

SUPREME COURT OF NIGERIA
16TH SEPTEMBER, 1994. SC.227/1988.
CORAM:- S. M. A. BELGORE, A. B. WALI, I. L. KUTIGI,
M. E. OGUNDARE, Y. O. ADIO, JJSC.

YESUFU AMUDA APPELLANT
AND
1. ALHAJI ABDULKADIR ADELODUN
2. ATTORNEY-GENERAL, RESPONDENTS
KWARA STATE)

APPEALS - *Grounds of Appeal - Whether Appellant's grounds 3 & 7 are based on fact or mixed law and fact.*

APPEALS - *Leave of Court - Where not obtained for grounds not based on error of law alone - Whether those grounds are competent.*

APPEALS - *Grounds of Appeal - When declared to be no grounds at all.*

APPEALS - *Application to strike out some grounds of appeal - When to be upheld.*

FACTS

The Appellant as Plaintiff instituted an action in the Kwara State High Court of Justice Ilorin against the Respondent. His claim was that he be declared the rightful Chief as opposed to the 1st Respondent who was given the Chieftaincy title in dispute by the military Governor of Kwara State.

The trial court dismissed the Appellant's claim. His claim to the Court of Appeal was also dismissed. Appellant has further appealed to the Supreme Court on 8 Grounds of Appeal. As the Appeal came up for hearing, the Respondents' counsel raised a preliminary objection to the competence of 5 of the 8 grounds of Appeal.

HELD *(Unanimously striking out 4 of the grounds of Appeal).*
Nature of appellant's grounds 3 & 7

1. Applying the foregoing principles to grounds 3 and 7 of the grounds of appeal in this case, I am of the view that ground 3 is a ground based on fact and that giving the most favourable consideration to ground 7 of the grounds of appeal, it is, at most, a ground based on mixed law and fact. The question whether a statement about a matter or thing is true or false is a question of fact. The sufficiency or insufficiency of evidence is also a question of fact or, at most, mixed law and fact. (P404 L.35)

Failure to obtain leave of court

2. Therefore, as both grounds 3 and 7 of the grounds of appeal are not grounds based on error of law alone, the appellant ought to have obtained the leave of the Court of Appeal or the Supreme Court to file them. Since no leave was sought and obtained to file them they are incompetent and this court has no jurisdiction to entertain them. (P405 L.8)

Grounds of appeal declared to be no grounds at all

3. After due consideration of the purported grounds 6 and 8 of the grounds of appeal, my inevitable conclusion is that they are no grounds of appeal at all. A proper ground of appeal should be framed to show clearly the alleged misunderstanding or wrong application of the law by the lower court or tribunal to the findings of fact made by the court or tribunal or to the facts admitted during the proceedings in which case it will be an error in law and the ground of appeal will be a ground of law. (P405 L.26)

Ground of appeal that is no ground in fact

4. Bearing the foregoing principles in mind, it is clear that ground 6 does not fall into any of the afore-mentioned types of grounds of appeal. It is not a ground based on question of law, question of mixed law and fact, or question of fact alone. The two particulars of the purported ground of appeal are of no real assistance in the present connection as each of them constitutes, in a proper case, an independent complaint and not an enumeration of the alleged error or misdirection in the judgment. (P405 L.26)

Striking out of incompetent grounds of appeal

5. The objection is upheld in relation to grounds 3, 6, 7 and 8 of the grounds of appeal which are hereby struck out. The grounds of appeal left, for the purpose of arguing the appeal, are grounds 1, 2, 4 and 5 of the grounds of appeal. (P406L. 15)

NOTABLE POINTS OF INTEREST

ADIO JSC

1. Fundamental principle on issue of competence of grounds of appeal

If the issue of the competence of grounds of appeal is raised, one principle is very fundamental. It is that the classification of grounds of appeal by learned counsel for the appellant as grounds of law or as grounds based on mixed law and fact or on fact is not conclusive. The court concerned with the determination of the question, must, in giving due consideration to the matter, ensure that the grounds of appeal in question are really grounds of law, grounds based on mixed law and fact or on fact, as the case may be. (P404 L.21)

2. Particulars of Error - What to be enumerated

The foregoing is not all in relation to ground 3 of the grounds of appeal. I have already set out the purported ground 3 of the grounds of appeal together with particulars (i) and (ii) thereof. It is obvious that particulars (i) and (ii) thereof are unrelated to the purported ground 3. The law is that the particulars and nature of the error or misdirection alleged in relation to a ground of appeal should be the specific reasonings, findings or observations in the judgment or ruling in question relating to the error or misdirection complained of. They should be the enumeration of the error or misdirection in the judgment or ruling. (P405 L. 16)

REPRESENTATION

J.O. Ijadola Esq. for the Appellant.

M.A.O. Sanni Esq. A-G Kwara State, with S.A. Mohammed
Director of Civil Litigations, for the Respondents.

CASES REFERRED TO

Nwadike v. Ibekwe (1987)4 NWLR (Pt.67)718

Olowosoke v. Oke (1972) 11 S.C. 1

Ogbochie v. Onochie (1986)2 NWLR (Pt. 23)484

LEAD JUDGMENT BY ADIO JSC

The appellant, as plaintiff, instituted an action in the Kwara State High Court of Justice, Ilorin Judicial Division, against the respondents. His claim was as follows:-

“(i) A declaration that he is the rightful Oba Elesha of Oke-Ode having been so appointed by the Oke-Ode kingmakers under the native law and custom of Oke-Ode.

“(ii) A declaration that the appointment of 1st defendant by the Military Governor of Kwara State as from 1st May, 1985, is null and void.

“(iii) A perpetual injunction prohibiting the 1st defendant from acting, or parading himself as the Elesha of Oke-Ode and the 2nd defendant and other agents and/or servants of the Government of Kwara State from treating the 1st defendant as the Elesha of Oke-Ode.”

Pleadings were duly filed and exchanged. The learned trial judge, after giving due consideration to the evidence before him and the submissions made by the learned counsel for each of the parties, dismissed the appellant’s claim. The appellant, dissatisfied with the judgment of the learned trial Judge, appealed to the Court of Appeal which dismissed the appeal. Dissatisfied with the judgment of the Court of Appeal he has lodged a further appeal to this court. The grounds of appeal filed by the appellant are as follows:-

“1. The justices of the Court of Appeal erred and misdirected themselves in law in holding:

‘The record of proceeding of the appeal showed that the appointment of 1st defendant was done by the kingmakers of Iwereje. Thereof Oke Ode Chieftaincy..... The above report made it clear that the traditional council succeeded in bringing (sic) the split of kingmakers through the said ad-hoc committee.’

Particulars of error and misdirection in law:

(i) An appellate court has no jurisdiction and no competence in drawing conclusions not drawn by the trial court and in respect of which there has been no appeal.

(ii) Exhibits 1 and 2 showed that it was the appellant who was appointed by the council of Iwereje.

(iii) *There was nobody called traditional Council of Oke-Ode chieftaincy.*

(iv) *There was no evidence that the traditional council succeeded to bridge the split of the kingmakers through the ad-hoc committee.*

2. *The learned Justices of the Court of Appeal erred and misdirected themselves in law in their view of the statutory duty of the Traditional Council.*

Particulars of error and misdirection in law:

S.78(1) (j) of the Local Government Law, 1976, gives only adjudication powers to a Traditional Council.

3. *The learned justices of the Court of Appeal erred and misdirected themselves in law in holding that it was not true that it was the Ifelodun Traditional Council which appointed the 1st respondent as the Elesha of Oke-Ode.*

Particulars of error and misdirection:

(i) *Parties are bound by their pleadings,*

(ii) *The 1st respondent's witnesses' evidence bind the 1st respondent.*

4. *The learned Justices of the Court of appeal erred and misdirected themselves in law in holding that the appellant could not properly argue grounds 2, 3, 8 and 9 because they were not raised at the High Court.*

Particulars of error and misdirection:

(i) *No Law says so.*

(ii) *They arose out of the High Court decision.*

5. *The learned Justices of the Court of Appeal erred and misdirected themselves in law in their view that the appellant could not properly complain in respect of Exhibits 5 and 6 when his counsel did not object to their admission.*

Particulars of error and misdirection in law:

(i) *Once a document was pleaded and was in law admissible, a party cannot object to its admission.*

(ii) *There is a width of difference between admissibility and weight to be attached to the admitted evidence.*

6. *The learned Justices of the Court of Appeal erred and misdirected themselves in law in holding that the Ifelodun Traditional Council disqualified the appellant.*

Particulars of error/misdirection in law:

(i) *Ifelodun Traditional Council does not have the power to disqualify the appellant.*

7. *The learned Justices of the Court of Appeal erred in law in holding that the plaintiff/appellant's evidence was not sufficient to prove that the 1st defendant/respondent's nomination and appointment were not proper.*

Particulars of error in law:

(i) *The 1st defendant/respondent was bound by the evidence of his witnesses.*

8. *The learned Justices of the Court of Appeal erred and misdirected themselves in not granting the 3 reliefs and that the reason for not granting the third relief is not tenable in law.*

Particulars of error/misdirection in law:

(i) *The applicant was entitled to the 3 reliefs.*

(ii) *Relief 3 was misconceived.*”

When the appeal came before us for hearing, the learned counsel for the respondents raised a preliminary objection to the validity or competence of some of the grounds of appeal. He argued that grounds 1, 3, 5, 6 and 7 of the grounds of appeal were incompetent because they were grounds of mixed law and fact. He contended that ground 3 was irregular because there were no particulars. Ground 6 too was irregular in that proper particulars of the alleged error in law or misdirection were not given. Ground 7 was one of fact and ground 8 was not known to law. The learned counsel conceded that grounds 1 and 5 were regular leaving grounds 3, 6, 7 and 8 which, in his contention, were irregular.

The learned counsel for the appellant submitted that grounds 3 and 6 of the grounds of appeal were grounds of law. He also submitted that in the case of ground 7 what the appellant intended to say was that it was not the function of the court below to determine sufficiency of evidence and, in any case, ground 7 was a ground of law. According to the submission of the learned counsel for the appellant, ground 4 was a ground of law because it related to a matter arising out of the decision of the High Court.

If the issue of the competence of grounds of appeal is raised, one principle is very fundamental. It is that the classification of grounds of appeal by learned counsel for the appellant as grounds of law or

as grounds based on mixed law and fact or on fact is not conclusive. The court concerned with the determination of the question, must, in giving due consideration to the matter, ensure that the grounds of appeal in question are really grounds of law, grounds based on mixed law and fact or on fact, as the case may be. See *Ogbechie v. Onochie* (1986) 2 NWLR (Pt.23) 484 at p. 491. It may be difficult to distinguish between a ground of appeal which is based on an error in law and a ground based on misdirection on the facts of a case. It is more difficult to distinguish between a ground of appeal based on error of law and a ground of appeal on mixed law and fact as the line of distinction is always very thin. Care must, therefore, be taken not to inadvertently convert a ground based on mixed law and fact into a ground based on error in law. See *Nwadike v. Ibekwe* (1987) 4 NWLR (Pt. 67) 718. Applying the foregoing principles to grounds 3 and 7 of the grounds of appeal in this case, I am of the view that ground 3 is a ground based on fact and that giving the most favourable consideration to ground 7 of the grounds of appeal, it is, at most a ground based on mixed law and fact. The question whether a statement about a matter or thing is true or false is a question of fact. The sufficiency or insufficiency of evidence is also a question of fact or, at most, mixed law and fact. The instances in which an appellant may appeal from the Court of Appeal to the Supreme Court as of right are set out in section 213(2) of the Constitution of the Federal Republic of Nigeria, 1979. The provision of subsection (3) of section 213 of the Constitution is that subject to the provisions of subsection (2) of the section, an appeal shall lie from the decisions of the Court of Appeal to the Supreme Court with the leave of the Court of Appeal or the Supreme Court. Therefore, as both grounds 3 and 7 of the grounds of appeal are not grounds based on error of law alone, the appellant ought to have obtained the leave of the Court of Appeal or the Supreme Court to file them. Since no leave was sought and obtained to file them they are incompetent and this court has no jurisdiction to entertain them. See *Olowosoke v. Oke* (1972) 11 S.C.1; and *Nwadike v. Ibekwe* (supra). There is no appeal before this court on the basis of grounds 3 and 7 of the grounds of appeal.

The foregoing is not all in relation to ground 3 of the grounds of appeal. I have already set out the purported ground 3 of the grounds of appeal together with particulars (i) and (ii) thereof. It is

obvious that particulars (i) and (ii) thereof are unrelated to the purported ground 3. The law is that the particulars and nature of the error or misdirection alleged in relation to a ground of appeal should be the specific reasonings, findings or observations in the judgment or ruling in question relating to the error or misdirection complained of. They should be the enumeration of the error or misdirection in the judgment or ruling. See *Globe Fishing Industries Ltd. v. Coker* (1990) 7 NWLR (Pt. 162) 265.

After due consideration of the purported grounds 6 and 8 of the grounds of appeal, my inevitable conclusion is that they are no grounds of appeal at all. A proper ground of appeal should be framed to show clearly the alleged misunderstanding or wrong application of the law by the lower court or tribunal to the findings of fact made by the court or tribunal or to the facts admitted during the proceedings in which case it will be an error in law and the ground of appeal will be a ground of law. If the ground of appeal shows that the facts in the case were not properly evaluated and as a result wrong findings of fact were made or a wrong conclusion was reached by the lower court and the application of the law to the facts was also erroneous, then it will be a question of mixed law and fact. If the ground of appeal shows that the facts were not properly evaluated and as a result the lower court or tribunal made wrong findings of fact or, on the facts, came to a wrong conclusion, that will be an error on question of fact upon which the ground of appeal on question of fact can be based. Bearing the foregoing principles in mind, it is clear that ground 6 does not fall into any of the afore-mentioned types of grounds of appeal. It is not a ground based on question of law, question of mixed law and fact, or question of fact alone. The two particulars of the purported ground of appeal are of no real assistance in the present connection as each of them constitutes in a proper case, an independent complaint and not an enumeration of the alleged error or misdirection in the judgment. See *Globe Fishing Industries Ltd.*, case *supra*.

The situation in the case of ground 8 of the grounds of appeal is similar to that of Grounds 6. Ground 8 is not a proper ground of appeal as there was nothing therein indicating that the alleged error was a question of law, mixed law and fact, or fact alone. Also each of the particulars constitutes, in a proper case, an independent com-

plaint and not an enumeration of the alleged error or misdirection in the judgment. See *Globe Fishing Industries Ltd case*, (*supra*).

The objection is upheld in relation to grounds 3, 6, 7 and 8 of the grounds of appeal which are hereby struck out. The grounds of appeal left, for the purpose of arguing the appeal, are grounds 1, 2, 4 and 5 of the grounds of appeal. The respondents are awarded N100.00 costs.

BELGORE JSC

I read in advance the ruling of my learned brother Adio J.S.C. and I am in agreement with him that grounds 3, 6, 7 & 8 of the Grounds of Appeal are incompetent. They are accordingly struck-out. I endorse the order for costs.

WALI JSC

I have the privilege of reading in advance, a copy of the lead Ruling of my learned brother, Adio, J.S.C., and I agree with it entirely.

Based on the guide lines laid down in the case *Ogbechie v. Onochie* (1986) 2 NWLR (Pt. 23) 484 by this Court, the appeal is sustained by grounds 1, 2, 4 and 5 while the objection raised against grounds 5, 6 and 7 by learned counsel for the respondents is sustained. Grounds 3, 6 and 7 are either of mixed law and fact or of fact alone and having been filed without leave, are incompetent and are accordingly struck out. N100.00 costs to the respondents.

KUTIGI JSC

I read in advance the ruling just delivered by my learned brother Adio, J.S.C. and I agree with him that grounds 3, 6, 7 & 8 of the Grounds of Appeal are incompetent. They are accordingly struck-out. I endorse the order for costs.

OGUNDARE JSC

I have had the advantage of reading the draft of the Ruling just read by my learned brother Adio, J.S.C. I agree with his reasoning and conclusion and I have nothing more to add.

Preliminary objection upheld in part.