

SUPREME COURT OF NIGERIA

21ST MAY, 1999. SC.196/1992

**CORAM:- S. M. A. BELGORE, U. MOHAMMED, A. I. KATSINA-
ALU, G. O. ACHIKE, U. A. KALGO, JJSC.**

OKONOFUA VINCENT OMOIJAHE APPELLANT
AND

1. UWESU UMORU

2. D. E. EMUJEZE RESPONDENTS

3. C. E. ONOHWAKPOR

CONTEMPT OF COURT - *Ex facie curiae contempt* - As in the present case does not attract summary trial - Trial judge cannot therefore exercise her summary jurisdiction.

CONTEMPT OF COURT - *Ex facie curiae* - May in some cases be summarily dealt with - In accordance with cardinal principles of fair process - And the matter should be placed before another judge in some cases - Where usual prosecution procedure must be followed.

CONTEMPT OF COURT - In the face of the court - Contemptuous actions - Must be such that interfere with the cause of justice - Superior court can deal and punish for it summarily - But the power is to be used sparingly - And only in serious cases.

CONTEMPT OF COURT - Trial - Order 42 rule 1 of former Bendel State High Court Rules - Court can make an order of committal under this order - After due hearing of the case - Subject to the type of contempt in issue.

CONTEMPT OF COURT - Types of contempt - Are two - In facie curiae and ex facie curiae - A charge and a plea are necessary in case of the second type - And the accused is entitled to fair hearing.

CRIMINAL PROCEDURE - Trials - Usual procedure for the apprehen-

sion, charge and prosecution of the offender - Must be followed - To ensure that an accused receives a fair trial - as guaranteed by the Constitution.

PRACTICE & PROCEDURE - *Cost of N850.00 - Awarded by the Court of Appeal - Is not excessive and arbitrary.*

FACTS

The appellant, a legal practitioner, sued the 1st respondent claiming aggravated damages for assault. When the writ was to be served on him, it was alleged that the 1st respondent assaulted and beat up the bailiff and the appellant who acted as a pointer. As a result, appellant brought an application before the High Court Benin, to have him committed to prison for contempt of court. During the pendency of the application, appellant alleged that the 2nd and 3rd respondents together with the 1st respondent interfered with the bailiff - potential witness in the committal proceedings. He sought to have the 3 respondents committed to prison for this contempt of court.

The respondents moved the trial court to dismiss the appellant's motion for committal against them. The learned trial judge dismissed the application and held that she had jurisdiction to hear the application for committal under order 42 of the High Court (Civil Procedure) Rules of 1988 of Bendel State. On appeal to the Court of Appeal, the respondents' appeal was allowed as that court held that the procedure of preferring a charge, taking a plea and proving the case against the alleged contemnor beyond reasonable doubt ought to have been followed. Being dissatisfied, appellant has now appealed to the Supreme Court raising 3 issues.

ISSUES FOR DETERMINATION

1. *Did the Learned trial judge exercise her discretion judicially and judiciously in holding that the appellant's application of 19th March, 1990 for an order of committal for contempt of court against the respondents was properly before her and, if so was the Court of Appeal right in substituting its own discretion for that of the trial judge?*

2. *Was the Court of Appeal right in holding that because the*

contempt of Court allegedly committed was committed ex facie curiae and amounts to criminal contempt, the High Court lacked jurisdiction to entertain same pursuant to Order 42(1) of the High Court (Civil Procedure) Rules 1988 of the former Bendel State notwithstanding that the specific offence allegedly committed was distinctly stated in the committal application and an opportunity afforded to the respondents to answer them?

3. *Was the cost awarded excessive in the circumstance having regard to the principle governing the award of cost?*

HELD (Unanimously dismissing the appeal per lead judgment of **KATSINA - ALU JSC**)

Criminal Procedure - Trials

1. Here, the wider interpretation of order 42 of the High Court (Civil Procedure) rules 1988 given by the appellant would appear to disregard fundamental principles with regard to criminal trials. In criminal trials the usual procedure for the apprehension, charge and prosecution of the offender must be followed. This is to ensure that an accused person receives a fair trial as guaranteed by the Constitution of this country. A construction of Order 42 rule 1 which seeks to disregard this principle is not acceptable. (p. 1348 A)

Types of contempt - Are two

2. There are two types of contempt - that committed in facie curiae and that committed ex facie curiae. In the case of the second type, a charge and a plea are necessary and the accused is entitled to a fair hearing of the case against him. In both types of contempt, a trial is involved. See Awosanya v. Board of Customs & Excise (1973) 3 SC.47. What separates one from the other is the procedure to be adopted. (p. 1348 D)

Contempt of Court - In the face of the court

3. For words or actions used in the face of the court, or in the course of proceedings, to be a contempt, they must be such as would interfere with the course of justice. A superior court of record has the inherent

jurisdiction to deal with a contempt in facie curiae and punish for the offence summarily. It must once again be emphasized that the summary power of punishing for contempt should, however, be used sparingly and only in serious cases. See Parashuram Detaram Ihandasani v. King-Emperor (1945) AC 264 at 270 Atake v. Attorney-General (1982) 11 S.C. 153; Oku v. State (1970) 1 NLR 60. It is a power which a court must of necessity possesses. Its usefulness, surely, depends on the wisdom and restraint with which it is exercised. (p. 1348 F)

C ***Contempt of court - Ex facie curiae***

4. In cases of contempt ex facie curiae there may be cases where the offence should be dealt with summarily, but such hearing must be conducted in accordance with cardinal principles of fair process, and the case must be one the facts surrounding the alleged contempt are so notorious as to be virtually incontestable. Where the judge would have to rely on evidence or testimony of witnesses to events occurring outside his view and outside of his presence in court, he should not try the case himself. The matter must be placed before another judge where the usual procedure for the arrest, charge and prosecution of the offender must be followed. In Oku v. The State (supra). (p. 1349 A)

F ***Trial - Order 42 rules 1***

5. It is to be realized that in both types of contempt, some form of trial is conducted. In that sense it is correct to say that the court can make an order of committal in the situations specified by Order 42 Rule 1 of the High Court (Civil Procedure) Rules 1988 of the former Bendel State. Such an order of committal must be made after due hearing of the case against the accused. This can be summary in cases of contempt committed in the face of the court or through a trial only after framing of a charge and taking of a plea in cases of contempt not committed in the face of the court. Each type of contempt has its own procedure. Each type must be kept within its compartment. (p. 1350 B)

Ex facie curiae contempt - As in the present case

6. In the instant case, it is not in dispute that the contempt in question was not committed in the face of the court. It was committed *ex facie curiae*. This does not attract summary trial. Here the offender is entitled to the benefit of a full process of a criminal trial. It cannot be contested that the judge would need evidence or testimony from prosecution witnesses and also from the accused and his witnesses in order to come to a just decision. There is clearly in my view no jurisdiction in the learned trial judge to exercise her summary jurisdiction in this case. The contempt was not committed in her presence. (p. 1350 D) B
C

Practice & Procedure - Cost of N850.00

7. I now come to the 3rd issue which is on costs. It was submitted on behalf of the appellant that the costs of N850.00 awarded by the Court of Appeal were excessive and arbitrary. I find no merit in this contention. The three respondents engaged the services of counsel to fight this case in the Court of Appeal. I am satisfied that the court below judicially exercised its discretion in the award of costs. I have not been shown any good reason to interfere with it. This issue also fails. (p. 1350 F) D
E

REPRESENTATION

Tolue Esekody, Esq. for the Appellant. F

Peter C. Adigwe Esq. for the Respondent.

Dr. C.Y.O. Adei, for 3rd Respondent.

CASES REFERRED TO

Awosanya v. Board of Customs & Excise (1973) 3 SC.47 G

Parashuram Detaram Ihandasani v. King-Emperor (1945) AC 264 at 270

Atake v. Attorney-General (1982) 11 S.C. 153

Oku v. State (1970) 1 NLR 60

Boyo v. Attorney-General of Mid-West (1971) All NLR H

Atake v. A/G Federation (1982) 11 SC 153 at pp 177 - 179

Boyo v. A/G of Mid-West State (1971) 1 All NLR 342

Deduwa v. The State (1975) 2 SC 54

Rex v. Thomas Horatius Jackson (1925) 6 NLR

Kolban Nigeria Ltd. v. Lawrence (1990) 3 NWLR (Part 138) 356

Balough v. St. Alban's Crown Court (1975) 1 Q.B. 73

Kolban Nigeria Limited v. Lawrence (1990) 3 NWLR 356

B Deduwa v. The State (1975) 1 ALL NLR 1

RULES REFERRED TO

High Court (Civil Procedure) Rules 1988 of Bendel State 0.42 r.1

C

LEAD JUDGMENT BY KATSINA-ALU JSC

The main issue arising in this appeal relates to the power of a court to punish for a criminal contempt committed *ex facie curiae*. The appellant herein, a legal practitioner, had sued Uwesu Umoru (1st respondent) claiming aggravated damages for assault. When the writ, taken out in November, 1989 was to be served on the 1st respondent at his workshop on 14 December, 1989 was to be served on the 1st respondent at his workshop on 14 December, 1989, it was alleged that he assaulted and beat up the bailiff and the appellant who accompanied the bailiff to act as a pointer. In consequence of the alleged incident, the appellant brought an application before the High Court, Benin to have the 1st respondent committed to prison for contempt of court. The application was still pending before the court when the appellant yet against made another allegation against the 1st respondent, D. E. Emujieze and G.E. Onohwakpor, Chief bailiff and Assistant Chief Registrar respectively. The appellant alleged that the respondent interfered with the bailiff - potential witness in the committal proceedings. He brought another application to have the three respondents committed to prison for this contempt of court.

On being served with the committal papers each of the respondents moved the trial court to dismiss the appellant's motion for committal against them. The 1st and 2nd respondents' application was struck out for procedural error while that of the 3rd respondent proceeded to determination. After a hearing, the learned trial judge dismissed the application and held that she had jurisdiction to hear the application for

committal under Order 42 of the High Court (Civil Procedure) Rules 1988 of Bendel State.

On appeal to the Court of Appeal, that court allowed the appeal of the present respondents. In the course of its judgment, the lower court held as follows:

"It is my humble view that the procedure of preferring a charge, taking a plea and proving the case against the alleged contemnor beyond reasonable doubt as laid down by the authorities, still applies and ought to have been followed in this case"

Barrister Okonofua Vincent Omoijahe was dissatisfied and has further appealed to this court.

At page 3 of the appellant's brief of argument dated 25 November, 1992, the appellant raised three issues for determination in the appeal. These are:

1. Did the Learned trial judge exercise her discretion judicially and judiciously in holding that the appellant's application of 19th March, 1990 for an order of committal for contempt of court against the respondents was properly before her and, if so was the Court of Appeal right in substituting its own discretion for that of the trial judge?

2. Was the Court of Appeal right in holding that because the contempt of Court allegedly committed was committed ex facie curiae and amounts to criminal contempt, the High Court lacked jurisdiction to entertain same pursuant to Order 42(1) of the High Court (Civil Procedure) Rules 1988 of the former Bendel State notwithstanding that the specific offence allegedly committed was distinctly stated in the committal application and an opportunity afforded to the respondents to answer them?

3. Was the cost awarded excessive in the circumstance having regard to the principle governing the award of cost?

For his part the 1st respondent formulated four issues which read as follows:

(i) Whether the defendants (respondents) proved their case and were entitled to judgment.

(ii) Whether the Learned Justices of the Court of Appeal cor-

rectly directed themselves as to the mode of trial for contempt of court of allegations criminal in nature but not committed in the face of the trial court.

(iii) Whether their Lordships of the Court of Appeal made a correct approach to the applicability of decided cases and statute law, to the arguments proffered by both sides to the case.

(iv) Whether the cost awarded was not reasonably justifiable in a case hotly contested by both sides.

The 3rd Respondent, raised three issues at pages 1 and 2 of his brief of argument. These are:

(i) Whether the Court of Appeal was right or not in setting aside the judgment of the High Court of Justice Benin-City presided over by Oni-Okpaku (Mrs.) Judge, having regard to the judicial interpretation placed on Order 42 Rule 1 of the High Court (Civil Procedure) Rules 1988 (Applicable to the defunct Bendel State) by the Court of Appeal and, also having regard to all the relevant authorities relied upon by the said Court of Appeal in arriving at its decision.

(ii) Whether the Court of Appeal on the issue of costs, used its discretion judicially in awarding costs.

(iii) Whether the Court of Appeal rightly and properly formulated the issues for determination as arising from the ground of appeal and/or the entire proceedings in the trial court.

The issues raised by the parties are similar in content. I shall however consider this appeal on the basis of the issues formulated by the appellant.

I find it convenient to deal with the first two issues together. This is because the discussion of both issues is closely related.

ISSUES 1 and 2

The main issue here turns on the interpretation of Order 42 Rule 1 of the Bendel State High Court (Civil Procedure) Rules 1988. Rule 1 provides:

"1. The power of the Court to punish for contempt of Court may be exercised by an order of committal.

(2) An order of committal may be made by the Court where contempt of Court -

(a) is committed in connection with -

(i) any proceedings before the court;

(ii) criminal proceedings;

(iii) proceedings in an inferior court;

(b) is committed in the face of the court, or consists of disobedience to an order of the court, or a breach of an undertaking to the court; or

(c) is committed otherwise than in connection with any proceedings".

The learned trial judge in the instant case, exercised her discretion to proceed with the committal proceedings in accordance with Order 42. It is indeed the view of the learned trial judge that Order 42 of the High Court (Civil Procedure) Rules, 1988 covers all cases of contempt whether civil or criminal, in curiae facie or ex curiae facie. The court below disagreed. In the course of its judgment it said thus:

"Rule 1 (1) makes it permissive for the High Court to proceed by way of committal. The Order does not exclude other forms of procedure. This is particularly borne out of the saving provisions of rules 3,5 and 8. Order 42 notwithstanding, it is my view that the procedure of preferring a charge, taking a plea and proving the case against the alleged contemnor beyond reasonable doubt as laid down by the authorities, still applies and ought to have been followed in this case and, I dare say, in dealing with the first contempt allegations also."

The principles of construction/interpretation of statutory provisions are well established. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. Judges are not called upon to apply their opinions of sound policy so as to modify or alter the plain meaning of statutory words, but where, in construing the general words the meaning which is not entirely plain or clear, then there are adequate reasons for doubting whether the Lawmaker would have intended so wide an interpretation as would disregard fundamental principles. In such a situation the courts may be justified in adopting a narrower construction. See Nokes v. Doncaster Amalgamated Collieries Ltd. 1940 A.C. 1014. It should be borne in mind that statutes are con-

strued to promote the general purpose of the legislature/lawmaker. Judges ought not to go by the letter of the statute only but also by the spirit of the enactment

Here, the wider interpretation of order 42 of he High Court (Civil Procedure) rules 1988 given by the appellant would appear to disregard fundamental principles with regard to criminal trials. In criminal trials the usual procedure for the apprehension, charge and prosecution of the offender must be followed. This is to ensure that an accused person receives a fair trial as guaranteed by the Constitution of this country. A construction of Order 42 rule 1 which seeks to disregard this principle is not acceptable.

In the present case, it is not in dispute that the allegations against the appellants are criminal in nature. The alleged contempt was *ex facie curiae*. Therefore, what is in dispute herein is the mode of trial for such a contempt of court.

There are two types of contempt - that committed in *facie curiae* and that committed *ex facie curiae*. In the case of the second type, a charge and a plea are necessary and the accused is entitled to a fair hearing of the case against him. In both types of contempt, a trial is involved. See Awosanya v. Board of Customs & Excise (1973)3 SC.47. What separates one from the other is the procedure to be adopted.

For words or actions used in the face of the court, or in the course of proceedings, to be a contempt, they must be such as would interfere with the course of justice. A superior court of record has the inherent jurisdiction to deal with a contempt in *facie curiae* and punish for the offence summarily. It must once again be emphasized that the summary power of punishing for contempt should, however, be used sparingly and only in serious cases. See Parashuram Detaram Ihandasani v. King-Emperor (1945) AC 264 at 270 Atake v. Attorney-General (1982) 11 S.C. 153; Oku v. State (1970) 1 NLR 60. It is a power which a court must of necessity possesses. Its usefulness, surely, depends on the wisdom and restraint with which it is exercised.

In cases of contempt ex facie curiae there may be cases where the offence should be dealt with summarily, but such hearing must be conducted in accordance with cardinal principles of fair process, and the case must be one the facts surrounding the alleged contempt are so notorious as to be virtually incontestable. Where the judge would have to rely on evidence or testimony of witnesses to events occurring outside his view and outside of his presence in court, he should not try the case himself. The matter must be placed before another judge where the usual procedure for the arrest, charge and prosecution of the offender must be followed. In Oku v. The State (supra) this court per Coker JSC held at page 68 that:

"Where the contempt of court is punishable brevimanu in court no warrant is necessary for the apprehension of the offender as he always in court and the contempt is stated to have been committed coram judice. In other cases the proper procedure of apprehension or arrest, charge, prosecution, etc., must be followed....."

(Underlining for emphasis).

In other words, in the trial of criminal contempt ex facie curiae, an offender is entitled to the benefit of a full process of a criminal trial. The reason for this is obvious. Firstly, this is to ensure that the accused receives a fair hearing of the case against him. In the second place, the judge no doubt would have to rely on evidence or testimony of witnesses to events which did not occur in his presence. In Boyo v. Attorney-General of Mid-West (1971) All NLR this court observed at page 353 of the Report thus:

"These observations to which we have referred, to our mind, apply both in cases of contempt in the face of the court. Although in the first case, generally, the contempt cannot be dealt with efficiently except immediately and by the very judicial officer in whose presence the offence was committed. In cases of contempt not in the face of the court, there may be cases where the offence should be dealt with summarily, but such hearing must be conducted in accordance with cardinal principles of fair process; and the case must be one in which the facts surrounding the alleged contempt are so notorious as to be virtually incontestable."

Where the judge would have to rely on evidence or testimony of witnesses to events occurring outside his view and outside of his presence in court it cannot be said that the contempt is in the face of the court. In such cases, a judge should not try a contempt which he is involved."

- B** It is to be realized that in both types of contempt, some form of trial is conducted. In that sense it is correct to say that the court can make an order of committal in the situations specified by Order 42 Rule 1 of the High Court (Civil Procedure) Rules 1988 of the former Bendel State. Such an order of committal must be made
- C** after due hearing of the case against the accused. This can be summary in cases of contempt committed in the face of the court or through a trial only after framing of a charge and taking of a plea in cases of contempt not committed in the face of the court.
- D** Each type of contempt has its own procedure. Each type must be kept within its compartment.

In the instant case, it is not in dispute that the contempt in question was not committed in the face of the court. It was committed ex facie curiae. This does not attract summary trial. Here the offender is entitled to the benefit of a full process of a criminal trial. It cannot be contested that the judge would need evidence or testimony from prosecution witnesses and also from the accused and his witnesses in order to come to a just decision. There is

F clearly in my view no jurisdiction in the learned trial judge to exercise her summary jurisdiction in this case. The contempt was not committed in her presence.

I now come to the 3rd issue which is on costs. It was submitted on behalf of the appellant that the costs of N850.00 awarded by the Court of Appeal were excessive and arbitrary. I find no merit in this contention. The three respondents engaged the services of counsel to fight this case in the Court of Appeal. I am

G satisfied that the court below judicially exercised its discretion in the award of costs. I have not been shown any good reason to interfere with it. This issue also fails.

H

In view of the foregoing, this appeal fails and is dismissed. I

affirm the decision of the lower court dated 27 March 1992. The respondents are entitled to costs which I assess at N10,000.00 against the appellant.

BELGORE JSC

I read before hand the judgment of my learned brother, Katsina-Alu, JSC., and I am in full agreement with him that this appeal has no merit. For the reasons contained in his judgment, which I adopt as mine, I also dismiss the appeal with N10,000.00 costs to the respondents against the appellant.

MOHAMMED JSC

I entirely agree that this appeal ought to be dismissed. I have had the privilege of reading the opinion of my learned brother, Katsina-Alu, J.S.C., in the judgment just delivered and I agree to dismiss the appeal. My learned brother has permitted me to read the judgment, in draft, before now.

It is clear from the facts of this case that the contempt allegedly committed by the respondents was committed ex facie curiae. The grounds and the reliefs sought by the appellant before the trial High Court for the committal of the respondents for contempt clearly show that the contempt was allegedly committed outside the court. The reliefs and the Grounds applied for by the appellant read as follows:

"Relief Sought

The relief sought herein is for an order to commit the respondents herein Uwesio Umoru, D.E. Emujeze and C.E. Onohwakpor to Federal Prisons Benin City for their contempt in interfering with a potential witness, Henry Okpako, in the committal proceedings pending before this Honourable Court."

Grounds Upon Which Relief is Sought

The action of the respondents in pressurizing the said Henry Okpako to accept a gratification of N200.00 in consideration of chang-

ing his statement incriminating the first respondent, Uwesu Umoru amounts to a pending matter and therefore calculated to obstruct the administration of justice in the pending committal proceedings against the said Uwesu Umoru."

B The learned trial judge held in her ruling that the alleged contempt is a criminal contempt committed in a pending civil proceeding before her court. However, in view of the provisions of Order 42, Rules 1 & 2 of the High Court (Civil Procedure) Rules of the then Bendel State of Nigeria, 1988, she could entertain an application supported with affidavit evidence for an order of committal for contempt against the respondent, she ruled that she had jurisdiction to deal with the case summarily whether the contempt is in facie curiae (in the face of the court) or ex facie curiae (outside the court) or whether it is a civil or a criminal D contempt.

Dissatisfied with the ruling of the learned trial judge the appellants appealed to the Court of Appeal. The Court below referred to several authorities which include this court's decisions in Atake v. A/G Federation (1982) 11 SC 153 at pp 177 - 179; Boyo v. A/G of Mid-West State (1971) 1 All NLR 342; Deduwa & Ors. v. The State (1975) 2 SC 54 and concluded that the facts of the case in hand have established an offence under section 133 (6) of the criminal code of Bendel State. It further observed that because of the serious nature of the allegations made against the appellant the contempt proceedings ought to be initiated by the State Attorney General. The Court of Appeal, quite rightly, stated that the procedure for preferring a charge, taking a plea and proving the case against the alleged contemnor beyond reasonable doubt as laid down by authorities had to be followed. The learned trial judge should not assume G jurisdiction and summarily deal with the allegation and punish for the contempt allegedly committed by the respondents.

H Although criminal contempts of court may take a variety of forms they all share a common characteristic: they involve an interference with the due administration of justice either in a particular case or more generally as a continuing process. It is justice itself that is flouted by contempt of court, not the individual court or judge who is attempting to administer

it. See - A/G v. Leveller Magazine, Ltd. (1979) 1 All E.R. 745 - per Lord Diplock.

Criminal contempt therefore resembles many ordinary offences, such as theft or offences against the person or property by which the interests of the victim himself are prejudiced more immediately than those of the public at large. In the case in hand the contempt was not committed before the learned trial judge and, as quite rightly pointed out by the learned trial judge, the contempt is a criminal contempt. That being so, the prosecution of the offence will involve the act of framing a charge, testimony of witnesses and all other aspects of a full trial. As the contempt was not committed in facie curiae before the learned trial judge she could not deal with it summarily and punish the contemnors on the spot. Although there is nothing wrong in arraigning the respondents before the learned trial judge for a full trial, in the interest of justice I will urge that they should be taken before another judge.

For these reasons and the fuller reasons in the judgment of my learned brother Katsina-Alu J.S.C. this appeal has failed and it is dismissed. The judgment of the Court of Appeal is hereby affirmed. I abide by the order made in the lead judgment on costs.

ACHIKE JSC

I have had the preview, in draft, of the judgment just delivered by my learned brother, Katsina-Alu, JSC, and I agree with his reasoning and conclusions that the appeal deserved to be dismissed.

The power to punish for contempt is inherent in courts of superior original jurisdiction. This power is independent of and in addition to any statutory forms of contempt. Indeed, the inherent powers to punish for contempt are expressly preserved under our law because section 6 of the Criminal Code Act states that "Nothing in the Act or in the code shall affect the authority of courts of record to punish summarily for the offence commonly known as contempt of court;" See laws of the Federation of Nigeria (1990) Vol. v, Cap 77.

The issue in controversy in this brief appeal hinges on the proper

procedure available to the trial court, or even appellate court, where it is faced, with the punishment for contempt committed by a person outside the court, which is generally referred to as contempt ex facie curiae, in contrast to contempt committed in the face of the court, i.e. contempt in facie curiae. For contempt committed in facie curiae the trial Judge will exercise his summary jurisdiction to punish the contemnor. Punishment for contempt committed ex facie curiae is criminal in nature and involves punishment of a person for his criminal act in relation to judicial process perpetrated outside the face of the court. See Rex v. Thomas Horatius Jackson (1925) 6 NLR 49 in which the former Supreme Court in Nigeria punished Jackson in respect of articles published in his paper which cast aspersion against the integrity and impartiality of Judges of the court. The Court committed him to prison for two months and ordered him to pay costs of the proceedings.

It is common ground that the Respondents were being sought to be committed for contempt perpetrated outside the court i.e. ex facie curiae in that they interfered with a potential witness. The presiding Judge at the trial court had no difficulty in appreciating that the contemptuous act was committed ex facie curiae and was therefore criminal in nature because in her ruling at p. 67 of the record she expressed herself thus:

"It is seen as such that the alleged contempt is a criminal contempt in this pending civil proceeding before court, that is Suit No. B/464/89 Okonofua Vincent Omoiјаhe v. Uмoru. By law an act calculated to prejudice the due course of Justice by interfering with witnesses who have given evidence or are likely to give evidence, is a criminal type of contempt"

It was quite explicit from the learned Judge's consideration of the authority of Kolban Nigeria Ltd. v. Lawrence Bros & Co. (1990) 3 NWLR (Part 138) 356 that Her Lordship appreciated that where a person is being proceeded against for a criminal contempt, the proper procedure would be for the contemnor to be arrested and charged before another court wherein after a full trial is conducted, and if found guilty after proof beyond reasonable doubt, the contemnor will be punished in ac-

cordance with the law. Nevertheless, after perusal of Order 42 Rules 1 and 2 of the High Court (Civil Procedure) Rules of Bendel State of Nigeria, 1988, applicable to Edo State of Nigeria wherein it is provided that a Judge could entertain an application for contempt which is duly supported with affidavit, be it a civil or criminal contempt, a situation completely out of step with Kolban Nigeria Ltd. case the learned trial Judge regrettably somersaulted. Thus, guided by that Rule she delivered a Ruling and held that she had jurisdiction. B

Not satisfied with this Ruling, the Appellants appealed to the Court of Appeal. Relying on the well-known authorities, especially Atake v. A.G of the Federation (1987) 11 SC. 153, Boyo v. A.G. of Mid-West State (1971) 1 All NLR 342, the court below had no difficulty in allowing the appeal, and stressed that the proper procedure for criminal contempt i.e. contempt committed ex facie curiae, such as the one under consideration, is to proceed against the contemnor by the regular procedure of criminal trial before another Judge to ensure that before the contemnor is punished the charge preferred against him is established beyond reasonable doubt. This is, of course, the golden thread that runs through all criminal trials, and short of proper compliance with that procedure the accused/contemnor cannot be punished under our law. In the circumstances, the lower court held, and rightly in my view, that it was erroneous for the trial court to assume jurisdiction to hear the contempt charge in the circumstances of this case. D E F

It is against this decision of the Court below that this appeal has been brought.

For all I have said, it is manifestly clear to me that the assumption of jurisdiction by the learned trial Judge under the fancied provisions of Order 42 of Edo State Law ran foul of the general law of our criminal jurisprudence for punishment of alleged act of criminal contempt of Court. For an act of contempt committed in facie curiae, and where the dignity of the court seized of the proceedings is called to question, it is fair and proper that the court should deal with such disrespect timeously moreso as the Judge in whose court the disrespect has been committed is fully seized of the facts and circumstances surrounding the conduct of the G H

contemnor, and the necessity of calling witnesses to testify to what transpired before the court will not arise.

But the situation of contempt ex facie curiae is completely different. It demands that the Judge handling a contempt committed outside the face of the courts, even though it is in respect of a matter in which civil or criminal proceedings are taking place before that Judge, should refrain, in the interest of justice, from assuming jurisdiction in such a situation. The Judge should be very wary to act otherwise, more so as in such circumstances, the Judge assuming jurisdiction would be acting in complete negation and in breach of the sacred principles of fair hearing now entrenched in section 33 of the 1979 Constitution. Furthermore, it must also be borne in mind that the contemptuous act sought to be punished is not a disrespect personal to the Judge seeking to hear the contempt proceedings, rather, it is a criminal offence of general interest to the public at large. Therefore, that Judge should be least interested in the determination of the contempt alleged. The power to commit for contempt of Court is manifestly necessary for the proper administration of justice but never to be invoked for the vindication of the Judge. Where the Judge feels he is personally scandalized, rather than the Court itself, it is clearly open to him to initiate an action for libel. It remains to say one last word of caution. The power to commit for contempt of Court should be viewed as a lethal weapon of last resort and to be invoked sparingly, and for the interests of good administration of justice. This explains the latitude given to journalists, reviewers and commentators on concluded judgments handed down by the courts.

Now the facts and circumstances of the case leading to this appeal are hardly in dispute and they show clearly that the act of disrespect complained of was not done before the trial Judge, rather it is a case of ex facie curiae for which the law forbids summary trial, but one that requires the formal procedure in an ordinary criminal trial.

It is for the foregoing reasons in addition to those set out in the leading judgment of my brother, Katsina-Alu, JSC that I am of the firm view that this appeal is palpably unmeritorious and the same should be dismissed. Accordingly, the appeal is dismissed by me.

I award N10,000.00 costs to the Respondents.

KALGO JSC

I have had the privilege of reading in draft the judgment of my learned brother Katsina-Alu JSC in this appeal and I agree with his reasoning and conclusions thereon.

The substance of the appeal concerned the procedure to be followed by a Court in punishing criminal contempt committed against the Court and not in the presence of the Court i.e. ex facie curiae. It is well settled that according to the law and the constitution, every superior Court of record in Nigeria has inherent powers to punish summarily for contempt committed in the face of the Court i.e. in facie curiae, (Atake v. Attorney-General (1982) 11 SC. 153) and this is only necessary in order to maintain the dignity and authority of the Court. (Balough v. St. Alban's Crown Court (1975) 1 Q.B. 73; In Reg. M. Boyo (1970) 1 ALL NLR 111 at 116.

It is also well-settled by legal authorities that a contempt of Court committed outside the Court (ex facie curiae) being criminal in nature, cannot be punished summarily.

In that case the contemnor must be arrested, charged before another Court, full trial conducted and if found guilty punished according to law. See Kolban Nigeria Limited v. Lawrence Bros (1990) 3 NWLR 356; Awosanya v. Board of Customs and Excise (1975) 3 SC. 47 at 60, (1975) 1 ALL NLR 106 at 118; Deduwa v. The State (1975) 1 ALL NLR 1.

The learned trial judge seemed to agree when she quoted the case of Kolban (supra) in her ruling on page 70 - 71 of the record that where a person is accused of criminal contempt, there must be full trial and proof beyond reasonable doubt before conviction and punishment can be laid against him. In the instant case, the learned trial judge found that the contempt was criminal when she said in her ruling on page 67 of the record:-

"It is seen as such that the alleged contempt is a criminal con-

tempt in this pending Civil proceeding before Court that is suit No. B/464/89 Okonofua Vincent Omoijahe v. Uwesu Umoru. By law an act calculated to prejudice the due course of justice by interfering with witnesses who have given evidence or are likely to give evidence, is a criminal type of contempt"

However, the learned trial judge found that of High Court Civil Procedure Rules of Bendel State of Nigeria, 1988, under which the application for committal for contempt was brought, has given her jurisdiction to hear the application to commit the appellants for contempt of Court. Her reason was that by 0.42 r. 2 (a) (i) of the said rules an order of committal can be made where the contempt, whether civil or criminal, is committed in connection with any proceedings before the court. And although the criminal contempt in this case constituted an offence under section 133 of the criminal Code of Bendel State, Section 6 of the same code expressly preserved the inherent powers of the court of record to punish a person summarily for the offence commonly known as contempt of Court though he should not also be punished under the code for the same offence.

The learned trial judge appeared to make a distinction on the exercise of the powers of Court to commit for contempt between the period before and after the enactment of the High Court Civil Procedure Rules of Bendel State which contained the said 0.42. She said in her ruling thus:-

"Therefore, before the 1988 rules, punishment would be either under section 6 or Section 133 (6) but not under both Sections of the law for the contempt of Court".

She is perfectly right on this but she went on to say:-

"But with the advent of the 1988 High Court Civil Procedure rules, Order 42 is the enabling rule which allows the High Court to entertain application supported with affidavit evidence, for an order of committal for contempt of its Court (sic) whether the contempt is in facie curiae (in the face of the Court) or ex-facie curiae (outside the court) or whether it is civil contempt or criminal contempt".

With due respect to the learned trial judge, I disagree with her on this.

0.42 r.1 (1) itself provides that:-

(1) The power of the Court to punish for contempt of Court may be exercised by an order of committal". (Underlining mine). And in rule (2) thereof it also provides that an order of committal may be made by the Court in the circumstances set out thereunder. From the provisions of rules (1) and (2), there is no doubt that other forms of procedure in dealing with contempt of Court are not excluded and it is therefore permissible to use other forms of committal than those specified under 0.42. Therefore it is my view that while the superior Court has inherent power to punish or commit a person for contempt of the Court in facie curiae summarily and brevi manu, in order to preserve and maintain the dignity of the court, the same power cannot be exercised in respect of contempt committed ex-facie curiae having regard to the need to be fair and just in the contempt proceedings. Another reason which in my view entitles a judge to deal instanter with contempt in the face of the Court, is because the judge ordinarily has personal knowledge of what transpired in Court without calling any witness to explain it, since in general, contempt in the face of the Court consists of unlawful interruption, disruption or obstruction of Court proceedings which may take various forms. But in case of contempt outside the Court, as in the instant case, the judge did not know what happened outside the Court and before the alleged contemnor could be found guilty and committed of such contempt, he must be given a hearing and full trial conducted. That is why I hold the view that the procedure under 0.42 of the High Court of Bendel State (Civil Procedure) Rules, 1988 is inappropriate in respect of contempt outside the Court, and it would appear to contravene the general principles of fair hearing enshrined in Section 33 of the 1979 Constitution. This situation would in my view deprive the trial Court the jurisdiction to proceed with the committal proceedings under 0.42.

I therefore agree with the decision of the Court of Appeal that the procedure of preferring a charge, taking a plea and proving the case against the contemnor beyond reasonable doubt, as laid down by the legal authorities should apply in the case of contempt ex-facie curiae as in this case.

Finally, I agree with my learned brother Katsina-Alu JSC in his leading judgment that there is no merit in this appeal. I dismissed it and affirm the decision of the Court of Appeal. I award N10,000.00 costs in favour of the respondents.

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