

SUPREME COURT OF NIGERIA

4TH FEBRUARY, 2000. SC. 108/1994

**CORAM:- A. G. KARIBI-WHYTE, E. O. OGWUEGBU,
A. I. KATSINA-ALU, U. A. KALGO, S. O. UWAIFO, JJSC**

L. O. DIKE & 2 ORS. APPELLANTS
(For themselves and on behalf of the Living
Christ Mission Onitsha

AND

DR. OSITA ADUBA & ANOR. RESPONDENTS
(The Administrator and Administratrix of
Estate of Mr. Osita Aduba)

CONSTITUTIONAL LAW - Decision - As envisaged under s. 277 (1) of the 1979 Constitution - Does not include an application taken administratively - From which an appeal will not arise under s. 220(1) of same Constitution.

PRACTICE & PROCEDURE - Rules of Court - O 19 r. 5 Anambra State High Court Rules 1988 - Transfer of a case from one court to another thereunder - Is merely administrative - And does not require court proceedings.

PRACTICE & PROCEDURE - Transfer of cases to courts - Mere fact that relief for such transfer was sought in the claim - Would not stop the administrative judge from effecting the transfer - And the result of such transfer is not appealable to the Court of Appeal.

FACTS

Two actions were pending in different courts between the same parties. One was earlier filed by the respondents as suit No. M0/660/92 in the Magistrate's Court, Onitsha. The other was filed by the appellants as suit No. 0/390/92 in the High Court, Onitsha. Although both were in respect of the same subject-matter, namely, the tenancy of a flat and out-houses

at No.42 Mba Road, Inland Town, Onitsha, the suit in the High Court raised more issues than that in the Magistrates' Court which merely sought possession and mesne profits on the ground that the yearly tenancy had been duly determined. But the High Court case seems to suggest that the appellants had ceased to be mere tenants in view of some collateral contractual considerations and an alleged tortious act of the respondents of some magnitude in connection with the property. The claim was for a number of reliefs, including special and general damages of N900,000.00 and an order for the High Court Judge (Ononiba, J.) to transfer the suit in the Magistrates' Court to his court.

The respondents had filed and argued a motion unsuccessfully in the High Court to have suit No.0/390/92 struck out on the grounds that it was an abuse of court process. In the meantime, the appellants applied to the administrative Judge of the high Court Onitsha to transfer the suit in the Magistrates' Court to the High Court presided over by Ononiba, J. which would enable Ononiba, J. to consolidate the two suits for hearing and determination. That order of transfer was made on 13 January, 1993 by Nwazota, J. On appeal, the Court of Appeal set aside the transfer order on 24 February, 1994 and directed that suit No. M0/660/92 be sent back to the Magistrates' Court to be determined there. On further appeal to this court, two issues have been raised for determination as follows:

ISSUES FOR DETERMINATION

"1. Whether the Court of Appeal was right in setting aside the Order made by Nwazota, J. wherein he transferred suit No. M0/660/92 from Onitsha Magistrates (sic) Court to Onitsha High Court to be consolidated with suit No. 0/390/92 and in sending suit No.M0/660/92 back to the Magistrate (sic) Court Onitsha for hearing ?

2. Whether the mere fact that a claim for an order of transfer was erroneously included in the writ of summons in suit No. 0/390/92 pending before Ononiba, J. who, in any event, had no jurisdiction to entertain the claim, was sufficient to preclude Nwazota, J. acting as the Administrative Judge in the Onitsha Judicial Division from exercising his undoubted jurisdiction under Order 19 rule 5 (1) of the Anambra State High Court Rules, 1988 to make the transfer Order in this case?"

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

Rules of Court - O. 19 r. 5

1. It seems clear that the consideration of the application does not require any argument by the parties before the chief Judge or the Judge in charge of administrative duties. The function is not much more than what may be involved in assigning or reassigning a case to a court by either of these functionaries. It is therefore a simple administrative arrangement. That much is clear from the rules reproduced above. It is unnecessary for proceedings to be held to consider an application brought under r.5. I think Nwazota, J. embarked on a procedure not provided for when he sat to hear and consider the application under that rule in open court. (p. 209 B)

Transfer of cases to courts

2. But it went on later to hold that the discretion to transfer a case under Order 19, r.5 should be exercised judiciously and judicially. The ground upon which this appears to have been founded by that court was that Nwazota, J. "failed to take into account a material and relevant fact to wit, that the making of the order sought would have far-reaching effect of deciding the fate of a specific relief that fell for resolution or determination in the suit that was pending before Ononiba, J." That relief was one of the five reliefs sought in suit No. 0/390/92 pending at the Onitsha High Court before Ononiba, J. as follows:

"An order of court transferring suit No.M0/660/92 from the Magistrates court Onitsha to the High court for a just determination of the issues raised in this suit."

I am of the view that in the circumstances of this case, the inclusion of that relief in the suit before Ononiba, J. was not capable of standing in the way of the administrative Judge in considering the application before him. It follows, in my view, that the mere inclusion of such a relief in the suit before Ononiba, J. was not a relevant consideration for Nwazota, J. in the circumstances of his granting or refusing the application to transfer. It was a routine administrative matter unsuited for the

importation of the concept of judicious and judicial exercise of discretion as it was not a judicial or quasi-judicial function properly so-called. Consequently, a decision arrived thereat is not one that is appealable to the Court of Appeal. I have no doubt in my mind that the lower court was not entitled to set aside the order in question. If it had properly considered the relevant rules 5 and 8 of order 19, it would, without going into the merit of the arguments proffered before it, have found that the order of transfer made by Nwazota, J. in the course of his administrative duties was not appealable. The appeal would simply have been struck out. (pp. 210 A/211 G)

Constitutional law - Decision

3. In Kalu v. Odili (1992) 5 NWLR (pt.240) 130 at 189, Karibi-Whyte JSC observed that a decision within the meaning of s. 277 (1) of the 1979 Constitution envisages any determination on an issue joined by or litigated by the parties before the court. This of course does not exclude ex-parte interim decisions that may be made by the High Court under the relevant Rules of Court or the Fundamental Procedure Rules that may be appealable by virtue of s. 220 (1) (9) (ii) or (v) of the 1979 Constitution. The said observation of Karibi-Whyte JSC is particularly attractive when related to the comparison between r.5 and r.8 of order 19 of the Anambra State High Court Rules 1988. That comparison reveals a distinction between the applications taken administratively and those taken as court proceedings. It is then it is appreciated that the decisions taken in the latter circumstance qualify as decisions of a High Court from which an appeal may lie under s.220 (1) of the 1979 Constitution, whereas those taken administratively do not. (p. 210 H)

REPRESENTATION

Dr. J. I. J. Otuka with Miss Juliet Achebe for appellants
H Nnamdi Ibegbu for the Respondents

CASE REFERRED TO

KALU V. ODILI (1992) 5 NWLR (PT.240) 130 AT 189

STATUTES & RULES REFERRED TO

Anambra State High Court Rules 1988 O. 19 rr. 5 (1) & (2) and (8)
 Constitution of Nigeria 1979 ss. 277 (1), 220 (1) (9) (ii)

LEAD JUDGMENT BY UWAIFO JSC

Two actions were pending in different courts between the same parties. One was earlier filed by the respondents as suit No. M0/660/92 in the Magistrate's Court, Onitsha. The other was filed by the appellants as suit No. 0/390/92 in the High Court, Onitsha. Although both were in respect of the same subject-matter, namely, the tenancy of a flat and out-houses at No.42 Mba Road, Inland Town, Onitsha, the suit in the High Court raised more issues than that in the Magistrates' Court which merely sought possession and mesne profits on the ground that the yearly tenancy had been duly determined. But the High Court case seems to suggest that the appellants had ceased to be mere tenants in view of some collateral contractual considerations and an alleged tortious act of the respondents of some magnitude in connection with the property. The claim was for a number of reliefs, including special and general damages of N900,000.00 and an order for the High Court Judge (Ononiba, J.)to transfer the suit in the Magistrates' Court to his court.

The respondents had filed and argued a motion unsuccessfully in the High Court to have suit No.0/390/92 struck out on the grounds that it was an abuse of court process. In the meantime, the appellants applied to the administrative Judge of the high Court Onitsha to transfer the suit in the Magistrates' Court to the High Court presided over by Ononiba, J. which would enable Ononiba, J. to consolidate the two suits for hearing and determination. That order of transfer was made on 13 January, 1993 by Nwazota, J. On appeal, the Court of Appeal set aside the transfer order on 24 February, 1994 and directed that suit No. M0/660/92 be sent back to the Magistrates' Court to be determined there. On further appeal to this court, two issues have been raised for determination as follows:

"1. Whether the Court of Appeal was right in setting aside the Order made by Nwazota, J. wherein he transferred suit No. M0/660/92

from Onitsha Magistrates (sic) Court to Onitsha High Court to be consolidated with suit No. 0/390/92 and in sending suit No.M0/660/92 back to the Magistrate (sic) Court Onitsha for hearing ?

2. *Whether the mere fact that a claim for an order of transfer was erroneously included in the writ of summons in suit No. 0/390/92 pending before Ononiba, J. who, in any event, had no jurisdiction to entertain the claim, was sufficient to preclude Nwazota, J. acting as the Administrative Judge in the Onitsha Judicial Division from exercising his undoubted jurisdiction under Order 19 rule 5 (1) of the Anambra State High Court Rules, 1988 to make the transfer Order in this case?"*

There is no argument that the order of transfer of the suit in question from the Magistrates' Court to the High Court was made under Order 19, r. 5 (1) of the Anambra State High Court Rules, 1988. There is also no question that the judge who made the transfer was the judge in charge of administrative duties. The said Order 19, r. 5 (1) provides inter alia:

"5 (1) An application for the transfer of any cause or matter from a Magistrate's (sic) Court to the High Court, may be made to the Chief Judge or to the Judge of the High Court designated by the Chief Judge as the Judge in charge of administrative duties in writing, using form 20, if by a party to the suit, or Form 21, if by a Magistrate, addressed to the Chief Registrar or to the Registrar of the court, as the case may be."

It is important to state the procedure that follows such an application. It is contained in r.5 (2) which provides that:

"The Chief Registrar shall place the application before the chief Judge, and shall transmit the order (granting or rejecting the application), sealed with the seal of the court to the Magistrate's (sic) Court concerned and to the new Court if the application be granted, for the information of the parties to the suit. The Registrar of the High Court, where the application was made to the High Court Judge, shall take similar action as the Chief Registrar."

It will be seen from Form 20 or Form 21 that the application is a simple one addressed to the Chief Registrar or the Registrar of the High

Court, as the case may be. Secondly, the parties are not expected to appear before the Chief Judge or the Judge in charge of administrative duties. Thirdly, it is through the Chief Registrar or the Registrar of the High Court that the parties and the respective courts are informed of the fate of the application. **It seems clear that the consideration of the application does not require any argument by the parties before the chief Judge or the Judge in charge of administrative duties. The function is not much more than what may be involved in assigning or reassigning a case to a court by either of these functionaries. It is therefore a simple administrative arrangement. That much is clear from the rules reproduced above. It is unnecessary for proceedings to be held to consider an application brought under r.5. I think Nwazota, J. embarked on a procedure not provided for when he sat to hear and consider the application under that rule in open court.**

Order 19, r.8 which is in contrast with the foregoing r.5 provides as follows:

"8. An application for the transfer of any cause or matter from the High Court to a Magistrate's (sic) Court shall be made in the open court and be disposed of in open court by the presiding Judge of that court, and the decision shall have effect as an interlocutory decision of the court in the proceedings."

[Emphasis Mine]

The implication of r. 8 is that an application made under it is open to argument by the parties and consequently calls for a decision of the High Court in its judicial function. That is quite different from what an administrative Judge or the Chief Judge is faced with under r.5.

The application granted under r.5 in this case as already said was by Nwazota, J. The lower court said as regards his position as follows:

"It is common ground that Nwazota, J. was and is still the administrative Judge for Onitsha Judicial Division. The application that suit No. M0/660/92 be transferred to Onitsha High Court in order to be consolidated with suit No. 0/390/92 presided over by Ononiba, J. was procedurally competent."

But it went on later to hold that the discretion to transfer a case under Order 19, r.5 should be exercised judiciously and judicially.

The ground upon which this appears to have been founded by that court was that Nwazota, J. "failed to take into account a material

B and relevant fact to wit, that the making of the order sought would have far-reaching effect of deciding the fate of a specific relief that fell for resolution or determination in the suit that was pending before Ononiba, J." That relief was one of the five reliefs sought in suit No. 0/390/92 pending at the Onitsha High Court before C Ononiba, J. as follows:

"An order of court transferring suit No.M0/660/92 from the Magistrates court Onitsha to the High court for a just determination of the issues raised in this suit."

D I am of the view that in the circumstances of this case, the inclusion of that relief in the suit before Ononiba, J. was not capable of standing in the way of the administrative Judge in considering the application before him. The authority to transfer a case in E the manner sought is not conferred on a Judge who is neither the chief Judge nor a Judge charged with administrative duties. Ononiba, J. was not known to be either. It follows, in my view, that the mere inclusion of such a relief in the suit before Ononiba, J. was not a relevant consideration for Nwazota, J. in the circumstances of his granting or refusing the application to transfer. It was a routine administrative matter unsuited for the importation of the concept of judicious and judicial exercise of discretion as it was not a judicial or F quasi-judicial function properly so-called. Consequently, a decision arrived thereat is not one that is appealable to the Court of Appeal. G

Under s. 277 (1) of the 1979 Constitution then applicable, the term "decision" by definition means, in relation to a court, any determination of that court and includes judgment, decree, order, conviction, sentence or recommendation. In Kalu v. Odili (1992) 5 NWLR (pt.240) H 130 at 189, Karibi-Whyte JSC observed that a decision within the meaning of s. 277 (1) of the 1979 Constitution envisages any determination on an issue joined by or litigated by the parties before the

court. This of course does not exclude ex-parte interim decisions that may be made by the High Court under the relevant Rules of Court or the Fundamental Procedure Rules that may be appealable by virtue of s. 220 (1) (9) (ii) or (v) of the 1979 Constitution. The said observation of Karibi-Whyte JSC is particularly attractive when related to the comparison between r.5 and r.8 of order 19 of the Anambra State High Court Rules 1988. That comparison reveals a distinction between the applications taken administratively and those taken as court proceedings. It is then it is appreciated that the decisions taken in the latter circumstance qualify as decisions of a High Court from which an appeal may lie under s.220 (1) of the 1979 Constitution, whereas those taken administratively do not.

The appellants have argued that the lower court was wrong to have set aside Nwazota, J. 's order of transfer. But they went further at great length to try to justify Nwazota, J.'s order on the ground that it was made in his discretion which he was said to have exercised judicially and judiciously. On the other hand the respondents' contention is that the discretion was not so exercised. I have already shown that it is inappropriate to use the term 'judicially and judiciously' in reference to the exercise of powers under order 19, r.5. It is enough if the administrative Judge or Chief Judge is satisfied that the Judge to whom he intends to make the transfer is in a position to and can conveniently take the case. When he is so satisfied and makes the transfer then it can be said he has done what he ought to. It will be undesirable, for instance, to transfer a case to a Judge who has an interest in the case or where there is evidence of a likelihood of bias.

I have no doubt in my mind that the lower court was not entitled to set aside the order in question. If it had properly considered the relevant rules 5 and 8 of order 19, it would, without going into the merit of the arguments proffered before it, have found that the order of transfer made by Nwazota, J. in the course of his administrative duties was not appealable. The appeal would simply have been struck out. I therefore allow this appeal and set aside the order of the lower court with costs of N10,000.00 to the appellants.

KARIBI-WHYTE JSC

I have read in draft the judgment of my learned brother Uwaifo, JSC in this appeal with which I entirely agree. There is no doubt that the application for transfer of suit No. M0/660/92 Dr. Osita Aduba & anor. v. L.O. Dike & ors. from Magistrate's Court, Onitsha for hearing and determination along with suit No. 0/390/92 Registered Trustees of Living Christ Mission, 2. L. O. Dike, 3. E. A. Onyia, 4. D. O. Nwosu v. Dr. Osita Aduba 2. Mrs. patricia Aduba (The Administrator and Administratrix of the Estate of Mr. Osita Aduba (deceased), was made under Order 19 r. 5 (1) (2) of the Anambra State, High Court Rules, 1988. The decision is the subject matter of appeal to the court below and to this court. The Court of Appeal set aside the order of transfer and directed that suit No. M0/660/92 be sent back to the Magistrate's Court to be determined there. This is the appeal before us. It is not disputed that the transfer was made under Order 19 r. 5 (1) of the Anambra State High Court Rules 1985.

In compliance with the relevant Rule of Court, the application was made to "the Judge of the High Court designated by the Chief Judge as the Judge in charge of administrative duties...."

Order 19 r. 5 (1) provides

"An application for the transfer of any cause or matter from a Magistrate's Court to the High Court, may be made to the Chief Judge or the Judge of the High Court designated by the Chief Judge as the Judge in charge of administrative duties in writing, using Form 20, if by a party to the suit, or Form 21, if by a Magistrate, addressed to the Chief Registrar of the court, as the case may be."

Under sub-rule 2 the Chief Registrar is given directions as to how to deal with the application. It reads,

"The Chief Registrar shall place the application before the Chief Judge, and shall transmit the order (granting or rejecting the application) sealed with the seal of the Court to the Magistrate's Court concerned and to the new Court if the application be granted, for the information of the parties to the suit. The Registrar of the High Court where the application was made to the High Court Judge, shall take similar action as the Chief Registrar."

It seems to me obvious from the ipsissima verba of order 19 r.5 (1) (2) that the entire procedure in effecting a transfer in accordance with the rules is purely administrative. It is not necessary for application to be dealt with in open court. No judicial procedure is involved. It was not a judicial or quasi judicial function and does not require the importation of the concept of the exercise of judicial or quasi-judicial discretion B

The learned trial Judge in the exercise of his administrative duty made the order of transfer sought. In his ruling he said;

"I am of the considered view that in so far as the parties to this application are the same as the parties in Suit M0/660/92 (currently pending in the Magistrate's Court, Ontisha) and 0/390/92 currently pending in the High Court, Onitsha - which suits relate or touch on the same subject matter except for paragraph 3 of the claim in Suit 0/390/92. It is proper to concede to the prayer for an Order of transfer - as it is my considered view that there is no fact whatsoever supporting assertions by the Respondents that the current application is an abuse of Court or legal processes as no assertion whatsoever of mala fide is made by the Respondents." C D E

It seems to me that in exercising the power under order 19 r.5(1) it is sufficient if the administrative Judge or Chief Judge as the case may be, is satisfied that there are good reasons for the transfer. It follows therefore that having made his decision either way, it is not subject to appeal. This is because a decision under Order 19 r.5 (1) (2) does not fall within the definition of "decision" under Section 277 (1) of the 1979 Constitution. Now S.318 (1) of the Constitution 1999 - See Kalu v. Odili (1992) 5 NWLR (pt.240) 130, 189. I hold therefore that the court below was in error when it set aside the order of transfer made by Nwazota J. I therefore allow this appeal. Respondents shall pay N10,000 as costs of this appeal to the Appellants. F G

H

OGWUEGBU JSC

I have had a preview in draft, of the judgment just delivered by my learned brother Uwaifo, J.S.C. and I am in agreement that the appeal

be allowed and the order made by the court below set aside. There will be costs to the appellants, which I assess at N10,000.00.

KATSINA-ALU JSC

B I have had the advantage of reading in draft the judgment of my learned brother Uwaifo, JSC in this appeal. I entirely agree with it.

 It is clear at page 5 of the record of appeal that the application for transfer dated and filed 16 November, 1992 was made under order
C 19. r.5 of the Anambra State High Court, Rules 1988. It was made to the Administrative judge. Order 19 r. 5 (1) provides inter alia:

*"(1) An application for the transfer of any cause or matter from a Magistrate's (sic) Court to the High Court, may be made to the
D chief Judge or the Judge of the High Court designated by the Chief Judge as the Judge in charge of administrative duties in writing, using Form 20, if by a party to the suit, or Form 21, if by a magistrate, addressed to the chief Registrar of the court, as the case may be."*

E Sub-rule 2 states the procedure on reception of the application. It reads:

*"The Chief Registrar shall place the application before the Chief Judge, and shall transmit the order (granting or rejection the applica-
F tion), sealed with the seal of the court to the Magistrate's (sic) Court concerned and to the new court if the application be granted, for the information of the parties to the suit. The Registrar of the High Court, where the application was made to the High Court Judge, shall take similar action as the Chief Registrar."*

G The learned trial judge made the order of transfer sought. In the course of his ruling he said:

*"I am of the considered view that in so far as the parties to this application are the same as the parties in suit M0/660/92 (currently pend-
H ing in the Magistrate's court Onitsha) and 0/390/92 currently pending in High Court Onitsha - which suits relate or touch on the same subject matter - except for paragraph 3 of the Claim in suit 0/390/92, it is proper to concede to the prayer for an Order of transfer - as it is my considered
G view that there is no fact whatsoever supporting assertions by the Re-*

spondents that the current application is an abuse of Court or legal processes as no assertion whatsoever of male fide is made by the Respondents."

The application of this nature, from the rules reproduced above, is a simple one. It is unnecessary for this application to be dealt with in open court. It is purely an administrative exercise by the Chief Judge or Judge in charge of administrative duties, as the case may be.

The complaint in this appeal arose largely because of the wrong procedure adopted by Nwazota J. It is enough if the administrative judge or the Chief Judge is satisfied that there are good reasons for the transfer. I think it follows quite clearly that a decision taken one way or the other is not one that is appealable. I am clearly of the view that the lower court was in grave error when it set aside the order of transfer made by Nwazota J.

In the result, I also would allow this appeal with N10,000.00 costs to the appellants.

KALGO JSC

I have read in advance the judgment of my learned brother Uwaifo, JSC just delivered and I agree with the reasoning and conclusions reached therein which I adopt as mine. He has, in the judgment, clearly and succinctly dealt with the main issues in the appeal and I find no useful purpose in repeating them here. I entirely agree that the appeal is meritorious and should be allowed. I accordingly allow it, set aside the decision of the Court of Appeal and restore the decision of the trial court. I abide by the consequential orders made in the lead judgment including the orders as to costs.