

**SUPREME COURT OF NIGERIA**

4TH JULY, 1997. SC. 86/1996

**CORAM:- S.M.A.BELGORE, M.E.OGUNDARE, U.MOHAMMED,  
S. U. ONU, Y. O.ADIO, JJSC.**

OWENA BANK (NIG) PLC ..... PLAINTIFF/APPELLANT  
AND  
NIGERIAN STOCK EXCHANGE LTD. .... DEFENDANT/RESPONDENT  
IN RE-SECURITIES AND EXCHANGE COMMISSION ..... RESPONDENT

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**APPEALS** - Aggrieved party - Where respondent had no more legal function to perform - It cannot be a party aggrieved - So as to be entitled to appeal.

**APPEALS** - Extension of time - Cannot be granted by the court - To a party that has not prayed for it.

**APPEALS** - Grounds of appeal - Where found to be grounds of law - No leave of court is required.

**APPEALS** - Time to appeal - If the statutory time within which an interested party can file his appeal has expired - There are three prayers that will make his application competent.

**STATUTES** - Construction - The rule of construction of statutes - Is that they should be construed according to the intent of the legislature that promulgated them.

**FACTS**

Dominion Trust Limited laid a complaint to the Securities and Exchange Commission against the Appellant for failure to consent and honour the transfer of certain amount of shares divested by the National provident fund through the Appellant. The Administrative Hearing Committee at its sitting on 8th December 1994 after hearing the parties and considering the facts, evidence and submission before it wrote to the Appellant through one of its staff disclosing to the Appellant the decision of the committee. The Appellant reading the letter filed an application to quash the decision of the Securities and Exchange Commission, on the grounds that the proceeding violated the principles of natural justice as enshrined in the 1979 Constitution of Nigeria.

The Chief Judge of the Federal High Court quashed the decision of

the Administrative Hearing Committee as being void ab initio and granted the prayers for injunction. The Securities and Exchange Commission applied to the Court of Appeal for leave to appeal as an interested party. That court granted leave to appeal and extension of time within which to appeal. It is against the ruling of the Court of Appeal that the appellant filed this appeal to the supreme Court on eight grounds of appeal raising 3 issues.

**ISSUES FOR DETERMINATION**

*"(a) Whether the applicant is a person having an interest within the meaning and intendment of section 222(a) of the Constitution 1979 and entitled to appeal against the Ex parte Order of the 23rd of February, 1996. Etc, see p. 1427*

**HELD** (Unanimously allowing the appeal per lead reasons for judgment of **MOHAMMED JSC**)

**Grounds of appeal - Where found to be grounds of law**

1. With respect, I have gone through all the grounds mentioned in issue 3 and, in my view, they are all grounds of law and the appellant does not require leave to file them. The second point in the same issue is of no consequence, because as the learned counsel for the appellant has indicated in the Reply Brief the issue has been raised in paragraphs 11 and 12 of the counter affidavit filed by the appellant at the Court of Appeal. It is not correct therefore to say that it is a fresh point of law which was not raised at the court below. (p. 1428 B)

**Appeals - Aggrieved party**

2. Thus, by the time the Court of Appeal granted the respondent leave to appeal the respondent had no legal function entrusted to it by law to perform in enforcing or claiming to be entitled to continue to enforce the suspension of the appellant. If the respondent has no legal function to perform it cannot be a person aggrieved because its interest, if it had any, had lapsed by the 8th of December, 1995. (p. 1429 E)

**Statute - Rule of construction**

3. The rule of construction of statutes is that they should be construed according to the intent of the Legislature which promulgated the Act. If the words of the Statute are in themselves precise and unambiguous then no more can be necessary than to expound those words in the natural and ordinary meaning. I must emphasize that from the provisions of Section 24 of SEC ACT the power of the respondent to suspend any person wishing to trade in securities on the floor of Stock Exchange is Limited to a period of 12 calendar months and no more. No other statutory interpretation could find extension

beyond that period without the statute explicitly providing same. (p. 1430 A)

### **Time to appeal - If expired**

4. Once a party wishes to appeal from either a final or an interlocutory decision of the High Court, whether he is the original party or an interested party, he must file his appeal within the time prescribed by Section 25 of the Court of Appeal Act. If the time within which he could file his appeal has expired he must apply for enlargement of time within which to seek leave to appeal; 2, leave to appeal and 3, extension of time within which to appeal. If any of the three prayers is not included in the application the application shall be incompetent and must be struck out. (p. 1431 B)

### **Extension of time - Cannot be granted if not prayed**

5. The prayer for extension of time to appeal is a vital application once a party is out of time to appeal. The Court of Appeal, in the case in hand, had not been asked to extend the time for the respondent to appeal when it gratuitously did so. The court is in error to do so, because the order is not a consequential order. It must be specifically prayed for before it could be granted. In the case of *Odofin v. Agu* (1992) 3 NWLR (Part 229) 350 this court when asked to accept that such an order is consequential rejected the argument. (p. 1431 G)

### **REPRESENTATION**

E. R. Emukpoeruo with J. Kupoluyi, for the Appellant

A. I. Idigbe with I. I. Akoh and I. C. Kigun for the Respondent

### **CASES REFERRED TO**

*Ikonne v. Commissioner of Police, Imo State* (1986) 3 NWLR (Pt. 36) 473 at 503

*A.G. v. Fulham Corporation* (1921) 1 Ch. 440

*Awolowo v. Shagari* (1979) A.N.L.R. 120

*Nalsa & Team Associates v. N.N.P.C.* (1996) 3 KLR (Pt. 39) 479

*Akapo v. Habeeb* (1992) 6 NWLR (Pt. 247) 266 at 296-297

*Iroegbu v. Okwordu* (1990) 6 NWLR (Part 159) 643

*Bowaje v. Adediwura* (1976) 6 S.C. 143

*Amudipe v. Arijodi* (1978) 2 NSCC 515

*Owoniboy Technical Services Ltd. v. John Holt Ltd* (1991) 6 NWLR (Pt. 198) 550 at 557

*Ojukwu v. Governor of Lagos State* (1986) 2 NWLR (Part 18) 806

*Mbanu v. Mbanu* 13 WACA 194

*Otapo v. Sunmonu* (1986) 1 NWLR (Part 16) 344

*Funduk Engineering Ltd. v. Macarthur* (1996) 7 NWLR (Part 459) 153

**STATUTES AND RULES REFERRED TO**

Constitution of Nigeria 1979 s. 222(a)

Supreme Court Rules 1985. Order 8 Rule 2

Securities and Exchange Act 19 s. 24

Court of Appeal Act s. 25 (2)(a)

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**LEAD REASONS FOR JUDGMENT BY MOHAMMED.JSC**

On the 6th of May, 1997 this appeal was argued before this court. After reading the respective briefs of counsel for the appellant and the respondent, and listening to the oral arguments in elaboration of points made in those briefs, I allowed this appeal, set aside all the orders made by the Court of Appeal and restored the orders made by the High Court. I indicated that I would give my reasons later. I now do so.

In this appeal Owena Bank (Nigeria) PLC submitted that the Court of Appeal, Lagos Division, was in error to grant leave to Securities and Exchange Commission to appeal, as an interested party, against a ruling delivered by Audu Kafarati J. of Federal High Court, Lagos. The history behind this dispute started when one Mr. I.L. Okoh of the Securities and Exchange commission wrote to the Managing Director of Owena Bank, the appellant in this appeal, disclosing to him the decision reached by the Administrative Hearing Committee established to investigate the complaint lodged by Dominion Trust Limited against Owena Bank (Nigeria) PLC. The complaint of Dominion Trust Limited was that the appellant had declined to consent and honour the transfer of 23.7 Million shares of the bank divested by National Provident fund (NPF) through the Owena Bank, despite the fact that the deal in respect of the shares was duly transacted on the floors of the Nigerian Stock Exchange and approved by the Securities and Exchange Commission, vide its letter dated 20th January, 1994.

The Administrative Hearing Committee at its sitting on 8th December, 1994, after hearing the parties and considering the facts, evidence and submissions before it, arrived at the following decisions:

*"1. That Owena Bank (Nigeria) Plc being a public limited Company and by virtue of the provisions of s. 151 and Table A part I of schedule 1 of the Companies and Allied Matters Decree 1990, its shares are freely transferable. Consequently, the Board of Directors acting for and on behalf of the company has no discretion to refuse, decline or restrict transfer of its fully paid up shares.*

*2. That the shares of Owena Bank (Nigeria) Plc are registered by the Commission and quoted on the Nigerian Stock Exchange and accordingly, the consent of the bank is not required before effecting any transfer in*

*respect of its shares traded on the floors of the Stock Exchange.*

3. *That the transfers of 29,458,127 shares of NPF were properly made to the under-listed investors in the proportion shown against their names:*

1. Alaaye Investment Co. Ltd.	-	23,700.00	
2. Dayke Nigeria Limited	-	5,088,127	B
3. Ahmed Azezat co. Ltd.	-	670,000"	

It was therefore not correct to state that it was Alaaye Investment that purchased the total of 29,458.127 shares.

4. That the percentage of the shares currently held by Alaaya Investment is 30%. This percentage has not exceeded the limit of share-holding a corporate body is allowed to acquire in a bank under CBN regulations. C

5. The failure of Owena Bank (Nigeria) Plc to sign, seal and deliver the share certificates and other instruments of transfer lodged with it by City Securities Limited for a period of over seven (7) months amounted to wilful violation of the SEC Decree and rules and regulations made thereunder. D

6. The Registrar's conduct in waiting for seven (7) months for the bank's prior consent before effecting transfers of the said shares was not in consonance with the spirit of the law and the SEC rules and regulations.

In view of the above, the Administrative Hearing committee, in pursuance of the powers conferred on the securities and Exchange Commission by sections 6 (b), (c), (h) and (i); 15(1) and (2) (b) and 24 of the SEC Decree No. 29 of 1988 and in the interest of the investing public as well as for the maintenance of the public confidence in the Nigerian Capital market, ORDERS and DIRECTS as follows:

1. That the registration of securities of Owena Bank (Nigeria) Plc by F Securities and Exchange Commission be and is hereby suspended with effect from the date of this decision.

This suspension shall remain in force until the bank signs, seals and delivers the certificates relating to the transfers of the 29,458,127 shares divested by NPF to the transferees namely: G

(a) Alaaye Investment Nig. Ltd.	-	23,700.000
(b) Dayke Nig. Ltd.	-	5,088,127
(c) Ahmed Azezat Co. Ltd.	-	670,000

2. It is further ordered that trading in Owena Bank (Nig.) Plc securities on the floors of The Nigerian Stock Exchange and its branches be and is hereby suspended forthwith until the Bank complies with the order herein made. H

3. The bank is hereby warned to desist from such further conducts that will frustrate the laws and operations of the Capital market and undermine

public and investors' confidence in securities transactions in the market".

After reading the above letter the appellant filed an application for an order of certiorari to quash the decision of Securities and Exchange Commission suspending the appellant from both having its securities registered and its stocks traded on the floors of the Nigerian Stock Exchange. The grounds upon which the reliefs were sought are that the proceedings before the Administrative Hearing Committee violated the principles of natural justice and mandatory provision for a fair hearing as enshrined in section 33 of the Constitution of the Federal Republic of Nigeria, 1979. The Panel was in breach of the rules of Natural Justice and the proceedings violated the intent of section 24 of the Securities and Exchange Control Act, Cap 406, Law of the Federation of Nigeria, 1990.

The learned chief Judge of the Federal High Court, after hearing both parties, and in a well considered judgment, found that the proceedings and conviction based on it before the Administrative Hearing Committee was against natural justice. The learned chief Judge concluded that the applicant (appellant in this appeal) was not given an opportunity to defend itself in the substantial parts of the complaint and held that the decision was void ab initio. Consequently the court quashed the said proceedings. An appeal has been lodged to the Court of Appeal against that judgment.

Meanwhile, the appellant commenced an action against the Nigerian Stock Exchange in the Federal High Court, Lagos and claimed for:

*"DECLARATIONS*

*a. That the Plaintiff is entitled to have its securities listed and registered with the Stock Exchange traded on the floor of the Nigerian Stock Exchange and its branches.*

*b. That the decision of the Defendant not to allow trading of the Plaintiff's securities on the floor of the stock Exchange is unjustified and illegal.*

*PERPETUAL INJUNCTION ORDERS*

*a. Directing the Defendant by itself, its agents, servants and privies and otherwise however to restore to the official list of the Exchange and to allow trading of the Plaintiff securities on the floor of the Stock Exchange and its branches".*

The appellant simultaneously filed a motion ex-parte and a motion on notice seeking against the Nigerian Stock Exchange the following injunctive reliefs:

*"An interim order of injunction, pending the hearing and determination of the Motion on Notice for an interlocutory injunction, restraining the defendant by itself, its servants, agents or privies or otherwise howso-*

*ever from preventing the trading in the plaintiff's securities on the floor of the Stock Exchange or its branches OR ALTERNATIVELY.*

*An interim order of Injunction, pending the hearing and determination of the Motion on Notice for an interlocutory order of injunction, directing the defendant by itself, its servants, agents or privies or otherwise howsoever to restore to the official list of the stock Exchange and allow trading in the plaintiff's securities on the floor of the stock Exchange and its branches".*

The Federal High Court per Kafarati J., on the 23rd of February, 1996 granted the first prayer only and ordered that the Nigerian Stock Exchange Limited, its servants, agents or privies be restrained from preventing the trading in the appellant's securities on the floors of the Stock Exchange or its branches. The securities and Exchange Commission, who is the respondent in this appeal, applied to the Court of Appeal for leave to appeal as an interested party against the ex-parte order made by Kafarati J. The Court of Appeal, coram, Musdapher, Uwaifo and Pats Acholonu, JJCA, agreed that the Ex-parte Order made by Abdu Kafarati J. of Federal High Court affected the respondent in the performance of its functions and it was accordingly entitled to leave to appeal from that order as a person interested. Leave to appeal against the Ex-parte order of Abdu Kafarati J. was therefore granted. Extension of time to appeal was granted although not sought for by the respondent. It is against this order of the Court of Appeal that the appellant filed this appeal on eight grounds of appeal. Three issues have been raised from those grounds. They are;

*"(a) whether the applicant is a person having an interest within the meaning and intendment of section 222(a) of the constitution 1979 and entitled to appeal against the Ex parte Order of the 23rd of February, 1996.*

*(b) If the answer to (a) is in the affirmative whether the Court of Appeal was competent to grant the applicant's application having regard to the reliefs sought for by the applicant.*

*(c) Whether the Court below was right in coming to a decision without first recording and considering the objections and opposition of the Appellant".*

The learned counsel for the respondent on his part also raised the following three issues from the grounds for determination of the appeal.

*"1. Whether extension of time to appeal was required or whether time to appeal starts to run from date of grant of leave to appeal as interested person?*

*2. Whether on the materials before the Court of Appeal the respondent established that it is a person interested within the meaning of Section 222 (a) of the 1979 Constitution as amended.*

3. *Whether grounds 3(i) 3(ii) 3 (v) and 3(vii) of the grounds of appeal contained in the Notice of Appeal and additional grounds of appeal are incompetent leave of the Supreme Court not having been first sought and obtained to raise fresh points of law not raised at the lower court on appeal, and/or due to non compliance with the provisions of Order 8 Rule 2 B of the Supreme Court Rules 1985 as amended".*

Before considering the issues formulated I think it is pertinent to deal with issue 3 raised by the learned counsel for the respondent because it stands as a preliminary objection to the appeal. **With respect, I have gone through all the grounds mentioned in issue 3 and, in my view, they are all C grounds of law and the appellant does not require leave to file them. The second point in the same issue is of no consequence, because as the learned counsel for the appellant has indicated in the Reply Brief the issue has been raised in paragraphs 11 and 12 of the counter affidavit filed by the appellant at the Court of Appeal. It is not correct therefore to say that it is a fresh point D of law which was not raised at the court below.** The 2 paragraphs read:

*"11. That the order sought to be appealed from the applicant herein does not directly affect any of its interests, rights or duties as spelt out by law.*

*12. That the applicant does not in fact have any legally recognizable interest in this matter save for an interest to persecute the plaintiff E herein".*

This clearly is the answer to the objection raised by the learned counsel for the respondent in issue 3 which he formulated for the determination of this appeal.

Starting with issue 1, learned counsel for the appellant, Mr. F Emukpoeruo, submitted that for an applicant to be entitled to leave to appeal as a person having an interest in the matter he must show not only that he is a person interested but also that the Order made prejudicially affects his interests - see D.D.Ikonne v. Commissioner of Police, Imo State & Anor. (1986) 3 NWLR (Pt. 36) 473 at 503. It has been held in that case by this court that the G interest recognizable by the courts must be a legally recognizable interest. Learned counsel further argued that the Respondent is a creature of statute created by section 1 of the Securities and Exchange commission Decree No. 29 of 1988 and accordingly all its powers, duties and functions are to be found in that enactment. But more importantly, it cannot legally exercise any powers, H carry out any duty or execute any functions outside the parameters of its enabling statute. See A.G. V. Fulham Corporation (1921) 1 Ch. 440. To drive the point home, learned counsel submitted that the Court below, in granting the respondent time within which to seek leave to appeal, leave to appeal and extension of time to appeal from the Ex-parte order of Kafarati J. failed to



inquire into whether the function which the respondent said it is executing and which it seeks leave to continue executing is in fact within its legal powers. I think learned counsel is quite right here. Counsel's submission is in reference to Section 24 (1) of Securities and Exchange Commission Decree No. 29 of 1988, which reads:

*"24. - (1) The commission may if in its opinion the public interest B and the protection of investors so require and after notice and opportunity for hearing have been given to the affected person, suspend for a period not exceeding twelve months or with the approval of the minister, revoke the registration of a security or any person registered under this decree if the commission finds that the issuer of such a security or a person registered by C the commission has failed to comply with any provisions of this Decree or the Rules and Regulations made thereunder".*

It is crystal clear from the above provision that the Respondent has power to suspend the registration of any person's security for a period of twelve calendar months and no more, or to obtain the approval of the minister D in order to revoke the registration of a person's securities. The respondent in this appeal suspended the appellant on 9th December, 1994. Thus by the 23rd of February, 1996 when Abdu Kafarati J. vacated the order of suspension and restrained the respondent from preventing the trading in the appellant's securities on the floor of stock Exchange or its branches the suspension in fact had E lapsed since 8th December, 1995. There is no statutory provision empowering the respondent to extend the statutory limitation and no order had been obtained from the Minister revoking the registration of the appellant's securities.

**Thus, by the time the court of appeal granted the respondent leave to appeal the respondent had no legal function entrusted to it by law to perform F in enforcing or claiming to be entitled to continue to enforce the suspension of the appellant. If the respondent has no legal function perform it cannot be a person aggrieved because its interest, if it had any, had lapsed by the 8th of December, 1995.**

Mr. Idigbe made unconvincing submissions in respect of the interest G of the Respondent in the suspension of the appellant from trading on the floor of Stock Exchange. Learned Counsel made futile endeavour to show that the interpretation placed on Section 24 of SEC ACT would lead to absurdity. He said that the interpretation does not take into consideration the mischief sought to be curtailed by the section, i.e. maintaining market integrity and public H confidence. Mr. Idigbe is obviously wrong in trying to find another interpretation to s. 24 of SEC ACC so that the respondent could find authority to interfere with the appellant's rights to have its securities traded on the floor of Stock Exchange.

The rule of construction of statutes is that they should be construed according to the intent of the Legislature which promulgated the Act. If the words of the Statute are in themselves precise and unambiguous then no more can be necessary than to expound those words in the natural and ordinary meaning. Chief Obafemi Awolowo v. Alhaji Shehu Shagari & 2 Ors. (1979) A.N.L.R. 120. I must emphasis that from the provisions of Section 24 of SEC ACT the power of the respondent to suspend any person wishing to trade in securities on the floor of Stock Exchange is Limited to a period of 12 calendar months and no more. No other statutory interpretation could find extension beyond that period without the statute explicitly providing same.

In sum, the Court of Appeal was in error to grant extension of time to the respondent to seek leave to appeal, leave to appeal and extension of time to appeal because the respondent cannot continue to enforce or renew the suspension order against the appellant as at the 23rd of February, 1996. The Respondent's interest, if any, had lapsed by the 8th of December, 1995.

I will now touch the issue of incompetency of the respondent's application before the Court of Appeal. There is no dispute over the fact that in the motion argued before the Court of Appeal the respondent did not apply for extension of time within which to appeal. Learned counsel for the appellant has submitted that without the relief for extension of time within which to appeal the respondent's application before the Court of Appeal is incompetent and ought to have been struck out. He referred to Nalsa & Team associates v. N.N.P.C. (1996) 3 NWLR (Pt. 439) 621 [1996] 3 KLR (Pt. 39) 479. Learned Counsel further submitted that it was not competent for the court below to suo motu grant extension of time within which the respondent was to appeal when the relief was not sought for in the motion paper. This being a substantive relief and not a merely consequential order - see Akapo v. Hakeem Habeeb (1992) 6 NWLR (Pt. 247) 266 at 296-297.

Mr. Emukpoeruo, quite helpfully, referred to a recent decision of this court to buttress his argument. This is the case of Funduk Engineering Ltd. v. James Macarthur & Ors. in Re Madaki (1996) 7 NWLR (Part 459) 153 [(1996) 7 KLR (Pt. 43) 1319. The facts of that case are on all fours with the case in hand. In that case, Uwais, CJN, who wrote the lead judgment, agreed with the submission of counsel for the appellant that where the interested party is late in filing his application against the final decision of the High Court, he is bound to ask for an extension of time within which to appeal, for leave to appeal and in addition, pray for enlargement of time within which to appeal. This court's decision in the case of Iroegbu v. Okwordu (1990) 6 NWLR (Part 159) 643 at page 664 was referred to. In that case Obaseki, J.S.C. stated as follows:

*"If the statutory period within which to exercise a right of appeal*

*has expired the court cannot entertain an application for leave (to appeal) unless a prayer for extension of time to seek leave (to appeal) and prayer for extension of time to appeal are included".*

The cases of Tunji Bowaje v. Moses Adediwura (1976) 6 S.C. 143, Amudipe v. Arijodi (1978) 2 NSCC 515 and Owoniboy's Technical Services Ltd. v. John Holt Ltd. (1991) 6 NWLR (Pt. 198) 550 at 557 were referred to. There is really no need for a final decision to resolve conflict over the decision of courts over the issue. The Supreme court had made several pronouncements over this issue and it has been emphasized in those decisions that **once a party wished to appeal from either a final or an interlocutory decision of the High Court, whether he is the original party or an interested party, he must file his appeal within the time prescribed by Section 25 of the Court of Appeal Act. If the time within which he could file his appeal has expired he must apply for enlargement of time within which to seek leave to appeal; 2, leave to appeal and 3, extension of time within which to appeal. If any of the three prayers is not included in the application the application shall be incompetent and must be struck out.**

Mr. Idigbe, learned counsel for the respondent went off the track again on this issue where he said that time for filing the appeal in respect of an interested party begins to run after the party has obtained leave to appeal as an interested party. It is quite clear that the learned counsel did not advert his attention to the provision of section 25(2) (a) of the Court of Appeal Act. A case which Mr. Idigbe referred to in support of his submission is not helpful to his argument at all. The case is a decision of the Court of Appeal - see Tunde Oshunrinde v. Olufemi Akande, Appeal No. CA/L/44/85 delivered on 21st May, 1985. In that case Nnaemeka-Agu, JCA (as he then was) held as follows:

*"It is now a settled point of law that an applicant who needs leave to appeal must, apart from the express provisions of the Court of Appeal Rules, 1981, with which I shall deal anon, obtain his leave and file the notice of appeal within the periods stipulated by Sections 25(2) (a) of the Court of Appeal Act, 1976, or Section 31 (2) (a) of the supreme court Act, 1960, as the case may be. See on this Amudipe v. Arijodi (supra) at p. 33".*

The decision of the court of Appeal in that case is therefore contrary to the argument put forward by Mr. Idigbe in this appeal. **The prayer for extension of time to appeal is a vital application once a party is out of time to appeal. The Court of Appeal, in the case in hand, had not been asked to extend the time for the respondent to appeal when it gratuitously did so. The court is in error to do so, because the order is not a consequential order. It must be specifically prayed for before it could be granted. In the case of Odofin v. Agu (1992) 3 NWLR (Part 229) 350 this court when asked to accept that such an**

**order is consequential rejected the argument.** Nnaemeka-Agu, JSC, cleared the air over such assumption in the following opinion:

*"Now a consequential order is one giving effect to a judgment or order to which it is consequential. See Obayagbona v. Obazee (1970) 5 S.C. 247. It is directly traceable to or flowing from that other judgment or order duly prayed for and made. In this case, each of the substantive prayer, which I have discussed above is a substantive prayer, none can be consequential to the other, I therefore, do not agree with learned counsel for the respondents that the order for the extension of time to appeal was a consequential order within which to seek leave to appeal. Each of the three prayers must have to be prayed for and duly asked for before it can be granted".*

It is abundantly clear that the respondent was out of time when it decided to seek leave to appeal from the Ex-parte order made by Kafarati J. The ruling of the learned trial judge was delivered on 23rd February, 1996. The respondent filed its application for extension of time to seek leave to appeal and leave to appeal on 13th March, 1996, four days after the time within which to appeal from an interlocutory decision had expired. Since the statutory period (section 25 (2), (a) of Court of Appeal Act) within which to file an appeal from an interlocutory decision had expired the respondent must apply for extension of time within which to appeal. The respondent had not done so and therefore its application was incompetent.

I do not have to consider the argument in issue 3 since this appeal has succeeded on the two issues I dealt with above. It is for the above reasons I announced that this appeal had succeeded and I allowed it. The respondent has no legally recognizable interest to be granted leave to appeal as an interested party from the ruling of Abdu Kafarati J. Secondly, the order of the Court of Appeal granting the respondent extension of time within which to seek leave to appeal, leave to appeal and extension of time to appeal is hereby set aside. The motion filed by the respondent on 13th March, 1996, is hereby struck out. The appellant is entitled to the costs of this appeal which I assess at N1000.00

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### BELGORE JSC

On the 6th day of May 1997, this Court allowed this appeal and reserved its ruling to today. As I had the privilege of having read the reasons given by my learned brother, Mohammed, J.S.C., for the judgment, I have nothing to add then to say that the Court of Appeal was in error to have granted relief not sought, nor ancillary to the prayers, before it. I therefore adopt the reasons in the judgment of Mohammed, JSC as mine for setting

aside the orders of the Court of Appeal.

### OGUNDARE JSC

This appeal came before us on 6th May 1997 and after hearing learned counsel for the parties in oral submissions and considering the record of appeal and the submissions in the written briefs of argument, I dismissed the appeal and indicated then that I would give fuller reasons for my judgment today.

I have had the privilege of a preview of the reasons given by my learned brother Mohammed JSC for he also dismissing the appeal. I agree entirely with his reasoning I only wish to add a few comments on the Court of Appeal decision in Tunde Oshunrinke v. Olufemi akande, Appeal No. CA/L/44/85 decided on 21st May 1985 (unreported) to which our attention was drawn by Mr. idigbe, learned counsel for the respondent.

Nnaemeka-Agu JCA (as he then was) who delivered the lead ruling in that case had opined:

*"Where, however, as in this case an application for leave to appeal from a decision of the High Court has been filed timeously in the Court of Appeal, but due to the business or fault of the court it has not been heard promptly so as to enable the applicant file his appeal, after obtaining leave, within the period prescribed by section 25(2) (a) of the court of Appeal Act, 1976, there is a saving provision in O. 3. r. 3(6) of the Court of Appeal Rules, 1981. That rule provides:*

*'Where an application for leave to appeal from a decision of the court below has been brought within the time specified by section 25 of the Act but has been heard within that period, the Court, if satisfied that there has not been an unreasonable delay in bringing the application, may extend time to appeal and in a proper case grant leave to appeal.'*

*This situation has, to my mind, arisen in this case. It is a discretion which the Court may exercise in a proper case in an application for leave which was filed in good time, but was not heard within time, as is the case here, due to no fault of the applicant. As the Court is, in the circumstances, seized with the facts of the situation, I do not see the need to insist that there must be a formal motion for extension of time supported by an affidavit, as the respondent's counsel's argument seems to postulate."*

With profound respect to the learned Justice, I don't think he is right in his construction of Order 3 rule 3(6) of the Court of Appeal rules. I do not think that that sub-rule gives the Court power to grant a relief or prayer that has not been specifically asked for and which cannot be said to be consequential to the prayer for leave to appeal. It is interesting to observe that the same Judge

as Justice of this Court in Odofin v. Agu (1992) 3 NWLR 350 (a case not too dissimilar to the case on hand) observed at p. 371:

"..... could a person whose time to appeal had expired simply apply for leave to appeal without a prayer for extension of time within which to apply for leave? He cannot.

B I wish to pause here to emphasize that a person who wishes to seek leave on any statutory periods to appeal under section 25 of the Court of Appeal Act (No. 43) of 1976 (or section 31 of the Supreme Court Act (No. 12) of 1960 requires three substantive prayers, namely:  
for-

- C (i) extension of time to seek leave to appeal;  
(ii) leave to appeal; and  
(iii) extension of time within which to appeal.

That any such application must contain these three prayers is not a matter of mere cosmetic importance which could be waved off with levity or waived.

D Rather, it is a matter which goes to the serious issue of the jurisdiction of court. The periods within which a party can appeal in our courts are pre-scriptions of statutes; and leave to appeal, where necessary, is a requirement of our Constitution."

And at pages 372-373 of the report, the learned Justice added:

E "Now, a consequential order is one giving effect to a judgment or order to which it is consequential. See Obayagbona v. Obazee (1970) 5 SC. 247. It is directly traceable to or flowing from that other judgment or order duly prayed for and made. In this case, each of the three prayers which I have discussed above is a substantive prayer: none can be consequential to  
F the other. I, therefore, do not agree with learned counsel for the respondents that the order for an extension of time to appeal was a consequential order to either a prayer for extension of time within which to seek leave or leave to appeal. Each of the three prayers must have to be prayed for and duly asked for before it can be granted.

G It has been said times without number that a court ought not to play the role of Father Christmas which can go around granting to parties relief which they have not asked for. See Nwanya v. Nwanya (1987) 3 NWLR (Pt. 62) 697. The case of Ndukwe Erisi and Ors. V. Uzor Idika & Ors. (supra) which the respondents relied upon is inapplicable. In our adversary system,  
H a court makes orders on the lis or issues raised by the parties. Where a court grants to a party a relief which it did not seek, it has made the order on a lis not raised by the party. This will be an order made without jurisdiction and therefore a nullity; see Umenweluaku v. Ezeana (1972) 5 SC. 343; Western Steel works Ltd. v. Iron & Steel Workers Union (1986) 3 NWLR (Pt. 30) 617,

618.

Karibi-Whyte JSC, in his lead judgment in the case, at pages 369-370, put the law succinctly in these words:

*"Our adjudicatory system has severely circumscribed and restricted the awards to be made by the Court within the scope of the claims made and reliefs sought by the parties before the Court. The view of this Court is that it is without power to award to a claimant or grant a relief that which he did not claim. In Ekpenyong v. Inyang & Ors. (1975) 2 SC. 71, this Court said the proposition of the law is not only good law but good sense. A court of law may award less, and not more than what the parties have claimed. I entirely agree. A fortiori the Court should never award that which was not claimed or pleaded by either party. - See Ochonma v. Unosi (1965) NMLR. 321. In the instant case, it is not easy to conceive how the Court of Appeal could have validly made the order extending time to give notice of appeal, in the absence of a prayer. Where the Court observes the defect in the application, the proper course was to draw the attention of the applicant to the omission and to give the applicant the opportunity to rectify it. In the circumstances of this case, the application remained throughout with its fatal defect. Accordingly, at the time the appeal was heard and decided by the Court of Appeal, there was no valid notice of appeal on which the appeal was argued. Indeed there was no valid appeal before the court of Appeal. The entire exercise was a nullity and in the now commonly used expression, it was an exercise in futility."*

The other justices who sat on the case expressed similar views.

The interlocutory order of Kafarati J. which the respondent sought to appeal against was given on 23rd February, 1996. The application to the Court of Appeal was filed on 13th March 1996, outside the period provided for in section 25(2) (a) of the Court of Appeal Act, 1976. There was need for a prayer for extension of time to appeal and as this was not asked for, the Court below acted wrongly in extending time. The application should have been struck out as being incompetent. - see: Odofin v. Agu (supra); Iroegbu v. Okwordu (1990) 6 NWLR 643, 664; Funduk Engineering Ltd. v. James MacArthur & Ors. in Re Madaki (1996) 7 NWLR 153.

It was for the above reasons and the more detailed reasons given by my learned brother Mohammed JSC that I too allowed the appeal on 6th May 1997 and set aside the orders made by the Court below.

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ONUJSC

I was a member of the panel of this court that sat on 6th May, 1997 to hear the oral submissions of learned counsel for both sides based on the

record of appeal and written briefs of argument earlier placed at our disposal. I allowed the appeal and indicated that I would give my reasons today. I now proceed to do so.

In the case giving rise to the appeal herein sequel to which the law-maker's aim was to invest in the Respondent (Securities and Exchange Commission) as a disciplinary body to mete out or instill in corporate financial institutions/person such as the Appellant, some discipline and so keep them on the path of rectitude, my learned brother Mohammed, JSC has so eloquently stated the facts thereof in his Reasons for Judgment, that I need not repeat them here. It will only suffice with regard to the applicable law for me to only add a few words of mine hereunder as follows:-

Of the three issues formulated and submitted for our determination by the Appellant, Issue No. 1 to which Issue No. 2 is ancillary and an adjunct, is in my opinion, sufficient to dispose of the appeal. Issue No. 1 under reference postulates

D *"Whether the applicant is a person having an interest within the meaning and intendment of section 222(a) of the Constitution 1997 and entitled to appeal against Ex parte Order of the 23rd of February, 1996."*

By Section 24(1) of the Securities and Exchange Commission Decree No. 29 of 1988 (by its sheer formidability the cornerstone and from which all E issues radiate) which provides:

*"24. (1) The Commission may if in its opinion the public interest and the protection of investors so required and after notice and opportunity for hearing have been given to have to the affected person, suspend for a period not exceeding twelve months or with the approval of the Minister, F revoke the registration of a security or any person registered under this decree if the Commission finds that the issuer of such a security or a person registered by the Commission has failed to comply with any provisions of this Decree or the rules and Regulations made thereunder."*

The Respondent in the instant case is empowered to suspend the registration G of any person's security for a period of twelve calendar months and no more or to obtain the approval of the Minister in order to revoke the registration of a person's securities. The Respondent herein suspended the Appellant on 9th December, 1994. Hence, by the 23rd February, 1996 when the Federal High Court sitting in Lagos (Abdu Kafarati, J.) vacated that order of suspension at H the Appellant's instance and restrained the Respondent from preventing the trading in the Appellants' securities on the Floor of the Stock Exchange or its branches, the suspension had lapsed since 10th December, 1995. There is no statutory provision empowering the Respondent to extend the statutory period while no order had been obtained from the Minister revoking the registra-



tion of the Appellant's securities.

Thus, by the time the court below on 5th June, 1996 granted the Respondent leave to appeal by its Ruling (see page 143 of the Records) the Respondent had no legal function entrusted to it by law to perform in either enforcing or claiming to be entitled to continue to enforce, the suspension of the Appellant. What it means is that the Respondent, bereft as it was of any legal function to perform, could not be a person aggrieved because its interest, if any, had lapsed. See D.D. Ikonne v. Commissioner of Police, Imo State & Anor. (1986) 4 NWLR (Part 36) 473 at 503 (per karibi-Whyte, J.S.C.) wherein it was held that for an applicant to be entitled to appeal as "a person having an interest in the matter" under section 222(a) of 1979 Constitution, he must "show not only that he is a person interested but also that the Order made prejudicially affects his interest." See also IN RE IJELU (1992) 4 NWLR (Part 266) 414 and IN RE UGADU.

That the interest referred to here must be "a legally recognizable interest" finds expression in Aniagolu, J.S.C.'s observation Ikonne's Case (supra) wherein the learned justice said at page 498 of the Report thus:

*"The spirit of the provisions of Section 222(a) of the 1979 Constitution cannot accommodate the malicious interest of the Respondent as a recognizable interest under the Section ..... The malice destroys the legality of the interest which interest upon public policy, cannot be recognized by the Courts."*

Thus, as Aniagolu, JSC further said in the Ikonne's Case, an ultra vires act by a statutory body cannot constitute an interest that can be recognized under Section 222(a) 1979 Constitution.

Coming to the incompetency of the Respondent's application before the court below, the principle is that the fact that a suit in which he had interest was pending but that he did not know and was not made a party thereto, are facts which, if proved, would entitle an applicant for leave to appeal as a person interested to be let in to so appeal either by the High Court or the Court of Appeal but they do not qualify as special circumstances to warrant his filing the application first in the Court of Appeal rather than in the High Court as enjoined by Order 3 rule 3(4) of the Court of Appeal Rules, see Ojukwu v. Governor of Lagos State (1986) 2 NWLR (Part 18) 806; Mbanu v. Mbanu 13 WACA 194 and Kalu v. Odili (1992) 5 NWLR (Part 240) 130 at 171-172.

Implicit in the words of Order 3 rule 3(4) (ibid) is that an applicant has no right to choose or elect whether to apply first in the High Court or in the Court of Appeal. By that rule, the applicant's first port of call is the High Court, unless he can show special circumstances for any departure from the express words of that rule which will entitle him in that regard to apply straight to the Court of

Appeal. See Otapo v. Sunmonu (1986) 1 NWLR (Part 16) 344; Kalu v. Odili (supra) at pages 173-174; Clement v. Iwuanyanwu (1989) 3 NWLR (Part 107) 39. On the duty of an appellant wishing to appeal out of time as in the instant case, Section 25 of the court of Appeal Act (No. 43) of 1976 or section 31 (now section 27) of the Supreme court Act (No. 12) of 1960 (now Cap. 424 Laws of the Federation, 1990) provides that a person who wishes to seek leave of Court on any grounds of appeal after the expiration of the statutory periods prescribed as the case may be, requires three substantive prayers, namely for:

(a) extension of time to seek leave to appeal

(b) leave to appeal

C (c) extension of time within which to appeal

If any of the above prayers is absent where required then the application is fundamentally defective. See Odofin & Anor. V. Agu & Anor. (1992) 3 NWLR (Part 229) 350 in which Nnaemeka - Agu, JSC at pages 371-372 said *inter allia*

"That any such application must contain these three prayers is not  
D a matter of mere cosmetic importance which could be waved off with levity or waived. Rather, it is a matter which goes to the serious issue of jurisdiction on court. The periods within which a party can appeal in our courts are prescription of statutes; and leave to appeal, where necessary, is a requirement of our Constitution. When necessary, it must be applied for and obtained within the statutory period to appeal unless time to do so has been  
E extended. See Owoniboy Technical Services Ltd. v. John Holt Ltd. (1991) 6 NWLR (Part 198) 550 at pages 557-558. This court has also decided in a number of cases that where leave is necessary before an appeal can be validly filed, it ought to be applied for and obtained and notice of appeal filed  
F within the statutory period.

See Amudipe v. Arijodi (1978) 2 L.R.N. 128; Atanda v. Olarewaju (1988) 4 NWLR (Part 89) 394 Lamai v. Orbin (1980) 5-7 S.C. 28."

Akpata, JSC at pages 375-376 of the above Report added with fervour and emphasis the following words:

G "If an oral application was in fact made, the Court of Appeal deprived itself of jurisdiction by its failure to record it. If no oral application was made, the court of Appeal wrongly vested itself with jurisdiction by extending time. It has to be emphasized that where leave to appeal against a decision is required and time to seek leave to appeal and file notice of  
H appeal has expired, it is imperative that a "tripod application" be file, that is, a prayer for (a) extension of time to seek leave to appeal; (b) leave to appeal; and (c) extension of time to appeal. For there to be a valid appeal the three reliefs must be granted.

The proceedings in the Court of Appeal therefore seem to me to be

*a nullity. The subsisting judgment as at now is that of the High Court. The appeal therefore succeeds".*

Compare Order 3 rule 3(6) court of Appeal Rules. See also Premier Breweries Ltd. v. Anere Construction Ltd. (1987) 3 NWLR (Part 62) 688; N.B.N v. N.E.T. (1986) 3 NWLR (Part 31) 667 and R. Lauwers Import-Export v. Jozebson Industries Ltd. (1988) NWLR (Part 83) 429 at 447.

B

In the instant case, without the relief for extension of time within which to appeal the Respondent's application before the court below, in my respectful view, became incompetent and ought to have been struck out and this the moreso that the relief sought is a substantive relief and not merely a consequential order (see Obayagbona v. Obazee (1970) 5 S.C. 247). As a prayer for extension of time to appeal was not included in the application before the court it became inept and liable to be struck out: see Iroegbu v. Okwordu (1990) 6 NWLR (Part 159) 653 and Funduk engineering Ltd. v. James Macarthur & ors. (1996) 7 NWLR (Part 459) 153 and Nalsa & Team Associates v. N.N.P.C (1996) 3 NWLR (Part 439) 621.

D

It is for the above reasons and the more elaborate ones contained in the lead judgment of my learned brother Mohammed, JSC that I, too agree that the Respondent's application is incompetent and accordingly struck it out with the same consequential orders inclusive of costs.

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### ADIO JSC

On the 6th day of May, 1997, this appeal came before us for hearing. After due consideration of the record of appeal, the submissions in the briefs of the parties and the oral submissions of the learned counsel for the parties, I dismissed (sic allowed) this appeal and at the same time I indicated that I would give my reasons today.

I have read, in advance, the reasons given by my learned brother, Mohammed, J.S.C. for dismissing (sic allowing) this appeal. I agree entirely with the reasons given by him and I adopt them as mine. I have nothing more to add. It is for the reasons given by my learned brother, Mohammed, J.S.C., which I have adopted as mine, that I too dismiss (sic allow) this appeal. I abide by the consequential orders, including the order for costs.

H