

SUPREME COURT OF NIGERIA
19TH JANUARY, 2001. SC. 43/2001
CORAM:- A. G. KARIBI-WHYTE, M. E. OGUNDARE,
S. U. ONU, O. ACHIKE, S. O. UWAIFO, JJSC.

BABATUNDE ADENUGA & 5 ORS APPELLANTS/RESPONDENTS
AND

1. J.K. ODUMERU & 6 ORS DEFENDANTS/RESPONDENTS
8. ASSOCIATION OF NATIONAL
ACCOUNTANTS OF NIGERIA DEFENDANT/APPELLANT

ACTIONS - *Claims - Departure from endorsed claim - Gives rise to new cause of action - For which the court's jurisdiction has not been invoked.*

ACTIONS - *Claims - Reliefs sought must be within the scope of the claim - As plaintiff is limited by his claim.*

APPEALS - *Cross appeal - Where respondents have not filed a cross appeal against co-respondents - They cannot support appellants' motion - As they lack standing in respect of reliefs sought.*

INJUNCTIONS - *Order of - When it will be made - Reason and condition for its grant.*

INJUNCTIONS - *Remedy - Is not available - In respect of issues not raised in the action - Or matters not directly related to the issues raised.*

CLAIMS - *Reliefs - Since they are not related to a claim before the court - Court is incompetent and has no jurisdiction to hear it.*

FACTS

All the parties to the litigation are members of the Association of National Accountants of Nigeria - A body corporate which is the 8th defendant. The 1st and 2nd defendants/respondents are the president

and vice president of the Association while the 4th, 5th, 6th and 7th defendants are members of the council and the 3rd. defendant is the treasurer of the Association. The plaintiffs complained that the council whose tenure had expired has failed or refused to hold an annual general meeting of the association and so denied members the opportunity to nominate fresh people to constitute a new council. Equally they contended that the tenure of the 1st - 3rd defendants had expired in 1998 and thus they ceased to be officers of the Association. However long after the expiration of their tenure, the 1st - 3rd defendants had organized a workshop and invited members of the Association to pay money to the Association .

Having failed to summon an extra ordinary general meeting of the Association due to frustrating tactics of 1st - 3rd defendants, the plaintiffs issued a writ of summons claiming a barrage of reliefs against the respondents. They had obtained an ex parte interim order against the 1st - 3rd defendants restraining them from parading themselves as officers of the Association and an Interlocutory order restraining them from summoning any meetings until the determination of the interlocutory injunction. The Court of Appeal allowed the appeal of the 1st - 3rd defendant against the order and the plaintiffs have appealed to the Supreme Court. However the 1st - 3rd & 8th defendants/respondents have raised a preliminary objection to the application of the plaintiffs which objection is now considered.

THE ISSUES involved concern matters of good and effective judicial administration of justice. The juridical basis whereby an ancillary relief not within the scope and purview of the claim before the court could be entertained and the nature of the equitable remedy of interlocutory injunction are matters raised in the determination of this application.

HELD: (Unanimously upholding the preliminary objection per lead judgment of **KARIBI-WHYTE JSC**).

Reliefs sought must be within the scope of the claim

1. It is settled law which does not require citation of decided cases that any application for relief subsequent to the claim before the Court shall

be within the purview and scope of the claim. This is because a Plaintiff is limited by his claim as expressed in his writ of summons and statement of claim. (p. 208 F)

Departure from endorsed claim

2. Any departure from the claim so endorsed and to make a new claim gives rise to a new cause of action in respect of which the jurisdiction of the court has not been invoked by the institution of an action. The jurisdiction of the court is determined by the claim of the Plaintiff. This is why any ancillary relief must fall within the scope of the claim in the substantive action. (p. 208 G)

Injunctions - Order of

3. The order for injunction is available to restrain the Defendant from the repetition or the continuance of the wrongful act or breach of contract complained of - See Egan v. Egan (1975) 2 All ER. 167. It is generally granted to protect a legal right which is in existence - See Union Beverages Ltd. v. Pepsicola International Ltd. & ors. (1994) 3 NWLR. 1 SC. This is with the object of keeping matters in status quo until the question at issue between the parties is determined - See Okafor v. Naife (1987) 4 NWLR. The Applicant must show that he has sufficient interest in the reliefs sought - See Abiodun Akerele v. Chief Obafemi Awolowo & anor. (1962) WNLR. 220, 224. (p. 209 F)

Injunctions - Remedy

4. Hence in an ancillary relief which the application subject matter of this preliminary objection, is, the relief must fall within the purview of the claim. This is because the remedy is for the protection of the claim, that is an injury which may be occasioned by the violation of Applicants right in respect of which he will not be adequately compensated in damages - See Daniel Ogonnaya & ors v. Adoplan Nigeria Ltd. (1993) 5 NWLR. 197.

The remedy is certainly not available to parties in respect of issues not raised in the action, or matters not directly related to the issues

raised - See Akibu & ors. v. Munirat Oduntan (1991) 2 NWLR. 1, at 10. The application by the Plaintiffs/Appellants seeking for injunctive orders is clearly not within the claim and not directly related to the claim. The application therefore cannot be for the protection of a right before the B Court, which may be violated, unless the application was granted. (210 A)

Reliefs - not related to a claim before the court

C 5. Furthermore, since the reliefs sought are not in respect of or directly related to a claim before the Court, the court is without competence and jurisdiction to hear it, since it is not in respect of a claim before it. - See Madukolu & ors. v. Nkemdilim & ors. (1962) 1 All NLR. 587. It is therefore in such a circumstance unnecessary to inquire into the existence of a legal right enabling the grant of the relief. (p. 210 E)

Appeals - Cross appeal

E 6. I agree with Mr. C. O. Akpamgbo, SAN, that the 4th - 7th Defendants who are Respondents in this appeal, and having not filed a cross-appeal, cannot be heard in support of the Plaintiff's Motion. They, having not made any claims against 1st - 3rd and 8th Defendants, lack standing in respect of the reliefs sought. (p. 210 F)

F **NOTABLE POINTS OF INTEREST**

ACHIKE JSC

1. Fresh points of law can only be raised with leave of court

G No doubt, as unyieldingly submitted by Mr. Ogundeyin of learned counsel, relying on Mobil Oil Nig. Ltd. V. FBIR (1977) 3 SC 53 that fresh points of law can be taken in the Supreme Court, but he went completely wide and out of tangent when he further pressed on us that such fresh points of law could be taken even without leave. That was unquestionably H bizarre. It is unacceptable. That was the basis of the pitfall of the submission of learned Plaintiffs' counsel. (p. 214 C)

2. Additional relief should be brought within scope of claim with leave

But the law is trite that the additional relief sought to be protected by the Plaintiff must first be brought within the purview of his claim with the leave of the court and not otherwise. The application of the Plaintiffs for injunctive orders runs foul of the above-stated time-honoured principle of law. I shall go further to state that the injunctive orders sought are not directly related to the claim. Clearly, this Court lacks jurisdiction and competence to entertain the reliefs sought by the Plaintiff in violation of established principles. (p. 214 E)

UWAIFO.JSC

3. Injunction sought must be within the scope of substantive proceeding

It is the law, for instance, that where any injunction is claimed, there is need for it to be on a subject-matter within the ambit, scope and effect of the substantive proceedings before the court. (p. 218 G)

4. No contempt of court where no subsisting court order is breached

As for prayer (d), the respondents are sought to be cited for contempt. But there is no subsisting order of the court which the respondents have breached. They have simply taken certain steps to hold a meeting at which some resolutions were taken on the basis that they have triumphed in the litigations they had been confronted with. They may at worst be taken to have commenced celebrations too early but they cannot be accused of contempt of court. (p. 219 D)

REPRESENTATION

C. O. Akpamgbo, Esq., SAN, (with him, Uche Nwokedi, John Eramah and Miss Rachel Ordu for 1st 3rd and 8th Respondent/Applicants.

Chief T. A. O. Ogundeyin (with M. Shuaibu for Plaintiffs/Appellants/ Respondents.

Mr. S. B. Monodipo for 4th - 7th Defendants/Respondents/applicants.

CASES REFERRED TO

Mobil Oil Nig Ltd v FBIR (1977) 3 SC 53

Ifegwu v Mgbakor (1990) 3 NWLR (Pt. 140) 588

Igbinigie v Yusuf (1993) 2 NWLR (Pt. 274) 206 at 219

Egan v Egan (1975) 2 All ER 167

Okafor v Naife (1987) 4 NWLR 613

Odumegwu Ojukwu, v Lagos State Government (1986) 3 NWLR 39

B Abiodun Akerele v Chief Obafemi Awolowo & anor (1962) WNLR 220

Daniel Ogbonnaya & Adoplan Nigeria Ltd (1993) 5 NWLR 197

Madukolu & ors v Nkemdilim & ors (1962) 1 All NLR 587

LEAD JUDGMENT BY KARIBI-WHYTE JSC

C On the 23 October, 2000, the Court unanimously upheld the preliminary objection to the hearing of Plaintiffs/Appellants' motion dated 30th August and filed on the 31st August, 2000. These are my reasons for the ruling.

D The preliminary objection is by the 1st - 3rd and 8th Defendants/Respondents to the application by the Plaintiffs/Appellants in this appeal seeking by motion on notice to the Defendants/Respondents dated 30th August and filed on 31/8/2000 praying the court for the following

E Orders-

(1) Restraining the 1st - 3rd defendants from

"(a) Taking any disciplinary action against any member of the Association pending the determination of the appeal in the Supreme Court

F (b) Calling or convening any meeting, Seminar, conferences of the Association.

(c) Passing, issuing any statements and/or resolution on behalf of the Association

G (d) An Order that the meeting of the 8th Defendant/Respondent summoned by the 1st - 3rd respondents in Jos. Plateau State on 27th July, 2000 and the resolutions purportedly passed at the said meeting is in contempt of this Honourable Court in that the act was done deliberately to render the eventual judgment of this Honourable Court nugatory should
H the appeal succeed."

The Motion is supported by an affidavit dated 31st August, 2000 filed the same day and sworn to by Babatunde Adenuga, the 1st Plaintiff. Babatunde Adenuga the 1st Plaintiff has sworn to a further affidavit dated

5th October, 2000 in support of the motion

In support of the Motion of the Plaintiffs dated 30/8/2000 and filed on 31/8/2000 reproduced above in this ruling, the 4th 5th and 6th and 7th Defendants/Respondents, have brought a Motion on their own behalf, praying this court for an order restraining the 1st 3rd Defendants B from.

(a) Taking any disciplinary action against any member of the Association pending the determination of the appeal in the Supreme court.

(b) Calling or convening any meeting, seminar, conferences of C the Association.

(c) Passing, issuing any statements and/or resolution on behalf of the Association.

And for such other orders as the Honourable Court may see fit D to make in the circumstances.

This Motion is supported by an affidavit of 18 paragraphs sworn to by Alhaji M.B.M. Mua'zu, the 6th Defendant/Respondent and dated 23rd August, 2000 and filed the same day. There is also a further and better affidavit of 14 paragraphs sworn to on the 28th August, 2000 by E Samuel Olumuyiwa Abayomi Sosanya, the 4th Defendant/Respondent and filed the same day. Attached to this affidavit is a document exhibit A, the Resolutions passed at the Special General Meeting of the Association of National Accountants of Nigeria on Thursday 27th July, 2000 at Pla- F teau Hotel, Jos.

On the 26th September, 2000, the 1st-3rd, 8th Defendants/Re- spondents, filed a motion raising a preliminary objection to the hearing and determination of the motion and striking out the Motion of the Plain- G tiffs/Appellants/Respondents and also of the 4th-7th Defendants/Respon- dents application dated 18/8/2000 but filed 23/8/2000 and all the accom- panying documents.

The following grounds were relied upon for the objection-

(a)(i) Against that of the Plaintiffs/Appellants/Respondents, that H the reliefs (a)(b)(c) and (d) now sought in this Court was not sought for in the trial Court nor pronounced upon by the trial Court nor was the same the subject matter of the appeal in the Court of Appeal now on

appeal to the Supreme Court.

(ii) That in respect of relief No.(d) the court does not grant an injunction in respect of a completed act.

(b) In respect of the application of the 4th-7th Defendants/
B Respondents

(i) That as a Defendant in the trial Court the latter did not file any cross-action, nor ask for any relief, in the trial Court or the Court of Appeal.

(ii) That as a Respondent who did not file a Respondent notice
C or cross-appeal, their primary duty is to support the judgment appealed against."

Applicants filed an affidavit of six paragraphs dated 26th Sept., 2000 sworn to by John Erameh in support of the motion. There is also
D the affidavit of Johnson Kolawole Odumeru, 1st Defendant/Respondent, of 12 paragraphs dated 26th September, 2000 in opposition to the motion of the Plaintiffs/Appellants/Applicants. On the same date Johnson Kolawole Odumeru, the 1st Defendant/Respondent swore to a 15 paragraph affi-
E davit in opposition to the Motion of the 4th to 7th Defendants/Respon- dents dated 23rd August, 2000 and filed the same day. On the 16th October, 2000, Johnson Kolawole Odumeru swore to a supplementary affidavit of 11 paragraphs which was filed the same day. All the affida-
F vits sworn to by Johnson Kolawole Odumeru, were sworn to on his own behalf and on behalf of the 2nd, 3rd and 8th Defendants/Respondents.

The position therefore in this application is that the 1st, 2nd, 3rd and 8th Defendants/Respondents, are the Applicants seeking to strike out the Motion of the Plaintiffs/Appellants/Applicants of the 30th August,
G 2000. There is also the Motion of the 4th-7th Defendants,, dated 18th and filed on the 23rd August, 2000, seeking to restrain the 1st-3rd De- fendants as per the orders set out above.

Mr. C. O. Akpamgbo, SAN, arguing the Preliminary objection
H on behalf of the 1st-3rd and 8th Defendants relied on the Motion filed by Defendants/Respondents on the 26th September, 2000. I have already set out the terms of the application and the grounds relied upon. Learned Senior Counsel relies on all the 7 paragraphs of the affidavit.

He submitted that the motion sought to be struck out savours of an injunctive relief and not for a stay of judgment. Learned Senior Counsel referred to the Statement of claim and to paragraph 13(a)-(f) namely the relief sought in the court of trial and submitted that the prayers now sought were not sought for in the courts below. In fact it was argued B they are not related or connected to the reliefs sought in the Courts below. It was contended that applicants have not disclosed any infringement of their rights or any attempt to do so.

Learned counsel submitted that injunction cannot be granted in C respect of a completed act.

In respect of the position of the 4th-7th Defendants, Mr. Akpamgbo, SAN, submitted that having been Defendants/Respondents in the Courts below, and had not cross- appealed, they cannot bring the motion. A defendant who has not counterclaimed can obtain an order D for interlocutory injunction if he can show a breach of his rights or that his right is likely to be breached. He cited and relied on Ifegwu v. Mgbakor (1990) 3 NWLR (Pt. 140) 588 Igbini v Yusuf (1993) 2 NWLR (Pt.274) 206 at p.219. We have been urged on the above submissions to uphold E the preliminary objection and strike out the Motion.

Opposing the application Mr. Ogundeyin, learned Counsel to the Plaintiffs/Appellants, who are the Respondents to this application submitted that the claims in the writ of summons and their prayers in the F Motion of the 30th August sought to be struck out were related. He referred to Order 8 r. 12 (3) R.S.C. 1985 as amended as enabling the grant of the prayers sought. Learned Counsel cited Mobil Oil (Nig.) Ltd. v. FBIR (1977) 3 SC. 53 in support of his submission that fresh points of law can be taken in the Supreme Court even without leave. G

On his part Mr. Monokpo who appeared for the 4th-7th Respondents but had filed a Motion on the same terms as Plaintiffs/Appellants, sought leave to withdraw their motion. The motion of the 4th-7th Respondents was accordingly struck out. H

It is relevant and pertinent for a clear elucidation of the argument of the Applicants to state briefly the history leading to this litigation and particularly the claim of the Plaintiffs against the Defendants which has

given rise to the action in the first instance. The background information will greatly assist in determining whether the prayers sought by the Plaintiffs fall within the scope of their claim in the action against the Defendants/Respondents/Applicants in this motion.

B The facts averred in Plaintiffs' statement of claim are that all the parties to this litigation are members of the Association of National Accountants of Nigeria, and the Association is a body corporate. The Plaintiffs are financial members of the Association. The 1st and 2nd Defendants are the President and Vice-President of the Association, which is C the 8th Defendant. The tenure of Office of the President and Vice-President appointed on the 27th June, 1996 for a two-year term expires on the 26th, June, 1998. The 3rd Defendant was appointed Treasurer on the 27th June, 1996. There is a Council of the 8th Defendant. The 4th, 5th, D 6th and 7th Defendants are some of the members of the Council, and have been sued for and on behalf of the entire Council. Plaintiffs have complained that the Council whose tenure expires on the 20th Jan., 1997 has failed or refused to hold an annual general meeting of the 8th Defendant Association, and accordingly denied members of the 8th Defendant E Association, the opportunity to nominate fresh people to constitute a new Council. The tenure of members of the present Council was to expire on the 19th January, 1997.

F The contention of Plaintiffs is that the tenure of 1st-3rd Defendant expired on June 26th, 1998, and that they had accordingly ceased to be officers of the 8th Defendant Association.

G Long after the expiration of the tenure of office of the 1st-3rd Defendants, they organised a Workshop on the 22nd July, 1998. At the instance of the 1st-3rd Defendants, members of the 8th Defendant Association had been invited on 14.10.1988 in an advertisement in the Guardian Newspapers to pay money to the Association. Plaintiffs say that they had made several attempts to summon an extra ordinary general meeting H of the 8th Defendant Association according to the laws of the Association to discuss the ultra vires and unlawful acts of the 1st-3rd Defendants and the nomination of new members of 8th Defendant Council, but the efforts have been frustrated by the 1st-7th Defendants.

Plaintiffs have therefore on the 15th December, 1998 issued a writ of summons claiming from the Defendants as follows-

(a) A Declaration that the tenure of the 1st-3rd Defendants as President, Vice-President and Treasurer respectively of the 8th Defendant expired by effluxion of time on 26th June, 1998. B

(b) A Declaration that the continued occupation of the 1st-3rd Defendants as President, Vice-President and Treasurer respectively of the 8th Defendant is illegal, null and void.

(c) An order of perpetual injunction restraining the 1st-3rd Defendants from parading themselves or purporting to act as Council Members of the 8th Defendant from the 27th day of June, 1998. C

(d) An order cancelling and declaring all acts, decisions and Programmes planned or purportedly carried out by the 1st-3rd Defendants as President, Vice-President and Treasurer from January, 1999 ultra vires and void. D

(e) An order that the 1st-3rd Defendant render an account of all income and expenditure of the 8th Defendant Association of National Accountants of Nigeria from 27th day of June, 1988 till the date they hand over the affairs of the Association. E

(f) A Declaration that the tenure of the Council of the 8th Defendant constituted at the Annual General Meeting of 29th January, 1994 expired on the 19th January, 1997 and Order appointing (7) Financial Members of the 8th Defendant as Interim Caretaker to conduct Annual General Meeting where a new Council will be constituted not later than (six) months from the date of the Order. F

It is relevant to point out that Plaintiffs/Appellants had obtained an ex parte interim order on the 18/12/98 restraining the 1st-3rd Respondents inter alia from parading themselves as President, Vice-President and Treasurer, respectively of the 8th Respondent. The application of the 1st-3rd Respondents to discharge the interim order was refused. The Court went on to grant an interlocutory order in favour of the Appellants H restraining the 1st-3rd Respondents from summoning any Meeting special or otherwise until the determination of the interlocutory injunction. Plaintiffs/Appellants filed and obtained an interlocutory injunction restrain-

ing the 1st-3rd Defendants from acting as and/or parading themselves as President, Vice President and Treasurer respectively of the 8th Defendant pending the determination of this suit.

The Court of Appeal allowed the appeal of the 1st-3rd Defendant against this interlocutory order on the 24th January, 2000. Plaintiffs have now appealed the judgment of the Court of Appeal. The situation now is that the parties are in the position in which they were at the filing of the writ of summons.

I have already set out the prayers in the Plaintiffs/Appellants Motion of the 30th August, 2000. I have also stated the claim of the Plaintiffs/Appellants against the 1st-3rd Defendants. The grounds relied upon by 1st-3rd Defendants in their motion to strike out the prayers is that the reliefs now sought are entirely new and were not sought in the trial Court and neither in the Court of Appeal. It is also contended that injunctions are not granted in respect of a completed act. On the other hand learned Counsel to the Plaintiffs/Appellants, the Respondents to this preliminary objection argue that their prayers are within their claim, and that in any event they are allowed by the rules to raise a fresh point even at this stage. The issues involved concern matters of good and effective judicial administration of justice. The juridical basis whereby an ancillary relief not within the scope and purview of the claim before the court could be entertained and the nature of the equitable remedy of interlocutory injunction are matters raised in the determination of this application.

It is settled law which does not require citation of decided cases that any application for relief subsequent to the claim before the Court shall be within the purview and scope of the claim. This is because a Plaintiff is limited by his claim as expressed in his writ of summons and statement of claim. Any departure from the claim so endorsed and to make a new claim gives rise to a new cause of action in respect of which the jurisdiction of the court has not been invoked by the institution of an action. The jurisdiction of the court is determined by the claim of the Plaintiff. This is why any ancillary relief must fall within the scope of the claim in the substantive action.

A careful study of the claim of the Plaintiffs/Appellants clearly discloses that the claim in the action was confined to determination of the tenure of the 1st-3rd Defendants; the illegality of their continuation, the injunction restraining them from parading themselves as members of the 8th Defendant Council. There are also orders cancelling the acts and decisions of 1st-3rd Defendants, and for them to render account of all income and expenditure of the 8th Defendant; and a declaration of the expiration of the tenure of the 8th Defendant Council and appointment of 7 member care taker Council within six Months. These were the specific claims in the writ of summons and statement of claim.

There seems to be no doubt that none of the prayers in the Motion of the Plaintiffs/Appellants dated 30th August, 2000 reproduced above falls within the purview of the claims outlined. Accordingly the reliefs sought in the prayers cannot be said to arise from or related to the claim before the Court. The purpose of the reliefs in the prayer is to ensure the maintenance of the claim pending the determination of the substantive action. Hence the relief must be related to the substantive claim which is the subject matter for determination before the Court.

The prayers sought in the Motion of the Plaintiffs/Appellants is an injunctive relief seeking to restrain the 1st-3rd Defendants in respect of the matters stated in the prayers. An injunctive relief is effected by way of an injunction. An injunction is an equitable order restraining the person to whom it is directed from doing the things specified in the order or requiring in exceptional situations the performance of a specified act. A claim for an injunction is a claim in equity.

The order for injunction is available to restrain the Defendant from the repetition or the continuance of the wrongful act or breach of contract complained of - See Egan v. Egan (1975) 2 All ER. 167. It is generally granted to protect a legal right which is in existence - See Union Beverages Ltd. v. Pepsicola International Ltd. & ors. (1994) 3 NWLR. 1 SC. This is with the object of keeping matters in status quo until the question at issue between the parties is determined - See Okafor v. Naife (1987) 4 NWLR. 613 Odumegwu Ojukwu, v. Lagos State Government (1986) 3 NWLR.

39. The Applicant must show that he has sufficient interest in the reliefs sought - See Abiodun Akerele v. Chief Obafemi Awolowo & anor. (1962) WNLR. 220, 224. Hence in an ancillary relief which the application subject matter of this preliminary objection, is, the relief must fall within the purview of the claim. This is because the remedy is for the protection of the claim, that is an injury which may be occasioned by the violation of Applicants right in respect of which he will not be adequately compensated in damages - See Daniel Ogbonnaya & ors v. Adoplan Nigeria Ltd. (1993) 5 NWLR. 197.

The remedy is certainly not available to parties in respect of issues not raised in the action, or matters not directly related to the issues raised - See Akibu & ors. v. Munirat Oduntan (1991) 2 NWLR. 1, at 10. The application by the Plaintiffs/Appellants seeking for injunctive orders is clearly not within the claim and not directly related to the claim. The application therefore cannot be for the protection of a right before the Court, which may be violated, unless the application was granted.

Furthermore, since the reliefs sought are not in respect of or directly related to a claim before the Court, the court is without competence and jurisdiction to hear it, since it is not in respect of a claim before it. - See Madukolu & ors. v. Nkemdilim & ors. (1962) 1 All NLR. 587. It is therefore in such a circumstance unnecessary to inquire into the existence of a legal right enabling the grant of the relief.

I agree with Mr. C. O. Akpamgbo, SAN, that the 4th-7th Defendants who are Respondents in this appeal, and having not filed a cross-appeal, cannot be heard in support of the Plaintiff's Motion. They, having not made any claims against 1st-3rd and 8th Defendants, lack standing in respect of the reliefs sought.

These above stated are the reasons why I upheld the preliminary objection by the 1st-3rd and 8th Defendants to the Motion of the Plaintiffs/Appellants dated 30th and filed 31st August, 2000, and struck out the motion with ₦1,000.00 costs to the 1st-3rd Defendants/Respondents.

OGUNDARE JSC

When the motions of the plaintiffs and the 4th to 7th defendants came before us for hearing on 23rd October, Mr. C. O. Akpamgbo SAN learned leading counsel for the 1st to 3rd and 8th Defendants/Respondents raised preliminary objections to the two motions. After hearing arguments of learned counsel for the parties I upheld the preliminary objections and struck out the two motions. I indicated then that I would give my reasons for so doing, today. B

I have had the privilege of a preview of the reasons given by my learned brother Karibi-Whyte JSC for also upholding the preliminary objections. I agree entirely with the reasons given by him which I hereby adopt as mine. C

ONU JSC

On the 23rd October, 2000 we unanimously upheld the preliminary objection to the hearing of the Plaintiffs' motion dated 30th August and filed on the 31st August, 2000. I then indicated that I would give my reasons today for so holding. D

I having before now been privileged to read in draft the leading Ruling of my learned brother Karibi-Whyte, JSC, I agree with his reasoning and conclusions that this preliminary objection be and is hereby upheld. I adopt the same as mine and I have nothing further to usefully contribute thereto. F

ACHIKE JSC

To the Plaintiffs'/Appellants' motion dated 30/8/2000, the 1-3rd and 8th Defendants/Respondents took objection to the hearing of the motion. We found favour with the objection and the same was sustained. My reason for my Ruling which I indicated would be given on 19/1/2001 is hereby delivered. G

The Plaintiffs'/Appellants' motion sought the following orders: H

(1) Restraining the 1st-3rd Defendants from

"(a) Taking any disciplinary action against any member of

the Association pending the determination of the appeal in the Supreme Court.

(b) Calling or convening any meeting, Seminar, Conferences of the Association.

B (c) Passing, issuing any statements and/or Resolution on behalf of the Association.

(d) An Order that the meeting of the 8th Defendant/Respondent summoned by the 1st-3rd Respondents in Jos, Plateau State on 27th July, 2000 and the Resolutions purportedly passed at the said meeting is in contempt of this Honourable Court in that the act was done deliberately to render the eventual judgment of this Honourable Court nugatory should the appeal succeed."

D The 4th & 5th and 6th & 7th Defendants/Respondents also supported the Plaintiffs motion of 30/8/2000 restraining the 1st-3rd Defendants from

(a) Taking any disciplinary action against any member of the Association pending the determination of the appeal in the Supreme Court.

E (b) Calling on convening any meeting, Seminar, Conferences of the Association.

(c) Passing, issuing any statements and/or resolution on behalf of the Association.

F And for such other orders as the Honourable Court may see fit to make in the circumstances.

G Mr. C. O. Akpamgbo, S.A.N., learned counsel to the 1st-3rd and 8th Defendants/Respondents filed a motion wherein he raised a preliminary objection to the hearing and determination of the two earlier mentioned motions on the following grounds of objection:

"(a)(i) Against that of the Plaintiffs/Appellants/ Respondents, that the reliefs (a)(b)(c) and (d) now sought in this Court was not sought for in the trial Court nor pronounced upon by the trial Court nor was the same the subject matter of the appeal in the Court of Appeal now on appeal to the Supreme Court.

(ii) That in respect of relief No.(d) the court does not grant an injunction in respect of a completed act.

(d) In respect of the application of the 4th - 7th Defendants/ Respondents.

(i) That as a Defendant in the trial Court the latter did not file any cross-action, nor ask for any relief, in the trial Court or the Court of Appeal. B

(ii) That as a respondent who did not file a respondent notice or cross-appeal, their primary duty is to support the judgment appealed against."

Mr. Akpamgbo, S. A. N., counsel to the 1st-3rd and 8th Defendants/Respondents further submitted that the reliefs sought in paragraph 13(a)-(f) of the Plaintiffs' Statement of Claim were different from the reliefs now sought by them and in fact unrelated to them. Again, it is counsel's submission that the motion sought to be struck out was not after all one predicated on a stay of execution of judgment but one for an injunctive reliefs. He also relied on all the other grounds set out in his motion paper on his preliminary objection. D C

Learned counsel, Mr Ogundeyin for the applicants in the main motion dated 3/8/2000 submitted that their motion related to the reliefs E set out in their writ of summons. In any event, counsel argued that fresh points of law can be taken in the Supreme Court at any time as of right and without leave of the Court.

Learned counsel for the applicants in the second motion, Mr F Monodipo, taking a tip from the Court, obtained our leave to withdraw his motion and the same was routinely struck out.

The resume of the contest between the parties, as may be gathered from the Plaintiffs' Statement of Claim is that both parties are all members of the 8th Defendant, i.e. Association of National Accountants of Nigeria, and the Plaintiffs contend that the tenure of office of 1st 2nd and 3rd Defendants who respectively are President, Vice President and Treasurer of the 8th Defendant had expired and yet they failed to hold an Annual General Meeting of the Association whereby a change among the officers of the Association could be brought about under the Constitution of the said Association. It is pertinent to point out that there are other processes between the parties in respect of the running of the 8th Defen- G H

dant, which I need not introduce in this Ruling.

Suffice it, however, to say that without going into the merits of the legal feud between the parties, but directing my attention strictly to the contest premised on the preliminary objection that I have perused the relevant documents placed before us. There is no gain saying the fact that the reliefs sought by the Plaintiffs which are objected to in this preliminary objection are clearly outside the ambit of their claim or reliefs sought in their Statement of Claim. No doubt the reliefs presently sought are beneficent to the proper running of the 8th Defendant. That notwithstanding, the rules of pleadings dictated by common sense and fair play make it imperative to limit the claims of a party to those set out in his or its writ of summons of Statement of Claim or those which are set out in their amended pleadings. No doubt, as unyieldingly submitted by Mr. Ogundeyin of learned counsel, relying on Mobil Oil Nig. Ltd. V. FBIR (1977) 3 SC 53 that fresh points of law can be taken in the Supreme Court, but he went completely wide and out of tangent when he further pressed on us that such fresh points of law could be taken even without leave. That was unquestionably bizarre. It is unacceptable. That was the basis of the pitfall of the submission of learned Plaintiffs' counsel.

It is enough to reiterate that Plaintiffs' claim as expressed in his writ of summons and the Statement of Claim was clearly narrower than Plaintiffs' reliefs that he sought to protect. But the law is trite that the additional relief sought to be protected by the Plaintiff must first be brought within the purview of his claim with the leave of the court and not otherwise. The application of the Plaintiffs for injunctive orders runs foul of the above-stated time-honoured principle of law. I shall go further to state that the injunctive orders sought are not directly related to the claim. Clearly, this Court lacks jurisdiction and competence to entertain the reliefs sought by the Plaintiff in violation of established principles.

I share the view of the learned Senior Counsel that the 4th-7th Defendants who are herein Respondents cannot file a motion to support the Plaintiffs' motion without having filed a cross-appeal nor made any claims against 1st-3 and 8th Defendants because they undoubtedly lack standing in relation to the reliefs sought.

These are my reasons for summarily upholding the preliminary objection on 23/10/2000.

UWAIFO JSC

On 23 October, 2000, I upheld the preliminary objection raised by Mr. C. O. Akpamgbo SAN on behalf of the 1st-3rd defendants/respondents to the motion for some injunctive orders and for contempt brought on behalf of the plaintiffs/appellants/applicants. I then said I would give my reasons today which I now state.

The plaintiffs/applicants are financial members of the Association of National Accountants of Nigeria (ANAN). The said ANAN is the 8th defendant/respondent, a body corporate with perpetual succession. It has a Council constituted to run for every three years as the highest and main decision making organ of the body corporate. The Council was last constituted on 29 January, 1994, and accordingly its tenure should have expired on 19 January, 1997. The 1st and 2nd defendants/respondents were appointed President and Vice President by the said Council on 27 June, 1996 for a two-year term which should have expired on 26 June, 1998. The 3rd defendants/respondent was appointed Treasurer on 27th June, 1996 to complete the three year tenure of one Chief F.A. Chinweze whose term should have expired with that of the President and Vice President but for his retirement at the mandatory age of 65 years. The 4th-7th defendant/srespondents are members of the Council whose term should have expired on 19 January, 1997.

The case of the plaintiffs/applicants in the substantive action is that the life of the Counsel constituted on 20 January, 1994 expired on 19 January, 1997 together with the tenure of the 4th-7th defendant/respondents; while the tenure of the 1st-3 defendants/respondents expired on 26 June, 1998. But the Council and its officials and members mentioned above continued as if their respective tenures had not ceased. As a result the plaintiffs/applicants on 15 December, 1998 filed a writ at the Lagos High Court in which they sought declarations that the continued occupation of the 1st-3rd defendants in their respective offices was illegal, null and void; an order restraining them from acting and another compelling

them to render the account of income and expenditure of ANAN; an order declaring all actions taken by the 1st-7th defendants as Council members on behalf of ANAN ultra vires and void. The final declaration sought was that the tenure of the Council constituted on 20 January, B 1994 expired on 19 January, 1997, and an order appointing seven financial members of ANAN as interim caretaker to conduct the next annual general meeting at which a new Council would be constituted within six months.

C While the 1st-3rd defendants contest the averments by the plaintiffs, the 4th-7th defendants wholly support them. In the meantime, the plaintiffs brought a motion on notice praying for the following orders:

D "1. AN ORDER of Interlocutory injunction restraining the 1st-3rd defendants from acting as and/or parading themselves as President, Vice President and Treasurer respectively of the 8th defendant pending the determination of this suit.

E 2. AN ORDER appointing the under-mentioned members of the 8th defendant and/or any such person(s) as may be nominated by the Court or by the parties and constituting them as a Caretaker Committee of the 8th defendant to manage run and administer its affairs pending the determination of this motion to wit:

F 1. Mr. J.M. Airewole, Director Finance and Supply Nigeria Airways Ltd, Ikeja, Lagos.

2. HENRY O. BAZIAKE, Bursar University of Benin Benin City, Edo State.

G 3. Mr G. O. ABIGHO, Senior Audit Manager-Computer NEPA Hdqts, Ijora, Lagos.

4. LABARAN YUNUSA DAMBATA G.M. Tawada Subsidiary, Nigeria Minting and Printing Co. Abuja.

5. MR. E.E. AGOM, Federal Airport Authority, Ikeja.

H 6. TUNJI ODEGBAMI, Chief Accountant World Courier Int. 12 Mobolaji Bank Anthony Way, Lagos.

7. B.L. OJO Managing Partner, Bolaji Ojo & Co., IB Shina Street, Fadeyi, Lagos:.....

3. AN ORDER directing the 1st-3rd defendants to hand-over all

the affairs of the 8th defendant to the Caretaker Committee who will convey an extra-ordinary General Meeting of the Association forthwith and conduct election of new principal officers of the Association within 3 months.

4. AN ORDER of Interlocutory Injunction restraining the 1st, B
2nd, 3rd 4th, 5th, 6th and 7th defendant from acting as and/or parading themselves as members of Council of the 8th defendant pending the hearing of this suit.

5. AN ORDER freezing all bank accounts of the 8th defendant C
Association pending the hearing and determination of the substantive suit.

6. AN ORDER freezing the accounts of the Nigerian College of Accountancy, Jos, Plateau State pending the hearing and determination of the substantive suit.

7. AN ORDER forbidding the Nigerian College of Accountancy, D
Jos Plateau State from collecting any money whether in cash or cheque pending the hearing and determination of the substantive suit."

In the end, the learned trial judge (Adebayo Manuwa, J) made the following orders virtually as sought for in the motion on 16 June, E
1999 pending the determination of the suit: (1) An interlocutory injunction restraining the 1st-3rd defendants from acting as and/or parading themselves as President, Vice President and Treasurer respectively of ANAN. (2) An order constituting a nine-member caretaker committee of F
ANAN, three each to be nominated by the plaintiffs, 1st-3rd defendants and 4th-7th defendants respectively. (3) The 1st-3rd defendants to hand over all the affairs and documents of ANAN to the caretaker committee who shall convene an extra-ordinary general meeting and conduct the election of new principal officers of ANAN within three Months. (4) An G
order of interlocutory injunction restraining the 1st-7th defendants from acting as and/or parading themselves as members of Council of ANAN. (5) An order freezing all bank account of ANAN. (6) An order freezing all bank account of the Nigerian College of Accountancy, Jos. (7) An H
order forbidding the Nigerian College of Accountancy, Jos from collecting any money whether in cash or cheque.

The appeal taken by the 1st-3rd defendants against the said or-

ders made by the trial court was successful. The Court of Appeal on 24 January, 2000 set the orders aside. The plaintiffs have appealed against the decision of the lower court which appeal is now pending in this court. They have, however, brought a motion on notice on 31 August, 2000 seeking to restrain the 1st-3rd defendants from: "(a) Taking any disciplinary action against any member of the Association pending the determination of the appeal in the Supreme Court. (b) Calling or convening any meeting, seminar, conferences of the Association. (c) Passing, issuing any statements and/or resolution on behalf of the Association." They further ask for "(d) An order that the meeting of the 8th defendant/respondent summoned by the 1st-3rd respondents in Jos Plateau State on 27th July, 2000 and the resolutions purportedly passed at the said meeting is in contempt of this Honourable Court in that the act was done deliberately to render the eventual judgment of this Honourable Court nugatory should the appeal succeed." The 4th-7th defendants filed a similar motion on 23 August, 2000 against the 1st-3rd defendants praying for identical (a), (b) and (c) recited above. But in the course of hearing the preliminary objection to the said motions by the 1st-3rd defendants, learned counsel for the 4th-7th defendants withdrew the 4th-7th defendant's motion.

The preliminary objection to the plaintiffs motion is to the effect, in the main, that the orders sought in prayers (a)-(c) are not founded on any of the reliefs sought in the substantive suit; and that in respect of prayers (d), there is no court order breached to attract contempt proceedings. There is no doubt in my mind that prayers (a) to (c) are not within the scope of the reliefs sought in the substantive claim before the court. It is the law, for instance, that where any injunction is claimed, there is need for it to be on a subject-matter within the ambit, scope and effect of the substantive proceedings before the court. This principle is derived from the views expressed by Winn, J, (and this has stood the test of time) in *Winstone v. Winstone* (1959) 3 All ER 580. The learned judge was in the course of submissions referred to a provision of the Supreme Court of Judicature (Consolidation) Act which says that "the High Court may grant...and injunction.....in all cases in which it ap-

pears..... convenient so to do." He then observed:

"In my view those words are to be construed and understood as limited to the granting of an injunction ancillary to and comprised with the scope of the substantive relief sought in the proceedings in which the application for the injunction is made. I find myself unable to accede to the cogent and helpful submissions of Mr. Hunter that, once any proceedings have been competently and effectively commenced, an injunction may be granted for relief on a subject-matter falling outside the ambit, scope and effect of the proceedings in which the injunction is sought."

I entirely endorse this observation as a correct statement of principle. The said prayers (a) - (c) sought by applicants do not, in my view, come within the ambit scope and effect of the present proceedings and therefore cannot be entertained.

As for prayer (d), the respondents are sought to be cited for contempt. But there is no subsisting order of the court which the respondents have breached. They have simply taken certain steps to hold a meeting at which some resolutions were taken on the basis that they have triumphed in the litigations they had been confronted with. They may at worst be taken to have commenced celebrations too early but they cannot be accused of contempt of court.

I agree with the reasons for judgment given by my learned brother Karibi-Whyte JSC which I had the privilege of reading in advance. For the reasons I have stated and, from hindsight, for the reasons given by Karibi-Whyte JSC, I upheld the preliminary objection on 23 October, 2000 to the plaintiffs/appellants/applicants' motion filed on 31st August, 2000, and struck out the said motion with ₦1,000.00 costs to the 1st-3rd defendants/respondents.