

COURT OF APPEAL  
ENUGU JUDICIAL DIVISION  
6TH DECEMBER, 1999. CA/E/171/96  
CORAM:- E. C. UBAEZEONU, J. A. FABIYI,  
M. D. MUHAMMAD, JJCA

1. CHIEF CHUKWUMA ACHIKE

(The Owelle of Ohita)

2. EMMANUEL ADABA

.....

APPELLANTS

(The Odua of Ohita)

AND

1. CHIEF UZO OSAKWE

(The Ojoke of Ohita & Disi of  
Amanwulu Title Society of Ohita)

2. CHIEF ATAGUNCHANWATA

(The Uzi of Ohita)

.....

RESPONDENTS

3. CHIEF UZUKWU NWORA

(The Chobo of Ohita)

4. NNABUENYIELEAZAR NWOKOCHA

5. AKUNWANNE CHRISTOPHER N.C.C. OSAKWE

6. AKUNWANNE AUGUSTINE OLISA OBI

(For themselves as the Ichies and as representing the members of  
Amanwulu Title Society of Ohita)

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**JUDICIAL PRECEDENT** - *Stare decisis* - Application of our Law -  
Need for certainty and consistency - Lower courts should follow the rule  
of *stare decisis*.

**PRACTICE & PROCEDURE** - Reply - In considering its function and  
role - Its age long procedural rule of practice - Cannot be abandoned -  
The rules under consideration - Merely gave a statutory stamp of ap-  
proval - To the age long function of reply.

**PRACTICE & PROCEDURE** - Reply - Interpretation of O.9.r 1(8) of

*Anambra State High Court Rules - By trial court - Is wrong - A reply should not contain anything - But can show that the defence is not maintainable.*

***PRACTICE & PROCEDURE*** - Reply - To merely join issues - And which is an amendment of the statement of claim - Is not permissible.

***STATUTES*** - Interpretation - Courts have no power to fill any disclosed gap - But as regards O.9.r. 1(8) there is no gap to be filled.

### **FACTS**

This is an interlocutory appeal that arose in respect of a chieftaincy dispute between the parties before the Anambra State High Court holden at Onitsha. The plaintiffs/respondents filed their statement of claim and the defendants/appellants in response filed their own statement of defence. The plaintiffs filed an application by which they sought to file a reply to the statement of defence. The defendants vehemently opposed the application to file the reply as constituted on the ground that it lacked competence as it was not a reply known to law. The reply merely denied averments in the statement of defence and raised new issues different from those contained in the statement of defence.

In granting the plaintiffs' prayer for leave to file their reply, the trial court considered Order 9 Rule 1(8) of the Anambra State High Court (Civil Procedure) Rules 1988. And came to the conclusion that reply can contain anything including denials and admissions of the averments in the statement of defence provided it does not raise a new cause of action not set out in the writ of summons. Being dissatisfied with the ruling, the defendants have now appealed to the court of Appeal raising a lone issue.

### **ISSUE FOR DETERMINATION**

*"Whether in all the circumstances and on the well settled principles guiding statutory interpretation the learned trial judge was right in her judicial construction and application of ORDER 9 RULE 1 (8) of the Anambra state High Court Rules, 1988 as to the proper function of Reply to statement of Defence."*

**HELD** (Unanimously allowing the appeal per lead judgment of **FABIYI JCA**)

***Reply - In considering its Function and role***

1. What I am trying to show is that the above quoted rule merely put a statutory stamp on the age long procedural practice on the use of 'reply' in pleadings. And in construing the function and role of reply, its age long procedural rule of practice cannot be abandoned. It is an old time procedure which has been well tested. And it has been able to with-stand the test of time also. The stance of the Trial Judge, in my considered view, was wrong. The Rule under consideration gave the traditional age long procedural Rule of practice as it relates to function of Reply statutory stamp of approval. That being so, the normal procedural practice cannot be jettisoned. The interpretation of the Rule by the Trial Judge appears rather absurd if not chaotic. It is like buying a ship, putting it on a deep ocean and the captain refusing to employ the services of the navigational aids. There is bound to be problem. (p. 585 C)

***Reply - To merely join issues***

2. As stated earlier on, in paragraph 1 of the desired reply, the plaintiffs joined issue with the defendants upon their statement of defence. This amounts to an express joinder of issue on the statement of defence. A further reply to deny and admit in the prevailing circumstance is unnecessary. The plaintiffs cannot approbate and reprobate at the same time. A reply to merely join issues is certainly not permissible. The Reply is not maintainable in law. A close perusal of the desired reply shows that it is an amendment of the statement of claim. This cannot be done through the back door or under the guise of a surmised, undeserved Reply. That will be over-reaching the Defendants/Appellants. If the Plaintiffs/Respondents desired to amend the statement of claim, such should be through a proper application and if granted, the Defendants/Appellants will have an opportunity of doing their own consequential amendment. (p. 586 B)

***Statutes - Interpretation***

3. The Respondents maintained that the courts have no power to fill any

gap disclosed in a statute. As regards Order 9 Rule 1 (8), there is no gap to be filled. Any gap fished out by them is only within their own feigned imagination and wrongly stamped by the Trial Judge. (p. 586 F)

**B *Judicial Precedent - Stare decisis***

4. It must be started that there must be some element of certainty and consistency in the construction and application of our law. This is more so in the area of procedural law otherwise the practice of law might become impossible as crystal gazing would be completely eliminated in the words of Udo Udoma JSC in Adis Ababa & anr v. D.S.Adeyemi (1976) 12 S.C. 51 at pages 58-59. Lower Courts should diligently follow the rule of stare-decisis. A point of law that has been settled by the apex court should be followed un-disturbed. Refer to Adesokan v. Adetunji (1994) 5 NWLR (pt. 345) 540 at 577-578. (p. 586 G)

***Reply - Interpretation of 0.9 r. (8)***

5. I feel very strongly that the Trial Judge goofed in her interpretation of Order 9, Rule 1 (8) of the High Court Rules, 1988. Where the plaintiffs joined issues with the Defendants on their statement of defence, a reply is unnecessary. A reply should not just contain anything. A reply should not take the place of amendment of the statement of claim. For, such will over-reach the Defendant. A reply can show that the defence, as put up, in the statement of defence, is not maintainable. That is not the case in this appeal. There is no counter-claim by the Defendants/appellants herein. I come to the conclusion that the appeal is meritorious. (p.587C)

**G REPRESENTATION**

O. Obianyo Esq. with Miss Obianyo for Appellants.  
T.U. Oguji Esq. for the Respondents.

**H CASES REFERRED TO**

Adeniji v. Fatuga (1990) 5 NWLR pt. 375 at 379  
Akeredolu v. Akinremi (1989) 3 NWLR (pt. 108) 164 at p. 172  
Nyong v. Central Bank of Nigeria (1993) 8 NWLR (pt. 310) 140 at p. 159

Spaaco Vehicle and plant Hire Co. v. Airaine (Nigeria) Ltd (1995) 8 NWLR (pt. 416 655 at p. 670

Arthur v. Bokenham (1708) 11 Mod. 148 at P. 150

Adis Ababa v. Adeyemi (1976) 12 S.C. 51 at pages 58 - 59

IBWA v. Imon Nig. Ltd. (1988) 3 NWLR (pt. 85) 633 at p. 660 B

Magor and St. Mellanus Rural District Council v. New port Corporation (1952) AC. (HL) 189

Fisher v. Bell (1960) 3 All E.R. 919 at 922

Sodipo v. Laumi Kwanen (1986) 1 NWLR (pt. 5) 220 at pages 231-232 C

### **RULES REFERRED TO**

High Court (Civil Procedure) Rules of Anambra State 1988 O.9.r 1(8)

### **BOOKS REFERRED TO**

Aguda - Practice and Procedure 1980 pp. 223 Art 18.03, 224 Art 18.06 & 18.07

Bullen and Leake and Jacob - Precedents of Pleadings 12th Ed. p.106

Odgers - Principles of Pleadings 22nd Ed. p. 210 E

Blacks Law Dictionary 6th Ed. p.1300

### **LEAD JUDGMENT BY FABIYI JCA**

This interlocutory appeal is against the ruling of the Onitsha High Court entered on 20-7-95 by C.N. Uzowulu, J. The plaintiff/Respondents herein, at the Trial Court, claimed against the Defendant/Appellants a declaration that the 1st Defendant had no right to confer the 'prestigious, Amanwulu title on the 2nd Defendant and an injunction restraining the 1st Defendant from performing his desired act. F G

Pleadings were exchange by the parties. The plaintiffs filed an extensive statement of claim which contains 27 paragraph. It is dated 11-5-94 and filed on 12-5-94. The Defendants, on their own part, filed a 15 paragraph statement of defence dated 19-7-94. It also appear rather H prolix.

The plaintiffs desired to file a reply to the statement of defence. They filed two applications dated 9-3-95 and 2-6-95 respectively for the

purpose. During the hearing of the applications, the first one was withdrawn. Reliance was placed on the second one.

Chief F.M. Obianyo, Learned Counsel for the Defendants/Appellants, strenuously opposed the application to file the reply as constituted on the grounds that it lacked competence as it was not a reply known to law except paragraphs 1 and 7 therein. This is because the reply merely set out to deny averments in the statement of defence and went further to raise new issues different from those contained in the statement of defence.

In acceding to the Plaintiffs/Respondents' prayer for leave to file their reply, the Learned Trial Judge considered Order 9 Rule 1(8) of the Anambra State High Court (Civil Procedure) Rules, 1988 and concluded as follows on page 28 lines 15-24 of the transcript record of appeal -

*"It is my view that Reply in the circumstances of order 9 Rule 1 (8) of the High Court Rules can contain anything including denials and admissions of the averments in the statement of defence provided it does not raise a new cause of action not set out in the writ of summons. I am reinforced in this view by the case of Adeniji v. Fatuga (1990) 5 NWLR pt. 375 at 379."*

It is instructive to note here that paragraph 1 of the reply unequivocally avers as follows:-

*"1. The plaintiff joins issues with the defendants upon their statement of defence."*

The Ruling of the Trial Judge did not get down well with the Defendants/Appellants. Notice cum grounds of appeal dated 24-11-95 was filed on their behalf. The notice of appeal complained against the whole Ruling of the Trial Judge. Four grounds of appeal which accompanied the notice of appeal, without their particulars, read as follows:-

*"1. ERROR IN LAW*

*The learned trial Judge erred in law in misconstruing ORDER 9 Rule 1 (8) of the Anambra state High Court Rules, 1988 thereby granting the plaintiff application to file a reply to the statement of Defence, which reply as constituted excepting paragraphs 1 and 7 thereof was not a reply known to law, in that it consists of bare denials to the statement of*

defence and passed as an amendment to the statement of claim."

## 2. MISDIRECTION

The Learned Trial Judge misdirected herself in law when she said inter-alia;-

*'Further more under Order 9 Rule 40, a technical objection to a pleading such as to its form shall not be entertained by the court unless the pleadings or any part thereof is scandalous vexatious or an abuse of the process of court amongst other things. Reply is part of part of plaintiffs' pleading. In this case the learned counsel has not shown that the Reply or any part thereof is scandalous or vexatious.'*

## 3. MISDIRECTION

The learned Trial judge misdirected herself in law when she held thus:

*'It is my view that Reply in the circumstances of order 9 Rule 1 (8) of the High Court Rules can contain ANYTHING including denials and admission of the averments in the statement of defence provided it does not raise any new cause of action not set out in the writ of summons.'*

## 4. MISDIRECTION

The learned trial judge misdirected herself when she said in her said ruling:-

*'It is trite law that where specific provision prevail over general provisions (sic) In the instant case our High Court Rules have made specific provision in Order 9 Rule 1 (8) as to conditions for filing a Reply to the statement of defence. This provision therefore prevails over all other rules of practice'*

It is, at this juncture, necessary to depict the relief sought by the Appellants. It is to set aside the order of the learned trial judge permitting the plaintiffs to file a reply dated 12th day of June, 1995 and filed on 16th June, 1995 and/or striking out paragraphs 2,3,4,5,6,8,-14 of the said Reply pursuant to section 16 of the Court of Appeal Act.

On 26-10-99 when the appeal was heard, O. Obianyo Esq, learned counsel for the Appellants, adopted the Appellants' brief dated 26-3-97 and filed on 1-4-97 as well as their reply brief dated 29-3-99. T.U. Oguji

Esq, learned Counsel for the Respondents, also adopted the Respondents' brief dated 26-2-99 and filed on 4-3-99.

The issue for determination formulated on page 3 of the Appellants' brief reads as follows:-

B *"Whether in all the circumstances and on the well settled principles guiding statutory interpretation the learned trial judge was right in her judicial construction and application of ORDER 9 RULE 1 (8) of the Anambra state High Court Rules, 1988 as to the proper function of Reply to statement of Defence."*

C On page 2 of Amended Respondents' brief, the issue for determination was couched in another fashion as follows:-

D *"Whether the Honourable Trial Judge was right in her interpretation of Order 9 Rule 1 (8) of the High Court Rules of Anambra State when she held that the said provision does not stipulate that a reply shall not contain denials to the statement of defence and that there is no lacuna or gap in the said rule to warrant resort to a general rule of practice of common law."*

E It is submitted in the Appellants' brief that under order 9 Rule 1 (8) of the High Court Rules, 1988, filing of reply to a statement of Defence is permissive except in cases involving counterclaim or defamation where the defence contains a plea of privilege and the plaintiff is empowered to file a Reply to allege and plead malice. Learned Counsel for the  
F appellants contended that the introduction of Reply in the High Court Rules, 1988 was not intended to change the existing role or function of a Reply in pleadings. It is not intended to alter the age long procedural rule of practice as to the functions of a Reply to a statement of Defence  
G where necessary, but to place a statutory stamp on the age long procedural practice on the use of 'Reply' in pleadings. Learned Counsel observed that the use of a Reply in the Rules of practice is only to raise in answer to the defence any matter which must be specifically pleaded and  
H which makes the defence not maintainable. He referred to Azeez Akeredolu v. Lasisi Akinremi & ors (1989) 3 NWLR (pt. 108) 164 at p. 172. Nyong Emmanuel Obot v. Central Bank of Nigeria (1993) 8 NWLR (pt. 310) 140 at p. 159 Spasco Vehicle and plant Hire Co. v. Alraine (Nigeria) Ltd



(1995) 8 NWLR (pt. 416 655 at p. 670.

Learned counsel observed that plaintiffs, by their Reply, were merely denying every averment in the statement of Defence and went further to raise new issues not made in the statement of Defence and using Reply as and opportunity to amend their statement of claim. This, B he felt the plaintiffs could not do in practice. He referred to Order 9 Rule 1 (9) of the High Court Rules, 1988 which, in the main, provides that there shall be no further pleadings filed after the reply. Learned Counsel submitted strongly that Adeniji v. Fetuga (supra), relied upon by the Trial C Judge, did not say that a reply could contain "anything".

Learned Counsel submitted that the introduction of Reply into the High Court Rules, 1988 was not intended to radically change the existing practice as to the function of a reply, a procedural practice that has enjoyed a long period of existence; neither does it make a reply a D channel of introducing and containing 'anything' including denials and admissions. Learned Counsel contended that on the contrary, it is a cardinal principle of statutory construction that to alter any clearly established principle of law and practice, a distinct and positive legislative E enactment is necessary. He referred to Arthur v. Bokenham (1708) 11 Mod. 148 at P. 150; Craies on statute Law, 7th Edition, pages 121 - 122. We urged that there should be consistency in the application of our law and procedure. He referred to Adis Ababa & anr v. D.S. Adeyemi (1976) F 12 S.C. 51 at pages 58 - 59.

Learned Counsel opined that the use and function of a Reply have been well treated, considered and settled by learned treatise and books of reference which cannot be brushed aside. We referred to Bullen and Leake and Jacob: precedents of pleadings, 12 Edition, page 106; G Odgers, principles of pleadings and practice 22nd Edition, page 210; T. Akinola Aguda: practice and procedure of the Supreme Court, Court of Appeal and High Courts of Nigeria 1980 pages 223 Art. 18.03, 224 Art. 18.06 and 18.07. H

Learned Counsel for the Appellants finally urged that the appeal be allowed.

It contended in the amended Respondents' brief that the learned

Trial Judge adopted the literal rule of interpretation in her consideration of Order 9 Rule 1 (8) of the High Court Rules, 1988. Reliance is placed on the authority of IBWA v. Imon Nig. Ltd. (1988) 3 NWLR (pt. 85) 633 at p. 660.

B Learned Counsel for the Respondents contended that the courts have no power to fill in any gap disclosed in a statute. He referred to Magor and St. Mellanus Rural District Council v. New port Corporation (1952) AC. (HL) 189, Fisher v. Bell (1960) 3 All E.R. 919 at 922 where Lord Parker cautioned against "naked usurpation of the legislative function under the thin disguise of interpretation"; Nafiu Rabi v. Kano State (1980) 8-11 SC 130 at pages 149 - 150 where Udo Udoma, JSC couched the law that - " In interpretation.... if the test is explicit, the test is conclusive, alike in what it directs and what it forbids"; Sodipo v. Laumi Kwnen D (1986) 1 NWLR (pt. 5) 220 at pages 231-232 where Eso, JSC felt our Rules of court should start to undergo some form of metamorphosis and shed itself of its common law stance and/or background.

E Learned Counsel submitted that where a local statutory provision differs from common law or statute of general application, they must give way to the local statute. He referred to Patkum Industry v. Niger Shoes Ltd (1988) 5 NWLR (pt. 93) 138. Where there are provisions in the local legislation, resort cannot be made to English rules. He referred to Ademola v. Thomas 12 W.A.C.A. 81.

F Learned Counsel finally urged that the appeal be dismissed for want of merit.

In reply, learned Counsel for the appellant submitted that there is no gap in Order 9 Rule 1 (8) which the Trial Court was called upon to fill. G He opined that the Respondent introduced that element into the argument to confuse the simple issue at stake. He further referred to Black's Law Dictionary, 6th Edition at p. 1300 for the definition of 'Reply'. According to him, that definition is in pari materia and in accord with definition and H role/function of Reply enunciated by Kawu, JSC in Akeredolu v. Akinresi (supra) and as stated by Learned authors and treatise. They all, have not said that a reply can contain 'anything'.

In giving an adequate appraisal to the lone issue at stake, it is

imperative to carefully explore the function, role and meaning of Reply in pleadings generally. Bullen and Leake and Jacob's - Precedents of pleadings 12th Edition at page 106 contains the following on Reply:

*"A reply may be served by the plaintiff in answer to the defence of the defendant without leave but in many cases it is unnecessary to serve a reply. If no reply is served to a defence which is unaccompanied by a counter-claim, there is an implied joinder of issue on that defence which means that the material allegations of fact in the defence are deemed to be denied."* (Underlined by we)

Instances when it is necessary to file a reply to a statement of defence are stated as follows-

1. If the plaintiff admits so as to save unnecessary costs.
2. If the plaintiff desires to plead an objection in point of law.
3. If there is a counter-claim or a set-off by the Defendant which the plaintiff intends to contest.

I need to state it categorically here that in odgers principles of pleadings and practice, 22nd Edition at page 210, the same view is strongly expressed without any reservation. I need not repeat same here.

In paragraph 18.06 of practice and procedure of the supreme Court, Court of Appeal and High Court of Nigeria, 1980, T.A. Aguda, the Learned author maintained that in general, it is not necessary for a plaintiff to file a reply if his only intention in doing so is to deny any allegations that the defendant may have made in the statement of defence.

In Black's Law Dictionary, 5th Edition at page 1169. Reply is defined as -

*"plaintiff's answer to the defendant's set off or counter-claim.... . A reply is only allowed in two situations: to a counterclaim denominated as such, or an order of court to an answer or a third-party answer."*

I now move to the case law proper on the use and purpose of filing a reply to a statement of defence. The starting point in the view succinctly expressed by Kawu, JSC in Azeez Akeredolu & ors. v. Lasisi Akinremi & ors (1989) 3 NWLR (pt. 108) 164 at page 172. His Lordship had this to say on Reply:-

*"Now, the rule of practice is that where no counterclaim is filed,*

*a Reply is generally unnecessary if its sole object is to deny allegations contained in statement of Defence. The proper function of the Reply is to raise, in answer to the defence, any matters which must be specifically pleaded, which make the defence not maintainable or which otherwise might take the defence by surprise or which raise issues of fact, not arising out of defence:- Bullen and Leake and Jacob's precedents of pleadings - 12th Edition p. 107. (Also see Williamson v. London & North Western Railway Company (1879) 12 ch. D. 787,794). Reply is the proper place for meeting the defence by confession and avoidance: Hall vs. Eve (1876) 4 Ch. D. 341."*

In Nyong Emmanuel Obot v. Central Bank of Nigeria (1993) 8 NWLR (pt. 310) 140 at p. 159, Uwais, JSC (as he then was) restated the function of Reply in pleadings. Lending his weight to the view expressed by Kawu, JSC in Akeredolu v. Akinremi (supra), his Lordship also maintained that in general, it is not necessary for a plaintiff to file a reply if his only intention in doing so is to deny any allegations that the defendant may have made in the statement of defence. If no reply is filed at all, material facts alleged in the statement of defence are put in issue. A reply to merely join issues is therefore not permissible.

And lastly on case law, in Spasco Vehicle & Plant Hire Co. v. Alraine (Nig) Ltd (1995) 8 NWLR (pt. 416) 655 at p. 670, in dealing with purport of Reply, Iguh, JSC in the same tone stated that it cannot be disputed that where no counter claims filed by a defendant to a suit, as in the present case, further pleadings by way of a reply to a statement of Defence is generally unnecessary if the sole purpose is it to deny the averment contained in the defendant's statement of Defence.

Order 9 Rule 1 (8) of the High Court Rules, 1988 of Anambra state of Nigeria was considered by the Trial Judge. The stated Rule provides as follows:-

*"The plaintiff may file a reply to the statement of defence, (and he shall do so where the statement of defence contains a counter-claim which he disputes or in a suit for defamation if the statement of defence pleads matters as a result of which the plaintiff shall rely on actual malice) within twenty one days of the receipt of the statement of defence. He*

*shall cause the reply to be served as in the case of statement of claim."*  
(Underlined by me)

The above rule must have been couched with the opinion expressed in Bullen and Leake and Jacob's: precedents of pleadings as quoted above in view by the Law Makers. The words used are similar, if not the same. The authors say that 'a reply may be served by the plaintiff in answer to the defence of the defendant without leave but in many cases it is unnecessary to serve a reply; The above quoted rule provides that 'the plaintiff may file a reply to the statement of defence'.

**What I am trying to show is that the above quoted rule merely put a statutory stamp on the age long procedural practice on the use of 'reply' in pleadings. And in construing the function and role of reply, its age long procedural rule of practice cannot be abandoned. It is an old time procedure which has been well tested. And it has been able to with-stand the test of time also.**

The Learned Trial Judge in her Ruling felt that Rule 1 (8) of Order 9 does not stipulate that a reply should not contain denials to the statement of Defence. She said she was giving a very clear and unambiguous. She then concluded that a Reply can contain anything including denials and admissions. She said she was not bound by the decision of the supreme Court in Akeredolu's case supra as such was based on English Rules of practice.

**The stance of the Trial Judge, in my considered view, was wrong. The Rule under consideration gave the traditional age long procedural Rule of practice as it relates to function of Reply statutory stamp of approval. That being so, the normal procedural practice cannot be jettisoned. The interpretation of the Role by the Trial Judge appears rather absurd if not chaotic. It is like buying a ship, putting it on a deep ocean and the captain refusing to employ the services of the navigational aids. There is bound to be problem.**

The learned trial Judge maintained that she placed reliance on the decision in Adeniji v. Petuga (supra). I need to state it bluntly that the Ibadan Division of this court in that case certainly did not say that a reply to the statement of defence can contain anything, including denials and

admissions. That court could not have said so for such an assertion appears too wide and made for the air. In Adeniji v. Petuga which followed Akeredolu v. Akinremi (supra) it was held that new issues or matters cannot be included in a Reply.

**B As stated earlier on, in paragraph 1 of the desired reply, the plaintiffs joined issue with the defendants upon their statement of defence. This amounts to an express joinder of issue on the statement of defence. A further reply to deny and admit in the prevailing circumstance is unnecessary. The plaintiffs cannot ap-**  
**C probate and reprobate at the same time. A reply to merely join issues is certainly not permissible. The Reply is not maintainable in law.**

**D A close perusal of the desired reply shows that it is an amendment of the statement of claim. This cannot be done through the back door or under the guise of a surmised, undeserved Reply. That will be over-reaching the Defendants/Appellants. If the Plaintiffs/Respondents desired to amend the statement of claim, such**  
**E should be through a proper application and if granted, the Defendants/Appellants will have an opportunity of doing their own consequential amendment.**

**F In passing, I need to state it here that the High Court of Anambra State Civil procedure Rules, 1988 provide for a step by step approach in preparing a suit for hearing. There is no room for a fencing game for one side to cleverly out wit the other.**

**G The Respondents maintained that the courts have no power to fill any gap disclosed in a statute. As regards Order 9 Rule 1 (8), there is no gap to be filled. Any gap fished out by them is only within their own feigned imagination and wrongly stamped by the Trial Judge.**

**H It must be started that there must be some element of certainty and consistency in the construction and application of our law. This is more so in the area of procedural law otherwise the practice of law might become impossible as crystal gazing would be completely eliminated in the words of Udo Udoma JSC in Adis Ababa**

**& anr v. D. S. Adeyemi** (1976) 12 S.C. 51 at pages 58-59. Refer also to Victor Rossex & 2 ors v. African Continental Bank Ltd (1993) 8 NWLR (pt. 312) 382 at 497-498.

Lower Courts should diligently follow the rule of stare-de-cisis. A point of law that has been settled by the apex court should be followed un-disturbed. Refer to Adesokan v. Adetunji (1994) 5 NWLR (pt. 345) 540 at 577-578, Clement vs. Iwuanyanwu (1989) 3 NWLR (pt. 107) 39, Royal Exchange Assurance (Nig.) Ltd v. Aswani Textile Industries Ltd (1991) 2 NWLR (pt. 176) 639 at p. 672; Sadiku v. Dolari (1996) 5 NWLR (pt. 447) 151.

I feel very strongly that the Trial Judge goofed in her interpretation of Order 9, Rule 1 (8) of the High Court Rules, 1988. Where the plaintiffs joined issues with the Defendants on their statement of defence, a reply is unnecessary. A reply should not just contain anything. A reply should not take the place of amendment of the statement of claim. For, such will over-reach the Defendant. A reply can show that the defence, as put up, in the statement of defence, is not maintainable. That is not the case in this appeal. There is no counter-claim by the Defendants/appellants herein.

I come to the conclusion that the appeal is meritorious. I accordingly allow it vide section 16 of the Court of Appeal Act, CAP 75, Laws of the Federation of Nigeria, 1990. I set aside the order of the Trial Judge permitting the Plaintiffs/Respondents to file the said Reply dated 12-6-95 and filed on 16-6-95. The Appellants are awarded N2,000 costs against the Respondents.

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#### UBAEZEONU JCA

I have had the opportunity to read in draft the judgement of my learned brother FABIYI JCA. I agree that the appeal should be allowed. I allow the appeal and make the same order as to costs as is made in the lead judgment.

Order 9 Rule 1 (8) of the High Court Rules of Anambra state

makes provision for the filing of a reply. Practice, however, which has received the force of law through judicial interpretations has restricted the circumstances under which a plaintiff may file a reply to the statement of Defence. Apart from the specific cases of a counter-claim or a  
 B defamation where the issue of express malice arises, the filing of a reply in Anambra and Enugu state (where the High Court Rules of 1988 apply) is very much restricted. The rule is not a blank-cheque for the plaintiff to embark on a whole-sale denial of the statement of defence or for raising  
 C a new issue nor is it a tool to be used for amending the statement of claim through the back-door. There are a few other permissible instances which are highlighted in the lead judgment. A reply shall not be used for pleading "anything" as inadvertently stated by the trial Judge.

D

### MUHAMMAD JCA

I had the privileged of reading the draft of the leading judgment just delivered by my learned brother Fabiyi JCA. I agree that the appeal  
 E being meritorious should be allowed.

The issue raised by the appeal relates to the correct interpretation of order 9 rule 8 of the Anambra State High Court (Civil procedure) rules 1988.

F The interpretation proffered by the trial judge C.N. Uzowulu J of 20/7/95 is manifestly wrong.

The rule of court under consideration is certainly not an open cheque which the plaintiff could use as he pleased. The rule was put in place with some purpose to serve. Generally it is unnecessary for the  
 G plaintiff to file a Reply after the defendant had filed his statement of defence. A plethora of judicial authorities abound on the appropriate interpretation to be placed on the relevant rule of court. My learned brother has exhaustively considered these authorities making it bare in  
 H his judgment the purpose and the extent of the rule of court under consideration.

The judge below is and must be bound by these authorities. Any interpretation which is not in harmony with the decisions of our Apex



court cannot be correct in law. That is the nature and logic of the system we operate.

The appeal for this and the more detailed reasons contained in the lead judgment is hereby allowed. I make same consequential order and order as to cost.

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