

SUPREME COURT OF NIGERIA
TUESDAY 25TH JUNE, 1996. SC. 156/1990
CORAM:- M. L. UWAIS, A. B. WALI,
M. E. OGUNDARE, Y. O. ADIO, A. I. IGUH, JJSC

CHIEF P. D. C. OKENWA PLAINTIFF/APPELLANT

AND

1. MILITARY GOVERNOR, IMO STATE
2. THE ATTORNEY-GENERAL DEFENDANTS/
AND COMMISSIONER FOR JUSTICE, IMO STATE RESPONDENTS
3. COMMISSIONER FOR LOCAL
GOVERNMENT, IMO STATE.
4. EZE LAMBERT OKOYE AKUNEZIRI

APPEALS - Point of law - Relating to the effect of a chieftaincy law - sought to be raised newly - Whether substantial.

APPEALS - Point of law - Where the new point sought to be raised - Relates to interpretation and effect of a statute - Whether the issue of failure to plead that point - Should arise.

APPEALS - Point of law - Whether the issue sought to be raised - Is an attempt to raise an entirely new case.

APPEALS - Brief of appeal - Supplementary brief - That is contained in the rime document as the reply brief - Whether incompetent.

PLEADINGS - Point of law relating to a statute - Sought to be raised newly on appeal - Need not be pleaded - As only material facts are required to be pleaded.

FACTS

Before the High Court, Owerri, the plaintiff/appellant filed an action against the defendants/respondents seeking inter alia, a declaration that his removal as the traditional ruler of Ihitenansa is null and void and of no effect whatsoever. The trial court, after hearing the case, dismissed the plaintiff's claims in their entirety.

Plaintiff appealed to the Court of Appeal. He sought leave of that court to raise a new point of law relating to the legal effect and interpretation of a particular chieftaincy law. The Court of Appeal refused to grant leave to plaintiff to raise the said point of law. Being aggrieved, plaintiff has further appealed to the Supreme Court raising six issues. But the ulti-

mate court preferred the two issues raised by the respondents in determining the appeal.

ISSUES FOR DETERMINATION

“(i) Whether the issue sought to be raised by the Appellant for the 1st time (at the Court of Appeal) amounts to the Appellant putting forward an entirely new case different from the one put in and canvassed in Court below by the Appellant and whether such new case will not require additional evidence

(ii) Whether the issue sought to be raised and canvassed now the Appellant is substantial or relevant.”

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

Point of law - Whether substantial

1. In the present case, the point of law raised, even from the arguments advanced in the briefs of the parties, clearly admits of more than one interpretation. A decision thereupon is not only necessary but crucial to a just determination of the suit which concerns who, in law, is the Traditional Ruler of the autonomous community in question. I am therefore of view that the question as to the true interpretation and effect of the provisions of the said Traditional Rulers and Autonomous Communities No. 11 of 1981, the subject matter of the fresh point sought to be raised a substantial point of law for the determination of the court below. Whether however, it is valid or meritorious, as I have observed, is quite a differed matter. (p. 1239 G)

Point of law that relates to effect of a statute - Need not be pleaded

2. Upon a careful consideration of the above submissions, it seems to me that since the point sought to be raised concerns the interpretation and effect of Law No. 11 of 1981 together with any other statutory provisions, enactment, legal notices or laws relevant to the issue in question, no additional or fresh evidence needs be called. The court below was of the opinion that the fact sought to be raised, not having been pleaded, no evidence was led thereon before the trial court, hence having failed to do so, the appellant could not be allowed to adduce fresh evidence before it. But with profound respect, this proposition cannot be well founded. This is because what was sought to be raised was not fact but law, namely, the interpretation of Law No. 11 of 1981. Its purported result was already copiously pleaded in the appellant's further amended Statement of Claim to the effect that he remained the recognised traditional ruler of Ihitenansa autonomous community. The law in issue itself needed not be pleaded. (p. 1240 D)

Whether an entirely new case is being raised

3. It therefore seems to me clear that the issue sought-to be raised before the court of Appeal being the alleged legal result of the Legal Notice No. 11 of 1981 relied upon by the appellant and consistent with his case before the trial court cannot, rightly, be described as an entirely different case from that in which issues were joined by the parties. With profound respect to the Court of Appeal, I am unable to accept that the appellant, by virtue of the issue he seeks to raise before the court below, is attempting to jettison his case in the trial court and to raise an entirely new case in the Court of Appeal. (p. 1241 G)

Brief of appeal

4. The real question is whether the supplementary brief, although separate from the reply brief, is incompetent for the simple reason that it is contained in the same document as the reply brief. In other words, does the fact that the appellant incorporated both his reply to issues arising from the respondents' brief and his argument on the issue formulated from his additional ground of appeal invalidate his said supplementary brief. In my view this whole issue revolves on nothing but sheer technicality. The appellant's supplementary brief was so described and filed. It was contained in a separate part, to wit, Part II of his reply brief. All that was sought was for leave to deem his argument therein contained as his supplementary brief. The grant of this prayer will result in no injustice to the respondents who, if they so desire, may be granted leave to file their supplementary reply brief thereto. I think the court below was in error to refuse prayers 2 and 3 of the appellant's application. (p. 1243 H)

NOTABLE POINTS OF INTEREST**IGUH JSC*****1. Principles guiding the raising of a new point on appeal***

There can be no doubt that an appellate court must not allow an appellant to jettison before it, the question on which the parties joined issue and fought their case before the trial court as to do otherwise would amount, in effect, to permitting the appellant to commence an entirely new case before the appellate court. In the same vein, an appellate court before which a new point is sought to be canvassed will, on the authorities, refuse to grant leave to do so where the fresh point raised introduces a new line of defence completely different from the issues fought by the parties in the court below. An appellant will also not be allowed to raise on appeal, a fresh point or question which was not raised or tried or considered by the trial court, particularly where to raise such a point or question will require additional evidence to be adduced. Where, however, such a fresh point or

question involves substantial point of law, substantive or procedural is plain that no further evidence needs be adduced which would affect the decision on the matter, the appellate court will allow the question to be raised and the point taken to prevent a miscarriage of justice, (p. 1237 D)

B 2. Courts - Shifting away fro technical approach to justice

It has to be borne in mind the courts appear now to be shifting away from the narrow technical approach to justice which characterised their earlier decisions and tend now to pursue the course of substantial justice as lull and judiciously as the law may permit. As Bowen, C L.J. once observed in *Cropper v. Smith* (1884) 26 Ch. D. 700 at 701 - *"Now, I think it is a well established principle that the object of courts is to decide the rights of the parties as judiciously, equitably and as fairly as practicable and not to punish them for mistakes they make in the conduct of the cases by deciding otherwise than in accordance with substantial justice or their rights. Speaking for myself, and in conformity with what I have heard laid down by the other Division of the Court of Appeal and by myself as a member of it, I know of no kind of error or mistake which, if not fraudulent or intended to overreach the court ought not to correct, if it can be done without injustice to the other party....."*

The above obiter dictum, although pronounced over a century ago on the issue of amendment of proceedings, remains as valid now as when it was made. I must respectfully endorse the same as sound and in accordance with common sense and the interest of justice. F (p. 1244 C)

UWAIS CJN

3. Preferable to file a separate brief

Admittedly, Order 6 rule 5 of the Court of Appeal Rules, 1981 envisages that a reply brief would "deal with only new points arising from the respondent's brief." It is, therefore, preferable that a separate brief apart from the reply brief should have been sought to be filed, as supplementary to the Appellant's brief, in presenting the argument on the fresh point. If that were done, the Respondent would be expected to apply for leave seeking to also file a supplementary H Respondent's brief. This is the ideal as it would conform with the sequence of filing briefs of argument in accordance with the provisions of the Rules. However, the situation in this case differs. Albeit I am of the opinion that the Court below should have overlooked the incongruity of the method adopted by the Appellant in making his

supplementary brief pan of his Reply brief, so dial die justice of the case in the appeal before it could be met. The Court of Appeal Rules give the Court below the discretion to waive the observance of any of its provisions in the interest of justice; see Order 6 rule 2 thereof. (p. 1246 D)

REPRESENTATION

Rotimi Jacobs Esq. - for the Appellants

Livy Uzoukwu, Esq., - Attorney-General of Imo State (with him,

C.O. Okoro, Esq., Acting Director of Civil Litigation)

Chief K. K. Ogba - (with him, T. N. Orji-Abadua (Mrs.))

For the Respondents

CASES REFERRED TO

Akpene v. Barclays Bank of Nigeria Ltd. (1977)1 S.C. 47

Ejiofodomi v. Okonkwo (1982) 11 S.C. 74

Gamida v. Ezezi (1961) All N.L.R. 584 at 588

Okonjo v. Dr. Odje (1985) 10 S.C. 267

Cropper v. Smith (1884) 26 Ch. D. 700 at 701

Collins v. VEstry of Paddington (1880) 5 Q.B.D. 380 at 381

Attorney-General of Oyo State v. Fairlakes Hotel Ltd (1988) 5 NWLR (Pt. 92) 1

Salati v. Shehu (1986)1 NWLR (Pt. 15) 198

STATUTE & RULES REFERRED TO

Imo State chieftaincy Law No. 22 of 1978 s. 9

Traditional Rulers and Autonomous Communities Law No. 11 of 1981

Court of Appeal Rules 1981 O. 6 rr. 5, 3(a), 2

Evidence Act Cap. 112 LFN 1990 ss. 73, 74

LEAD JUDGMENT BY IGUH JSC

In the Owerri Judicial Division of the High Court of Imo State, holden at Owerri, the plaintiff, now the appellant, instituted an action against the defendants/respondents claiming as follows:-

“(a) A declaration that the removal of the plaintiff as the traditional ruler of Ihitenansa Autonomous Community and the withdrawal of his recognition as such by Imo State Government is contrary to the Imo State Chieftaincy Law No. 22 of 1978 and the said withdrawal is therefore null and void and of no effect whatsoever.

(b) A declaration that the plaintiff is still the recognised traditional ruler (Eze) of Ihitenansa Autonomous Community.

(c) A declaration that the subsequent recognition of Chief Lam

bert Okehi Akuneziri as the traditional ruler of Ihitenansa by the former Government of Imo State is contrary to Imo State Chieftaincy Edict (Law) of 1978 and Ihitenansa Chieftaincy Constitution and is therefore null and void and of no effect whatsoever.

B (d) *A declaration that the withdrawal of recognition of the plaintiff based on Justice Ojiako Panel's recommendation was misconceived, irregular, unjust and unwarranted.*

(e) *A perpetual injunction restraining the fourth defendant from continuing to hold himself out or from acting or parading himself as the recognised Eze or Traditional ruler of Ihitenansa Autonomous Community or from performing the function of a recognised Eze or traditional ruler set out in the Traditional Rulers and Autonomous Communities Law of 1981.*"

C Pleadings were ordered in the suit and were duly settled, filed and exchanged.

D At the subsequent trial, both parties testified on their own behalf and called witnesses. The learned trial Judge, Nwogu, J., at the conclusion of hearing on the 18th day of June, 1987, dismissed the plaintiff's claims in their entirety. The plaintiff, being dissatisfied with the said decision, appealed to the Court of Appeal on the 23rd June, 1987.

E By an application dated the 30th August, 1988, the plaintiff sought and obtained the leave of the Court of Appeal -

(i) to file and argue additional ground of appeal annexed as Schedule "A" to the said application and

(ii) extension of time within which to file a reply brief.

F Since briefs had been exchanged before the plaintiff's application for leave to file and argue additional ground of appeal was granted, his argument on the additional ground of appeal was set out in part ii of his reply brief.

G As it appeared that the point raised in the additional ground of appeal was a fresh point before the Court of Appeal, the plaintiff, to regularise his position in the appeal, brought an application dated the 3rd April, 1989 and filed on the 27th April, 1989 seeking the following reliefs -

H "1. *An order granting leave to the Appellant/Applicant to raise a fresh point in this court which was not raised at the lower court to wit; the validity of the purported withdrawal of recognition of the Appellant or recognition of the 4th Respondent when by the Traditional Rulers and Autonomous Communities law No. II of 1981, the Appellant is still the legally recognised Eze of Ihitenansa Autonomous Community.*

2. *An order granting leave to the Appellant to file a Supplementary Brief on the new issue raised before this Honourable Court.*

3. *An order deeming Part two of Appellant's Reply Brief dated*

10th August, 1988 and filed on 23rd September, 1988 which is based on the Additional Ground of Appeal dated 30th August, 1988 already filed and served with leave of court as Supplementary Brief in support of the new issue raised before this Honourable Court. And for such further order or orders as this Honourable Court may deem fit to make in the circumstances.” B

The two grounds upon which the application is based are stated to be that -

“1. The Traditional Rulers and Autonomous Communities Law No. 11 of 1981 is the latest statute on recognised Ezes for various autonomous communities having come into effect on 1st day of April, 1981 and by the schedules thereto, the Appellant is still the recognised Eze of Ihitenansa Autonomous Community. C

2. Although the Traditional Rulers and Autonomous Communities Law No. 11 of 1981 was referred to at the trial court, the attention of the learned trial Judge was not drawn to the above fact.” D

At the conclusion of arguments on the application, the Court of Appeal in an unanimous decision on the 9th May, 1990 dismissed the same in its entirety. The plaintiff being dissatisfied with this decision lodged an appeal to this court on the 21st May, 1990. The plaintiff and the defendants will hereinafter be referred to as “appellant” and “respondents” respectively in this judgment. E

The parties to this interlocutory appeal, pursuant to the rules of this court, filed their respective briefs of argument. The appellant, in his brief, formulated six issues for the determination of this court. These are as follows - F

“1. Whether the issue sought to be raised by the Appellant in the Court of Appeal for the first time as embodied in the Additional Ground of Appeal, amounts to the Appellant putting forward an entirely different case from that canvassed by him in the trial court.

2. Whether further or additional evidence will be required before the Court of Appeal could effectively and effectually adjudicate upon the fresh point being raised by the Appellant. G

3. Whether the question as to the interpretation and effect of the provisions of the Traditional Rulers and Autonomous Communities Law No. 11 of 1981, subject matter of the fresh point sought to be raised by the application is not a substantial point of law. H

4. Whether the failure of the Respondents to object to the Additional Ground of Appeal at the time leave to file and argue same was being sought does not amount to a waiver thereby estopping them from later complaining that the said additional ground of appeal raises an issue for

the first time in the Court of Appeal.

5. *Whether the Court of Appeal could rightly ignore a decision of the Supreme Court and refuse to consider same when that decision was duly cited to the Court in support of a view canvassed by one of the parties.*

B 6. *Whether by its refusal to grant prayers 2 and 3 of the Application, the Court of Appeal was not denying the Appellant the right to adduce argument on a ground of appeal properly before the Court."*

C The 1st, 2nd and 3rd respondents, for their part, identified two issues as sufficient for the determination of this appeal. These are stated as follows:-

"(i) *Whether the issue sought to be raised by the Appellant for the 1st time (at the Court of Appeal) amounts to the Appellant putting forward an entirely new case different from the one put in and canvassed in the Court below by the Appellant and whether*

D *such new case will not require additional evidence?*
(ii) *Whether the issue sought to be raised and canvassed now by the Appellant is substantial or relevant."*

E The 4th respondent, in addition to adopting the 6 issues formulated by the appellant added a 7th issue, all of which he considered pertinent in the determination of this appeal. This 7th issue goes thus -

"7. *Whether the alleged errors in law and misdirections in law on the part of the Court of Appeal have in the circumstances resulted in a miscarriage of justice."*

F Upon a close study of the above sets of issues, it is apparent that the two issues identified on behalf of the 1st, 2nd and 3rd respondents are clearly sufficient for a determination of this appeal. These correspond with the first three issues set out in the appellant's brief of argument. I shall in this judgment, therefore, confine myself to the two issues formulated on behalf of the 1st, 2nd and 3rd respondents for my consideration of this appeal.

G At the oral hearing before us, learned counsel for the appellant, Mr. Rotimi Jacobs, in addition to adopting his brief of argument dated and filed on the 10th September, 1990 proffered oral arguments in amplification thereof. Relying on the decisions in *Akpene v. Barclays Bank of Nigeria Ltd. (1977) 1 S.C. 47*, *Management Enterprises Ltd. v. Otusanya (1987) 2 N.W.L.R. (Pt. 55) 179*, *Oredoyin v. Arowolo (1989) 4 N.W.L.R. (Pt.114) 172*, etc., learned counsel submitted that it is now well settled that an appellate court will, in appropriate cases, allow a party to raise, for the first time, a point of law not raised or canvassed in the court below. He pointed

H

out that the Court of Appeal refused the appellant's application on the ground that the appellant was seeking to set up an entirely different case from that on which issues were joined by the parties. He argued that this view is a total misconception of the facts. He claimed that all the appellant wanted was leave to rely on a section of the Traditional Rulers and Autonomous Communities Law No. 11 of 1981, otherwise also referred to as Law No. 11 of 1981 in which the appellant was allegedly referred to as the Traditional ruler of Ihitenansa Community. He submitted that it is not in doubt that the appellant is, in fact, not the traditional ruler or Ihitenansa. The appellant, however, claims that he is in law the traditional ruler of the community. He stressed that what the appellant applied for was leave to raise a fresh point in the appeal and not for leave to adduce fresh evidence. He submitted that the principles governing the two issues are totally different. He contended that the law sought to be relied on was copiously cited before the trial court by both parties. He assured that in adjudicating upon the fresh point in the court below no fresh or additional evidence will be required since all the materials necessary for its determination are available to the court. He urged the court to allow the appeal and to grant the application as prayed.

Learned counsel for the 1st, 2nd and 3rd respondents who is also the Hon. Attorney-General, Imo State, Mr. Livy Uzoukwu also adopted his brief of argument and made oral submissions in expatiation thereof. He contended that the application in issue has the effect of introducing an entirely new case on behalf of the appellant. He argued that this will require fresh evidence and that the court below was right in dismissing the application. He stated that before the trial court, the appellant contended that although he was removed from office, that removal was wrong in law and null and void. His case now is that he was in law never removed, a fresh issue which requires fresh evidence to sustain it. He argued that the appellant cannot in law be allowed to do this. Referring to the Traditional Rulers and Autonomous Communities Law No. 11 of 1981 sought to be relied upon by the appellant, learned counsel submitted that under the existing law, it is the Governor that recognises a Traditional Ruler and not any Schedule. He pointed out that not one of the 26 sections of the said Law No. 11 of 1981 refers to any Schedule. He contended that the alleged Schedule which is not referable to any section of that Law No. 11 of 1981 has no legal validity but is hanging in the air. He argued that the appellant who claims to be recognised by virtue of a mere Schedule that has no force of law and is not referable to any section of the law has no valid claim. He finally submitted that the issue sought to be raised by the appellant is neither substantial nor relevant to the issue before the court.

Learned counsel for the 4th respondent, Chief K. K. Ogba in his

reply adopted his brief of argument dated the 24th October but filed on the 1st November, 1990. It is his submission that the appellant's additional ground of appeal does not involve any substantial question of law and that even if it does, the question of law raised cannot be properly resolved without additional evidence. He explained that what the appellant submitted as a substantial question of law is the trial court's decision that he was no longer the traditional ruler of Ihitenansa when by Schedule VII of Law No. 11 of 1981, his name appeared as the Traditional Ruler of Ihitenansa. He described the proposition as untenable, bearing in mind that Schedule VII relied on is dated 28th September, 1979. Also, section 1 of the said Law No. II of 1981 makes it clear that the Law should be cited as the Traditional Rulers and Autonomous Communities Law, 1980 but to come into force on the 1st April, 1981. He stressed that the recognition of the appellant as the Traditional Ruler of Ihitenansa was withdrawn by the Governor of Imo State on the 1st January, 1981 pursuant to section 9 of the Chieftaincy Law No. 22 of 1978 which was repealed by Law No. 11 of 1981 which came into force on the 1st April, 1981. He argued that it is clear the Schedules to the Law No. 11 of 1981 show the state of affairs as they existed in 1978 and 1979 and that they did not reflect the name of Traditional Rulers of Autonomous Communities as at 1981. He submitted that why the appellant's name appeared in the Schedule to the Law No. 11 of 1981 is a matter of evidence but that the question, unfortunately, was never raised before the trial court. He finally argued that a reply brief under Order 6 Rule 5 of the Court of Appeal Rules, 1981, as amended, is limited to answering new points raised in the respondent's brief but does not cover arguments in respect of new grounds of appeal such as is the position in the present case. He urged the court to dismiss this appeal.

I propose, in this judgment, to consider the two issues together. The first question is whether the fresh point sought to be raised by the appellant before the Court of Appeal amounts to the appellant putting forward an entirely different case from that canvassed by him in the trial court and whether such a new case will not require additional evidence. The court below in dealing with this issue per the lead judgment of Onu, J.C.A., as he then was, with which Jackson and Omosun JJ.C.A., agreed, found as follows:-

"Mr. Alinnor submitted succinctly that the applicant is not entitled to the relief sought because what he (applicant) is now doing is an attempt to jettison his case in the court below and thus raise an entirely new case in this court. I am in entire agreement with his submission."

A little later in its judgment, the Court of Appeal, after setting out

paragraphs 3, 9 and 30(b) of the appellant's further amended Statement of Claim and paragraph 7(b) of the 4th defendant/respondent's amended Statement of Defence, went on

"In the face of the above extracts coupled with his evidence - see particularly pages 116 - 117 of the Record for the applicant to say that by the Traditional Rulers and Autonomous Communities Law No. 11 of 1981 (hereinafter referred to as Law No. 11 of 1981) he is still the legally recognised Eze of Ihitenansa by the Governor, is the commencement of a new case altogether. This is the moreso when he has not shown which section of that law confers the recognition on him."

The Court of Appeal concluded -

"I also agree with the learned Director of Civil Litigation that the point now sought to be raised would have been a matter for evidence and had it been raised in the court below, that court would have provided an instant answer thereto. The fact not having been pleaded, no evidence was led thereon in the court below. Hence, having failed to do so, the applicant cannot now be allowed to adduce fresh evidence in this court."

There can be no doubt that an appellate court must not allow an appellant to jettison before it, the question on which the parties joined issue and fought their case before the trial court as to do otherwise would amount, in effect, to permitting the appellant to commence an entirely new case before the appellate court. In the same vein, an appellate court before which a new point is sought to be canvassed will, on the authorities, refuse to grant leave to do so where the fresh point raised introduces a new line of defence completely different from the issues fought by the parties in the court below. See *Ejiofodomi v. Okonkwo* (1982) 11 S.C. 74. An appellant will also not be allowed to raise on appeal, a fresh point or question which was not raised or tried or considered by the trial court, particularly where to raise such a point or question will require fresh or additional evidence to be adduced. See *Oredoyin v. Arowolo* (1989) 4 N.W.L.R. (Pt. 114) 172 at 190 and 192. Where, however, such a fresh point or question involves substantial point of law, substantive or procedural, and it is plain that no further evidence needs be adduced which would affect the decision on the matter, the appellate court will allow the question to be raised and the point taken to prevent a miscarriage of justice. See *Attorney-General of Oyo State v. Fairlakes Hotels Ltd.* (1988) 5 N.W.L.R. (pt. 92) 1 at 29, *John Bankole and others v. Mojidi Pelu and others* (1991) 8 N.W.L.R. (Pt. 211) 523.

In *Attorney-General, Oyo State v. Fairlakes Hotel Ltd.*, (supra) this court succinctly stated the principles guiding the appellate courts in the

exercise of their discretion to grant leave to a party to raise, for the first time, a point of law not raised or canvassed in the court below thus -

"The discretion has been exercised in a variety of situations in the interest of the administration of justice. The following situations are disclosed by some of the decided cases, among many, where substantial points of law, substantive and procedural are involved.

The leave has been granted to raise new points of law:

(1) When the point of law raised discloses ex facie that the court has no jurisdiction

(2) Where the point of law raised arose out of the decision of the court of first instance and could not have been raised earlier in that court

(3) Where the point of law raised involves the interpretation of documents relevant to the determination of the case before the court

(4) Where all the materials necessary for the determination of the point of law raised are present in the records of the court.

(5) Where the court is satisfied that the evidence is such that establishes beyond doubt, that the facts, if fully investigated would have supported the new plea."

The next question must be what this all important new issue now sought to be raised by the appellant before the court below is.

The issue sought to be raised is indisputably clear. This, is indicated in the appellant's additional ground of appeal dated the 30th August, 1988. The issue is whether there was a legal withdrawal of recognition of the appellant and a legal recognition of the 4th respondent as the Traditional Ruler of Ihitenansa when by the said Traditional Rulers and Autonomous Communities Law No. 11 of 1981, the appellant is purportedly indicated as the legally recognised Eze of Ihitenansa Autonomous Community.

Without doubt, this issue is one of law as it revolves on the law, namely, the Traditional Rulers and Autonomous Communities Law No. 11 of 1981. Whether or not the appellant's proposed arguments to be adduced before the court below in the appeal if his application in issue were to be granted are meritorious or otherwise puerile, ridiculous or misconceived is entirely a different matter. It suffices to state that the fresh issue sought to be raised is a statutory enactment and therefore law.

The appellant is seeking to apply what he conceives, rightly or wrongly, is the legal result of the said Law No. 11 of 1981 to the facts of the case as pleaded before the court. The issue raised being purely on a point of law, needs be fully canvassed in the overall interest of justice. The next question shall be whether the fresh point of law so raised can be regarded

as a substantial point of law.

All learned counsel appearing for the parties in this appeal have advanced copious arguments in their respective briefs on the issue of whether or not there was a legal withdrawal of recognition of the appellant or a legal recognition of the 4th respondent as the Traditional Ruler of Ihitenansa, B having regard to the provisions of the Traditional Rulers and Autonomous Communities Law No. 11 of 1981 and/or the alleged Schedule VII attached thereto. I think with the greatest respect, I ought to make it clear that this court is not in this appeal concerned with the validity or otherwise of the fresh issue sought to be raised by the appellant. That will be a matter C for the court below to pronounce upon in the event of leave being granted to the appellant to raise the point. I will therefore make no observation whatever on the issue. It suffices to state that what I need to consider at this stage is whether or not the fresh point sought to be raised is a substantial question of law. The question must be distinguished from whether or D not there is any merit on the point itself, the decision of which can only be taken after full arguments from the parties have been heard by the court below in accordance with the Rules of court and all the relevant laws and enactments in connection therewith are examined and considered.

On the issue of when a question of law may be said to be substantial, this court in *African Newspapers of Nigeria Ltd. and others v. The Federal Republic of Nigeria* (1985) 2 N.W.L.R. (Pt. 6) 137 at 149 explained the matter thus E

"We shall not attempt a complete definition of what amounts to a substantial question of law, but it must clearly be one of which arguments in favour of more than one interpretation might reasonably be adduced. F Secondly, the question must be one which must necessarily be decided in the cause or matter and not which may be unnecessary to decide."

See too *Otugor Gamioba and others v. Ezezi II, the Onodjie of Okpe and Others* (1961) 2 SCNLR 237; (1961) All N.L.R. 584 at 588.

In the present case, the point of law raised, even from the arguments advanced in the briefs of the parties, clearly admits of more than one interpretation. A decision thereupon is not only necessary but crucial to a just determination of the suit which concerns who, in law, is the Traditional Ruler of the autonomous community in question. I am therefore of the view that the question as to the true interpretation and effect of the provisions of the said Traditional Rulers and Autonomous Communities Law No. 11 of 1981, the subject matter of the fresh point sought to be raised, is a substantial point of law for the determination of the court below. Whether, however, it is valid or meritorious, as I have observed, is quite a different matter. H

Learned counsel for the 4th respondent has submitted in his brief that even if the fresh point sought to be raised involves substantial question of law, which he did not concede, the question of law raised cannot be properly resolved without additional evidence.

B For the appellant, it was contended that in determining the new issue raised, no further evidence would be required by the lower court as the materials which involve the necessary Laws and/or enactments required for such adjudication cannot be regarded as fresh evidence but constitute laws which all courts are required to take judicial notice of.

C Learned counsel for the 1st, 2nd and 3rd respondents in his brief stressed that had the appellant raised the new issue before the trial court, he would have been obliged to tender before the court, such other vital documents, such as withdrawal of Recognition of Chiefs Instrument, 1981 published as Legal Notice No.9 of 1981 at page B20 of the Supplement to Imo State of Nigeria Gazette, 1981 etc. The Traditional Rulers and Autonomous Communities (Amendment) Law, 1982 was also referred to in their brief.

Upon a careful consideration of the above submissions, it seems to be that since the point sought to be raised concerns the interpretation and effect of Law No. 11 of 1981 together with any other statutory provisions, enactments, legal notices or laws relevant to the issue in question, no additional or fresh evidence needs be called. The court below was of the opinion that the fact sought to be raised, not having been pleaded, no evidence was led thereon before the trial court, hence having failed to do so, the appellant could not be allowed to adduce fresh evidence before it.

F But, with profound respect, this proposition cannot be well founded. This is because what was sought to be raised was not fact but law, namely, the interpretation of Law No. 11 of 1981. Its purported result was already copiously pleaded in the appellant's further amended Statement of Claim to the effect that he remained the recognised traditional ruler of Ihitenansa autonomous community. The law in issue itself needed not be pleaded.

G In this connection, I should perhaps stress that the law is that it is no longer necessary to plead statutes or sections thereof before reliance can be placed on them. It is sufficient to plead material facts which will lead to a certain legal result, and, once such material facts have been pleaded, the inference to be drawn from such pleaded facts and the particulars of the law to be relied upon for such an inference need not be pleaded. See *Re Vandervell's Trust (No. 2)*, *White and Others v. Vandervell Trustees Ltd.* (1974) 3 All E.R. 205 at 213, *Anyanwu v. Mbara* (1992) 5 N.W.L.R. (Pt. 242) 386 at 398.

H

The appellant throughout his further amended Statement of Claim clearly pleaded that the withdrawal of his recognition as the Traditional Ruler of Ihitenansa by the Imo State Government is null and void and of no effect. In pursuance thereof, he claimed per paragraph 30(b) of his said further amended Statement of Claim a declaration that he is still the Eze of Ihitenansa autonomous community. B

The 4th respondent, on the other hand pleaded that the recognition of the appellant as the traditional ruler of Ihitenansa was duly and legally withdrawn by Government and that the 4th respondent himself was legally appointed and recognised as the present traditional ruler of the said autonomous community in place of the appellant. C

I entertain no doubt that both sides are fully entitled to place reliance on whatever legislations, Legal Notices and/or other Laws they consider helpful to their respective causes without pleading such Laws. I will now turn to whether the new point sought to be canvassed by the appellant in the court below is in any way seeking to set up an entirely different case from that on which issues were joined by the parties. D

The case of the appellant in the trial court on which issues were properly joined is that his derecognition as the Eze of Ihitenansa is null and void and of no effect. He therefore maintained that he is still the recognised traditional ruler of the autonomous community. Accordingly he claimed as per paragraphs 30(a) and 30(b) of his further amended Statement of Claim as follows:- E

“30(a) A declaration that the removal of the Plaintiff as the traditional ruler of Ihitenansa autonomous community and the withdrawal of his recognition as such by Imo State Government is contrary to the Imo State Chieftaincy Law No. 22 of 1978 and the said withdrawal is therefore null and void and of no effect whatsoever. F

(b) A declaration that the Plaintiff is still the recognised traditional ruler (EZE) of Ihitenansa autonomous community.” G

It therefore seems to me clear that the issue sought to be raised before the Court of Appeal being the alleged legal result of the Legal Notice No. 11 of 1981 relief upon by the appellant and consistent with his case before the trial court cannot, rightly, be described as an entirely different case from that on which issues were joined by the parties. With profound respect to the Court of Appeal, I am unable to accept that the appellant, by virtue of the issue he seeks to raise before the court below, is attempting to jettison his case in the trial court and to raise an entirely new case in the Court of Appeal. H

I think I ought also to point out that the Law No. 11 of 1981

which constitutes the subject matter of the fresh point to be raised is from the records, not being made an issue for the first time before the trial court. That law was copiously referred to by the parties and in the findings of the trial court. In my view, the fresh point sought to be raised by the appellant in the court below is not an attempt to jettison his case as fought in the trial court. It seems to me further that in adjudicating upon the fresh point, no fresh or additional evidence will be required by the court below as the entire exercise revolves on statutory provisions, enactments and/or legal notices which all courts of law are bound to take judicial notice of. The point of law raised also involves the interpretation of statutory provisions and/or legal notices relevant to the case before the court. I think the Court of Appeal, with respect, was in error by dismissing the appellant's application in issue whether on grounds that what the appellant was doing is an attempt to jettison his case in the court below and raise an entirely new case in the court below, or that the point sought to be raised is a matter to be adduced in evidence or indeed that the point, not having been pleaded, must go to no issue and must be discountenanced. In the circumstance, issues 1 and 2 are hereby resolved in favour of the appellant, the answers to the said issues 1 and 2 being in the negative and the affirmative respectively.

On the issue of the appellant's prayers for -

- (i) An order granting him leave to file a supplementary brief on the fresh issue to be raised before the court below, and
- (ii) An order deeming Part Two of appellant's reply brief filed on the 23rd September, 1988 which is based on the additional ground of appeal dated the 30th August, 1988 already filed and served with leave of court as supplementary brief in support of the new issue to be raised before the Court of Appeal, the court below disposed of the same as follows -

"Further and in relation to the second prayer to wit: leave to the Appellant/Applicant to file a Supplementary Brief on the new issues raised before this Court, I will briefly dispose of the matter by saying that the applicant indeed filed a Reply brief on 23/9/88; that under Order 6 Rule 5 of the Court of Appeal Rules, 1981 as amended, such a Reply brief is limited to answering new points raised in the Respondent's brief. The applicant at pages 1 - 8 of his Reply brief most admirably did just that. However, from pages 9 (which he characterises as PART 2) the Reply brief then proceeds to argue new grounds of appeal for which he is now seeking leave of court. The filing of Part 2, learned counsel for the applicant has described as mere matter of form. Could it be said that since no objection was taken to the Reply brief, the grant of the application becomes automatic?"

My answer to this question is in the negative since to my mind, it is an application erroneously made in anticipation of the court's exercise of discretion in the applicant's favour which has backfired As prayer 2 fails, prayer 3 too fails."

With the greatest respect, I find myself unable to endorse the above views of the Court of Appeal. In the first place, it is to be conceded that under Order 6 Rule 5 of the Court of Appeal Rules, 1981 as amended, the appellant's reply brief shall deal with answering all new points arising from the respondent's brief. There is however the provision of Order 6 Rule 3(a) of the Court of Appeal Rules, 1981, as amended, which provides thus -

"The brief, which may be settled by counsel, shall contain an address or addresses for service and shall contain, what are, in the appellant's view, the issues arising in the appeal as well as any points taken in the court below which the appeal wishes to abandon and any point not taken in the court which he intends to seek leave of the court to argue at the hearing of the appeal." (underlining supplied for emphasis).

There is therefore no doubt that an appellant's brief may contain any point not taken in the court which he intends to seek leave of the court to argue at the hearing of the appeal. The issue here, however, is whether an appellant's reply brief may also contain a supplementary brief, separately and distinctly marked, following leave granted by the court, after the appellant had filed his appellant's brief, for the said appellant to file a supplementary brief in support of a new issue to be raised in the appeal.

Order 6 Rule 5 of the Court of Appeal Rules, 1981, as amended, provides as follows

"The appellant may also, if necessary, within 14 days of the service on him of the respondent's brief but not later than 3 clear days before the date set down for the hearing of the appeal, file and serve or cause to be served on the respondent a reply which shall deal with all new points arising from the respondent's brief."

It is not in dispute that the appellant in the present case filed a reply brief which properly dealt with the new points arising from the respondent's brief. The appellant had filed his appellant's brief well within time but before he obtained the leave of the Court of Appeal to file his additional ground of appeal. He duly raised an issue from his additional ground of appeal and filed what he rightly called a Supplementary brief in support of the new issue. The supplementary brief, was dealt with separately and distinctly in Part II of his reply brief. The real question is whether the supplementary brief, although separate from the reply brief, is incom

petent for the simple reason that it is contained in the same document as the reply brief. In other words, does the fact that the appellant incorporated both his reply to issues arising from the respondents' brief and his argument on the issue formulated from his additional ground of appeal invalidate his said supplementary brief.

B In my view, this whole issue revolves on nothing but sheer technicality. The appellant's supplementary brief was so described and filed. It was contained in a separate part, to wit, Part II of his reply brief. All that was sought was for leave to deem his argument therein contained as his supplementary brief.

C The grant of this prayer will result in no injustice to the respondents who, if they so desire, may be granted leave to file their supplementary reply brief thereto.

I think the court below was in error to refuse prayers 2 and 3 of the appellant's application.

D In the second place, it has to be borne in mind that the courts appear now to be shifting away from the narrow technical approach to justice which characterized their earlier decisions and tend now to pursue the course of substantial justice as fairly and judiciously as the law may permit. See Consortium M.C. v. N.E.P.A. (1992) 6 N.W.L.R. (Pt. 246) 132 at 142, Fari Khawam v. Foud Michael Elias (1960) SCNLR 516; (1960) 5 E F.S.C. 224, Falobi v. Falobi (1976) 1N.M.L.R. 169, Bello v. Attorney-General Oyo State (1986) 5 N.W.L.R. (Pt. 45) 828, Okonjo v. Dr. Odje (1985) 10 S.C. 267. As Bowen, L.J., once observed in Cropper v. Smith (1884) 26 Ch.D. 700 at 710-

F *"Now, I think it is a well established principle that the object of Courts is to decide the rights of the parties as judiciously, equitably and as fairly as practicable and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with substantial justice or their rights. Speaking for myself, and in conformity with what I have heard laid down by the other Division of the Court of Appeal and by myself as a member of it, I know of no kind of error or mistake which, if not fraudulent or intended to over-reach the Court ought not to correct, if it can be done without injustice to the other party"*

H The above obiter dictum, although pronounced over a century ago on the issue of amendment of proceedings, remains as valid now as when it was made. I must respectfully endorse the same as sound as in accordance with common sense and the interest of justice. See also Collins v. Vestry of Padding ton (1880) 5 Q.B.D. 368 at 381. In my view, the court below was in error to have refused to grant prayers 2 and 3 of the application which is the subject matter of the ruling appealed against.

The conclusion I reach is that there is definite merit in this appeal and the same is hereby allowed. The ruling of the Court of Appeal delivered on the 9th day of May, 1990 together with the order for costs therein made are hereby set aside. In substitution thereof, the following orders are hereby made -

(i) Leave is hereby granted to the appellant to raise a fresh point in the court below, that is to say, the validity or otherwise of the withdrawal of recognition of the appellant or the recognition of the 4th respondent as the Traditional Ruler of Ihitenansa Autonomous Community, having regard to the provisions of the Traditional Rulers and Autonomous Communities Law No. 11 of 1981.

(ii) Leave is further granted to the appellant to file a supplementary brief on the new issue raised before the Court of Appeal.

(iii) Part II of the appellant's reply brief dated the 10th August, 1988 and filed on the 23rd September, 1988 which is based on the additional ground of appeal dated the 30th August, 1988, is hereby deemed as supplementary brief in support of the new issue raised before the court below. The respondents; if they so desire, are hereby granted leave to file and serve a supplementary reply brief to the appellant's supplementary brief within 45 days hereof. '

There will be costs to the appellant against each set of respondents which I fix at N200.00 in the court below and N1000.00 in this court.

UWAIS CJN

I have had the opportunity of reading in draft the judgment read by my learned brother Iguh, J.S.C. I entirely agree with the reasoning and conclusion therein.

The point of law which the Appellant sought to raise for the first time in the Court of Appeal did not require being pleaded by the Appellant since only facts and not law need be pleaded in a Statement of Claim or indeed Statement of Defence and Reply etcetera. In relying on a point of law, a party is not obliged, nor is it necessary; to call evidence to prove the law since by section 74 of the Evidence Act Cap. 112 it is mandatory for the trial judge to take judicial notice of inter alia all laws, enactments and subsidiary legislations. Further section 73 of the same Act, provides that a fact which the court must take judicial notice of need not be proved.

Therefore, the court below was wrong when it held that fresh evidence would have to be called to prove the provisions of the Schedule to

the Traditional Rulers and Autonomous Communities Law, 1981 (Law No. 11 of 1981) of Imo State.

B With respect, the Court of Appeal was also in error when it held that the application to raise the point of law in question, on appeal, would change the character of the case considered by the trial court. As the Law was in force at the time of the trial, it was applicable to the facts of the case and the parties as well as the trial court ought to have recourse to it; but they omitted to do so. Strictly speaking the point was not even new since it had always been there. In my opinion, the application should have been granted by the Court of Appeal in order that justice might be done. It is only where a fresh point of law, which when raised, would introduce a new line of action or defence from the case contended by the parties in the trial court that leave to raise the point is usually refused- see *Abinabina v. Enyimadu*, (1953) A.C. 207 and *Ejiofodomi v. Okonkwo* (1982) 11 S.C. 74.

D With regard to the issue whether the Appellant could raise the new point in his reply brief as supplementary to his first brief of argument (Appellant's brief), I think the stage at which the application to raise the fresh point was made is significant. Admittedly, Order 6 Rule 5 of the Court of Appeal Rules, 1981 envisages that a reply brief would "deal with only new points arising from the respondent's brief." It is, therefore preferable that a separate brief apart from the reply brief should have been sought to be filed, as supplementary to the Appellant's brief, in presenting the argument on the fresh point. If that were done, the Respondent would be expected to apply for leave seeking to also file a supplementary Respondent's brief. This is the ideal as it would conform with the sequence of filing briefs of argument in accordance with the provisions of the Rules. However, the situation in this case differs. Albeit I am of the opinion that the Court below should have overlooked the incongruity of the method adopted by the Appellant in making his supplementary brief part of his Reply brief, so that the justice of the case in the appeal before it could be met. The Court of Appeal Rules give the Court below the discretion to waive the observance of any of its provisions in the interest of justice; see Order 6 rule 2 thereof.

G I am, therefore, of the view that there is merit in this appeal and I too will allow it. In so doing, I adopt the order as contained in the judgment of my learned brother Iguh, J.S.C.

H

WALI JSC

I have had a preview of the lead judgment of my learned brother

Iguh JSC and I agree with his reasoning and conclusions for allowing the appeal.

I however wish to make the following contribution by way of emphasis.

The issue sought to be raised is whether there was a legal withdrawal of the recognition of the appellant and the subsequent recognition of the 4th respondent as the Traditional Ruler of Ihitenansa Autonomous Community by virtue of the Traditional Rulers and Autonomous Communities Law No. 11 of 1981. B

The issue sought to be raised involves the interpretation of S. 9 of the Chieftaincy Law No. 22 of 1978 and the Traditional Rulers and Autonomous' Communities Law No. 11 of 1981, which is a pure question of law. C

Learned counsel for the parties put forward comprehensive arguments on the issue which admits more than one interpretation. The court has to decide whether:-

(i) The appellant's de-recognition by the governor under S. 9 of the Chieftaincy Law, 1978 is still valid having regard to the schedules to the 1981 Law which included the name of the appellant as the recognised Chief of Ihitenansa Autonomous Community, despite the fact that the latter Law repealed the 1978 Chieftaincy Law of 1978. D

(ii) Whether with the position; as in (i) above 4th respondent's recognition as the chief of Ihitenansa Autonomous Community by the Governor is still valid. E

The new point sought to be raised undoubtedly involves the interpretation of the two Laws mentioned above and also the subsidiary legislation published as Legal Notice No.9 of 1981 and the amendment to the Traditional Rulers and Autonomous Communities (Amendment) Law 1982. F These are all statutory provisions that are well connected with the case which the lower court is bound to take judicial notice of by virtue of S.74 of the Evidence Act. Cap. 112, Laws of the Federation of Nigeria 1990, without any further proof. No further evidence will be required in interpreting them, nor will there be any further requirement to plead such laws since the related facts relevant to their interpretation have been pleaded by the appellant. See *Anyawu v. Mbara* (1992) 5 NWLR (Pt. 242) 386. *Benson & Anor. v. Ashiru* (1967) NMLR 363; (1967) NSCC 198 at 201 and *Tofi v. Uba* (1987) 3 NWLR (Pt. 62) 707. G

No fresh evidence would be required in interpreting the laws involved in this case, nor could it be contended as done by learned counsel for the respondents that the appellant, by seeking leave to raise the issue, is trying to jettison the original case he presented and canvassed in the court H

below.

The issue sought to be raised is a substantial and arguable point of law which may have effect on the decision the Court of Appeal might reach in one way or the other. The application to raise it ought to have been granted by the Court of Appeal. See *Attorney-General of Oyo State v. Fairlakes Hotel Ltd.* (1988) 5 NWLR (Pt. 92) 1 and *Bakin Salati v. Shehu* (1986) 1 NWLR (Pt. 15) 198.

It is for these and the more substantial reasons given in the lead judgment of my learned brother Iguh, JSC that I too hereby allow the appeal and grant the appellant leave to raise the new issue contained in the additional ground that had already been filed with the leave of the Court of Appeal. I direct that the Court of Appeal (differently constituted) to hear the appeal. I endorse the other consequential orders, that of costs inclusive, contained in the lead judgment.

D

OGUNDARE JSC

I have had the advantage of a preview of the judgment of my learned brother Iguh JSC just delivered. For the reasons given by him in the said judgment, I too allow this appeal and set aside the ruling of the Court below. I grant the Appellant's application before the Court and make the consequential orders as contained in the lead judgment of my brother Iguh JSC. I also abide by the order for costs made by him.

ADIO JSC

I have had the opportunity of reading, in draft, the judgment just read by my learned brother, Iguh, J.S.C., and I agree that the appeal has merit. I too allow it and I abide by the consequential orders, including the orders for costs.

G

H