

SUPREME COURT OF NIGERIA
10TH MARCH, 2000. SC.231/1992
CORAM:- S. M. A. BELGORE, M. E. OGUNDARE,
U. MOHAMMED, S. U. ONU, U. A. KALGO JJSC

DR. M.G.O. IWEKA	APPELLANT
AND		
S.C.O.A. NIGERIA LTD.	RESPONDENT

***APPEALS** - Amendment - Power as to - The Court of Appeal can order an amendment of a Writ or Pleadings as the High Court could have done - However the Court would only grant such an amendment - So as to bring the pleadings in line with evidence already led.*

***APPEALS** - Claim - Amendment - That is designed to create a suit that was not in existence - Will not be permissible.*

***APPEALS** - Evidence - Further evidence - Grounds upon which further evidence can be allowed.*

***APPEALS** - Leave to appeal - Where an application has been refused by the High Court - An application for a similar purpose may be made to the Court of Appeal.*

***APPEALS** - Limitation of time - Interlocutory appeal in civil causes - Must be made within 14 days - Where time has elapsed - Remedial steps that may be taken.*

***COURTS** - Appeal - Amendment - Exercise of discretion - The court will not exercise its discretion - If nothing will be achieved in the circumstances.*

***CONTRACTS** - Breach of contract - When the cause of action accrues - And when the period of limitation begins to run.*

DAMAGES - *Actions - Contract - Breach of - Where goods form the subject matter of the litigation - The Court has to ascertain the pecuniary loss before trial.*

FACTS

In the High Court of Anambra State sitting at Onitsha, the Plaintiff/appellant claimed against the defendant/respondent for specific performance of the contract between the parties for the delivery to the plaintiff by the defendant of a 504 G.R. Air-conditioned Saloon Car; and N750,000 damages being remedy for breach of contract and/or detention of the said car, till same is delivered to the plaintiff. Following the failure of the defendant to deliver to the plaintiff a 504 Saloon Peugeot car he had deposited money for in 1984, the plaintiff in 1986 took out a writ of summons, and claimed as aforesaid. The learned trial judge heard the evidence proffered on both sides, and judgment was reserved. Before judgement was delivered however, plaintiff's counsel who had earlier filed an application to amend plaintiff's final pleadings by adding new claims, was unable to move the application and asked for an adjournment. The application for adjournment was refused and the application was struck out on 11/6/90. The learned trial judge on 4/7/90, delivered his judgment in which he arrived at the conclusion that the plaintiff's claims for specific performance failed but however entered judgment for the plaintiff against the defendant in the sum of N16,766.00 being special and general damages for the detention of his car. Dissatisfied, plaintiff (a medical Practitioner) took over the conduct of his case. He appealed to the Court of Appeal against the whole decision. Thereafter he filed three motions in the Court of Appeal on 30th August; 1991; 7th February, 1992; and 3rd June, 1992; respectively. In the first of the three motions he prayed that the motion struck out at the trial Court on 11/6/90 be relisted by the Court of Appeal to enable him argue same in his substantive appeal. In the second motion, he prayed for an order to introduce further evidence, that is to introduce the current or present cost of Peugeot G.R A.C. Saloon cars into his main appeal to enable the Court of Appeal enhance his damages for breach of contract. And in the third motion he

prayed for an order to amend the relief sought in his appeal. The Court of Appeal disallowed the three motions. The Plaintiff has now appealed to the Supreme Court against the interlocutory decision based on seven grounds of appeal from which he raised twenty-three Prolix issues. The defendant formulated three issues which were considered adequate for the determination of the appeal.

ISSUES FOR DETERMINATION

Issue No 1:

Could the Court of Appeal relist a motion struck out at the Lower Court when the same has not been appealed against by way of interlocutory appeal nor leave to appeal out of time granted?

Issues No. 2:

Could the Court of Appeal make an order to further amend the writ of summons and the reliefs sought therein after the case had been determined and is pending on appeal before it?

Issue No. 3:

Is it permissible to allow fresh evidence to be introduced at the hearing of an appeal?

HELD (Unanimously dismissing the appeal per lead judgment of **ONU JSC**)

Court of Appeal - Interlocutory appeal

1. I uphold the preliminary objection raised by the Respondent to the same motion to the effect that by virtue of Section 25(2)(a) of the Court of Appeal Act, 1976, the Notice of Appeal or Notice of Application for leave to Appeal in a Civil Cause or Matter in the High Court must be made within 14 days of the striking out or if time has elapsed, on application to the Court of Appeal pursuant to Order 3, Rule 4(2) of the Court of Appeal Rules, 1981, as amended supported by an affidavit setting forth good and substantial reasons for failure to appeal within the prescribed period and by grounds of appeal which prima facie show good cause why the appeal should be heard. See **IBODO V. ENAROFIA** (1980) 5-7 S.C. 42. (p. 631 D)

Court of Appeal - Leave to appeal

2. Where leave had been sought in the High Court and was refused, the applicant could take advantage of Order 3, Rule 3(3) of the Rules which provides:-

B "3(3) where an application has been refused by the Court below, an application for a similar purpose may be made to the Court within fifteen days after the date of the refusal."

C The period provided for above which may also be enlarged by leave of the Court of Appeal since in the instant case the Appellant took no steps to avail himself of the laid down procedure, the Court of Appeal was, in the circumstances, right in dismissing the motion. See ALADE V. ALEMULOKE (1988) 1 NWLR (pt.69) 207. (p. 631 G)

D ***Amendment - Power as to***

3. By virtue of Order 1, Rule 20(1) Court of Appeal Rules (ibid) the Court of Appeal can order an amendment of a Writ, a Statement of Claim or Defence as the High Court could have done. However, in the exercise of this rule, the Court is slow or reluctant and would only grant such an amendment so as to bring the pleadings in line with evidence already led. See UDECHUKWU V. OKWUKA 1 FSC. 70. (p. 632 D)

F ***Claim - Amendment***

4. An amendment that is designed to create a suit that was not in existence, as in the instant case where the amendment was being sought by the Appellant with a view to enhancing the award of special and general damages made in the High Court so that the Court of Appeal on hearing and granting the amendment sought, may be enabled to award the proposed bloated amended figures, will not in my view, be permissible. See PEDRO ST. MATTHEW DANIEL V. OLAJIDE BAMGBOSE 19 NLR. 7. (p. 633 B)

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Courts - Appeal

5. The Court does not act in vain and will not exercise its discretion if nothing will be achieved in the circumstances. It must, for instance,

appear to the Court that it is in the interest of justice to grant such an amendment and even at that stage in the life of the case. See BIODE PHARMACEUTICAL IND. LTD. V. ADSELL (1986) 5 NWLR (Pt. 46) 1070. (p. 633 D)

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Appeal - Evidence

6. In appropriate cases, the Court is empowered to grant such an amendment and allow fresh or further evidence to be called. See JADESIMI V. OKOTIE-EBOH (NO.2) (1986) 1 NWLR (Pt. 16) 264 at 275 per Karibi-Whyte, J.S.C. and ESANGBEDO V. STATE (1989) 7 SCNJ. 16, wherein Nnaemeka-Agu, J.S.C. stated the grounds upon which further evidence can be allowed viz:

C

(a) the evidence sought to be adduced must be such as could not have with reasonable diligence been obtained for use at the trial;

D

(b) the evidence should be such as if admitted, it would have an important, not necessarily crucial, effect on the whole case; and

(c) the evidence must be such as is apparently credible in the sense that it is capable of being believed although it need not be incontrovertible.

E

All three special grounds must co-exist. See ASABORO V. ARUWAJI (1974) 4 S.C. 119 at 124. (p. 633 F)

Contracts - Breach of contract

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7. In the instant case, it ought to be stressed that the new evidence sought, in law, cannot be allowed as to do so is to influence the enhancement of the value of the Car (Peugeot 504 G.R A.C. Saloon Car). The trial court (per Iguh, J. as he then was) held that the breach of contract by the Respondent occurred on 24th June, 1986. It is settled law that in actions for breach of contract, the cause of action accrues for the Plaintiff's benefit from the time the breach is committed and not when the damage is suffered. See EGBE V. ADEFARASIN (1985) 1 NWLR (pt.3) 549; THOMAS V. OLUFOSOYE (1986) 1 NWLR (pt.18) 689 and BELLO V. A.G. OF OYO STATE (1986) 5 NWLR (Pt.45) 828 at 876. Thus, the period of limitation begins to run from the date the cause of action accrues. See SANDA V. KUKUWA LOCAL GOVERNMENT

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624 Iweka v. S.C.O.A Nig. Ltd (2000) 3 KLR
(1991) 2 LRCN 632; (1991) 2 NWLR (Pt.174) 379 at 388. (p. 634 G)

Damages - Actions

B 8. Where, as in the case in hand, a breach of contract is alleged in which goods form the subject matter of the litigation, the court has to ascertain the pecuniary loss before trial. See SHELL B.P. V. JAMMAL ENGINEERING LTD. (1974) 4 S.C. 33; UNION BEVERAGES LTD. V. OWOLABI (1988) 1 NWLR (pt.68) at 128 at 136. (p. 635 C)

C NOTABLE POINTS OF INTEREST OGUNDARE JSC

1. *Complaint against an interlocutory order from which there has been no appeal.*

D A party who is dissatisfied with a judgment and who appeals against it may raise complaints against any interlocutory order made by the trial court even though he has not appealed against that interlocutory order when it was made.- See: OKOBIA V. AJANYA & ANOR. (1998) 6 NWLR
E 348 at 364-365. (p. 643 G)

2. *Propriety of the Court of Appeal relisting a motion struck out in the court of trial.*

F In any event I cannot see how the Court of Appeal can relist a motion struck out in the Court of trial. If such a motion was to be relisted it could only be by order of the trial court. And that is before the substantive suit was brought to an end. Of course, a party could appeal against such an order of striking-out (as has been done by the Plaintiff in the
G instant case), but the party must await the result of the appeal. He cannot short-circuit the system by bringing a motion. (p. 644 B)

KALGO JSC

H 3. *Need to relate issues to the grounds of appeal.*

The appellant filed his Notice of Appeal against the decision of the Court of Appeal containing only 7 grounds of appeal, but he formulated and argued 23 issues in his so-called brief. This is contrary to the generally

accepted principle of law that issues raised in any appeal must relate to the grounds of appeal and the judgment or decision challenged. See OKONKWO V. OKOLO (1988) 2 NWLR (Pt.78) 632. (p. 645 E)

REPRESENTATION

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Dr. M.G.O. Iweka, Esq., in person.

Dr. E.E.J. Okereke, Esq., for the Respondent.

CASES REFERRED TO

C

MORTUNE V. GAMBO (1983) 4 NCLR 237 at 242

KUFEJI V. KOGBE (1961) 1 All NLR (pt.1) 113 at 114

AMERICAN CYNAMID V ETHICON LTD. (1975) A.C. 396 AT 407

ATTORNEY-GENERAL OF BENDEL STATE V. AIDEYAN (1989) 4
NWLR (Pt.118) 646

D

BURAIMOH V. BAMGBOSE (1989) 3 NWLR (Pt. 109) 352

EGBE V. ALHAJI (1990) 1 NWLR (pt. 27) 546 at 590

ADEKEYE V. AKIN-OLUGBADE (1987) 3 N.W.L.R. 214

IBODO V. ENAROFIA (1980) 5-7 S.C. 42

E

COOPERATIVE & COMMERCE BANK (NIGERIA) LTD. V. EMEKA

OGWURU (1993) 3 NWLR (pt. 284) 630 at 633-634

ALADE V. ALEMULOKE (1988) 1 NWLR (pt.69) 207

ATTORNEY-GENERAL, ANAMBRA STATE V. OKAFOR (1992) 2
NWLR (pt.224) 429

F

STATUTES & RULE REFERRED TO

Court of Appeal Act, 1976; S.25 (2) (a)

Court of Appeal Rules, 1981; O. 1 r. 20 (1); 03, rr. 3, 4 & 22.

G

BOOK REFERRED TO:

Black's Law Dictionary, Sixth Edition P.96

H

LEAD JUDGMENT BY ONU JSC

This interlocutory appeal by the Plaintiff/Appellant (hereinafter in this judgment referred to shortly as Appellant) is against the ruling of

the Court of Appeal, Enugu given on 14th July, 1992 disallowing three motions filed by him on 30th August, 1991, 7th February, 1992 and 3rd June, 1992 respectively, in which he sought to amend his appeal (still pending in the Lower Court) and to introduce further evidence therein. It is pertinent to point out in addition, that the action whose tortuous but humble origin commenced in the High Court of Anambra State before Iguh, J. (as he then was) sitting at Onitsha in Suit No.0/241/86, wherein in the Appellant's claim in paragraph 13 of the Amended Statement of Claim, it is averred as follows:-

(i) *Specific performance by the Defendant of the contract between the parties for the delivery by the Defendant to the Plaintiff of a 504 G.R. airconditioned Saloon Car*

OR

In the preferred alternative:-

An order for delivery of a comprehensively insured new Peugeot 504 GR, A.C. Car to the Plaintiff by the Defendant.

(ii) *N750,000 (Seven Hundred and Fifty Thousand Naira) damages being remedy for breach of contract and/or detention of the said car, till same is delivered to Plaintiff."*

The learned trial Judge having heard the evidence proffered on both sides, on 4th July, 1990, delivered his judgment in which he arrived at the conclusion that the Respondent did indeed fail to deliver the car as well as to insure it after the one month agreed by the parties. He therefore proceeded to find the Respondent liable in the sum of N16,766.00 being special and general damages for the breach of contract. Being aggrieved by the decision of the trial court, the Appellant appealed to the Court below where in his desire to introduce the current or present cost of Peugeot G.R.A.C. Saloon Cars into his main appeal to enable the court below enhance his damages for breach of contract on which in his opinion, that Court's judgment should be based as at the date of delivery, he brought the three motions herein-before referred to. In each of these, the court below (Coram: Oguntade, JCA., Uwaifo, JCA., (as he then was) and Akintan, JCA., disallowed the application against the background of a Notice of Preliminary Objection filed and argued by the Re-

spondent in opposition thereto.

A brief comment, I think, is necessary to shed more light on the motions at this juncture.

In the motion of 30th August, 1991, the Appellant sought to "further amend the Writ and prayers in Suit No. 0/241/86" which was filed at the Onitsha High Court on 7th June, 1990 and struck out by that court on 11th June, 1990. As against the striking out, he never filed a fresh motion, nor did he request the High Court to relist the same and neither did he appeal against this order to the Court of Appeal. At the Court of Appeal, Enugu, he now prayed it to have the same relisted. Opposing it, the respondent filed the Notice of Preliminary Objection hereinbefore mentioned.

In the second motion filed on 7th February, 1990, the Appellant inter alia prayed for an order to further, further amend the Writ and the prayers in suit No. 0/241/86. In effect, the prayer sought was to allow the Appellant tender a document which listed the new price of Peugeot 504 as at 25th March, 1992, so as to affect the price of Peugeot cars for which judgment was given on 4th July, 1990 notwithstanding the fact that the Court below held that he breach held that the breach occurred on 25th July, 1986.

Being dissatisfied with the said Ruling dismissing all three motions, the Appellant who after obtaining leave for extension of time granted by this Court for the purpose in 1993, filed the interlocutory appeal herein premised on seven grounds. From these latter grounds twenty-three prolix and for the better part thereof, irrelevant issues were formulated from the Ruling given on 14th July, 1992. These issues in pith and substance constitute mere legal discussions which lack merit for any judicial consideration as the purpose is not to write discourses, embark as it were, on wild and futile academic exercises unrelated to the issues of the day. It is in that wise, that I share the humble view proffered by the learned Counsel for the Respondent that issues 1(b) (c) (d), Issue Nos. 2,3,4,6,7(b), 8(a),(b), Issue Nos. 10, 10(b), 11, 12, 13, 13(b), 13(c), 13(d), 14, 15, 15(b), (c), 16, 17, 17(a) and (b), Nos. 18, 19, 21, 22 and 23, have no relevance to the interlocutory appeal which is against

the ruling on the Appellant's three motions which were filed to enhance his chances of success at the substantive appeal. Furthermore, I am of the firm view that for the effectual disposition of the issues, it is only right to totally ignore what the Appellant has postulated as "the circum-
 Bstantial and legal background" save where it is overridingly necessary to refer to any relevant point in the argument put forward. Likewise, I do not deem it worthy for consideration what the Appellant dubs as Summary vide pages 165-169 of the Record as deserving of any particular attention in so far as the issues discussed therein are essentially matters
 C to be considered in the main appeal before the Court below and are not matters opportune to be given any treatment at this interlocutory appeal.

This is because this Court has advised in the case of SYLVANUS MORTUNE V. ALHAJI MOHAMMED GAMBO (1983) 4 NCLR 237 at
 D 242 "that care should be taken when a court is hearing an interlocutory application to avoid making any observation in its ruling on that application which might appear to prejudice the main issue in the proceedings relative to the interlocutory application. "This is as it should be for as
 E Coker, J. (as he then was) stated in KUFEJI V.KOGBE (1961) 1 All NLR (pt.1) 113 at 114, the tenancy is to avoid trying the main question twice and to grant injunctions only in clear cases: Article 953, Halsbury's Laws of England, Vol. 24, 4th Edition. As further pointed out in the latter case,
 F it is not necessary for the Plaintiff or Appellant to make out a complete case as he would be required to do on the merits. That is why the House of Lords (England) in AMERICAN CYNAMID V ETHICON LTD. (1975) A.C. 396 AT 407, per Lord Diplock said:-

*It is no part of the court's function at this stage of the litigation
 G to try to resolve the conflicts of evidence on affidavits as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature consideration. These are matters to be dealt with at the trial."*

H (underlining is mine for emphasis).

In the instant case, not only has the Appellant formulated issues for determination far in excess of the grounds of appeal filed, raised issues outside the contemplation of those grounds; are variegated and in certain

instances, raised matters unrelated to issues decided in the judgment from which the appeal emanated. See ATTORNEY-GENERAL OF BENDEL STATE V. AIDEYAN (1989) 4 NWLR (Pt.118) 646; BURAIMOH V. BAMGBOSE (1989) 3 NWLR (Pt. 109) 352; BURAIMOH V. BAMGBOSE (1989) 3 NWLR (Pt. 109) 352; and EGBE V. ALHAJI (1990) 1 NWLR (pt. 27) 546 at 590. B

It is for the above reasons that I discountenance the Appellant's twenty three issues as superfluous proliferation and consider the Respondent's dichotomy of the issues into three as arising for our determination which I respectfully endorse for the resolution of the appeal C herein, as apt. They are:-

Issue No 1:

Could the Court of Appeal relist a motion struck out at the Lower Court when the same has not been appealed against by way of interlocutory D appeal nor leave to appeal out of time granted?

Issues No. 2:

Could the Court of Appeal make an order to further amend the writ of summons and the reliefs sought therein after the case had been deter- E mined and is pending on appeal before it?

Issue No. 3:

Is it permissible to allow fresh evidence to be introduced at the hearing of an appeal?

At the hearing of this appeal on 14th December, 1999 both Ap- F pellant in person and learned Counsel for the Respondent each adopted and relied on the Appellant's brief of 12/2/93 and the Reply Brief of 22/2/95 as well as the Respondent's brief of 30/12/94 respectively.

Elaborating on his Brief and Reply Brief, the Appellant orally G submitted that he was appealing against the Ruling of the Court below of 14th July, 1992, on his three related motions, the reliefs sought therein having to do with wrongful breach of trust by the Respondent which are material matters for determination in the trial Court. For one year, he H maintained, his Counsel, Mr. Ikeazor, (S.A.N.) was relying on implied (constructive) trusts, fiduciary relationships, etc., not necessarily having anything to do with facts but on law alone. In other words, he con-

tended, his prayer was to amend his action in his prayers to plead facts only. He called in aid the case of ADEKEYE V. AKIN-OLUGBADE (1987) 3 N.W.L.R. 214. He added that he was therefore claiming there and then in this Court to amend his prayer as set out on page 24 of his Brief, the
 B Court below having earlier on without considering his similar application, dismissed it. The relief he was now seeking, he emphasized, is that set out in both his Reply Brief and Grounds of Appeal, adding that he needed no new or further evidence to amend the matter for the Court below to
 C look into. Nor is he seeking to introduce any new matter etc., it being a meritorious amendment and the rationale for his being overruled by the trial Court being the culmination of his attack in Ground 19 of the Grounds of Appeal on page 153 of the Records in Exh. SCA wherein the reason given for his being overruled was that the application was too close to the
 D judgment of that Court. He concluded by urging us to grant his prayer since for 16 years, his money had not been returned to him and nothing done to restore him to the status quo ante. He concluded that if the striking out order was part of the Court of Appeal decision, then his
 E motion to amend was in order.

Replying and relying on Respondent's Brief aforementioned, learned Counsel for the Respondent, Mr. Okereke submitted that where issues are formulated which do not touch on the matter or matters in
 F issue as in the instant case, such issues ought not to be considered. After pointing out that the substantive suit No. CA/E/32/91 in the case herein is still pending in the Court below at Enugu, learned Counsel submitted that the appeal only seeks to restore the three motions struck out to be relisted and heard, adding that the Appellant cannot raise the matter of the amend-
 G ment of the action as he is precluded from doing so.

I will now proceed to consider the above issues starting with issue 1 separately and issues 2 and 3 together in that order as follows:-

Issue No.1

H The question posed in this issue is: Could the Court of Appeal relist a motion struck out at the Lower Court when the same has not been appealed against by way of interlocutory appeal? Also; could the Court also entertain such an application when no leave to appeal out of time has

been granted?

Now, on 7th June, 1990, the Appellant filed a motion to amend his claim at the trial Court. That motion was struck out on 11th June, 1990 by that court which later on 4th July, 1990 delivered its judgment in the substantive case. The Appellant did not file a similar motion to the one struck out before judgment nor did he file an interlocutory appeal against the striking out of the motion that was struck out. Although, he appealed against the substantive judgment delivered by Iguh, J. (as he then was), he never applied for leave of that Court or at any time at the Court of Appeal for leave to appeal against the interlocutory judgment. It is against this background that the Appellant applied by way of motion at the Court of Appeal for the motion struck out at the trial court on 11th June, 1990 to be re-listed by the Court of Appeal to enable him argue same in his substantive appeal.

I uphold the preliminary objection raised by the Respondent to the same motion to the effect that by virtue of Section 25(2)(a) of the Court of Appeal Act, 1976, the Notice of Appeal or Notice of Application for leave to Appeal in a Civil Cause or Matter in the High Court must be made within 14 days of the striking out or if time has elapsed, on application to the Court of Appeal pursuant to Order 3, Rule 4(2) of the Court of Appeal Rules, 1981, as amended supported by an affidavit setting forth good and substantial reasons for failure to appeal within the prescribed period and by grounds of appeal which prima facie show good cause why the appeal should be heard. See IBODO V. ENAROFIA (1980) 5-7 S.C. 42; AND COOPERATIVE & COMMERCE BANK (NIGERIA) LTD. V. EMEKA OGWURU (1993) 3 NWLR (pt. 284) 630 at 633-634. From the foregoing, I uphold the Respondent's submission that where leave had been sought in the High Court and was refused, the applicant could take advantage of Order 3, Rule 3(3) of the Rules which provides:-

"3(3) where an application has been refused by the Court below, an application for a similar purpose may be made to the Court within fifteen days after the date of the refusal."

The period provided for above which may also be enlarged by leave

of the Court of Appeal since in the instant case the Appellant took no steps to avail himself of the laid down procedure, the Court of Appeal was, in the circumstances, right in dismissing the motion. See ALADE V. ALEMULOKE (1988) 1 NWLR (pt.69) 207; UTIH V. ONOYIVWE (supra) and ATTORNEY-GENERAL, ANAMBRA STATE V. OKAFOR (1992) 2 NWLR (pt.224) 429. My answer to the above issue is accordingly rendered in the negative.

Issues 2 and 3

While Issue 2 postulates whether it is legally permissible for Court of Appeal to make an order in the course of the hearing an appeal from the Lower Court to exercise its powers and allow an amendment to the Writ of Summons and the reliefs sought therein after the case had been concluded and determined by the Lower Court, Issue 3 asks whether one could delimit or circumscribe the circumstances in which an appellate Court could permit fresh evidence to be introduced at the hearing of an appeal. By virtue of Order 1, Rule 20(1) Court of Appeal Rules (ibid) the Court of Appeal can order an amendment of a Writ, a Statement of Claim or Defence as the High Court could have done. However, in the exercise of this rule, the Court is slow or reluctant and would only grant such an amendment so as to bring the pleadings in line with evidence already led. See UDECHUKWU V. OKWUKA 1 FSC. 70; EWARAM V. A.C.B. LTD (1978) 4 S.C. 99; OYENUGA V. PROVISIONAL COUNCIL OF THE UNIVERSITY OF IFE (1965) NMLR 9 and JOSEPH AFOLABI & ORS. V. JOHN ADEKUNLE & ANOR. (1983) 8 S.C. 98 at 103. See also ASANITAIWO & ORS V. ADAMO AKINWUMI (1975) 4 S.C. 143, where the Supreme Court refused an application to amend a Statement of Defence. In that case Fatayi-Williams, JSC. (as he then was) said:-

"In the first place, unless there is very good and strong justification for so doing, a High Court should be reluctant to grant amendments before Judgment, even though it has been indicated in the course of the hearing that some amendment might be asked for. Such an amendment may be allowed where the matter involved has been raised in the course of the trial and Counsel has addressed the Court on it since it will be

merely incorporating in the pleadings that which has emerged in the course of the case as an issue between the parties."

See LOUFTI V. CZANIKOW LTD. (1952) 2 E.R. P.823; see also MOSUDI SAKA V. DISU SANNNI & ORS.- Appeal No. CA/1/190/87 delivered on 4/7/89 (per Omololu-Thomas, J.C.A.).

An amendment that is designed to create a suit that was not in existence, as in the instant case where the amendment was being sought by the Appellant with a view to enhancing the award of special and general damages made in the High Court so that the Court of Appeal on hearing and granting the amendment sought, may be enabled to award the proposed bloated amended figures, will not in my view, be permissible. See PEDRO ST. MATTHEW DANIEL V. OLAJIDE BAMGBOSE 19 NLR. 7. Indeed, a similar principle of law was enunciated in AMEACHI V. OBIOHA (1972) 2 ECSLR (pt. 2) 596 at 597; See also AGBAPUONWU V. AGBAPUONWU (1991) 1 NWLR (pt.65) 33 and UNEBU V. MEDLAND ENTERPRISES LTD (1990) 6 NWLR (pt.156) 306. Be it noted that the Court does not act in vain and will not exercise its discretion if nothing will be achieved in the circumstances. It must , for instance, appear to the Court that it is in the interest of justice to grant such an amendment and even at that stage in the life of the case. See BIODE PHARMACEUTICAL IND. LTD. V. ADSELL (1986) 5 NWLR (Pt. 46) 1070. An Appellate Court is bound to base its consideration of every appeal before it upon legal evidence upon which the court below acted. In appropriate cases, the Court is empowered to grant such an amendment and allow fresh or further evidence to be called. See JADESIMI V. OKOTIE-EBOH (NO.2) (1986) 1 NWLR (Pt. 16) 264 at 275 per Karibi-Whyte, J.S.C. and ESANGBEDO V. STATE (1989) 7 SCNJ. 16, wherein Nnaemeka-Agu, J.S.C. stated the grounds upon which further evidence can be allowed viz:

- (a) the evidence sought to be adduced must be such as could not have with reasonable diligence been obtained for use at the trial;
- (b) the evidence should be such as if admitted, it would have an important, not necessarily crucial, effect on the whole case; and

(c) the evidence must be such as is apparently credible in the sense that it is capable of being believed although it need not be incontrovertible.

All three special grounds must co-exist. See ASABORO V. ARUWAJI (1974) 4 S.C. 119 at 124; OBASI V. ONWUKA (1987) 3 NWLR (pt.61) 364 at 370 and CHAIRMAN, BOARD OF INTERNAL REVENUE V. JOSEPH REZCALLAH & SONS LTD. (1962) 1 All NLR. 1. In TURNBULL V. DURAL (1902) A.C. 429, the Privy Council (England) held that a new trial will not be ordered where the fresh evidence is a document which could have been obtained by discovery during the trial proceedings.

The attitude of the Appellant in making the application to the Court below in which he attached as Exhibit "E" Peugeot Automobile Nigeria Limited, Official Car selling (public) prices as applicable from 25th March, 1992, is summarized in his ("Plaintiff's/Appellant's Brief (Interlocutory Ruling of 14th July, 1992)") at pages 2 and 3 of "Part II INTRODUCTION" which inter alia reads at page 2, lines 1-4 as follows:-

For the appellant to be able to recover that range of awards, if he succeeds in this claim in trust, he must expunge the now puny figure of N750,000.00 (Seven hundred and fifty thousand naira) and substitute the highest possible ceiling of award in his written claim."

Lines 1-5 of page 3 of the above document goes on to amplify:

On the other hand, if the amendment is not made before final judgment, then however high, the award, that the Court finds in favour of the Plaintiff, that award will be frustrated by the pygmy ceiling already stated in the claims. N750,000.00 a pygmy?..... one asks, Yes" In other words, he now wants millions of naira to replace the judgment sum of N16,766.00.

In the instant case, it ought to be stressed that the new evidence sought, in law, cannot be allowed as to do so is to influence the enhancement of the value of the Car (Peugeot 504 G.R A.C. Saloon Car). The trial court (per Iguh, J. as he then was) held that the breach of contract by the Respondent occurred on 24th June, 1986. It is settled law that in actions for breach of contract, the

cause of action accrues for the Plaintiff's benefit from the time the breach is committed and not when the damage is suffered. See EGBE V. ADEFARASIN (1985) 1 NWLR (pt.3) 549; THOMAS V. OLUFOSOYE (1986) 1 NWLR (pt.18) 689 and BELLO V. A.G. OF OYO STATE (1986) 5 NWLR (Pt.45) 828 at 876. Thus, the period of limitation begins to run from the date the cause of action accrues. See SANDA V. KUKUWA LOCAL GOVERNMENT (1991) 2 LRCN 632; (1991) 2 NWLR (Pt.174) 379 at 388, per Wali, J.S.C. and this Court's recent decision in ALHAJI ALIYU IBRAHIM V. JUDICIAL SERVICE COMMITTEE, KADUNA STATE & ANOR. (1998) 14 NWLR.1. Where, as in the case in hand, a breach of contract is alleged in which goods form the subject matter of the litigation, the court has to ascertain the pecuniary loss before trial. See SHELL B.P. V. JAMMAL ENGINEERING LTD. (1974) 4 S.C. 33; UNION BEVERAGES LTD. V. OWOLABI (1988) 1 NWLR (pt.68) at 128 at 136, per Nnaemeka - Agu, J.S.C. and IJEBU ODE LOCAL GOVERNMENT V. ADEDEJI BALOGUN & CO. LTD. (1991) 2 LRCN 287; (1991) 1 NWLR (pt.166) 136 at 158, per Karibi-Whyte, J.S.C. If, as stated by Oputa, J.S.C. in LAWRENCE ADEBOLA OREDOYIN & ORS. V. CHIEF AKALA AROWOLO & ORS. (1989) 4 NWLR (PT.114) 172 at page 211 E-F:

"An appeal is not the inception of a new case. No, far from that. An appeal is generally regarded as a continuation of the original suit rather than as an inception of a new action. That being so, an appeal should normally and generally be confined to consideration of the record which came from the court below with no new testimony taken or new issues raised in the Appellate court. This is the broad view of an appeal. An appeal to the Court of Appeal should be a complaint against the decision of the trial court An appeal is on invitation to a Higher Court to find out whether on proper consideration of the facts placed before it and the applicable law, that court arrived at a correct decision " and Black's Law Dictionary, Sixth Edition page 96 defines the word "Appeal" as:

"Resort to a superior (i.e. appellate) Court to review the decision of an inferior (i.e. trial) Court or administrative agency. A Com-

plaint to a higher tribunal of an error or injustice sought to be corrected or reserved."

then, in the instant case, the fact of the pendency of the trial High Court's decision awarding in Appellant's favour general and special damages of N16,766.00 for breach of contract in the Court below (Court of Appeal, Enugu Division), outrightly precludes the Appellant from bringing the three motions culminating in the ruling of that Court given on 14th July, 1992 and now the subject of the appeal herein. Thus, when in its said ruling written and delivered by Uwaiifo, JCA, (as he then was) and concurred in by Oguntade and Akintan, JJ.CA., dismissing the application:

"It (Court of Appeal) has no jurisdiction to hear and determine the motion filed in this Court by the Plaintiff/Appellant on 30 August, 1991 since it has not come by way of an appeal or leave to appeal. I therefore strike out the motion filed on 30 August, 1991.

In respect of the motion of 7 February, 1992 there is no doubt that under Order 1, rule 20(1) of the Court of Appeal Rules, this Court can order an amendment of a writ, a statement of claim or defence as the High Court would have done. Normally, such an amendment in the Court Appeal would be to bring the pleading in line with the evidence already led. See TAIWO V. AKINWUMI (1975) 4 S.C. 143 at 169-170. It must appear to the Court that it is in the interest of justice to grant such an amendment even at that stage: See BIODE PHARMACEUTICAL IND. LTD. V. ADSELL (1986) 5 NWLR (pt.46) 1070. In appropriate cases this Court can grant such an amendment and allow fresh or further evidence to be called In the present case, the Plaintiff/Appellant does not seek the amendment in order to bring the evidence led in the Court below in line with his pleading. He intends to amend, and then to tender in evidence a document (or other evidence in support), showing the new prices of Peugeot 504, in particular the price of 504 GR with airconditioner (same as his car, the subject matter of dispute) as at March 25, 1992, nearly two years after the judgment appealed against was delivered. That is not the further evidence that can be allowed to be led in the present circumstances. No special grounds have been shown to permit such a procedure. Judgment was given on the value of the Plaintiff/

Appellant's vehicle as it was at the time of judgment or more correctly at the time the cause of action arose. The Plaintiff/Appellant can never show that the present evidence sought to be adduced is such as if admitted, it would have an important effect on the whole of the case since that is one of the conditions to be satisfied when further evidence is intended to be adduced on appeal. See ASABORO V. ARUWAJI (1974) 4 S.C. 119 at 124. B

In the present case the new evidence, in law, cannot be allowed to influence the enhancement of the value of the Car even if it was erroneously admitted as further evidence" (Underlining and parenthesis above are mine for emphasis) C

Their Lordships in my respectful view, were perfectly right and justified in their conclusions above and I see no reason whatsoever to interfere therewith. The result of all I have been saying is that all three issues are accordingly answered in the negative and having resolved them against the Appellant, the appeal be and is hereby dismissed with N10,000.00 (Ten Thousand Naira) costs to the Respondent. D

E

BELGORE JSC

I read in advance the judgment of my learned brother, Onu, JSC., dismissing this appeal. The appellant, a layman, despite his effort at appellate procedure, The has not satisfied me how the lower Court erred. I am not in the least persuaded by his argument and therefore find not a single reason to interfere with Court of Appeal's decision. Therefore I agree with my learned brother that this appeal lacks merit and I also dismiss it with N10,000.00 costs to the respondent. G

OGUNDARE JSC

This matter has had a chequered history. A rather simple action H has been complicated by the plaintiff-a medical practitioner, representing himself in the Court of Appeal. The action was taken out in 1986 by Chief Chimezie Ikeazor, SAN on behalf of the Plaintiff but learned Senior

Advocate faded out of the suit somewhere in the course of proceedings and the Plaintiff has since conducted the action personally both in the Court of Appeal and in this Court.

Following the failure of the Defendant (Respondent before us) to deliver to the Plaintiff (now Appellant) a 504 Saloon Peugeot car he had deposited money for in 1984, the Plaintiff in 1986 took out a writ of summons, claiming, as finally amended:

(i) Specific performance by the defendant of contract between the parties for the delivery by the defendant to the plaintiff of a 504 GR air-conditioned saloon car

(ii) N750,000 (seven hundred and fifty thousand Naira) damages being remedy for breach of contract and/or detention of the said car, till same is delivered to plaintiff".

After pleadings had been filed and exchanged, the case proceeded to trial. Evidence was led and after closing addresses by learned counsel for the parties, judgment was reserved. Before judgment was delivered, however Plaintiff's counsel who had earlier filed an application to amend Plaintiff's final pleadings by adding new claims, was unable to move the application and asked for an adjournment. The application for adjournment was refused and the application to amend was struck out. This was on 11/6/90. On 4/7/90 the trial Judge read his judgment the concluding paragraph of which reads:

"In the final result and for all the reasons that I have given above, the plaintiff's claims for specific performance or in the alternative for the delivery of a Peugeot 504 GR A/C saloon car to the said plaintiff by the defendants fail and are hereby dismissed. There will however be judgment for the plaintiff against the defendants in the sum of N16,766.00 being special and general damages for the detention of his car. But interest will run on the judgment debt pursuant to Section 54 of the Sale of Goods Act at the rate of 5% per annum from this day until the amount is fully liquidated. There will be costs to the plaintiff against the defendants which I assess and fix at N1,700.00."

The Plaintiff was dissatisfied with this judgment and took over the conduct of his case. He filed a Notice of Appeal in which he appealed

against the "whole decision" on 19 grounds of appeal and sought from the Court of Appeal the following reliefs:

"A. (i) *That the rulings, of the High Court, concerning the remedies prayed for by the Plaintiff, in that court below, be set aside.*

(ii) *That the Court Orders that the defendant/respondent delivers to the plaintiff/appellant a new Peugeot 504 GR AC with comprehensive insurance or money for the said current comprehensive insurance.*

(iii) *That in addition the Court Orders general damages for the plaintiff greater than those decreed by the court below, for breach of contract and/or detention of the car and/or wrongful breach of resulting and constructive trusts.*

That for the purpose of prayer 'A' above, the court relists and enrolls as court orders the motion and its prayers in the proposed Further Further Amended Statement of Claim which motion was filed on 7/6/90 and struck out, not on merits, on 11/6/90.

After filing his written brief of argument in respect of the appeal in the Court of Appeal, the Plaintiff filed a motion praying that Court (in the first of three motions that form the subject matter of the appeal now before us) for the following orders:

"1. *An order to relist the motion praying for leave to further Further Amend the Writ and the Prayers in suit No.0/241/86 which motion was filed on 7/6/90 and struck out on 11/6/90 on the ground only that judgment was too close for adjournment as requested.*

2. *An order that the motions be argued as part of the appeal.*

3. *An order deeming the said relisting as having been made.*

4. *An order deeming the consequential Further Further Amendments as formulated in pages 30 to 40 of the records of appeal and/or as reformulated in Exhibit 'B' annexed to this motion as having been made.*

AND for such further and other orders as this Honourable Court may deem fit."

In a second motion he prayed as hereinafter:

"1. *An order to further further further amend the writ and the Prayers in Suit No.0/241/86.*

2. *An order that this motion be treated as part of the substantive*

appeal, and the ruling on it be reserved pending this Honourable Court's decisions on the issues for determination.

3. *An order that this motion be heard concurrently with or in substitution for the motion for relistment dated 29th August, 1991, and filed on 30th August, 1991.*

4. *An order deeming the said amendments to have been made."*

And in a third motion Plaintiff prayed for -

"1. *An Order to further amend paragraph 4, ('RELIEF SOUGHT FROM THE COURT OF APPEAL ') of the 'NOTICE OF APPEAL', as formulated in the proposed amendment annexed as Exhibit 'A' to this Motion.*

2. *An Order deeming same as having been made."*

The three motions were argued along with defendant's preliminary objection. The Plaintiff (who appeared for himself) proffered arguments. In a reserved ruling, the Court of Appeal in the lead Ruling of Uwaifo, J.C.A. (as he then was) with which Oguntade and Akintan, JJ.C.A. agreed, adjudged as follows:

1. *"In regard to the first motion, the order of the Court below striking out the motion before it on 11 June, 1990 as contended in the preliminary objection is an order of court which is appealable. By virtue of Section 25(2)(a) of the Court of Appeal Act, 1976, the appeal against it must be made within 14 days of the striking out of the court below, or if time has elapsed this Court may extend time under Order 3, rule 4(2) of the Court of Appeal Rules, 1981 upon an application supported by an affidavit setting forth good and substantial reasons for failure to appeal within the prescribed period, and by grounds of appeal which prima facie show good cause why the appeal should be heard: see IBODO V. ONAROFIA (1980) 5-7 S.C. 42; MOBIL OIL LTD. V. AGADAIGHO (1988) 2 NWLR (Pt. 77) 383; LAUWERS IMPORT-EXPORT V. JOZEBSON IND. LTD. (1988) 3 NWLR (Pt. 83) 429; YESUFU V. CO-OPERATIVE BANK (1989) 3 NWLR (Pt. 110) 483. If leave had been sought in the court below and was refused. Order 3, rule 3(3) allows the applicant to seek the same prayer in this Court within 15 days after the date of refusal, which period may also be enlarged by leave of this Court.*

Since the plaintiff/appellant has not appealed against that order nor sought an enlargement of time in this Court within which to appeal against it, this Court can do nothing that will lead to the consideration of the merit of that order. This Court can certainly not order the motion to be relisted before it for consideration since its jurisdiction derives from Section 219 of the 1978 Constitution to hear appeals from the High Courts and the other courts mentioned in that section. It therefore has no jurisdiction to hear and determine the motion filed in this Court by the plaintiff/appellant on 30 August, 1991 since it has not come by way of an appeal or leave to appeal; see ALADE V. ALEMULOKO (1988) 1 NWLR (Pt.69) 207; UTIH V. ONOYIVWA (1991) 2 LRCN 221; (1991) 1 NWLR (Pt. 166) 166 at 225 per Karibi-Whyte, JSC.; ATTORNEY-GENERAL, ANAMBRA STATE V. OKAFOR (1992) 2 NWLR (Pt.224) at 429 per Nnaemeka-agu, JSC. I therefore strike out the motion filed on 30 August, 1991."

2. *In respect of the motion filed on 7 February, 1992, there is no doubt that under Order 1, rule 20(1) of the Court of Appeal Rules, this Court can order an amendment of a writ, a statement of claim or defence as the High Court would have done. Normally, such an amendment in the Court of Appeal would be to bring the pleadings in line with the evidence already led; see TAIWO V. AKINWUMI (1975)4 S.C 143 at 169-170. It must appear to the Court that it is in the interest of justice to grant such an amendment even at that stage: see BIODE PHARMACEUTICAL IND. LTD. V. ADSELL (1986) 5 NWLR (Pt.46) 1070. In appropriate cases this Court can grant such an amendment and allow fresh or further evidence to be called: see JADESIMI V. OKOTIE EBOH (NO.2) (1986) 1 NWLR (Pt.16) 264 at 275 per Karibi-Whyte, JSC.*

In the present case, the plaintiff/appellant does not seek the amendment in order to bring the evidence led in the court below in line below in line with his pleading. He intends to amend, and then to tender in evidence a document (or other evidence in support), showing the new prices of peugeot 504, in particular the price of 504 GR with air-conditioner (same as his car, the subject-matter of dispute) as at March 25, 1992, nearly two years after the judgment appealed against was deliv-

ered. That is not the further evidence that can be allowed to be led in the presented circumstances. No special grounds have been shown to permit such a procedure. Judgment was given on the value of the plaintiff/appellant's vehicle as it was at the time judgment or more correctly at the time the cause of action arose. The plaintiff/appellant can never show that the present evidence sought to be adduced is such as if admitted, it would have an important effect on the whole of the case since that is one of the conditions to be satisfied when further evidence is intended to be adduced on appeal; see ASABORO V. ARUWAJI (1974) 4 S.C. 119 at 124..... I therefore refuse the prayers sought in the second motion filed on 7th February, 1992 and dismiss the application."

3. "But in the present case, having regard to the fact that I have dismissed the second motion upon which the said relief (B) is founded, I cannot grant this third motion. Accordingly, the motion is dismissed."

The two latter motions were thus dismissed while the first was struck out.

The Plaintiff has now appealed to this Court against the interlocutory decision of the Court below refusing his three motions. Brief of argument were filed and exchanged and at the oral hearing of the appeal, the Plaintiff who appealed for himself proffered oral arguments.

I must pause here to make a short observation. It may be that the Plaintiff is an intelligent and able medical practitioner. One thing is clear to me, he is not wise in the nuances of the legal profession. It is not enough to read up cases in the law reports and to cram up rules and legal principles read in the books, the correct application of these cases, rules and principles to given situation is what makes the difference between the legal practitioner and the able medical practitioner. I doubt it much if the Plaintiff is doing justice to his cause by conducting these proceedings himself given the intricacies of the questions he has himself raised. His notice and grounds of appeal and other papers that have since been filed by him and his prolix, and for most part irrelevant, arguments in his "briefs" of arguments both in this Court and in the court below bear testimony to this observation.

Plaintiff in his 174 page brief of argument filed in this Court

formulated in 10 pages 23 issues for determination. Learned counsel for the Defendant, in the Respondent's brief formulated 3 issues which, in my respectful view, are adequate for the determination of this appeal. These are:

"Issue No. 1

B

Could the Court of Appeal relist a motion struck out at the lower Court when the same has not been appealed against by way of interlocutory appeal nor leave to appeal out of time granted.

Issue No.2

C

Could the Court of Appeal make an order to further amend the writ of summons and the reliefs sought therein after the case had been determined and is pending on appeal before it?

Issue No. 3

Is it permissible to allow fresh evidence to be introduced at the hearing of an appeal?"

Issue 1

The reason given by the Court below for refusing the Plaintiff's first motion was that there was no appeal against Iguh, J's ruling of 11/6/ 90 striking out the motion before him for amendment. The Plaintiff has argued that the Court below was in error since he complained about the trial Judge's order in his appeal against the final judgment of Iguh, J. (as he then was) and cited BIOKU INVESTMENT LTD. V. NIPOL CO. LTD. (1992) 3 NWLR 727 at 753 in support.

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I think the Court below was wrong in the reason given by it for refusing the first motion. Order 3 rule 22 of the Rules of the Court of Appeal provides:

"22. No interlocutory judgment or order from which there has been no appeal shall operate so as to bar or prejudice the Court from giving such decision upon the appeal as may seem just."

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Under this rule a party who is dissatisfied with a judgment and who appeals against it may raise complaints against any interlocutory order made by the trial court even though he has not appealed against that interlocutory order when it was made.- See: OKOBIA V. AJANYA & ANOR. (1998) 6 NWLR 348 at 364-365.

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Be that as it may, the first motion sought a prayer which he seeks to obtain in the event of the appeal succeeding. This he cannot do. Having raised in his notice of appeal the correctness of the order of Iguh, J. made on 11th June, 1990, it amounts, in my view, to an abuse of the process of court to now raise the same issue by way of a motion. In any event I cannot see how the Court of Appeal can relist a motion struck out in the Court of trial. If such a motion was to be relisted it could only be by order of the trial court. And that is before the substantive suit was brought to an end. Of course, a party could appeal against such an order of striking-out (as has been done by the Plaintiff in the instant case), but the party must await the result of the appeal. He cannot short-circuit the system by bringing a motion.

For the reason I have given above, even though the reason given by the Court below for striking out Plaintiff's first motion is well faulted, the motion was non-the-less properly struck out.

Issues 2 &3

I have considered the arguments advanced by the parties both in their respective written briefs and in oral arguments. I am not persuaded that the Court below was in any way in error in refusing the other two motions to adduce fresh evidence and to amend Plaintiff's pleadings in order to enable him raise new claims. I agree entirely with the reasoning and conclusions of the Court below, per Uwaifo, J.C.A. on these two motions.

It is for what I have stated herein that I agree with my learned brother, Onu, JSC., that this appeal be dismissed. I, too, dismiss it with costs as assessed by him.

MOHAMMED JSC

I entirely agree with the opinion of my learned brother, Onu, H J.S.C., in the judgment just read, that this appeal has failed and ought to be dismissed. The simple answer to issue 1 is that where an application filed before a High Court has been refused the applicant can make a similar application for the same purpose before the Court of Appeal within

has argued for example issues like breach of trust, fiduciary relationship, constructive trust, etc. Which are completely irrelevant to the decision of the Court of Appeal on the three motions now appealed against.

The respondent on the other hand, raised only 3 issues for determination and which in my view are relevant to the decision appealed against and related very much to the grounds of appeal filed by the appellant. I adopt them as the issues arising in this appeal. My learned brother, Onu, JSC., has in his leading judgment considered the issues fully and satisfactorily and I adopt all his arguments thereon as mine. I agree with his conclusion that there is no merit in this appeal. I therefore dismiss the appeal with N10,000.00 costs in favour of the respondent.

KALGO JSC

I have had a preview of the judgment just delivered by my learned brother, Onu, JSC., in this appeal and I entirely agree with him that there is no merit in the appeal.

The appellant filed his Notice of Appeal against the decision of the Court of Appeal containing only 7 grounds of appeal, but he formulated and argued 23 issues in his so-called brief. This is contrary to the generally accepted principle of law that issues raised in any appeal must relate to the grounds of appeal and the judgment or decision challenged. See OKONKWO V. OKOLO (1988) 2 NWLR (Pt.78) 632, OLOWOSAGO V. ADEBANJO (1988) 4 NWLR (Pt.88) 275; OKPALA V. IBEME (1989) 2 NWLR (Pt. 102) 208. And generally, the proliferation of issues for determination in appeals has been discouraged and disapproved in our appellate courts. See ANAEZO V. ANYASA (1993) 5 SCNJ. 151 at 175; AGBENYI V. ABO (1994) 7 NWLR (Pt.359) 735; NNODIM V. AMADI (1993) 1 NWLR (Pt. 271) 568.

The appellant by formulation of too many issues in his brief, has raised many irrelevant matters which are completely unrelated and unconnected with the subject matter of the ruling appealed against. He has argued for example issues like breach of trust, fiduciary relationship, constructive trust, etc. Which are completely irrelevant to the decision

of the Court of Appeal on the three motions now appealed against.

The respondent on the other hand, raised only 3 issues for determination and which in my view are relevant to the decision appealed against and related very much to the grounds of appeal filed by the appellant. I adopt them as the issues arising in this appeal. My learned brother, Onu, JSC., has in his leading judgment considered the issues fully and satisfactorily and I adopt all his arguments thereon as mine. I agree with his conclusion that there is no merit in this appeal. I therefore dismiss the appeal with N10,000.00 costs in favour of the respondent.

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