

**SUPREME COURT OF NIGERIA**

9TH JULY, 1993. SC.94/1989

**CORAM:- S. KAWU, S. M. A. BELGORE, O. OLATAWURA,  
I. L. KUTIGI, E. O. OGWUEGBU, JJSC**

ALHAJI YUSUF DAN

HAUSA & CO. LTD ..... APPELLANT

AND

PANATRADE LTD ..... RESPONDENT

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**CIVIL PROCEDURE** - Striking out of plaintiff's claim in its absence  
- proceeding with the defendant's counter claim - without issuing  
hearing notice to the Plaintiff - whether proper

**JURISDICTION** - Proceeding with hearing of counter claim - with-  
out giving hearing notice to Plaintiff who was absent whether court  
lacked jurisdiction

**MAXIMS** - Audi alteram partem (you must hear the other party) -  
when held to have been violated

**WORDS & PHRASES** - "May" - used in relation to giving hearing  
notice of counter claim to the plaintiff - under the High court Rules -  
whether mandatory or directory

**FACTS**

The Plaintiff/Respondent filed an action against the Appellant/  
Defendant and another before Sokoto State High Court for the sum  
of N155,681.47 being outstanding for the price of 5,000 tons of rice  
supplied to the Defendants. Appellant filed a counter-claim against  
the Respondent and the 2nd Defendant in the sum of N298,586.30.  
The case was adjourned, by the Respondent's counsel without its  
being in court, to the 14-5-84. On the said date, both the Respon-  
dent and its counsel were absent in court. Appellant then applied to  
strike out the Respondent's claim on that date and the court ad-  
journing ruling and possible continuation to a subsequent date.

The Respondent's claim was eventually struck out and the court  
proceeded with the counter-claim in the absence of the Respondent  
and gave judgment in favour of Appellant as per its counter-claim.

The Respondent's appeal to the court of Appeal was allowed while it declared the proceedings relating to the counter-claim null and void. Appellant has now appealed to the Supreme Court against the Court of Appeal's decision. The Supreme Court was called upon to determine the propriety of the trial Judge's hearing of Appellant's counter-claim without being satisfied that the Respondent had due notice thereof as provided by 0.24 r. 6 of the Sokoto High Court Rules.

***HELD*** (unanimously dismissing the appeal)

1. As the adjournment to the 14-5-84 was at the instance of the Respondent's counsel, it had notice of the hearing fixed for that date. So that the trial Judge would have been in order if he had struck out Respondent's claim on 14-5-84 and proceeded the same date to take evidence on the counter-claim even if followed with subsequent adjournments. (p. 114 L31)

2. The Respondent did not have notice of the hearing of the counter-claim seeing that the trial court adjourned the case for ruling and continuation if possible, to different dates. The learned trial Judge should have adjourned the counter-claim to another date and directed a hearing notice to issue to the Respondent. (p. 115 LI)

3. The rules of court provided that service of notice of hearing on the plaintiff must be duly proved because a counter-claim is regarded as an independent action for all practical purposes. There is therefore, no service of notice of the counter-claim on the Respondent. (p. 115 L8)

4. Failure to give the Respondent an opportunity to be heard was a fundamental breach of the rule of natural justice (*audi alteram partem*) a constitutional breach that renders that act subsequent to the breach a nullity. (p. 115 L15)

5. The service of notice on the Respondent towards enabling it to appear to defend the counter-claim is one of the conditions precedent before the court can have competence and jurisdiction. (p. 115L 26)

6. The word “may” used in 0.24 r. 6 of the Sokoto High Court Rules is obligatory. The court must satisfy itself about proof of service of hearing notice of the counter-claim. Otherwise, it cannot proceed to determine the counter-claim without proof of such service, since to do so will render the proceeding a nullity. (p. 115 L37)

7. The object of 0.24 r. 6 of the Sokoto State High Court Rules is to ensure that hearing of the counter-claim did not take place behind the plaintiff as in this case. (p. 116 LI 1)

### **REPRESENTATION**

Mr Ena Odjugo, for the Appellant

Mr. O Agbakoba, for the Respondent

### **CASES REFERRED TO**

1. Emaphil Ltd. v. Odoli (1967) 4 N.W.L.R. (pt. 67) 915
2. Williams v. North Collieries (1906) A.C. 136
3. Skenconsult v. Ukey (1981) 1 S.C. 8
4. Craig v. Kanssen (1943) 2 K.B 256
5. Madukolu v. Nkemdilim (1962) 1 All N.L.R. 587
6. A.G. Lagos State v. Dosunmu (1989) 3 NWLR 552
7. Okafor v. A.G. Anambra State (1991) 6 NWLR (pt. 200) 659
8. Adigun v. A.G. Oyo State (1987) 1 NWLR (pt. 53) 678

### **STATUTES AND RULES REFERRED TO:**

1. High Court (civil Procedure) Rules 1976 of Sokoto State, order 24 Rule 5(2) & 6, Order 5 Rule 2
2. Constitution of the Federal Republic of Nigeria 1979, 533 (1)

### **LEAD JUDGMENT BY OGWUEGBU JSC**

The plaintiff entered into a contract for the supply to the 1st defendant, 5,000 metric tons or 100,000 bags of American long grain par-boiled rice at N28.25 per bag. The 2nd defendant gave an undertaking to the plaintiff that the cargo of rice would be paid for by it as the cargo of rice is received. The 1st defendant is the agent of the 2nd defendant.

It was the contention of the plaintiff that it was a term of the contract that fluctuations in the exchange rate between the naira and

the dollar would be borne by the 1st defendant. The exchange rate of the dollar appreciated at the time of the delivery of the rice to the defendants. The plaintiff debited the defendant in the sum of N155,681.47. The plaintiff in paragraph 19 of its statements of claim averred as follows:-

1. Wherefore the plaintiff claims from the 1st defendant's (sic) jointly severally the sum of N455 being outstanding balance for the price of 5,000 tones of U.S.

No.2 Rice delivered to the 2nd defendant's warehouse vide the Order of the 1st defendant."

The 1st defendant filed its statement of defence and counter-claim. In paragraph 29 of its amended statement of defence and counter-claim, the 1st defendant claimed as follows:-

*"Whereupon the 1st defendant claims against the plaintiff and the 2nd defendant jointly and severally for the sum of N298,586.30k"*

*The plaintiff filed his defence to the counter-claim denying liability to the counter-claim.*

*At the close of pleadings, the learned trial judge fixed the case for definite hearing on 13th February, 1984. On this date parties were absent but were represented by their counsel. The learned counsel for the plaintiff applied for an adjournment. This application was granted and the case was adjourned to the 14th and 15th May, 1984 with costs against the plaintiff.*

*On 14th May, 1984, the plaintiff and his counsel were absent. The 1st defendant was present together with its counsel. The 2nd defendant who was absent was represented by counsel. The learned counsel representing the 1st defendant applied to the court to strike out the case under Order 24 Rule 5 (2) of the High Court (Civil Procedure) Rules 1976 of Sokoto State. Counsel for the 2nd defendant associated himself with the application.*

*After hearing the oral submissions of both counsel, the learned trial judge adjourned "for ruling and continuation if possible till 16/7/84 and 17/7/84."*

On 16/7/84, the learned trial Judge in his ruling struck out the plaintiff's case and proceeded with the counter-claim. The 1st defendant counter-claimant testified on this date and the case was adjourned to the next day being 17th July, 1984.

On that date, the plaintiff and the 2nd defendant were absent.

Counsel for the 2nd defendant was present. The 1st defendant and his counsel were present. He called three witnesses and the court adjourned to 6/8/84 for continuation of hearing.

For reasons stated in the record of proceedings, the 1st defendant's counterclaim was further adjourned to 6/8/84. On this  
5 date, the 4th and last witness for the 1st defendant testified and the 1st defendant's case closed. His counsel addressed the court and the case was adjourned to 17/9/84 for judgment.

Judgment was not delivered in the 1st defendant's counter-  
10 claim on 17/8/4. It was further adjourned till 24/10/84. It was further adjourned from 24/10/84 to 6/11/84.

Judgment was finally delivered on 6/11/84 against the plaintiff for N298,616.30 with N1,023.00 costs. Aggrieved by the decision of the Gusau High Court, the plaintiff (defendant in the counter-claim)  
15 appealed to the Court of Appeal, Kaduna Division.

The Court of Appeal allowed the appeal of the plaintiff and declared as null and void the proceedings relating to the counter-claim.

The 1st defendant has appealed to this court being dissatisfied  
20 with the decision of the Court of Appeal.

The 1st defendant counter-claim will as from now be referred to as the appellant and the plaintiff as the respondent.

The appellant filed a notice of appeal containing five grounds  
25 of appeal which are reproduced hereunder without their particulars:

"1. The learned Court of Appeal, Kaduna erred in law in failing to focus on the real issues for determination in the case.

2. The learned Court of Appeal erred in law in holding that in the circumstances of this case, it was MANDATORY for the High Court  
30 to serve the plaintiff appellant with a FRESH Notice of the hearing of the counter-claim.

3. The learned Court of Appeal had erred in law in holding that the trial High Court had no jurisdiction to try the case, that the trial was nullity.

35 4. The learned Court of Appeal erred in law and fact in holding that the counter-claim in this case, is a distinct and separate action.

5. The learned Justices of the Court of Appeal, Kaduna erred in holding that the respondent's fundamental right to fair hearing

guaranteed by the provisions of Section 33(1) of the 1979 Constitution was infringed in the circumstances of this case.

The following four issues are formulated by the appellant for determination in the appeal:

"1. Do the words "due notice thereof" as contained in Order 24 Rule 6 of the Sokoto State High Court (Civil Procedure) Rules mean" <sup>5</sup> due notice of the counter-claim itself, or "due notice of the hearing of the counter-claim"?"

2. Is it to true in all the circumstances of this case, that the respondent (the Plaintiff) had had notice of both the counter-claim 10 and the hearing date.

3. Are the issues of acquiescence, fair hearing and jurisdiction directly relevant to the determination of this case, in the facts and principles presented to the Court of Appeal?"

In the respondent's brief of argument filed on 30th July, 1992, the 15 respondent identified one issue for determination, that is:

*"The respondent respectfully submit that the broad issue for determination in this appeal is this: Was the Court of Appeal right to declare the judgment of the learned trial judge a nullity on the ground that the respondents had no notice of the trial of the Counter-Claim."* 20

I think that the broad issue formulated by the respondent covers all the issue identified in the appellant's brief of argument. I will adopt it and in the course of the judgment deal with the issues raised in the appellant's brief.

The appellant's counsel stated in his brief that at the close of plead- 25 ings, the case came up on 24/10/83 and on the application of the respondent's counsel, it was adjourned to 13/2/84 for "positive hearing". On the said date, the respondent's counsel applied for a further adjournment which was granted and the case fixed for hearing on 14th and 15th May, 1984. 30

He said that on the date fixed for hearing, that is, 14/5/84, the respondent and his counsel being absent without any excuse, the respondent's claim was struck out, the court proceeded with the counter-claim and delivered judgment on it.

Appellant's counsel further stated that the respondent appealed to 35 the Court of Appeal against the decision of the High Court mainly on the ground that it was not given a fresh hearing notice. He submitted that on a proper construction of Order 24, Rule 6 of the Sokoto High Court (Civil Procedure) Rules on which the Court of Appeal placed much reliance, the

issuance of a hearing notice of the counter-claim to the respondent is not mandatory because of the use of the word "may" in the sentence.

He said that the phrase "on due proof of service on the plaintiff" does not import the formal issue of a new or fresh hearing notice of the counter-claim on the respondent since he was in court on 13/2/84 and that  
5 due proof of service in the said order relates to the hearing of the appellant's counter-claim.

Counsel submitted that both claims were closely interwoven and are in respect of the same rice-supply contract. He cited the cases of Emaphil Ltd. v. Odoli (1987) 4 NWLR (Pt.67) 915 at 938 and Williams v. North's  
10 Collieries (1906) A.C. 136. He further argued that the case of Skenconsult v. Ukey (1981) 1 S.C. 6 and Craig v. Kanseen (1943) 2 K.B. 256 relied upon by the Court of Appeal related to those case where service of process is required by law.

We were urged to hold that the trial court had exercised its discretion  
15 judicially because, the respondent knew of the existence of the counter-claim. He had clear notice of the hearing of his claim and the counter-claim of 13/2/84 and offered no reasons for his absence or that of his counsel on the date fixed for hearing.

On fair hearing, counsel submitted that the Court of Appeal mis-  
20 conceived the principle in Skenconsult's case because the facts are not directly applicable to the facts of this case. We were urged to allow the appeal.

The learned counsel for the respondent submitted in his brief of argument that the true purport of Order 24, Rule 6 of Sokoto State High  
25 Court (Civil Procedure) Rules is that notwithstanding that a defendant to a counter-claim was in court at some point to press his original suit, if he does not appear at some future date and his action is struck out, a trial judge will not proceed to determine a counter-claim unless proof of service of the notice of the counter-claim is established. He said that the practical  
30 effect of the provision is to ensure that a counter-claiming party does not get judgment behind an absent defendant.

Counsel gave the various dates of adjournments up to 14/5/84 when the appellant applied that the action of the respondent be struck out because of the absence of the respondent and his counsel and ruling was  
35 reserved on the point. Ruling was delivered on 6/11/84 striking out the respondent's claim and the counter-claim remained thereafter.

He submitted that by Order 24 Rule 6, the learned trial Judge ought to have satisfied himself that due notice was given to the respondent of the counter-claim and proof of it established. He referred to Section 33 of the

1979 Constitution of the Federal Republic of Nigeria and adopted the judgment of this court in *Skenconsult v. Ukey* (1981) 1 S.C. 6 at 26. He said that Order 24, Rule 6 supra envisaged two possible procedures:

(a) to hear the counter-claim immediately upon striking out the plaintiff's claim and on due proof of service of the hearing notice on the plaintiff, or

(b) postpone the hearing and direct notice of such postponement to be given to the plaintiff."

He submitted that the learned trial judge proceeded to hear the counter claim under the first limb of Order 24, Rule 6 without satisfying himself that the respondent had been duly notified of the hearing thereof; that even though respondent's counsel attended court on 13/2/84 when hearing was fixed for 14/5/84 and he did not appear, he was nevertheless entitled to notice of hearing of the counter-claim because the matter stood over from 14/5/84 to 16/7/84.

He further submitted that if the court finds that service of hearing notice on a defendant to a counter-claim is a condition precedent to the hearing of the counter-claim, failure to follow this procedure is fatal to the competence and or jurisdiction of the trial court to hear the counter-claim. He cited and relied on the following cases:-*Madukolu v. Nkemdilim* (1962) 2 SCNLR 341 (1962) 1 All NLR 587 at 694; *Skenconcult Nigeria Ltd. v. Ukey* supra and *Attorney General, Lagos State v. Dosunmu* (1989) 3 NWLR (Pt.111) 552 at 566-567.

He concluded by submitting that every one has a fundamental right to a fair hearing and any proceeding that violates this principle is a nullity. The case of *Okoye & ors v. Nigerian Construction & Duccintures Co. Ltd. & ors.* (1991) 6 NWLR (Pt. 199) 501 at 539 and *Okafor & ors. v. Attorney-General, Anambra State* (1991) 6 NWLR (Pt.200) 659 at 678 -679 cited. We were urged to dismiss the appeal because of non-compliance with the rules of court which affected the fundamental right of the respondent to a fair hearing.

The main issue which has been canvassed from the court below is the propriety of hearing the appellant's counter-claim by the learned trial judge without being satisfied that the respondent had due notice of the hearing thereof.

Both parties relied on the construction each placed on Order 24, rule 6 of Sokoto State High Court (Civil Procedure) Rules, 1976.

In this case the learned trial Judge on 13/2/84 adjourned the case till Monday, 14/5/84 and Tuesday, 15/5/84 on the application of counsel for the respondent. It was on terms. Even though the parties were absent on



this 13th February, 1984, they were represented by counsel.

On 14/5/84 when the case came up in court, the respondent and his counsel were absent and there was no notice to the court as to the reason for their absence. The learned counsel for the appellant who was present applied to the court under Order 24 rule 5(2) of the Sokoto State High Court (Civil Procedure) Rules to strike out the action brought by the respondent.

After recording the addresses of counsel on the application, he adjourned to 16/7/84 for ruling. He accordingly struck out the respondent's claim on 16/7/84 and proceeded to hear the appellant's counter-claim from this date. Was the learned trial judge right in commencing to hear the counter-claim?

At this junction, I will consider Order 24, Rule 6 of the Sokoto State High Court (Civil Procedure) Rules which is central to the contentions of both parties.  
It provides:

*"Where the defendant to a case which has been struck out under rule 5(2) of this Order has a counter-claim, the court may, on due proof of service on the plaintiff of notice thereof, proceed to hear the counter-claim and give judgment on the evidence adduced by the defendant, or may postpone the hearing of the counter-claim and direct notice of such postponement to be given to the plaintiff."*

Rule 6 of Order 24 specifically says that where the original claim has been struck out under Rule 2 of Order 5, the court may, on the proof of service on the plaintiff of notice thereof, proceed to hear the counter-claim...  
(Italics is mine for emphasis only)

The notice whose due service is to be proved is notice of the hearing of the counter-claim. It is only when the original action is struck out, stayed, dismissed or discontinued that defendant who is counter-claiming as in this case may be allowed to proceed to prove his counter-claim as provided in Order 24 Rule 6 (supra). In this case, the respondent had notice of the hearing of 14/5/84. The adjournment to that date was at the instance of its counsel. It was on this date that counsel for the appellant applied to the court to strike out the respondent's action for its absence and that of its counsel from court without excuse. If the learned trial Judge had struck out the respondent's claim on 14/5/84 and proceeded the same day to take evidence on the counter-claim, he would have been perfectly in order even if he did not conclude the counter-claim on that day and it suffered adjournments.

Having adjourned the case "for ruling and continuation if possible till 16/7/84 and 17/7/84 "to use his exact words, the respondent did not have notice of the hearing of the counter -claim on 16/7/84 or any other day the case was adjourned. The learned trial judge should have adjourned the counter-claim to another date and directed a hearing notice to issue to the respondent. But for the counter-claim there would have been no need 5 to direct notice of the adjournment to the respondent.

Because a counter-claim is regarded as an independent action for all practical purposes, the rules provide that service of notice of hearing on the plaintiff must be duly proved. There was therefore, no service of notice of the counter-claim on the respondent. He had no notice of the hearing 10 when the learned trial judge proceeded to hear the counter-claim on 16/7/84 and subsequently delivered judgment against the respondent.

The appellant ought to have been given an opportunity to be heard. It was, a fundamental breach of the rule of natural justice, namely, the audi alteram partem rule-a right to a fair hearing which is equally enshrined 15 in Section 33(1) in the Constitution of the Federal Republic of Nigeria, 1979. It provides:

*"In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court 20 or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality."*

A breach of the provisions of the fundamental right provisions renders the act subsequent to such breach a nullity. See *Adigun v. Attorney-General, Oyo State* (1987) 1 NWLR (Pt.53) 678. The service of notice of 25 the respondent so as to enable it appear to defend the counter-claim is one of the conditions precedent before the court can have competence and jurisdiction. The importance of service of process and the effect when there is failure to do so are well illustrated in *Skenconsult (Nig.) Ltd.& ors. v. Ukey* (1981) 1 S.C. 6 and *Craig v. Kannsen* (1943) K.B. 256 at 263-264. 30 The respondent was not served with any notice as required by the rules and was not present either by itself or by counsel when the counter-claim was heard and determined. I am therefore of the view that this appeal has no merit.

I now come to the word "may" used in Order 24 rule 6 of the Sokoto 35 State High Court (Civil Procedure) Rules. Is it mandatory and compulsory or discretionary and directory? No. universal rule can be laid down for the construction of statutes or rule as to whether mandatory enactments are to be considered directory only or obligatory with implied nullification for dis-

obedience. In every case the object of the statute (rule of court) must be looked at.

In the instant case, the wording of Order 24, rule 6 in my view is obligatory. The court must satisfy itself of proof of service of notice of the hearing of the counter-claim. Until the trial judge does that, he cannot  
5 proceed to hear the counter-claim and give judgment on the evidence adduced by the defendant.

Where he fails to do so and proceeds to hear the counter-claim when there is no proof of service of notice, the proceeding on the counter-claim is a nullity. If he is not satisfied of the service, he should postpone the  
10 hearing. There is no discretion in the matter.

The object of Order 24 Rule 6 of the Sokoto State High Court (Civil Procedure) Rules to my mind is to ensure that hearing did not take place behind the back of the plaintiff as in this case.

For all the reasons given above, I am of the view that this appeal  
15 ought to fail. It is accordingly dismissed. The Judgment of the court below is affirmed. Appellant shall pay N1,000.00 as costs of this appeal to the respondent.

### **KAWU JSC**

20 The respondent in this appeal, as plaintiff, instituted an action against the appellant as 1st defendant, the Sokoto State Supply Company Limited as the 2nd defendant, claiming jointly and severally from the sum of N455,681.47 being the out-standing balance of the price of 5,000 tonnes of parboiled rice delivered to the 2nd defendant's warehouse in compliance  
25 with the order of the appellant. The appellant denied the claim and filed a counterclaim. Thereafter the respondent filed and served on the appellant Reply to the counterclaim. All pleadings having been filed and exchanged, the case was adjourned to 14th and 15th May, 1984 for hearing. On 14th May 1984 both the plaintiff and his counsel were not present in court and  
30 an application was made praying the court to dismiss the plaintiff's claim under Order 24 Rule 5(2) of the Sokoto State High Court Rules. The court's ruling on the application was adjourned to 17/7/84, and on that day, the application was granted and the plaintiff's claim was struck out with costs. On that same day, having struck out the plaintiff's claim, the court pro-  
35 ceeded to hear the defendant's counter-claim in respect of which judgment was given in favour of the defendant (appellant herein) on 6/11/84 in the sum of N298,616.30. Being dissatisfied with the judgment of the trial court, the respondent appealed to the Court of Appeal and the appeal was allowed and the judgment of the trial court set aside. This appeal is from that

judgment.

The short point to decide in this appeal is whether the Court of Appeal was right in its construction of Ord. 24 Rule 6 of the Sokoto State High Court Procedure Rules relating to the need to put a plaintiff on notice before a court could proceed with the hearing of a counter-claim against him.

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Now, Order 24 Rule 6 provides as follows:-

*"6. Where the defendant to a cause which has been struck out under Rule 5(2) of this Order has a counter-claim the court may, on due proof of service on the plaintiff of notice thereof, proceed to hear the counter-claim and give judgment in the evidence adduced by the defendant or may postpone the hearing of the counter-claim and direct notice of such postponement to be given to the plaintiff."*

In my view, there are two options open to the Court in a situation where the plaintiff is absent and the defendant wants to proceed with his counter-claim. Both options, in my view, are entirely at the discretion of the Court. The first option is to proceed to try the counter-claim after the court has satisfied itself that the plaintiff has notice of the hearing of the counter-claim, which is a separate and independent action. The second option is for the court to postpone the hearing of the counter-claim and direct that notice of such postponement be given to the plaintiff. In either case, the rule enjoins the court to give to the plaintiff a fair opportunity of being heard, which will be in keeping with the principles of fair hearing enshrined in Section 33 of the 1979 Constitution. I am therefore of the firm view that in this case the Court of Appeal was right in its decision that failure to afford the plaintiff an opportunity of being heard renders the judgment of the trial court a nullity.

For the above reasons and for the fuller reasons contained in the lead judgment of my learned brother, Ogwuegbe, J.S.C. the draft of which I had previously read, I too will dismiss the appeal with N1,000.00 costs awarded against the appellant and in favour of the respondent.

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### **BELGORE JSC**

Order 24 rule 5(2) of Sokoto High Court Rules does not preclude fair hearing. Unless there is certainty that the defendant to counter-claim is aware of the hearing date and deliberately absents himself from the Court the better discretion of the Court is to adjourn hearing to a date to be notified the said defendant.

It is for the foregoing reasons and fuller reasons by my learned brother

Ogwuegbu, J.S.C., which also adopt, that I dismiss this appeal. I award N1,000.00 as costs in this appeal against the appellant

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***OLATAWURA JSC***

5 I had a preview of the judgment of my learned brother Ogwuegbu, J.S.C, just delivered. I agree with his reasoning and conclusions. I will also dismiss the appeal. I abide by the order for costs.

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***KUTIGI JSC***

10 I read before now the judgment of my learned brother Ogwuebu, J.S.C, I just delivered. I agree with his reasoning and conclusions. There is abundant evidence on record which shows clearly that the appellant/re-spondent had no notice of hearing of the defendant/appellant's counter-  
15 claim. The trial of the counter-claim by the High Court was therefore a nullity (see for example SkenConsult (Nigeria) Ltd & ors. v. Ukey (1981) 1 SC. 6). Madukalu & ors v. Nkemidilim (1962) 1 All NLR 587) (1962) 2 SCNLR 341. The appeal is accordingly dismissed and the judgment of the Court of Appeal affirmed. I endorse the order for costs.  
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