

**SUPREME COURT OF NIGERIA**  
21ST MARCH, 1997. SC. 71/1996  
**CORAM:-A.B. WALL,E.O. OGWUEGBU, U. MOHAMMED,**  
**S.U. ONU, Y.O. ADIO, JSC**

CHIEF SAMUEL IKENNA & ANOR

(For themselves and on behalf of the ..... PLAINTIFFS/APPLICANTS  
people of Umusiome village Nkpor)

AND

CHIEF BENEDICT BOSAH & ANOR

(For themselves and on behalf of the ..... DEFENDANTS/RESPONDENTS  
people of Ikenga village Ogidi)

3. THE SURVEYOR-GENERAL  
ANAMBRA STATE

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**APPEALS** - *Enlargement of time - To file the record of appeal - Court will not entertain questions - That will determine the substantive appeal.*

**APPEALS** - *Extension of time to appeal - Where reasons for the delay are not disclosed - Or are not substantial - The application will not be granted.*

**APPEALS** - *Enlargement of time to appeal - Failure to show there is a substantial case to be determined - The application will be refused.*

**FACTS**

This motion stems from a protracted land dispute which has moved from the Onitsha high court in 1973 to the Supreme Court in 1992. The plaintiffs/applicants claimed declaration of title, perpetual injunction and demarcation of the boundary in respect of the land in dispute. The trial court ordered a demarcation based on the survey plans tendered by the parties.

Plaintiffs appealed unsuccessfully to the Court of Appeal and the Supreme Court. Plaintiffs filed another action in 1994 seeking judicial interpretation of the previous Supreme Court judgment and that demarcation be done according to the interpretation so given. It is the failure of this subsequent action from the High Court to the Court of Appeal that has made the plaintiffs file the present application before the Supreme Court. Plaintiffs prayed inter alia, for extension of time within which to apply for leave to appeal.

**HELD** (Unanimously dismissing the application per lead Ruling of OGWUEGBU JSC)

**Questions that will determine the substantive appeal**

1. The two questions identified in the brief of argument of the applicants and the arguments on them dwelt only on the failure of the court below to resolve the conflict in Exhibits 1 and 2 in not taking oral evidence from the parties. In addition, from the issues identified, the parties want the court to treat the motion as the appeal itself and the court will be seen as prejudging the issues which are yet to come before it. The questions and the arguments thereon when considered and pronounced upon will indirectly determine the substantive appeal. (p. 596 C)

**Reasons for the delay in appealing within time**

2. The brief is also silent on the reasons for the delay in appealing within the time prescribed by the law. It is not enough as averred in paragraphs 19 and 20 of the affidavit in support of the application that it took up to two weeks to get a certified copy of the Ruling and that there was shortage of qualified typist and typing materials in the Enugu Division of the Court of Appeal, with the result that it was too late when the certified copy of a ruling of twenty one pages was eventually collected. The applicants should have gone further to depose to the date their counsel made the application for the certified copy and annex a copy of the letter to the affidavit. These will go to confirm that the applicants are diligent and that the delay is due to circumstances beyond their control. There is therefore no good and substantial reason for failure to appeal within the prescribed period. (p. 596 E)

**Failure to show there is a substantial case**

3. I am afraid that the applicants have not set out in this application a full statement of the facts and legal grounds showing that there is a substantial case on the merits and a point of law involved properly to be determined by this court. One would want to relax the Rules in the over-riding interest of substantial justice but the applicants must show that the circumstances are such that it is just that this application should be granted and they have not done that. (p. 597 A)

**REPRESENTATION**

C.O. Akpamgbo, Esq., S.A.N. (with him Jude Okeke, Esq.) for the Applicants.  
C.N. Oguagha Esq., for the 1st & 2nd Respondents.

**CASES REFERRED TO**

Okonkwo & Ors. v. Kpajie & Ors. (1992) 2 N.W.L.R. (pt.226) 633.  
 Canada Central Railway Co. v. Murray & Ors. (1883) 8 App. Cas. 574, P.C.  
 Ibodo & Ors. v. Enarofia & Ors. (1980) N.S.C.C. 195.  
 University of Lagos v. Olaniyan (1985) 1 NWLR 156.  
 The Secretary Iwo Local Government v. Prince Yaya Adigun (1992) 6 NWLR (part 250) 723  
 African Continental Bank PLC. v. Obimiami Bricks & Stone (Nig.) Ltd. (1993) 6 KLR 143  
 Anyaduba v. M.R.T.C. Ltd. (1990) 1 NWLR (part 127) 397;  
 Arubo v. Aiyeleru & 5 Ors. (1993) 8 K.L.R. 23 at 25

**STATUTES & RULES REFERRED TO**

Supreme Court Act 1960 ss. 31 (2)(a) & 31(4)  
 Constitution of Nigeria 1979 ss. 6 (6)(9), 213(3)  
 Supreme Court Rules O.2 rr.28(1) & 31(1), O.6 r.2(1)  
 Court of Appeal Act s.16

**LEAD JUDGMENT BY OGWUEGBU JSC**

The plaintiffs/applicants brought this application pursuant to section 31(2)(a) and 31(4) (sic) of the Supreme Court Act, 1960, sections 6(6)(a) and 213(3) of the Constitution of the Federal Republic of Nigeria, 1979 and Order 2 Rules 28(1) and 31(1) and Order 6 rule 2(1) of the Supreme Court Rules. They are praying the court for the following orders:

*“(i) An order enlarging the time within which the Appellants/Applicants may file the Record and Appellants’ Brief of Argument pursuant to Order 6 Rule 2(1) Rules of this Court;*

*(ii) An order deeming as properly filed the said Brief of Argument dated 11:6:96 and the Record of Appeal filed with this application as sufficient Records for the effectual determination of the appeal herein lodged;*

*(iii) Extension of time within which to apply for leave to appeal against the Ruling/Judgment of the Court of Appeal (Enugu Division) dated the 15th day of April, 1996;*

*(iv) Leave to appeal;*

*(v) Extension of time within which to file the notice and grounds of appeal and to deem the same as duly filed upon payment of the prescribed fees;*

*(vi) Leave to file and argue grounds other than that of law;*

*(vii) Stay of execution of the judgment/ruling of the Court of Appeal dated 15:4:96 pending the determination of this appeal.*

(viii) *accelerated hearing of this appeal.*”

The application is supported by an affidavit of twenty nine paragraphs and a further affidavit of thirteen paragraphs both deposed to by the 1st plaintiff/applicant. Various judgments and rulings of the High Court, the Court of Appeal and this court are annexed to the said affidavits. The defendants/respondents filed two counter-affidavits. One was deposed to by the 1st defendant/respondent with the knowledge and consent both of the 2nd defendant/respondent and of Ikenga Community whom they represent. The second was deposed to by the 3rd defendant/respondent, Joseph Nwakile Oguejiofor, Acting Surveyor-General, Anambra State. Both parties filed briefs of argument in compliance with Order 6 rule 2(1) of the Rules of this court.

Before I proceed to consider the merits or otherwise of the application it is necessary to give a brief statement of the facts. In Suit No. 0/52/73 which originated in the Onitsha High Court of Anambra State, the predecessors in title of the present plaintiffs of Umusione Village, Nkpor instituted a civil action against the predecessors of the defendants/respondents of Ikenga, Ogidi claiming as follows in paragraph 22 of their amended statement of claim:

“(1) *A Declaration of title that the plaintiffs people of Umusiome are owners of Okofia land as shown in the plan filed with this Statement of Claim and thereon edged pink.*

(ii) *Perpetual Injunction to restrain the Defendants, their people, their servants and agents from further trespassing into OKOFIA land or any part of same;*

(iii) *An Order of this Honourable Court decreeing that the boundary between the lands of the plaintiffs’ people and those of the Defendants people is the MGBU BUSH and that same should be marked out with concrete pillars.”*

The action was prosecuted and defended in representative capacities. In that suit the plaintiffs filed Exhibit “A” and the defendants’ survey plan was Exhibit “G”. Exhibit “C” is a survey plan resulting from the superimposition of Exhibit “G” on Exhibit “A” on the order of the learned trial judge.

The learned trial judge Awogu, J. (as he then was) made various findings and orders and in respect of the plaintiffs’ third relief which relates to the boundary between the lands of both parties to the suit, he said:

“*This green verge to the south agrees with the pink to the south in Exhibit G which the defendants claim to be their boundary with the plaintiffs. If, as the plaintiffs concede, “mpia” is the name which the defendants give to the bush in-between them, it means that the defendants have conceded a portion of this bush to the plaintiffs and the southern green verge on Exhibit C which agrees with the southern pink verge on Exhibit G marks this*

dividing line. It is therefore possible to demarcate a boundary for the parties and I hereby demarcate it along the southern green verge on Exhibit C (which corresponds with the southern pink verge on Exhibit G) (the underlining is for emphasis).

The plaintiffs were aggrieved by the decision of the learned trial judge and appealed to the Court of Appeal, Enugu Division. That court dismissed the appeal on all the issues raised and canvassed except for the one relating to costs. The plaintiffs were still not satisfied and appealed to this court. This court in a unanimous judgment delivered on 28:2:92 dismissed the appeal of the plaintiffs. It affirmed the decision of the court below and held that the boundary as demarcated by the High Court and confirmed by the Court of Appeal is not arbitrary. See Okonkwo & Ors. v. Kpajie & Ors. (1992)2 N.W.L.R. (pt.226) 633.

The plaintiffs/applicants who are the successors in title of the plaintiffs in Suit No. 0/52/73 instituted an action in the Onitsha High Court - Suit No. 0/522/94 against the successors in title of the defendants in that case claiming as follows:

“1. *Judicial interpretation of the judgment of the Onitsha High Court in Suit No. 0/52/73 Silas Okonkwo & Ors. vs. Kpajie & Ors. delivered on the 29th day of July, 1981.*

2. *Perpetual injunction restraining the defendants, their agents, servants and/or other privies from demarcating the boundary between the Umusiome-Nkpor and Ikenga-Ogidi Communities as decreed in the said Suit No. 0/52/73 aforesaid except as in accordance with the interpretation given to the said judgment by this honourable court.”*

The plaintiffs after claiming as set out above filed a motion in the said High Court “for an order of interlocutory injunction restraining the defendants, their agents and or privies from carrying out the demarcation of the boundary between Umusiome-Nkpor and Ikenga-Ogidi communities ..... pending the hearing and determination of the substantive suit .....”

The learned trial judge Olike, J. in a considered ruling dated 7:11:94, G dismissed the application and struck out the substantive action (Suit No. 0/522/94). An ex- parte order was obtained by the defendants/respondents herein to carry on a demarcation exercise. This order prompted the institution of Suit No. 0/522/94 by the plaintiffs. As stated earlier, the suit was struck out and the plaintiffs appealed to the Court of Appeal, Enugu Division. H

The court below on 2:6:94, set aside the ex-parte order obtained by the defendants in the High Court to carry on the demarcation. In its place, it substituted an order with the consent of both parties which reads as follows:

“(i) *That the Surveyor-General, Anambra State is ordered to de-*

*marcated the boundary between the applicants and the respondents, using Exhibits C and G and the judgment of the Onitsha High Court delivered in Suit No. 0/52/73 assisted by a surveyor nominated by each party.*

*(ii) That two persons from each side should represent each party in the demarcation exercise.*

B *(iii) That the Commissioner of Police Anambra State be ordered to provide adequate security for the survey team (and the four representatives of the parties) as well as the job they will do in the demarcation exercise.*

*(iv) That both parties are ordered to pay equally the cost of the said demarcation exercise."*

C The plaintiffs/applicants brought another motion before the court below for an order restraining the defendants/respondents, by themselves, their servants and privies from continuing with the installation of any pillars, beacons and other land marks along the purported boundary between the Umusiome Village, Nkpor and Ikenga Village, Ogidi pending the hearing and D determination of the appeal against the decision of an Onitsha High Court Suit No. 0/522/94.

The court below, after hearing the application, ordered as follows:

*"(i) That the Surveyor-General is to produce a plan of the land in dispute showing the demarcation of same in accordance with the Supreme E Court judgment keeping in mind the survey plans Exhs. C and G exhibited at the said trial.*

*(ii) That the Surveyor-General is allowed two months from today to file in court this plan showing the demarcation and the said plan is to be served on each of the parties to the dispute.*

F *(iii) That the parties are to co-operate with the Surveyor-General by ensuring that there is no breach of the peace while he is on this exercise of demarcation.*

*(iv) for the avoidance of doubt, the warring parties are restrained from interfering with the demarcation exercise by the Surveyor-General."*

G This order was made on 6:6:95 and the case was adjourned to 25:9:95.

On 18:10:95 the court below resumed hearing to consider the plan prepared by the 3rd defendant/respondent as directed by that court. The survey plan prepared by the 3rd defendant was admitted in evidence as Exhibit "1" by consent of both counsel. Survey plan No. CUO/AN D19/95 H prepared by the plaintiffs/applicants' counsel was also admitted as Exhibit "2". After both survey plans were admitted in evidence, learned counsel for the parties were recorded to have submitted as follows:

*"Akpanmbo: ..... The applicants question violently Exh. 1. Consents that in Exh. 1 & 2 the court can under S. 16 of Court of Appeal Act hear*

*oral evidence from the two surveyors in order to resolve the conflicts and enable the court to determine the proper boundary between the parties. Says that this will assist in the administration of justice and resolve the conflict and bring peace between the parties. Chief Oguagha: Says he is opposed to suggestion of resolving the conflict between the parties via oral evidence. Says also on 6:6:95 this Court ordered the Anambra State Surveyor-General to prepare a plan showing the boundary between the parties as set down in the lower court's judgment in suit No. 0/522/94, (sic), having regard to Exhibits C and G which were exhibits at the trial court. Chief Oguagha says there is no conflict in exhibits 1 and 2 and therefore there is no necessity to call evidence. Says the Court cannot resolve the issue of demarcation as proposed."*

At that juncture counsel for 3rd defendant/respondent applied for an adjournment because he was only served that morning. The application was granted and further hearing was adjourned to 16:11:95. Further hearing was resumed on 17:11:95 and learned counsel for the parties concluded their submissions. Ruling was reserved. In a considered ruling, the court below unanimously refused the application of Akpamgbo Esq., S.A.N. and held that the demarcation as shown in Exhibit "1" is to constitute the boundary of the land in dispute. The plaintiffs/applicants appealed to this court against the ruling. That appeal has given rise to the application leading to this ruling.

The prayers of the applicants have been set out earlier in this judgment. In their brief of argument in support of the application the submitted two questions for consideration in the determination of the application, namely:

*"(!) Did the Court of Appeal considering the conflict in Exhibits 1 and 2 exercise its discretion judiciously and judicially in refusing to hear oral evidence from the two surveyors, the 3rd respondent and the Applicant's (sic) to resolve the conflict?*

*(ii) Was the Court of Appeal right in according Exhibit 2 no weight without evaluating same with Exhibit 1, not a denial of fair hearing, even in respect of demarcation of land?"*

The 1st and 2nd defendants/respondents identified the following questions for determination by the court:

*"(i) Since the Court did not order the parties to produce their own plans, can the Court of Appeal act on the applicants' strange and unauthorized plan Exhibit 2?*

*(ii) Since the said plan Exhibit 2 was unauthorized and parties were not asked to produce their own plans will it not amount to re-opening the whole case if the Court of Appeal in enforcing the judgment of the Supreme Court allows the applicants to indirectly re-open the whole case?"*

I must say that the plaintiffs/applicants appear to lose sight of the prayers contained in their motion filed on 11:6:96. Parties should not wander into issues meant for the substantive appeal. This is so because the issues for determination and the arguments thereon contained in their briefs of argument did not deal with the said prayers as provided in Order 6, rule 2(1)(e) and B (h) of the Supreme Court Rules which provide that:

- “(e) a statement of the questions which the applicant would like the Court to consider, expressed in the terms and circumstances of the case but without unnecessary detail ..... Only the questions set forth in the application or comprised therein will be considered by the Court.
- C (f) .....
- (g) .....
- (h) a direct and concise argument amplifying the reasons relied upon.”

The two questions identified in the brief of argument of the applicants and the arguments on them dwelt only on the failure of the court below to resolve the conflict in Exhibits 1 and 2 in not taking oral evidence from the parties. In addition, from the issues identified, the parties want the court to treat the motion as the appeal itself and the court will be seen as prejudging the issues which are yet to come before it. The questions and the arguments thereon when considered and pronounced upon will indirectly determine the substantive appeal. The brief is also silent on the reasons for the delay in appealing within the time prescribed by the law. The reasons for the delay averred in paragraphs 19 and 20 of the affidavit in support of the motion read:

- “19. That it took me up to two weeks to get a certified true copy of the Ruling, by which time the time allowed me to appeal had elapsed.
- 20. That my counsel tells me and I verily believe him that he applied for a certified true copy in time, but because of the perennial shortage of qualified Typist and typing materials, it was too late to get the said Ruling until lately.”

It is not enough as averred in paragraphs 19 and 20 of the affidavit in support of the application that it took up to two weeks to get a certified copy of the Ruling and that there was shortage of qualified typist and typing materials in the Enugu Division of the Court of Appeal, with the result that it was too late when the certified copy of a ruling of twenty one pages was eventually collected. The applicants should have gone further to depose to the date their counsel made the application for the certified copy and annex a copy of the letter to the affidavit. These will go to confirm that the applicants are diligent and that the delay is due to circumstances beyond their control. There is therefore no good and substantial reason for failure to appeal within the



prescribed period.

**I am afraid that the applicants have not set out in this application a full statement of the facts and legal grounds showing that there is a substantial case on the merits and a point of law involved properly to be determined by this court.** See Canada Central Railway Co. v. Murray & Ors. (1883) 8 App. Cas. 574, P.C. and Ibodo & Ors. v. Enarofia & Ors. (1980) N.S.C.C. 195. **One B would want to relax the Rules in the over-riding interest of substantial justice but the applicants must show that the circumstances are such that it is just that this application should be granted and they have not done that.** See Property and Reversionary Investment Corporation Ltd. v. Templar & Or. (1977) 1 W.L.R. 1223 at 1225. C

For the above reasons, the application is refused and dismissed with N100.00 costs to the respondents.

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#### WALI JSC

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I have had the privilege of reading in advance the lead Ruling of my learned brother Ogwuegbu, JSC and I completely agree with him.

The plaintiffs/Applicants have failed to show good and substantial reasons for failing to appeal within time and as such this court would not exercise its discretion in their favour for enlargement of time to file the interlocutory appeal. The two conditions that are specified in Order 6 rule 2(1) of the Supreme Court Rules, 1985 must be satisfied before an application of this nature is granted. See Ibodo & Ors v. Enarofia & Ors. (1980) 5 - 7 SC. 42 and University of Lagos v. Olaniyan (1985) 1 NWLR 156. E

It is for this and the more detailed reasons contained in the Ruling of my learned brother Ogwuegbu, J.S.C. that I also hereby refuse the application and dismiss same with N100.00 costs to the Respondent. F

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#### MOHAMMED JSC

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I agree with the ruling delivered by my learned brother, Ogwuegbu, J.S.C., and for the reasons disclosed therein I, too will refuse to grant the application. It is accordingly dismissed. H

## ONU JSC

I have been privileged to read before now the lead RULING of my learned brother Ogwuegbu, J.S.C. I am in entire agreement with him that the application is unmeritorious and ought to fail.

I only wish to comment on the application briefly as follows:-

B From the preponderance of affidavit evidence placed at out disposal and argued by learned counsel for both parties, it is overwhelmingly clear to me that the Court of Appeal's decision from which this application is an off-shoot, was the obedient and solemn carrying out of the order of this court contained in its judgment No.SC.27/1987 decided on 28th February, 1992 (vide C Exhibit 'A' herein) pursuant to Order 8 rule 17 of the Supreme Court Rules 1985, as amended which rule provides that

*"17. Any judgment given by the Court may be enforced by the Court or by the Court below or by any other Court which has been seized of the matter, as the Court may direct."*

D The said order of this Court for enforcement by the Court of Appeal which, as the learned counsel for the respondents Mr. Oguagba submitted, is not a matter for appeal in any shape or form but only at all calls for the demarcation of the boundary of the land in dispute as adjudicated by this court on the proposition of law that there must be an end to litigation. This principle, E admirable expressed in the maxim interest republicae ut sit finis (See Omoregi v. Idugiemwanye (1985) 2 NWLR (part 5) 41) and which learned counsel for the respondents urges should not be applied without caution, learned Senior Advocate, Mr. Akpamgbo, S.A.N. argues on behalf of the applicants that it should not be adopted as it would stifle or affect the merits of the appeal now F pending in the matter before this Court. The less said about the merit or demerit of the appeal therefor the better.

My brief consideration of this application will, however, be incomplete without may alluding to the applicants' affidavit and further affidavit dated 11th June, 1996 and 25th October, 1996 respectively, paragraphs 3, 4 and G 5 in which it was deposed as follows:-

*"3. That paragraph 2 of the affidavit of Chief Samuel Ikenna is misleading in that Suit No.0/52/73, was not instituted by Chief Samuel Ikenna but by Silas Okonkwo and others for Umusiome Nkpor who are now deceased.*

H *4. That further to paragraph 3 above in the suit 0/52/73 the said Silas Okonkwo and others sued for declaration of title and injunction and Demarcation of boundary (along their own chosen line).*

*5. That paragraph 3 of the said applicants affidavit is misleading in that the Onitsha High Court presided over by Honourable Mr. Justice*

*Awogu, granted title and injunction to the applicants on the area which was close to their home-stead and which was not being claimed by the respondents."*

A complete below, it appears clear, was dealt to the application of the applicants by the counter-affidavit of Joseph Nwakile Oguejiofor, Acting Surveyor general of Anambra State dated 13th September, 1996 and who, as a detached neutral and unbiased civil servant deposed in paragraphs 1,2,3,4,5,7,8,9,10,11,12 and 13 thereof thus:

*"1. That I have been served with the affidavit of Chief Samuel Ikenna dated 11th June, 1996.*

*2. That the Court of Appeal ordered me to demarcate the boundary between the Umusiome Nkpor people and Ikenga Ogidi people as per Court Order on pages 94 and 95 of Records.*

*3. That I completed the demarcation exercise without any difficulty and filed in Court the plan of the demarcation within two months as ordered by the Court.*

*4. That before embarking on the demarcation exercise I studied the relevant judgment of the Onitsha High Court in Suit No. 0/52/73, the judgment of the Court of Appeal in No.FCA/E/189/81 and the Supreme Court judgment in SC/27/87.*

*5. That these judgments are respectively referred to as Exhibit A, Exhibit B and the Supreme Court judgment is at pp.50-89 of the Records submitted by the applicants.*

*6. That I studied the relevant portions of these judgments in so far as the line of demarcation is concerned.*

*7. That armed with Exhibits C and G, I then commenced the demarcation exercise with my survey team and completed same on time as ordered by the Court of Appeal.*

*8. That my survey team included highly qualified personnel in the Bureau of Lands, Survey and Town planning, Awka Anambra State.*

*9. That neither I nor the Anambra State Government has personal interest in the case between the parties.*

*10. That paragraph 13 of Chief Ikenna's affidavit is misleading in that Surveyor Ozoude who is the applicant's Surveyor is naturally interested in the case for the applicants.*

*11. That any impartial Surveyor who goes to the land will find the line of demarcation as described by the High Court (confirmed by the Court of Appeal and the Supreme Court) very easy to follow.*

*12. That paragraph 14 of the affidavit is false. I followed strictly the line of demarcation as described by the Court and as indicated in Exhib-*

its C & G and in strict compliance with Survey Laws and Regulations.

13. That having completed the demarcation exercise and filed the relevant plan in the Court of Appeal (which was accepted as Exhibit 1), I regarded the task assigned to me by that Court as completed."

Be that as it may, as it will amount to deciding the appeal to hold as learned B counsel for the respondents has argued, or the succumbing to the subtle move to obviate, by-pass or usurp the decision of this court by enthroning vexatious litigation through a vicious circle vide The Secretary Iwo Local Government v. Prince Yaya Adigun (1992) 6 NWLR (part 250) 723 and African Continental Bank PLC. v. Obimiami Bricks & Stone (Nig.) Ltd. (1993) 5 NWLR C (part 294) 399 or that it would amount to an abuse of this Court's process vide Anyaduba v. M.R.T.C. Ltd. (1990) 1 NWLR (part 127) 397; Alade v. Alemuloke (1988) 1 NWLR (part 69) 207; Arubo v. Aiyeleru & 5 Ors. (1993) 8 K.L.R. 23 at 25 and Ishola-Noh v. H.E. British High Commissioner in Nigeria (1980) 8-11 S.C. 100 at 101 it will be premature at this stage to consider these authorities as D apposite to the situation in hand. Suffice it to say, however, that in the face of the overwhelming affidavit evidence placed at out disposal, this application is devoid of any merit.

For the reasons given by me ad the more elaborate ones articulated in the leading ruling of my learned brother Ogwuegbu, J.S.C. I, too, dismiss E this application. I make similar consequential orders including those as to costs.

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### ADIO JSC

F I have had a preview of the ruling just read by my learned brother, Ogwuegbu, J.S.C., and I agree that the application dose not succeed. I too dismissed it and I abide by the order for costs.

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