

SUPREME COURT OF NIGERIA
19TH FEBRUARY, 2001. SC. 109/1997
CORAM:- A. G. KARIBI-WHYTE, M. E. OGUNDARE,
E. O. OGWUEGBU, O. ACHIKE, S. O. UWAIFO, JJSC.

GABRIEL EMAIKWU ADAH APPELLANT
AND
JOHN OKOH ADAH RESPONDENT

***APPEALS** - Briefs - Argument in a brief - On issues not backed by the grounds of appeal - Will be discountenanced and struck out.*

***APPEALS** - Issues - Must be based on the grounds of appeal - Filed by the parties.*

FACTS

The appellant had applied in the High Court Otukpo, Benue state for an order of injunction restraining the respondent from acting or interfering with the performance of his duties or responsibilities as clan head of Ekenobi clan or from holding himself out or parading himself as the clan head of the said clan. The motion was supported by affidavits and necessary documents and the respondent filed his own counter affidavit.

The trial judge in his judgment found that there were some irreconcilable issues in the affidavits but went ahead to make the order of permanent injunction. The Respondent thereafter appealed to the Court of Appeal, who allowed the appeal on the ground that the present appellant had not established his right to the headship of the clan and so was not entitled to an order of injunction. The appellant has therefore appealed to the Supreme Court which determined the appeal based on procedural shoddiness.

HELD:- (Unanimously dismissing the appeal per lead judgment of **UWAIFO JSC**)

Appeals - Issues

1. It follows that not only was the issue not framed from the ground of

appeal, the argument canvassed can neither be reconciled with the said issue, nor be remotely related to the ground of appeal.

This appeal is largely decided on the procedural shoddiness I have pointed out. It is well-established that issues are formulated with a view to proffering arguments to meet them. In that effort, the complaints in the relevant grounds of appeal will of course be projected if the issues have been correctly identified. That is why it is necessary to argue issues which have been framed from grounds of appeal rather than the grounds of appeal themselves. But in order to have the desired results the issues formulated for the determination of an appeal must be based on the ground or grounds of appeal filed by the parties. (p. 498 G)

Appeals - Argument in a brief

2. In other words, the issues must encompass the grounds of appeal otherwise any argument in support of an issue not adequately backed by a ground or grounds of appeal will be discountenanced and struck out by the court. The authorities on this are legion, very clear and instructive: see *Kano State Urban Development Board v. Fanz Construction Co. Ltd* (1990) 4 NWLR (pt. 142) 1 at 48 – 4. (p. 499 B)

NOTABLE POINT OF INTEREST

UWAIFO JSC

1. Grounds and particulars of appeal should not contain arguments

I do not intend to concern myself with the validity of this ground of appeal because of the argumentative nature of the particulars in contravention of Order 8, r.2(3) of the Supreme Court Rules, 1985 (as amended). That rule clearly states that a notice of appeal shall set forth concisely and under distinct heads the grounds upon which the appellant intends to rely at the hearing of the appeal without any argument or narrative and shall be numbered consecutively. It is plain that neither a ground of appeal nor the particulars in support should contain any argument or narrative, otherwise its validity could be called into question. (p. 498 A)

REPRESENTATION

F. I. Agboroh Esq., with him O. S. Oweazim Esq. for the appellant
C. Eche Adah Esq., for the respondent.

CASES REFERRED TO

Ayanboye v Balogun (1990) 5 NWLR (Pt.151) 392

Momodu v Momoh (1991) 1 NWLR (Pt.169) 608

Idise v Williams International Ltd (1995) 1NWLR (Pt.370) 142

Omagbemi v Guinness Nig Ltd (1995) 2 NWLR (Pt.377) 258

Animashaun v University College Hospital (1996) 10 NWLR (Pt. 476) 65

Kala v Potiskum (1998) 3 NWLR (Pt.540) 1

STATUTE REFERRED TO

Supreme Court Rules, 1985 - Order 8, r.2(3)

LEAD JUDGMENT BY UWAIFO JSC

This case is fraught with surprising twists and turns which ought never to have occurred to bring it to the undeserved end it has come to. The appellant (as applicant) sought an injunctive relief in the High Court, Otukpo, Benue State in this form:

“An order of injunction restraining the respondent from acting or interfering in anyway however with the performance of the applicant’s duties/functions or responsibilities as the clan head of Ekenobi clan in Okpokwu Local Government Council or in anyway parading or holding himself out as the clan head of Ekenobi clan.”

This was by motion supported by affidavits and necessary documents. His claim is that as the head of Ai Ekenobi, one of the five clans that make up Ekenobi, he was selected the clan head of Ekenobi; the other clans being Ai Adoli, Ai Oko, Ai Ojogo and Ai Okete. On 25 September, 1989, the respondent, the clan head of Ai Adoli, contested the said clan headship with him and lost. By a letter dated 26 January, 1994, approval of the appointment as clan head was conveyed to the appellant by the Secretary, Idoma Area Traditional Council effective from December 1, 1993 on stipend of N5,000.00 per annum reference letter No.LGPCA/S/LAC/

18/T.I/268 of 13 December, 1993 from the office of the Director-General, Deputy Governor's Office.

The respondent was said however to parade himself as the clan head of Ekenobi by (1) bringing out the royal ancestral masquerade called *B Ekwunokwu*; (2) performing mass burial ceremonies known as *Ikwu* in other clans apart from his own; (3) settling land disputes; and (4) wearing the clan head's bead despite warning at the instance of His Royal Highness, the Och'Idoma II.

C In his affidavit in opposition, the respondent countered the claim that there are five clans in Ekenobi but said there are four sub-clans namely Ai'Adoli, Ai'Ekwo, Ai'Oko and Ai'Ojogo. He added that the appellant hailed from Ai Okete a sub-clan made up of settlers who, therefore, were not indigenes of Ekenobi. He further claimed that the traditional stool of Ekenobi clan was known as *Ogblegba Eke*, clan head, and that the post was available only to the male descendants of the four sub-clans mentioned above, in rotation among the sub-clans. He asserted that following the rotational arrangement he was on 21 September, 1989
D selected by the elders and kingmakers of Ekenobi and that he performed the necessary ceremonies to become the '*ancestral spirit*' of the Ekenobi clan. But when the appellant began to interfere with his office of Ekenobi clan head, aided by the then Chairman of the Idoma Traditional Council, E
F he (the respondent) instituted an action in the High Court in suit No.OHC/1/90 and hearing commenced. However, sometime in December, 1993, while the case was still pending, the Benue State Government approved a list of new clan heads in Idoma land. In the approved list, the appellant was made the clan head of Ai Ekwo Okete Clan while the respondent
G became the clan head of Ai Adoli Ogodum Clan. The letter No.OKP/LGA/TC/APPT.2/Vol.1 dated 27 January, 1994 from the Secretary Okpokwu Local Government Traditional Council, Okpoga, put the swearing-in ceremony of both appellant and respondent for 31 January, 1994
H at 10.30 a.m. in Och'Idoma's Palace, Otukpo. There were therefore these conflicting claims as to who was appointed to what position. The learned trial judge, E. Eko J., in his judgment given on 27 February, 1996, faced with the facts contested by the affidavits, observed as follows:

“There is some confusion about these appointments from the letters of appointment. The letter from the office of the Adenone conveying he appointments to the parties says that they were appointed as clan heads. Its source is letter No.LGPCA/5/LAC – 18/T.1/268 of 13th December, 1993 from the office of the Director-General, Deputy Governor’s Office. The same letter is the source of another letter from the Ochi’Idoma’s office in which the appointment conveyed to the Applicant is the village head of Ai Okete – Exhibit D in the Applicant’s affidavits. Is there any mischief? The Ochi’Idoma did the swearing in of the parties.”

The learned trial judge nevertheless went ahead to make the order of permanent injunction.

The respondent appealed against the order of injunction to the Court of Appeal and raised a number of issues. He became, naturally, the appellant before that Court and was so referred to in the judgment by Edozie JCA. In resolving the question who as between the parties was selected to succeed to the position of clan head of Ekenobi, the learned Justice observed and held as follows:

“Referring to the two kingmakers, the learned trial Judge on page 56 lines 2 to 15, remarked quite rightly in my view, as follows:

‘I believe that both were kingmakers on 25-9-89. However, that their names appeared on these two inconsistent documents is curious. None of the counsel in their rather loquacious and circumlocutous submissions saw anything wrong. This is inspite of the numerous affidavits they put on which suggest confusion and uncertainty on their parts. Exhibit E in the affidavit of the Applicant was put in as a refutal to Exhibit A in the counter-affidavit. Yet both sides did not see the need to ask the authors of the two documents to offer any explanation. If the two documents are true then Olah Ejembi and Ekedagba Oboa must be in some sort of gimmick. I doubt I believe one side is up to some tricks.’ (sic) In resolving the conflicting claims of the parties, the learned trial Judge adverted to two other documents annexed to the Respondent’s affidavits and on page 57 lines 4 to 16 said:

‘The Applicant has an edge over the Respondent. The Idoma Area

Traditional Council in a letter dated January 26, 1994 had conveyed to the Applicant the approval for his appointment as clan head of Ekenobi. That letter is Exhibit B in the Applicant's affidavit. There is also letter No. ITC 72/Vol.III/741 of January 4, 1995 addressed to the Adenone of the Okpokwu Local Government Traditional Council asking the addressee "to order Okpe Oche, the son of the late Chief of Ekenobi to surrender the traditional beads to Chief Gabriel Adah, the present clan head." The letter confirms the status quo in favour of the Applicant and also that he is the person recognised as the clan head of Ekenobi by the authorities.'

I am in agreement with the above finding. Exhibits B and C to the supporting affidavit preponderate in favour of the Respondent making Exhibit E to the further affidavit more authentic. The Appellant did not have documents to lend support to his claim. In paragraph 4 (xii) of the counter-affidavit, it was deposed as follows:

'That irked and aggrieved by the unlawful acts of the applicant and the Idoma Traditional Council which neither accepted nor refused the selection of the respondent, the respondent filed suit No.OHC/1/90 before this Honourable Court.'

This averment is an indication that the Appellant was not the one selected to succeed to the office of the clan head of Ekenobi. It is my view that there were sufficient materials before the learned Judge upon which he could and did resolve the conflict of affidavit evidence without a recourse to oral evidence.

One would have expected that this observation and finding constituted the basis of the legal right of the appellant upon which the injunction might be justified. But the learned Justice delved into other matters of questionable relevance, in the circumstances of the passage quoted above from his judgment, and then made a contrary observation thus:

"Exhibit G is a letter dated 24/6/68 written by the District Head of Edumoga to Ochi' Idoma. The concluding paragraph reads thus –

'I agree that this turn is for Ai Okete who have not been appointed whereas the four hamlet had led twice and should have three times before Ai Okete. No doubt Ai Adoli are the majority the richest and cheated

people in Ekenobi clan area if not they should not oppose this appointment. I therefore confirm the appointment of Ogwu Aba of Ai Okete and he should be recognised henceforth.'

I need hardly stress that this letter Exh. G dated 24/6/68 predates the Onu Chieftaincy panel of 1978 which after due investigation resolved the chieftaincy conflict by excluding the Ai Okete kindred from the ruling houses. Furthermore, it does not appear Exh. G was declaring what the custom of the people was. With respect, I am unable to agree with learned counsel to the Respondent that Exhibits F and G had established a modification of the customary law of the Ekenobi people as stated in Exhibit K. The sum total of all that I have been saying is that the Respondent had not proved that he is eligible to succeed to the headship of Ekenobi clan. An injunction is only available to protect an established legal right. If the substantive right has not been established an injunction cannot be granted ... It is on this score that I hold that the court below was in error to have made the order of injunction against the Appellant. This disposes of the appeal making the consideration of the remaining issues for determination unnecessary."

The appellant filed three grounds of appeal. Two of the grounds were abandoned. It is necessary to reproduce the only one remaining in order to compare it with the issue raised and canvassed. The ground of appeal reads:

"The learned Justices of the Court of Appeal, erred in law, when having held that the Applicant had not established a legal right, proceeded to dismiss the motion.

Particulars of error

- 1. Having held that the Chieftaincy panel of 1978 excluded the Ai Okete kindred from the ruling houses, it then means that the Appellant had no locus to institute the action in the first place.*
- 2. Since the Appellant had no locus to institute the action, the appropriate order would have been an order non-suiting the Appellant or at most striking out the action.*
- 3. If the Applicant had no legal right to institute the action, the Court had no jurisdiction to try it."*

I do not intend to concern myself with the validity of this ground of appeal because of the argumentative nature of the particulars in contravention of Order 8, r.2(3) of the Supreme Court Rules, 1985 (as amended). That rule clearly states that a notice of appeal shall set forth concisely and under distinct heads the grounds upon which the appellant intends to rely at the hearing of the appeal without any argument or narrative and shall be numbered consecutively. It is plain that neither a ground of appeal nor the particulars in support should contain any argument or narrative, otherwise its validity could be called into question. But the appellant purported to frame from that ground an issue for determination thus:

“Whether the Justices of the Court of Appeal were right in holding that the Appellant is not eligible to succeed to the Headship of Ekenobi clan.”

It is obvious that the ground of appeal complains that since the appellant was impliedly adjudged to have no locus standi to bring the action, the proper order would have been to non-suit him or strike out the suit and not to dismiss it. But the issue raised for determination postulates that the lower court was wrong upon the merit of the case to conclude that the appellant did not prove his eligibility to be made the head of Ekenobi clan. Even so, the argument in support runs from improper appraisal of the affidavit evidence to the effect of concurrent findings; from evidence of concession by the respondent that both he and the appellant contested for the headship of Ekenobi clan without his raising the issue of stranger element to the settled fact that the appellant was approved as sub-clan head of Ai Ekwo Okete within Ekenobi district by the Okpokwu Local Government Traditional Council; and from Onu Chieftaincy Panel to what can be accepted as the custom of the people of Ekenobi clan in respect of the case. It was simply a no-holds ramble. **It follows that not only was the issue not framed from the ground of appeal, the argument canvassed can neither be reconciled with the said issue, nor be remotely related to the ground of appeal.**

This appeal is largely decided on the procedural shoddiness I have pointed out. It is well-established that issues are formulated with a view to proffering arguments to meet them. In that effort,

the complaints in the relevant grounds of appeal will of course be projected if the issues have been correctly identified. That is why it is necessary to argue issues which have been framed from grounds of appeal rather than the grounds of appeal themselves. But in order to have the desired results the issues formulated for the determination of an appeal must be based on the ground or grounds of appeal filed by the parties. In other words, the issues must encompass the grounds of appeal otherwise any argument in support of an issue not adequately backed by a ground or grounds of appeal will be discountenanced and struck out by the court. The authorities on this are legion, very clear and instructive: see *Kano State Urban Development Board v. Fanz Construction Co. Ltd* (1990) 4 NWLR (pt. 142) 1 at 48 – 49; *Ayanboye v. Balogun* (1990) 5 NWLR (pt. 151) 392 at 404; *Momodu v. Momoh* (1991) 1 NWLR (pt.169) 608 at 621; *Idise v. Williams International Ltd.* (1995) 1 NWLR (pt 370) 142 at 150; *Cross River State Newspapers Corporation v Oni* (1995) 1 NWLR(pt. 371) 270 at 284-285; *Omagbemi Guinness(Nig.) Ltd.* (1995) 2 NWLR (pt. 377) 258 at 266-267; *Jallo Ltd v. Owoniboy Technical Services Ltd.* (1995) 4 NWLR (pt. 391) 534 at 547; *Animashaun v. University College Hospital* (1996) 10 NWLR (pt.476) 65 at 70; *Kala v. Potiskum* (1998) 3 NWLR (pt. 540) 1 at 10-11.

I have had to refer to the above numerous authorities to underscore the point that the principles of framing issues for determination in appeals have become so familiar through repeated statement and re-statement that no counsel who keeps abreast can have any real justification for acting patently in default. I must therefore strike out the lone issue raised and the argument canvassed by the appellant as they are not pertinent to the ground of appeal filed. In the result, the appeal fails and is dismissed with N10,000.00 costs to the respondent.

KARIBI-WHYTE JSC

I had the privilege of reading in draft the leading judgment just read in this appeal by my learned brother S. O. Uwaifo, JSC. I agree entirely with his reasoning and conclusion dismissing this appeal. I too will and hereby dismiss the appeal.

I abide by the costs ordered in the lead judgment.

OGUNDARE JSC

B I agree entirely with the judgment of my learned brother Uwaifo
JSC just delivered. I have no hesitation whatsoever in holding that the
lone issue formulated in the Appellant's brief does not arise out of the
grounds of appeal filed by him and as no issue has been raised based on
those grounds, the grounds are deemed abandoned. It follows that no
C argument has been advanced in support of the appeal. The appeal, there-
fore fails and it is equally dismissed by me too.

I abide by the order for costs made by my learned brother Uwaifo
JSC.

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OGWUEGBU JSC

E I have had the privilege of reading the draft of the judgment just
delivered by my learned brother Uwaifo, JSC and I agree with his rea-
soning and conclusions. I too would dismiss the appeal. I abide by the
order made by Uwaifo, JSC.

F

ACHIKE JSC

I have had the opportunity of reading in advance the leading judg-
ment of my learned brother, Uwaifo, JSC with which I am in agreement.
The short point under fire is the competency of the single issue proffered
G by the appellant as the issue for determination. The said issue for deter-
mination is incompetent, not being pertinent to the ground of appeal filed.
The result is that the appeal fails and the same is dismissed with N10,000
costs to the respondent.

H