

SUPREME COURT OF NIGERIA
 13TH JUNE, 1995. SC. 64/1989
CORAM:- M.L. UWAI, I.L. KUTIGI, E.O. OGWUEGBU,
U. MOHAMMED, A.I. IGUH, JJSC.

ALHAJI A. ALFA ADEHI APPELLANT
 AND
 ATULUKU ATEGA & 39 OTHERS RESPONDENTS

***APPEALS** - Brief of appeal - Filed by the appellant - When held to be a bundle of confusion.*

***APPEALS** - Competence of appeal - Where the appellant's brief is not competent - Whether the appeal is rendered incompetent.*

FACTS

Before the Benue State Area Court, Ugwolawo, Appellant filed an action against the Respondents jointly, claiming a farmland and the economic trees thereon. The action was dismissed, and the appellant's appeal to the Benue State High Court was also dismissed. About a year later, the respondents jointly took out an originating summons against the appellant in the High Court seeking to stop the appellant from encroaching on their land in view of the Area Court's judgment against the appellant. The appellant filed a counter-affidavit denying the respondents' claim vide the originating summons. The High Court granted all the reliefs sought by the respondents. Appellant's appeal to the Court of Appeal was dismissed.

Being dissatisfied the appellant appealed to the Supreme Court. He filed four grounds of appeal and formulated four issues for determination in his brief through his counsel. Appellant was neither present nor represented by counsel during the hearing of the appeal. He did not file any reply to the respondents' preliminary objection to the effect that the appeal is incompetent.

ISSUE FOR DETERMINATION

Whether the appellant's appeal is competent in view of the serious irregularities in the manner his brief of appeal was presented.

HELD (Unanimously striking out the appeal per lead judgment of **UWAIS JSC**)

Brief of appeal

1. There is no doubt that the preliminary objection raised is well-founded. The Appellant's brief of argument is, indeed, a bundle of confusion which is not worthy of our attention. The absence of a reply by the Appellant to the pre-

liminary objection has not helped matters. An appellant's brief is required to be a succinct star argument in support of his appeal. It should also present with accuracy, brevity and precision the argument in support of the appeal (p. 1292 E)

Competence of appeal

2. Apart from the fact that the issues for determination are not related to the grounds of appeal, the argument in the brief is based on grounds of appeal which are foreign to the appeal. With this state of confusion in the Appellants brief it is not possible to make head or trial of the case being proffered by the Appellant. The result is that there is non-compliance with the Rules pertaining to the writing of brief of argument. This is a serious irregularity since it renders the Appellant's brief incompetent. An Appeal set down for hearing which is not accompanied by a competent appellant's brief of argument, as in this case, becomes, in my opinion, an incompetent appeal also. (p. 1293 C)

NOTABLE POINT OF INTEREST

UWAIS JSC

1. Appellant's brief- Need to comply with Rules of Court

The necessity for appellant's brief to comply with the Rules of Court has been stated in many cases by this court, times without number. In some of such cases issues for determination not based on the grounds of appeal filed got discountenance by the Court. Similarity arguments in the appellant's brief which have been based on grounds of appeal, instead of issues for determination as formulated, had been disregarded before the Court. (p. 1292 H)

REPRESENTATION

Appellant absent and unrepresented

Chief B.C. Oyibo for the Respondents

CASES REFERRED TO

Ekuruno vs. Ifejika(1960) 5 FSC 156

Osinupebi v. Saibu (1982) 7 S C 104 at page 110

Ugo v. Obiekwe (1989) 1 N.W.L.R. (Part 99) 566

Okpala v. Ibeme (1989) 2 N.W.L.R. (Part 102) 208 at page 222

Adejumo v. Ayantegbe (1989) 3 N.W.L.R (Part 110) 417 at page 430

Momodu v. Momoh (1991) 1 N.W.L.R (Part 169) 608 at page 620H

Kolawole v. Alberto(1989) 1 N.W.L.R. (Part 98) 382

Okonji v. Njokanma(1991)7N W.L.R (Part 202) 131 at page 153

Popoola v. Adeyemo (1992) 8 N W.L.R (Part 257) 1 at page 31A

Sanusi v. Ayoola (1992) 9 N.W.L.R. (Part 265) 275 at page 291A

STATUTES & RULES REFERRED TO

Constitution of the Federal Republic of Nigeria 1979 s. 236
Supreme Court Rules 1985 0.6 rr. 8 (6), 5 & 9

BOOK REFERRED TO

Manual of Brief Writing - Hon. Justice Nnaemeka-Agu

LEAD JUDGMENT BY UWAIJS JC

The history of this case began in 1982 with an action brought by the appellant herein in Area Court No.1, at Ugwolawo, in the former Benue State, jointly against all the respondents herein, claiming a farmland and the economic trees thereon. The action failed and it was dismissed by the Area Court. There was an appeal against the decision, by the appellant herein, to the High Court of former Benue State, sitting at Idah (Anyebe and Anuga, JJ.), which was dismissed on the 19th day of May, 1983. About a year later, that is on or about the 19th day of July 1984, all the respondents herein jointly took out an originating summons in the said High Court against the appellant herein, in which they claimed as follows -

“(1) A declaration that the plaintiffs by judgment of the Divisional Area Court 1 Ugwolawo, dated 25th day of October, 1982, in case No. CV.114/82, are not within the limits of the defendants’ land area situate at Okele, in Benue State of Nigeria.

(2) A further declaration that the plaintiffs are entitled to their individual exclusive possessions and use, as against the defendant, of all the said land areas that were the subject of the determination per their various defences in Case No. CV. 114/82 of 25/10/82.

(3) An order of injunction restraining the defendant, his agents or servants from harassing, intimidating, and encroaching or trespassing into the land areas of the plaintiffs per the determination of (1) and (2) above.”

In the affidavit attached to the originating summons paragraphs 9 and 10 read thus-

“9. That the defendant on the 27th, 28th, 29th days of March, 1984, entered on the plaintiffs land and areas covered by the Area Court judgment, Annexure 1, and not only farmed on it, but also caused the destruction of economic trees on the said land.

10. That the defendant has subsequently harassed, intimidated, trespassed and encroached upon the said land areas.”

The judgments of the Area Court and the High Court sitting as an appellate court were exhibited to the affidavit as Exhibits 1 and 2 respectively. The appellant herein filed a counter affidavit, in which he deposed as follows in paragraphs 5 to 10 inclusive and paragraph 15-

“5. That I denied (sic) the charges of entering individual farms of Atuluku Atega and 38 others and committed the offences enumerated at paragraph 9 of the affidavit.

6. That I have not carried out any extension to my existing farm acreage since 1972 nor after the Ugwolawo case No. CV. 114 of 8/7/82; the size and location of the farms which have been described by the trial Judges including my buildings during locus in quo report.

7. That there was no report of any trespass and destruction of economic trees in the individual farms by any of the plaintiffs to the Police charge offices anywhere in the Benue State against the defendant.

8. That some of the plaintiffs and their agents have committed acts of the thefts, intimidation, attempt to murder policemen, used force on my farmers and lastly destroyed my buildings and properties at Okele Alfah all these cases have been reported to the Police by my individual farmers affected; are either being tried in the law courts or are being investigated by the police.

9. That the limitations of Okele Alfah is as shown by the sketch plan admitted in Case No. 166/76 admitted as Exhibit A3 in Case No. CV. 114 hereby pleaded.

10. That the limitation of Okele Alfah properly described by the Ugwolawo trial Judges in their locus in quo report CV. 114 agrees with the descriptions contained in Exhibits A.1, 2 and 4 hereby mentioned.”

“15. That it is in the interest of justice that the court should refuse the affidavit and order the plaintiffs in paragraph 13 to remove their farms where they were in accordance with the ruling (sic) in CV. 114.”

The learned trial Judge (Puusu. J.) was addressed by counsel for the parties before he adjourned the case for judgment. In a considered judgment which was delivered on the 15th day of March, 1986, the learned trial Judge held as follows:-

“The declaration and reliefs sought in this matter arise (sic) out of the two judgments quoted above. The contention by the defence that if the reliefs are granted it would mean the entire land of the defendant would be given out is baseless because it is the same land area that he sued the present plaintiffs to leave in Case No. CV. 114/82 which claim was dismissed and that decision (was) affirmed on appeal.

The second submission was that a surveyor should be ordered to survey the area and demarcate the boundaries. This also is not well taken because it was the present defendant who sued the present plaintiffs, there is no indication that he tendered any plans, he therefore knew the land area he wanted the defendants/plaintiffs to quit. From the evidence it is clear the area in dispute is not in doubt. As a follow up from this it is also not necessary for a court's order to restrain the plaintiff from changing the name of Okele Alfah to Okele or Okele Ojokogbe since the land area is not in doubt.

The real issue before the court is about ownership and mainly possession. These issues have been determined by courts of competent jurisdiction.

In view of the foregoing all the reliefs sought by the plaintiffs are hereby granted. There is no good defence to the application.” (parenthesis mine)

Dissatisfied with the judgment, the appellant herein appealed to the
 B Court of Appeal after obtaining its leave to do so. The lower Court (Maidama, of blessed memory, Jacks and Mukhtar, JJCA) found as follows as per Jacks, J.C.A. who wrote the leading judgment -

*“It is clear from the above passage that the learned trial Judge neither reviewed nor interpreted the judgments as contended by learned
 C counsel for the appellant. The dismissal of the appellant’s claim to ownership and possession of the land in dispute by the Area Court and affirmed by the Appellate High Court gives the respondents the right to remain in possession of the said area of land known to the parties In reality the court was merely called upon to declare that the respondents are not within the limits
 D of the defendant’s land area at Okele which in effect the appellant claimed and lost in the aforementioned judgment. It is my view therefore that the declarations given in pursuance thereof is proper since the respondents have the right to remain in possession of the land which they occupy and which is not within the limits of the land claimed by the appellant in the said judgments. And since the respondents have the legal right to remain in possession by virtue of the aforesaid judgments, the trial court has jurisdiction to make such declarations having regard to its unlimited jurisdiction by virtue of section 236 of the 1979 Constitution.*

*It is true no objection was taken at the lower court to the trial by originating summons by counsel for the appellant. In my view the important
 F question is whether initiating the action by originating summons is appropriate having regard to the declarations sought and the affidavit evidence of the contending parties. The law is that where contentious issues of fact are disclosed in the affidavit evidence, an application by originating summons in the instant case was appropriate and did not require oral evidence.*

In the result the appeal in my view lacks merit and it is hereby dismissed by me. The judgment of the Idah High Court in Suit No. 10/10/84 given on the 17th March, 1986 is affirmed.”

Again dissatisfied, the appellant has appealed before us. He was neither present nor represented by counsel at the hearing of the appeal. A
 H brief of argument has, however, been filed on his behalf by Rakiya Okpanachi who describes herself therein as “Appellant’s Solicitor.” A joint brief was filed by the respondents in reply to the appellant’s brief and the respondents were represented by Chief B.S. Oyibo, their learned counsel. Pursuant to Order 6 rule 8 (6) of the Supreme Court Rules, 1985 which provides -

“(6) When an appeal is called and no party or any legal practitio-

ner appearing for him appears to present oral argument, but briefs have been filed by all the parties concerned in the appeal, the appeal will be treated as having been argued and will be considered as such"

We called on Chief Oyibo to present his oral argument. Learned counsel drew our attention to the preliminary objection which he raised in the respondents' brief or argument and adopted the brief without further oral address.

Now, the appellant filed four grounds of appeal and formulated four issues for determination in his brief of argument. The issues read thus -
 "(a) *Were the learned judges of the Court of Appeal right in holding at page 128 lines 15 - 18 that the allegation of acts of trespass must be protected by reason of the subsisting judgments in favour of the respondents inspite of the appellants denial which shifted the burden of proof which was never discharged on the respondent. In essence were they right in their application of the principle in Ekwunnu and others v. Ifejika and Anor (1960) SCN LR 320: (1960) 5 FSC 156 when in that case trespass was just an incidental matter to the substantive issue of title which oral evidence was led in support.*

(b) Was the learned Court of Appeal right when it went on a fresh appraisal of facts in appellants counter affidavit, ascribing probative value as if it were a trial court and anchoring its decision that the use of originating summons was appropriate since the affidavits were not hostile or contentious on those facts.

(c) In the light of the fact that the trial court held at page 91 of the appeal records that "The real issue before the court is about ownership and mainly possession. These issue have been determined by court of competent jurisdiction".

Was the learned Justices of Court of Appeal right in upsetting that finding of fact at page 129 of the record when they held thus:-

"I will re-emphasise that the learned trial Judge never ruled that the real issue before the court is about ownership and possession. On the contrary the case was fought in the trial Area Court on that basis".

(d) Were the learned Judges of the Court of Appeal right in holding at page 124 of the record that the learned trial Judge in granting the declaration did not interpret the documents and therefore the case of Ademuliyu and Anor v. African Continental Bank is inapplicable when the trial Judge at page 89 said:- "The originating summons is for interpretation of two documents".

The argument in the appellant's brief that follows the issues for determination is based on the grounds of appeal and not the issues as formulated. The grounds of appeal argued which are 5 in number instead of the 4 filed by the appellant. Do not correspond with the latter. Chief Oyibo submitted that the appellant's brief is incompetent and gave the following reasons for so submitting -

"(a) Appellant's Notice of Appeal as filed in this Honourable Court on the 14th day of July, 1988, has only 4 Grounds numbered serially as 1, 2,

3 and 4 (pages 134, 135 and 136 of the Record).

(b) Surprisingly, at pages 3,4, 5, 6, 7, 8, and 9 of his Brief, appellant has given not 4 but 5 Grounds of Appeal which he peculiarly numbered serially as I, II, 3(a), 3(b) and IV.

(c) the Appellant appeared to have argued his brief on strange grounds not meant for this appeal.

(d) Appellant for no apparent purposes, has reproduced at pages 1,2 and 3 of his brief the old grounds he has already argued at the Court of Appeal as if the grounds for the present appeal in this Honourable court.

(e) the serial numbers of the grounds of this appeal given in his Brief as grounds I, II, 3(a), 3(b) and IV differ materially from those given in the Notice of Appeal.

(f) Contrary to Order 6 Rule 5 of the Supreme Court Rules 1985, the appellant has declined to argue his 4 issues for determination given as (a), (b), (c) and (d) at paragraph 2.01 at pages 2 and 3 of his Brief and instead appeared to have argued the grounds of the Appeal”

Learned counsel, relying on the provisions of Order 6 rule 9 of the Supreme Court Rules, 1985, (which are not apposite) then urged upon us to dismiss the appeal since the appellant has failed to prosecute it, owing to his failure to file a proper brief of argument, as enjoined by the rules of this court. The appellant has not filed a reply brief to answer the respondents’ preliminary objection.

There is no doubt that the preliminary objection raised is well-founded. The appellant’s brief of argument is, indeed, a bundle of confusion which is not worthy of our attention. The absence of a reply by the respondent to the preliminary objection has not helped matters either. An appellant’s brief is required to be a succinct statement of the appellant’s argument in support of his appeal. It should also present with accuracy, brevity and precision the argument in support of the appeal. In chapter 2 of the book Manual of Brief Writing, by Honourable Justice Nnaemeka-Agu, the following Statement appears on page 7 thereof-

“The sole purpose of an appellate brief is therefore to present a party’s case on appeal in a summary form but with such accuracy and lucidity as not only to give the court in advance a deep insight into the party’s case but also to convince it on the justice of his case. The brief is a succinct statement of the party’s argument in the appeal. It has been defined as a condensed statement of the propositions of law or fact or both, which a party or his counsel wishes to establish at the appeal, together with reasons and authorities which can sustain them. If a brief fails to communicate or contain these essentials or ends up a mere bundle of pettifoggery or confusing trash the hallowed purpose of brief writing would not have been achieved.”

With the present state of the appellant’s brief in this appeal it is not possible for us to follow the appellant’s case. The necessity for appellant’s brief to comply with the Rules of Court has been stated in many cases by this

court, times without number. In some of such cases issues for determination not based on the grounds of appeal filed got discountenanced by the Court. Similarly arguments in the appellant's brief which have been based on grounds of appeal, instead of issues for determination as formulated had been disregarded by the Courts. See *Osinupei v. Saibu* (1982) 7 S.C 104 at page 110; *Ugo v. Obiekwe* (1989) 1 NWLR (Pt.99) 566; *Okpala v. Ibeme* (1989) 2 NWLR (Pt.102) 208 at page 222; *Adejumo v. Ayantegbe* (1989) 3 NWLR (Pt.110) 417 at page 430; *Momodu v. Momoh* (1991) 1 NWLR (Pt.169) 608 at page 620H; *Kolawole v. Alberto* (1989) 1 NWLR (Pt. 98) 382; *Okonji v. Njokanma* (1991) 7 NWLR (Pt.202) 131 at page 153; *Popoola v. Adeyemo* (1992) 8 NWLR (Pt.257) 1 at page 31A and *Sanusi v. Ayoola* (1992) 9 NWLR (Pt.265) 275 at page 291A. The situation in this case is even worse. Apart from the fact that the issues for determination are not related to the grounds of appeal, the argument in the brief is based on grounds of appeal which are foreign to the appeal. With this state of confusion in the appellants brief it is not possible to make head or tail of the case being proffered by the appellant. The result is that there is non-compliance with the rules pertaining to the writing of brief of argument. This is a serious irregularity since it renders the appellant's brief incompetent. An appeal set down for hearing which is not accompanied by a competent appellant's brief of argument, as in this case, becomes, in my opinion, an incompetent appeal also. See *Osinupei's* case (supra) In *Onifade v. Olayiwola* (1990) 7 NWLR (Pt.161) 130 at page 157 C-F and in particular page 166, *Agbaje J.S.C.* remarked thus-

"The courts have an inherent jurisdiction to ensure compliance by litigants with the rules of court and to strike out any process not filed in compliance with the relevant rules. See Reichel v. Magrath. (1889) 14 App. Cas. 665k Huntly v. Gaskell No.1, (1905) 2 Ch. 655; Nixon v. Laundes, (1909) 2 Ir. R. 1. So, in my judgment, the document labeled the brief of the appellant could have been properly struck out in the lower court by reason of the fact that it was not a brief within the contemplation of the relevant rules of court."

The preliminary objection, therefore, succeeds and it is upheld. The appellant's brief is hereby struck out for being incompetent. The appeal is also hereby struck out for not being supported by a brief of argument. I award N1,000.00 costs to the respondents jointly against the appellant.

KUTIGIJS

I read in advance the judgment just delivered by my learned brother Uwais J .S.C. I agree with it. Clearly the issues formulated by the appellant for resolution in the appeal do not flow from the grounds of appeal as contained in the Notice of Appeal dated the 14th day of July 1988 and filed on the same day. These issues therefore only deserve to be struck out. I strike them out. The appellant again instead of arguing the issues so formulated, proceeded in his brief to argue some strange grounds of appeal Nos. 1, 2, 3a, 3b and 4 which are unknown in the appeal. These strange and unknown grounds of appeal

must also be struck out and they are hereby struck out. Since the appeal is not supported by any brief as required by the rules of court, the appeal must be struck out as well. It is accordingly struck out. I endorse the order for costs as contained in the lead judgment.

OGWUEGBU JSC

B I have had the privilege of reading the judgment of my learned brother, Uwais, J.S.C. in this appeal just delivered and I agree entirely with the reasoning and conclusions.

The appeal is struck out by me with N1,000.00 costs to the respondents jointly.

C

MOHAMMED JSC

D I agree to strike out this appeal for the reasons given by my learned brother, Uwais, J.S.C., in the lead judgment the draft of which he permitted me to read before now. I agree that the brief filed by the learned counsel for the appellant is patently incompetent and Chief Oyibo's preliminary objection in which the learned counsel urged us to strike out the brief is meritorious. The appellant's brief is hereby struck out. Consequently, in compliance with Order 6, rule 9 of Supreme Court Rules, 1985, this appeal is struck out.

E

IGUH JSC

I have had the advantage of a preview of the judgment just delivered by my learned brother, Uwais, J.S.C.

I agree entirely with his reasoning and conclusion and I have nothing more to add.

F Accordingly I, too, strike out the appellant's brief for being incompetent.

The appeal is also struck out as the same is unsupported by a brief of argument. I endorse the award of costs as assessed in the lead judgment. Appeal struck out.

G

H