

**SUPREME COURT OF NIGERIA**  
 16TH MAY, 1995 SC. 40/1992  
**CORAM:- M.L.UWAIS, A.B.WALI, I.L. KUTIGI,**  
**M.E. OGUNDARE, A.I. IGUH JJSC**

CECILIA IHUOMA NWANKWO ..... APPELLANT  
 AND  
 EMMANUEL CHUKWUMA OBI NWANKWO ..... RESPONDENT

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**APPEALS** - *Reevaluation of evidence - Properly done by Court of Appeal - In setting aside trial court's judgment.*

**BUSINESS NAMES** - *Ownership of a registered business - In the parties names - Whether appellant established sole ownership*

**PUBLIC OFFICERS** - *Engaging in running of private business - Prohibited under the 1979 Constitution - Whether same as prohibiting acquiring interest in private business.*

**PUBLIC OFFICERS** - *Restriction from running private business - Is meant to protect public interest -And not to create a private interest for appellant's benefit.*

**PRACTICE & PROCEDURE** - *Competency of a claim - Were appellant has no locus standi in a matter - Claim related to that matter should be struck out.*

### **FACTS**

The parties were formerly married as husband and wife under customary law before they became divorced. Appellant has always been in private business at all material times while the Respondent was a civil servant. When the going was fine, the parties registered a business under the Registration of Business Names Act 1961, in their joint names. Following the breakdown of their marriage appellant filed an action in the Aba High Court seeking for a declaration that she was the owner and sole proprietor of the firm registered as Emceco Engineering Company.

The trial court granted three out of the four reliefs claimed by the appellant. Respondent's appeal to the Court of Appeal was allowed by that court which dismissed the appellant's claim. Being dissatisfied, the appellant has now appealed to the Supreme Court raising six issues which were reduced to two by the court.

### **ISSUES FOR DETERMINATION:**

1. *Whether the Court of Appeal was wrong in its decision that the*

*appellant had no locus to claim relief under paragraph 2(b) of the 5th Schedule of the 1979 Constitution, since it was not intended to create any right or interest or cause of action to individuals other than the public at large, or in short, the State.*

*2. Whether, with the evidence adduced, the Court of Appeal was right in reversing the judgment of the trial court and declaring that EMCECO ENGINEERING COMPANY was a joint partnership owned by the appellant and the respondent. All other issues are ancillary to these two.*

**HELD** (Unanimously dismissing the appeal per lead judgment of **WALI JSC**) ***Public Officers - Engaging in running of private business.***

1. Paragraph 2(b) of the 5th Schedule as worded and enacted cannot by any stretch of imagination be said to have intended to prevent any public officer, the respondent inclusive, from acquiring interest in a private business like a partnership. What is prohibited by paragraph 2(b) to the Fifth Schedule is for a public officer to “engage or participate in the management or running of any private business, profession or trade”. The intendment is not to prevent any person willing to serve as a public officer from merely having an interest in a private business. But what he cannot do is to be a public officer and at the same time hold a managerial or other position in such an undertaking or solely to run the same. (p. 1145 D)

***Public Officers - Restriction from running private business***

2. The Law does not create a private right or interest for which the appellant could claim a relief. The purpose of the law is to protect public interest and the respondent has no locus standi to prosecute it’s contravention or claim a relief as a result thereof. (p. 1146 A)

***Competency of a claim***

3. Since the appellant has no locus standi in the matter, it will tantamount to an act of mere academic exercise to go into the relief claimed by the appellant in paragraph 15(ii) of the Statement of Claim What the learned trial judge ought to have done had he properly directed himself was to strike out paragraph 15 (ii) of the Statement of Claim for its incompetence and lack of jurisdiction by the court to entertain it. Paragraph 15(ii) of the Statement of Claim is accordingly struck out. (p. 1146 B)

***Business Names - Ownership of a registered business***

4. Exhibit 13 cannot be described as an admission of estoppel because of its ambiguity. Since the appellant failed to comply with the provisions of sections 8 and 9 of Registration of Business Names Decree. Exh. 13, even if not unambiguous, cannot help her claim that she is the sole owner of EMCECO ENGI-

NEERING COMPANY. (p. 1147 G)

***Appeals - Reevaluation of evidence***

5. The Court of Appeal rightly re-evaluated the evidence in this case and came to a correct decision when it set the judgment of the trial court aside and dismissed the appellant's case. (p. 1148 B)

**NOTABLE POINTS OF INTEREST**

**WALI JSC**

***1. Failure to bring document to the notice of Registrar of Business***

Apart from the ambiguous nature of Exhibit 13, its contents were not brought to the notice of the Registrar of Business Names as stipulated by section 9 of the Registration of Business Names Decree No 17 of 1961; the wording of the section is mandatory. There is no other document registered with the Registrar of Business Names showing that the position has changed. It is for these reasons that I find myself in complete agreement with the Court of Appeal. (p. 1146H)

**OGUNDARE JSC**

***2. Breach of Code of Conduct does not confer civil right to sue***

A breach by a public officer of any of the provisions of the Code of Conduct set out in the Fifth Schedule to the Constitution of the Federal Republic of Nigeria, 1979 (Cap.62 Laws of the Federation of Nigeria, 1990) does not confer a civil right on any citizen for which he can sue for but only attract: the sanction provided in paragraph 12 of the said Fifth Schedule which reads: "Any allegation that a public officer has committed a breach of or has not complied with the provisions of this Code shall be made to the Code Conduct Bureau." It is the Code of Conduct Bureau and the Code of Conduct Tribunal set up under paragraphs 15 and 17 of the said Schedule that have jurisdiction in the matter and not the High Court except where the conduct complained of is also a criminal offence. (p. 1149 A)

**REPRESENTATION**

Chief U.N Udechukwu for the Appellant

I.N. Umezuruike for the Respondent

**CASES REFERRED TO**

Gramophone Co Ltd. v. Magazine Holding Co (1911)28 RFC 221

S.S.N. Ltd. v. Eyuafe( 1976)9 & 10 SC. 135 at 158 Lines 15-152

Agbaje v. Adelekan (1990)7 NWLR (Ft. 164)565

Iga v. Amakiri (1976) 11 SC 1

Bello v. Eweka (1981)1 SC 101

NNSC v. Sabana (1988)2 NWLR (pt. 74)23

N.B.N. Ltd v. Guthrie (1987)2 NWLR (Pt. 56)2

Lahan v. Lajoyetan (1972)2 SC. 190

Fedahunsi v. Shell B.P. (1969)1 NMLR 304

Adediran v. Interland Transport Ltd (1991)9 NWLR (pt. 214)155

A.G. Bendel State v. A.G. of the Federation (1980) SC 1 at 159

Adesanya v. Federal Republic of Nigeria (1981)5 SC 122

A.G. Kaduna State v. Hassan (1985)2 NWLR (Pt. 8)483

Ekpan v. Chief Uyo (1986)3 NWLR 63

### **STATUTES REFERRED TO**

Constitution of the Federal Republic of Nigeria 1979 para 2(b) of Part 1 Schedule 5

Registration of Business Names Decree No. 17 of 1961

Regulated and Other Professions (Private Practice Prohibition) Decree No. 34 of 1984

### **LEAD JUDGMENT BY WALI JSC**

The plaintiff, Cecilia Ihuoma Nwankwo instituted an action in the Aba High Court of Imo State against the defendant, Emmanuel Chukwumaobi Nwankwo, claiming the following reliefs:-

*“(i) A declaration that the plaintiff is the owner and sole proprietor of the business known as EMCECO Engineering Company registered as No. 1073 under, the Registration of Business Names Act 1961 and having its principal place of business at No. 14 Obohia Road, Aba.*

*(ii) An injunction restraining the defendant from further interfering with the plaintiff’s control and management, or in any other way whatsoever meddling, in the affairs of the said business.*

*(iii) An order directing the defendant to account to the plaintiff for all assets, property and utensils-in-trade of the said business which said assets, property and utensils-in-trade the defendant has forcibly appropriated to himself and excluded the plaintiff therefrom.*

*(iv) The sum of N100,000.00 being special and general damages arising from loss suffered by the plaintiff due to the defendant’s undue interference with and forcible appropriation of and undue meddling in the said business of EMCECO Engineering Company.”*

Pleadings were filed and exchanged. At the end of the trial, the learned trial Judge, Chianakwalam J, granted reliefs (i), (ii) and (iii) of the plaintiff’s claim and dismissed relief (iv).

Dissatisfied with the judgment, the defendant appealed to the Court of Appeal, Port Harcourt. In a considered judgment delivered by Onu, J.C.A. (as he was then), the Court unanimously allowed the appeal and dismissed the

plaintiff's claim.

Aggrieved by the Court of Appeal decision, the plaintiff has now appealed to this court. Henceforth, both the plaintiff and the defendant will be referred to as the appellant and the respondent respectively.

The facts in this case can be stated thus:

B The appellant and the respondent were married under customary law in 1976, but before, the commencement of this action, they were divorced. The appellant was at all time before the marriage, a business woman engaged in various types of private business enterprises, including contract works, bulk and retail supply business, farming and construction. The respondent on the  
C other hand was at all time before the marriage and thereafter a civil servant working in the Ministry of Works of Imo State. When the going between them was good, a firm named EMCECO Engineering Company was registered under the Registration of Business Names Act, 1961 in the joint names of the appellant and the respondent in 1980.

D Following the break-down of the marriage resulting in divorce, the appellant filed the present suit seeking for a declaration that she was the owner and sole proprietor of the firm known and registered as EMCECO Engineering Company.

E Parties filed and exchanged briefs of argument in this appeal in compliance with the rules of this court. In the appellant's brief, the following six issues were raised for determination:-

F "(a) *Whether the overt registration of a business name under the Registration of Business Names Act as "a firm of unincorporated body of two persons" raises a conclusive and irrebutable legal presumption of an intention as between the two persons concerned to operate a partnership, as postulated by the Court of Appeal.*

(b) *Whether the Court of Appeal was justified in law in their decision to reverse the finding of the court of first instance to the effect that EMCECO is the exclusive business of the appellant.*

G (c) *Whether the Court of Appeal was justified in law in their finding that the appellant's Exhibit 13 was not a binding declaration against the respondent or that it is ambiguous.*

H (d) *Whether having regard to paragraph 2(b) of Part 1 schedule 5 of the 1979 Constitution of Nigeria the respondent as Public Officer can register EMCECO to be run for and on his behalf by the appellant whether in the capacity of delegate or partner.*

(e) *Whether paragraph 15(11) of the statement of claim is in law incompetent.*

(f) *Whether the Court of Appeal is justified in law to say that the*

*appellant has no locus standi to raise the point that as a Public Officer the respondent cannot under the 1979 Constitution engage or participate in the management or running of EMCECO either as a partner or as a principal through a delegate.”*

The respondent also raised the following six issues in his brief for determination:-

*“(1) Whether, having regard to the pleadings, the totality of the evidence and the law, the learned Justices of the Court of Appeal were wrong in reversing the decision of the learned trial Judge declaring the appellant the owner and sole proprietor of the business known as EMCECO Engineering Company the subject-matter of this suit (hereinafter referred to simply as (“EMCECO”).*

*(2) Whether the justices of the Court of Appeal were wrong in holding that the appellant had no locus standi to claim the relief set out in paragraph 15(ii) of her Statement of Claim.*

*(3) Whether the learned justices of the Court of Appeal were wrong when they held that the learned trial Judge ought not to have entertained the claim in paragraph 15(ii) of the Statement of Claim as the relief sought therein was not originally in the Writ of Summons and could not be conveniently tried with the claim as set out in the Writ of Summons, which writ was never amended.*

*(4) Whether the learned justices of the Court of Appeal misdirected themselves in law in the view they took of the provisions of the Fifth Schedule to the 1979 Constitution in relation to the appellant’s claim as set out in paragraph 15(ii) of her Statement of Claim.*

*(5) Whether having regard to the totality of the evidence and the law, the learned justices of the Court of Appeal were wrong in holding that the appellant’s Exhibit 13 was not conclusive and could not have the effect of making the appellant the owner and sole proprietor of EMCECO.*

*(6) Whether having regard to the pleadings, the evidence and the law the learned Justices of the Court of Appeal were wrong in allowing the appeal of the respondent in the court below and dismissing the case of the appellant in the court of first instance.”*

Issue (1) of the respondent is covered by issue (a) of the appellant, issue (2) by issue (b), issue (3) by issue (c), Issue (4) by issue (d), issue (5) by issue (e) and issue (6) by issue (f) of the respondent and appellant respectively.

I shall, in attempting to resolve the issues raised, go by the issues formulated by the appellant in her brief.

Under issue (a) learned counsel for the appellant attacked part of the judgment of the Court of Appeal in which the court opined thus -

“One would have thought that with the over-whelming evidence before the learned trial Judge the matter would have ended there with the

respondent's claim being dismissed in its entirety" and submitted that the fact that EMCECO was registered as a firm of unincorporated body of two persons merely raises as between the two persons a presumption that a partnership was contemplated and that any of the parties could adduce evidence to show that a partnership was never intended to be created between the said parties. Learned counsel contended that it is not registration under the Registration of Business Names Act, 1961 that creates a firm and that firms are only obliged to register if they come under section 6(a) or (c) of the Act. He submitted that the question which the High Court was called upon to decide was not whether EMCECO was registered in the joint names of the appellant and the respondent, but whether both parties at the time the form of application for registration of EMCECO was filed, contemplated incorporating a body of two persons to carry on business by or on behalf of both as partners. He submitted that it is not registration under the registration of Business Names Act 1961, that creates a firm, but the intention of the parties that registered it. He then referred to the pleadings of the parties and Exh. 13 and the evidence of the parties and urged the court to hold that the trial court's findings that there is no partnership is right and to restore the same.

Learned counsel cited the following cases to buttress his submissions: *Gramophone Co. Ltd. v. Magazine Holdings Co.* (1911) 28 R.P.C. 221 at 225 to 226; *S.S.N. Ltd. v. Eyuafe* (1976) 9 & 10 S.C. 135 at 158 lines 15 - 152 and *Agbaje v. Adekan* (1990) 7 NWLR (Pt.164) 595.

In answer to the submissions above, learned counsel for the respondent submitted that the appellant's view of the part of the Court of Appeal judgment referred to in her brief is misconceived and is also quoted out of context. He said the Court of Appeal fully considered the pleadings, the evidence and the exhibits tendered and admitted, particularly Exh. 13, before it came to the conclusion that the appellant is not the sole owner and proprietor of EMCECO, and urged the court to dismiss ground 1 of the grounds of appeal to which issue (a) in the appellant's brief is hinged.

On issue (b), learned counsel for the appellant submitted that, upon a calm view of the pleadings and the evidence adduced in this case, and considered by learned trial Judge meticulously, vis-a-vis the applicable law, he was right in his conclusion that EMCECO is the exclusive business of the appellant and that the Court of Appeal was wrong in disturbing that conclusion. Learned counsel particularly referred to paragraph 6 of Exh. 13 where he said the respondent deposed that the inclusion of his name in EMCECO as a partner was a mistake and that he was and is still a public officer within Schedule 5 of the 1979 Constitution.

In reply to the submissions above, learned counsel for the respondent in his arguments under issue No.6 of his brief submitted that the learned trial Judge arrived at a wrong conclusion that EMCECO is the exclusive property of the appellant because such a finding was against the weight of evidence and

cited the following as an example:-

“That the appellant was induced by the representations made by the respondent to manage and run the business as well as the employment of one Emeka to oversee the Petrol Station at Umuvo, was not supported by evidence.

He also submitted that the learned trial Judge failed to consider the following evidence which is in the respondent’s favour, before arriving at the decision he took

(a) that the Petrol Station is part of EMCECO which the respondent developed from a loan he got from the Union Bank;

(b) that the respondent insured the Petrol Station at the request of the Union Bank.

On issue (c), which is covered by issue (5) of the respondent, learned counsel for the appellant submitted that there is no ambiguity in Exh. 13 and that the Court of Appeal is wrong in its finding to the contrary. He said Exh. 13 is very clear and unambiguous in all its paragraphs and that the Exhibit also supports paragraphs 10 and 11 of the appellant’s pleadings. He contended that failure to lodge Exh.13 with the Registrar of Business Names cannot vest in the respondent the sole proprietary right in EMCECO which he does not possess. He also submitted that Exhibit 13 amounts to an admission under Sections 20(1), 26 and 150 of the Evidence Act and therefore binding on the respondent. He cited and relied on *Iga v. Amakiri* (1976) 11 S.C 1; *Bello v. Eweka* (1981)1 S.C. 101; *NNSC v. Sabana* (1988) 2 NWLR (pt.74) 23 and *N.B N. Ltd. v. Guthrie* (1987) 2 NWLR (Pt 56) 255. Learned counsel further submitted that the finding by the Court of Appeal that Exh.13 cannot operate as estoppel against the respondent is perverse and wrong.

In reply, learned counsel for the respondent submitted that in the circumstances of this case, Exh. 13 taken together with the rest of the evidence cannot amount to an admission by the respondent that the appellant is the owner and sole proprietor of EMCECO. He referred to section 19 of the Evidence Act and *Joe Iga & Ors. v. Chief Ezekiel Amakiri & Ors.* (1976) 11 S.C.1; *John Wilberforce Bamiro v. S.C.O.A.*, (1941) 7 WACA 150. Learned counsel contended that Exh.13 was sworn to by the respondent under nagging influence and duress of the appellant in order to circumvent the Regulated and Other Professions (private Practice Prohibition) Decree No. 34 of 1984, as the exhibit was sworn to exactly six days after the promulgation of the Decree.

Issues (d), (e) and (1) were taken together by learned counsel for the appellant.

It is the contention of learned counsel for the appellant that the Court of Appeal is wrong in its view that

(a) The relief claimed in paragraph 15(ii) of the Statement of Claim is



enforceable only by the State, being in the nature of a public right.

(b) That the appellant has no locus standi to raise the issue.

(c) That there is nothing in the 5th Schedule of the 1979 Constitution to show that its purport is to extinguish any interest already acquired by a public officer.

B (d) That paragraph 15(ii) of the Statement of Claim, not being part of the relief set out in the Writ, is incompetent.

The following authorities were cited to buttress the submissions above: - *Lahan v. Lajoyetan* (1972) 2 S.C. 190; *Fadahunsi v. Shell B.P.* (1969) 1 NMLR 304; *Adediran v. Interland Transport Ltd.* (1991) 9 NWLR (Pt.214) 155; A.G. Bendel State v. A.G. of the Federation (1982) 3 NCLR 1; (1981) 10 S.C. 1 at 159; *Adesanya v. Federal Republic of Nigeria* (1981) 2 NCLR 358; (1981) 5 S.C. 122 at 137 and 140-141; *Agbaje v. Adelekan* (1990) 7 NWLR (Pt.164) 595; *A.G. Kaduna State v. Hassan* (1985) 2 NWLR (pt.8) 483 and order 3 rule 1(1) and order 33 rules 4, 7 and 8 of the High Court rule, (CAP.61) Laws of Eastern Nigeria applicable in the then Imo State.

D Learned counsel also submitted that the Court of Appeal is wrong in finding that paragraphs 2(b) and 13 of Part 1 to the 5th Schedule of the 1979 Constitution is not intended to preclude a public officer from investing in a business or enterprises provided he does not personally engage or participate in the management or running of the business or enterprise.

E He finally urged this court to allow the appeal and restore the judgment of the trial court.

In reply to issues (d), (e), and (f), it is the submission of learned counsel for the respondent that the Court of Appeal was right in its conclusion that the relief purportedly claimed by the appellant in paragraph 15(ii) of the Statement of Claim is in the nature of a public right and has therefore no locus standi to sue and claim the relief. He said the Court of Appeal was right in considering the whole evidence when the trial Judge had failed to do so. He urged the court to dismiss the appeal.

Although the appellant and the respondent raised differently worded issues in their respective briefs of argument, the crux of the matter is whether, and having regard to the evidence adduced, the Court of Appeal is wrong in deciding that the trial court was wrong in its decision that the appellant as plaintiff is the sole owner of EMCECO Engineering Co. With this in view, the issues formulated can be reformulated and reduced into the following for conveniently dealing with the appeal:-

H 1. Whether the Court of Appeal was wrong in its decision that the appellant had no locus to claim relief under paragraph 2(b) of the 5th Schedule of the 1979 Constitution, since it was not intended to create any right or

interest or cause of action to individuals other than the public at large, or in short, the State.

2. Whether, with the evidence adduced, the Court of Appeal was right in reversing the judgment of the trial court and declaring that EMCECO Engineering Company was a joint partnership owned by the appellant and the respondent.

All other issues are ancillary to these two.

Now paragraph 2(b), Part 1 of the Fifth Schedule to the 1979 Constitution provides thus:-

“2. Without prejudice to the generality of the foregoing paragraph, a public officer shall not -

(b) engage or participate in the management or running of any private business, profession or trade “

It is an undisputed fact that the respondent was (and may still be) a public officer at the time the action was filed in court in 1986. The question to be asked and answered is did he engage or participate in the management or running of EMCECO after the provision of paragraph 2(b) of the 5th Schedule quoted above came into force; and if he did, could that confer on the appellant the right to sue for contravention of the said provision as contained in paragraph 15(ii) of the Statement of Claim?

Paragraph 2(b) of the 5th Schedule as worded and enacted cannot by any stretch of imagination be said to have intended to prevent any public officer, the respondent inclusive; from acquiring interest in a private business like a partnership. What is prohibited by paragraph 2(b) to the Fifth Schedule is for a public officer to “engage or participate in the management or running of any private business, profession or trade”. The intendment is not to prevent any person willing to serve as a public officer from merely having an interest in a private business. But what he cannot do is to be a public officer and at the same time hold a managerial or other position in such an undertaking or solely to run the same. This is to avoid the possibility of such an officer having a divided loyalty. If by the time the provision of paragraph 2(b) of the 5th Schedule came into force a serving public officer was engaged or was participating in “the management or running of any private business, profession or trade”, all that was required of him was to resign from such a position and surrender its management or its running to another person or body. The provision does not prevent any public officer from acquiring interest simpliciter in a private business, profession or trade or retain any such interest that has already been acquired. I agree on this issue with the unanimous judgment of the Court of Appeal where Onu, J .C.A. (as he then was) in the lead judgment said -

*“The learned trial Judge, in my view, fell into another serious error in that he appeared not to appreciate the line of defence adopted by the appellant that the Fifth Schedule did not operate to invalidate or nullify any existing right which he had in the Company and afortiori operated to pre-*

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*clude him from investing in it. If expropriation had been the intention of the framers of that Schedule, they would have said so in clear terms."*

The law does not create a private right or interest for which the appellant could claim a relief. The purpose of the law is to protect public interest and the respondent has no locus standi to prosecute its contravention or claim a relief as a result thereof. See Abraham Adesanya v. President of the Federal Republic of Nigeria & Anor. (1981)1 All NLR (pt.1)1; Atipioke Ekpan & Anor v. Chief Agunu Uyo & Anor. (1986) 3 NWLR 63 and Fawehinmi v. Akilu & Anor. (1987) 4 NWLR (Pt.67) 797.

Since the appellant has no locus standi in the matter, it will tantamount to an act of mere academic exercise to go into the relief claimed by the appellant in paragraph 15(ii) of the Statement of Claim. What the learned trial Judge ought to have done had he properly directed himself was to strike out paragraph 15(ii) of the Statement of Claim for its incompetence and lack of jurisdiction by the court to entertain it. Paragraph 15(ii) of the Statement of Claim is accordingly struck out. See Olawoyin v. A.G. Northern Nigeria (1961) 2 SCNLR 5; (1961)1 All NLR (Pt. 2) 260.

The other argument is centred on Exhibit 13 which was an affidavit sworn to by the respondent on 17th October 1990. In Exhibit 13, the respondent was claimed by the appellant to have surrendered any interest in EMCECO Engineering Co, if any. But the Court of Appeal showed that Exh. 13 is not free from ambiguity. If a person has no interest in a business, he does not need to confer authority on another to conduct it. As evidence of such ambiguity paragraph 4 of the affidavit reads: -

*"4. That I have no business dealing since Mrs. C.I. Nwankwo conducts business wholly and solely for EMCECO Eng. Co."*

Whereas in paragraph 8 it was deposed as follows -

*"8. That I authorise and support the use of Mrs. C.I. Nwankwo to conduct all business matters of the company since she is the proprietor and Managing Director. All other documents should bear her name."*

If the respondent had no business dealing with EMCECO, there would be no need for him to swear to the facts in paragraph 8. In my view, Exh. 13 was sworn to by the respondent for two purposes:-

1. To avoid any punishment under S.11(2) of Part 1 of the 5th Schedule to 1979 Constitution, and

2. to comply with section 2 of part 1 of the 5th Schedule.

On paragraph 4 of Exh. 13 again the expression "I have no business dealing" does not mean that the respondent has no interest in EMCECO as he tried to portray in paragraph 6 of Exh. 13.

Apart from the ambiguous nature of Exhibit 13, its contents were not brought to the notice of the Registrar of Business Names as stipulated by section 9 of the Registration of Business Names Decree No. 17 of 1961, the wording of the section is mandatory. It reads thus:-

*"9. Where a change is made or occurs in any of the particulars*

required by section 7 to be furnished in respect of any firm or individual registered under that section other than particulars as to the age of an individual, the firm or individual shall within twenty eight days after such change notify such change to the registrar at the registered office at which the firm or person is registered in writing signed as provided in section 8."

In Exhibit 11 which was filled in compliance with section 7 of the Decree, the names of the appellant and the respondent were supplied for the purpose of registering EMCECO Co. as a firm. Paragraph (e) of Exh.11 contained the following:

*"e) The following particulars in respect of each of the partners (other than corporations)*

*The present fore names and surnames*

*1. Emmanuel Chukwuma Nwankwo*

*2. Cecilia Ihuoma Ehirim"*

These particulars were certified as correct and signed by both the respondent and the appellant respectively. There is no other document registered with the Registrar of Business Names showing that the position has changed. It is for these reasons that I find myself in complete agreement with the Court of Appeal in its judgment where Onu, J.C.A. (as he then was) said:-  
"..... the learned counsel for the respondent having conceded at page 15 of the respondent's brief that Exhibit 13 is not an instrument for transfer of proprietary right of interest; nor is it an instrument of gift or capable by itself of extinguishing proprietary interest, I, cannot see the wood for the trees in his contention wherein shortly down below on the same page he turned summersault by submitting, inter alia, that respondent's case was and is that Exhibit 13 is a solemn declaration under oath by the appellant confirmatory of the intention and understanding of both parties when appellant's Exhibit 3 was completed. Nor do I agree, with learned counsel's further submission that the position taken by the respondent is that by virtue of section 150 of the Evidence Act the appellant is not allowed in these proceedings between him and the respondent, to deny the truth of the contents of Exhibit B."

"From the purports of paragraphs 1, 4, 6 and 8 and appellant's explanation that he made it for respondent under a "nagging duress," there can therefore be no basis for holding that respondent became at any point in time, the Sole Proprietor of the Company. No where can the depositions in Exhibit 13 be said to be clear, positive and unambiguous as well as solemn declarations of the appellant as learned counsel for the respondent would have us believe. "

Exhibit 13 cannot be described as an admission or estoppel because of its ambiguity. See Iga & Ors. v. Amakiri (1976) 11 S.C.1

Since the appellant failed to comply with the provisions of sections 8 and 9 of Registration of Business Names Decree, Exh. 13, even if not unambiguous, cannot help her claim that she is the sole owner of EMCECO Engineering Company.

With the evidence adduced before the learned trial Judge, he was totally wrong to have derogated from his initial finding that -

*“From the pleadings the evidence and circumstances of this case, I am satisfied that EMCECO Engineering Company is an existing business within the definition under the 1979 Constitution of Nigeria and within the definition under the Registration of Business Names Act, 1961. I am also satisfied that it was registered as a firm of unincorporated body of two persons comprising the plaintiff and the defendant. It is not disputed that the business was established for the purpose of making profit.”*

Having considered all the relevant points and determined the issues raised and canvassed in this appeal, I do not think there is the need to say more. The Court of Appeal rightly re-evaluated the evidence in this case and came to a correct decision when it set the judgment of the trial court aside and dismissed the appellant’s case. See *Lawal v. Dawodu* (1972) 8 and 9 S.C. 83; *Fashanu v. Adekoya* (1974) 1 All NLR (pt. 1) 35; *Fatoyinbo v. Williams* (1956) SCNLR 274; (1959) 1 F.S.C. 87; *Ariori v. Elemo* (1983) 1 SCNLR 1; (1983) 1 S.C. 13 and *Abinabina v. Enyimadu* (1953) A.C. 207.

The appeal fails and it is dismissed with N1,000.00 costs to the respondent.

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#### UWAIS JSC

I have had the opportunity of reading in draft the judgment read by my learned brother Wali, J.S.C. I am in complete agreement with it and do not wish to add anything. Accordingly this appeal fails and it is hereby dismissed with N1,000.00 costs to the respondent.

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#### KUTIGI JSC

I have read the judgment of my learned brother Wali, J.S.C. just delivered. I think the Court of Appeal was right to have set aside the decision of trial High Court and dismissed appellant’s claims. I will also dismiss the appeal with costs of N1,000.00 to the respondent.

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#### OGUNDARE JSC

I have had the advantage of a preview of the judgment of my learned brother Wali, J.S.C. just read. For the reasons given by him which I hereby adopt as mine I too dismiss this appeal and affirm the judgment of the court below. The plaintiff’s claims were rightly dismissed by that court.

I only need to add that a breach by a public officer of any of the

provisions of the Code of Conduct set out in the Fifth Schedule to the Constitution of the Federal Republic of Nigeria, 1979 (Cap. 62 Laws of the Federation of Nigeria, 1990) does not confer a civil right on any citizen for which he can sue for but only attracts the sanction provided in paragraph 12 of the said Fifth Schedule which reads:

*“Any allegation that a public officer has committed a breach of or has not complied with the provisions of this Code shall be made to the Code of Conduct Bureau.”* B

It is the Code of Conduct Bureau and the Code of Conduct Tribunal set up under paragraphs 15 and 17 of the said Schedule that have jurisdiction in the matter and not the High Court except where the conduct complained of is also a criminal offence - see paragraph 20(3) & (6) of the Fifth Schedule. C

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### IGUHJSC

I have had the privilege of reading in draft the lead judgment just delivered by my learned brother, Wali, J.S.C. and I agree entirely with him that this appeal is without substance and should be dismissed. D

I wish however to comment briefly by way of emphasis only on two of the main issues upon which this appeal revolves. These are issues (b) and (c) raised in the appellant's brief of argument which correspond with issues (1) and (5) respectively as formulated in the respondent's brief.

These issues question as follows:-

(i) Whether the Court of Appeal was justified in law in its finding that Exhibit 13 did not raise an irrebuttable presumption against the respondent and was therefore not a binding declaration against him and E

(ii) Whether the Court of Appeal was justified in law in its decision reverse the finding of the trial court to the effect that EMCECO is the exclusive business of the appellant. F

The above two issues are the main plank upon which the appellant's arguments rest and I will consider them together in this judgment.

The *litis contestation* in this appeal is the business registered under the Registration of Business Names Act, 1961 in the joint names of the appellant and the respondent as EMCECO. Both parties were married under the customary law. The marriage was however dissolved at the instance of the appellant shortly before she instituted the action in this case at the High Court of Justice, Aba. G

The appellant's claim is that she was the owner and sole proprietress of EMCECO. She claimed that the respondent's names appear in Exhibit 10, the form of application for the registration of the business as the respondent was her husband at the material time. She tendered Exhibit 13, an affidavit sworn to by the respondent on the 18th December, 1984, six days after the promulgation of regulated and Other Professions (Private Practice Prohibi- H

tion) Decree No. 34 of 1984. In it, the respondent disassociated himself from all interests in the business.

The respondent, for his own part, relied inter alia on the certified true copy of the original certificate of registration of the business, Exhibit 1, together with a certified true copy of the notice of change filed with the Registrar of Business Names when dealership in petroleum products was added to the registered particulars of the firm, Exhibit 2. He further relied on Exhibit 3 which is a certified true copy of the application for the registration of the business name of the firm dated the 23rd May, 1978. Exhibit 3 is signed by both the appellant and the respondent. It was his case that he in fact floated EMCECO and merely included the name of his wife, the appellant, in the registration form in the interest of their family and the confidence and trust that existed between them as husband and wife. He delegated the appellant to run the business in their joint names.

The learned trial Judge after a review of the evidence stated as follows:-

*“From the pleadings, the evidence and circumstances of this case, I am satisfied that EMCECO ENGINEERING COMPANY is existing business within the definition under the 1979 Constitution of Nigeria and within the definition under the Registration of Business Names Act 1961. I am also satisfied that it was registered as a firm of unincorporated body of two persons comprising the plaintiff and the defendant. It is not disputed that the business was established for the purpose of making profit.”* (Italics supplied for emphasis)

Commenting on the above finding of the trial court, the court below observed as follows:-

*“One would have thought that with the overwhelming evidence before the learned trial Judge, the matter would have ended there with the respondent’s (i.e. the present appellant’s) claim being dismissed in its entirety.”* (Words in bracket supplied)

It then proceeded to adduce various reasons to justify the above view and came to the final conclusion that the learned trial Judge was in error when he declared the appellant the owner and sole proprietress of EMCECO.

The appellant argued rather strenuously that the “matter”, as stated in the above observation of the Court of Appeal, did not end with the finding of the trial court that EMCECO was a body of two persons comprising of the appellant and the respondent in view of Exhibit 13. It is her contention that Exhibit 13 is an admission by the respondent that he had no interest in EMCECO and that he is now estopped from denying the declarations therein contained.

On Exhibit 13, I am prepared to accept that the fact that EMCECO was registered as a firm of unincorporated body of the appellant and respondent raises, as between the two parties, a presumption that the business is their joint business. But this is not an irrebutable or conclusive presumption. It is a

rebutable presumption and I am in agreement that either of the parties is

entitled to adduce evidence to establish that the business belongs to only one of them. Similarly, Exhibit 13, although a statement against interest, is certainly not a formal admission and therefore cannot per se be conclusive evidence against the respondent or have the effect of making the appellant the unchallengeable or absolute owner and sole proprietor of EMCECO.

It is certainly not the law that all admissions are necessarily conclusive against the maker as each and every admission must be carefully evaluated and considered by the court against the particular circumstances under which it was made. B

Admissions are either formal or informal. Formal admissions are admissions made by a party to a civil proceeding so as to relieve the other party of the necessity of proving the matters admitted. They are usually contained in a pleading as facts admitted in a pleading need not be proved any longer but are taken as established. Formal admissions may also take the form of clear admissions filed or made by a party to a civil proceeding or by his counsel in the course of the trial of a civil suit. See Chief Aaron Nwizuk and others v. Chief Waribo Eneyok and others (1953) 14 W.A.C.A. 354 and ReBeeny(1894)1 ch.499. The court, however, even in the case of a formal admission in a civil proceeding has discretion to require the admitted fact to be proved by some other evidence other than by the admission itself. See the proviso to section 74 of the Evidence Act. C D

Informal admissions, on the other hand, do not necessarily or strictly speaking bind their maker and may therefore be explained or contradicted. The weight of an informal admission depends on the circumstances under which it was made and these circumstances may always be proved to impeach enhance its credibility. Thus an informal admission, unless it amounts to an estoppel, may be established by the party against whom it is tendered to be incorrect, untrue or to have been made under a mistake of law or fact or some compelling or vitiating circumstances. Accordingly, the value of an informal admission depends on the particular circumstances under which it was made and it is for the trial court to determine the issue and to give due weight to the alleged admission and the explanatory circumstances thereof. See Nii Abossey Okai II v. Nii Ayikai II (1946) 12 W.A.C.A. 31 and Joe Iga and others v. Ezekiel Amakiri and others (1976) II S.C.1. It is like any other evidence and the court is duty bound to consider all the surrounding circumstances under which it was made and to take a decisions on whatever weight, if any, that must be attached to it. Such an admission is therefore not conclusive proof of the matters admitted although, as I have already pointed out, it may in an appropriate and established case operated as estoppel against the party against whom it is tendered. E F G

In the present case, the admission in issue, Exhibit 13, is clearly not a formal but an informal admission. The respondent, therefore, was entitled at the trial, as in the case of any other informal admission, to endeavour to explain its contents away in a bid to establish before the court the actual circumstances under which it was made. In my view, the learned trial Judge H

was in gross error by considering Exhibit 13 in isolation without taking into



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account the circumstances under which it was made as a result of which he was able to hold that the contents thereof were conclusive of the facts therein stated. See *Seismograph Service Nigeria Ltd. v. Chief Keke Eyuofe* (1976) 9-10 S.C. 135.

B The court below in an exhaustive consideration of Exhibit 13, along side the rest of the evidence before the trial court held that it did not operate as an estoppel as against the respondent and I am unable to find any valid reason to disturb this finding. I agree entirely that Exhibit 13 was intended to be used to circumvent the Regulated and Other Professional (Private Practice Prohibition) Decree No. 34 of 1984 as the respondent, at the time of its promulgation, was a public officer.

C In this regard, it is significant that Exhibit 13 was sworn to on the 18th December, 1984, exactly six days after the enactment of the Decree No. 34 of 1984 aforesaid. In my view, the learned trial Judge was wrong in holding that Exhibit 13 was conclusive of its contents. I endorse the view of the Court of Appeal that Exhibit 13 could not per se operate to make the appellant too  
D owner and sole proprietor of EMCECO. The court below was clearly in order when it reversed the trial court's decision that Exhibit 13 was conclusive and operated as estoppel against the respondent.

E Attention must be drawn to various vital and overwhelming items of evidence in favour of the respondent in respect of which the trial court failed adequately to consider. These are to the effect that -

(1) The petrol station at Umuvo in Ugba junction which is part of EMCECO business was insured by the respondent. The appellant accepted this fact and further admitted that she was not a party to this insurance. It seems to me basic that the respondent would have been unable to insure the said petrol station if he had no insurable interest in the property.

F (2) The Union Bank, Owerri Road branch, Aba advanced some money to the respondent as a loan per Exhibit 4. This loan transaction was covered with a deed of mortgage, Exhibit 5. The loan was used by the respondent to develop the aforesaid petrol station at Umuvo.

G The bank as a condition of this loan required the respondent to insure the property which he accordingly did. It is significant that this piece of evidence was neither contradicted nor were Exhibits 4 and 5 challenged.

(3) Exhibit 6 tendered by the respondent is a reconciliation account and promissory note signed by him on behalf of EMCECO. This was not controverted

H (4) Exhibits 1, 2 and 3 in unequivocal terms establish that both the appellant and the respondent are the proprietors and co-owners of the business, EMCECO. This, in my view, is the most vital evidence placed before the trial court which it failed to consider adequately.

It cannot be over emphasized that the totality of all the admissible and relevant evidence led before a trial court in any proceeding must be carefully

weighed and considered before there can be a just and equitable determination of the rights of the parties. It also seems to me imperative that a clear resolution as to which of such evidence had due weight as against those which appear weightless must be painstakingly arrived at in the interest of a fair and equitable determination of a court proceeding. See A.R Mogaji and others v. Odofin and other (1978) 4 S.C. 91. As explained by this court in Olufosoye and others v. Olorunfemi (1989) 1 NWLR (Pt.95) 26 at40, it is of the essence of justice and fairness that cases are decided on their merits and this imposes a duty on the trial court to consider all the issues arising between the parties before arriving at a decision for or against either of them. I find it difficult in the light of all I have stated above to fault the decision of the Court of Appeal when it reversed the finding of the trial court to the effect that the business of EMCECO was the exclusive property of the appellant. In my view, the appellant was quite unable to establish that EMCECO is her exclusive business and the answers to the two questions under consideration must be in the affirmative.

It is for the above and the more detailed reasons contained in the lead judgment of my learned brother, Wali, J.S.C., that I, too, dismiss this appeal as lacking in substance. The respondent is entitled to the costs of this appeal which I assess and fix at N1,000.00.

Appeal dismissed.