

SUPREME COURT OF NIGERIA
16TH APRIL, 1996. SC. 102/1994
CORAM:- S. M. A. BELGORE, M. E. OGUNDARE,
U. MOHAMMED, S. U ONU, A. I. IGUH, JJSC.

JOSIAH CORNELIUS LTD & 3 ORS APPELLANTS
AND
CHIEF CORNELIUS OKEKE EZENWA RESPONDENT

APPEALS - *Existence of appeal - Whether from the records - Respondent's appeal was not brought to the trial court's notice - Was actually filed and in existence.*

APPEALS - *Issues - That are not predicated on the grounds of appeal - Whether the grounds should be deemed abandoned - Unto dismissing the appeal.*

APPEALS - *Leave to appeal - Where no leave was obtained to appeal against a ruling - That ruling cannot be attacked through the 1st appeal.*

APPEALS - *Existence of a decision - Where the decision appealed against has been rectified - That decision cannot be appealed against.*

APPEALS - *Issue - Preliminary objection that issues do not emanate from the grounds - Whether well founded.*

FAIR HEARING - *Denial - Whether failure to stay proceedings - Pending determination of interlocutory appeal - Amounts to denial of fair hearing.*

PRACTICE & PROCEDURE - *Abuse of court process - Appeal - Where there was an appeal against a decision - And the respondent caused the decision to be rectified - Whether pursuing that appeal is an abuse of court process.*

FACTS

The plaintiff/respondent and one J.O. Nnoruka established the four defendants/appellants companies. Respondent who has been the executive director in all the companies held 40% of the shares while Mr. Nnoruka who has been the chairman and managing director held the majority shares of 60% in each of the Companies. The two share holders relationship

soured and the Respondent filed petitions before the Federal High Court Lagos to wind up the four companies. The petitions were consolidated for hearing. The respondent filed a motion to advertise the four petitions which was opposed by the appellants. The trial judge in his ruling talked about winding up instead of the issue canvassed in the motion.

The respondent filed an appeal against the ruling which was not brought to the trial court's notice. Respondent and the Appellants by consent caused the trial court to rectify the slip in the said subsequent decision. Respondent later decided to pursue his said interlocutory appeal and while much time was being taken the trial court delivered judgment refusing the respondent's petition for winding up of the appellants. It ordered that the respondent's shares be rather bought up by his co-shareholder Mr. Nnoruka. Respondent's appeal to the court of Appeal and his 1st and 2nd appeals were consolidated. The respondent's appeal was granted on ground of denial of fair hearing and trial de novo was ordered. Being dissatisfied, appellants have now appealed to the Supreme Court raising eleven issues.

ISSUES FOR DETERMINATION

“(1) Whether or not the Court of Appeal was right to have held that the petitioner filed an appeal on 25th August, 1992, against the decision of federal High Court of 12/8/92

(2) Whether or not such an appeal, if filed on that date or on any other date, was competent.

(3) Whether or not in view of the amendment of the order of 12/8/92 made by consent of both parties on 12th October, 1992, against which there is no appeal, any of the two grounds of appeal in the first appeal has any leg to stand.

(4) Whether or not the court of Appeal was right to have held that the issues for determination raised in the first appeal arose from the grounds of appeal filed. Etc., see p. 713

HELD (Unanimously allowing the appeal per lead judgment of **OGUNDARE JSC**)

Existence Of appeal

1. I am satisfied from the record of appeal before us that such an appeal was indeed filed, although for reasons that are not clear to me the existence of this appeal was never brought to the notice of the trial court up to and until after that court had made the second decision of 12/10/92. The Respondent did not at anytime disclose this to the court either when he sought adjournment to bring in his application for the first decision to be corrected

nor at the time the summons was being argued nor when ruling on it was given. This Ominous silence however, cannot be taken as non-existence of the appeal. (p. 714 F)

Issues - that are not predicated on the grounds

2. With profound respect to the learned President and Justices of the court I think they are wrong in the conclusion reached. The questions set out in the Appellant's Brief cannot by any stretch of imagination be said to be predicated on the grounds of appeal in the amended Notice of Appeal. Having agreed with this view, it is beholden on them to dismiss the appeal, the two grounds of appeal being deemed abandoned. (p. 716 G)

Leave to appeal

3. The appeal before them was a complaint against the decision of the trial court made on 25/8/92. The decision made on 12/10/92 was not on appeal before them and they could not in the appeal against the decision made on 12/8/92 question the correctness or otherwise of the decision made on 12/10/92

This is more so, if the court below had adverted its mind to the fact that the decision made on 12/10/92 was a consent decision and an appeal against such a decision could only be with the leave of the trial High Court or of the Court of Appeal. To have allowed the appellant before them to attack the second decision made on 12/10/92 in the manner he did was to allow him to appeal against that decision without complying with the constitutional requirement of leave to appeal. Their Lordships ought to have upheld the preliminary objection and to have dismissed the first appeal. (p. 716 H)

Appeals - Existence of a decision

4. I may here again consider whether at the time the court below was entertaining the first appeal there was a decision in existence against which it could be said that the appellant therein was aggrieved. As stated earlier in this judgment, following the decision of 12/8/92 the present Respondent filed a summons applying to have the decision rectified by the trial court. The application was heard and granted. The portion of the decision of 12/8/92 being objected to by the Respondent had been taken care of by the second decision of 12/10/92. There was, therefore, no decision of 12/8/92 in existence that could be complained of. What the Respondent ought to have done, if he honestly believed after 12/10/92 that the trial court had no jurisdiction to carry out the rectification, was to have appealed with leave against the decision of 12/10/92. (p. 717 D)

Abuse of court process

5. If the court below had considered more deeply the conduct of Respondent, it would have struck out the appeal before it as being an abuse of the process of court. As the record of appeal shows, the existence of the appeal filed on 25/8/92 was never brought to the notice of the trial court. Mr. Sofola SAN, both before the Court below and before us, maintain that he was not aware of it. I have no reason to doubt counsel's word in this respect, just as I have no reason to doubt Chief Williams' word that he filed an appeal on 25/8/92. Having, after filing the appeal, applied to the court below for a rectification of the error contained in the decision of 12/8/92, one would expect that the Respondent would not pursue the appeal of 25/8/92. By maintaining that appeal after the decision of 12/10/92 he was grossly in abuse of the process of court and the court below in its inherent jurisdiction, should have stopped him. It is trite law that the court has an inherent jurisdiction to protect itself from abuse or to see that its process was not abused by the proceeding without reasonable grounds so as to be vexatious and harassing. (p. 718 D)

Issue - Preliminary objection

6. It would appear that Question (i) was a challenge to the exercise of trial court's discretion to refuse an adjournment. I cannot see how that question can be said to be predicated on the two grounds of appeal. The court below, with respect, ought to have found that the preliminary objection taken to that question was well taken. The second question would appear to be predicated on the second ground of appeal and as regards that question the preliminary objection taken in the court below was rightly dismissed. (p. 720 B)

Fair hearing - Denial

7. I regret I cannot find a case of want of fair hearing established by the Respondent. With profound respect to the learned President and Justices of the court below, I cannot see how a refusal to exercise "a little more patience" would amount to a denial of fair hearing. The law is clear, that is, that an appeal does not operate as a stay of execution or of proceedings. Any party appealing against the interlocutory decision of a court is under a duty to apply for stay of further proceedings pending appeal if he believes the result of his appeal will affect further proceedings in the matter. Mr. T.E. Williams admitted as much for at one stage of the proceedings he intimated that an application for a stay of further proceedings would be brought.

This was never done by the Respondent. On the totality of the facts as gleaned from the record I cannot say that the Respondent was never denied fair hearing. The conclusion I finally reach is that the court below ought to have dismissed the second appeal as well. (p. 720 D)

NOTABLE POINTS OF INTEREST

BELGORE JSC

1. Need to keep companies in business

At this time in the country's economic travail, it should be public policy to keep companies in business, especially the ones that are doing well profit. They will keep workers on the jobs, the dealers prospering and the end users making good business. The trial Court, to my mind acted in accordance with the law not to allow winding up proceedings to take off and to seek refuge under Section 312 Companies and Allied matters Act 1990 after satisfying itself that the best option on examining petition under Section 310 or 311 thereof was to keep the healthy companies in business and whoever is not ready to go along should have his shares sold to the majority shareholder. (p. 721 C)

MOHAMMED JSC

2. Whether error could be corrected through the slip rule

It is plain from the tenor of the judgment/Ruling of Jinadu J, delivered on 12/8/92, that the error which was discovered could not be corrected through the slip-rule. It is well settled that a court, while able to correct a misnomer or misdescription under the "Slip Rule" will not under that Rule, whether in the exercise of its inherent jurisdiction or by the powers conferred by the rules of court, vary a judgment or order which correctly represents what the court decided, nor will it vary the operative and substantive part of its judgment so as to substitute a different form. (p. 721 H)

3. Decision to continue to stand until altered through appeal

Going over the judgment/ruling delivered by the learned trial judge on 12/8/92 and the subsequent amendment made through the ruling, reproduced above, the position of the law is clear, as Chief Williams had submitted, that such a correction could only be made through the invocation of the appellate jurisdiction. However, could the appeal filed before the Court of Appeal against the judgment/ruling of 12/8/92 be used to set aside the Court's order made in the ruling delivered on 12/10/92? The simple answer is, No. What the learned judge made on 12/10/92 was a decision within the meaning of section 277 of 1979 Constitution. That being so it would

continue to stand until vacated or altered through the process of an appeal. (p. 722 G)

IGUH JSC

B 4. Irregularity in proceedings

A simple irregularity in the course of proceedings that are competent and within the jurisdiction of a trial court must be distinguished from proceedings which are manifestly incompetent thereby affecting the jurisdiction of the court. An irregularity that renders a proceeding incurably defective and null and void may not be waived as acquiescence cannot confer jurisdiction. In the present case, the trial Federal High Court is a court of competent jurisdiction with definite powers, either under the slip rule or under the inherent jurisdiction of the court, to rectify or correct its judgments or orders within the frame work of the law concerning the rectification or correction of court judgments and orders. Whether or not such a court of competent jurisdiction was in error in making the rectification order of the 12th October, 1992 or whether the making of the order was irregular, improper proper or otherwise defective seems to me a matter more properly questioned by the invocation of such appellate jurisdiction as may be available and not otherwise. (p. 726 F)

E 5. Failure to appeal against court's rectified Judgment

It seems to me from all the circumstances of this case that the court's order of the 12th October, 1992 was an order of a court of competent jurisdiction, with powers to rectify or correct its judgments and orders, whether under the slip rule or under the inherent jurisdiction of the court. It is not disputed that the order, which is clearly appealable, with leave, was not appealed against. For my part, it does not appear to me necessary to wade into whether or not the trial court misdirected itself or erred in law in its corrective order of the 12th October, 1992 in the absence of an appeal against that decision. It suffices to state that the order of the 12th August, 1992 having been amended, by consent, pursuant to the subsequent order of the 12th October, 1992 by the trial court, what stood before the amendment, on the state of the law, was no longer material before the court and no longer defined the issues in controversy or to be tried between the parties. (p. 728 B)

H 6. Right to fair hearing - What it entails

It is true that all the right to fair hearing entails is being given adequate opportunity of being heard. It is clear from the record of proceedings that the petitioner was given the fullest opportunity to be heard in the prosecu-

tion of his petitions. A close study of the record of proceedings reveals that

from the 12th August, 1992, the learned trial Judge on a number of occasions tried to get the parties to address him on the final order he was to make without success. Endless applications for adjournment were made to the court on behalf of the petitioner. (p. 730 D)

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REPRESENTATION

kihinde Sofola Esq. SAN (Mrs. T. I. Ezeokeke, Pl.N. Ikwueto Esq. and Miss D. M. Oha for the Appellants
T. E. Williams for the Respondent

C

CASES REFERRED TO

Minister of Lagos Affairs, Mines and Power v. Chief Olugbade (1974) ALL N.L.R. 748 at 755

Thyne v. Thynne (1955) 3 All E. R. 129 at 146

Smith v. East Elloe Rural District Council (1956) A. C. 736 at 769 - 770 D

Timitimi v. Amabebe (1953) 14 W.A.C.A. 374

Nyarko v. Akowuah 14 W.A.C.A. 426

Oranye v. Jibowu 13 W.A.C.A. 41

Fadiora v. Gbadeba (1978) N.S.C.C. Vol. 2 page 121 at 133

Attorney-General for Trinidad and Tobago v. Eliche (1893) A.C. 518 at E 522-523

Rogers v. Wood (1831) 2.B & Aid. 245. 109 ER 1134

Dublin (Archbishop) v. Trimleston (1849) 12 1. Eq. R. 251

Toronto R. Co. V. Toronto (1904) A.C. 809 at 815

McIntosh v. Parent (1924) 4 D.L.R. 420

F

Skenconsult (Nig) Ltd. v. Ukey (1981) 1 S.C. 6 at 26

Management Enterprises Ltd. v. Jonathan Otusanya (1987) 2 N.W.L.R. (part 55) 179

Obimonure v. Erinosho (1966) 1 ALL N.L.R. 250

Warner v. Simpson (1952) 2 W.L.R. 109

G

Amanambu v. Okafor (1966) 1 All N.L.R. 205

Rotimi v. McGregor (1974) 11 S.C. 133 at 152

Atuyeye v. Ashamu (1987) 1 N.W.L.R. (Part 49) 267

Erisi v. Idika (1987) 4 N.W.L.R. (Part 66) 503 at 516-517

Tukur v. Government of Gongola State (1988) 1 N.W.L.R. (part 68) 339

H

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

Modupe v. State (1988) 4 N.W.L.R. (Part 87) 130

STATUTES & RULES REFERRED TO

Companies and Allied Matters Act 1990 ss. 312 310 311

Constitution of the Federal Republic of Nigeria 1979 ss. 220(2)(c), 277

Companies Winding Up Rules r. 19

B Evidence Act s. 53

LEAD JUDGMENT BY OGUNDARE JSC

Chief Cornelius Okeke Ezenwa and one Chief J.O. Nnoruka together established four companies namely: Josiah Cornelius Limited, Master Mal-leable Fittings and Foundries Nigeria Limited, The Wheelbarrows, Hand-trucks and Carts and the Roadmaster Industries (Nigeria) Limited. The four companies were doing very well. At all times relevant to these proceedings Chief Ezenwa was the Executive Director of each of the four companies and held 40% of the shares in each company. Chief Nnoruka who held the majority shares of 60% in each of the companies was the Chairman and Managing Director of each company. For undisclosed reasons relationship between the two shareholders soured subsequent upon which Ezenwa brought separate petitions at the Federal High Court Lagos to wind up the four companies. The four petitions were consolidated for hearing with Chief Ezenwa as the Petitioner and the four companies as respondents.

E In the course of proceedings after attempts made by the court through a conciliator/receiver/ manager had failed to effect reconciliation, Chief Ezenwa brought an application before the court to advertise 'the four petitions. The respondents resisted the application and after addresses by learned leading counsel, Chief F.R.A. Williams SAN for the Petitioner and Kehinde Sofola Esq. SAN for the respondents, the learned trial Judge in a written ruling termed "judgment" concluded:

G *"I therefore refuse the prayer to wind up the respondents but will make other orders under Section 312 aforesaid. But before deciding what power to invoke under the provisions of Section 312 aforementioned I must by law invite learned counsel on both sides to address the court. For this reason this matter will be adjourned to 16/9/92 for the addresses. Meanwhile the tenure of office of the Receiver/Manager is hereby extended to that date.*

There is no order as to costs."

H This decision was given on the 12th of August 1992 and shall hereinafter be referred to as the first decision. Following this decision the Petitioner on 25/8/92 filed a Notice of Appeal which shall hereinafter be referred to as the first appeal. More on this appeal will be said in the course of this judgment.

Following the first decision the parties appeared before the learned trial Judge to address him on the order to be made pursuant to Section 312 of the Companies and Allied Matters Act. On 25/9/92 when the parties and their counsel were again brought before the court for the purpose of addressing it.

Learned leading counsel for the Petitioner observed as follows:

"I respectfully ask for an adjournment to apply for rectification of the slip in the judgment and order of the court delivered and made on 12/8/92."

And learned leading counsel for the respondents reacted in these words:

"I have intended to argue that mere technicality should give way to substantial justice. I submit that the court is entitled to rectify the slip and there will no longer be any need to stay further proceedings on this matter or to proceed with an appeal, I do not oppose the application. "

The court in a short Ruling granted the application. The Petitioner later filed the summons whereby he applied for an order *"that the order made herein on Wednesday the 12th day of August be corrected in the manner set forth in the Schedule to this Summons....."* The Schedule read:

"SCHEDULE

Delete the sentence 'I therefore refuse the prayer to wind up the respondents but will make other orders under Section 312 aforesaid;'

The summons came up for hearing on 12th October 1992 and after addresses by learned leading counsel for the parties, the learned trial Judge ruled as follows:

"I am much grateful to both learned senior counsel for their kind words to me. I believe that a judge is sometime bound to fall into error and once the Judge finds out he should be bold enough to accept his mistake. I therefore grant the application of the petitioner and I delete the sentence at page 14 of my judgment which reads 'I therefore refuse the prayer to wind up the respondents but will make other orders under section 312 aforesaid' and substitute therefor the sentence 'I therefore refuse the petitioner's application for the advertisement of the winding up petitions: I however, call upon both learned senior counsel to address me on what order I should make under the provisions of Section 312 of the Companies and Allied Matters Act, 1990."

This decision shall hereinafter be referred to as the second decision." The matter was further adjourned to 16/10/92 for addresses on the order to make under Section 312 of the Act.

On 16th October, 1992, Chief Williams, S.A.N. addressed the court in which he sought leave to amend the petitions. Further hearing was ad-

journed for Mr. Sofola SAN to reply. This, Mr. Sofola SAN died on 6/1/92. Ruling was delivered on the application for amendment on the 11th December, 1992. The matter was adjourned to 26th January, 1993 for further addresses. On that day, petitioner's counsel for the first time indicated that he intended to appeal against the first decision in the following words:

"I have been having second thought on the order made by the court on my application dated 5/10/92. I now think that this court's order can only be corrected on appeal since it is a point upon which both, counsel and the court agreed the processing of the appeal should not take more than one month."

After Mr. Ekumankama counsel for the respondents had expressed his surprise at the turn of events, the court ruled:

"Although I am not convinced that the ruling I make on Chief Williams application to correct a slip in my considered ruling on advertisement is wrong in law yet I will rather wait for a month requested by Chief Williams than embark on a fruitless exercise. I therefore adjourn this case as requested by Chief Williams SAN, to 5/3/93 for further argument."

Meanwhile, the Petitioner had applied to the Court of Appeal for an amendment to his Notice of Appeal and for a departure from the rules. Both prayers were granted on 23/3/03. It would appear that the proceedings in the Court of Appeal in relation to the first appeal lasted much longer than anticipated by the Petitioner at the trial court. The trial court after various adjournments gave a final decision in the matter on 30/7/93. He adjudged as follows:

"1. That the petitions are accordingly hereby struck out with N2,000.00 costs in favour of the respondents."

2. That the majority shareholder Mr. Nnoruka shall buy the shares of the minority shareholder Mr. Ezenwa at a fair value to be assessed by Mr. Tajudeen Adedapo Odofin of Dapo Odofin & Company, Chartered Accountants of 15, St. Agnes Street, Off Birell Avenue, Sabo, Yaba who is hereby specifically appointed to assess the fair value of the shares of the minority shareholder in the four companies and his assessment shall form part of the order of this court."

3. That the majority shareholder is hereby ordered to pay to the minority shareholder any sums assessed by the appointed chartered Accountant as a fair value for the shares of the minority shareholder in the four companies."

4. That the names of the four companies should be changed by substituting new names for the said companies in compliance with the provisions of clause II of the Joint Venture Agreement dated 9th day of July 1989."

5. The Receiver/Manager is hereby granted a period of 3 (three) months ending 30/10/93 to finalise the affairs of the four companies with a view to handing over to the majority shareholder who will also pay for the shares of the minority as assessed by Mr. Odofin and who will also effect the change of names of the companies within a period of 3 months from 30/7/93." B

Being dissatisfied, the Petitioner on 23/8/93 filed an appeal to the Court of Appeal. This shall hereinafter be referred to as the second appeal.

The first and second appeals came before the Court of Appeal and were consolidated. Briefs having been filed and exchanged and after oral arguments by learned leading counsel the court below allowed the two appeals. It set aside the first decision of 12/8/92 and the final decision of 30/7/93 and ordered that the matter be heard de novo by another Judge of the Federal High Court. It is against this decision that the respondents have appealed to this Court upon five original and 7 additional grounds of appeal, Written Briefs of arguments were filed and exchanged and at the oral hearing before us Mr. Kehinde Sofola SAN learned leading counsel for the respondents/appellants and Mr. T.E. Williams of counsel for the petitioner/respondent addressed us. The respondents/appellants shall hereinafter be referred to as appellants simpliciter while the petitioner/respondent shall also be referred to as respondent simpliciter. E

In the appellants brief the following 11 questions have been set down as calling for determination in this appeal, to wit:

"(1) Whether or not the Court of Appeal was right to have held that the Petitioner filed an appeal on 25th August, 1992, against the decision of the Federal High Court of 12/8/92. F

(2) Whether or not such an appeal, if filed on that date or on any other date, was competent.

(3) Whether or not in view of the amendment of the order of 12/8/92 made by consent of both parties on 12th October, 1992, against which there is no appeal, any of the two grounds of appeal in the first appeal has any leg to stand. G

(4) Whether or not the Court of Appeal was right to have held that the Issues for determination raised in the first appeal arose from the grounds of appeal filed.

(5) Whether or not the Issues for determination raised in the second appeal arose from the grounds of appeal filed. H

(6) As both parties admitted and the trial Court agreed that the offending sentence in the ruling of 12/8/92 was a slip and no party has resiled therefrom and the Petitioner duly applied to have it amended by its

deletion under the slip rule and, not being opposed, the application having been granted and the sentence deleted, whether or not it was not a decision which could only have been reversed by way of a substantive appeal with leave in view of the provisions of section 220(2)(c) of the Constitution, 1979.

(7) Whether or not any Issue was validly before the Court of Appeal against the amendment of 12/10/92 of the order of 12th August, 1992 under the slip rule in view of the notice and grounds of appeal before it.

(8) Whether or not the Court of Appeal correctly comprehended the crucial issue for determination in the appeal?

(9) Whether or not the grounds and issues in the two appeals were either the same or one subsumed into the other such that it became unnecessary to consider and decide the issue raised in the second appeal after deciding the first.

(10) Whether or not by first glossing over and not considering the issues raised by, and the orders made in the final judgment appealed against the subject of the second appeal, and the delay entailed thereby, the court below did justice between the parties.

(11) Whether or not on the facts, the respondent could complain of want of fair hearing before the final judgment of 30/7/93."

I shall consider together questions 1-4, 6 and 7. I will deal next with the other questions together.

QUESTIONS 1-4, 6 & 7:

I have carefully considered the submissions made both in the written brief and oral argument on behalf of the appellants as to the existence or otherwise of the first appeal filed on 25/8/92. I am satisfied from the record of appeal before us that such an appeal was indeed filed, although for reasons that are not clear to me the existence of this appeal was never brought to the notice of the trial court up to and until after that court had made the second decision of 12/10/92. The respondent did not at anytime disclose this to the court either when he sought adjournment to bring in his application for the first decision to be corrected nor at the time the summons was being argued nor when ruling on it was given. This ominous silence however, cannot be taken as non-existence of the appeal. This disposes of Question (1).

There can be no doubt that that appeal was, at the time it was filed, competent but whether at the time it was, however, being heard by the court below, it ought to be entertained is another issue. The court below granted the respondents leave to file an amended Notice of Appeal. I have looked at both the original Notice of Appeal and the amended Notice of

Appeal and I can see no difference whatsoever. Be that as it may, the amended Notice of Appeal contained two grounds namely:

“(1) The learned trial Judge misdirected himself in law when he proceeded to deliver a judgment after hearing arguments upon a Motion on Notice brought under rule 19 of the winding up rules for an order to advertise the petition herein.

(2) The learned trial Judge erred in law when he made the decision “I therefore refuse the prayer to wind up the respondents” without hearing arguments of counsel on the merits of the Petition to wind up the respondent’s Company.”

In the appellant’s brief filed by the petitioner, the questions for determination in the appeal were set out as hereunder:

“(1) Whether the court below has the jurisdiction or power to correct the error, which it admittedly made its judgment delivered on 12.8.92

(2) If the answer to the first question is in the negative, what order should this court make in the appeal before it.”

Appellants in their respondents brief gave notice of preliminary objection to the effect that the issues for determination as set out in the appellant’s Brief had no bearing whatsoever to the grounds of appeal and that arguments not having been proffered in respect of the appeal, it should be dismissed. A formal Notice of preliminary objection was subsequently filed to the same effect. In his lead judgment, Akanbi, P.C.A. with whom Sulu-Gambari and Kalgo, J.J.C.A. agreed, observed:

“Respondent’s counsel has in his brief questioned the competence of the Notice and amended Notice of Appeal filed by the appellants against the interlocutory decision of the trial court. First, it is said that the issues raised have no bearing whatsoever on the grounds of appeal. The point was also made that the issue identified is on ‘the jurisdiction or power (of the court) to correct error’ while the ground of appeal alleged a misdirection in law on the part of the trial Judge in that he proceeded to deliver judgment in the case without hearing arguments on the merit of the petition. It was argued that there was no nexus between the ground of appeal filed and the issues identified for determination. Put differently, the issues raised did not arise from or relate to the grounds of appeal filed. As an alternative proposition, learned counsel further argued that in any case, the two grounds of appeal are in themselves defective for the particulars of the alleged ‘misdirection’ or ‘errors’ have not been stated. ‘Consequently, he contended that the grounds ought to be ‘deemed’ as having been abandoned and in consequence should be struck out.”

Having stated the objection raised, the learned President considered the

law applicable and, quite correctly in my respectful view, observed:

B *"I agree with the submission and the legal authorities cited by respondents counsel that the issues identified in a brief must derive from or relate to the grounds of appeal filed. A long line of authority supports that contention; and so it can rightly be said that the law on the issue is trite. Indeed in the case of Fasoro v. Beyioku (1988) 2 NWLR (Pt, 76) 263 at 270/271. Oputa J.S.C. said:*

'A question for determination has to be referable to

C *(i) the case of the parties as pleaded*
(ii) the judgment appeal (sic) from
(iii) the grounds of appeal on which the judgment is being attacked, namely the grounds of appeal.'

In Ayeni v. R.A. Agbeja CA/1/260/87 delivered on 21/7/89, I have myself said that -

D *'the questions or issues raised for determination in any appeal must necessarily bear a certain relation to the grounds of appeal which in themselves are complaints of errors, commissions or omissions either in law on the facts or both made by a Judge in the judgment being appealed from. "*
 (Underlining is mine)

.....

E Curiously enough the learned President determined the objection in these words:

F *"That said I must say that although the issues as defined in the appellant's brief cannot be said to be of the best or to have really exemplified the deftness or adroitness normally expected of any master of brier writing, I agree with appellant's counsel that the issues identified in the briefs in substance bear a certain relation to the grounds of appeal. In the first appeal, the grounds of appeal and the issues referred to the rectification order made by the trial Judge according to appellant's counsel he (the Judge) had no power to do so;"*

G He dismissed the preliminary objection as relating to the first appeal.

H With profound respect to the learned President and Justices of the court below, I think they are wrong in the conclusion reached. The questions set out in the appellant's brief cannot by any stretch of imagination be said to be predicated on the grounds of appeal in the amended Notice of Appeal. Having agreed with this view, it is beholden on them to dismiss the appeal, the two grounds of appeal being deemed abandoned. The appeal before them was a complaint against the decision of the trial court made on 25/8/92. The decision made on 12/10/92 was not on appeal before them and they could not in the appeal against the decision made on 12/8/

92 question the correctness or otherwise of the decision made on 12/10/92.

This is more so, if the court below had adverted its mind to the fact that the decision made on 12/10/92 was a consent decision and an appeal against such a decision could only be with the leave of the trial High Court or of the Court of Appeal. See Section 220(2) (c) which provides:

“Nothing in this section shall confer any right of appeal

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*.....
(c) without the leave of a High Court or of the Court of Appeal,
from a decision of the High Court made with the consent of the parties
.....”*

To have allowed the appellant before them to attack the second decision made on 12/10/92 in the manner he did was to allow him to appeal against that decision without complying with the constitutional requirement of leave to appeal. Their Lordships ought to have upheld the preliminary objection and to have dismissed the first appeal. That disposes of Questions (4) and (7).

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I may here again consider whether at the time the court below was entertaining the first appeal there was a decision in existence against which it could be said that the appellant therein was aggrieved. As stated earlier in this judgment, following the decision of 12/8/92 the present respondent filed a summons applying to have the decision rectified by the trial court. The application was heard and granted. The portion of the decision of 12/8/92 being objected to by the respondent had been care of by the second decision of 12/10/92. There was, therefore, no decision of 12/8/92 in existence that could be complained of. What the respondent ought to have done, if he honestly believed after 12/10/92 that the trial court had no jurisdiction to carry out the rectification was to have appealed with leave against the decision of 12/10/92. This disposes of Question (6).

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Be all that as it may, it was argued in the court below and in this Court that by filing the summons to rectify the error in the decision of 12/8/92 the present respondent must be taken to have abandoned his appeal filed on 25/8/92 against the decision. The contention of the respondent was that there was no such abandonment.

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The court below, per Akanbi, J.C.A. observed in the course of its judgment:

“I have earlier on pointed out that the first appeal to this Court against the rectification order and the application made to the trial Court by the appellant to rectify the slip, were live issues in the two courts. Something one might say, constitutes an abuse of the process of the Court. Unfortunately at the time the application to rectify the alleged slip was being considered, there was no undertaking or any suggestion or assurance

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of any kind that the appeal would be withdrawn if the rectification is effectu

ated. The withdrawal of the appeal was never made a condition for the grant of the order of rectification, that being so, I am unable to agree with respondents' counsel that there was any abandonment of the appeal. Nor do I subscribe to the view that the application to rectify the slip has the effect of 'extinguishing' the appeal which was not struck out or dismissed pursuant to any order of Court. I may however observe in passing that the fact that the appeal was pursued after all strategic moves to save appellant's case in the High Court, had failed, especially after the application for rectification had been made and granted, does give some cause for concern and it is not surprising that Kehinde Sofola Esq. SAN has in his submissions questioned the bona fides of the appellant in this matter and has therefore advocated that he should not be allowed to approbate and reprobate. In my view, Mr. Sofola would have been on stronger grounds if he or the Court below had directed attention to the subsisting appeal before a final decision on the application to rectify the alleged slip was made. Whatever the case, the appeal remained on the Court's record and having been argued, what remains is for a decision thereon to be given on the merits."

With respect I do not agree with the approach made by the court below in the passage above. If the court below had considered more deeply the conduct of the respondent, it would have struck out the appeal before it as being in abuse of the process of court. As the record of appeal shows, the existence of the appeal filed on 25/8/92 was never brought to the notice of the trial court. Mr. Sofola SAN, both before the Court below and before us, maintained that he was not aware of it. I have no reason to doubt counsel's word in this respect, just as I have no reason to doubt Chief Williams word that he filed an appeal on 25/8/92. Having, after filing the appeal, applied to the court below for a rectification of the error contained in the decision of 12/8/92, one would expect that the respondent would not pursue the appeal of 25/8/92. By maintaining that appeal after the decision of 12/10/92 he was grossly in abuse of the process of court and the court below in its inherent jurisdiction, should have stopped him. It is trite law that the court has an inherent jurisdiction to protect itself from abuse or to see that its process was not abused by the proceeding without reasonable grounds so as to be vexatious and harassing .

Having regard to the conduct of the respondent I think it would be a scandal and disgrace to the administration of justice if he were allowed to maintain the appeal he filed on 25/8/92. He chose not to wait for that appeal to run its course. It was evident that his complaint was that the trial Judge did not limit the dismissal in that decision to the motion to advertise which was the issue before the court. He drew the Court's attention to this

error and applied to have the error corrected and this was done. Of what

use would the appeal of 25/8/92 be to him that had not been achieved by the second decision of 12/10/92. As it turned out to be, he used his appeal to attack a decision procured by him at his own instance and against which he had not formally lodged an appeal as required under the Constitution. B He should never have been allowed by the court below to abuse the process of the court in this manner. From his two grounds of appeal, it is evident that he was not challenging the merit of the trial court's reasoning but rather the accidental error made by the learned trial Judge in not limiting his order of dismissal to the motion before him but to the petition that was yet to be argued. C The conclusion I finally reach is that the respondent's appeal of 25/8/92 should have been struck out by the court below as being in abuse of the process of court. The trial court could not have put him to his election as that court was unaware that he filed the appeal.

The above conclusions dispose of Questions (1)-(4), (6) and (7). I D may however, say that I do not consider it necessary in this appeal to decide whether or not the error made in the first decision of 12/8/92 was one that could be corrected under the "slip rule."

QUESTIONS (5),(8) (11):

The appellants in their respondents brief in the court below also E raised a preliminary objection to the second appeal on the same grounds as their objection to the first appeal. The second appeal was against the final decision of the trial court. There were two grounds of appeal to wit:-

"1. *The learned trial Judge erred in law and or exercised his discretion wrongly in proceeding to the final determination of the petition when F he was fully aware that the Court of Appeal has yet to determine the matter pending before it concerning the very same matter.*

2. *Even if (which is not conceded) it was proper for the learned trial Judge to give final judgment on the petition before the decision in the pending appeal he ought to have heard final address by counsel on both G sides before doing so."*

In the appellant's Brief in that appeal the following two questions were set out as calling for determination:

"(i) *Was the decision of the learned trial Judge correct and sound when he failed to adjourn the trial until after the hearing and determination of the appeal before the Court of Appeal touching his power and jurisdiction to proceed with the trial?* H

(ii) *Was it right for the learned trial Judge to have written and delivered his judgment without giving the petitioner an opportunity of addressing him?"*

‘the appellant’s objection before the court below was that those questions did not arise out of the two grounds of appeal. The court below however, found:

B *“....the complaint in the second appeal and the issues distilled therefrom are referable to the decision of the trial court to proceed to give final judgment while the first appeal was still pending in the Court of Appeal.”*

The objection was subsequently dismissed. It would appear that Question (i) was a challenge to the exercise of the trial court’s discretion to refuse an adjournment. I cannot see how that question can be said to be predicated on the two grounds of appeal. The court below, with respect, ought to have found that the preliminary objection taken to that question was well taken. The second question would appear to be predicated on the second ground of appeal and as regards that question the preliminary objection taken in the court below was rightly dismissed. That leaves me now
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D to the consideration of whether the parties, particularly the respondent had a fair hearing in the trial court before final judgment was given.

I have considered the submissions made by learned counsel for the parties on this issue and the reason given by the court below (which reason the respondent fully adopted) for allowing the second appeal. I regret I
E cannot find a case of want of fair hearing established by the respondent. The reasoning of the court below, Per Akanbi, P.C.A. on this issue runs as follows:

*“It suffices to say that having regard to the fact that the first appeal was pending in the Court of Appeal and a decision thereon may one way or
F the other affect the final outcome of the case, the learned trial Judge ought to have exercised a little more patience, grant the adjournment sought, so that, as he himself had on a previous occasion said the entire exercise would not be a fruitless exercise which unfortunately it has turned out to be.”*

G With profound respect to the learned President and Justices of the court below, I cannot see how a refusal to exercise “a little more patience” would amount to a denial of fair hearing. The law is clear, that is, that an appeal does not operate as a stay of execution or of proceedings. Any party appealing against the interlocutory decision of a court is under a duty to apply for stay of further proceedings pending appeal if he believes the result
H of his appeal will affect further proceedings in the matter. Mr. T.E. Williams admitted as much for at one stage of the proceedings he intimated that an application for a stay of further proceedings would be brought. This was never done by the respondent. On the totality of the facts as gleaned from

the record I cannot say that the respondent was ever denied fair hearing. The conclusion I finally reach is that the court below ought to have dismissed the second appeal as well.

Consequently I allow this appeal, I set aside the judgment of the court below. I restore the judgment of the Federal High Court given on the 30th July 1993. As there is no appeal against the decision of that court given on 12th October 1992, I say nothing on it and the order made by the learned trial Judge in his Ruling of 12/8/92 having been amended by subsequent order made on 12/10/92. B

I say nothing on it either.

I award to the appellants N1,000.00 costs of this appeal. C

BELGORE JSC

At this time in the country's economic travail, it should be public policy to keep companies in business, especially the ones that are doing well and making profit. They will keep workers on the jobs, the dealers prospering and the end users making good business. The trial Court, to my mind acted in accordance with the law not to allow winding up proceedings to take off and to seek refuge under Section 312 Companies and Allied Matters Act, 1990 after satisfying itself that the best option on examining petition under Section 310 or 311 thereof was to keep the healthy companies in business and whoever is not ready to go along should have his shares sold to the majority shareholder. D E

I agree the Court of Appeal was in error and ought to have dismissed the appeal. I also, for reasons adumbrated in the judgment of Ogundare, J.S.C., allow this appeal and restore the judgment of the Federal High Court given on 30th July, 1993. F

I award N1,000.00 as costs against the respondent in favour of the appellants.

MOHAMMED JSC

I entirely agree with my learned brother, Ogundare, J.S.C., that this appeal ought to be allowed. I have the advantage of reading the judgment in draft before now.

I only wish to comment on the issue concerning the order made by the learned trial Judge on 12/10/92. It is plain from the tenor of the judgment/ruling of Jinadu J. delivered on 12/8/92, that the error which was discovered could not be corrected through the slip rule. It is well settled that a court, while able to correct a misnomer or misdescription under the "Slip H

Rule”, will not under that Rule, whether in the exercise of its inherent

jurisdiction or by the powers conferred by the Rules of court, vary a judgment or order which correctly represents what the court decided, nor will it vary the operative and substantive part of its judgment so as to substitute a different form. See *MaCarthy v. Agard* (1933) 2 K.B. 417 and *Preston Banking Co. v. William Allsup & Sons* (1895) 1 Ch. D. at page 143.

In *Minister of Lagos Affairs, Mines and Power & Anor v. Chief Akin-Olugbade & Ors.* (1974) All NLR 748 at 755 this court gave approval to the statement of Morris L.J. in *Thynne v. Thynne* (1955) 3 All E.R. 129 at 146 where he said;

“Where a court has decided an issue and the decision of the court is truly embodied in some judgment or order that has been made effective, then the court cannot re-open the matter and cannot substitute a different decision in place of the one which has been recorded. Those who seek to alter must in those circumstances invoke such appellate jurisdiction as may apply. (Underlining is mine)”.

Chief Williams being very well aware of the position of the law in this regard, re-considered an earlier application he made before the learned trial Judge in which he asked for a whole sentence in the judgment of the court to be deleted and substituted by another differently worded sentence, by use of the slip-rule. Mr. Kehinde Sofola, SAN did not object to the application because, according to him, the learned trial Judge had earlier mentioned that he had discovered a slip in his judgment. Accordingly, the learned trial Judge ruled as follows:

“I am much grateful to both learned senior counsel for their kind words to me. I believe that a Judge is sometime bound to fall into error and once the Judge finds out he should be bold enough to accept his mistake. I therefore grant the application of the petitioner and I delete the sentence at page 14 of my judgment which reads “I therefore refuse the prayer to wind up the respondents but will make other orders under section 312 aforesaid and substitute therefore the sentence” I therefore refuse the petitioner’s application for the advertisement of the winding-up petitions.”

Going over the judgment/ruling delivered by the learned trial Judge on 12/8/92 and the subsequent amendment made through the ruling, reproduced above, the position of the law is clear, as Chief Williams had submitted, that such a correction could only be made through the invocation of the appellate jurisdiction. However, could the appeal filed before the Court of Appeal against the judgment/ruling of 12/8/92 be used to set aside the court’s order made in the ruling delivered on 12/10/92? The simple answer is, No. What the learned Judge made on 12/10/92 was a decision within the meaning of section 277 of 1979 Constitution. That being so, it

would continue to stand until vacated or altered through the process of an

appeal. Lord Radcliffe said in *Smith v. East Elloe Rural District Council* (1956) A.C. 736 at 769-770:

“An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Until the necessary proceedings are taken at law to establish the cause of invalidity or otherwise upset it will remain as effective for its ostensible purpose as the most impeccable of orders.” B

I agree with the learned Senior Advocate, Kehinde Sofola, that there was nothing before the Court of Appeal to show that there was a pending appeal against the decision of 12/10/92. The decision was not properly before the Court of Appeal for it to invoke its appellate power and set it aside. C

For the above reasons and the fuller reasons in the lead judgment, this appeal is allowed. The judgment of the Court of Appeal is hereby set aside. I abide by all the consequential orders made in the lead judgment, including the assessment on costs. D

ONU JSC

I had the advantage before now to read the judgment of my learned brother Ogundare, J.S.C. just delivered. I am in entire agreement with his reasoning and conclusions and have nothing further to add thereto. E

I make the same consequential orders inclusive of those as to costs as contained in the judgment of my learned brother. F

IGUH JSC

I have had the privilege of reading in draft, the lead judgment just delivered by my learned brother, Ogundare, J.S.C. He has comprehensively considered all the issues canvassed before us and I agree entirely with his reasonings and conclusion. G

I desire however to say a few words of my own on one or two issues that were canvassed before us in this appeal.

It is common place that the petitioner after the institution of the winding up proceedings, filed a motion on notice pursuant to Rule 19 of the Companies winding up Rules seeking leave to advertise the petition. This application was opposed by the respondents. The learned trial Judge, Jinadu, J. in a considered ruling (though erroneously headed Judgment) delivered on the 12th August, 1992 concluded as follows:- H

B *"I therefore refuse the prayer to wind up the respondents but will make other orders under Section 312 aforesaid. But before deciding what power to invoke under the provisions of Section 312 aforementioned I must by law invite learned counsel on both sides to address the court. For this reason this matter will be adjourned to 16/9/92 for the addresses. Meanwhile the tenure of office of the receiver/manager is hereby extended to that date."*

C It is also not in dispute that the relief granted by the learned trial Judge in the above application was neither prayed for nor was it in tune with the issues canvassed before the court. It was obviously a glaring error which, on discovery, was accepted as such by the court and learned leading Senior Advocates for both parties. Indeed, Chief F.R.A. Williams S.A.N. for the petitioner, subsequently applied formally for an order to rectify what he described as a "slip in the judgment and order of the court" delivered on the 12th August, 1992.

D As both learned leading Senior Advocates were in agreement that the error was one which could and should be corrected without the necessity for an appeal, it was, by consent, rectified by the trial court on the 12th October, 1992. Said the learned trial Judge in his ruling.

E *"I am much grateful to both learned Senior counsel for their kind words to me. I believe that a Judge is sometimes bound to fall into error and once the Judge finds out, he should be bold enough to accept his mistake. I therefore grant the application of the petitioner and I delete the sentence at page 14 of my judgment which reads:*

F *"I therefore refuse the prayer to wind up the respondents but will make other orders under section 312 aforesaid" and substitute therefore the sentence "I therefore refuse the petitioner's application for the advertisement of the winding-up petitions. I however, call upon both learned senior counsel to address me on what order I should make under the provisions of section 312 of the Companies and Allied Matters Act, 1990."*

G It is the contention of the petitioner that he had on the 25th August, 1992 filed an appeal against the ruling of the 12th August, 1992. This was well before the application for the rectification of the relevant ruling was filed and subsequently argued on the 12th October, 1992. The respondents vigorously denied that any such appeal was filed. In view, however, of the prime facie evidence on record in support of the existence of this appeal, I am prepared to consider the present appeal against the background that the appeal in question, hereinafter referred to as "the first appeal", was duly filed as required by law.

H It is clear from the record of proceedings that the learned trial

Judge, on a number of occasions, tried without success to get the parties to address him on the proper order to make in respect of the petitions under powers conferred on him by Section 312 of the Companies and Allied Matters Act with a view to concluding the proceedings. However, on the 30th July, 1993, the learned trial Judge was obliged to deliver his final judgment in the petitions. The petitioner being dissatisfied with this decision, filed an appeal against the same to the Court of Appeal on the 23rd August, 1993. This appeal is hereinafter referred to as “the second appeal.”

The two appeals were consolidated for the purpose of hearing and the court below decided both appeals in favour of the petitioner. The present appeal is from the decision of the Court of Appeal in the consolidated appeals.

One of the main complaints of the respondents in the first appeal is that the same, if it was filed at all, was incompetent. Their submission is that in view of the subsequent amendment of the order of the 12th August, 1992 made by the consent of both parties on the 12th October, 1992 against which there was no appeal, none of the two grounds of appeal is related to the said ruling complained of and cannot therefore sustain the appeal. They further contended that the order of amendment or rectification on 12th October, 1992 was made on the application of the petitioner and in presence and with the consent of both parties and was a decision which could only have been reversed by way of a substantive appeal with leave in view of the provisions of section 220(2) (c) of the 1979 Constitution of Nigeria. It was finally argued that the issues for determination raised in the first appeal did not flow from the grounds of appeal filed.

The petitioner, for his own part, contended that the submissions of the respondents over looked the well established rule that where one party relies on a judgment or order to bar the court from entertaining a proceeding, it is a valid answer for the other party to show that the judgment or “order so relied upon was given without jurisdiction. It was argued on his behalf that the “purported amendment” of the order of the 12th August, 1992 was void for want of jurisdiction and that it in no way affected the petitioner’s grounds of appeal against the order of the 12th August, 1992.

It is beyond question that a judgment or order by a court given without jurisdiction is a nullity. See: *Timitimi v. Amabebe* (1953) 14 WACA 374; *Nyarko v. Akowuah* 14 WACA 426; *Oranye v. Jibowu* (1950-51) 13 WACA 41. It is also indisputable that section 53 of the Evidence Act enables any party to a suit to raise lack of jurisdiction in respect of a judgment or order of a court sought to be used against him on ground of estoppel.

See also *Timitimi v. Amabebe*, supra. *Fadiora v. Gbadebo* (1978) 3 SC 219; (1978) NSCC Vol 2 page 121 at 133 and *Attorney-General for Trinidad and Tobago v. Eriche* (1893) A.C. 522-523. I am also in agreement that lack of jurisdiction in the court deprives the judgment or order of any effect whether by estoppel or otherwise, even where the party alleged to be estopped himself sought the assistance of the court whose jurisdiction is impugned. See *Rogers v. Wood* (1831) 2 B & Ald. 245; 109 ER 1134; *Dublin (Archbishop v. Trimleston)* (1849) 12 IEq R. 251; *Toronto R. Co. v. Toronto* (1904) A.C. 809 at 815. In other words, in raising the invalidity or attacking the validity of a judgment or order on ground of want of jurisdiction, it will go to no issue and must be treated as wholly irrelevant and immaterial that such judgment or order was obtained at the instance of the party against whom it is tendered. See *Mcintosh v. Parent* (1924) 4 D.L.R. 420.

The above principles of law notwithstanding, a distinction must be clearly drawn between a judgment or order which is given without or in total absence of jurisdiction as against a judgment or order which is only irregular or erroneous on point of law in the sense that although the court possessed the jurisdiction to make the order, the power was exercised improperly or erroneously. Judgments or orders which are given without jurisdiction are, without doubt, null and void and the party against whom such judgments are tendered in evidence could under section 53 of the Evidence Act establish their invalidity by showing that the court from which they emanated has no jurisdiction to entertain the same. But judgments or orders which are not null and void but only irregular or erroneous can only be declared ineffective or set aside on appeal, otherwise they would have the full force of subsisting judgments or orders. See *Chapman v. C.F.A.O.* 9 WACA 181 at 185; *Chukwunta v. Chukwu* 14 WACA 341. See too *Timitimi v. Amabebe*; *Nyarko v. Akowuah*; *Oranye v. Jibowu*; *Fadiora v. Ghadebo* supra. In other words, a simple irregularity in the course of proceedings that are competent and within the jurisdiction of a trial court must be distinguished from proceedings which are manifestly incompetent thereby affecting the jurisdiction of the court. An irregularity that renders a proceeding incurably defective and null and void may not be waived as acquiescence cannot confer jurisdiction. See too *Skenconsult (Nig.) Ltd. & Anor v. Godwin Ukey* (1981) ISC 6 at 26; *Management Enterprises Ltd & Anor v. Jonathan Otusanya* (1987) 2 NWLR (Pt. 55) 179; *Obimonure v. Erinoshio & Anor* (1966) 1 AU NLR 250 etc.

In the present case, the trial Federal High Court is a court of competent jurisdiction with definite powers, either under the slip rule or under the inherent jurisdiction of the court, to rectify or correct its judgments or orders within the frame work of the law concerning the rectification or correction

of court judg-

ments and orders. Whether or not such a court of competent jurisdiction was in error in making the rectification order of the 12th October, 1992 or whether the making of the order was irregular, improper or otherwise defective seems to me a matter more properly questioned by the invocation of such appellate jurisdiction as may be available and not otherwise.

In this regard, it cannot be over emphasized that a judgment or order of a court of competent jurisdiction remains valid and binding unless and until it is set aside by an appellate court or, by the lower court itself, where it acted without jurisdiction, and there is an unqualified obligation on every person against whom it is given to obey it unless and until it is so set aside. The rationale is that to hold otherwise will be to clothe a party against whom a judgment or order is given with the discretion to decide in his own wisdom, whether the judgment or order is invalid and not binding on him, a situation, which rightly, has been described as amounting to an invitation to anarchy. See: *Aladegbemi v. Fasanmade* (1988) 3 NWLR (Pt. 81) 129; *Adebayo v. Johnson* (1969) 1 All NLR 176 at 194; *Ajao v. Alao* (1986) 5 NWLR (Pt. 45) 802 at 823; *Odiase v. Agbo* (1972) 1 All NLR 170 at 176; *Melifonwu v. Egbuji* (1982) 9 SC 145; *Rossek v. A.C.B. Ltd.* (1993) 8 NWLR (Pt. 312) 382 etc.

In this connection, the often quoted dictum of Lord Denning, M.R. in *Macfoy v. U.A.C. Ltd.* (1961) 3 All E.R. 1169 at 1172; (1962) A.C. 152 to the effect that:-

"If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so"

readily comes to me. This dictum was carefully considered by this court in the case of *Rossek v. A.C.B. Ltd.* supra, per Ogundare, J.S.C. where he aptly described the same as:-

"no more than an obiter given per incuriam - See: Isaacs v. Robertson (1984) 3 All E.R. (140) at 143 per Lord Diplock"

He expatiated as follows:-

"While I agree with the noble Master of the Rolls in his exposition of the distinction between acts that are void and those that are voidable, it is my humble view that his pronouncement (if it was meant to extend to a judgment or order of court) that there would be no need for an order of court to set aside a void judgment, cannot be correct; it is against the weight of judicial opinion. With profound respect, I do not subscribe to

*such view. The law has been laid down as long ago as 1846 by Lord Cottenham, L.C. in *Chuck v. Cremer*; *Cooper temp. Cotto* 338 at 342; 47 E.R. 884 at 835. This view was re-echoed by Romer L.J. in *Hodkinson v. Hodkinson* (1952) p. 285 at 288 or (1952) 2 All E.R. 567 at 569”*

B I agree entirely with the above observations of Ogundare, J.S.C. which, with respect, I fully endorse as representing the correct state of the law.

C It seems to me from all the circumstances of this case that the court’s order of the 12th October, 1992 was an order of a court of competent jurisdiction, with powers to rectify or correct its judgments and orders, whether under the slip rule or under the inherent jurisdiction of the court. It is not disputed that the order, which is clearly appealable, with leave, was not appealed against. The petitioner has argued that the main issue in this appeal is whether the trial court had the power to make the corrective order which he considered a nullity. I regret I find myself unable to subscribe to
D this view.

E For my part, it does not appear to me necessary to wade into whether or not the trial court misdirected itself or erred in law in its corrective order of the 12th October, 1992 in the absence of an appeal against that decision. It suffices to state that the order of the 12th August, 1992 having
F been amended, by consent, pursuant to the subsequent order of the 12th October, 1992 by the trial court, what stood before the amendment, on the state of the law, was no longer material before the court and no longer defined the issues in controversy or to be tried between the parties. See: *Warner v. Simpson* (1952) 2 WLR 109; *Grace Amanambu v. Alexander Okafor & Anor* (1966) 1 All NLR205; *Col. Rotimi v. McGregor* (1974) 11 SC 133 at 152 etc. Accordingly, after the amendment of the ruling of the 12th August, 1992 by the order of the 12th October, 1992, the words deleted there from by consent ceased to exist and no longer defined the issues to be tried between the parties. I will now turn briefly to the petitioner’s first
G appeal.

H The main complaint of the petitioner in the first appeal is that the trial court misdirected itself in law in deciding to refuse the prayer to wind up the respondent companies on a motion to advertise the petition without hearing arguments on the merits of the main petitions. The two grounds of appeal are briefly as follows:-

(i) The learned trial Judge erred in law to have delivered judgment (on the merits) after hearing arguments on a motion for an order to advertise the petition.

(ii) The learned trial Judge erred in law to have refused the prayer

to wind up without hearing arguments of counsel on the merits.

It is pertinent to observe that the words deleted from the order of the 12th August, 1992 are as follows:-

"I therefore refuse the prayers to wind-up the respondents"

In their place were substituted:-

"I therefore refuse the petitioner's application for the advertisement of the winding-up petitions....."

It is clear that the target of the petitioner's first appeal related only to the words deleted from the said ruling of the August, 1992 by the order of amendment of the 12th October, 1992. Those deleted word, as I have observed, ceased to be part of the order of the 12th August, 1992 after the amendment and were no longer material before the court. They also no longer defined the issues to be tried between the parties after the said amendment.

It seems to me clear that having regard to the amendment made by the court to its earlier order of the 12th August, 1992, the two grounds of appeal became totally irrelevant and unrelated to the decision appealed against. I am therefore inclined to accept the submission of the respondents' learned counsel that the amendment order of the 12th October, 1992 rendered the two grounds of appeal contained in the relevant notice of appeal impotent, irrelevant and unarguable. I also accept that the amendment knocked the bottom off the petitioner's first appeal against the one time error contained in the order of the 12th August, 1992 appealed against. This is because once the said two grounds of appeal are declared unrelated to the order appealed against, the Notice of Appeal will be left with no ground of appeal whatsoever, a situation which must render the Notice of appeal defective and the purported appeal incompetent. See Atuyeye & Ors. v. Ashamu (1987) 1 NWLR (Pt.49) 267. It is only when a proper Notice of Appeal which contains proper grounds of appeal has been filed that an appeal is said to have commenced. See Ndukwe Eris & Ors. v. Iдика & Ors. (1987) 4 NWLR. (Pt. 66) 503 at 516-517.

No appeal can stand without a proper Notice of Appeal to sustain it. See Tukur v. Government of Gongola State (1988) 1 NWLR (Pt. 68) 339. It is therefore my view that as the only two grounds of appeal in this case are unrelated to the order appealed against, the first appeal is incompetent and the Court of Appeal should have so pronounced.

In the second place, the two issues formulated by the petitioner for the determination of this court are as follows:-

"(1) Whether the Court below has the jurisdiction or power to correct the error which is admittedly made in its judgment delivered on 12/8/92.

(ii) *If the answer to the first question is in the negative, what order should this court make in the appeal before it.* ”

It cannot be seriously argued that the above issues relate to the grounds of appeal before the court. It is settled law that the issues for determination must arise from or relate to the grounds of appeal filed. See: Ugo v. Obiekwe (1989) 1 NWLR (Pt.99) 566; Modupe v. State (1988) 4 NWLR (Pt.87) 130; Oniah v. Onyia (1989) 1 NWLR (Pt.99) 514; Egbe v. Alhaji (1990) 1 NWLR (Pt.128) 546 at 589 etc. I think the Court of Appeal, with respect, was in error by failing to hold that the issues for determination as formulated by the petitioner in the first appeal did not arise from the grounds of appeal before the court.

The main complaint of the respondents in the second appeal is that the course taken by the court below whereby it allowed the appeal simply because the first appeal had succeeded is a grave error as the issues raised by the two appeals were totally different. I think that the respondents are on a firm ground in this regard.

There is also the complaint by the petitioner before the court below that he was denied the right of fair hearing by his learned counsel not addressing the court before judgment was delivered in the petitions. It is true that all the right to fair hearing entails is being given adequate opportunity of being heard. See: Ceylon University v. Fernando (1960) 1 WLR 1223 at 1235; Baba v. Nigerian Civil Aviation Training Centre & Anor (1991) 5 NWLR (Pt.192) 388 at 426.

It is clear from the record of proceedings that the petitioner was given the fullest opportunity to be heard in the prosecution of his petitions. A close study of the record of proceedings reveals that from the 12th August, 1992, the learned trial Judge on a number of occasions tried to get the parties to address him on the final order he was to make without success. Endless applications for adjournment were made to the court on behalf of the petitioner when on the 5th March, 1993, the learned trial Judge was obliged to observe as follows:-

“I am in complete agreement with Mr. Sofola, S.A.N. that the petitioner is adopting delaying tactics in order to frustrate the completion of this case.”

After two more adjournments on the 30th April, and the 2nd July, 1993, learned respondents’ counsel urged the court on the 30th July, 1993 to deliver its judgment in the petitions. Learned counsel for the petitioner who was present in court neither opposed the application nor did he apply to be allowed to address the court. He simply stated:-

“Nothing to add”

Whereupon the trial court delivered its final judgment in the petitions.

In the respondents’ brief of argument, their learned counsel, Mr. Sofola; S.A.N. on the alleged issue of lack of fair hearing submitted as follows:-

“I submit with respect that on the above facts, the petitioner was not entitled to complain that he was not given the opportunity to address the Federal High Court before its decision on 30/7/93. To hold otherwise as the Court of Appeal had done, was tantamount to insisting that the learned trial Judge who was supposed to be dominus litis should allow himself to be held hostage in the proceedings in his own court and ignore the principle that justice delayed is justice denied. The Court of Appeal, I respectfully submit, was in error to have made the denial of the right of address by the petitioner’s Counsel as one of the main pillars in its decision in the second appeal”.

I confess that I am inclined to accept the above submission of learned respondents’ counsel as well founded. Upon a close study of the record of proceedings, I find myself unable to hold that want of fair hearing was established by the petitioner in these proceedings.

On the whole, I find some merit in this appeal and it is for the above and the more elaborate reasons contained in the lead judgment of my learned brother, Ogundare, J.S.C., that I, too allow this appeal. I set aside the judgment and orders of the court below and restore the decisions of the Federal High Court delivered on the 12th August, 1992 and 30th July, 1993 respectively. I abide by the consequential orders, including those as to costs, made in the lead judgment.

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