

SUPREME COURT OF NIGERIA
2ND JUNE, 2000. SC. 185/1994
CORAM:- A. G. KARIBI-WHYTE, A. B. WALI,
A. I. KATSINA-ALU, A. O. EJIWUNMI, JJSC

ATTORNEY-GENERAL OF THE FEDERATION APPELLANT
AND
A. I. C. LIMITED PLAINTIFF/RESPONDENT
1. AERMACCHI SPA
2. MARIO MARAS DEFENDANTS
3. GIOVANNI CATANEO

ACTIONS - *Relief not claimed - Power of the court to grant such relief*
- *A plaintiff cannot obtain a relief - Which he did not expressly claim in the statement of claim.*

CONTRACTS - *Strangers to a contract - Right of - A contract affects the parties to it - And cannot be enforced by or against a person who is not a party.*

JUDGMENTS - *Consequential order - Jurisdiction of the Court to make*
- *A consequential order could only be made directing a party - Who participated in the proceedings before the court - And was involved in the judgment to do certain things.*

JUDGMENTS - *Foreign judgment - Effect of - on a right acquired under a Nigeria judgment - Where the Nigerian judgment was not challenged - It remains valid*

FACTS

In the Lagos High Court, the plaintiff/respondent filed a claim and sought the following reliefs inter alia: against the 1st defendant, and alternatively against the 2nd and 3rd defendants and solely in the event that the 1st defendant is held not liable; the sum of \$8,194,300.00 US dollars or its equivalent in Nigerian currency being commission payable to the

plaintiff under a subsisting exclusive representation agreement made between plaintiff and 1st defendant and against the Ministry of Defence and all other agents, officers or servants of the Federal Government (represented by Attorney General of the Federation as 4th defendant/appellant), an injunction against payment of any sum to the 1st defendant without the 1st defendant first satisfying the claim of the plaintiff or giving security for such satisfaction. The plaintiff was appointed through an oral agreement as the sole representative in Nigeria of Aermacchi SPA (1st defendant), an Italian Company engaged in manufacture and sale of aircraft. The agreement was reached in May, 1981 and a term of the agreement was that the plaintiff would receive a commission of 10% of the net sales by Aermacchi SPA in Nigeria. In 1983 the plaintiff contacted the 1st defendant through the 2nd defendant and reported that it had arranged a final meeting with the Ministry of Defence in connection with a contract and requested the 1st defendant to pay it the agreed sum of 10% for its services. The 1st defendant denied the existence of any such agreement. In Paragraph 11 of the statement of Claim the plaintiff averred that the 1st defendant had been awarded a contract for Jet trainers in the amount of \$81, 943, 000.00 Us Dollars and the advance payment (10% of the contract sum) was about to be paid and a letter of credit was also about to be opened for the balance. The contract was for the supply of Military hardware between the 1st defendant and Ministry of Defence.

On 20th May 1987 a motion was filed by the plaintiff before the High Court seeking the following prayers: " (i) directing the 1st, 2nd and 3rd defendants to file their defence to the above action within such time as the court may prescribe (ii) that judgment be entered against the 4th defendant in default of his filing a statement of defence (iii) in the alternative to (ii) directing the 4th defendant to file his defence within such time as the court may deem fit; (iv) directing that a copy of this order shall be served on Mr. G.O.K. Ajayi, SAN, and that such service be deemed good and proper service on the 1st, 2nd and 3rd defendants; and (v) directing that, pending the trial and final determination of this action, the Federal Government, its servants and agents shall be restrained from paying or remitting or causing to be remitted and the 1st, 2nd and 3rd defendants

by themselves or their servants or agents shall be restrained from receiving or accepting any sum or sums in excess of 10% of the total amount due and payable to the 1st defendants in respect of the sale of aircraft and/or spare parts thereof and/or equipment ancillary thereto to the Federal Government under any contract for such sale." The learned chief Judge heard the motion and granted prayers (i) (iii) and (iv). He refused to grant prayer (ii) which sought for judgment to be entered against the 4th defendant/appellant. Following the ruling of the learned chief judge, the 4th defendant did not file a statement of defence, but rather filed a counter-affidavit stating that it is not a party to the contract between the plaintiff and the 1st defendant, and has no interest in the contract. It further averred that the 4th defendant cannot file a meaningful defence before knowing the defence of the 1st to 3rd defendants. It denied that plaintiff had any cause of action against the 4th defendant, and asked that the 4th defendant be struck out for misjoinder.

The learned trial judge, S.O. Hunponu Wusu, considered the affidavits filed before him and in a considered ruling made an order against the 4th defendant to pay the plaintiff the sum due to the 1st to 3rd defendants pending with the Ministry of Defence in satisfaction of the judgment debt of US \$8,194,300 (or its equivalent in Nigerian currency). The 4th defendant appealed against the decision to the Court of Appeal unsuccessfully. And has now further appealed to the Supreme Court raising four issues.

ISSUES FOR DETERMINATION

"(i) Whether the learned Judges of the Court of Appeal erred in law by affirming the decision of the Lagos High Court which granted a relief which was not claimed by the respondent in the Writ of Summons or the Statement of Claim.

(ii) Whether the respondent can enforce provisions of the exclusive representation agreement which forms the basis of the alleged commission due to the respondent against the appellant who is not a party thereto.

(iii) Whether the respondent has a cause of action against the appellant having regard to the statement of Claim before the court.

(iv) *Whether the respondent can in Nigeria acquire or enforce any right whatsoever under an agreement that has been declared null and void under the Italian law which is the proper law expressly selected by the parties to govern the exclusive representation agreement."*

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HELD (Unanimously allowing the appeal Per lead judgment of **MOHAMMED JSC**)

Actions - Relief

C 1. If the relief claimed by the respondent against the appellant in the Statement of Claim is placed side by side with the order made by Hunponu-Wusu J it becomes crystal clear that the learned trial judge had granted the respondent a relief which the company did not ask for. Mr. Ayoade, learned counsel for the appellant who wrote the appellant's brief argued,
D quite correctly, that where a defendant in a suit defaults in giving notice of intension to defend, or in a pleading or does not appear at the trial the plaintiff cannot obtain a relief which he did not expressly claim in the Statement of Claim. See Tocan v. National Standard Investment Co.
E (1887) 56 L.T. 165 and Faithful v. Woodley (1890) 43 Ch D. 287.

I do not have to speak the obvious fact, because our legal system is replete with authorities that a judge has no power to make an order or grant a relief which has not been asked by the plaintiff in his pleadings.
F This court once explained fully the absence of jurisdiction to grant such a relief in the case Etim Ekpenyong & Ors. v. Inyang Effiong Nyong and 6 Others (1975) 2 S.C. 71. (p. 1787 A)

Contracts - Strangers to a contract

G 2. It is relevant to point out that the Ministry of Defence is a total stranger to the exclusive representation agreement between the respondent and Aermacchi S.P.A. It is a question to ask why the trial High Court ordered the appellant to pay to the respondent money, the dispute in which the
H ministry of Defence is not a party? In volume 8 Halsburys Laws of England (3rd Edition) at page 66, paragraph 110 the learned authors under the heading "Strangers to Contract" stated thus:

"As a general principle a contract affects the parties to it, and

cannot be enforced by or against a person who is not a party, even if the contract is made for his benefit and purports to give him the right to sue, or to make him liable upon it. The fact that a person who is a stranger to the consideration of a contract stands in such near relationship to the party from whom the consideration does not entitle him to sue upon the contract". (p. 1788 C)

Judgments - Consequential order

3. I do not agree that the order of the learned trial judge is consequential to the judgment he delivered against the 1st defendant. A consequential order could only be made directing a party who participated in the proceedings before the court and was involved in the judgment to do certain things. You cannot make a consequential order directing a complete stranger to the proceedings and judgment to pay money in satisfaction with the enforcement of a judgment. If such an order is to be made the party being directed to comply with it must be given notice of it so as to have the opportunity to oppose it. The appellant, in this case, had no notice of the order directing him to pay money to the respondent. The order, in my view, is incompetent because the learned judge had no jurisdiction to make it. For a judgment or order to be valid against a party he must be aware of the relief claimed and be given the opportunity to resist it. See Obajimi v. Attorney-General Western Nigeria (supra). (p. 1791 E)

Judgments - Foreign judgment

4. The only issue which remains to be considered is the effect of the judgment of the Court of Laspezia, Italy, of 18th October, 1990 on the rights of the respondent as determined by the trial court on the 20th day of October, 1989. I agree with Chief Williams that the 1st, 2nd and 3rd defendants against whom the judgment of Lagos High Court was entered had not challenged, through an appeal, the validity of that judgment. Therefore, the decision still stands against them notwithstanding the judgment of an Italian court which was given a year after the Nigerian judgment. (p. 1792 B)

REPRESENTATION

O. T. Olatigbe, Principal Legal Officer, for the appellant.

Prof. A. B. Kasunmu, SAN, Miss O.M. Lewis, with him, for the respondent.

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CASES REFERRED TO

Ikpeazu v. ACB LTD (1965) NMLR 374

Negbenebor v. Negbenebor (1971) 1 All NLR 210

New India Assurance Co v. Odubanjo (1971) NCLR 363

C

Akinbobola v. Plinson Fisko (1991) 1 NWLR 270

Dunlop Pneumatic Tyre Co. v. Selfridge & Co. (1915) A.C. 847 at 853

Tocan v National Standard Investment Co. (1887) 56 L.T. 165

Faithful v Wardley (1890) 43 CL.D 287

D

Ekpeyong v. Nyong (1975) 2 SC 71

Obajimi v. A.G. for Western Nigeria (1967) ALL NLR 33

Nalsa & Team Associates v NNPC (1991) 8 NWLR 652

E

BOOK REFERRED TO

Halsbury's Laws of England, vol. 8, 3rd edn, p. 66; Para 110.

LEAD JUDGMENT BY MOHAMMED JSC

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The plaintiff Company, A.I.C. Limited (Respondent in this appeal) filed a claim in the Lagos High Court and sought for the following reliefs:

G

"(i) A declaration against the first defendant, that there is a valid and subsisting exclusive representation agreement made in Lagos on or about 21st May 1981 covering Aermacchi's aircraft, accessories, spareparts and services, between plaintiff of the one part and first defendant of the other part, which agreement is still in full force and effect and has never been terminated nor expired;

H

(ii) Against the Ministry of Defence and all other agents, officers or servants of the Federal Government an injunction against payment of any sum to first defendant without the said first defendant satisfying the claim of the plaintiff or giving security for such satisfaction;

(iii) *Against the first defendant, an injunction restraining it from receiving, disposing of, removing or dealing with, directly or through its servants or agents or otherwise, any payment of the sum mentioned in paragraph 1 without the said defendant satisfying the claim of the plaintiff or giving security for such satisfaction;* B

(iv) *Against the first defendant, the sum of US \$8,194,300.00 (or its equivalent in Nigerian currency), being commission payable by first defendant to plaintiff under the above-mentioned agreements, plus damages including without limitation the cost of retaining non-Nigerian counsel, plus interest at ten percent from the date of breach to the date of judgment;* C

(v) *Alternatively, against the second and third defendants (solely in the event that first defendant is held not liable) the sum of US \$8,194,300.00 (or its equivalent in Nigerian currency), being commission payable to plaintiff under the above mentioned agreements, plus damages including without limitation the cost of retaining non-Nigerian counsel, plus interest at ten percent from the date of breach to the date of judgment".* D E

The facts briefly, show that the respondent was appointed through an oral agreement as the sole representative in Nigeria of Aermacchi SPA, an Italian company engaged in manufacture and sale of aircraft. The agreement was reached in May, 1981 and a term of the agreement was F that the respondent would receive a commission of 10% of the net sales by Aermacchi SPA in Nigeria. Aermacchi SPA is the 1st defendant in the suit filed by the respondent in the High Court, the decision in which is the subject of this appeal.

In 1983 the respondent contacted the 1st defendant through the G 2nd defendant and reported that it had arranged a final meeting with the Ministry of Defence in connection with a contract and requested the 1st defendant to pay it the agreed commission of 10% for its services. The 1st defendant denied the existence of any such agreement. In paragraph H 11 of the Statement of Claim the respondent averred that the 1st defendant had been awarded a contract for jet trainers in the amount of \$81,943,000. US Dollars and the advance payment (10% of the contract

sum) was about to be paid and a letter of credit was also about to be opened for the balance. The contract was for the supply of military hardware between the 1st defendant and Ministry of Defence.

On 20th May 1987 a motion was filed by the respondent before
B the High Court with the following prayers:

"(i) directing the 1st, 2nd and 3rd defendants to file their defence to the above action within such time as the court may prescribe;

(ii) that judgment be entered against the 4th defendant in default of his filing a Statement of Defence;

(iii) in the alternative to (ii) directing the 4th defendant to file his defence within such time as the court may deem fit;

(iv) directing that a copy of this order shall be served on Mr. G.O.K. Ajayi, SAN, and that such service be deemed good and proper
D *service on the 1st, 2nd and 3rd defendants;*

(v) directing that, pending the trial and final determination of this action, the Federal Government its servants and agents shall be restrained from paying or remitting or causing to be remitted and the 1st, 2nd and 3rd defendants by themselves or their servants or agents shall be restrained from receiving or accepting any sum or sums in excess of 10% of the total amount due and payable to the 1st defendants in respect of the sale of aircraft and/or spare parts thereof and/or equipment under any contract for such sales".

On the 22nd of March 1988, the learned Chief Judge of the High Court of Lagos State heard the motion and granted prayers (i) (iii) (iv). He refused to grant prayer (ii) which sought for judgment to be entered against the 4th defendant i.e. the Attorney General of the Federation who
G is the appellant in this appeal. The appellant did not file a Statement of Defence as was demanded in prayer (iii) of the motion. He however filed a counter-affidavit, paragraphs 10,11 and 12 of which read as follows:

"10. That the claim is based on an alleged breach of a written
H *contract between the plaintiff and the 1st defendant to which the 4th defendant is not a party and has not played any part whatsoever in the making thereof, nor does the 4th defendant have any interest whatever in the contract.*

11. That S.N.C. Harris-Eze Esquire, learned counsel seized of the matter informed me and I verily believe it to be true that no meaningful defence can be filed by the 4th defendant without the statement of defence filed by the 1st to 3rd defendants to know the facts in dispute and allegations otherwise connecting the 4th defendant if any. B

12. That the plaintiff has no cause of action against the 4th defendant, who should be struck out of the suit for misjoinder".

The learned trial judge, S.O. Hunponu-Wusu, considered the affidavits filed before him and in a considered ruling, made the following order against the appellant: C

"The 4th defendant is hereby ordered to pay to the plaintiff the amount due to the 1st to 3rd defendant pending with the said Ministry of Defence in satisfaction of this judgment debt of US Dollars \$8,194,300.00 (or its equivalent in Nigerian currency)". D

It was against the above decision that the Attorney-General of the Federation filed an appeal before the Court of Appeal. The Court of Appeal, coram, Sulu-Gambari JCA (as he then was) Niki Tobi and Ubaezonu, J.J.C.A., unanimously dismissed the appeal. It is against that judgment that this appeal has been filed. Four issues have been identified by the appellant and they are as follows: E

"(i) Whether the learned Judges of the Court of Appeal erred in law by affirming the decision of the Lagos High Court which granted a relief which was not claimed by the respondent in the Writ of Summons or the Statement of Claim. F

(ii) Whether the respondent can enforce provisions of the exclusive representation agreement which forms the basis of the alleged commission due to the respondent against the appellant who is not a party thereto. G

(iii) Whether the respondent has a cause of action against the appellant having regard to the statement of Claim before the court.

(iv) Whether the respondent can in Nigeria acquire or enforce any right whatsoever under an agreement that has been declared null and void under the Italian law which is the proper law expressly selected by the parties to govern the exclusive representation agreement." H

For the respondent, Chief F.R.A. Williams, learned Senior Advocate, formulated the following issues for the determination of the appeal:

"(i) *Whether the Court of Appeal was right in affirming the decision of the lower court ordering the appellant to pay to the respondent the sum of US Dollars \$8,194,300.00;*

(ii) *Whether the appellant was a proper party to the action at the lower court;*

(iii) *What is the effect of the judgment of the Court of Laspezia, Italy of 18th October, 1990, on the rights of the respondent as determined by the trial court on the 20th October, 1989".*

Learned counsel for the appellant opened his submission by reference to Order 17 Rule 3 of the High Court of Lagos State (Civil Procedure) Rules 1972 which provides as follows:

Every Statement of Claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and it shall not be necessary to ask for general or other relief, which may always be given as the Court or a Judge in chambers may think just to the same extent as if it had been asked for. And the same rule shall apply to any counter-claim made or relief claimed by the defendant in his defence".

In this case the plaintiff who is respondent in this appeal claimed for five reliefs in the Statement of Claim. The claim in relief (ii) reads:

"(ii) Against the Ministry of Defence and all other agents, officers or servants of the Federal Government an injunction against payment of any sum to first defendant without the said first defendant satisfying the claim of the plaintiff or giving security for such satisfaction"

Pleadings were served on the defendants but none of them filed a Statement of Defence. The appellant however filed a counter-affidavit as I disclosed above. On 28th October, 1989, following an application for judgment in default of defence, Hunponu-Wusu J of Lagos High Court delivered a ruling in which the learned trial judge made the following order directing the appellant:

"To pay to the plaintiff" (now respondent) the amount due to the 1st to 3rd defendants pending with the said Ministry of Defence in satisfaction of this judgment debt of US Dollars \$8,194,300.00 (or its equiva-

lent in Nigerian Currency). xxxxx

If the relief claimed by the respondent against the appellant in the Statement of Claim is placed side by side with the order made by Hunponu-Wusu J it becomes crystal clear that the learned trial judge had granted the respondent a relief which the company did not ask for. Mr. Ayoade, learned counsel for the appellant who wrote the appellant's brief argued, quite correctly, that where a defendant in a suit defaults in giving notice of intension to defend, or in a pleading or does not appear at the trial, the plaintiff cannot obtain a relief which he did not expressly claim in the Statement of Claim. See Tocan v. National Standard Investment Co. (1887) 56 L.T. 165 and Faithful v. Woodley (1890) 43 Ch D. 287.

I do not have to speak the obvious fact, because our legal system is replete with authorities that a judge has no power to make an order or grant a relief which has not been asked by the plaintiff in his pleadings. This court once explained fully the absence of jurisdiction to grant such a relief in the case of Etim Ekpennyong & Ors. v. Inyang Effiong Nyong and 6 Others (1975) 2 S.C. 71 in the following words:

"..... as the reliefs granted by the learned trial judge were not those sought by the applicants, he went beyond his jurisdiction when he purported to grant such reliefs. It is trite law that the court is without the power to award to a claimant that which he did not claim. This principle of law has, time and again, been stated and re-stated by this court that it seems to us that there is no longer any need to cite authorities in support of it. We take the view that this proposition of the law is not only good law, but good sense. A court of law may award less, and not more than what the parties have claimed. A fortiori, the court should never award that which was never claimed or pleaded by either party. It should always be borne in mind that a court of law is not a charitable institution; its duty, in civil cases, is to render unto everyone according to his proven claim".

In Karimu Alade Obajimi v. Attorney-General (Western Nigeria) & Ors. (1967) A.N.L.R. 33 at 36 Brett F.J. held that the then Order 35

Rule 1 of High Court (Civil Procedure) Rules of Lagos did not empower the court to make an order which had not been asked for and which the person against whom it was made had no opportunity of resisting. See also Nalsa & Team Associates v. Nigerian National Petroleum Corp. (1991)

B 8 N.W.L.R. (part ?) 652 at 679 where Karibi-Whyte J.S.C. observed:

".... *there can only be jurisdiction to grant a relief, where such relief is one claimed by the plaintiff in his action, or the applicant in the motion before the court. See Ekpeyong & Ors. v. Nyong & Ors. (1975) 2 S.C. 71; Ochonma v. Unosi (1965) NMLR 321. Accordingly where the court in the exercise of its jurisdiction makes a largesse of a relief not claimed, our courts have been consistent in its rejection of the exercise of such powers.*"

D It is relevant to point out that the Ministry of Defence is a total stranger to the exclusive representation agreement between the respondent and Aermacchi SP.A. It is a question to ask why the trial High Court ordered the appellant to pay to the respondent money, the dispute in which the ministry of Defence is not a party?
E In volume 8 Halsburys Laws of England (3rd Edition) at page 66, paragraph 110 the learned authors under the heading "Strangers to Contract" stated thus:

"As a general principle a contract affects the parties to it, and cannot be enforced by or against a person who is not a party, even if the contract is made for his benefit and purports to give him the right to sue, or to make him liable upon it. The fact that a person who is a stranger to the consideration of a contract stands in such near relationship to the party from whom the consideration does not entitle him to sue upon the contract".

G Chief Williams, SAN, who wrote the respondent's brief does not dispute the statement of law stated above. But he submitted that the High Court's Order that the appellant pay the respondent the sum in dispute was a consequential order which flowed as a matter of course from the judgment in favour of the respondent. The learned Senior Advocate referred to the case of Akinbobola v. Plisson Fisko (1991) 1 NWLR (part H 167) 270 S.C. at page 288 where Nnaemeka-Agu J.S.C., said;

"A consequential order is not one merely incidental to a decision but one necessarily flowing directly and naturally from and inevitably consequent upon it. It must be given effect to the judgment already given not by granting a fresh and unclaimed or unproven relief A proper consequential order need not be claimed but a substantive order must be claimed and sustained from the facts before the court". B

Chief Williams also referred to the case of Gbadamosi & Ors. v. Alele (1993) NWLR (part 293) at page 113. With respect to the learned Chief the case of Gbadamosi v. Alele, which is a Court of Appeal decision, is not apposite, is not apposite to the decision of the trial High Court in the suit in hand. In fact, it seems to me that Gbadamosi v. Alele is on all fours with the present action. C

In Gbadamosi v. Alele (supra) the 1st plaintiff who was respondent before the Court of Appeal claimed in a substantive suit in the High Court a declaration that he was still the chairman of the 5th defendant/company and Chairman of its Board of Directors. He also sought a nullification of a number of resolutions and decisions of the company on the ground that they were taken ultravires. The plaintiffs/respondents E subsequently brought an application for an order of interlocutory injunction restraining the defendants/respondents their servants or agents, jointly or severally or otherwise or howsoever, from implementing the series of resolutions and/or decisions by them pending the final determination of the suit. In his ruling the trial judge on his own volition ordered, inter alia, F as follows:

"The Executive Chairman (the 1st respondent) and the General Manager (the 4th applicant) shall be and are hereby appointed to jointly take charge of the management of the financial affairs of the 5th applicant company with immediate effect and for this purpose, one shall not spend any of the money or moneys of the company without the concurrence of the other pending the determination of the appeal mentioned in (1) and (2) above; so however that none of them shall unreasonably withhold his assent or concurrence to any expenditure. G

In essence the Chairman and the Managing Director or where there is no Managing Director, the General Manager, are the two principal officers H

that run a company. In other words, they are the officers responsible for the day-to-day management of the affairs of the company. In the particular circumstances of this case and to resolve the impasse created by the present situation in the 5th applicant company, I think an order that the Executive Chairman (the 1st respondent) and the General Manager (the 4th applicant) shall be jointly responsible for the Management of the financial affairs of the 5th applicant company will solve the impasse. To this end, I will order that one shall not spend the funds of the company without the concurrence of the other pending the final determination of the substantive suit. The two of them and indeed all the directors and shareholders should learn to work together".

In an appeal against the Ruling of the High Court reproduced above, the Court of Appeal held that for a consequential order to be considered validly given by a court, the judge must confine himself within the ambit of what was requested in an application in which an opposing party is put on notice. The court went further and elaborated in the following words:

"A consequential order must be one giving effect to the judgment which it follows. Any consequential order which detracts from it is incompetent. To be valid the order must be related to matters adjudicated upon. In the instant case, the trial judge went too far adrift to grant the respondents what they did not request for. In doing so, the trial judge exceeded his judicial power in the matter. The consequential order complained of was therefore made without jurisdiction considering what was before him. [*Obayogbona v. Obase* [1972] 5 S.C 247 referred to [p. 122 para. B]".

Coming back to the present case, this very important issue had been raised before the court below, in the appellant's brief, under the heading: "Award of Relief Not Sought for by the Plaintiff" The court below, in its judgment, referred to the issue but avoided making any determination on it or resolving the issue one way or the other. An important procedural issue which is fundamental to fair trial should have been considered fully. Since it touches the jurisdiction of the trial court failure to consider it is a grievous error.

The respondent in the case in hand filed five separate claims against

Aermacchi SPA (as 1st defendant); Mario Maras and Glovanni Cataneo (as 2nd and 3rd defendants respectively) and Ministry of Defence represented by Attorney-General of the Federation (as 4th defendant and appellant in this appeal). The claim against the Ministry of Defence is for an injunction against payment of any sum of money to the 1st defendant without the said 1st defendant satisfying the claim of the respondent or giving security for such satisfaction. B

But as it is very clear from the facts, the respondent did not claim against the Ministry of Defence for an order to pay the respondent any amount due to 1st to 3rd defendant pending with the Ministry of Defence. The learned trial judge however instead of granting the relief claimed against the Ministry of Defence, gratuitously ordered the appellant to pay an unspecified amount of money to the respondent. It has been urged by the respondent's counsel that the trial court's order was a consequential order which flowed as a matter of course from the judgment made in favour of the respondent. Professor Kasunmu, SAN, argued very strongly that the order made by the learned judge was consequential to the judgment delivered against the 1st defendant. D E

I do not agree that the order of the learned trial judge is consequential to the judgment he delivered against the 1st defendant. A consequential order could only be made directing a party who participated in the proceedings before the court and was involved in the judgment to do certain things. You cannot make a consequential order directing a complete stranger to the proceedings and judgment to pay money in satisfaction with the enforcement of a judgment. If such an order is to be made the party being directed to comply with it must be given notice of it so as to have the opportunity to oppose it. The appellant, in this case, had no notice of the order directing him to pay money to the respondent. The order, in my view, is incompetent because the learned judge had no jurisdiction to make it. For a judgment or order to be valid against a party he must be aware of the relief claimed and be given the opportunity to resist it. See Obajimi v. Attorney-General Western Nigeria (supra). xxxxx F G H

For reasons I have disclosed above, Hunponu-Wusu J, had no jurisdiction to make the order directing the appellant to pay an unspecified amount of money to the respondent in satisfaction of the judgment entered against the 1st defendant. If the respondent is in need of enforcing the judgment delivered in its favour against Aermacchi SPA it should follow the proper procedure laid down for doing so. The Court of Appeal is therefore wrong to affirm the order made by Hunponu-Wusu J.

Th only issue which remains to be considered is the effect of the judgment of the Court of Laspezia, Italy, of 18th October, 1990 on the rights of the respondent as determined by the trial court on the 20th day of October, 1989. I agree with Chief Williams that the 1st, 2nd and 3rd defendants against whom the judgment of Lagos High Court was entered had not challenged, through an appeal, the validity of that judgment. Therefore, the decision still stands against them not withstanding the judgment of an Italian court which was given a year after the Nigerian judgment.

For the above reasons, this appeal succeeds and it is allowed. The judgment of the Court of Appeal affirming the order made by Hunponu-Wusu J, directing the appellant to pay some amount of money to the respondent is hereby set aside. I award costs of N1,000 in favour of the appellant at the court below and N10,000.00 in this court.

F —————

KARIBI-WHYTE JSC

I have read the leading judgment of my learned brother Uthman Mohammed, JSC in this appeal. I agree with his reasoning and conclusion allowing the appeal. I only wish to make my own contribution to the judgment.

Two issues are outstanding in the determination of this appeal. The first is whether a Court is entitled to grant to a party a relief not claimed in the litigation before it. The second is the scope of the consequential order which a court can make. The judgment of Humponu-Wusu J, calls into question the fundamental principle of contract whether a contract can be enforced against persons who are not parties to it. In

other words whether our law knows the principle of a jus quesito tertio.

The facts have been very comprehensively stated in the judgment of Uthman Mohammed JSC. I adopt the facts as reproduced and stated by him in their entirety.

The Claim

It is clear from the claim filed that A.I.C. Ltd is claiming from 1. Aermacchi SPA 2. Mario 3. Giovanni Cataneo, the declaration against the 1st Defendant, and alternatively against the second defendants and solely in the event that 1st Defendant is held not liable; the sum of \$8,194.300 US dollars or its equivalent in Nigerian Currency being Commission payable to Plaintiff under a subsisting exclusive representation agreement made between Plaintiff and 1st Defendant. Although the Ministry of Defence is not a defendant to the action, the second item of claim is against it and all other agents, officers or servants of the Federal Government. There is also an injunction against payment of any sum to the first defendant without the first defendant first satisfying the claim of the Plaintiff or giving security for such satisfaction.

The claim includes without limitation, cost of retaining non-Nigerian counsel, plus interest at 10% from the date of breach to the date of judgment.

It is convenient to start with the Motion of 20th May 1987, by the Plaintiff before the High Court seeking the following prayers.

"(i) directing the 1st, 2nd and 3rd defendants to file their defence to the above action within such time as the court may prescribed.

(ii) that judgment be entered against the 4th Defendant in default of his filing a statement of defence

(iii) in the alternative to (ii) directing the 4th Defendant to file his defence within such time as the Court may deem fit.

(iv) directing that a copy of this Order shall be served on Mr. G. O. K. Ajayi, SAN and that such service shall be deemed good and proper service on the 1st, 2nd and 3rd Defendants.

(v) directing that pending the trial and final determination of this action. The Federal Government, its servants and agents shall be restrained from paying or remitting or causing to be remitted and the 1st,

2nd and 3rd defendants by themselves or their servants or agents shall be restrained from receiving or accepting any sum or sums in excess of 10% of the total amount due and payable to the 1st defendants in respect of the sale of aircrafts and/or spare parts thereof and/or equipments ancillary thereto to the Federal Government under any contract for such sale."

On a ruling dated 22nd March, 1988, the learned Chief Judge granted the prayers in (i) (iii) (iv) and (v). He refused prayer (ii) which sought to enter judgment against the Hon. Attorney-General or for him to file his statement of defence. Following the ruling of the learned chief Judge, the Attorney-General did not file a statement of defence, but rather filed a counter affidavit, stating that it is not a party between Plaintiff and the 1st Defendant, and has no interest in the contract. It further averred that the 4th Defendant cannot file a meaningful defence before knowing the defence of the 1st defendant without the statement of defence of the 1st to 3rd Defendants. It denied that Plaintiff had any cause of action against the 4th Defendant, and asked that the 4th Defendant be struck out for misjoinder.

It seems obvious that in a subsequent motion by the Plaintiff before Humponu-Wusu J, on the 28th October, 1999 on an application for Judgment in default, by plaintiff he considered the last mentioned affidavit of the Appellant / 4th Defendant but made an order against the 4th Defendant to pay to plaintiff the sum due to the 1st-3rd Defendants pending with the Ministry of Defence in satisfaction of this judgment debt of US \$8,194,300 (or its equivalent in Nigerian Currency).

It is pertinent to observe that the liability of the 1st Defendant upon which the claim of the Plaintiff rests has neither been admitted nor determined. The Hon. Attorney-General's appeal against this decision to the Court of Appeal was dismissed. It would seem that the position taken by both Humponu-Wusu J, and the Court of Appeal was that the 4th Defendant having failed to file a statement of defence the Court was entitled to give judgment in default of defence. It is clear from the Writ of summons, that Appellant was not a defendant. The claim against the 1st-3rd Defendants did not include the Appellant, except that item (ii) of the Claim refers to the Ministry of Defence, and all other agents, Officers

or servants of the Federal Government. The Ministry of Defence incidentally is not a party to the action.

A careful study and comparison of the writ of summons and statement of claim with the order made by Humponu-Wusu J, discloses that the order had granted a relief not claimed by the plaintiff. Mr. Ayoade, B learned Counsel observing this defect submitted in his brief of argument that where a defendant defaults in giving notice of intention to defend, or does not appear at the trial to defend after pleadings, plaintiff still cannot obtain a relief not expressly claimed in the statement of claim. He relied on Tocan v. National Standard Investment Co. (1887) 56 L.T.. 165 and Faithful v. Wardley (1890) 43 Ch.D. 287. C

I cannot agree more with this well settled proposition of law, amply supported by several cases decided by this Court. See Ekpenyong & ors. v. Nyong & ors. (1975) 2 SC. 71 Obajimi v. A-G for Western Nigeria & ors. (1967) All NLR 33, Nalsa & Team Associates v. NNPC (1991) 8 NWLR 652. D

The proposition is similarly well settled that a judge has no power to make an order or grant a relief which has not been asked for by the plaintiff. The decisions of this Court cited clearly support this proposition which is based on the fundamental and elementary principle of adjudication, that a defendant must be given opportunity to answer the claim against him and if need be to resist it. E

Whether Respondent can sue Appellant on the Contract. F

The contract sued upon by the plaintiff is between the plaintiff and the 1st Defendant. The ministry of Defence is not a party, and the contract was not made on its behalf. There is no doubt Appellant is a stranger to the Contract - See Negbenebor v. Negbenebor (1971) 1 ALL NLR. G 210. The general principle of law of contract is that a contract affects only the parties to it, "and cannot be enforced by or against a person who is not a party even if the contract is made for his benefit; and purports to give him the right to sue or to make him liable upon it. The fact that a H person who is a stranger to the consideration of a contract stands in such near relationship to the party from whom the consideration does not entitle him to sue upon the Contract" - See 8 Halsbury's Laws of England

(3rd Ed.) p. 66 para. 110. See also Ikpeazu v. ACB Ltd. (1965) NMLR . 374, Negbenebor v. Negbenebor (1971) 1 ALL NLR 210, New India Assurance Co. v. Odubanjio (1971) (1) NCLR. 363. These cases have followed the House of Lords decision in Dunlop Pneumatic Tyre Co. v. Selfridge & Co. (1915) AC. 847 at 853, where Lord Haldane said,

"My Lord, in the law of England certain principles are fundamental. One is that only a person who is a party to a contract can sue on it. Our law knows nothing of a jus quaesitum tertio arising by way of contract. Such a right may be conferred by way of property, as for example, under a trust but it cannot be conferred on a stranger to a contract as a right to enforce the contract in personam."

Is the Order a Consequential Order.

Respondents do not dispute this above stated principles and the statement of the law. Their contention is that the Order of Humponu-Wusu J, to pay Respondent the sum in dispute was a consequential order which followed as a matter of course from the judgment in favour of the respondent. Reliance was placed on Akinbobola v. Plisson Fisko (1991) 1 NWLR. 270 Gbadamosi & ors. v. Alete (1993) NWLR. (Pt. 293) 113. Nnaemeka-Agu, JSC defined a consequential order in Akinbobola v. Plisson Fisko (supra) as follows -

"A consequential order is not one merely incidental to a decision but one necessarily flowing directly and naturally from and inevitably consequent upon it. It must be given effect to the judgment already given not by granting a fresh and unclaimed or unproved relief ..."

I agree entirely with this definition. The decision of Gbadamosi v. Alete (supra) fully discussed in the leading judgment covers the case and is properly applicable.

It is not easy to conceive of how the order of Humponu-Wusu J could be regarded as a consequential order vis-a-vis, the Respondent within Akinbobola v. Plisson Fisko (supra). The Ministry of Defence, a total stranger was at no stage a party to the proceedings. The judgment could have been properly made against the defendants stated in the Writ of summons and statement of claim. Again, it does not seem to me that the order of Humponu-Wusu J, against the Appellant could have been

incidental and necessary to the decision, since there was no claim against the Appellant. An order to be made against a party to a suit ought in accordance with the rules of natural justice be given fair hearing, and notice that an order was to be made against him. See Obajimi v. A.G. Western Nigeria (supra). The Appellant in this case had no jurisdiction to make the order, which is in consequence in-competent. As was held by this Court in Obajimi v. Att-Gen. Western Nigeria (supra). A judgment is only valid against a party who is aware of the relief claimed and was given an opportunity to resist it. This is not the situation in the appeal before us. I am of opinion that the order of Humponu-Wusu J against the Appellant directing Appellant to pay an unspecified amount of money to the Respondent in satisfaction of the judgment entered against the 1st defendant was made without jurisdiction. The Court of Appeal was wrong to have affirmed the order.

There is extant for consideration the effect of the judgment of the Court of Laspezia, Italy of the 18th October 1990, on the right of the Respondent as determined by the trial Court on the 20th day of October, 1989. Chief F.R.A. Williams SAN, had submitted and I agree with him, that the 1st, 2nd and 3rd Defendants having not challenged the judgment of the Lagos High Court of the 20th October, 1989, entered against them its validity remains undisputed. That decision therefore still stands, notwithstanding the subsequent judgment of an Italian Court given a year later denying liability.

For the reasons given above and the fuller reasoning in the leading judgment of Uthman Mohammed, JSC this appeal succeeds. The judgment of the Court below affirming the order made by Humponu-Wusu J, directing Appellant to pay some amount of money to the Respondent is hereby set aside. Costs of this appeal in the sum of N1,000 in the Court below and N10,000 in this Court is awarded to the Appellant.

WALI JSC

I have had the privilege of reading before now, a copy of the lead judgment of my learned brother Uthman Mohammed JSC, and I en-

tirely agree with his reasoning and conclusion for allowing the appeal. I adopt them as mine.

Having nothing more useful to add, I also allow the appeal, set aside the judgment of both the Court of Appeal and the trial court and adopt the order of costs made in the lead judgment.

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment of my learned brother Mohammed, JSC in this appeal. I entirely agree with it. There is nothing I can usefully add.

EJIWUNMI JSC

The judgment just delivered by my Lord Mohammed JSC, was read by me in its draft form. I agree entirely for the reasons given that the appeal is meritorious. But in upholding the appeal I will say this much. Except it is necessary so to do. I do not propose to touch upon the facts which have been reviewed adequately in the leading judgment.

It is evident from the facts and the argument presented before us in this appeal that the two main questions calling for determination is whether - (1) It was proper to award a relief not claimed, and (2) Whether in a claim based upon a contract, a person who is not a party to the contract could be adjudged liable upon a breach of the said contract.

With regard to the first question, Mr. Ayoade, learned counsel for the appellant is undoubtedly right when he argued that it is settled law that a plaintiff cannot obtain a relief not expressly claimed, and cited in support of that proposition. Tocan v National Standard Investment Co. (1887) 56 L.T. 165 and Faithful v Wardley (1890) 43 CL.D 287.

The following cases in our jurisdiction also give express support for that well settled principle. See Ekpeyong & Ors v. Nyong & Ors. (1975) 2 SC 71; Obajimi v. A.G. for Western Nigeria & Ors (1967) ALL NLR 33; Nalsa & Team Associates v NNPC (1991) 8 NWLR 652.

In the case in hand the respondent filed a motion before the High

Court seeking for the following prayers:-

"(i) Directing the 1st, 2nd & 3rd defendants to file their defence to the above action within such time as the court may prescribe.

(ii) That judgment be entered against the 4th defendant in default of his filing a statement of Defence. B

(iii) In the alternative to (ii) directing the 4th defendant to file his defence within such time as the Court may deem it.

(iv) Directing that a copy of this order shall be served on Mr. G. O. K. Ajayi, SAN, and that such service be deemed good and proper service on the 1st, 2nd and 3rd defendants. C

(v) Directing that, pending the trial and final determination of this action, the Federal Government its servants and agents shall be restrained from paying or remitting or causing to be remitted and the 1st, 2nd and 3rd defendants by themselves or their servants or agents shall be restrained from receiving or accepting any sum or sums in excess of 10% of the total amount due and payable to the 1st defendant in respect of the sale of aircrafts and/or spare parts thereof and/or equipments ancillary thereto to the Federal Government under any contract for such sale." D E

The learned Chief Judge of the High Court of Lagos State, who heard the motion granted prayers (i), (iii) and (v). The prayer (ii) by which plaintiff sought for judgment to be entered against the 4th Defendant, i.e. the Federal Attorney-General, appellant in this appeal was refused. Though the appellant did not file a Statement of Defence, a counter affidavit was filed. The germane paragraphs of the counter-affidavit are as follows:- F

"10. That the claim is based on an alleged breach of a written contract between the plaintiff and the 1st defendant to which the 4th defendant is not a party and has not played any part whatsoever in the making thereof, nor does the 4th defendant have any interest whatever in the contract. G

11. That S.N.C. Harris - Eze Esquire, learned counsel seized of the matter informed one and I verily believe it to be true that no meaningful defence can be filed by the 4th defendant without the statement of H

defence filed by the 1st to 3rd defendants to know the facts in dispute and allegations otherwise connecting the 4th defendant if any.

12. *That the plaintiff has no cause of action against the 4th defendant, who should be struck out of the suit for misjoinder."*

B The matter subsequently came before Humponu-Wusu J, who having considered the affidavit filed before him, in a considered ruling, made the following order against the appellant:-

C *"The 4th defendant is hereby ordered to pay to the plaintiff the amount due to the 1st to 3rd defendants pending with the said Ministry of Defence in satisfaction of this judgment debt of US Dollars \$8,194,300.00 (or its equivalent in Nigeria Currency)."*

The Attorney-General appealed against the decision to the Court of Appeal unsuccessfully. And has now further appealed to this Court.
D As I have observed above, a plaintiff cannot be awarded a relief that he has not specifically asked for. It is my respectful view that if the Court of Appeal had carefully examined the claim of the respondent it would have reached the conclusion that the plaintiff did not ask that the amount
E due to the 1st - 3rd defendant and pending with the Ministry of Defence be paid to him in satisfaction of the judgment debt of US Dollars \$8,194.300.00. As that order was wrongly made and wrongly affirmed by the Court below, it is hereby set aside.

F As it is also trite law that a person who is not a party to a contract, cannot be held bound by it, I must also resolve the second question against the respondent. In this respect it is apposite to refer to the classical statement of the law enshrined in the House of Lords decision in Dunlop Pneumatic Tyre Co. v. Selfridge & Co. (1915) A.C. 847 at 853
G where Lord Haldane said:-

*"My Lord, in the law of England certain principles are fundamental. One is that only a person who is a party to a contract can sue on it. Our law knows nothing of a Jus quaesitum tertio arising by way of
H contract. Such a right may be conferred by way of property, as for example, under a trust but it cannot be conferred on a stranger to a contract as a right to enforce the contract in personam."*

See also Ikpeazu v. ACB LTD (1965) NMLR 374; Negbenebor

v. Negbenebor (1971) 1 All NLR 210; New India Assurance Co v. Odubanjo (1971) NCLR 363, where in these cases, the decision in Dunlop v. Selfridges (supra), have been followed.

I will conclude by saying that the order against the appellant cannot also subsist on the ground that it is a consequential order. With B due respect the order made against the appellant stood on its own. It is not and cannot be regarded as a consequential order. See Akinbobola v. Plinson Fisko (1991) 1 NWLR 270, where Nnaemeka-Agu JSC defined a consequential order thus:-

"A consequential order is not one merely incidental to a decision C but one necessarily flowing directly and naturally from and inevitably consequent upon it. It must be given effect to the judgment already given not by granting a fresh and unclaimed or unproven relief

I will therefore for the above reasons and the fuller reasons given D in the leading judgment of my brother Mohammed JSC allow this appeal. I also award costs of N1000 in favour of the appellant at the Court below and N10,000.00 costs in this Court.

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