchange Commission (SEC, 15th Respondent) and Central Bank of Nigeria (CBN, 16th Respondent) at the Investments and Securities Tribunal (IST).

They wanted IST to make a declaration that they were entitled to know the total amount frozen from the 3rd respondent's accounts in various commercial Banks in Nigeria including but not limited to Zenith Bank Plc, First Bank Plc, Union Bank Plc, UBA Plc, Sky Bank Plc, Intercontinental Bank Plc, and Oceanic Bank Plc by 1st Respondent since May, 2007. They also wanted an order of the tribunal compelling Zenith Bank and First Bank to release all amounts so frozen from the said account for immediate disbursements forthwith without further delay.



On 25th November, 2010 Nospetco Oil (the appellant) filed its responses together with a Notice of Preliminary Objection to the originating process. However, after hearing arguments on the Preliminary Objections, the tribunal in its ruling on 13th April, 2011 dismissed the Preliminary Objection. Dissatisfied, the oil company went on appeal. In its verdict on Monday 19th December 2011, the Court of Appeal considered the provisions of sections 251 (1) (p) (q) (r) of the 1999 Constitution as well as sections 153 (1) (a) & (b) and 284 (i) (f) of the Investment and Securities Act 2007 and Hon. Justice Mohammed Danjuma made this notable pronouncement:

“However, the question remaining, and it is this, since a right of adjudication is conferred by the Constitution or statute, can a Court or Tribunal not so imbued with jurisdiction or as in this case, where jurisdiction which otherwise would have inured is expressly or impliedly taken away or denied take cognizance of such a Suit? The answer will be obvious from a perusal of section 251 (1) (r) of the 1999 Constitution of the Federal Republic of Nigeria. It provides as follows:

“251 Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred on 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 courses and matters.

“(r) Any action proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies, and...

“The argument of the appellant’s learned Counsel, Mr. Shamsudeen Abubakar Esq., that the trial tribunal had no jurisdictions is therefore correct. The exclusive jurisdiction has by the aforesaid Constitutional Provision been exclusively vested or conferred in the Federal High Court, since then action amongst its principal reliefs, makes claims and seeks declarations and injunction affecting the validity of the executive or administrative action or decision by the Federal Government or any of its agencies in this appeal, to wit the Securities and Exchange Commission and Central Bank of Nigeria (that is the 15th and 16th Respondents respectively). On this score alone, the appeal must succeed, as the trial tribunal, lacking in jurisdiction had no power to have proceeded in adjudicating and making any pronouncement thereafter.

"It was incumbent on the Tribunal to have struck out the case for want of jurisdiction. Let me however, say at this stage that the situation created by this decision and the other such cases as Oloruntoba-Oju Supra is such that the Legislative i: e. National Assembly may amend section 251 (1) (r) of the 1999 Constitution to qualify such exclusivity of jurisdiction by addition of such phrases as:

'without prejudice to the determination of all such causes or matters as are by any statute or Act of the National Assembly vested in any specialized Court or tribunal, the parties thereto notwithstanding.'

"It is only by a Constitutional amendment that the situation can be saved. The Constitution is the gronnorm of the society and all laws must be subject to it, and it does not matter if it operates unreasonably and in departure from public opinion or intended Legislative intent in any specific Act of the National Assembly as maybe enacted or in existence." At page 168-169 paras. A-B

NOSPETCO Oil & GAS Ltd .v. Olorunnimbe (2012) 10 NWLR (PART 1307) 115

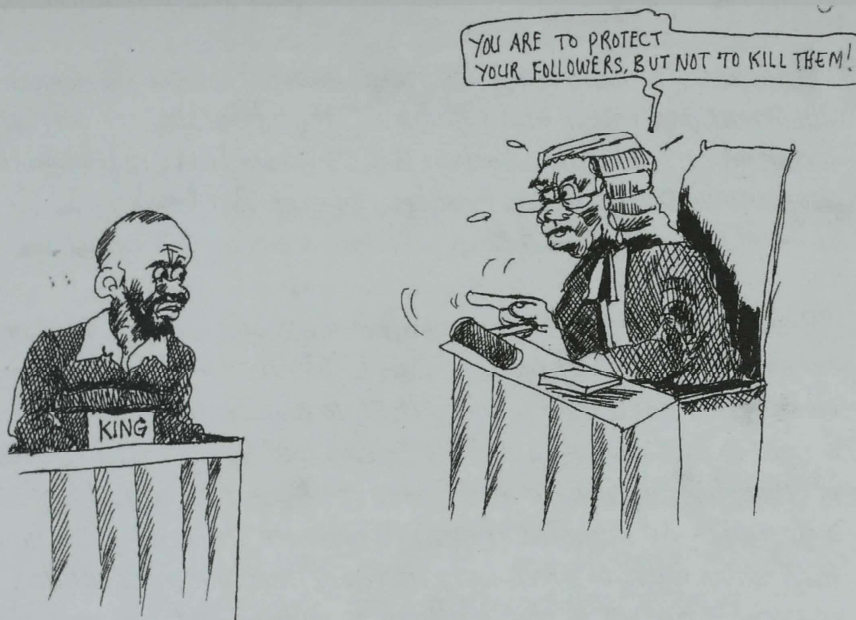
Leading Judgment: Ogunwumiju, JCA
Court of Appeal Lagos Division

Abominable Nature of Act of Killing Innocent Persons in God's Name and Duty of Religious Leaders to Protect their Followers and to Treat them Humanely

Chukwuemeka Ezeugo, alias Dr. Rev. King (Appellant) was General Overseer of the Christian Praying Assembly church, a religious organisation with its headquarters at Ajao Estate, Lagos. Some members of the church lived at his residence and rendered different kinds of domestic services to him. On the 22nd of July, 2006 a fire incidence occurred at the residence and six persons suffered various degrees of burns. Over 50% of one of the victims' body, Ann Uzoh (Alias Ann Uzoh King) was burnt. She was eventually rushed to the hospital where she died on 2nd August, 2006.

Subsequently, the State filed a charge against King at the High Court of Lagos State. Five counts for attempted murder of five of the victims and one count for the murder of Ann Uzoh (the deceased).

The State called 12 witnesses and tendered documentary and other physical evidence at the trial. The surviving victims and other eyewitnesses testified that King accused the victims of fornication and then beat them severally.



One of the witnesses further testified that after Rev. King had brutally flogged the victims, he directed her to pour petrol on them. Thereafter, he lit a match, threw it at the victims and the fuel was ignited causing great injuries to the victims. She also revealed that the deceased who received the most severe beating, was very weak and suffered the worst scorchers. Several other witnesses testified against King including the doctor who attended the deceased, her biological father and brother.

King opened his defence and called nine witnesses. He stated that he was in his bedroom when he heard shout of 'fire.' As a result, he came out, went to the courtyard and he saw the victims on fire. However, in the written statement (exhibit p2) he made before the police, King neither mentioned that he was in his parlour nor his bedroom. Significantly, he stated under cross-examination that he could burn people alive if 'God' asked him to do so.

The trial Court found him guilty on all counts and sentenced him to concurrent terms of imprisonment on the counts of attempted murder and to death on the count of murder.

He appealed. Hon Justice Adamu Jauro who gave the lead judgment on Friday 1st February, 2013, dismissed the appeal. At page 570, paragraphs A-C, he notably said:

"Before I draw the curtain, I must by way of parenthesis observe that the facts of this case are so miserable, sordid and morbid, reflecting the moral decay of the age in which we live. The Appellant, a religious leader instead of protecting and guiding his followers, has turned around brutalizing them, setting them ablaze, roasting an innocent soul to death and offering them stone when they desire bread and scorpion when they demanded for fish. It is indeed sad and unfortunate."

Hon. Justice Ibrahim Mohammed Musa Saulawa toed the same line and stated at page

587, paragraphs D and page 588, paragraphs C-F as follows:

“Undoubtedly, killing of unarmed innocent people in God’s name is abhorrent and rather unjustifiable.... Paradoxically, the current reign of terror unleashed by the notorious Boko Haram Insurgents upon the hapless people (most especially the Northern part of this Country in God’s name, is antithetic to the well cherished Islamic teaching and values.

“By the Holy Scriptures, human life is sacrosanct (sacred), thus must not be taken save by the due process of law! Under the 1999 Constitution (supra), every person has a right to life; a right, to dignity; a right to personal liberty, a right to fair hearing; a right to private and family life; a right to freedom of thought, conscience and religion, et al. see section 3343 of the 1999 constitution as amended (supra). These are the everlasting fundamental inalienable rights to which every citizen of this country is entitled. We must collectively rise up to the challenges to uphold and preserve those rights cherishingly enshrined in the constitution (supra). We have obligation to do so, not just for our present generation, but for all posterity, as well.”

Olisa Chiejina, Onuora Chizoba, Vivian Ezeocha, Jessica Nwene and Kosisochukwu Ezenwankwo still recount their experiences. They are alive. Ann Uzoh was not lucky....

Ezeugo .v State (2013)9 NWLR (Pt. 1360)50

Leading Judgment: Jauro, JCA
Court of Appeal Lagos Division

NOTE: The Supreme Court on Friday February 26, 2016 affirmed the death sentence on King. However, it is now left for the government of Lagos State to implement that verdict.

Need for Banks to Protect Users of Automated Teller Machines from Fraud

Benjamin Agi (Appellant), a business man, maintained a current account with Access Bank Plc at its Makurdi Branch in Benue State. Access Bank issued Benjamin Agi an Automated Teller Machine (ATM) debit card which he activated. He then changed the initial personal identification number (PIN) to his own secret PIN and used it exclusively.

On 3rd October, 2009, he travelled to Onitsha to purchase goods. He drew a cheque of N70, 000.00 payable to himself out of the credit balance of N95, 518.00 in his account but he was informed that he had no funds in the account. He was further informed

that the money in his account was withdrawn through ATM transactions at the bank's Fontana Service Station, Enugu. On complaining to his home branch, he was given the print out of fifteen sequential withdrawals of various sums of money through ATM from his account.

Agi's solicitor wrote letters to Access Bank demanding for a restoration of the said sum, damages and apology but the bank replied and denied liability. He then sued Access Bank. At the conclusion of trial, the action was dismissed. Undaunted, the businessman went on Appeal. Unfortunately, Agi failed to outline any particulars of negligence or fraud on the part of the bank in his statement of claim which is an integral part of his pleading!

Dismissing the appeal on Thursday 28th November 2013, Hon. Justice Obande Festus Ogbuinya, however, observed notably at page 163, paragraphs B-G.

"Before I am done, I must observe that, the process of withdrawing money from the banks by dint of Automated Teller Machine (ATM) debit card is a banking procedure invented to ensure prompt access to customer's funds, decongestion of the banks over trivial transactions and alignment with the international best standards in banking practices. Unfortunately, for the customers, a regrettable one at that, this commendable objective has turned into their albatross in that it has not yielded the desired laudable results. The helpless and unsuspecting customers are constantly being exposed to avoidable frauds and thereby subjecting the banks to litany of litigations. Tons of banks' customers lose colossal funds, stashed in the bank's vault for protection, to unscrupulous and faceless swindlers. It is decipherable from the evidence of DW2 that the new verve ATM debit card is equipped with cameras that captures users.

"There is crying need for same to state the time of any transaction. Doubtlessly, these will curb or help ameliorate the undetectable frequent ATM debit card frauds to the lowest ebb. It will, in turn, preserve the corporate image of our commercial banks as well as conserve the customer's precious funds in their custody."

Agi .v. Access Bank Plc. (2014) 9 NWLR (Pt. 1411) 121

Leading Judgment: Ogbuinya, JCA

Court of Appeal Makurdi Division

Need for Judges Hearing Armed Robbery Cases to Seek Justice with Open Mind, but

Adeoye Aliyu with two others, namely, Kamorudeen Adebayo and Saheed Balogun, were arraigned and tried before the High Court of Oyo State, Ibadan on a four-count charge of conspiracy to commit armed robbery contrary to sections 6 (b) and I(b) of the Robbery and Firearms (Special provisions/Act, Cap 11 LFN 2004).

It all started at about 11.00pm on 14th May, 2008, when PW1, who was on duty along with others as vigilante group members, saw three boys in their area coming out from the bush. Due to constant complaints of armed robbery in the area, the boys were accosted and asked to stop, but two of them ran away while one was arrested. He was searched and a charm was found on him. On being interrogated, he introduced himself as Kamoru. With additional questioning, he named the other boys who ran away as Adeoye Aliyu and Saheed. He was then taken to Ogbere Police Station at about 1.30am where he made a statement.

According to the prosecution, the police officer at the police station accompanied by the 'Land lord' picked up the Adeoye Aliyu in his house. On their way Saheed was seen coming out from a bush and was also arrested. He recounted that after interrogations, it was confirmed that they were the persons terrorizing the area by robbing people. He also disclosed, that Aliyu and his co-accused confessed to being responsible for the series of robberies in the area.

At the trial, Aliyu's statement and the other accused persons', together with some exhibits (handset, phones and charms) were admitted in evidence.

On conclusion of the trial, the lower Court found Adeoye Aliyu and the other accused persons guilty and sentenced them to death by hanging. Unhappy with the conviction and sentence, he headed for the Court of Appeal and succeeded. In the lead judgment delivered on Wednesday 18th June 2014, Hon. Justice Haruna Simon Tsammani at page 100, paragraphs B-F had this to say:

"Before I conclude, let me refer to the admonition of Supreme Court to trial judges, per Rhodes-Vivour Jsc in the case of Chukwuka Ogudo v the state (2011) LPELR-860 (SC) p:30 para. B-D; (2011) 18NWLR (Pt1278) 1 at 32 para. G. His Lordship said No matter how rampant, reprehensible armed robbery is in the society, judges who sit to hear such cases should strive to be detached and seek justice with an open mind. They are to ensure that a person accused of armed robbery is given every opportunity to defend himself, and so before convicting; on a retracted confessional statement such a statement must be subjected to detailed scrutiny;



"In the instant case, the learned trial judge did not take heed of this well time preachment from the highest citadel of justice in our land. This led to a perverse decision, resulting in a judicial order for the termination of the life of the appellant, when there was no evidence linking him to the commission of any of the crimes he is accused of. This finding of the trial Court leading to the conviction of the Appellant should not be allowed to stand. I therefore hold that the learned trial judge erred when he convicted the appellant on the four-count charge. None of the charges for which the appellant was convicted was proved by the evidence on record."

Aliu .v. State (2015) 2NWLR (Pt.1442) 51

Leading Judgment: Tsammani, JCA

Court of Appeal Ibadan Division

A **garnishee order** is an attachment of money against a third party ("the garnishee") who owes money to a judgment debtor ("debtor"). If a debtor failed to pay money, in terms of a judgment, directly to the judgment creditor ("creditor"), a garnishee order may be applied for against the garnishee.

<https://www.legalwise.co.za/help-yourself/quicklaw-guides/garnishee-orders>

A garnishee order must at first be an **order nisi**. That is, an order directed to the garnishee instructing him to show cause (to give any reasons to object the application) why the debt claimed to be due or accruing from him to the judgment debtor should not be utilized to satisfy the judgment debt and the costs of the garnishee proceedings.

The order nisi specifies the time and place for further consideration of the matter, and in the meantime attaches the debt claimed to be due or accruing from the garnishee to the judgment debtor, or so much of it as may be specified in the order.

www.bkcdic.org/en/topics/civilCase/enforce_judgment/q4.shtml

... Afterwards, when the order nisi is made absolute, which will follow in due course unless the debtor can show good cause why it should not be made, the creditor who has obtained the order is entitled to receive the amount of the debt owing, and the garnishee must either pay the same into court or submit to an execution being levied upon his goods and chattels for the same. Payment by the garnishee to the execution creditor is a good discharge of the debt which was owing, or of that part of it which is actually paid if the total amount of the debt owing by the garnishee is greater than the debt of the execution creditor...

http://www.teachmeanfinance.com/Financial_Terms/Garnishee.html

Whether "Public Officer" in Section 84 of Sheriffs and Civil Process Act includes Artificial

Persons Bob Kay Njemanze obtained a monetary judgment against the 2nd and 3rd Respondents at the High Court. Consequently, he obtained a garnishee order nisi attaching the sum of 28.1 million belonging to the 2nd and 3rd Respondents which was lodged with the Central Bank of Nigeria (CBN).

The garnishee order nisi was served on CBN and it filed a Notice of Preliminary objection to the jurisdiction of the trial court to entertain the garnishee proceedings. Its contention was that it is a public officer and cannot be brought before a State High Court. Ruling, the trial Court held that the apex bank is not a public officer, dismissed the objection and made the garnishee order absolute.

Unhappy with the ruling, CBN appealed; challenging the position of the trial Court to the effect that it was not a public officer. However, the issue argued before the Court of Appeal was the trial Court's non-application of section 84 of the sheriffs and civil process Act in its determination of CBN's preliminary objection.

Unanimously dismissing the appeal, the Court of Appeal, on 2nd July 2014 through Hon. Justice Raphael Chikwe Agbo held at page 286, Paras. F-G as follows:

"The term 'public officer' as used in section 84 of sheriffs and civil process Act does not include an artificial person, and the trial court was right when it so held in this case."

Clarifying who a public officer is, the Court further stated that:

"The term public officer relate to the holder of the office as reflected only in section 318 (1) of the Constitution (as amended). Equally, section 84 of the Sheriffs and Civil Process Act also referred to a public as a holder, officer or person holding a public office. In the circumstance, officers of the CBN are public officers but the CBN is not a public officer."

Central Bank of Nigeria .v. Bob. Kay Njemanze & Ors
(2015)4 NWLR (Part 1449) 278

Leading Judgment: Agbo, JCA
Court of Appeal Owerri Division



Duty on Court Where Winding up Petition is Based on Ground that it is Just and Equitable to do so

Per Ikyegh, JCA at P.366, paras. C-G

“The issue of alternative remedy is of keystone importance to winding up actions. The court invited to wind up a company under the just and equitable clause in section 408(e) of the Companies and Allied Matters Act, 1990, read with section 312 thereof must be satisfied by the petitioner as a matter of utmost necessity, that there is no other legal remedy to save the life of the company before proceeding to entertain and grant the petition putting to death the company in question.

“In the instant case, the un-denied petition did not establish or state therein that the respondent as the petitioner at the trial court and as a contributory or shareholder of the appellant company had no other remedy apart from winding up of the appellant. Consequently, the petition was inchoate and disentitled the respondent to the order winding up the appellant on the just and equitable clause in section 408(e) of the Companies and Allied Matters Act, 1990, which clause was wrongly utilized by the trial court to grant the winding-up petition in the circumstances of the case.”

First Equity Sec. v. Anozie
(2015) 12 NWLR part 1473 page 337

Leading judgment: Ikyegh, JCA
Court of Appeal Lagos

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Duty on Trial Judge to be Familiar with Contents of Documents in Court's File

Per Iyizoba, JCA at page 222 paras. D-F

“A trial judge is expected to be familiar with the contents of documents in the court's file. In the instant case, the trial Judge did not familiarize himself with the contents of the documents in the case file and did not pay adequate attention to the issues raised in the preliminary objection.”

Maduka .v. Ubah (2015) 11 NWLR part 1470, page 201

Leading judgment: Iyizoba, JCA
Court of Appeal Lagos

Meaning of the Phrases "Question of Law" and "Question of Fact"

"The Supreme Court had in Metal Construction (West African) Ltd vs. D A, Migliore & Ors.; In Re Miss C Ogundare (1990) ANLR 142, (1990) 1 NWLR (Pt. 126) 266, examined at length the phrases 'a question of law' and 'a question of fact' and at pages 149-150 Karibi-Whyte, JSC, defined them as follows: "Generally, considered the term 'question of law' is capable of three different meanings. First, it could mean a question the court is bound to answer in accordance with a rule of law. This excludes the exercise of discretion in answering the question as the court thinks fit in accordance with what is considered to be the truth and justice of the matter. Concisely stated a question of law in this sense is one determined and authoritatively answered by the law. The second meaning is as to what the law is. In this sense, an appeal on a question of law means an appeal in which the question for argument and determination is what the true rule of law is on a certain matter, the question of law in this sense arises out of the uncertainty of the law. A question of the construction of statutory provision falls within this meaning. The third meaning is in respect of those questions which are committed to and answered by the authority which normally answers question of law only.

"Thus any question which is within the province of the Judge instead of the Jury is called a question of law, even though in actual sense it is a question of fact. The cases which readily come to mind are the interpretation of documents, often a question of fact, but within the province of a Judge. Also, the determination of reasonable and probable cause for a prosecution in the Tort of malicious prosecution which is one of fact, but it is a matter of law to be decided by the Judge." On 'question of fact' he has this to say: "Now, turning to what is a question of fact? It is easy to postulate that it is anything which falls outside the meaning of question of law. That will not be entirely correct, because there are exceptions. Like question of law, question of fact has more than one meaning. The first meaning is that a question of fact is any question which is not determined by a rule of law. Secondly, it is any question except a question of what the law is. Thirdly, any question that is to be answered by the jury instead of by the Judge is a question of fact."

Bank of the North Ltd v. Alhaji Yahaya Bamidele (2005) LPELR-11337(CA)

(Pp. 12-14, Paras. E-A)

Leading Judgment delivered by Bulkachuwa, JCA.

Abuja Division



Whether the Courts are the Guardian of the Constitution

'The courts are the custodian and guardian of the Constitution by virtue of sections 1(1), 4(8), 6(6) a - b who will come in and intervene to bring out the intendment of the Constitution. See in particular the preamble to the 1999 Constitution which says: WE THE PEOPLE of the Federal Republic of Nigeria: HAVING firmly and solemnly resolved: TO LIVE in unity and harmony as one indivisible and indissoluble Sovereign Nation under God dedicated to the promotion of inter-African solidarity, World peace, international co-operation and understanding: AND TO PROVIDE for a Constitution for the purpose of promoting the good government and welfare of all persons in our country on the principles of freedom, equity and justice, and for the purpose of consolidating the unity of our people: DO HEREBY MAKE, ENACT AND GIVE TO OURSELVES the following Constitution.' In view of the above it is our collective duty to abide and uphold the Constitution. See the holding of my Lord Tobi JSC in *A.-G.*

"Abia State v. A.G., Federation (supra) at 381-382; The Constitution of a nation is the fons et origo, not only of the jurisprudence but also of the legal system of the nation. It is the beginning and the end of the legal system. In Greek language, it is the Alpha and the Omega. It is the barometer with which all statutes are measured. In line with this kingly position of the Constitution, all the three arms of Government are slaves of the Constitution, not in the sense of undergoing servitude or bondage, but in the sense of total obeisance and loyalty to it. This is in recognition of the supremacy of the Constitution over and above every statute, be it an Act of the National Assembly or a law of the House of Assembly of a State."

Hon. Micheal Dapianlong & Ors v. Chief (Dr.) Joshua Chibi Dariye & Anor.
(2007) LPELR-8241(CA)

(Pp. 62-63, paras. C-D)

Leading judgment delivered by Bulkachuwa, JCA
Jos Division,

Whether an Incomplete Quorum of the Justices in an Election Tribunal Vitiates any Judgment Given Thereof

"My understanding of the combined effect of the Constitutional and the Electoral Act provisions earlier quoted is that an election petition tribunal shall consist of five members with a quorum of three at any sitting. The tribunal will thus be duly constituted if it consists of at least three members

inclusive of the Chairman. In the absence of the Chairman, who commenced the proceedings for any reason, the Act gives the new Chairman the discretion to 'recommend' and 'conclude' the proceedings, as the word 'may' here is used in the paragraph. Paragraph 26(2) may to my mind not be applicable in the instant circumstances as it envisages a situation where the Chairman had heard the matter, participated in the writing of the judgment but is unable to deliver the judgment due to illness or any other reason.

"What is important here is that the 4 members of the panel participated in the proceedings and were present up to the delivery of judgment. Jauro (JCA) did not write or deliver the judgment. Ogbunyiya's case (supra) in respect of a judgment delivered by Igub 'J' after his appointment to the Supreme Court had been gazetted; in effect he delivered and read a judgment of the High Court when he was a Justice of the Supreme Court. In Kusimo's case (supra) the Supreme Court reversed the decision of the High Court which in its appellate jurisdiction upheld an appeal from the Customary Court, that a variation of the panel of the Customary Court renders the trial before it null and void. The Supreme Court per Ademola CJN at 287 held;

"The complaint against a hearing that was not always before the same bench does not pertain to any matter that goes to the jurisdiction of the court. It is at bottom a complaint that the judgment cannot be satisfactory on the ground that as the person who gave it had not seen and heard all the witnesses, they could not appraise the evidence as a whole and decide the facts properly. Thus it is a complaint on the soundness of the judgment itself, and not a complaint that is intrinsic to the adjudication, which is the test to apply when considering a submission on jurisdiction.

"We are therefore of the opinion that variations in the bench do not make the judgment a nullity, they may make it unsatisfactory, and it may have to be set aside for this reason but whether they do or not depends on the particular circumstances of the case." "In Elikwu's case (supra) the appeal was allowed by the Supreme Court not on the basis of variation of the members of the panel of the trial court but on the basis that the panel was not complete as stipulated in the law which gave the trial court its jurisdiction.

"In the Sokoto Government's case (supra), the case was nullified by the Supreme Court as there was an infringement of the provisions of Section 247(1) of the 1999 Constitution which stipulates that the Court of Appeal shall be constituted by not less than three Judges, and Galadima JCA who delivered the judgment of the court did not participate at the hearing of the appeal. In my view the cases of Obi v. Exordia (supra) and Niggle v. Obi (supra) are relevant and applicable to the instant appeal. They are all on election petition and the complaint on them is on the variation of members

of the panel of the trial tribunal petitions. The holding in these cases is that variation of panel does not render the decision null and void. See also Mark v. Abubakar & Ors. Unreported appeal of the Jos Division of this Court No. CA/J/EP/SN/114/2008 where after due consideration of the law and the cases cited came to this conclusion at page 62 of the records;

'The Constitutional and Statutory requirement is that there is a quorum of the tribunal when three members sit with a Chairman and the Chairman if disabled may be replaced by another Chairman to conclude the proceedings. The intention being that a petition will not be commenced de novo in the absence of a Chairman, rather an election petition being sui generis once commenced should be completed so long as there is a quorum... The judgment which had been heard and delivered by a quorum of 4 is competent and not vitiated in the circumstances.' "

Alhaji Ahmed Garba Bichi & ORS. v. Alhaji Ibrahim Shekarau & ORS.
(2009) LPELR-3874(CA)

(Pp. 21-23, paras. G-F)

Leading judgment delivered by Bulkachuwa, JCA
Court of Appeal,
Kaduna Division

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Legal Capacity of the International Committee of the Red Cross and whether the Committee is a Separate Legal Entity Different from its Members Who Enjoy Immunity While the Committee Does Not

"The fact that the Appellant can institute legal proceedings clearly shows that it can sue and once it can sue, it follows therefore that it can equally be sued. It is therefore not true as contended by the Appellant's counsel that the Appellant cannot sue or be sued or be subjected to any legal proceedings for acts done in the course of its business. The Appellant has legal capacity to enter into any legally binding contract and transact all sort of business related to its work in the country and it can acquire and dispose of any movable or immovable property. It can also institute legal proceedings. All these go to show that it has legal capacity to transact and conduct all its businesses and can therefore sue or be sued.

"In fact, it is arguable if without the capacity to conduct its affairs and business and to institute proceedings, the committee can be said to have proper and effective control of the management of its affairs. The Committee as an entity does not enjoy immunity. The Committee (Appellant) is different and

distinct from its members and officials who in fact enjoy immunity from legal proceedings save in respect of certain aspects as provided under Section 5 (1) of the Act. The Section provides that the Head of the Delegation of the Committee except in so far as in any particular case the immunity is waived by the Committee shall enjoy personal immunity for acts performed in pursuance of his duties, etc as Chief Executive of the Committee. Same immunity is also extended to the officials of the Committee while exercising their function as such as enumerated under Section 6(1) (a) (b) & (c) as reproduced earlier in this judgment.

'However, it is clear by the provisions of Section 3 (1) and (2) that all properties, archives and assets of the committee shall be exempt from search, requisition and confiscation and by subsection (2) such properties, archives and assets of the committee shall for the purpose of Public Safety and Public Order be subject to the Laws of Nigeria. This section is also clear as to the immunity imposed on the properties, archives and assets of the committee.

That is, such properties archives shall be exempt from search, requisition and confiscation by Law Enforcement Agents, that may for the purpose of investigation enter its premises. This does not affect Court Orders or Judgments which is constitutionally recognized under Section 6 (6) of the 1999 Constitution. Therefore, the question of immunity of the Appellant as distinct from its officials does not arise. The committee as a corporate entity is subject to the Laws of Nigeria.

'The case of FAWEHINMIVNIGERLABARASSOCIATION (supra) cited by the Appellant counsel to support his argument that the committee is not a legal entity as it does not owe its creation to any statute in Nigeria is totally misconceived. The Act, Diplomatic Immunities and Privileges, (International Committee of the Red Cross) recognize the legal capacities of the Appellant. It is therefore a creation of statute. It does not need to be incorporated or registered under the Corporate Affairs Commission to enjoy legal personality. Section 2 of the Act clearly gives the Committee legal capacities of a body corporate that can sue and be sued in its own name. See also Article III of the Agreement.

'The argument of the Appellant's counsel that, the Appellant is recognized as a body corporate for a variety of purpose but not for purposes of being sued in its own name is totally misconceived. It does not sound logical that the Appellant should enter into contractual obligation with individuals or other corporate bodies or groups and will not be sued for breach of obligation on its own part, just because it is an International Humanitarian Organisation under the United Nations.

“This does not accord with common sense, justice and fair play. Therefore, it must treat persons who contracted with them fairly by paying for such contracts. The committee as a separate legal entity is different from its members who enjoy immunity while the committee does not. It has a separate and distinct life and existence apart from its members. When sued it is represented through its officials or legal practitioners, and the fact that its officials are immune from legal proceedings does not ipso facto follow that they will not represent the Committee caught in legal battle before any court of law in Nigeria. Based on the foregoing, it is my view that the Appellant enjoys legal capacities of a body corporate and can therefore sue or is sued in its own name and the lower court was therefore right when it held that the Appellant is a legal entity and can sue and be sued.”

International Committee of the Red Cross (ICRC) v. Ismaila Tijani Olabode
(Trading under the name of IT Olabode Enterprises)
(2009) LPELR-8764(CA)
(Pp.29-32, Paras.F-F)

Leading judgment delivered by Abba-Aji, JCA
 Abuja Division

When a Piece of Evidence is Contradictory to Another; Whether Minor Discrepancies Between Previous Written Statements and Subsequent Oral Testimony Can Destroy the Credibility of Witnesses

“The Supreme Court, in the case of Kenneth Ogoala v. The State (1991) 2 LRCN 660 AT 679 held as follows: ‘A piece of evidence is contradictory to another when it asserts or affirms the opposite of what that other asserts, and not necessarily when there are minor discrepancies in say, details between them. As I see it, contradiction between two pieces of evidence goes rather to the essentiality of something being or not being at the same time, whereas, minor discrepancies depend rather as the persons astuteness and capacity for observing details?. The word “contradict” comes from the two latin words contra (opposite) and dicere (to say). Two pieces of evidence contradict one another when they are by themselves inconsistent. On the other hand, a discrepancy may occur where a piece of evidence stops short of, or contains a little more than what the other piece of evidence says or contains is minor discrepancies in details.

“On the other hand, minor discrepancies between previous written statements and subsequent oral testimony are to be expected and do not destroy the credibility of the witnesses. Indeed, when such occur, it may lead to suspicion that the witness has been tutored. See Ayo Gabriel v. The State (1989)

5NWLR (Pt. 122) 457. In the instant case, what the Appellant is alleging as contradictions are noting more than minor discrepancies as rightly observed by the learned trial Judge. See *Sale Dagaya v. The State* (supra) and *Atano v. A. G. Bendel State* (supra). For a contradiction to be fatal to the prosecution case, it must go to the substance or root of the case and not of a minor nature as rightly observed by the learned trial Judge in the instant case."

Okechi Jeremiah v. The State

(2012) LPELR-7950(CA)

(Pp. 28-29, paras. F-G)

Leading judgment delivered by Abba-Aji, JCA

Owerri Division

Ingredients That Must be Proved for the Plea of Acquiescence and Laches to be Sustained

"It thus expanded (4) four ingredients that must be proved for the plea of acquiescence and laches to be sustained as follows: (a) The person seeking to set up the plea must have made a mistake as to his legal right. (b) He must have expended some money or must have done some act on the faith of his mistake belief; (c) The person whose right has been infringed must know of the existence of his own right which is inconsistent with the right mistakenly claimed by the person seeking to set up the plea of acquiescence as the doctrine of acquiescence is founded upon conduct with knowledge of one's legal rights. (d) The person whose right has been infringed must have encouraged the person seeking to set up the plea of acquiescence in the latter's expenditure of money or in the other acts which he has done wither directly or by abstaining from asserting his legal rights.

"Where all these elements exist, it is deemed that there is fraud of such a nature as will entitle the court to restrain the possessor of the legal right from exercising it. In the instant case, there is no evidence whatsoever to establish laches or acquiescence against the Respondent. See *Abbey vs. Ollenu* (1954) 14 WACA 567; *Taiwo vs. Taiwo* (1958) SCNLR 244. In the instant case, the pleadings and evidence of the Appellants did not show that the Appellants made mistake as to their legal rights. From the time the Respondent discovered in 1992 that his land had been fraudulently trespassed into, he instituted a flurry of arbitration activities and finally filed this suit in 2004. He thus cannot be said to be guilty of delay. For there to be a delay in



taking action, there must be knowledge on the part of the Plaintiff of all the facts of giving him a cause of action. See Mogaji vs. Nuga (1960) SCNLR 219."

Chief Godspower R. Awomukwu & Anor v. Chief Sunday Awomukwu
(2013) LPELR-22505(CA)
(Pp. 31-33, paras. G-B)

Leading Judgment delivered by Abba Aji, JCA
Owerri Division

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On Whom Lies the Onus to Prove that the Title Holder has been Dispossessed or has Discontinued Possession

"Section 143 Evidence Act (2011) (As Amended) provides:- "when the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner". The law therefore presumes the person in possession of land to be the owner. Therefore, in order to displace a party in possession, a claimant has to show that the party in possession is in possession without his consent or his tenant. See Jinadu vs. Esurombi - Aro (2005) 14 NWLR CA (944) 142 CA.

"Until the contrary is proved, possession in law follows the right to possess. Thus, it is not enough to possess. Also, it is not enough that a claimant is able to show he has been in possession of land for the requisite number of years. The burden on him is higher than that. He has to show something more. He has to show that he is the one claiming that land owned by his title has now become his because the owner has either been dispossessed or has discontinued possession. Therefore, the claimant has the clear onus to prove that the title holder has been dispossessed or has discontinued his possession see Majekodumni v. Abina (2002) 3 NWLR (PT. 755) 720 SC."

Chief Jacob N. Obasi v. Sylvanus O. Ebenugwu
(2014) LPELR-22533(CA)
(P.36, paras. A-F)

Leading judgment by Abba Aji, JCA
Owerri Division

On Gross Abuse of the Police Crime Prevention Mechanism

"This case highlights a gross abuse of the police crime prevention mechanism. It is therefore important to call to mind that crime prevention patrol is a very useful crime prevention mechanism. It is one of the police operational strategies for responding to acute demands for crime control and prevention in the community. There is no doubt that the police crime prevention patrol is aimed at eliminating opportunity for the commission of crime. It involves walking or driving around the area and keeping a look out for potential problem. It purports to increase police presence in areas of expected crime in order to act as a deterrent.

"The notion behind such patrol is that it prevents and deters crime. It is often adopted as a measure of community caretaking functions of the police which include the duty to reduce the opportunities for the commission of some crimes. Generally, the objectives of the preventive patrol include deterrence of crime, apprehension of criminals, satisfaction of the public demands for services related to crime, development of a sense of security and confidence in the law enforcement agency and recovery of stolen property. There is no doubt that the more random patrol a community receives, the more a perceived omnipresence of the police will deter crime in public places and enhance public assurance of their security.

"As useful as this crime prevention scheme is, it can become a danger to the very society it seeks to protect if it is not conducted according to the Constitution and other laws of the land. The fact that police officers are at any time engaged in any crime prevention activity including city patrol is no excuse of justification for the officers to be lawless and destroy the lives and properties of any person in the community. Crime prevention and control is law enforcement. You can only validly and effectively enforce law through compliance with law.

"The need for the rule of law is more acute in the area of law enforcement, as it always involves the restriction of the rights of persons. In any case, compliance with law by investigative and prosecuting officers is the best indicator of an efficient, effective, fair and transparent criminal process.

"The police power of crime prevention, detection and control has scope. The scope is defined by law. The law defines how the power shall be exercised both in ordinary times and during emergency. A situation of emergency does not exist because police officers are searching for persons suspected of having committed or about to commit or committing crimes like armed robbery or other very serious crimes or searching properties suspected to be connected with a crime.

A legal order that can only exist when the president of the Federal Republic of Nigeria proclaims it in exercise of his power under S. 305 of the 1999

Constitution of Nigeria. I have bothered to make this clarification because of the submission of learned counsel for the appellant that: 'if the accused persons being policemen and being entitled to carry guns and use these in emergency or perceived emergency, how can arriving at the 'so called hide out with guns' constitute unlawful purpose? It is submitted that much more was required that the scenario just mentioned...



"On 14-8-1998 Enugu city was not in a state of emergency. The mere fact that a place has become a hot spot of the recurrence of a particular crime does not turn it onto a state of emergency. There may be situations of urgent need for police intervention, quick or timely arrival to a crime scene or rapid response to forestall commission of a crime or arrest those committing a crime or who have committed a crime or to recover stolen property. In any case, the idea of a state of emergency provided for in S. 305 of the 1999 Constitution does not mean a state of lawlessness or anarchy. It is a situation that requires extraordinary measures to avoid breakdown of public order and public safety in the country or any part thereof.

"The police crime prevention patrol team must understand that it is carrying out policing functions of crime detection, control and prevention and that in doing so, it must scrupulously adhere to the Constitution and other laws of Nigeria.

The fact that officers are on crime prevention patrol is no licence for the officers to become lawless and invade the privacy of persons and their homes in disregard of the law or unlawfully kill anybody in the name of being on patrol. The appellant and his fellow police officers in that patrol team turned themselves into a killer squad. They killed Edwin Ugwu and were about killing PW3 to cover their killing of Edwin Ugwu. God intervened through DW2...

Paul Ojoma v. State

Unreported: CA/E/409A/2007, Pp. 20-22

Leading judgment: Agim, JCA

Delivered: 25th March, 2014

Abuja Division

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Compelling a Person to Vote Openly in Public Amounts to a Violation of Fundamental Rights to Privacy as a Citizen

'In interpreting the part of the Constitution providing for the protection of certain fundamental rights in a Constitutionally established democratic culture, the court must do so on the basis of principles that give the provision a meaning that promotes the values that underlie and are inherent characteristics of an open democratic society. Therefore, in interpreting any legislation in relation to any fundamental right provision of the constitution, the court must promote the spirit, the purport and objects of the fundamental rights provisions of the constitution...

'Where the Constitution states a word or phrase generally or without any limiting words, it is obvious that it intends that the word or phrase should have a general meaning and application, unless other provisions in the Constitution state or suggest the contrary. If there are no other provision of the constitution requiring or suggesting the contrary, the court must apply the word or phrase generally, and will have no power to restrict its application to specific situations.

'For the above reasons, I interpret the phrase, 'privacy of citizens' generally, liberally, and expansively to include privacy of citizens' body, life, person, thought, belief. Conscience, feelings, views, decisions (including his plans and choices), desires, health, relationships, character, material possessions, family life, activities et cetera. Therefore the privacy of his choice of candidate and the privacy of his voting for that candidate constitute part of his 'privacy'



as a citizen. The appellant (Hon Peter Nwali) was entitled to the privacy of his decision to vote for a particular candidate, his choice of that candidate and his casting his vote for that candidate.

"Therefore requiring or compelling him to vote openly in the public watch and knowledge by queuing in front of the poster carrying the portrait of the candidate he has decided to vote or intrudes into, interfere with, and invades the privacy of his said decision, choice and voting, completely removing that privacy, therefore amounting to a clear violation of his fundamental right to privacy as a citizen guaranteed him and protected by S.37 of the 1999 Constitution. The decision of the trial court that it does not see how making the appellant to vote publicly violates his privacy is therefore clearly wrong..."

"...The problem arose from the fact that the rival candidate was able to know who is voting or who is not voting for him or her during voting and is therefore in a position to determine if he or she is losing or winning from the length of the queues behind each candidate. It is obvious that if the voter's vote was secret, the candidate would not be able to know or determine who is voting or not voting for them and the likely result during voting.

"These depositions highlight that in elections by open ballot, a candidate or his supporters who find from the length of the queue behind him that he has lost that election in the polling unit, can violently scatter all the queues and disrupt the voting and that in such situations, people are killed or wounded and properties destroyed. The depositions also highlight that a voter can suffer attack from the supporters of a candidate he did not vote for and that some voters, for fear of such reprisals or to avoid incurring the ill-feeling of a person they did not vote for, may chose not to vote and thereby become disenfranchised..."

"The privacy of the cession to vote a candidate and the voting of that candidate prevents anybody from knowing whom he or she has decided to vote for and has voted and thereby removes or limits the likelihood of interference with the decision or vote. The privacy of the decision and the vote promotes the independence of the decision to vote for a candidate and the freedom to express that decision or choice, as the voter can vote without fear in safety of his privacy.

"The voter's independence of decision and choice of candidate and the freedom to express that choice is the sole indicator that the poll was free. There can be no free and democratic society without this independence of decision and freedom to express that decision... The right to vote is the most fundamental and important of all rights of a citizen. Without it, the enjoyment of all other rights are compromised and threatened. Without it, sovereignty cannot belong to the people and the society cannot be democratic..."

"In the light of the foregoing, I hold that S. 5(1) and paragraph 21 (2), (3), (4) and (5) of the 1st schedule to the Ebonyi State Electoral (Amendment) Law 2010 and all provision therein providing for voting by open ballot are void ab initio for being inconsistent with S.37 of the 1999 Constitution and for not complying with S.45 (1) of the same Constitution."

Hon Peter Nwali. v. Ebonyi State Independent Electoral Commission (EBSIEC) & Ors.

Unreported: CA/E/510/2014

Pages 22, 25, 43, 44, 46 and 47

Leading judgment delivered by Agim, JCA

Delivered: 5th of September 2014

Enugu division

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The National Assembly Lacks Power of Criminal Investigation

"An investigation by a House of the National Assembly cannot be for the purpose of determining whether a person or organisation committed a crime. It is not a criminal investigation. It is a fact finding inquiry into a matter of public concern in exercise of the power vested on it by S.88 (1) of the Constitution of the Federal Republic of Nigeria 1999 Amended which provides that:

'(1) Subject to the provisions of this Constitution each House of the National Assembly shall have power by resolution published in its journal and in the Gazette of the Federal Government of the Federation to direct or cause to be directed an investigation into –

(a) any matter or thing with respect to which it has power to make laws; and

(b) the conduct of affairs of any person, authority, ministry or government department charged, or intended to be charged, with the duty of / or responsibility for –

(i) executing or administering laws enacted by the National Assembly,

(ii) disbursing or administering moneys appropriated or to be appropriated by the National Assembly.'

Subsection (2) of 88 limits the purposes for which the power can be exercised. It states thusly:

(2) the powers conferred on the National Assembly under the provisions of this section are exercisable only for the purpose

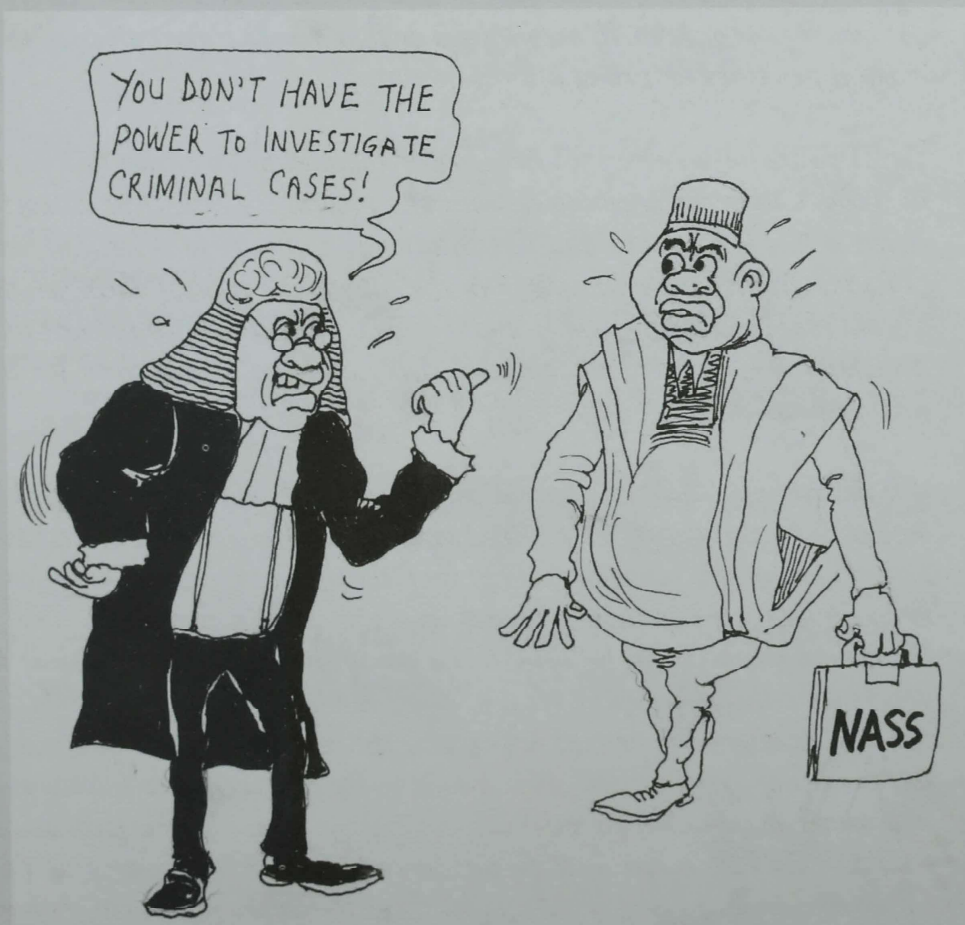


of enabling it to -

- (a) make laws with respect to any matter within its legislative competence and to correct any defects in existing laws;
and
- b) expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it.'

'The purposes listed in Subsection (2) for which the power can be exercised does not include to find out if a crime or crimes has been committed and who committed the crime or crimes. So the investigative power vested on each House of the National Assembly by S. 88 of the Constitution cannot extend to the investigation of the commission of a crime... It lacks the power of criminal investigation. See Senate of the National Assembly v. Momoh (1983) 4 NCLR 367...

'...The House of Representatives or any of its committees lack the power to try any person for the commission of a criminal offence. It is only a court of law that can try a complaint that a person committed a criminal offence...



"The finding or recommendation of a police investigation or other investigative panel of the commission of an offence is not a judicial decision and does not determine the guilt or innocence of the person suspected of committing a crime. That is for the court to judicially determine after the trial of the accused is concluded. See Amaechi v. INEC (2008) 5NWLR (Pt. 1080) 227 at 306.

"There can be no prosecution without a proper and efficient investigation of an allegation of commission of a crime. The investigation is to find out if there is reasonable basis for the suspicion that a person has committed a crime and or to find out if a person has committed an offence. This involves the process of gathering and verification of the facts constituting the legal ingredients of the offence alleged to have been committed.

"The due process of an investigation of an allegation of the commission of a crime does not necessarily end with the production of the final report of the result investigation. The investigating authority can reopen or continue the investigation even after the final report of the investigation has been made. This can occur when it is realised that the finding or conclusion in the report of investigation was wrong, or that certain aspects of the case were not investigated or properly investigated or that new facts have emerged that make it necessary to further investigate the case...

"It is now frequent for persons suspected of committing an offence to apply to the High Courts for orders to restrain and prevent the competent authority vested with the statutory and Constitutional authority to investigate and prosecute crimes, from investigating the allegations against them on the ground that the investigation is unfair or malafide, is a witch hunt or that it violates any of their fundamental rights and prosecuting them for the said offences.

"In determining such an application, the court should not concern itself only with finding out if the pre-trial or extra judicial criminal process has violated any of the fundamental rights of the applicant and striking down or invalidating the pre-trial criminal process for that reason alone. Such a determination must involve a consideration of a whole range of issues to ensure that the enforcement of a person's fundamental or other rights is not used or allowed to prevent or frustrate the initiation or continuation of due process of criminal law against him by the competent law enforcement authorities or is not used to shield the person from the due process of criminal law or is not used to prevent or frustrate the competent law enforcement agency from exercising its Constitutional or statutory powers

of crime prevention, control, investigation and prosecution or is not used to defeat the legitimate public expectation of law enforcement or is used to acquire a toga of defacto immunity for himself.

“The court must ensure that legal redress for violations, perceived violations, threatened violations or imminent violations of a person’s right by a pre-trial criminal process can be achieved without interfering or frustrating the due process of criminal law against him. The preponderance of judicial decisions across jurisdictions, particularly in common wealth countries is that fundamental rights under Constitutional guarantees are not above the right of the community to protection from crime...

“These pre-emptive legal processes initiated by persons suspected of committing very serious offences such as petroleum subsidy fraud, theft of public funds and properties, terrorism, treason etc. to prevent the initiation or continuation of the due criminal process of investigation of the allegation against them is not a legitimate or genuine use of the court’s process... The allegation of violation or threatened violation or imminent violations of the suspect’s rights during the pre-trial criminal process cannot constitute a legal cause for an action to stop the initiation or continuation of such process...

“The remedy of the suspect lies in civil claim for relief from malicious process if after the investigation with or without arrest and detention, the pre-trial criminal process stops or is discontinued because the investigation does not show that there was any reasonable basis for the suspicion or if it shows that there was, but fails to show that the offence was committed by the suspect or other reasons. There is also the remedy of relief for damages or compensation for malicious prosecution if after the trial; the evidence does not establish the guilt of the suspect. The suspect can also exercise his or her right of action under S.37 of the 1999 Constitution for redress for any such violation or threatened violation of his or her fundamental rights...”

**The Chairman Economic and Financial Crimes Commission (EFCC) & Anor.
v. Dr. Patrick Ifeanyi Ubah & 2 Ors.**

Unreported: CA/A/564/2013

Pages 27, 28, 29, 31, 32, 45, 46, 47, 48, and 49.

Leading judgment delivered by Agim, JCA

Delivered: 12th May, 2017

Abuja Division

Further Evidence Adduced in an Appeal without Leave of Court is Incompetent

"It is settled law that leave of the appellate court to introduce or adduce fresh evidence in an appeal before it must be sought for and obtained before such evidence can be adduced and if adduced already, leave must be obtained to use it.

"Further evidence adduced in an appeal without leave of court is incompetent and of no legal effect. See Adeleke v. Aerifa (1990) 5 SCNJ 104, CPC & Anor. v. Onibugadu & Anor. (2013) 7 SCNJ and Aroh v. PDP & Ors. (2013) 6 SCNJ 78... It is beyond argument that an issue of jurisdiction not raised and considered at the trial court, can be raised as fresh issue in an appeal and that being an issue of jurisdiction; it can be raised and argued without leave of court. But such issue must be raised and determined on the basis of the record of appeal as it is.

"If such fresh issue of jurisdiction does not arise from the record of appeal as it is and the facts on the basis of which it can be raised were not introduced or established during trial, it becomes necessary for the party seeking to raise the fresh issue of jurisdiction to first adduce fresh evidence of those facts with leave of court before it can proceed to raise and argue the fresh issue on the evidence adduced. The liberty to raise a fresh issue of jurisdiction without leave does not carry with it the liberty to adduce the fresh evidence on which it is to be founded without leave of court."

The Chairman Economic and Financial Crimes Commission (EFCC) & Anor. v. Dr. Patrick Ifeanyi Ubah & 2 Ors.

Unreported: CA/A/564/2013

Pages 58, 59, 62, 63

Leading judgment delivered by Agim, JCA

Delivered: 12th May, 2017

Abuja Division

Attorney General of the Federation Cannot Prevent or Prohibit the Investigation or Further Investigation of an Allegation of the Commission of a Crime

"...The powers vested on the Attorney General of the Federation cannot be exercised in such a manner as to prevent or prohibit the investigation or further investigation of an allegation of the commission of a crime. If a competent investigating authority considers that it is necessary to investigate or further investigate an allegation that a person has committed an offence there is nothing



in S.174 (1)-(4) of the 1999 Constitution of Nigeria empowering the Attorney General of the Federation to stop such authority from carrying out such further investigation in exercise of the powers vested on it by statute.

“A legal advice or opinion written by the office of the Attorney General of the Federation on a case file forwarded for its opinion by the police after an investigation, cannot be equated to the exercise of the power of the Attorney General under S. 174 (1) (a) and (c) to institute or discontinue criminal proceedings. It is clear from the litera legis of S. 174 (1) of the 1999 Constitution that the powers vested on the Attorney General of the Federation therein can be exercised only in respect of criminal proceedings instituted or to be instituted or pending in court. It cannot be exercised in respect of pre-trial criminal processes...

**The Chairman Economic and Financial Crimes Commission (EFCC) & Anor.
v. Dr. Patrick Ifeanyi Ubah & 2 Ors.**

Unreported: CA/A/564/2013

Pp. 62, 63

Leading judgment delivered by Agim, JCA

Delivered: 12th May, 2017

Abuja Division

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Money Laundering (Prohibition) Act 2011 Cannot Apply to Legal Practitioners

“...the Money Laundering Act to my mind does not directly or by implication state in any of the 25 sections of the said Money Laundering Act that any of the provisions of the Legal Practitioners Act is amended or repealed either in whole or part. And this is the cross road. I believe that the learned trial judge was right in expressing preference for the provisions of the Legal Practitioners Act over the provisions of Section 5 and 25 of the Money Laundering (Prohibition) Act 2011 rendering the two sections of the Money laundering (Prohibition) Act invalid, null and void in so far as they purport to apply to Legal Practitioners...

“...the inclusion of ‘Legal Practitioners’ in the definition of ‘Designated Non-Financial Institution’ in Section 25 of the Money Laundering (Prohibition) Act 2011 is inapplicable to Legal Practitioners...

“The Zenith of the matter is whether the intention of the National

Assembly in passing the Money Laundering (Prohibition) Act 2011 is to amend directly or impliedly the provisions of the Legal Practitioners Act which I have held made adequate and direct provisions regulating the practice of law in this country and the obligations the Legal Practitioners owe their clients in respect of clients' funds or monies.

"Textually and contextually, the whole body of Section 5 of the Money Laundering Act cannot be said to be intended for Legal Practitioners who have no business reporting the client/legal practitioner relationship to a minister in charge of Federal Ministry of Commerce, Trade and Investments. Section 5 sub sections 5 and 6 of the Money Laundering Act provide thus:-

'5(5) Notwithstanding the provisions of sub-section (2) of this section, the Commission shall have powers to demand and receive reports directly from Designated Non – Financial Institutions.

6) A designated Non - Financial Institution that fails to comply with the requirements of customer identification and the submission of returns on such transaction as specified in this Act within 7 days from the date of the transaction commits an offence and is liable on conviction to:

- (a) a fine of N250,000.00 for each day during which the offence continues; and;*
- (b) suspension, revocation or withdrawal of licence by appropriate licencing authority as the circumstances may demand.'*

"These have no bearing to any of the duties, obligations and responsibilities of a Legal Practitioner to his client as laid out in the Legal Practitioners Act which laid down the procedure for admittance as a Legal Practitioner at the Supreme Court and the authority that can withdraw a lawyer's certificate or striking off from the roll of Legal Practitioners kept at the Supreme Court. The type of business transaction the lawmakers had in mind when making the Money Laundering (Prohibition) Act could be seen in the definition of 'transaction' which Section 25 defined in the MLA (Money Laundering Act) to mean:-

'Transaction' means:

- (a) acceptance of deposit and other repayable funds from the public;*
- (b) lending;*
- (c) financial leasing;*
- (d) money transmission service;*
- (e) issuing and managing means of payment (for example, credit and*

- debit cards, cheques, travellers' cheque and banker's drafts etc.);*
 (f) *financial guarantees and commitment;*
 (g) *trading for account of customer (spot-forward, swaps, future options, etc.) in:*
 (i) *money, market instruments (cheques, bill, CDs etc.);*
 (ii) *foreign exchange;*
 (iii) *exchange interest rate and index instruments;*
 (iv) *transferable securities; and*
 (v) *commodity futures trading;*
 (h) *participation in capital markets activities and, the provision of financial services related to such issues;*
 (i) *individual and collective portfolio management;*
 (j) *safekeeping and administration of cash liquid securities on behalf of clients;*
 (k) *life insurance and all other insurance related matters, and;*
 (l) *money changing.'*

"All these are not the primary calling of Legal Practitioners. If it had been in the contemplation of the lawmakers to include Legal Practitioners, having regard to the Legal Practitioners Act, the wise option would have been clearly to state so in the Money Laundering (Prohibition) Act 2011 vide an amendment or repeal enactment or clause instead of creating the confusion inherent in the Money Laundering Act which brought Legal Practitioners in through definition..."

"I am of the view that bringing Legal Practitioners into the Act vide Section 25 aforesaid is clearly unrelated to the law makers' intention as covered by the Money Laundering (Prohibition) Act 2011. It creates ambiguity to classify Legal Practitioners under Non-Designated Financial Institution under the Money Laundering Act when Legal Practitioners Act had made clear and specific provisions concerning the Legal Profession extensively. The two laws insofar as it relates to Legal Practitioners cannot operate side by side. The Money Laundering Act will illegally encumber, impede or obstruct the smooth administration of the Legal Practitioners Act as amended and jeopardize the practice, regulation and rules of professional conduct for Legal Practitioners which had been effectively administered and applied since 1975..."

"...Also in view of the clear provisions Sections 192 (1) of the Evidence Act, 2011, the provisions of 5 and 25 of the Money Laundering (Prohibition) Act cannot operate side by side as it relates to Legal Practitioners and have to be obliterated or struck down to the extent of its conflict or inconsistency with provisions of Section 192 of the Evidence Act..."

"I am of the solemn view that the arrangement made by the Legislators for detecting persons engaged in Money Laundering offence via business venture or professional advice under MLA is highly incongruous and in direct conflict with the Legal Practitioners Act particularly Sections 20 - 23 thereof which already provided by specific provisions of the said Act the relationship between the 1st Respondent's (Registered Trustees of the Nigerian Bar Association) members and their clients as earlier observed and explained..."

Central Bank of Nigeria (CBN) v. Registered Trustees of the Nigerian Bar Association & Anor.

Unreported: CA/A/202/2015

Pp. 43, 49, 61, 62, 63, 64, 65, 68, 69, 74

Leading judgment delivered by Aboki, JCA

Delivered: 14th June, 2017

Abuja Division

Where a Statute Lays Down a Procedure for Doing Anything, No Other Method is to be Employed in Doing It.

"The law is certain that in trying to discover whether an action disclosed a cause of action it is the writ of summons and the statement of claim that will be examined or looked into because one does not begin statement of defence in order to find a cause of action or reasonable cause of action.

"The law also needs no restatement that it is the writ of summons and the statement of claim that determine the jurisdiction of the Court. It is also not in dispute that where an action is begun by originating summons the Court would examine the reliefs endorsed on the originating summons and the Affidavit in Support to determine if there is jurisdiction in the Court approached by a litigant to adjudicate on the cause or matter..."

"The learned Counsel to the Appellant stated that the Respondent in the case before the lower Court is claiming fees or charges for legal services rendered to the Defendant in the purported recovery of alleged London Club Debt. That in paragraph 1 of the Respondent's Affidavit in Support of the Writ for Undefended List Procedure, Respondent deposed that his firm Udemgaba Maduka & Associates is a firm of Legal Practitioners



and that he is an expert in the aspect of law practice relating to recovery of debt for governments...

"One of the cardinal or ardent position of the law relating to interpretation of the statute is that a Court or Tribunal is not entitled to read into a law things that are not contained in the statute or intended. A statute must be interpreted in a way that will not defeat the intention of the legislature. The words used in a statute must be given their natural and grammatical meaning. The provisions of a statute must be read communally giving important consideration to the intention of the law maker..."

"I am of the firm view that there is no discernible dichotomy between ascertained professional fees reduced into writing or agreement and unascertained fees of a Legal Practitioners both referred to as Bill of Charges under Section 16(1) and (2) a) & (b) of the Legal Practitioners Act. I am of the settled view that before a Legal Practitioner having disputes with his client with regard to the failure of his client to pay him his fees or for his professional services must as of necessity comply with Section 16(l) (2) (a) & (b) of the Legal Practitioners Act to recover his fees. The conditions precedent for the recovery of his fees or payments for his professional services must be strictly followed as laid down in the said Section of the Act.

"The Legal Practitioner must prepare a Bill of Charges with detail particulars of the principal items included in the Bill for the Charges and must be signed by the Legal Practitioner or where as in this case a Firm of Legal Practitioners is involved the Bill of the Charges must be signed by one of the partners or in the name of the firm. The Bill must be personally served on the client or served at the clients address or through post to the client's address.

"Upon compliance with Section 16(l) (2) (a) & (b) of the Legal Practitioners Act, the Legal Practitioner or the Firm of Legal Practitioners must in accordance with Section 16(l) (2) (b) wait for a month beginning from date of service or delivery of the Bill to his client, to expire before he or the firm could bring an action in a Court of competent jurisdiction to recover his charges or professional fees. All I am saying is that Section 16 of the Legal Practitioners Act is applicable to the Respondent's suit or action herein.

"The only time the provisions of Section 16 aforesaid may not be applicable or enforced is when or if the client decided to waive the conditions precedent or blow muted trumpet. But whereas here the client challenges the failure

to comply with Section 16 of the Legal Practitioner's Act the Court seised of the matter is bound to enforce the provisions of Section 16(l)(2)(a) & (b) of the Legal Practitioners Act Cap L11 LFN 2004.

"Where a statute provides for a method or procedure to be followed for doing of a thing the person concerned cannot adopt any other method or procedure to attain the purpose or condition prescribed by law for initiation of a cause or matter. See: (1) Dr. Arthur A. Nwankwo A Ors V. Albaji Umaru Yar'adua & Ors (2010) 6 SC in 121 AT 143 F - & per Onnochen, JSC (now Ag. CJN) who said:

'It is settled law that where a Statute lays down a procedure for doing anything, no other method is to be employed in doing the thing. In other words, where a statute or legislation provides for a particular method of performing a duty regulated by the statute, that method and no other method must have to be adopted.'...

"I am not unmindful of the letter of demand which the Respondent said he wrote to the Governor of Bayelsa State on 17/7/14. There is nothing to indicate when the letter was served or received by Appellant. In any event the particulars required to be stated under Section 16(2) (a) & (b) of the Legal Practitioners Act are not stated and are lacking in the letter on page 43 of the record. Surely that type of letter cannot be the Bill of Charges envisaged under Section 16(l) (2) (a) & (b) of the Legal Practitioners Act Cap L11 LFN 2004..."

Bayelsa State Government .v. Prince Godwin Udemaduka (Trading Under the Name and Style of Udemgaba Maduka and Associates)

Unreported: CA/A/652/2016

Pp. 38,39,40,43,45,46,47, 48, 50

Leading judgment delivered by Olabisi Ige, JCA

Delivered: 13th December, 2017

Abuja Division

Proper Exercise of Sentencing Discretion Must Reflect a Consideration of the Proportionality of the Sentence to the Gravity of the Crime

"Without the judgement expressly stating so, the choice of punishment of 2 years imprisonment with the option to N250, 000.00 fine for each count of offence, an amount obviously very disproportionate to the humongous amount of over 24 billion naira stolen or converted by the convict, appear to have been



influenced by the consideration of tampering justice with mercy and being lenient to the convict, than consideration of correcting the convict and deterring other persons. The custodial sentence of 2 years to be suffered together with a monetary sentence reasonably proportional to the sum of over 24 billion naira stolen or converted would have been more consistent with a deterring sentence. The sentence does not show that it was influenced by considerations of the impact of the crime on the society or consideration of the nature of the crime and consideration of the person and the office of the convict when the offence was committed.

"The judgment of the trial court acknowledged that the offence of misappropriation and theft of public funds and criminal breach of trust by government officials is widespread or rampant in Nigeria and has destroyed the economic wellbeing of the people generally and resulted in insecurity in the nation...

"One of the hallowed principles of sentencing judicially established through the cases across jurisdictions is that where a particular form of crime is prevalent in a particular community, the trial court upon conviction of an accused should impose a severe sentence to deter the convict and the general community from further committing that crime... The trial court having held as above concerning the endemic nature of the crime and its cause of the abject poverty of the citizens of this country and the insecurity in this country, ought to have imposed a severe sentence or given reasons why it did not.

"The appellant has by this appeal invited this court to exercise its appellate jurisdiction to review this sentence. Both sides agree that this Court can do so only if the trial court did not properly exercise its sentencing discretion and levied a sentence that is unreasonable, irrational, arbitrary, unjust and wrong in principle.

"It is settled law that the scope of the power of an appellate to interfere with the sentence imposed by a trial court in the exercise of its sentencing discretion is very narrow and limited to only when the discretion is not properly exercised and the sentence is wrong in principle, unreasonable, excessive or inadequate and unjust having regard to the circumstances of that case...

"The sentences it levied are clearly light and lenient ones because they allow the convict who had admitted converting to his own use or stealing over 24 billion naira, the option to pay the sum of N250,000.00 per count of offence, in lieu of serving the prison term of 2 years for the offence, an

amount that is paltry, a pittance and unreasonably low and disproportionate to the amount stolen and therefore can comfortably and quickly be paid by the convict from the humungous amount stolen leaving him with a huge balance of the stolen funds in his possession and without really causing him any pain of punishment and leaving him with surplus benefit of the proceeds of his crime.

“The Judgment did not explain why the trial court chose to impose the said lenient sentence, in spite of its holding that the theft and conversion of public funds by public office holders had bedevilled Nigeria, generally pauperising the citizens and causing insecurity in the country. Such an explanation that would demonstrate the rationality of the sentence in the face of the trial court’s said holding was necessary. Without it, the sentence would be devoid of rationality and the trial court’s exercise of its sentencing discretion cannot be rational.

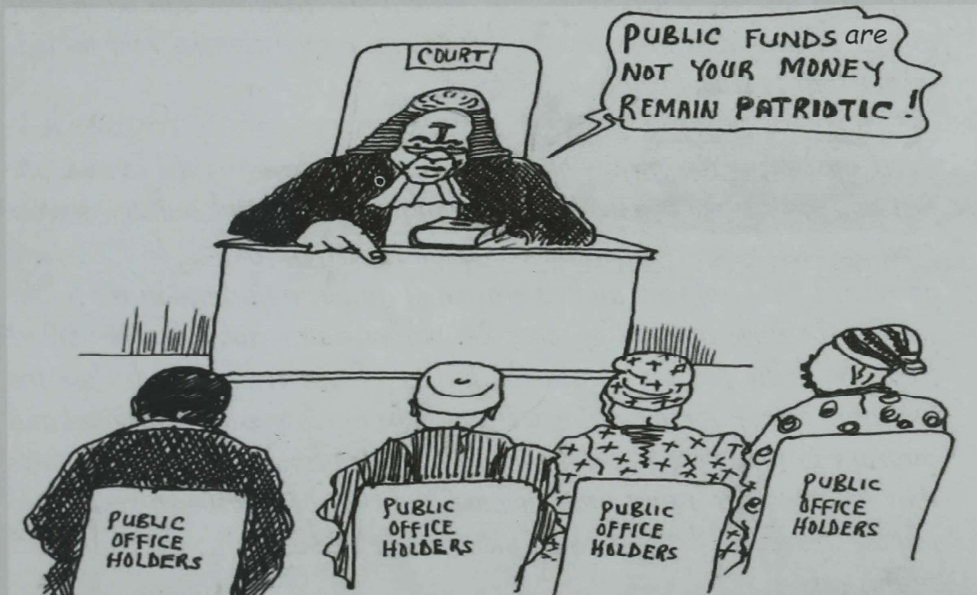
“The offence committed by the respondent, by its nature, involves a grave breach of public trust, erodes public confidence in public governance and caused retired police officers hardship and suffering. The funds stolen or misappropriated by the convict are police pension funds for the payment of monthly pensions and other retirement benefits to retired police officers nationwide. The theft or misappropriation of over 24 billion naira of that fund would make the prompt payment of monthly pensions to retired police officers very difficult if not impossible, with attendant hardship and suffering inflicted on such retired officers who rely on their monthly pensions as their only means or source of sustenance in retirement.

“The hopeless, helpless and dehumanising condition the retired officers have been put into by this offence that has become habitual and widespread amongst government officials in pensions departments of government whose duties are to custody pension funds and process the payment of gratuities, monthly pensions and other retirement benefits to retired public servants is obvious. The respondent as Chief Account in the Police Pension office had the responsibility to pay gratuity and monthly pensions to retired police officers. Instead of paying the retired police officers their said retirement benefits, the respondent rather converted to his own use and stole the funds meant for such payments, converting same into a huge personal wealth, and thereby betrayed the high public trust bestowed on him by his high office and profession.

“The Judgment of the trial court did not show that it considered this grave breach of public trust, the erosion of public confidence in government pension payment schemes and public service generally and the very serious hardship, suffering and hopelessness that such offence would inflict on the retired police officers, in sentencing the convict. The Judgment ought to show that these facts were considered by the trial court in exercising its sentencing discretion.

"A proper exercise of sentencing discretion must reflect a consideration of the nature of a crime and its impact and the society. The established judicial practice is to impose severe sentence to deter the further commission of offences of this nature..."

"A proper exercise of sentencing discretion must reflect a consideration of the proportionality of the sentence to the gravity of the crime. It is obvious that the sentence that the respondent who admitted stealing or converting the huge amount of over 24 billion naira for the payment of the retirement benefits of retired police officers, should pay a total fine of N750, 000.00 in respect of three offences or serve a concurrent term of imprisonment of 2 years is disproportionate to the very serious nature of the offence the respondent committed. The amount of monetary sentence is a pittance compared to the over 24 billion the respondent has stolen or converted to his personal wealth. "Such a sentence defies reason and rationality and appears capricious and



arbitrary. The ridiculously low monetary sentence as against the mind blowing and massive amount of over 24 billion naira stolen helps the convict to effortlessly and easily pay the fine and avoid or escape the pain of punishment for his crime, while retaining the proceeds of his crime. Such a sentence makes that criminal enterprise safe and lucrative, clothes it with impunity, so that instead of deterring the further commission of the crime, would rather encourage it. Considering the huge amount stolen or converted to his use, and considering that the maximum term of imprisonment the trial court can impose under S.309 of the Penal Code Act is 2 years, the sentence that would be proportionate to the gravity of the crime and have a deterring effect is both imprisonment and fine, with the prison terms for the three offences being consecutive instead of concurrent and the fine being an amount of money substantial enough to make the sentence reasonably proportionate to the gravity of the crime..."

“The trial court also considered that the convict is the bread winner of his family and community children. Learned Counsel for the convict in his plea for leniency in the trial court submitted that: ‘He is the head of a family of four. He has a wife and three children, two of whom are in the university. One is in the primary school. They all depend on the convict for their survival and wellbeing including payments of school.’

“The fact that a convict has family responsibility is not a legally recognisable factor that can mitigate the imposition of severe sentence for the grave crime committed by him. The retired police officers who have been deprived the payment of their retirement benefits by the convict’s crime may equally be suffering the inability to discharge their own family responsibilities because of his crime. He cannot depend on the proceeds of his crime to discharge his family responsibilities and provide scholarship to school children in his community. Those funds were meant for the public purpose of paying the retirement benefits of retired police officers and not for the convict to steal and take care of his family responsibilities and provide scholarship to school children...

“...Considering the gravity of the offences committed by the convict, the fact that such crime is now rampant and pervasive in the country, the far reaching destructive effect of the crimes on society, the impact of the crimes on retired public officers and its erosion of public confidence in the public service, the huge amount of over 24 billion naira stolen by the convict from the police pension funds, the failure of the convict to disclose the monetary cost of those buildings, it would be unreasonable, irrational and contrary to the above Judicially established principles to rely on the facts that the convict is a first time offender and that he has shown remorse to impose a sentence as light and lenient as the one levied by the trial court in this case...

“In the light of foregoing, I hold that the sentence of fine of N250,000.00 in lieu of imprisonment for a term of 2 years for each offence is unreasonable, unjust, unfair, irrational, arbitrary, and contrary to judicially established principles and is not the result of a judicious and judicial exercise of the trial court’s sentencing discretion. It is settled law that in this kind of situation, this court as an appellate court can interfere with the trial court’s exercise of sentencing discretion and review the sentence. See Adeyeye & Anor. v. The State (supra), Agbanyi v State (supra), Odeh v FRN (2008) 13 NWLR (Pt. 1103) 1 at 25 and Downing v IGP (1961) 1 All NLR 782.

“In reviewing the sentence imposed by a trial court, this court may reduce or increase it according to the dictates of justice in the case. As held by the



Supreme Court in Odeh v FRN, (supra) 'An appeal court may, where the ends of Justice may be properly met, reduce or increase the sentence imposed by a trial court.' In Adeyeye & Anor. v The State (supra) the Supreme Court had held if that 'it appears to us appropriate to emphasise that this court will, when necessary, reconsider a sentence passed by the lower court in the direction of increase, when there is an appeal against sentence, if the facts as in this case, appear to us to justify such a course.'...

"In reviewing the sentence of imprisonment with option to pay fine as in this, this court can vary the sentence of one of both imprisonment and fine or imprisonment without option to pay fine or enhanced fine. Considering the humongous amount stolen, the nature and gravity of the crime and its destructive effect on the country and its impact on the retired police officers and the grave breach of public trust, a severe sentence that would deter the further commission of such crime and prevent the convict from retaining any part of what he stole to avoid him obtaining financial benefit from his crime should be imposed."

Federal Republic of Nigeria v. John Yakubu Yusuf

Unreported: CA/A/366c/2013

Pages 21, 27, 28, 29, 30, 31, 39, 40, 41, 42, 43, 44

Leading judgment delivered by Agim, JCA

Delivered: 21st March, 2018

Abuja Division

An Interlocutory Order Stands on the Same Position as Final Orders

"Generally, a court lacks the jurisdiction to set aside its own decision except as permitted by law, such as where the decision is a nullity by reason of a breach of procedure or has occasioned a miscarriage of justice. Another instance is when the judgment is given in default. This general rule of law applies even to interlocutory decisions. Consequently, an interlocutory order stands on the same position as final orders and cannot be altered except by means of appeal. See Onwuka v. Maduka (2002) 18 NWLR (PT799) 586 SC. It is also not competent for a judge to overrule the decision or ruling made by another judge, or to sit in judgment over the decision of a brother judge. The reason for this stems from the fact that judges who are of coordinate jurisdiction cannot sit on appeal over the decision or ruling of his brother judge except where the decision amounts to a nullity. See ITPP v. UBN PLC (2006) 12 NWLR (PT995) 483, Jatau v. Ahmed (2003) 4NWLR (PT 811) 498..."

National Pension Commission v. Derrick Roper and 3 Ors.

Unreported: CA/A/428/2012, Pg. 18

Leading judgment: Aboki, JCA

Delivered: 25th March 2018

Court of appeal Abuja division

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Whether the Judgment of a Court Can be Interpreted by a Court of Co-ordinate Jurisdiction

"It is very obvious or clear that the judgment of the Federal Capital Territory High Court Abuja in SUIT NO: FCT/HC/CV/2129/2014 had already prescribed mode of enforcement of the judgment sum in favour of 1st Respondent as Co-Plaintiff against the 5th Respondent and not against any other person. Notwithstanding the denial of the 1st Respondent that this action did not seek for interpretation of judgments, it is evident that, that precisely is what the 1st Respondent's action herein was intended to achieve. If the Amended Originating Summons was not for interpretation of the judgments aforementioned how come it was initiated pursuant to ORDER 3 RULES 6 and 7 of the Federal High Court Civil Procedure Rules 2009 which all provide:- 'RULE 6. Any person claiming to be interested under a deed will enactment or other written instrument may apply by Originating Summons for the determination of any question of construction arising under the instrument and for a declaration of rights of the person interested. RULE 7.

"Any person claiming any legal or equitable right in a case where the determination of the question whether such a person is entitled to the right depend upon a question of construction of an enactment, may apply by Originating Summons for the determination of such question of construction and for a declaration as to the right claimed. The whole essence of Originating Summons has been stated or explained in numerous cases all warning that where issues in controversy or dispute are contentious, originating summons cannot be the vehicle of initiation or commencement of such a suit or action.

"It is also beyond argument that unless a litigant is desirous of a determination of right or action bordering on interpretation or construction of a deed, statute, will or instrument, originating summons cannot be the mode of commencement of the action. See the case of NJIDEKA EZEIGWE v. CHIEF B. C. NWAUWULU & ORS (2010) 4 NWLR (PART 1183) 159 AT 215-216 per ADEKEYE, JSC. Not long ago the provisions of Order 3 Rules 6 and 7 of the Federal High Court (Civil Procedure) Rules 2009 were construed or interpreted by the apex Court in the land in the case of BARR. ORKER JEV. & ANOR v. SEKAVDZUA IYORTYOM & ORS (2014) 8 SCM 131 AT 156 E TO 158 A where my Lord OKORO,



JSC had this to say:-

'There is no doubt that originating summons is one of the ways of commencing action in our Courts. It is provided for in the various High Court Rules. For the Federal High Court (Civil Procedure) Rules 2009, Order 3 Rules 6 and 7 thereof provide:- "6. Any person claiming to be interested under a deed, will, enactment or other written instrument may apply by Originating Summons for the determination of any question of construction arising under the instrument and for a declaration of the rights of the persons interested. 7. Any person claiming any legal or equitable right in a case where the determination of the question whether such a person is entitled to the right depends upon a question of construction of an enactment, may apply by Originating Summons for the determination of such question of construction and for a declaration as to the right claimed. The above provision clearly states the type of actions that may be commenced by way of Originating Summons. Where the issue is that of construction of documents or interpretation of statutory provisions, it is safe and prudent to approach the Court by Originating Summons.'

On page 620 of the record in the address of learned Counsel to 1st Respondent at the lower Court, he confirmed that the action was for the interpretation of the judgments. "He said:-

"The only controversial issue may be dispute as to how to interpret and link the two Court judgments to the rights and interests of the Plaintiff herein' which construction is within the power of the Court. See Order 3 Rule 6. Any person claiming to be interested under a deed will, enactment, or other written instrument may apply by Originating Summons for the determination of any question of construction arising under the instrument and for a declaration of rights of the person interested. It is respectfully submitted that the documents for construction in respect of this suit is that of judgments of the two Courts which are in writing and which obviously falls within the cases that can be commenced by Originating Summons.

I have no doubt in my mind that the learned trial Judge has no jurisdiction or competence to adjudicate on the questions contained in the Amended Originating Summons, the reliefs sought in the main and in the alternative. The action did not and does not avail the 1st Respondent. The learned trial

Judge greatly erred in law in his assumption of jurisdiction to interpret the aforesaid judgments vide Originating Summons when judgment(s) of Courts cannot be classified as instrument, statute document or will. The whole exercise is an aberration in judicial process and a complete nullity. See the case of RACE AUTO SUPPLY COMPANY LIMITED & ORS v. ALHAJA FAOSAT AKIB (2006) 13 NWLR (PART 997) 333 AT 351 E - 352 A-E per MOHAMMED, JSC who said:- "In this appeal, it is necessary to examine the status of the Lagos High Court consent judgment of Obadina, J. (as he then was) of 4-5-98 which was placed before Shitta-Bey, J. of the same Lagos High Court for interpretation by the appellants under Order 46 Rule 1 of the Lagos State High Court (Civil Procedure) Rules, 1994 which Provides:

'Any person claiming to be interested under a deed will or other written instrument may apply by originating summons for the determination of any question of construction arising under the instrument and for declaration of the rights of the parties interested.'

"The question is whether the consent judgment of 4-5-98 between the parties which was before the trial Court for interpretation on the application of the appellants comes within the definition of "written instrument" capable of being accommodated under the rule. The word 'instrument' is defined in Strouds Judicial Dictionary, as 'anything reduced to writing, a document of formal or solemn character'.

"However, whether anything reduced to writing is an instrument largely depends on the context in which it is used. For example the same Strouds Judicial Dictionary, Volume 3 at page 1386 stated plainly that orders of Court were not instrument within Apportionment Act, 1834. One may find support in this observation by Stroud to say that a judgment of a Court of law can hardly be accommodated under the words "other written instrument" under Rule 1 of Order 46 of the Lagos High Court (Civil Procedure) Rules, 1994, under which the appellants filed their application for the interpretation of the consent judgment of 4-5-98. In other words, a judgment of a Court of law cannot be subjected to interpretation by a Court of co-ordinate jurisdiction like a deed, a will or an instrument containing right and obligation of parties under Order 46 Rule 1 of the Lagos High Court (Civil Procedure) Rules.

"In any case, even if the consent judgment in the present case were to be regarded as instrument under Rule 1 of Order 46, the provision would not give a High Court jurisdiction to determine any question of

construction or interpretation arising from the judgment of a Court of co-ordinate jurisdiction like the Lagos High Court presided by Obadina, 1. (as he then was) and the same Court as presided by Shitta-Bey, J., or that of a higher Court like the Court of Appeal or this court. If a judgment of a Court of law were to be regarded as an instrument like a deed or will, then even the judgment of the Court of Appeal or this Court could be subjected to interpretation by the High Court under Order 46 Rule 1 which is rather absurd.

“In the present case therefore, the Court below was quite right in its decision that the trial Lagos High Court presided over by Shitta-Bey, J., lacked competence to subject the consent judgment of the same Court delivered by Obadina, 1 (as he then was) to interpretation of the contents or terms thereof. To my mind, the whole gamut of the questions postulated for answers and the reliefs sought therein were in effect an invitation to the lower Court to sit over the judgments of Court of co-ordinate jurisdiction and to sit as appellate Court on the judgments of his learned brothers which he could not rightly do under the Constitution of the Federal Republic of Nigeria and the law.

“If a judgment does not meet the claim of the party or it is not as favourable to his interest as he may have fathomed out, the option open to him is to appeal the judgment and not to approach Courts of co-ordinate jurisdiction to appraise, reappraise, modify or give different impression of what the judgment given in his favour or against him conveys with a view to obtaining more favourable decision from the other Courts of the same status. The latter Court will lack the jurisdiction to intervene. See:- 1. HON. A.G., OF LAGOS STATE v. THE HON. A.G., OF THE FEDERATION & ORS (2014) 4 SCM 1 AT 41F TO 42A, 50G-G and 731 TO 74 A-B; 2. S.P.D.C. (NIG.) LTD v. CHIEF TIGBARA EDAMKUE & ORS (2009) 14 NWLR (PART 1160) 1 AT 28F-H TO 29A per OGBUAGU, JSC who said:

“However, I am aware and concede on this also settled, that no Judge can or is entitled to reverse, vary or alter the Order or decision of another Judge of co-ordinate jurisdiction except on issue of jurisdiction. See: the cases of Akporue & Anor. v. Okei (1973) 12 SC. 137; (1973) 3 ECSLR 1010 @ 1014; Orewere 4 Ors. v. Abiegbe & Ors. (1973) 3 ECSLR 1164 @ - 1167- that the proper action is to go on appeal: National Insurance Corporation of Nigeria v. Power Industrial Engineering Co. Ltd. (1990) 1 NWLR (Pt. 129) 697 @ 707 C.A. - per Akpata, JCA (as he then was). In other words, in the absence of statutory authority, one Judge has no power to set aside or vary the order of another Judge of concurrent and co-ordinate jurisdiction.

'See: the cases of Amamabu v. Okafor (1966) 1 All NLR 205 @ 207 and Uku v. Okumagba (1974) 1 ALL NLR (Pt. 1) 475 cited in the case of Wimpey (Nig.) Ltd. & Anor. v. Alhaji Balogun (1986) 3 NWLR (Pt. 28) 324 @ 939. This is especially when such Order has been entered or drawn up.' 3. LAWRENCE S. AZUH v. UNION BANK OF NIGERIA PLC (2014) 11 NWLR (PART 1419) 580 AT 608 F-H TO 609 A- D, A - C Per KEKERE-EKUN, JSC:- However, it is evident, from the reliefs sought, that the respondent was not satisfied with bail conditions granted by that Court which/ led to the institution of the suit that gave rise to this appeal, whose sole purpose was to have the bail conditions varied by making them more stringent, and specifically to ensure that the appellant remained within the country for the duration of his trial.'

'In view of a subsisting order granting bail to the appellant by a Court of co-ordinate jurisdiction, did the trial Court has the jurisdiction to vary the said order, or to sit on appeal over that order? The position of the law as stated by this Court in Witt & Busch Ltd v. Dale Power Systems PLC (2007) 1 NWLR (Pt. 1062) 1 at 25, para E.F.G (2007) 5-6 SC 121, per Ogbuagu, JSC. is as follows:-in the absence of statutory authority or except where the judgment or Order is a nullity, one judge has no power to set aside or vary the order of another judge of concurrent and co-ordinate jurisdiction.

'The rationale or reason for this is that there is only lone High Court in a State. See Anambra v. Okafor (1966) 1 All NLR 205 at 207; Uku v. Okumagba (1974) ALL NLR (Pt. 1) 475, Wimpey (Nig) Ltd v. Balogun (1980) 3 NWLR (Pt. 28) 324 at 331 cited with approval in Witt & Busch Ltd v. Dale Power Systems Plc. (supra)'' Recently in the case of MR. AKINFELA FRANK COLE v. MR. ADIM JIBUNOH & ORS (2016) 4 NWLR (PART 1503) 499 AT 521 C-H the apex Court in the land reaffirmed the position stoutly when GALADIMA, JSC said:-

'A Court of co-ordinate jurisdiction has no constitutional power to sit as an appellate Court in another case and review and/or adjudicate on a decision or Order made by another Court of the same hierarchy.

'See Chief Gani Fawehinmi v. A.G., Lagos State (No. 1) (1989) 3 NWLR (Pt. 112) 707 at 724, paras. C-D where the Court held: 'The presumption has always been that the decisions of a superior Court are within jurisdiction and are correct until the contrary is proved. It seems to me



that even if the decision of the superior court is a nullity, the only proper way of challenging such decision must be by an application before the very Court which tried the case or by an application to the appropriate appellate Court even if the proper way to set it aside is by an appeal not be review before a Court of co-ordinate jurisdiction... it seems to me that, in view of the provision of the Constitution, which carefully shares jurisdiction to the various Courts. Only the Court vested with the particular jurisdiction can interfere with the decision of another Court.

"The ruling of the trial Court that it has jurisdiction to entertain the present suit is due to the averments of fraud contained in the statement of claim, whereas the substance or issue in the suit is a challenge and a disguise to set aside the decision and auction carried out by virtue of an order made by a Court of coordinate jurisdiction in the earlier Suit No. ID/1082/90. This is not proper."

Incorporated Trustees of Nigerian Governors Forum & Anor. v. Riok Nigeria Limited & 6 Ors.

(Pp. 43-54, Paras. C-E)

(2018) LPELR-44915(CA)

Leading judgment delivered by Olabisi Ige, JCA
Abuja Division

Whether the Court Can Make an Order Against or in Favour of a Person Not a Party to a Suit

"A Court is devoid of jurisdiction to pronounce against or decree anything against persons or parties not before the Court or in a proceeding. It will be contrary to Section 36(1) of the Constitution of Federal Republic of Nigeria 1999 as amended. See:- 1. THE NIGERIAN NAVY & ORS v. D. O. LABINJO (2012) 17 NWLR (PART 1328) 56 AT 89 D per PETER ODILI, JSC. 2. OKONTA v. PHILLIPS (2010) 18 NWLR (Pt. 1225) 320 AT 326 D-E per ADEKEYE, JSC. 3. CHIEF MAXI OKWU & ANOR v. CHIEF VICTOR UMEH & ORS (2016) 4 NWLR (PART 1501) 120 AT 143 H TO 144 A-D per OKORO, JSC.

"The 1st Respondent (Riok Nigeria Limited cannot take refuge under Section 287(2) of the Constitution of the Federal Republic of Nigeria (1999) as amended to seek enforcement of judgments all of which the



Appellants were not parties to the suits from which the judgments emanated. They cannot be made liable to perform any obligations under judgments that were not given against them. The lower Court cannot also enlist the provisions of Section 287(3) of the Constitution aforesaid as umbrage to conscript the Appellants to supervise execution or enforcement of judgments of Courts in which they were not parties in the action. There is no order or judgment of Court against the Appellants. Section 287(3) of the Constitution is only applicable to person who is a party to an action and he must be a person or party against whom judgment has been delivered or Orders of Court made against and he is in disobedience of such judgment or Order.

“That is not the situation in this case. See. CHIEF UJILE D. NGERE & ANOR v. CHIEF J. W. OKURUKET “XIV” & ORS (2014) 11 NWLR (PART 1417) AT 173 CH per RHODES-VIVOUR, JSC who said:- “The Court of Appeal granted a perpetual injunction restraining the applicants from laying any claim to the stool of Okan-Ama of Ngo yet while that order still stands, the 1st applicant in his affidavit introduced himself as of the Palace of Okan-Ama Ngo. This amounts to disobedience of the orders of the Court of Appeal.

“The question to be answered is whether the 1st applicant (who is now a contemnor) should be heard and can be entitled to the discretion of this Court? Section 287(3) of the Constitution reads: ‘287(3) The decisions of the Federal High Court, the National Industrial Court, a High Court and of all other Courts established by this Constitution shall be enforced in any part of the federation by all authorities and persons, and by other Courts of law with subordinate jurisdiction to that of the Federal High Court, the National Industrial Court, a High Court and those other Courts, respectively.’ The judgment of a Court of competent jurisdiction subsists until upset on appeal. While the judgment subsists every person affected by it or against whom an order is made must obey it even if it appears wrong. Judgments take effect immediately they are delivered and every Court has inherent power to proceed to enforce judgments at once.

“The enforcements on delivery can only be interrupted by a stay of execution provided there is an appeal. Parties are thus bound to obey Court orders that are clear and unambiguous, notwithstanding the fact that the order may be wrong. So long as a party refuses to implement or obey a Court order he would not be given a hearing in any subsequent application. See Odogwu v. Odogwu (1992) 2 NWLR (Pt. 225) p.539; Governor of Lagos State v. Ojukwu (1986) 3 NWLR(Pt. 26) p.39.”

Incorporated Trustees of Nigerian Governors Forum & Anor. v. Riok Nigeria Limited & 6 Ors.

(2018) LPELR-44915(CA)

(Pp. 56-59, Paras. C-C)

Leading judgment delivered by Olabisi Ige, JCA

Abuja Division

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Distinction between Judgment in Rem and Judgment in Personam

"...It is here relevant to draw a distinction between judgment in rem and judgment in personam. It is also necessary for me again to have recourse to definition of the two types of judgments in the Black's Law Dictionary pages 171 and 972-973 as follows:-

'Judgment in rem is a judgment that determines the status or condition of property and that operates directly on the property itself. The phrase denotes a judgment that affects not only interests in a thing but also all persons' interest in the thing. Also termed in rem judgment.

'Personam Judgment - 1. A judgment that imposes personal liability on a defendant and that may therefore be satisfied out of any of the defendant's property within judicial reach. 2. A judgment resulting from an action in which a Court has personal jurisdiction over parties. 3. A judgment against a person as distinguished from a judgment against a thing, right or status - Also termed judgment in personam; in personam judgment; judgment inter parties.'

"The apex Court in the land had cause in numerous cases to make the distinctions defined above very long time ago. Suffice to refer to:- 1. IKENYE DIKE & ORS v. OBINZEKA II (1986) 4 NWLR (Pt. 34) 144 AT 253 E-H to 154 per OPUTA, JSC of blessed memory who said:- "It is therefore necessary to have a clear idea of the distinction between a judgment in rem and a judgment in personam.

"A judgment is said to be in rem when it is an adjudication pronounced upon the status of some particular thing or subject matter by a Tribunal having the jurisdiction and the competence to pronounce on that status. Such a judgment is usually and invariably founded on proceedings instituted against or on something or subject-matter whose status or condition is to be determined. It is thus a solemn declaration on the status of some persons or

thing. It is therefore binding on all persons in so far as their interests in the status of the property or person are concerned.

"That is why a judgment in rem is a judgment contra mundum - binding on the whole world - parties as well as non-parties. A judgment in personam, on the other hand, is on an entirely different footing. It is a judgment against a particular person as distinguished from a judgment declaring the status of a particular person or thing. A judgment in personam will be more accurately called a judgment inter partes. A judgment in personam usually creates a personal obligation as it determines the rights of parties inter se to, or in the subject-matter in dispute whether it be land or other corporeal property or a liquidated or unliquidated demand, but does not affect the status of either the persons to the dispute or the thing in dispute.

"As I observed in Sosan's case supra: 'A judgment in a land case is sequel to an action filed not for the purpose of determining the status of the contesting parties (Plaintiffs and Defendants) nor for the purpose of determining the status of the land in dispute but for the purpose of determining the rights or interest of either the Plaintiffs or the Defendants in the land the subject-matter of the dispute. It simply decrees that as between the plaintiffs and the defendants then before the Court the land belongs to one party or the other.' 2. ALHAJI SURAKATU AMIDA & ORS v. TAIYE OSHOBOJA (1984) LPELR-463 SC 1 AT 39 where OBASEKI, JSC who said:- 'A judgment inter partes or in personam raises an estoppels only against the parties to the proceedings in which it is given and their privies; (1) privies in blood (2) privies in law; and (3) privies in estate.

"As against all other parties, it is res inter alias acta, and with certain exceptions although conclusive of the facts that the judgment was obtained and of its terms, is not admissible evidence of the facts established by it.' 3. MRS. AKINFELA FRANK COLE v. ADIM JIBUNOH & ANOR (2016) 4 NWLR (PART 1503) 499 AT 531H TO 532 A-D per KEKERE-EKUN, JSC."

Incorporated Trustees of Nigerian Governors Forum & Anor. v. Riok Nigerian Limited & 6 Ors.

(2018) LPELR-44915(CA)

(Pp. 79-83, Paras. F-B)

Leading judgment delivered by Olabisi Ige, JCA
Abuja Division

Modes of Enforcement of Judgment/Order For Payment of Money

"The 1st Respondent's suit was/is in clear breach of the provisions of the Sheriff and Civil Process Act and Judgments Enforcement Procedure Rules all pertaining to method of enforcing monetary judgments. See:- 1. GOVERNMENT OF GONGOLA STATE v. ALHAJI UMARU ABBA TUKUR (1989) 9 SC 105 AT 122-123 per NNAEMEKA-AGU, JSC who said:- *In the case of Akunnia v. Attorney-General of Anambra State (1977) 5 S.C. 161, at p. 177, this Court came to the same conclusion where it drew a distinction between an executory and a declaratory judgments. Both must be obeyed but it is only the former that can be executed: such an execution may be stayed.*

"The question is whether the judgment in this case is among those that were capable of execution. Now what is the meaning of execution? I think execution simply means the process whereby a judgment or order of a Court of law is enforced or given effect to according to law. Our Sheriffs and Civil Process Act (Cap 189) Laws of the Federation, 1958, deals elaborately with process for execution that are recognised at law. Just as judgments can often be executed according to the provisions of that Act or the corresponding Laws of a State; it is only those judgments that are capable of execution that their execution can be stayed.

"I therefore wish to begin my consideration of the main issue raised by this appeal by pointing out that although every judgment of a Court must be obeyed and is effective from the date of its delivery or from such a date as the judgment itself appoints the method of enforcement of a particular judgment depends upon the type of judgment.

"In the sum (i) A judgment/order for payment of money may be enforced by a writ fieri facias garnishee proceedings, a charging order, a writ of sequestration or an order of committal on a judgment debtor's summons. (ii) A judgment for possession of land may be enforced by a writ of possession, a writ of sequestration or a commits/order. (iii) A judgment for delivery of goods may be enforced by a writ of specific delivery or restitution or their value, a writ of sequestration or writ of committal. (iv) A judgment ordering or restraining the doing of an act may be enforced by an order of committal or a writ of sequestration against the property of the disobedient person.

"For these, see Sections 20, 24, 25, 35, 38, 44, 55, 57, 58, 65, 82 and 83 of the Sheriffs and Civil Process Act (Cap. 189) Laws of the Federation 1958." 2. CHIEF M. O. OLATUNJI v. OWNEA BANK PLC & ANOR (2008) 8 NWLR (PART 1090) 668 AT 678H TO 680 A per MUSDAPHER, JSC later CJN (rtd.) of blessed memory who

said:- 'Now, it is agreed by both the appellant and the respondents that the relevant statutory provisions that call for consideration in this appeal are; Section 20(1) of the Sheriffs and Civil (Process) Act and Section 20(2) and Order IV Rule 1(1) and 2 of the Judgment Enforcement Rules made pursuant to Section 94 of the aforesaid ACT. The provisions read:-

"Section 20(1) Any sum of money payable under a judgment of a Court may be recovered, in case of default or failure of payment thereof forthwith or at the time or times and in the manner thereby directed, by execution against the goods and chattels and the immovable property of the judgment debtor in accordance with the provisions of this Act.

"Section 20(2) The Registrar on the application of the judgment creditor shall cause to be issued a writ of attachment and sale whereby the Sheriff shall be empowered to levy or cause to be levied by distress and sale of goods and chattels, wherever they may be found within the division or district of the Court, the money payable under the judgment and the costs of the execution.

"Order IV Rule I and Rule II Judgment (Enforcement) Rules made pursuant to Section 94 of the Act reads: Rule 1 No writ of possession shall be issued until after the expiration of the day on which the defendant is ordered to give possession of the land, or, if no day has been fixed by the Court for giving possession, until after the expiration of fourteen days from the day which the judgment is given.'

"Now, considering these provisions, the question may be asked when does a judgment to pay a sum of money become recoverable. Can a judgment creditor apply for a writ of *fifa* immediately a judgment is pronounced or must a judgment creditor wait for a default or failure to satisfy the judgment debt or must the judgment creditor wait for 14 days or 3 days after the judgment? In my view, unless the Court otherwise orders a judgment of Court to pay money takes effect from the day it is pronounced or delivered in Court.

"However, the Court at the time of making any judgment or order, or at any time afterwards, may direct the time within which the payment or other act is to be made or done. A person directed by a decree or order of Court to pay money or to do any other act is bound to obey the decree or order without any demand for payment or performance, and if no time is therein expressed, he is bound to do so immediately the decree or Order is pronounced.

"It must be emphasized that those bound by monetary judgment are the



defendants to the suit against whom order or judgment is made or pronounced and not persons or authority who were/are not parties to the proceedings.”

Incorporated Trustees of Nigerian Governors Forum & Anor. v. Riok Nigeria Limited & 6 Ors.

(2018) LPELR-44915(CA)

(Pp. 88-92, Paras. A-D)

Leading judgment delivered by Olabisi Ige, JCA
Abuja Division

On Duty of Agencies/Agents of Government to Ensure Observance and Compliance With Land Use Act

“The 1st Respondent (Isah Enejoh Paul) complied with all necessary conditions. He was lawfully put in possession of the land in dispute and no legal right in form of Certificate of Occupancy issued in favour of Appellant by the 4th Respondent (Minister of the Federal Capital Territory) can oust the equitable interest of the 1st Respondent in the property. Failure on the part of the Honourable Minister, Federal Capital Territory who was fully aware of the sale to the 1st Respondent to perfect and process all documents of title including issuance of Certificate of Occupancy to the 1st respondent cannot render the sale made to the 1st Respondent by the Federal Government through its agencies/agents, the 2nd (the Federal Ministry of Housing & Urban Development) and 5th Respondents (Federal Capital Development Authority), ineffectual. The sale remains valid and legal...”

“Land Use Act was enacted to prevent unconscionable and illicit sale and acquisition of land and thus enthrones orderliness into sale and purchase of landed properties. It is also designed to curb greedy and gullible land owners from selling some lands to various persons or individuals after such owner of land has divested themselves of all interest and title in the land. It is therefore painful and nauseating to see agencies/agents of government establishment who have duties to ensure the observance and compliance with Land Use Act deliberately flouting the provisions and intendment of the Land Use Act on the altar of unconscionable bargain...”

Abuja Investment & Property Development Co. Ltd. v. Isa Enejoh Paul & 4 Ors.

Unreported: CA/A/757/2014, Pp. 47, 48, 55

(2018) LPELR-45827(CA)

Leading judgment by Olabisi Ige, JCA
Court of Abuja Division



On Jurisdiction of Federal High Court in Enforcement of Foreign Judgments

"... The law is settled that the registering Court of a foreign judgment like Federal High Court has no Appellate jurisdiction over the Court that made the foreign judgment. Once the registering Court is satisfied that the Applicant seeking registration of foreign judgment for enforcement in Nigeria complies with the relevant law in Nigeria the competent Court will register the judgment in accordance with the provisions of Foreign Judgments (Reciprocal Enforcement) Act Cap 152 Laws of the Federation 1990.

"It is for the person challenging the registration of the foreign judgment (as in this case) the Appellant, to bring its case within the purview of Section 16 of the Foreign Judgments (Reciprocal (Enforcement) Act in order to convince the lower Court not to register the aforesaid judgment. See:

1. WITT A BUSCHI LTD VS DALE POWER SYSTEMS PLC (2007) 17 NWLR (PART 1662) 1 AT 21 A - H TO 22 A - E per MOHAMMED, JSC who said:-

From the record of this appeal containing the proceedings of the High Court of Justice of England and the two separate proceedings of the High Court of Justice of Lagos State presided by Phillips J. which granted the respondent's application registering its foreign judgment against the appellant and the other presided by Ade Alabi, J. (as he then was) which set aside the registration of the same foreign judgment, there is enough evidence showing that the appellant on its own volition through its learned counsel unsuccessfully defended the respondent's action against it in the English High Court up to the end of the proceedings culminating in the final judgment against it. Furthermore, the appellant through its learned counsel in England also appealed against the foreign judgment, without any complaint of the jurisdiction of the English High Court, prosecuted its appeal again which ended woefully against it...

"The Appellant has not shown that the rights under the judgment are not vested in the Applicant for registration, the Respondent herein. The Appellant lost his application to set the Arbitral Award aside in the English Court. He voluntarily submitted to the Arbitration Law of ICC and the English Law.

"All the points of jurisdiction now being raised and canvassed in the several applications the Appellant filed at the Federal High Court in Nigeria were

all stoutly and tenaciously argued before the English Court to which Appellant submitted its rights and it lost on all grounds. The Appellant abandoned the English Court without further appeal on the issues.

‘It has failed to bring itself within the purview of Section 6(l)(a)(vi) of the Foreign Judgments (Reciprocal Enforcement) Act Cap 152 supra and it had not been able to show any other militating factors standing against the registration and recognition accorded the Costs Order made by the English Court. See Kerian Ikpara Obasi v. Mikson Establishment Industries Ltd. (2016) 16 NWLR (PART 1539) 335 AT 364 E - G per Ngwuta, JSC who said:-

‘By Section 6(l) (d)(vi) of the Act, the registration of a foreign judgment shall be set aside on the ground among other grounds ‘that the right under the judgment are not vested in the person by whom the application for registration was made’. In my view, the onus is on the foreign judgment debtor who applied to set aside the registration of the judgment to satisfy the Court that the application for registration of the judgment has no right under the judgment. In my view, the registering Court can set aside the registration under Section 6(l)(a)(vi) of the Act without recourse to the High Court Rules as so whether or not the Registration Court could exercise its powers under Order II Rule 2 of the Kano High Court Rules (supra), suo motu has no relevance to this appeal.’

‘The Appellant has not discharged the onerous duty and burden placed upon it and so the lower Court was right in exercising its jurisdiction to grant Respondent’s application to recognize and enforce the Order of the English Court for Costs against the Appellant having regard to the materials on record since the Appellant did not satisfy any of the six (6) reasons for setting aside foreign judgment...

‘...Appellant cannot legally contend that its right under Section 36 of the 1999 constitution was breached having participated in the Arbitration Proceedings and having of its own volition approached the English Court for redress on the legality of the Arbitral Award and failed. I am sure Appellant would not have complained if he had succeeded in setting aside the Arbitration award and costs in English Court...

‘...I am not at one with the Learned Senior Counsel to the Appellant. The Federal High Court is endowed or vested with jurisdiction pursuant to the Foreign Judgment (Reciprocal Enforcement) Act Cap 152 LFN

and Reciprocal Enforcement of Judgments Act Cap 175 which are deemed to be the existing laws and Acts of the National Assembly of Nigeria under Section 315(1) (a) of the Constitution of Nigeria 1999 as Amended. The Federal High Court's jurisdiction is further protected and laid bare in Section 251(1) (s) of the Constitution of Nigeria 1999 as Amended which provides:

*Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred 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 cause or matters -
(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...*

"I am of the firm view that the Federal High Court has the jurisdiction to recognise, register and to enforce the judgment that is the Costs Order made against the Appellant by the English Court. See also: 'Order 52 Rule 17 of the Federal High Court (Civil Procedure) Rules 2009 which provides:

Rule 17: Awards made in proceedings in foreign territory; Where an award is made in proceedings on an arbitration in a foreign territory to which the Foreign Judgment (Reciprocal Enforcement) Act extends, if the award was in pursuance of the law in force in the place where it was made; it shall become enforceable in the same manner as judgment given by a court in that place and the proceedings of the Foreign Judgments (Reciprocal Enforcement) Act shall apply in relation to the award as it applies in relation to a judgment given by that court.'

"A community reading of all the above no doubt makes it clear that the Federal High Court has jurisdiction in the matter... The learned trial judge was right in granting the Respondent's application to enforce the Order of English Court..."

Abuja International Hotels Ltd. v. Meridien SAS
Unreported: CA/A/370 C/2016.
Pp. 28, 29, 34, 35, 38, 42, 43, 44
 Lead judgment: Olabisi Ige, JCA
 Delivered: 19th June 2018
 Abuja Division



Facts or Events Not Forming Part of the Record of Appeal are Not Valid for Consideration

"...Fresh facts or evidence cannot be introduced in an appeal without the leave of the appellate court first sought for by motion on notice and obtained to do so. It cannot be introduced by means of a written letter to the appellate court. Order 4 Rule 2 of the Court of Appeal Rules 2016 provides that-

'The Court shall have power to receive further evidence on questions of fact, either by oral examination in Court, by affidavit, or by deposition taken before an Examiner or Commissioner as the Court may direct, but, in the case of an appeal from a judgment after trial or hearing of any cause or matter on the merits, no such further evidence (other than evidence as to matters which have occurred after the date of the trial or hearing) shall be admitted except on special grounds.'

"The 2nd respondent (Attorney General of the Federation) has not applied for and obtained the leave of this court to introduce the said letter and attached bill as part of the records to be relied on to determine this appeal. Since no leave of this court had first been obtained to adduce or introduce the letter and attached bill as fresh facts or evidence in this appeal, the letter and attached bill are incompetent and are not valid for consideration in the determination of this appeal. See Onwubuanri & Ors. v. Egboasoyi (2011) LPELR - 754 (SC), Obasi v. Onwuka (1987) 7 SC (Pt. 1) 233, Imale & Ors. v. Agiri & Ors. (1997) 9 NWLR (Pt. 521) (CA). The arguments of all the respondents (Accord, Attorney General of the Federation and Independent National Electoral Commission, INEC) on the basis that the appellant (National Assembly) has proposed a new Electoral (Amendment) Act 2018 are not valid for consideration as the said fact is not part of the record of this appeal. It is settled law that address of Counsel in an appeal on facts or events not forming part of the record of appeal are not valid for consideration. See Akpan v. The State (1987) 3 SCM3 23."

National Assembly .v. Accord & Ors.

Unreported: CA/A/485/2018

Pp. 17, 18

Leading judgment delivered by Bulkachuwa, PCA

Delivered: 1st August, 2018

Abuja Division

A Party Should Present all Materials Necessary to Enable Court Rule in its Favour

“Generally, a court lacks the jurisdiction to set aside its own decision except as permitted by law, such as where the decision is a nullity by reason of a breach of procedure or has occasioned a miscarriage of justice. Another instance is when the judgment is given in default. This general rule of law applies even to interlocutory decisions. Consequently an interlocutory order stands on the same position as final orders, and cannot be altered except by means of appeal. See Onwuka v. Maduka (2002) 18 NWLR (PT 799) 586 SC.

“It is also not competent for a judge to overrule the decision or ruling made by another judge, or to sit in judgment over the decision of a brother judge. The reason for this stems from the fact that judges who are of co-ordinate jurisdiction cannot sit on appeal over the decision or ruling of his brother judge, excepts where the decision amounts to a nullity. See I.T.P.P. v. UBN Plc. (2006) 12 NWLR (PT 995) 483; Jatau v. Ahmed (2003) 4 NWLR (PT 811) 498 Emodi v. Kwentoh (1996) 2 NWLR (PT 433) 656 at 681. Ogunsola v. Usman (2002) 14 NWLR (PT 788) 636 at 660-661.

“Learned counsel to the Respondent in the instant application, has argued that the Court of Appeal decision in CA/L/16/2012 is not binding on this Court. He has urged the Court to depart from its previous decision in CA/L/16/2012 because according to him, new facts have emerged, which, though were in existence, were never brought to the attention of the Court of Appeal sitting in Lagos, before it made its decision in Exhibit FGPL 5.

“The question agitating the mind of this Court is: whose duty is it to bring to the attention of the court, the alleged fact that the decision contained in Exhibit 3 (i.e. the judgment of the Federal High Court sitting in Abuja, in Suit No: FHC/ABJ/CS/709/2011), has since 2012 rendered the content of Exhibit FGPL 1, FGPL 2, FGPL 3 and FGP, 4 null and void? To answer this question, the provisions of Section 136 (1) & (2) of the Evidence Act, 2011, are most apposite.

136. (1) The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person, but the burden may in the course of a case be shifted from one side to the other.

(2) In considering the amount of evidence necessary to shift

the burden of proof regard shall be had by the court to the opportunity of knowledge with respect to the fact to be proved which may be possessed by the parties respectively.

“It is my view that it was incumbent on the Respondent to this application to bring before the Court, all materials necessary to enable the court rule in its favour. By its own admission, it was obvious that the said Exhibit 3 was in existence, before the decision of the Court of Appeal, sitting in Lagos. Having failed in this duty, it cannot turn around to allege misrepresentation of facts, or to urge this Court to sit on appeal over the decision in CA/L/16/2012 i.e. Exhibit FGPL 5. The only option open to them, from the circumstances of this case, is to appeal against the decision in CA/L/16/2012. In the absence of any appeal, they are bound by the judgment in CA/L/16/2012. See F.I.B. Plc. v. Pegasus Trading Office GMBH & Ors. (2004) 4 NWLR (PT 863) 369.

“In Balogun v. Adejobi (1995) 2 NWLR (PT 376) 131 @ 168, the apex court held that a ruling and final order remains final and valid until set aside by the higher court...”

National Pension Commission .v. Derrick Roper & Ors.

Unreported: CA/A/428/2012

Pp.18, 19, 20

Leading judgment delivered by Aboki, JSC

Delivered: 26th March, 2018

Abuja Division

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On When Court of Appeal can Evaluate or Re-evaluate the Affidavits and Documentary Evidence of Parties

“Whenever an Appellate Court is called upon to set aside a decision of a lower Court on ground of errors or misdirection committed as contended by the Appellant in this Appeal, this Court will bear it in mind that it is not every slip, error or omission or mistake by the lower Court that will lead to reversal of the ruling, judgment order complaint against unless the Appellant can show and establish that the errors or mistakes are of such magnitude that have occasioned a miscarriage of justice. It must be eminently shown or established that having regard to the errors or misdirection of the Court below the judgment, ruling or order appealed against cannot be sustained. See the case of POPOOLA OLUBODE

ORS VS ALHAJI SALAMI (1984) 4 SC (PT. 1) 41 AT 48 per COKER, JSC who said:-

It is my view that the function of an Appeal Court is to determine whether error had been committed by the trial Court. If error has been committed, it must then decide whether such error was of such grave and magnitude to necessitate the reversal or the trial Court. It is not every error that would lead to a reversal by an Appeal Court. Such error must have substantially affected the result of the decision.'

It must also be stated that where the complaints of the Appellant border on lack or failure of the lower Court to consider and properly evaluate the materials placed before the lower Court or failed to properly appraise affidavits and documentary evidence before it, this Court is in the same stead or position as the lower Court to evaluate or re-evaluate the Affidavits and documentary evidence of the parties to the proceedings to enable this Court decide whether in fact and in law the lower Court was wrong or perverse in its conclusion or findings. "See:-

1. Lafia Local Government v. The Executive Governor of Nasarawa State & ORS (2012) 17 NWLR (PART 1328) 94 AT 129 G-H per Rhodes-Vivour, JSC who said:

'Even if there are conflicts in affidavits but there are authentic documentary evidence supporting one of the affidavits in conflict with the other, the trial Court ought to examine it before applying it in coming to a fair decision. See Nwosu v. Imo State Environmental & Sanitation Authority (1990) 2 NWLR (Pt. 135) P. 688. Chairman N.P.C. v. Chairman Ikere Local Government (2001) 13 NWLR (Pt. 730) P. 450. Evaluation of evidence entails the trial Judge examining all evidence before him before making his findings. This is done by putting all the evidence on an imaginary scale to see which side appears to outweigh the other. See MA & AJI J. Odojin (1978) 4 SC P. 91.'

At page 145 H to 146A Arinwoola, JSC also said this:-

'There is no doubt that this case was fought on affidavit and documentary evidence filed by both parties. It is however clear from the records that the trial Court failed to examine and properly evaluate the various documents attached as Exhibits.

'It is trite law that an appellate Court and even this Court is in as good a position as trial Court to examine and re-evaluate affidavit and documentary evidence before the trial Court in the event of the trial Court's failure to carry out its primary duty of evaluation.' "...

Abuja International Hotels Ltd. v. Meridien SAS

Unreported: CA/A/370C/2016

Pp. 22, 23, 24

19th June, 2018

Leading judgment delivered by Olabisi Ige, JCA
Abuja Division

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On Duty of Court to Register a Foreign Judgment

"The law is settled that the registering Court of a foreign judgment like Federal High Court has no Appellate jurisdiction over the Court that made the foreign judgment. Once the registering Court is satisfied that the Applicant seeking registration of foreign judgment for enforcement in Nigeria complies with the relevant law in Nigeria the competent Court will register the judgment in accordance with the provisions of Foreign Judgments (Reciprocal Enforcement) Act Cap 152 Laws of the Federation-1990.

"It is for the person challenging the registration of the foreign judgment (as in this case) the Appellant, to bring its case within the purview of Section 16 of the Foreign Judgments (Reciprocal (Enforcement) Act in order to convince the lower Court not to register the aforesaid judgment...

"The Appellant (Abuja International Hotels Ltd. has not shown that the rights under the judgment are not vested in the Applicant for registration, the Respondent (Meridien SAS) herein. The Appellant lost his application to set the Arbitral Award aside in the English Court. He voluntarily submitted to the Arbitration Law of ICC and the English Law. All the points of jurisdiction now being raised and canvassed in the several applications the Appellant filed at the Federal High Court in Nigeria were all stoutly and tenaciously argued before the English Court to which Appellant submitted its rights and it lost on all grounds.



"The Appellant abandoned the English Court without further appeal on the issues. It has failed to bring itself within the purview of Section 6(l)(a)(vi) of the Foreign Judgments (Reciprocal Enforcement) Act Cap 152 supra and it had not been able to show any other militating factors standing against the registration and recognition accorded the Costs Order made by the English Court. See Kerian Ikpara Obasi v. Mikson Establishment Industries Ltd. (2016) 16 NWLR (PART 1539) 335 AT 364 E - G per Ngwuta, JSC who said:-

'By Section 6(l) (d) (vi) of the Act, the registration of a foreign judgment shall be set aside on the ground among other grounds 'that the right under the judgment are not vested in the person by whom the application for registration was made'. In my view, the onus is on the foreign judgment debtor who applied to set aside the registration of the judgment to satisfy the Court that the application for registration of the judgment has no right under the judgment. In my view, the registering Court can set aside the registration under Section 6(l)(a) (vi) of the Act without recourse to the High Court Rules as so whether or not the Registration Court could exercise its powers under Order II Rule 2 of the Kano High Court Rules (supra), suo motu has no relevance to this appeal'

"The Appellant has not discharged the onerous duty and burden placed upon it and so the lower Court was right in exercising its jurisdiction to grant Respondent's application to recognize and enforce the Order of the English Court for Costs against the Appellant having regard to the materials on record since the Appellant did not satisfy any of the six (6) reasons for setting aside foreign judgment.

"Appellant cannot legally contend that its right under Section 36 of the 1999 Constitution was breached having participated in the Arbitration Proceedings and having of its own volition approached the English court for redress on the legality of the Arbitral Award and failed. I am sure the Appellant would not have complained if he had succeeded in setting aside the Arbitration award and costs in English Court.

"I am of the firm view that the Federal High Court has the jurisdiction to recognize, register and to enforce the judgment that is the Costs Order made against the Appellant by the English Court..."

Abuja International Hotels Ltd. v. Meridien SAS

Unreported: CA/A/370C/2016

Pp. 28, 29, 34, 35, 38, 43

Leading judgment delivered by Olabisi Ige, JCA

Delivered: 19th June, 2018

Abuja Division

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Courts Cannot Obstruct Legitimate Powers of the National Assembly to Make Laws or Pass a Bill into Law or Act

“It is agreed by all sides that the Electoral (Amendment) Act 2018 Bill, which is exhibit 1 in the affidavit in support of the originating summons that commenced the suit leading to this appeal has been passed by the Senate and the House of Representatives, the two houses that constitute the appellant, and has been transmitted and presented by the appellant to the President of the Federal Republic of Nigeria for his assent in accordance with S.58(1), (2) and (3) of the 1999 Constitution, and that the bill is still waiting for the President to signify his assent or the withholding of his assent in accordance with S.58(4) of the 1999 Constitution, and has not gone through the legislative processes in S.58 (4) and (5) of the 1999 Constitution that would make it become law, to wit, an Act of the National Assembly.

Before the legislative processes prescribed in S.58 (4) and (5) of the 1999 Constitution could be completed for the said bill to become law, the 1st respondent (Accord) commenced the suit at the trial court challenging the legislative competence of the appellant to pass a bill that would crystallise into a law that in its view has the effect of interfering with or taking away the power of the 3rd respondent (INEC) to decide the sequence or order of elections which it considers to be part of the power vested on it by item 15(a) of the Third Schedule to the 1999 Constitution as amended, to organise, undertake and supervise elections to the office of President and Vice President, Governor and the Deputy Governor of a State, the Senate, House of Representatives and Houses of Assembly and by virtue of S.25 of the Electoral Act 2010.

“The direct cause for the action is the proposal in the bill to amend S.25 of the Electoral Act 2010 by replacing it with the following provision-

'25.(1) Elections into the offices of the President and Vice President, the Governor and Deputy Governor of a State, and to the membership of the Senate, the House of Representatives and State Houses of Assembly of the States of the Federation shall be held in the following order-

- (a) National Assembly Elections;*
 - (b) Houses of Assembly of the States and Governorship Elections; and*
 - (c) Presidential Election.*
- (2) The dates for these elections shall be as appointed by the Commission.*
- (3) Election into the offices of the Chairman and Vice-Chairman and membership of the Area Councils of the FCT shall be held on the dates to be appointed by the Commission...*

"All sides agree that the courts of law of this country have the jurisdiction to judicially review the exercise of legislative power by the National Assembly or by a House of Assembly by virtue of S.4(8) of the 1999 Constitution which provides that:

'Save as otherwise provided by this Constitution, the exercise of legislative powers by the National Assembly or by a House of Assembly shall be subject to the jurisdiction of courts of law and of judicial tribunals established by law; and accordingly, the National Assembly or a House of Assembly shall not enact any law that ousts or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by Law.'

"All sides equally agree that by virtue of this power vested on courts of law by S.4 (8) of the 1999 Constitution, they can judicially review the constitutionality of Acts of the National Assembly and Laws of the House of Assembly. But the appellant parted ways and disagreed with the respondents on the question of whether the judicial review jurisdiction of courts of law over the exercise of legislative power by the National Assembly and Houses of Assembly extends to the legislative processes before the bill crystallises into Law.

*"This disagreement between the appellant and the respondents on this question is caused mainly by their lack of agreement on what the Supreme Court decided on the point in *A.G Bendel State & Ors. v. A.G of the Federation* (1981)¹ ALL NLR 85. The appellant contends that the*



decision supports its position that the courts of law have no judicial review jurisdiction over the legislative processes of a Legislature before a bill becomes law and that such jurisdiction exists only after the bill or such other legislative processes have become law. The respondents on the contrary, contend that it supports their position that the courts of law have judicial review jurisdiction over all legislative processes such as a bill before and after it has become law. Each side reproduced the part of the judgment of the Supreme Court in that case that it considers favourable to its position...

"Although the questions for determination in this case are different from the ones in the present case, the very erudite and illuminating judgment of the Supreme Court in that case, particularly the concurring opinion of His Lordship of blessed memory, Bello JSC (as he then was) relied on by Learned SAN for the appellant is very instructive on the answers to these questions, which are the questions that have arisen for determination here. Bello JSC stated that-

'I would endorse the general principle of constitutional law that one of the consequences of the separation of powers, which we adopted in our Constitution, is that the court would respect the independence of the legislature in the exercise of its legislative powers and would refrain from pronouncing or determining the validity of the internal proceedings of the legislature or the mode of exercising its legislative powers.'

"Reiterating this point further, Bello JSC also held in the celebrated case of Unongo v. Ake & Ors. FL983) LFELR-3422 (SC) that: This Court had occasion to consider the scope of the first limb of Section 4(8) of the Constitution in Attorney-General of Bendel State v. Attorney-General of the Federation & 22 Ors. (1982) 3 N.C.L.R. 1 at p.4D wherein Fatai-Williams, CJ.N as he was then, said:

"By virtue of the provisions of section 4(8) of the Constitution, the courts of law in Nigeria have the power, and indeed, the duty to see to it that there is no infraction of the exercise of legislative power, whether substantive or procedural, as laid down in the relevant provisions of the Constitution. If there is any such infraction, the courts will declare any legislation passed pursuant to it unconstitutional and invalid."

I may, for the purpose of emphasis, reiterate the opinion I expressed in that case to the effect that the courts ought not to entertain and must not entertain their jurisdiction under Section 4(8) over the conduct of the internal proceedings of the National Assembly unless the Constitution

makes provisions to that effect. I said at p.46:

I would endorse the general principle of constitutional law that one of the consequences of the separation of powers, which we adopted in our Constitution, is that the court would respect the independence of the legislature in the exercise of its legislative powers and would refrain from pronouncing or determining the validity of the internal proceedings of the legislature or the mode of exercising its legislative powers.

‘However, if the Constitution makes provisions as to how the legislature should conduct its internal affairs or as to the mode of exercising its legislative powers, then the court is in duty bound to exercise its jurisdiction to ensure that the legislature comply with the constitutional requirements.’

“The concurring opinions of their Lordships, restated and relied on by the trial court in its judgment and by the respondents in their respective briefs must be read and understood in the light and context of the fact that it was an Act of the National Assembly that was the subject of the dispute and not a bill that had not become law and therefore of no legal consequence and that the issue in that case was whether the court can review how the Act was made.

“In the lead judgment rendered by Fatayi-Williams, CJN, he stated thus-

*While on this point, it is pertinent to state that the exercise of legislative powers by the National Assembly referred to in section 4(8) above, is not only part of the legislative process of the two Houses, it is also related to the mode of exercising Federal Legislative Power clearly set out in sections 54, 55 and 58 of the Constitution to which I have referred earlier. Having regard to those provisions, it is my view that the legislative process when a Bill is introduced and first read in any of the two Houses of the National Assembly and ends when that Bill has passed into law/ by those Houses and assented to by the President of the Federal Republic of Nigeria. See *Bribery Commissioner v. Ranasinghe* (1965) AC 172 FPCI at pp. 193, 195 and 197 and *Gallant v. The King* (1949) 2 DLR 425 at p. 428. The exercise of Legislative powers by the National Assembly, being part of the legislative process, starts when a Bill is first introduced in any of the two Houses constituting that august body and ends at the moment before it is assented to by the President. Since*

the exercise of such powers 'shall be subject to the jurisdiction of Courts of law and judicial tribunals established by law', I am clearly of the view, and I do so hold that this court has the jurisdiction to hear the plaintiff's claims.'

'Further, at page 119, Nnamani JSC, enthused thus:

'Section 4(8) of our Constitution gives the court power to inquire into the exercise of legislative power and to take appropriate action if legislation has not been passed in accordance with the provisions of the Constitution; any law which seeks to preclude this inquiry is contrary to the provisions of the Constitution and must therefore be null and void. Section 1(3) of the Constitution specifically provides that: 'if any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail and that other law shall, to the extent of the inconsistency, be void.' It is in this context that one must examine the Acts Authentication Act, No. 50 of 1961 which was cited to us...'

"At page 135 of the same report, Uwais, JSC (as he then was) had this to say:

*'If the court can take judicial notice of the proceedings of the legislature, then what stops it from using the proceedings to decide in accordance with section 4(8) 1979 Constitution, whether the exercise of legislative power by the National Assembly is *ultra vires*? The Acts Authentication Act 1961 seems to imply that the certificate of the Clerk of National Assembly, once signed by him or published in the gazette, puts a stop to the power of the court to make use of the proceedings of the National Assembly to determine the validity impugned...The exercise of legislative power by the National Assembly is attained through the proceedings in the House of the National Assembly. The 1979 Constitution has made provisions, under section 52, 54, 55, 56, 57, 59 and 60 thereof, pertaining to the procedure to be followed by the House. If the propriety of the exercise of the legislative power through such procedure is challenged, as is in fact the case here, how can the court deal with the situation if it is not allowed to go behind the enrolled act or the certificate of the Clerk of the National Assembly?*



'It would appear that in such an event, the provisions of the Acts Authentication Act, 1961, which tend to render ineffective the provisions of the Evidence Act, will also infringe on the jurisdiction of the courts to supervise the exercise of legislative power by the National Assembly. Such provisions of the 1961 Act are clearly inconsistent with the 1979 Constitution and, as was submitted by Mr. Ajayi, void by virtue of section 1(3) of the Constitution...'

"On his own part, Eso, JSC stated thus-

'The Legislature is however not singled out among the three functionaries for this type of delimitation on its "sovereignty." The delimitation which is in the nature of checks and balances is provided for under the Constitution as regards all the three functionaries. In regard to the presidency, S.5 of the Constitution, which vests executive powers of the Federation in the President, makes the exercise thereof, "subject to the provisions of the Constitution" and this, in effect, entails the exercise of the executive powers of the President to be subject to Section 6(6) of the Constitution. S.6 (6) (b) thereof extends the judicial power to matters between government or authority and any person in Nigeria.

'The pertinent question in regards to the legislature is what are those legislative powers, the exercise of which is subject to

the jurisdiction of the court or to ask in another form, where do the legislative powers begins or commences when a Bill is introduced in either House of the National Assembly and end when the Bill is submitted to the President for his assent. I hold the view that what the President does in assenting to a Bill is performing executive powers within a legislative process.'

"Once a bill has become enacted as law, the judicial review jurisdiction of the courts of law under S.4 (8) of the Constitution to review whether it was made in accordance with the Constitution comes alive. The fact that it has become law cannot prevent the exercise of that jurisdiction. That is the substance of the concurring opinions of their Lordships of the Supreme Court ^ restated and reproduced above...

"The settled position of the law is that in the interpretation of the Constitution or a Statute the duty of the Court or Tribunal is to consider the Constitution or the Statute as a whole and that where the words used in the Constitution or a Law is clear and unambiguous they should be construed or interpreted literally in order to bring out succinctly the intendment of the Constitution or Statute and the intention of the Lawmakers. Extraneous matters must not be brought to bear on the words of the law being interpreted...

"It is thus beyond argument that a Bill does not become a law or Act of National Assembly until it is assented to by the President after it has been duly passed by both the Senate and House of Representatives in accordance with Sections 58(1)(2)(3) and (4) of the aforesaid Constitution.

"It is also certain that a Bill will not crystalize into Law or an Act of the National Assembly if the President of the Federal Republic of Nigeria withholds his assent pursuant to Section 58(4) of the 1999 Constitution...

"The lower Court was under the impression or mistaken belief that the Electoral Act (Amendment) Bill 2018 particularly Section 25 thereof as proposed had been passed into Law or an Act of the National Assembly. A Court has no jurisdiction to declare a Bill still undergoing legislative process or rites of passage into law null and void because it is not yet a law. A bill is incapable of being tagged as contravening Section 1(3) of 1999 Constitution as amended for reason that it is not yet a law or an Act of National Assembly. The validity of a law or an Act of National Assembly can only be questioned in a Court of law on the ground that it violates Section 1(3) of the 1999 Constitution

or any other Section of 1999 Constitution for that matter. The onus will then be on the challenger to establish or prove that the impugned law or Act was enacted by the National Assembly in breach of the provision(s) of the Constitution and not otherwise. The Courts in this Country, and this is as laid down by the apex Court in the land will not indulge in the habit of restraining the legislative powers or functions of National Assembly from passing a bill into law or Act otherwise the Court may be unwittingly undermining the doctrine of separation of powers as entrenched in the Constitution of the Federal Republic of Nigeria 1999 as amended. See Attorney General of Abia State & Ors v. Attorney- General of the Federation (2006) IS NWLR (PART 1005) 265 AT 388 C - D per Niki-Tobi, JSC.

"It must however be said loud and clear that the Courts in this Country have the jurisdiction and the powers to strike down any law or Act of National Assembly or any Section of any such Act or Law where it is shown or proved to have transgressed any Section of the Constitution...

"The rights of 1st Respondent to sue or complain about the Electoral Act (Amendment) Bill 2018 have not crystalized. The initiation or commencement of this suit as precipitated by the 1st Respondent is premature. It is an action designed to obstruct the legitimate powers of the National Assembly to make laws or pass a bill into law or Act. The action is not justiciable and it discloses no reasonable cause of action. The 1st Respondent's action is capable of undermining the doctrine of Separation of Powers contained in Sections 4, 5 and 6 of the 1999 Constitution. It has to be nipped in the bud. It smacks of an abuse of court process...

"I am of the firm view that the legislative function of the Appellant over a Bill is completed only upon assent to it by the President vide Section 58(4) of the Constitution. The Bill will not transform into a law unless it is assented to by the President. It must be noted that Section 58(4) of the Constitution gives the President the option to assent to the Bill as passed or to withhold his assent. In either case, the Bill becomes an Act where assented to, and it remains a Bill, where assent is withheld by the President, the Bill will be sent back to the National Assembly which would have the opportunity to override the President's withholding of his assent, under Section 58(5) of the Constitution to pass the Bill into Law. Where the National Assembly decides not to exercise the option of still passing the Bill into Law then the Bill remains a mere document.

That is the essence of Section 58(5) which states that:

'where President withholds his assent and the Bill is again passed by each House by two-thirds majority, the bill shall become Law and the assent of the President shall not be required.'

'The document exhibit 1 annexed or exhibited to the Plaintiff's Affidavit in Support of his Originating Summons remains a Bill and it is inchoate as it has not become law. It is therefore my finding or decision that at the time the 1st Respondent, the Plaintiff in the lower Court commenced this action, the National Assembly had not concluded its legislative duty as the passage of the Electoral (Amendment) Bill 2018 is concerned.

'The Legislative power of the country is vested in the National Assembly by S. 4(1) of the 1999 Constitution and the legislative power of a State is vested on the House of Assembly by S.4(6) of the 1999 Constitution. The Constitution did not provide that the Courts shall share this power with the legislature. S4(8) by giving the Court the power of judicial review of the exercise of legislative power by the legislature did not intend that this judicial review jurisdiction should be exercised at the embryonic stage of the law making process before the process becomes law. To allow this would result in the courts dictating the course of the legislative process and the legislative decisions to the legislature.

'This will erode the freedom, independence and sovereignty of the legislature and violate the principle of separation of power entrenched by Ss.4, 5 and 6 of the 1999 Constitution. The danger posed by this kind of situation is obvious. The primary duty of the legislature, which is to legislate, would be bogged down and frustrated by pre-emptive litigations with the result that the making of most laws would have to await the determination of the litigations challenging the process of making those laws. This can disable the legislative arm of government; endanger the rule of law and the governance of the country. In A.G Bendel State v. House of Assembly, Bendel State. Suit No. B/166/82 of 9/7/82, it was held that the Bendel State High Court was dearly in error in declaring as 'totally illegal' a bill under consideration by the State House of Assembly for the purpose of establishing local House and all its servants, agents or functionaries from taking further steps in the process of enacting the Bill...

“An exercise of legislative power by means of a bill that has not resulted or culminated in the existence of a law does not have the binding effect of a law and cannot have the legal effect of a law. Since it has no legal effect, it cannot create any rights or obligations and therefore cannot give rise to a cause of action or a justiciable cause. The courts deal with issues of legal consequences involving rights and obligations and not sterile issues that cannot be justiciable. I am satisfied and hold that the 1st respondent’s action at the trial court is not justiciable...”

“It is clear from the holding of the trial court...that it concluded that the 1st respondent had the locus standi to bring this suit before it because it was a registered political party that has been participating in election into various political offices in Nigeria... I fail to see how the facts that the 1st respondent is a registered political party which has been participating in elections to various political offices in Nigeria confer it the locus standi to sue in respect of the proposed S.25 of the Electoral (Amendment) Act 2018 Bill on the sequence of general elections.

“It did not show or even allege that the proposed sequence of elections would affect any of its right or interest as a political party. One of the main contentions in the suit is that the amendment sought to be introduced by the bill would erode or take away the power vested on the 3rd respondent (Independent National Electoral Commission, INEC) by item 15(a) of the Third Schedule to the 1999 Constitution to organise hold and supervise elections and by S.25 of the Electoral Act 2010 to appoint a date for an election and amounts to a violation of the principle of separation of powers.

“But the 3rd respondent did not file a suit to complain that its said power is eroded or taken away by the amendment. The 1st respondent is not an agent of the 3rd respondent and has not shown or even alleged that it sued on behalf of the 3rd respondent to complain on its behalf over the alleged planned erosion of 3rd respondent’s powers in the Electoral (Amendment) Act 2018 Bill.

“Since the 1st respondent did not show or even allege that its right or interest was affected or likely to be affected by the Electoral (Amendment) Act 2018 Bill, since the 1st respondent did not bring the suit for the determination of its rights and obligations, since the subject matter of the suit is non-justiciable and the trial court obviously lacks the jurisdiction to interfere with the law making process in the legislature before the process becomes law or lacks the power to determine how legislative power should be exercised before the law making process becomes law, then

clearly the suit is frivolous, aimed at preventing the amendment of S.25 of the Electoral (Amendment) Act and is therefore an abuse of court process as it was obviously not a genuine litigation and was not brought bona fide. See Abubakar v Bebeji Oil and Allied Products Ltd & Ors. (2007) LPELR - 55 (SC)..."

National Assembly .v. Accord & Ors.

Unreported: CA/A/485/2018

Pp. 23, 24, 28, 29, 31- 38, 42- 48, 51, 66, 67, 81

Leading judgment delivered by Bulkachuwa, PCA

Delivered: 1st August, 2018

Abuja Division

.....

On What Constitutes Violation of Right to Fair Hearing

"It seems to me that the core issue in this appeal is whether the Appellants were denied fair hearing by the trial court when it entered judgment against them. It is not in dispute, and in fact the law is well settled that where there are pending processes before a court, such as motions or other applications, such issues have to be disposed of with before a final decision is taken on the main action or appeal. In Irolo v. Uka (2002)14 NWLR (PT. 786) 195 at 2250, the apex court held as follows:

'It is the duty of a court, whether of first instance or appellate to consider all the issues that have been joined by parties and raised before it for determination. If the court failed to do so without a valid reason, then it has certainly failed in its duty; for in our judicial system, it is a fundamental principle of administration of justice that every court has a duty to hear, determine and resolve such questions.' ...

The grouse of the Appellants in the instant appeal is that the failure of the trial court to consider and rule on the Motion on Notice filed on the 27th of June 2016, which was fully argued by counsel on both sides on the 21st of June 2018, amounts to a gross violation of the Appellants' right to fair hearing. Let me say it right away that the right to fair hearing is a cardinal principle that is provided in section 36(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

It provides as follows:

‘(1) in the determination of 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 ensure its independence and impartiality.’

“...The effect of the observations above and from all the facts disclosed in the record of proceedings, it is quite apparent that the trial court did not consider and determine the Motion on Notice filed on the 27th of June 2016...

“The consequence of the above is that the trial court failed in its duty to dispense with all pending applications and /or processes before it, before reaching a final decision in a cause or matter. The failure of the trial court to do so, without a valid reason has amounted to a violation of the right of the Appellants to fair hearing... It is trite that the effect of breach of the rule of fair hearing is to render the decision liable to be set aside or declared invalid by the court.”

Independent National Electoral Commission (INEC) & Anor. v. Ejike & Anor.

Unreported: CA/A/659/2018, Pp.14, 15, and 17

Lead judgement: Aboki, JCA

Delivered: 11th October 2018

Appeal Court Abuja Division

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