

SUPREME COURT OF NIGERIA
14TH MAY, 1993. SC. 135/1991
CORAM:-M.L. UWAIS, S.M.A. BELGORE, A.B. WALI,
O. OLATAWURA, M.E. OGUNDARE, JJSC.

1. ALHAJI SULAIMAN MOHAMMED
2. SAMINU SALIU APPELLANTS
(For themselves and the entire the
members of ADO family)

AND

LASISI SANUSI OLAWUMI & 11 OTHERS (B)RESPONDENTS

CIVIL PROCEDURE - Application to court - where
dismissed on merit or struck out on
technicalities the difference thereof:

CIVIL PROCEDURE - Grant of application previously
refused-whether court's process is
abused

LEGAL PRACTITIONERS - Mistake on technicalities - whether
to debar litigants from justice

ESTOPPEL - Issue Estoppel - when not created
by Court's Order.

FACTS

This appeal revolves around procedural irregularities in the Lower Courts and the Appellants' failure to understand the ratio on courts' decisions in the matter. Respondents' motion to the Appeal that proceeded to the Supreme Court was struck out on some irregularities. Thereafter, Respondents filed another application before the Court of Appeal for the same prayers as were contained in the motion previously struck out. The Court of Appeal granted Respondents' prayer for leave to file an appeal against the High Court's decision in a contempt of court matter but refused their prayer for stay of proceedings in the High Court.

38 MOHAMMED V. OLAWUNMI (B) (1993) 5 KLR 37; (1993) 4 4
Appellants being dissatisfied brought this appeal before the Supreme Court. They contended that Respondents' various previous applications and appeals having failed, their present application should have been refused as an abuse of court's process being a re-litigation on the same subject matter and reliefs. All the Appellants' submission seem to be founded on their error that the earlier decisions of the Court were made on the merit of Respondents' application.

HELD (unanimously dismissing the Appeal)

1. The difference between an application dismissed after hearing on its merits and one struck out for non-compliance with court rules is that, where it is struck out the applicant is not barred from bringing another application. (p. 48)
2. The court's duty is to ensure that justice is not sacrificed at the altar of technicalities seeing that solicitors consulted by litigants in their search for justice make mistakes in technical matters. (p.48)
3. Where a matter has been fully argued and determined on its merits, re-litigating the issues already determined will be tantamount to an abuse of the process of court. (p. 49)
4. An order striking out an action or appeal for non-compliance with court rules cannot create an issue estoppel in a subsequent action. It follows that the successive applications made by the Respondents did not amount to an abuse of court's process. (p.49)
5. An appeal is initiated by filing notice of Appeal, and striking out of a Notice so filed does not mean a dismissal of the appeal. (p. 50)
6. A Supreme Court judgment that will be enforced by it or any court of subordinate jurisdiction must be one that declares or sees the rights of the parties. (p. 52)

7. The right of the parties as previously determined in a past Supreme Court judgment is not the matter on appeal to the Court of Appeal. Rather, the issue that is still pending, is whether the Respondents (i.e. Appellants in the pending appeal) are guilty of the contempt of court and whether they have been properly convicted and sentenced. (p. 53)

REPRESENTATION

M. A. Bashua with S.A. Bashua, K. O. Daudu & M.A. Bashua Jnr., for the Appellants.

H.A. Larnder SAN with Chief T.A. Oyegbola & Miss N.N. Uche, for the Respondents.

CASES REFERRED TO

1. Ibodo's case
2. Mobil Oil Ltd v. Agadaigho (1988) 2 NWLR (Pt 77) 394
3. Adigun v. A.G. Oyo State (1987) 2 NWLR (Pt 56) 197
4. Alhaji Mohammed & ors v. Lasisi Olawunmi & ors SC 42/89
5. Reichel v. Mograth (1881) 14 A. C. 665
6. Oloriode & ors v. Oyehi & ors (1984) NSCC 286/296, 297
7. Ugwajiofo & anor v. Onyekagbu (1964) 1 ALL NLR 124
8. Burgess v Boetefeur 13 L.J.M.C. 126
9. Ekpo v. The State (1972) 2 SC 26
10. Jephson v. Barker 3 T. L.R. 40
11. R V. Blaby (1894) 2 Q. B. 170
12. Re W. B. (An infant) (1969) 2 Ch 50 Eyo

STATUTES & RULES

1. 1979 Constitution ss. 251 (1), 277, 220 (1) (g) (i) (ii)
- 5 2. Supreme Court Rules Order 3 rule 4 (1) & (2)
3. Supreme Court Rules 1985, Order 8 rule 12 (1), (2) 16, 17
- 10 4. Court of Appeal Rules 1981, Order 3 Rule 2 (2)

LEAD JUDGMENT BY OLATAWURA JSC

15 On 15th February, 1993, after reading the record of appeal, and after listening to the oral submissions of Counsel on both sides in amplification of the briefs filed, I dismissed the appeal, I indicated I would give my reasons for the dismissal of the appeal, I now give my reasons.

20 The entire appeal revolves around procedural irregularity in the lower courts, Before this appeal there had been an earlier appeal numbered SC, 42/1989 in this Court. The appeal was between the same parties. There was an earlier judgment dated 8th July 1980 in
 25 appeal SC. 61/80. In that appeal i.e. SC. 61/80 the Supreme Court made some comments in respect of an appeal brought by the appellants in that case. The comments and remarks are plain and unambiguous. The ultimate result was that that appeal was struck out. The Supreme Court observed and ordered as follows:

30 *“On the whole, save for the fact that the notice of appeal against the order of 30th June 1986 is struck out, the appeal was allowed, the respondents require leave to appeal to the Court of Appeal. They have failed to obtain leave and therefore there is no appeal before the Court of Appeal. The order of the Court of Appeal is hereby set
 35 aside, and the notice of appeal is hereby struck out.”*

The lead judgment in SC. 61/80 was delivered by Eso J.S.C. It was a unanimous decision of the Court with which Obaseki, Belgore, Nnaemeka-Agu and Wali, JJ.S.C agreed.

A further step was taken by the Respondents in the Court of

Appeal in another matter CA/L341 M/88, but following the Objection raised by their counsel, the Court of Appeal Coram: Babalakin, Awogu and Kalgo, JJ.C.A. On 18th June 1990 sustained the objection. The Court relied on the decision of the Supreme Court in SC,61 /80 an the application in CA/L/341 M/88 was struck out. The Court⁵ of Appeal observed:

*“In so far as the motion had been decided upon as above, the motion bearing the same number suit No. CA/U341 M/88 is no longer in existence before the Court of Appeal. To that extent, objection of the Respondent is well taken and is upheld... The motion dated 10/4/90 is therefore struck there will be no order as to costs.”*¹⁰

It should be mentioned that the appeal in respect of the Appeal SC. 42/1989 delivered on 6th April 1990 was filed by Mr. Bashua.¹⁵ The objection raised in respect of Appeal CA/L/341 M/88 was also by Mr. Bashua.

The Respondents thereafter filed an application dated 27th April 1990 before the Court of Appeal and prayed for the following orders:²⁰

- (a) *an order granting them enlargement of time within which to apply for leave from the decision of the High Court of Iegos State made on 20th & 21st September 1988;*²⁵
- (b) *an order granting leave to the applicants to appeal to this Honourable Court from the said decision of the High Court against the said decision;*³⁰
- (c) *an order granting enlargement of time within which to appeal to this Honourable Court from the said decision of the High Court;*³⁵
- (d) *an order staying all further proceedings in this case in the High Court pending the hearing of this application;*

(e) *an order staying all further proceedings in this case in the High Court pending the hearing and determination of the appeal by this honourable Court.”*

5 There was a counters affidavit in support tracing the history of the earlier attempts made to obtain the leave of court to appeal. Paragraphs 15, 16, 17, 18, 19, 20, 21, 22, and 23 are not only instructive but illuminating, I therefore propose to set them hereunder:

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“15. That he has advised us, *ex abundanti cautela*, to file a fresh application for leave to appeal out of time against the orders of Hon. Justice Fernandez dated the 20th & 21st September 1988 and to
15 apply for stay of proceedings pending the determination of the said applications and, in the event the necessary extension of time and of leave to appeal being granted, a stay of all proceedings in the High Court provided the Notice of Appeal is filed within three days.

20 16. That I am advised by Mr. Lardner, SAN and I verily believe that the proposed grounds of appeal demonstrate a very strong case.

25 17. That Mr. Lardner informs me and I verily believe that among the other issues that he proposes to raise or that are already raised in the proposed grounds of appeal are:

1. Was the application against the applicants properly before
30 the Court, the application being quasi criminal and therefore proceedings *strictissimi juris*?

2. If no leave to apply for an order to enforce the judgment
35 against the applicants (who are not parties *nomine (sic)* in the case) was sought, was their conviction not invalid and a nullity in point of law?

3. In the face of the affidavits in support and the affidavit against, which the learned judge himself referred to in his Ruling, was the taking of evidence not absolutely necessary and obligatory in point of law to doing justice when nothing that the plaintiffs for committal swore to was admitted by the alleged contemnor (sic) and vice versa? 5

4. Ex facie from the Ruling “did the learned trial judge not equate privy in blood” to mean “blood relation” and was he not wrong in so treating the applicants having regard to the fact that the original judgment herein was against five individuals whom the plaintiff chose to sue and did sue in their personal capacity. 10

5. The learned Judge failed to observe that “Similar interest is not provity” and that to establish the relation of party and privy, not only must the two persons have a similar interest in the property to which the estopped (sic) related, but also the privy must derive title from the party subsequent to the judgment relied upon. 15

18. That we the alleged contemnors (sic) have never even dreamt of disobeying an order of any Court in the land. 20

19. That each of us, the 4th to 12th applicants (except the 8th) is living and has been living in his own or his father’s separate house and on the land and nobody has sued us in respect of our house or farms for upwards of at least 100 years and this is to the knowledge of the plaintiffs. 25

20. That I exhibit hereto and mark Exhibits B, C, D, the letters in respect of which the learned trial judge ordered some of us to write letters to withdraw. 30

21. That the bank (sic) the subject matter of this suit has been acquired by the Federal Government of Nigeria since 1972 before this action was brought and compensation of N9 million has been paid out by the Federal Government and out of this sum N4,5million has been paid to Mr. M. A. Bashua as “Counsel to Ado Family”. 35

22. That I am advised by our counsel and we verily believe public Lands Acquisition Act and the Land use Decree ample provision for the payment of farm crops, economic and houses on the land.

*23. That the effect of our being turned away from our house and
5 farms is to prevent us from pursuing our legitimate claim for compensation which the law permits us to claim and which is already before the Lands Tribunal presided over by Hon. Onalaja."*

10 Mr. Bashua for the respondents again filed a preliminary objection based on eight grounds. I need not go into them. addition the respondents filed a counter-affidavit and a counter-affidavit. In a well considered ruling dated 4th April 1991 the Court of Appeal Coram: Ademola, Awogu Kalgo, JJ.C granted the application. Kalgo,
15 J.C.A. in the lead ruling said:

*"This court has a discretion (which is to be exercised judicially and judiciously) to grant an application such as this. The applicant has in
20 my view fully complied with the requirements of order 3 rule 4 (1) and (2) of the Rules of this Court as laid down by supreme Court in the IBODO CASE (Supra) and the case of MOBIL OIL LTD. V.A GADAIGHO (1988) 2 N. W. L. R. (Part 77) at 394-395. Therefore, for the reasons stated above, and in the circumstances of this applica-
25 tion as explained earlier in this ruling, I am inclined to exercise my discretion in favour of the applicant in respect of leave to appeal.*

Accordingly I make the following orders:-

30 *(1) Time within which to apply for leave to appeal to this Court is hereby extended;*

*(2) Leave to appeal against the decision of Fernandez J. of the High Court of Lagos made on 20th and 21st September, 1988, is hereby
35 granted;*

(3) The applicants shall file their notice of appeal in this Court and the lower Court within 14 days from today;

(4) Stay of further proceedings in the High Court is hereby refused.

In sum, this application succeeds but I make no order as to costs”.

It is against this ruling that the Appellants have by their Notice dated 11th April 1991 appealed to this Court on 7 grounds of appeal. These grounds without the particulars are as follows:

“1. The learned justices of the Court of Appeal erred in law by reviewing their previous decisions in this suit delivered on the by another ruling on 4th April 1991.

2. The Court of Appeal erred in law in reviewing the Supreme Court decision in Suit No. SC. 42/89.

3. The learned Justices of the Court of Appeal erred in law in arriving at their decision of 4th April 1991 in breach of order 8 Rule 12(1) (20) and Order 8 Rule 16 of the Supreme Court Rules of 1985.

4. The learned Justices of the Court of Appeal erred in law in that, they failed to give effect to the provisions of Order 8 Rule 17 of the Supreme Court Rules 1985 and the provisions of Section 25(1) of the 1979 Constitution as amended by Decree 1 of 1984, by entertaining subsequent applications by the Respondents after the Supreme Court Judgment and Order of 6th April 1990 in SC/42/89 between the same parties and the same subject matter.

5. The learned Justices of the Court of Appeal erred in law in granting leave to the appellants when the purported notice of appeal attached to Motion in CA/L/122M/90 was not a proper Notice of Appeal within the contemplation of Order 3 Rule 2(2) of the Court of Appeal Rules 1981.

6. The Learned Justices of the Court of Appeal erred in law in holding that the successive applications of the Respondents on the same reliefs, same subject matter and in respect of the same *subject matter*

and in respect of the same appeal in suit 1213/76 does not constitute an abuse of the processes the Court.

7. *The learned Justices of the Court of Appeal erred in law in granting the Respondents application.*

Briefs were filed by both parties. The appellants in their brief raised five issues for determination. They are as follows:

- 10 “1. *Whether the Court of Appeal was right when it held that successive applications of the Respondents for the same reliefs, the same subject matter and in respect of the appeal against same Ruling of the High Court in respect of the same suit N.L 213/76 does not constitute an abuse of the processes of Court.*

2. *Whether or (not the learned Justices of the Court of Appeal have jurisdiction to review their previous decisions of 18th June 1990 contradiction to the principles of law laid down by the Supreme Court in*
20 ADIGUN VS. ATTORNEY GENERAL OF OYO STATE (1987) 2 NWLR PT56 at 197.

3. *Has the Court of Appeal jurisdiction to review the decision of the Supreme Court in SC. 42/89 ALHAJ I. S. MOHAMMED & ORS. VS.*
25 LASISI SANUSI OLAWUNMI & ORS. the subject matter of his appeal.

4. *Whether the Court of Appeal was right when it failed to give effect to ‘the provisions of Order 8 Rule 17 of the Supreme Court Rules 1985 and Section 251 (1) of the 1979 Constitution by entertaining subsequent proceedings by the Respondents after Order of the Supreme Court in SC.42/89.*

5. *Did the Court of Appeal act judicially and judiciously in the exercise of its discretion to grant the application particularly hen it failed to Observe that the purported Notice of Appeal attached to Motion in CA/L/122M/90 offends Order 3 Rule 2(2) of the Court of Appeal Rules 1981”.*

The one issue raised by the respondents is:

“Did the Court of Appeal act judicially and judiciously in granting the application of Respondents dated 27/4/1990”.

What led to this storm in a tea Cup is the order made by ⁵ Fernandez, J. On 21st September 1988. The order is as follows:

1. That the respondents, their agents move away from the land of Ado family as shown in Exhibit “1” (i.e. the Plan). 10

2. The respondents are hereby ordered to withdraw the letters, Exhibits 7 8 and 9 attached to the affidavit in support dated 20th June, 1986.

3. That the respondents do produce in court copies of letters of withdrawal of the said Exhibits 7, 8 and 9 attached to the said affidavit, and also to confirm to the recipient of these letters that they have no authority to do what they did in accordance with the supreme Court order as afore-said. 15 20

In default of this purge within the time stipulated I will pronounce my sentence in accordance with the law taking into consideration the gravity of the offence. 25

In the meantime, the 1st to 12th Respondents are to be on bail in the sum of N1,000.00 (One hundred thousand naira) and one surety in like sum. Each surety is to undertake to produce the respondents bailed by 9a.m on the 3rd October, 1988.

The Chief Registrar shall have power to approve the sureties. A surety can take two of the accused persons on bail.” 30
The learned trial judge having found them guilty of contempt of court, convicted them and deferred sentence.

In his oral submission, Mr. Bashua, the learned counsel referred to certain passages in the judgments of Eso and Wali, JJ.S.C. ³⁵ and submitted that there was nothing to appeal against and furthermore that the Court below did not say there was no abuse of the Court. He finally urged that the appeal be allowed.

In reply Mr. Lardner, S.A.N., the learned counsel for the respondents submitted that there was no previous binding order forbidding the respondents from filing fresh application. He further submitted that the lower Court was right in entertaining a fresh application.

5 This appeal raises, as I said earlier, issue of procedure. Mr. Bashua had referred to earlier applications made by the respondents and which were substantially struck out on the ground that no leave was obtained before the appeal was filed. There appears to be a
10 confusion in the analysis of Mr. Bashua in respect of the previous judgments and rulings. In the appellants’ brief, learned counsel said:

“The issue raised here was raised in CA/L/34M/88, it is the issue of leave to appeal against the same Ruling of the High Court. It is sub-
15 mitted that the Respondents Cannot re-open the issues again by another suit number. See REICHEL V. MAGRATH (1881) 14 A.C. 665 at 668”

To emphasise the same point, Mr. Bashua went on to submit:
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*“It is further submitted that the filing of these successive applications on the same issue that have been decided, amount to abuse of legal procedure or improper use of legal process. The applications have
25 not been brought in good faith. They were made. “to obtain a result not lawfully warranted” in view of the earlier ruling and judgments on the issue.”*

Mr. Bashua has made one fundamental error and that is that the
30 earlier decisions of the Court were made on the merit of the application. I cannot see anywhere in all the judgments relied upon by Mr. Bashua, that the applications were refused because they lacked merit. In other words there is a difference between an application dismissed on being heard on its merits and an application struck out for want of
35 compliance with the rules of Court. We come across this daily in court. Where an application is struck out, the applicant is not barred from bringing another application. Litigants consult ‘solicitors in their search for justice, Counsel make mistakes in their approach to solutions of technical matters, but the court must ensure that justice is not sacri-

ficed at the altar of technicalities. We now know and fully appreciate that litigants should not be penalised for the mistake of counsel. It is for this reason that a Court must draw a line between an application heard and dismissed on its merits and an application struck out for non-compliance with the rules. In the case of the former, an appeal is the solution so as to correct the error made by the Court, but in the
5 id the latter the litigant is still in order to bring another application. A litigant should not be denied a further access to Court on the ground that an earlier application was struck out. He can, if he is willing, file another application. However where a matter has been fully argued
10 and determined on its merits, it will amount to an abuse of the process of Court to relitigate the same issues already determined. It is worth repeating that there is no where in the earlier judgments of this Court and the Court of Appeal where there is a specific order forbidding the respondents from bringing another application. Preliminary
15 objections are sometimes raised where a party fails to comply with rules of Court. The order made following the objections varies with the nature of the order sought. Let us take a common example; where a writ has been find and a statement of claim discloses no
20 reasonable cause of action or that the Court has no jurisdiction will lead to the striking out of the action and not a dismissal of the action: OLORIODE & ORS V. OYEBI & ORS. (1984) NSCC 286/296; 297. There is nothing in law preventing the plaintiff in an action of that
25 nature from filing or instituting another action before the Court that has jurisdiction. An order striking out an action or appeal for non-compliance with the rules of Court cannot create an issue estoppel in a subsequent action. In UGWAJIOFO & ANOR. V. ONYEKAGBU
(1964) 1 All N.L. R. 124, this Court held that an order refusing an
30 application for extension of time within which to appeal is not a decision on the merits and does not prevent further application being made on the same issue. I will therefore hold that the successive applications made by the respondents did not and could not have amounted to an abuse of the process of Court.

With regard to issues 2 and 3, these can conveniently be taken
35 together, what the Court of Appeal did as a result of the ruling of 18th June 1990 was to strike out the application in CA/L/341M/88 because of the earlier appeal decided by the Supreme Court where the Supreme Court said failure of the appellants in that case to ob

tain leave was fatal to the application and that “there is no appeal before the Court of Appeal”. It was for that reason that the Supreme Court set aside the order of the Court of Appeal and the Notice of Appeal filed by the appellants in the Court of Appeal was struck out.

5 An appeal is initiated by the filing of Notice of Appeal, and once the Notice of Appeal is struck out, it does not mean a dismissal of the appeal. It was also for that reason a subsequent application was brought on 27th April 1990 praying for the orders already set out above. Babalakin, J.C.A. (as he then was) made it clear in the ruling
10 of the Court when the learned Justice observed as follows:

*“As Contended by Mr. Lardner, SAN one may say that the striking out of the Notice of Appeal is not the end of the matter but one can
15 safely say that is the end of the application bearing the No, CA/L/341M/88 as nailed in the ruling of the Supreme Court where it was held as follows:*

*“Having failed to obtain leave and therefore there is no appeal before the Court of Appeal. The order of the Court of Appeal is) hereby
20 set aside and the Notice of Appeal filed is hereby struck out”.*

*In so far as the motion had been decided upon as above, the motion bearing the same suit No. CA/U341 M/88 is no longer in existence
25 before the Court of Appeal. To that extent, Objection of the Respondents is well taken and is upheld.*

*If the Supreme Court had not taken the decision that that Notice of
30 Appeal bearing that No. CA/U341M/88 be struck out it may have been a different matter.*

The Objection is sustained.

The motion dated 10/4/90 is therefore struck out.

35 This cannot amount to a review of their previous decision. The submission of learned Counsel for the Appellants “that the ruling of the same Court of Appeal dated 4th April 1991, reversing the ruling of 18th June 1990 amounted to a review of its earlier decision” is erro

neous. It is also a misconception on the part of learned counsel for the Appellants that the Court of Appeal reviewed the decision of the Supreme Court in SC.24/89: ALHAJI S. MOHAMMED & ORS. V. SANUSI OLAWUNMI & ORS. The issues in SC.42/89 follows:

"Is the order made by Fernandez, J. on 21st September, 1988 to wit- 5

a finding of guilty of contempt against the respondent followed by an order to suspend sentence until the respondents were able to purge themselves of Contempt by

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(a) moving away from the land

(b) withdraw letters Exhibits 7,8, and 9; and

(c) production in Court of copies of such letters of withdrawal.....

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a final or interlocutory order, if it is final, then the respondents could appeal against it as of right but if interlocutory, they would require leave to appeal.

2. How does the application of section 220 (1) (g) (i) and (ii) of the 1979 Constitution affect right of respondents to appeal as of Right with leave. 20

3. With regard to the order of the Court made on 30th June, 1988 and the subsequent order of 13th September should the appeal against the first order be struck out." 25

At the day the Supreme Court came to the unanimous decision that the respondents in that appeal having failed to obtain leave there was no appeal before the Court of Appeal. The ratio decidendi is that once the appeal is interlocutory leave to appeal is necessary. I have again had a close look at the orders made in respect of the application before the lower court there is reasonable clarity in the orders made. I cannot read into any of the orders that the application struck out will be a bar to a subsequent application. I do not see and it has not been shown in what manner the lower Court reviewed the decision of this Court. Issue four deals with the failure of the Court of Appeal to give effect to the

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52 Muhammed v. Olawunmi (B) (1993) 5 KLR Olatawura JSC
provisions of order 8 rule 17 of the Supreme Court Rules 1985 and
section 25(1) of the 1979 Constitution. To show how irrelevant the
rule cited and the section of the Constitution relied upon are to the
appeal. I now set them down. Order 8 rule 17 of the Supreme Court
Rules Provides:

5 *“Any judgment given by the Court may be enforced by the Court or
by the court below or any other Court which has been siesed of the
matter, as the Court may direct”.*

10 ‘the Court’ here means the Supreme Court. Section 251(1) of the
1979 Constitution reads:

*“The decisions of the Supreme Court shall be enforced in any part of
the Federation by all authorities and persons, and by Courts with
15 subordinate jurisdiction to that of the Supreme Court.”*

According to the Appellants’ brief, the Court of Appeal “refused to
enforce the decisions of the Supreme Court given on the 6th April
20 1990.....” The decision of this Court in SC.42/1989 given on
6th April 1990 reads:

*“On the whole, save for the fact that the notice of appeal
against the order of 30th June 1986 is struck out, the appeal is al-
lowed, the Respondents require leave to appeal to the Court of Ap-
25 peal. They have failed to obtain leave and therefore there is no ap-
peal before the Court of Appeal. The Order of the Court of Appeal is
hereby set aside and the notice of appeal filed is hereby struck out”.*

One may ask: Did the Court of Appeal say there was an appeal be-
fore leave was granted as a result of the prayers? The answer is No. 1
30 have earlier on in this judgment explained the right of an appellant
whose Notice of Appeal was struck out and an appellant whose ap-
peal was dismissed. The failure of the appellants’ counsel to appreci-
ate and understand the ratios in the appeals has led to the confusion
35 on his part. A judgment of this Court which is to be enforced by the
Court or any Court of subordinate jurisdiction must be a judgment
that declares or settles the rights of the parties. Where an appeal has
been struck out, it may mean that the appeal was defective in form
or that there has been an infringement of the rules of court.

What is still on Appeal to the Court of Appeal is not the rights of the parties as to ownership of the land acquired but whether the appellants are guilty of the contempt of court and whether they have been properly convicted and sentenced. This is still pending in the lower court. 5

It would appear that the fifth issue has been abandoned as there was nothing said about it in the appellant's brief.

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These are the reason why I dismissed the appeal with costs assessed at N1,000.00 in favour of the respondents.

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UWAIS JSC

This appeal was dismissed on the 15th day of February, 1993 with N1,000.00 costs to the Respondents. I reserved the giving of my reasons for the dismissal to today. I now give the reasons. 20

I have had the opportunity of reading in draft the reasons for judgment read by my learned brother Olatawura, J.S.C. I agree with the reasons. I only wish to add the following. 25

In arguing issue no.1, in the appellants' brief of argument, learned counsel for the Appellants stated both in the brief and orally that the filing of successive applications by the Respondents amounted to an abuse of the process of the Court, Learned counsel then referred to an excerpt in the concurring judgment of my learned brother Nnaemeka-Agu, JSC in a sister case of Mohammed V. Olawunmi SC.42/1989, which has been reported in (1990)2 N.W.L.R. (Part 133/458 at P. 482 E-F, to submit that the Respondents could not appeal at the stage they did because no sentence was passed by 30 35

Fernandez J. on them after finding them guilty of contempt. The excerpt relied upon by counsel reads thus-

“On my view of the meaning of conviction above, that is, that it includes both a finding of guilt and a sentence, it follows that there
 5 was yet no conviction or sentence that could be appealed against. However, the excerpt is better understood in its full context which reads as follows –

10 “I shall now consider the other issues raised by the appeal against the stay of further proceedings and of execution of the contempt proceedings. A very important question is whether there was yet any conviction in the case, as the learned trial judge merely and that the respondents were in contempt of court by their disobedience of the
 15 order of injunction granted by this Court and postponed sentence to 14 days hence, if certain conditions were not fulfilled. The respondents, save the 8th who fulfilled the conditions and was cautioned and discharged, all appealed before the 14 days elapsed.

20 Part of the problems in this appeal appears to be that it does not seem to have been realized how equivocal the term “Conviction” is and how relevant that equivocation is in this case, In Ordinary parlance, to convict means simply to find guilty. But in law, a person is
 25 “Convicted” when he has been found guilty and sentenced for an offence; Burgess V. Boetefeur, 13 L.J.M. C. 126; and “Sentence” includes ordering the person found guilty to be bound over to enter into recognizance to be of good behaviour or to come for judgment if called upon Jephson V. Barker, 3 T.L.R. 40; R. V. Blaby (1894) 2
 30 Q. B. 170 But where, as in this case, a person has’ been found to be in contempt but the court retains its discretion as to whether: or not a committal should be ordered and carried out until the expiration of a fixed period, the court can when the day arrives, pass a reasonable sentence, or may pass none at all; see - Re W. (B) (An Infant) (1969)
 35 1 Ch.50

Respondents argue that the word “decision” is widely defined in section 277 of the Constitution; that every such decision is appealable under section 220; and so, they had a right to appeal against the

decision of the 21st of September, 1988 whereby they were pronounced guilty of contempt of court. Now, "decision" is defined in section 277 of the Constitution as meaning –

".....in relation to a court, any determination of that court and includes judgment, decree, order, conviction sentence or recommendation."

Two aspects of this definition appear to me to run counter to the argument of the respondents. First as the section says it is- relevantly - a conviction or a sentence that is an appealable decision. On my view of the meaning of conviction above, that is, that it includes both a finding of guilty and a sentence it follows that there was yet no conviction or a sentence that could be appealed against. Secondary, as the section says before a decision could be appealable, it must amount to a determination. In this case there was yet no determination. In the case of Eyo Ekpo v. The State (1972)2 S.C.26, where a Judge found the appellant guilty of murder but (I) pass sentence as required by law, this Court, before dismissing the appeal, directed that the matter be brought to the attention of the learned trial judge with a view to his passing appropriate sentence. The Court took the view that although there was a finding of guilty the conviction was not yet complete according to law. My clear view is that it is not the intendment of the definition that every decision in the progress of a criminal trial that could be appealed against. It is not intended, for an example, that if a judge decides that a particular piece of evidence was admissible, the person aggrieved by the ruling may halt the proceedings and appeal against the ruling. It is only when there is determination resulting in a conviction (or not) that he can appeal against the conviction and/or sentence. It follows from this state of the law, that at the time when, on the 21st of September, 1988, the learned trial judge found that the appellants were in contempt but retained their sentence for 14 days and made its being passed subject to their non-fulfillment of certain conditions, the proceedings were not yet completed. There was yet no determination. It was yet open to him to discharge them, if the conditions were fulfilled. Indeed the 8th defendant fulfilled the conditions and was cautioned and discharged. Hence the conviction yet inchoate - in the making - on September, 21, 1988."

What follows from this quotation is that the Respondents who had been found guilty of contempt could not appeal until the trial judge passed sentence on them. With the greatest respect, I am of the opinion that that decision was given *per incuriam* because the definition of the word “decision” in section 277 of the Constitution of the Federal Republic of Nigeria, 1979 is synonymous with either conviction or sentence or both conviction and sentence. The definition of “decision” therein is as follows –

“decision” means, in relation to a court, any determination of that 10 court and includes judgment, decree, order, conviction, sentence or recommendation.”

It can be seen from the definition that conviction as well as sentence are separately equated with “judgment” and “order”. Therefore, the definition of the word “conviction” as given in the English case of Burgess v. Boetefeur (supra) is not in consonance with the provisions of our Constitution.

A careful study of the provisions of section 220 of the Constitution of the Federal Republic of Nigeria, 1979 will show that the rights of appeal from High Court to the Court of Appeal hinge on decisions of the former. Since “decision” embraces conviction as well as sentence, then, it follows that there can be an appeal against either conviction or sentence and in the context of the Constitution a conviction does not imply a conviction and sentence. Therefore, the submission of learned counsel to the Appellants that the Respondents had no right of appeal to the Court of Appeal since no sentence was passed on them by Fernandez J. was erroneous and misleading.

It is for these and the reasons given by my learned brother Olatawura, J.S.C. that I dismiss the appeal.

BELGORE JSC

I discussed and read in advance the judgment of my learned brother, Olatawura, J.S.C. I agree with his reasoning and conclusion that this appeal be dismissed. Once a court of competent jurisdiction makes a finding of guilt in a criminal or quasi-criminal matter, a conviction has been made irrespective of deferment of sentence consequent upon it. The sentence whether of imprisonment or payment

of fine or binding over flows after conviction which is the finding on the evidence. Sentence emanates from the judge's discretion after finding of guilt. To hold that there is no conviction simply because a finding of guilt alone was returned and sentence was deferred has no backing in our statutes.

For the fuller reasons in the judgment of Olatawura, J.S.C,⁵ and the foregoing reasons, I also dismiss this appeal.

WALI JSC

I have been privileged to read before now the lead Reasons for judgment of my learned brother, Olatawura, J.S.C. and which has just been delivered. I entirely agree with it, and adopt the same as mine. 10

It was for those same reasons contained in the lead Reasons for judgment that I also dismissed the appeal on 15th February 1993 with an award of N1,000.00 costs in favour of the respondents. 15

OGUNDARE JSC

When this appeal came before us on 15th February, 1993 and had been argued, I dismissed it summarily and indicated that I would give my reasons for the dismissal later, I now give my reasons. I have had a preview of the reasons given by the Lord Olatawura, JSC for the dismissal of the appeal. I agree entirely with the reasons given by him and I adopt them as mine. I have nothing more to add. 20 25

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