

**SUPREME COURT OF NIGERIA**  
5TH MARCH, 1996, SC. 319/90  
**CORAM:- M. L. UWAIS CJN, I. L. KUTIGI, E. O. OGWUEGBU,**  
**U. MOHAMMED, S. U. ONU, JJSC.**

G.E.N. ONYEKWULUJE ..... APPELLANT  
AND  
G.B. ANIMASHAUN & ANOTHER ..... RESPONDENTS  
(For themselves and as Administrators  
of the Estate of Badaru Animashaun - Deceased)

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**APPEALS** - *Grounds of appeal - Objection to some grounds as being improper - Failure to rule on the objection is wrong.*

**COURTS** - *Decisions - Where a wrongful application is made before the Court - It is bound to make its decision known - And not to remain silent.*

**FAIR HEARING** - *Technicality - That touches a fundamental objective to fair hearing - Cannot be ignored.*

**RULES OF COURT** - *Noncompliance with Court of Appeal Rules - In making an application before that court - Steps open to the court.*

**FACTS**

Before the High Court Onitsha, plaintiffs/respondents sought to set aside a lease of land granted by their family head to the defendant appellant, for being contrary to law. The plaintiffs' case was dismissed by the trial court. They appealed to the Court of Appeal which allowed their appeal. However, in allowing the appeal, the lower court failed to rule on the defendant's objection to some grounds of appeal for being improper.

The procedure adopted in raising the said objection was erroneous. The court of Appeal failed to give any decision in respect of the objection and made no comment about it. Defendant has now appealed to the Supreme Court raising five issues, the first of which was found sufficient in ordering a rehearing before the Court of Appeal.

**ISSUES FOR DETERMINATION**

*“(a) A declaration that the purported Deed of Lease made on 29th January, 1975 between I.B. Animashaun and R.B. Animashaun and the defendant touching and concerning a plot of land lying and situated at No. 23 New Market Road Onitsha, registered as No. 29 at page 29 in volume 766 of the*

*Deeds Registry Enugu is contrary to Law and is therefore of no legal effect and should be set aside.* Etc, see p. 497

**HELD** (Unanimously allowing the appeal in part per lead judgment of **MOHAMMED JSC**)

***Non compliance with Court of Appeal Rules***

1. Going through the proceedings recorded by the Court of Appeal on 9th May; 1988, it is abundantly clear that Mr. Egonu did not comply with the provisions of sub. rule 3 of Order 3, Rule 15. It was therefore open to the Court to refuse to entertain the objection or adjourn the hearing to another date at the cost of Mr. Egonu's client or make any order it deemed fit. Mr. Egonu submitted in his brief before his court that the Court of Appeal had indicated to the parties that it would rule on the objection in its judgment. There is nothing on record to show that the court had given such undertaking. However, there is nowhere in the judgment of the Court of Appeal where the Court considered or made even a passing remark on the objection raised by Mr. Egonu. (p. 500 B)

***Court bound to make its decision known***

2. The three available options provided for in sub-rule 3 of Order 3, Rule 15, are open to the Court of Appeal to decide whichever course it wishes to act. A decision on any of the available options is at the court's discretion. Whichever order the court decides to make must disclose such a decision in a ruling or judgment. It is mandatory to make its decision known so that a party who feels aggrieved by the decision would have an opportunity to look at the ruling and file a ground of appeal against it. The court cannot remain silent and put a party in a guessing game, whether his objection has been sustained or over-ruled. (p. 500 D)

***Fair hearing - Technicality***

3. Chief Olakunri, SAN, argued that since the objection was not based on the Rules and was calculated to spring a surprise it could be ignored unless if the court raises the issue suo motu. I do not agree that the objection could be ignored. The Court is duly bound to express in writing whether it agreed with the objection or it did not. The issue may be technical in nature but where technicality touches a fundamental objective to fair hearing it cannot be ignored. It is a cardinal principle of the administration of justice to let a party know the fate of his application whether properly or improperly brought before the court. It will amount to unfair hearing to ignore an objection raised by a party or his counsel against any step in the proceedings. (p. 501 F)

***Grounds of appeal***

4. For the above reasons, issue 1 which has been formulated on ground 1 (a) and (b), is resolved in favour of the appellant. Yes, the Court of Appeal was wrong to fail to rule on the objection raised against grounds 1, 2, 3 and 4. It was in error also to take those grounds into consideration in coming to its decision in the appeal filed by Animashaun family before it. (p. 501 H)

***REPRESENTATION***

G.R.I. Egonu, SAN with G.A. Azika for the Appellant  
Chief S. M. Olakunri, SAN with G.O. Agboola for the Respondents

***CASES REFERRED TO***

Chidiak v. Laguda (1964) 1 ALL N.L.R. 160 at 162  
Anyioke v. Dr. Ade (1986) 3 NWLR (Pt.31) 731  
Omoregie v. Edo (1971) 1 All NLR. 282 at 289  
Fashanu v. Adeoya (1974) 1 All NLR 35 at 41  
Okolo v. Uzoka (1978) 4 S.C. 77 at 86  
Egonu v. Egonu (1978) 11-12 S.C. 111 at 129  
Atolagbe v. Shorun (1985) 4 S.C. 250 at 285 (part 1).

***RULES REFERRED TO***

Court of Appeal Rules 0.3 r.15 (1) & (3)

***LEAD JUDGMENT BY MOHAMMED JSC***

This appeal is from the judgment of Court of Appeal Enugu. The dispute which gave rise to this appeal concerns an estate of late Badaru Animashaun family in Onitsha. The respondents, as plaintiff claimed in the High Court that their family property was alienated by lease without their consent. The lease was allegedly granted secretly to the appellant by late Alhaji Isiaka Badaru Animashaun who was then head of Animashaun family and co-administrator of the estate of Badaru Animashaun. It has been alleged that when he granted the lease to the appellant the co-administrator and other members of Animashaun family were not consulted. For the above reason the respondents, in this appeal, filed the following claim before the Onitsha High Court.

*“(a) A declaration that the purported Deed of Lease made on 29th January, 1975 between I.B. Animashaun and R.B. Animashaun and the defendant touching and concerning a plot of land lying and situated at No. 23 New Market Road Onitsha, registered as No. 29 at page 29 in volume*

*766 of the Deeds Registry Enugu is contrary to Law and is therefore of no*

*legal effect and should be set aside.*

*(b) A declaration that any purported occupation of No. 23 New Market Road, Onitsha pursuant to the said Deed of Lease of 29th January 1975 aforesaid is unlawful.*

*(c) Possession of the said land at No. 23 New Market Road, Onitsha Annual Value is N40.00. ”*

At the end of the trial F.O. Nwokedi J. dismissed the action. The respondent, who were appellants before the Court of Appeal; appealed against the decision of the High Court. The Court of Appeal allowed the appeal and entered judgment in favour of the respondents in terms of their claim. Dissatisfied with that judgment Mr. G.E.N. Onyekwulje, as appellant, came before this court on seven grounds of appeal. The following issues have been formulated for determination of this appeal, by learned Senior Advocate, Mr. Egonu:

*“(a) Was the Court of Appeal right in failing to rule on the objections to grounds 1, 2, 3 and 5 of the grounds of appeal before it and in taking the said grounds of appeal into consideration in coming to its decision in the appeal?*

*(b) Was the Court of Appeal right in introducing into the case issues which were never pleaded nor raised by the parties in the case and in relying thereon in coming to its decision in the appeal?*

*(c) Did the Court of Appeal properly direct itself on the facts and the law in the case?*

*(d) Was the Court of Appeal right in purporting to re-evaluate the evidence adduced in the case?*

*(e) Did the plaintiff-appellants-respondents prove their case?”*

Chief Olakunri, SAN, raised only two issues, for the determination of this appeal, on behalf of the respondents and they read as follows:

*“(1) Ought not the High Court to have given judgment for the Plaintiffs upon the ample evidence placed before it to support their claim and upon the failure of the defendant to shift the burden placed on him to establish that he had the consent and approval of the principal members of the Animashaun family to the lease he organized through only one member of the family?*

*(2) Was the Court of Appeal not correct in assessing the facts as giving a correct judgment in consonance with its general powers to “have full jurisdiction over the whole proceedings as if the proceedings had been instituted in the Court of Appeal as court of first instance...?”*

The question raised by learned counsel for the appellant in the first

issue is fundamental because it queried the failure of the Court of Appeal

to rule on the objection raised against some grounds of appeal. I will therefore consider the issue first because if I agree with the argument of counsel on the issue it may result in disposing of this appeal. The issue could be understood better if I reproduce the proceedings which took place on 9th May, 1988, the day the appeal was argued before the Court of Appeal, Enugu. The entire proceedings were recorded thus:

*"BETWEEN:*

*G. B. ANIMASHAUN & ANOR.*

*VS.*

*G. E. N. ONYEKWULUJE*

*C Prince Orji Nwafor-Orizu (with him Mrs. G.E. Ifeakandu and A. Iwuchukwu, Miss) for appellants. G.R.I. Egonu, SAN (with him E.C. Ayalogu) for respondent.*

*Nwafor-Orizu: We have abandoned the two original grounds of appeal.*

*D Egonu: Pursuant to order 3 rule 2(2) (4) ask (sic) the Court to strike out grounds 1,2,3 and 4. The passage quoted in 1,2, and 3 are findings of fact by the learned trial judge. See Chidiak v. Laguda (1964) 1 All N.L.R. 160 at 162. Ground 4 is not a ground of appeal.*

*Argument on ground 5 at page 17 of the brief is no argument. See Anyioke & Ors. v. Dr. Ade & Ors. (1986) 3 NWLR (Pt. 31) 731*

*E Nwafor-Orizu: Concept of Court of Appeal Rules is that the other party should not be taken by surprise. I agree the Court can take it suo motu. But if a party wants to take it, he must come by way of a motion.*

*Having not objected when the motion were (sic) argued, it is too late in the day.*

*F Nwafor-Orizu: We adopt appellant's brief dated 4/7/89 and filed on 30/7/86. We have abandoned the original grounds of appeal.*

*Refers to Exh. 'D' and 'F' also to Exh. 'H' Egonu: We filed our brief of argument dated 26/9/86. We adopt the brief of argument. We urge that the appeal be dismissed.*

*Court: Judgment is reserved.*

*G (Sgd)*

*A. I. KATSINA-ALU*

*JUSTICE, COURT OF APPEAL*

*9/5/88."*

*H In his submission on the first issue, Mr. Egonu, SAN, drew our attention to the objection raised against grounds 1,2, 3 and 4 in the brief filed as counsel for the respondent before the Court of Appeal. In short, the argument of Mr. Egonu, SAN, here, is that the Court of Appeal indicated*

that it would rule on the objection raised as I reproduced above, but it

failed to do so. And most importantly, the Court of Appeal entertained those grounds of appeal in coming to its decision in this appeal. The learned Senior Advocate urged us to set aside the judgment of the lower court as it was based on grounds of appeal which were not properly before it.

In his reply, learned counsel for the respondents, Chief Olakunri, B SAN, argued that the objection was not made by a motion with supporting affidavit as required by the Rules of the Court of Appeal. It was merely raised in limine. He then referred to Order 3 Rule 15(1) of the Court of Appeal Rules which states:

*“15(1) A respondent intending to rely upon a preliminary objection C to the hearing of the appeal shall give the appellant three clear days notice thereof before the hearing, setting out the grounds of objection, and shall file such notice together with seven copies thereof with the Registrar within the same time.”*

Chief Olakunri further submitted that the respondents objected to the application because it was intended to cause a surprise. Also, the appellant had filed a brief of argument before he raised the objection and had argued copiously against those grounds. The learned Senior Advocate pointed out that the learned counsel for the appellant had conceded that his preliminary objection would be ignored, hence he proceeded to argue the appeal and rely on the brief of argument. Chief Olakunri concluded his reply by referring to the proceedings in the Court of Appeal and submitted that there was nothing on the record showing that the Court of Appeal had indicated to the parties that it would rule on the objection in its judgment. Furthermore, even if the Court did indicate that it would give the ruling in its judgment, the fact that it proceeded to give judgment for the appellant, F who is respondent in this appeal, is indicative of the fact that the objection had been over-ruled.

I have said it above that I would consider the argument of learned counsel for the appellant on the first issue because its determination may, if I agree with him, dispose of this appeal. There appears to be a procedural error which touches the fair hearing of the appeal before the Court of Appeal. Mr. Egonu, the learned Senior Advocate, had urged in that objection for striking out of grounds 1,2,3 and 4. He also attacked argument made in respondent's brief before the Court of Appeal on ground 5. Learned counsel who represented Animashaun family, Mr. Nwafor-Orizu, opposed the application. But, as can be seen in the proceedings, there is no ruling delivered by the Court of Appeal. It is therefore not known whether that H

Court agreed with Mr. Egonu or rejected the objection being out of tune with the Rules of the Court. Under Order 3, Rule 15(3) of the Court of Appeal Rules, 1981, as amended, it has been provided thus:

*“Order 3, Rule 15(3): If the respondent fails to comply with this Rule the Court may refuse to entertain the objection or may adjourn the hearing thereof at the cost of the respondent or may make such other order as it thinks fit.”*

Going through the proceedings recorded by the Court of Appeal on 9th May; 1988, it is abundantly clear that Mr. Egonu did not comply with the provisions of sub. rule 3 of Order 3, Rule 15. It was therefore open to the Court to refuse to entertain the objection or adjourn the hearing to another date at the cost of Mr. Egonu’s client or make any order it deemed fit. Mr. Egonu submitted in his brief before his court that the Court of Appeal had indicated to the parties that it would rule on the objection in its judgment. There is nothing on record to show that the court had given such undertaking. However, there is nowhere in the judgment of the Court of Appeal where the Court considered or made even a passing remark on the objection raised by Mr. Egonu:

The three available options provided for in sub-rule 3 of Order 3, Rule 15, are open to the Court of Appeal to decide whichever course it wishes to act. A decision on any of the available options is at the court’s discretion. Whichever order the court decides to make must disclose such a decision in a ruling or judgment. It is mandatory to make its decision known so that a party who feels aggrieved by the decision would have an opportunity to look at the ruling and file a ground of appeal against it. The court cannot remain silent and put a party in a guessing game, whether his objection has been sustained or over-ruled.

Mr. Egonu, SAN, pointed out, quite correctly, in his submission, that the Court of Appeal entertained the said grounds of appeal in coming to it’s decision in the appeal. Learned counsel thereafter urged that we should set aside the judgment of the Court of Appeal as it was based on grounds of appeal which were not properly before it. The Court of Appeal, per the judgment of Uwaifo J.C.A., did not decide the appeal based on the issues formulated against the grounds of appeal. Even the grounds of appeal were not dealt with separately. It is however, clear, going by the tenor of the judgment, that all the grounds were considered together. Here now comes the argument of Mr. Egonu that those objected grounds have been entertained by the Court in reaching its decision. The following excerpt from the judgment explains that the Court of Appeal re-evaluated the facts all over in reaching its decision:

*"The appellants' grounds of appeal attack these findings. They also deal with other aspects of the evidence led which he misdirected himself on the issue of alleged fraud by the respondent in the way he secured the said lease. The appellants also contend that the respondent as caretaker was an agent and that in that position he took advantage of his connection with Isiaka to secretly take the lease from him and sidetrack the principal members of Animashaun family. The respondent claims that he was the tenant of Badaru Animashaun family in respect of the portion of land in dispute from 1972 to 1974 and that in 1975 he got a lease of the said portion of land from the family.*

*The case, in my view, rested in the lower court substantially or indeed entirely on the way the Judge evaluated the evidence and made findings of fact. When a trial court has unquestionable evaluated the evidence before it, it is not for an Appellate Court to re-evaluate the same evidence and come to its own decision. This Court will in such a situation approach any findings of facts by the court below with due caution: See Etowa Enang & Ors. v. Fedelis Tkor Adu (1981) 11-12 S.C. 25 at 33-40 per Nnamani JSC. But when in its primary duties of appraisal of evidence, oral or documentary, the court of first instance drew wrong conclusions from accepted or proved facts which those facts do not support or indeed approached the determination of those facts in a manner which those facts cannot and do not in themselves support, the Appellate Court will make its own findings: See Omoregie v. Edo (1971) 1 All NLR 282 at 289; Fashanu v. Adeoya (1974) 1 All NLR 35 at 41; Okolo v. Uzoka (1978) 4 S.C. 77 at 86; Egonu & Ors. v. Egonu & ors. (1978) 11-12 S.C. 111 at 129; Atolagbe v. Shorun (1985) 4 S.C. 250 at 285 (part 1). The question is, did the Judge perform well here in the evaluation of the evidence before him and the ascription of probative values to the different aspects of it? I regret to say he did not."*

Chief Olakunri, SAN, argued that since the objection was not based on the Rules and was calculated to spring a surprise it could be ignored unless if the court raises the issue suo motu. I do not agree that the objection could be ignored. The Court is duly bound to express in writing whether it agreed with the objection or it did not. The issue may be technical in nature but where technicality touches a fundamental objective to fair hearing it cannot be ignored. It is a cardinal principle of the administration of justice to let a party know the fate of his application whether properly or improperly brought before the court. It will amount to unfair hearing to ignore an objection raised by a party or his counsel against any step in the proceedings.

For the above reasons, issue 1 which has been formulated on ground

1(a) and (b), is resolved in favour of the appellant. Yes, the Court of Appeal

was wrong to fail to rule on the objection raised against grounds 1, 2, 3 and 4. It was in error also to take those grounds into consideration in coming to its decision in the appeal filed by Animashaun family before it. I have mentioned earlier, in this judgment that if I agree with the argument of counsel on this issue it will result in disposing of this appeal.

**B**             Consequently, I hereby allow this appeal and set aside the judgment of the Court of Appeal. This is a proper case for an order to the Court below to rehear the appeal from the judgment of F.O. Nwokedi J of Anambra State High Court. I therefore hereby sent the case back to the Enugu Division of the Court of Appeal for the appeal to be reheard by a differently constituted panel of the Court. The appellant is entitled to the costs of this  
**C** appeal which I assess at N1000.00

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**UWAIS CJN**

**D**             I have had the opportunity of reading in draft the judgment read by my learned brother Mohammed, J.S.C. entirely agree with the judgment.

              The appeal therefore succeeds and I hereby allow it. Adopt the consequential order in the said judgment.

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**KUTIGI JSC**

**E**             I read in advance the judgment just delivered by my learned brother Mohammed J.S.C. and agree with him that since the Court of Appeal never ruled on the objection take on grounds 1, 2, 3 and 4 of the Grounds of Appeal filed before it and which said grounds were taken into account in  
**F** coming to its conclusion in the judgment appealed, the appeal ought to succeed and it is hereby allowed. I will also remit the case to the Court of Appeal for fresh hearing before another panel. I endorse the order for costs.

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**OGWUEGBU JSC**

**G**             I have had the privilege of a preview of the judgment which has just been delivered by my learned brother Mohammed J.S.C. and I am in complete agreement.

              I also allow the appeal and set aside the judgment of the Court of Appeal delivered on 9th May, 1988. The appeal is remitted to the Court of  
**H** Appeal, Enugu Division to be heard de novo by another panel of justices. I subscribe to the order of costs as assessed.

**ONU JSC**

              I have had the advantage to read the reasons for judgment of my

learned brother Mohammed, J.S.C. just delivered, and with it I entirely agree. I have nothing further to add thereto.

I make the same orders as to costs.

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