

SUPREME COURT OF NIGERIA
13TH JULY, 2001. SC. 95/1994
CORAM:- E. O. OGWUEGBU, A. I. IGUH, A. I. KATSINA-ALU,
U. A. KALGO, A. O. EJIWUNMI, JJSC.

YEKINI A. ABBAS & 3 ORS.

(On behalf of themselves and as the PLAINTIFFS/APPELLANTS
Attorneys and Agents of Iposu

Family)

Substituted for:

A. R. MOGAJI & 3 ORS.

AND

OLATUNJI SOLOMON & 3 ORS DEFENDANTS/RESPONDENTS

CONTEMPT OF COURT - Civil contempt - Application for committal
- Procedure - Such an application must strictly comply with the provisions
set out in the Judgments (Enforcement) Rules (H 5)

CONTEMPT OF COURT - Civil contempt - Committal - Power to order
committal for civil contempt - Conditions for the exercise of the power (H
4)

CONTEMPT OF COURT - Civil contempt of court - What it means (H
1)

CONTEMPT OF COURT - Committal proceedings - Fair hearing -
Where the judgment debtors were not heard - The whole proceedings fell
short of the standard of fair hearing (H 8)

CONTEMPT OF COURT - Committal proceedings - Procedure to be
followed - Before an order to commit a judgment debtor to prison may be

2550 *Abbas v. Solomon* (2001) 7 KLR (pt. 126) 2549; (2001) 15 NWLR
made (H 7)

CONTEMPT OF COURT - *Committal proceedings - Requirement - Before committal proceedings are instituted - What the judgment creditor must do* (H 6)

CONTEMPT OF COURT - *Committal - Where any person refuses or neglects to comply with an order made against him - Other than for payment of money - The Court has ample jurisdiction to order that he be committed to prison* (H 3)

COURTS - *Fair hearing - Issue - Raised suo motu - The parties must be given an opportunity to be heard on the issue* (H 10)

COURTS - *Issue - Not placed before the Court - The court has no business dealing with it* (H 9)

JUDGMENTS - *Enforcement of - Unless otherwise stipulated by statute Judgment may be enforced by a writ of attachment or by committal* (H 2)

FACTS

The plaintiffs, for themselves and on behalf of the Iposu family had in suit NO. 1K/95/71, claimed against the defendants jointly and severally declaration of title to all that piece or parcel of land situate at Akesan in Epe, Lagos State, possession of the said land, general damages for trespass and perpetual injunction. At the conclusion of hearing, the plaintiffs' claim for declaration of title was dismissed. Their claim for possession also failed, while their claims for trespass and injunction were upheld by the court. The defendants appealed unsuccessfully to the Court of Appeal. Their further appeal to the Supreme Court was dismissed.

Thereafter, by a motion on Notice, the plaintiffs sought to commit the 1st, 3rd, 4th, 5th, 7th, and 8th defendants to prison for contempt of court for their alleged failure to obey the court's order of injunction in

the suit. The Plaintiffs in the affidavit in support of their application claimed that the defendants trespassed on the land in dispute by failing to quit the said land, that the defendants boasted that they would not vacate the land and that this was in contravention of the order of injunction made against them restraining them from further acts of trespass on the land.

The defendants filed a counter affidavit in which they described the averment that they trespassed on the Plaintiff's land as "untrue". They maintained that they merely remained in their respective houses and had not trespassed further on the land of the plaintiffs. They stressed that there was no order of court against them for recovery of possession of the land and that at all events the plaintiffs lost their claim for title to the said land. They further contended that the Ijebu Epe community in suit NO 1D/26/74 at the Lagos High Court sued the appellants for title and trespass to the same land upon which they were being asked to be held in contempt. At some stage in the proceedings, the parties went into negotiation for an amicable settlement of the matter. The proceedings were adjourned several times to enable the parties reach an agreement but to no avail, until on the 18th day of October, 1985 when the learned counsel for the plaintiffs, peremptorily applied for the committal of the defendants to prison for contempt of court.

The learned trial judge, following this application and without hearing the defendants or inviting them to show cause why they should not be committed to prison for contempt of court as stipulated by law, proceeded summarily to find them guilty of contempt of court and sentenced them to a term of 6 months imprisonment in the court of first instance. The Court of Appeal, Lagos Division allowed the appeal of the defendants and declared the entire committal proceedings a nullity. It further set aside the conviction and sentence of imprisonment passed on the defendants by the trial court and ordered that no committal proceedings should be brought against the said defendants in the present suit NO. 1K/95/71 during the pendency in court of suit NO 1D/26/74. The plaintiffs have now appealed to the Supreme Court raising 6 issues while the Defendants raised 3 issues but the appeal was determined on 3 issues

reformulated by the court.

ISSUES FOR DETERMINATION

"1. Whether or not considering the whole facts and circumstances of the case, the court below was in error in declaring the entire
B contempt proceedings a nullity.

2. Whether the order of the Court of Appeal that no committal proceedings should be made against the respondents in suit NO. IK/95/71 during the pendency in any court of suit NO. ID/26/74 was wrongly made.

C 3. Whether the Court of Appeal was right to have granted a relief not sought or covered by the respondents' Notice of Appeal without allowing both parties to address it on such a relief."

HELD (Unanimously dismissing the appeal per lead judgment of IGUH
D JSC

Civil Contempt - Meaning

1. There can be no doubt that it is a civil contempt of court to refuse or neglect to do an act required by a judgment or order of the court within
E the time specified in the judgment or order or within the time as abridged or provided for under the rules of court or to disobey a judgment or order requiring a person to abstain from doing a specified act or to act in breach of an undertaking given to the court by a person, on the faith of which
F the court sanctions a particular course of action or inaction. (p. 2565 F)

Judgments - Enforcement of

2. Accordingly, a judgment or order to do, or to abstain from any act, unless otherwise stipulated by the statute, may be enforced by a writ of
G attachment or by committal. (p. 2565 H)

Contempt - Court

H 3. Where, therefore, any person refuses or neglects to comply with an order made against him by a court of competent jurisdiction other than payment of money, the court has ample jurisdiction pursuant to the provision of section 72 of the said Sheriffs and Civil Process Act to order that he be committed to prison and detained in custody until he has purged

his contempt. (p. 2566 A)

Civil contempt - Committal

4. It must be stressed, however, that the power to order committal for civil contempt is one which must be exercised with great care. The court may only punish as a contempt, a breach of or disobedience to an order of court, or non-compliance with an undertaking, if it is satisfied that the terms of the order or injunction are clear and unambiguous. The court must also be satisfied that the defendant has proper notice of the terms of the judgment or order and that breach of the injunction has been proved beyond reasonable doubt. (p. 2566 C)

Civil contempt - Application for committal

5. The Judgments (Enforcement) Rules have prescribed the procedure to be adopted by a judgment creditor who is applying to have the judgment debtor committed to prison for the disobedience of court order or judgment. I need stress, however, that an application for such committal must strictly comply with the provisions set out in these rules. An application to commit for civil contempt is in the nature of a criminal charge and the rules relating to criminal charges are therefore applicable. See Comet Product U.K. Ltd. Hawkex Plastics Ltd. (1971) 2 Q.B. 67, (1971) 1 All E.R. 1141 C.A. (p. 2566 F)

Contempt - Committal proceedings

6. Before committal proceedings are instituted therefore, the judgment creditor shall ensure that the judgment debtor, if the order was made in his absence, is served with a copy of the order proposed to be enforced endorsed with a notice in the appropriate form, to wit, Form 48 informing the person on whom the copy is served that if he neglects to obey the order, he will be liable to be committed to prison to compel him to obey it. See Stockton Footfall Co. V. Gaston (1895) 1 Q.B. 453. Where, however, an order requires a person to abstain from doing an act, it would seem that the same may be enforced, notwithstanding that service of a duly endorsed copy of the order has not been served on the judg-

ment debtor if the court is satisfied, that pending such service, the person against whom enforcement is sought has had notice of the terms of the order either by being present when the order was made, See Husson v. Husson 1962 3 All E.R. 1056 or by being notified of the terms of the order. Such notice, however, must be proved beyond all reasonable doubt. (p. 2567 C)

Committal proceedings - Procedure to be followed

7. Where the judgment debtor still fails to obey the order after two clear days of service on him of the order and the notice, the judgment creditor may pursuant to the provisions of Order 9 Rule 13 (2) of the Judgments (Enforcement) Rules apply to the Registrar for the issuance of a notice in Form 49 for service on the judgment debtor for an order for the said judgment debtor to appear in court and to show cause why he should not be committed to prison for failure to obey the order. If on the hearing date, the judgment debtor appears, the court may hear him and if the court is satisfied that he has failed to obey the order and that he was duly served with a copy of the said order together with the prescribed notice, an order to commit him to prison may be made. (p. 2567 H)

Committal proceedings - Fair hearing

8. It is crystal clear from the record of proceedings that the main reason the learned trial Judge committed the respondents to prison for 6 months in the first instance is because of their failure to pay the monetary compensation demanded from them by the appellants. I think the court below was perfectly right by describing the procedure adopted by the learned trial Judge in the committal proceedings as bizarre and a travesty of justice. I am also in complete agreement with Court of Appeal that the complaint that the respondents were not heard and that the whole proceedings fell short of the standard of fair hearing are clearly justified and sustainable. (p. 2569 D)

Courts - Issue

9. It is a basic principle of law that when an issue is not placed before a

court of law, it has no business whatsoever to deal with it. See Florence Olusanya v. Olufemi Olusanya (1983) 3 S.C.41 at 56/57, Ochonma v. Unosi (1965) N.W.L.R. 321 at 323. (p. 2570 A)

Courts - Fair hearing

10. It is another basic principle of law that when a court raises a point suo motu, as the Court of Appeal did in the present case, the parties must be given an opportunity to be heard on the issue, particularly the party that may be adversely affected as a result of point raised suo motu and thus avoid any breach of the parties right to fair hearing. See Adegoke v. Adibi (1992) 5 N.W.L.R. (Part 242) 410 at 420. (p. 2570 C)

REPRESENTATION

O. A. Umasabor for the Appellants.

Mr. K. Olatunji with him, I. A. Yusuff for the Respondents.

CASES REFERRED TO

Kotoye v. C.B.N. (1989) 1 N.W.L.R. (Part 98) 419 at 444

Willson v. Raffalovich (1881) 7 Q.B.D. 553 AT 561 C.A.

Gay v. Hancock (1887) 56 L.T. 726

Re bramblevale Ltd. (1970) Ch. 128, (1969) 3 All E.R. 1062 C. A.

Knight v. Clifton (1971) Ch. 700

Comet Product U.K. Ltd. V. Hawkex Plastics ltd. (1971) 2 Q.B. 67, (1971) 1 All E.R. 1141 C.A.

Stockton Footfall Co. V. Gaston (1895) 1 Q.B. 453

Adegoke v. Adibi (1992) 5 N.W.L.R. (Part 242) 410 at 420

Odiase v. Agho (1972) 1 All N.L.R. (Part 1) 170

Ejowhomu v. Edok-Eter Mandilas Ltd.(1986)5 N.W.L.R.(Part 39) 1

Oje v. Babalole (1991) 4 N.W.L.R. (Part 185) 267 at 280

Florence Olusanya v. Olufemi Olusanya (1983) 3 S.C.41 at 56/57

Ochonma v. Unosi (1965) N.W.L.R. 321 at 323

STATUTE & RULES REFERRED TO

Sheriffs and Civil Process Act, Cap. 407 Laws of Lagos state of Nigeria, ss.72 and 94.

B Judgment (Enforcement) Rules, Cap 127, Laws of Lagos state, 1976; Ord 9 v.13.

LEAD JUDGMENT BY IGUH JSC

C This is an appeal against the judgment of the Court of Appeal,
Lagos Division delivered on the 31st day of July, 1990 wherein it allowed
the appeal of the defendants and declared the entire committal proceed-
ings before Ayorinde, J, as he then was, a nullity. The Court of Appeal
D further set aside the conviction and sentence of imprisonment passed on
the defendants by the trial Court and ordered that no committal proceed-
ings should be brought against the said defendant in the present suit NO.
IK/95/71 during the pendency in court of suit NO. 1D/26/74.

E The plaintiffs, for themselves and on behalf of the Iposu family,
had claimed against the defendants jointly and severally declaration of
title to all that piece or parcel of land situate at Akesan in Epe, Lagos
State, possession of the said land, N100.00 general damages for trespass
F and perpetual injunction. At the conclusion of hearing, the plaintiffs claim
for declaration of title to the land in dispute was dismissed by the Court.
Their claim for possession also failed and was struck out. With regard to
their claims for trespass and injunction, the learned trial Judge pronounced
thus:-

G "*.....From the foregoing, the Plaintiffs succeed in their claim
for trespass against all the Defendants including the 6th Defendant who
did not file a Statement of Defence nor give evidence at the hearing.
I award the sum of N10 as damages against each of the Defendants for
H trespass.*

*I also make an order of injunction restraining the Defendants, their ser-
vants or agents from further trespass on the land shown in Exhibit B and
marked RED."*

Dissatisfied with this decision of the trial court, the defendants lodged an appeal against the same to the Court of Appeal Lagos Division, which court in a unanimous decision on the 27th day of July, 1978 dismissed the appeal and affirmed the Judgment of the trial court. The defendants' further appeal to this court was on the 12th day of November, 1982 also dismissed and the decisions of the both the trial court and the Court of Appeal were affirmed. B

By a motion on notice dated the 21st day of June, 1983, the plaintiffs sought to commit the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th and 8th defendants to prison for contempt of court for their alleged failure to obey the court's order of injunction in the suit. The plaintiffs in the affidavit in support of their application claimed that the defendants trespassed on the land in dispute by failing to quit the said land, that the defendants boasted that they would not vacate the land and that this was in contravention of the order of injunction made against them restraining them from further acts of trespass on the land. C D

The defendants filed a counter affidavit in which they described the averment that they trespassed on the plaintiff's land as "*untrue*" They E maintained that they merely remained in their respective houses and had not trespassed further on the land of the plaintiffs. They stressed that there was no order of court against them for recovery of possession of the land and that at all events the plaintiffs lost their claim for title to the said land. F

At some stage in the proceedings, the parties went into negotiation for an amicable settlement of the matter. After failure to reach agreement, the proceedings were replaced on the cause list for hearing. On the 15th day of July, 1985 when the defendants appeared in court as ordered to show cause why an order for their committal should not be made, they were summarily ordered to be remanded in prison custody for contempt of court without an opportunity to show cause why they should not be committed to prison pursuant to the provisions of Order 9 Rule 13 of the Judgments (Enforcement) Rules, Cap 127, Laws of Lagos State, 1976. Further proceedings were thereafter adjourned to the 20th day of September, 1985 for hearing. G H

It would appear that the parties subsequently tried a settlement of the matter once more. The proceedings were adjourned a few times until on the 18th day of October, 1985 when the learned counsel for the plaintiffs, O. Afuye Esq. peremptorily applied for the committal of the defendants to prison for contempt of court. The learned trial Judge, following this application and without hearing the defendants or inviting them to show cause why they should not be committed to prison for contempt of court as stipulated by law, proceeded summarily to find them guilty of contempt of court and sentenced them to a term of 6 months imprisonment in the first instance. Said the learned trial Judge:-

"Court: I have carefully considered this matter, the more I delay or adjourn, the more confusion or bad blood would be created. The respondents (i.e. defendants) have failed to comply with the order of the court. I commit the 1st, 3rd, 4th and 8th defendants to prison for 6 months in the first instance for disobedience."

Aggrieved by this decision of the trial court, the affected defendants appealed against the same to the Court of Appeal, Lagos Division, which court on the 31st day of July, 1990 unanimously allowed the appeal. It declared:-

"With great respect to the learned Judge, the procedure adopted by him in the committal proceedings is bizarre and a travesty of justice. The complaint that the appellants were not heard and that the whole proceedings fell short of the standard of fair hearing are, in my view, justified."

The result is that the appeal of the appellants, 1st, 3rd, and 8th are hereby allowed. The sentence of imprisonment for six months imposed upon them by Ayorinde J. (as he then was) is hereby set aside.

The entire proceedings before Ayorinde J. relating to the committal of the appellants is declared a nullity. It is hereby ordered that no committal proceedings should be made against the defendants in Suit NO. 1K/95/71 during the pendency in any court of Suit NO. ID/26/74."

Dissatisfied with this decision of the Court of Appeal, the plaintiffs have appealed to this court. I shall hereinafter refer to the plaintiffs and the defendants as the appellants and respondents respectively.

Pursuant to the Rules of this Court, the parties filed and exchanged their written briefs of argument. In the appellants' brief of argument. The following six issues are set out as arising for determination in the appeal, namely:-

"1. Whether the Court of Appeal has the power or jurisdiction to make an order the effect of which is to suspend the execution of the Judgment or order of the High Court, affirmed by the Court of Appeal and which in turn on appeal was affirmed by the Judgment of the Supreme Court?" B

2. Can the Court of Appeal suspend the execution of a previous judgment or order of the Court of Appeal?" C

3. Can the Court of Appeal make an order suspending the execution of the judgment or order of the Supreme Court?"

4. Was the Court of Appeal justified in declaring the committal proceedings in the High Court a nullity on the ground that the complaints of the Respondents were not heard when both parties addressed the High Court on the issue before it delivered its ruling. D

5. Can the Court of Appeal make a relief not sought by the Respondents in the Notice of Appeal without allowing both parties to address it on such a relief?" E

6. Is the Court of Appeal competent to make findings on and give considerations to matters not argued before the lower Court?." F

The respondent, for their part, submitted three issues in their brief of argument for the resolution of this appeal. These are as follows:-

"1. Whether or not the Appellants' Appeal is competent.

2. Whether or not considering the whole facts and circumstances of this case the lower court was in error in declaring the entire contempt proceedings a nullity. G

3. Whether or not in the peculiar circumstances of this case, the order of the lower court that no committal proceedings should be made against the defendants in suit N0. IK/95/71 during the pendency in any court of suit N0. ID/26/74 was wrongly made." H

I have given a close consideration to the sets of issues identified in the respective briefs of argument of the parties. It seems to me that

having regard to the grounds of appeal filed, the following issues appear ample for my determination of this appeal. These are:-

"1. *Whether or not considering the whole facts and circumstances of the case, the court below was in error in declaring the entire contempt proceedings a nullity.*

2. *Whether the order of the Court of Appeal that no committal proceedings should be made against the respondents in suit NO. IK/95/71 during the pendency in any court of suit NO. ID/26/74 was wrongly made.*

3. *Whether the Court of Appeal was right to have granted a relief not sought or covered by the respondents' Notice of Appeal without allowing both parties to address it on such a relief."*

At the oral hearing of the appeal learned counsel for the parties adopted their respective briefs of argument. For the appellants, the contention was that courts of competent jurisdiction made an order for permanent injunction against the respondents which order the said respondents had disobeyed. It was submitted on their behalf that the respondents were in contempt of the order of the trial court as confirmed by both the Court of Appeal and the Supreme Court by failing to obey the said order which restrained them from further acts of trespass on the land. It was argued that the respondents on the 15th July, 1985 were remanded into prison custody after they had been given opportunity to purge their contempt by obeying the said order of injunction or settle with the appellants. The respondents were given adequate time to obey the said order of the court or defend themselves but they kept wasting the time of the court asking for adjournments instead of settling with the appellants. It was submitted that the trial court duly heard both parties before the learned trial Judge gave his ruling and committed the respondents to prison. Learned counsel for the appellants contended that there was nothing "bizarre" in the proceedings of the 18th October, 1985 before the trial court and that no travesty of justice was perpetuated by that court as found by the Court of Appeal. He pointed out that all the addresses of learned counsel and the ruling of the learned trial Judge were about compliance with the court's order of injunction or, alternatively, disobedience of the order. He claimed that it would appear the Court of

Appeal which ordered that no committal proceedings should be made against the respondents in suit NO. IK/95/71 during the pendency of suit NO. ID/26/74, an order not sought by the respondents, was more concerned with protecting the defiance of the order of the Supreme Court that the enforcement of the same. He referred to the decision in Kotoye v. C.B.N. (1989) 1 N.W.L.R. (Part 98) 419 at 444 and stated that the basic attributes of fair hearing include that the Court shall hear both sides, that equal treatment, opportunity and consideration should be given to all concerned, that the proceedings shall be held in public and that justice must not only be done but shall be seen to have been done. He submitted that the trial court strictly complied with all the above preconditions in the present proceedings. He therefore urged the court to allow this appeal.

Learned counsel for the respondents in reply submitted that no proper criminal charge as known to criminal law was either made or proved beyond reasonable doubt by the appellants before the respondents were deprived of their right to personal liberty by their conviction and sentence to 6 months imprisonment for the alleged disobedience of court order. He argued that no valid arraignment and trial of the respondents took place, nor were they given opportunity to defend themselves or show cause why they should not be committed to prison for contempt of court pursuant to the provisions of Order 9 Rule 13 of the Judgments (Enforcement) Rules. In particular, he argued that the appellants had no title decreed in their favour in respect of the land in dispute, that their claim for possession in the relevant suit NO. IK/95/71 was refused, that suit NO. ID/26/74 which was commenced against the appellants by a third party claiming radical title to the same land affected the competence of the committal proceedings instituted by the said appellants and that the procedure for initiating the contempt proceedings was not strictly followed as prescribed by law before the respondents were pronounced guilty and sentenced to 6 months imprisonment. He submitted that the respondents were made to serve the sentence imposed on them upon a purported trial that was in total breach of their constitutional right to fair hearing because they were not heard. Learned counsel stressed that no

where did counsel for either of the parties make any reference to Forms 48 or 49 under the relevant Order 9 Rule 13 of the Judgments (Enforcement) Rules. He submitted that all that transpired was whether or not the respondents had paid the monetary compensation demanded from them as dictated by the appellants and that nothing was said about any disobedience of the order of court which was the main application before the trial court. He submitted that the entire committal proceedings were total nullity and he urged the court to dismiss this appeal.

It is convenient to deal with issues 1 first. Thereafter, I propose to consider issues 2 and 3 together.

The main question raised under issue 1 is whether, as found by the court below, the trial court failed to comply with the basic procedure laid down by the law and the Rules in the committal proceedings leading to the conviction for contempt of court and the imposition of a sentence of six months' imprisonment on each of the respondents and whether, consequently, that court was in error by declaring the entire proceedings a nullity.

In resolving this issue, the Court of Appeal, per Ademola, J.C.A. observed thus:-

"The appellants (meaning the defendants) are victims of a cross-fire between two warring factions in Epe. The Epe Eko to which camp the respondents belong, and the ijebu Epe, who have inherited a later action in suit No. ID/26/74 against the respondents..... If they have to attorn to the respondents (meaning the plaintiffs) by way of settlement over this disputed land they are likely to incur the displeasure of the Ijebu Epe who are still waging a battle over the land against the respondents. So they are caught between the Devil and the deep Blue Sea."

The Court of Appeal next proceeded to examine the genesis of the proceedings and admirably summarised the same as follows:-

"For a determination of this matter, I have to look at the record before the matter got before Ayorinde J. I discovered that this matter was adjourned sine die before Agoro J. Who was first dealing with it on 10/12/84, pending the determination of the case filed by the Ijebu Epe community in suit NO. ID/26/74.

Somehow, the matter came before Ayorinde J. (as he then was) on the 8th day of July, 1985. Owing to some mix up, it was adjourned to the 15th day of July, 1985. On that day 1st, 3rd, 5th, 7th, 8th defendants were present with the 4th defendants absent but reported to be ill. Mr. Afuye represented the plaintiffs/respondents, while Mr. Ajijola represented all the defendants.

Mr. Ajijola was informed on the day that ruling had been delivered regarding the preliminary objection raised earlier to the procedure on behalf of the defendants. The court obliged Mr. Ajijola by reading the ruling, thereafter the court made an order to the following effect:-

"..... adjourned to 20/9/85, and the 5th defendants present is remanded into prison custody for contempt. I order the arrest and remand in prison custody of Saka Salami till 20/9/85.

*(Sgd) Ligali A. Ayorinde
Judge 15/7/85"*

It went on thus :-

"On the 20th September, 1985, the matter came before the learned trial Judge, Ayorinde J. (as he then was). It was adjourned to 18th October, 1985. On that day, 1st, 3rd, 5th, 7th, and 8th defendants were present and parties were represented by counsel. It was reported by Mr. Afuye, counsel for the respondents that the 5th and 7th defendants who were not represented or present have complied with the terms of settlement with the respondents. The court made an order releasing and discharging the 5th and 7th defendants.

In respect of the other defendants, i.e. 1st, 3rd and 8th defendants, learned counsel representing them informed the court that the proposal for settlement had not been finalised and that they should be given one more adjournment and that they needed about two weeks and that after this effort they would no longer be interested in representing the defendants.

After a few submissions by counsel on the question of adjournment, the court said:-

"Court: This morning it was announced that 5th and 7th respondents have complied and they have been discharged. But I see no

sign or hope that the others are willing to obey the order of the Supreme Court. It takes 2 to settle. I do not understand how a Respondent can force a plaintiff applicant to accept his terms of settlement. This matter must come to an end. The learned counsel for the 4th and 8th Defendants/Respondent is bent on seeing the matter settled in his own terms.

I have carefully considered this matter, the more I delay or adjourned the more confusion or bad blood would be created.

The respondents have failed to comply with the order of the court, I commit the 1st, 3rd, 4th and 8th Defendants to prison for 6 months in the first instance for disobedience. (Underlining mine for emphasis).

(SGD) L.A. AYORINDE

JUDGE 18-10-85"

It concluded by declaring the procedure adopted by the learned trial Judge in the committal proceedings as bizarre, a travesty of justice and consequently null and void.

I have given a most careful consideration to the decision of the Court of Appeal in this matter and confess that I can find no reason whatever to fault the same.

In the first place, Section 72 of the Sheriffs and Civil Process Act, Cap. 407, Laws of Lagos State of Nigeria pursuant to which the proceedings were brought provides as follows:-

"72. If any person refuses or neglects to comply with an order made against him, other than for payment of money, the court, instead of dealing with him as judgment debtor guilty of the misconduct defined in paragraph (f) of section 66 of this Act may, order that he be committed to prison and detained in custody until he has obeyed the order in all things are to be immediately performed and given such security as the court thinks fit to obey the other parts of the order, if any, at the future time thereby appointed, or in case of his no longer having the power to obey the order then until he has been imprisoned for such time or until he has paid such fine as the court directs."

In the second place, there are also the provisions of Order 9, Rule 13 of the Judgments (Enforcement) Rules made pursuant to section 94 of the Sheriffs and Civil Process Act which, without doubt, are rel-

evant and govern committal proceedings for contempt of court orders such as the one under consideration in the present appeal.

These provide as follows:-

"13 (1) When an order enforceable by committal under section 72 of the Act has been made the registrar shall, if the order was made in the absence of the judgment debtor and is for the delivery of goods without the option of paying their value or is in the nature of an injunction, at the time when the order is drawn up, and in any other case, on the application of the judgment creditor, issue a copy of the order endorsed with a notice in form 48, and the copy so endorsed shall be served on the judgment debtor in like manner as a judgment summons. B C

(2) If the judgment debtor fails to obey the order the registrar on the application of the judgment creditor shall issue a notice in Form 49 not less than two clear days after service of the endorsed copy of the order, and the notice shall be served on the judgment debtor in like manner as a judgment summons. D

(3) On the day named in the notice the court, on being satisfied that the judgment debtor has failed to obey the order and, if the judgment debtor does not appear:- E

(a) that the notice has been served on him; and

(b) if the order was made in his absence, that the endorsed copy thereof has also been served on him; may order that he be committed to prison and that a warrant of commitment may issue". F

There can be no doubt that it is a civil contempt of court to refuse or neglect to do an act required by a judgment or order of the court within the time specified in the judgment or order or within the time as abridged or provided for under the rules of court or to disobey a judgment or order requiring a person to abstain from doing a specified act or to act in breach of an undertaking given to the court by a person, on the faith of which the court sanctions a particular course of action or inaction. Accordingly, a judgment or order to do, or to abstain from any act, unless otherwise stipulated by the statute, may be enforced by a writ of attachment or by committal. G H

The commonest instances of such a judgment or order are orders for injunction, whether mandatory or prohibitory, interlocutory or permanent, specific performance and delivery of goods without an option.

Where, therefore, any person refuses or neglects to comply with an order made against him by a court of competent jurisdiction other than payment of money, the court has ample jurisdiction pursuant to the provision of section 72 of the said Sheriffs and Civil Process Act to order that he be committed to prison and detained in custody until he has purged his contempt.

It must be stressed, however, that the power to order committal for civil contempt is one which must be exercised with great care. See Willson v. Raffalovich (1881) 7 Q.B.D. 553 AT 561 C.A. and Gay v. Hancock (1887) 56 L.T. 726. The court may only punish as a contempt, a breach of or disobedience to an order of court, or non-compliance with an undertaking, if it is satisfied that the terms of the order or injunction are clear and unambiguous. See Iberian Trust Ltd V. Founders Trust and Investment Co. Ltd. (1932) 2 K.B. 887. The court must also be satisfied that the defendant has proper notice of the terms of the judgment or order and that breach of the injunction has been proved beyond reasonable doubt. See Re bramblevale Ltd. (1970) Ch. 128, (1969) 3 All E.R. 1062 C.A. and Knight v. Clifton (1971) Ch. 700.

The Judgments (Enforcement) Rules have prescribed the procedure to be adopted by a judgment creditor who is applying to have the judgment debtor committed to prison for the disobedience of court order or judgment. I need stress, however, that an application for such committal must strictly comply with the provisions set out in these rules. An application to commit for civil contempt is in the nature of a criminal charge and the rules relating to criminal charges are therefore applicable. See Comet Product U.K. Ltd. H V. Hawkex Plastics ltd. (1971) 2 Q.B. 67, (1971) 1 All E.R. 1141 C.A.

In the present case, the complaint against the respondent is disobedience of an order of injunction restraining them, their servants and agents from further trespass on the land in dispute shown verged red in

the appellants' plan, Exhibit B. As a general rule, no order of court requiring a person to do or abstain from doing any act may be enforced if such order was made in the absence of the judgment debtor, and is in the nature of an injunction, unless a copy of the order has been served personally on the person required to do or abstain from doing the act in question. Where such an order was made in the absence of the judgment debtor, the Registrar shall, at the time when the order is drawn up and on the application of the judgment creditor issue a copy of the order endorsed with a notice in Form 48 and such endorsed copy shall be served on the judgment debtor in like manner as a judgment summons. This general rule is fully reflected in the provisions of Order 9 Rule 13(1) of the Judgments (Enforcement) Rules. **Before committal proceedings are instituted therefore, the judgment creditor shall ensure that the judgment debtor, if the order was made in his absence, is served with a copy of the order proposed to be enforced endorsed with a notice in the appropriate form, to wit, Form 48 informing the person on whom the copy is served that if he neglects to obey the order, he will be liable to be committed to prison to compel him to obey it.** See Stockton Footfall Co. V. Gaston (1895) 1 Q.B. 453. Where, however, an order requires a person to abstain from doing an act, it would seem that the same may be enforced, notwithstanding that service of a duly endorsed copy of the order has not been served on the judgment debtor if the court is satisfied, that pending such service, the person against whom enforcement is sought has had notice of the terms of the order either by being present when the order was made, See Husson v. Husson 1962 3 All E.R. 1056 or by being notified of the terms of the order. Such notice, however, must be proved beyond all reasonable doubt. See Churchman v. Joint Shop Stewards' Committee of Workers of the Port of London (1972) 3 All E.R. 603 at 606.

Where the judgment debtor still fails to obey the order after two clear days of service on him of the order and the notice, the judgment creditor may pursuant to the provisions of Order 9 Rule 13 (2) of the Judgments (Enforcement) Rules apply to the Regis-

trar for the issuance of a notice in Form 49 for service on the judgment debtor for an order for the said judgment debtor to appear in court and to show cause why he should not be committed to prison for failure to obey the order. If on the hearing date, the judgment debtor appears, the court may hear him and if the court is satisfied that he has failed to obey the order and that he was duly served with a copy of the said order together with the prescribed notice, an order to commit him to prison may be made. Such are the rules surrounding and regulating proceedings in respect of committal to prison for disobedience of the judgment or order of court.

A close study of the record of proceedings in this case before Ayorinde, J, as he then was, does disclose that no where throughout the proceedings did learned counsel for either of the parties advert his mind to either Form 49 under the relevant Order 9, Rule 13 of the said Sheriffs (Enforcement) Rules, without which it would seem doubtful whether or not the proceedings are properly before the court or are otherwise incompetent thus rendering the proceedings incurably defective. Not even the trial court in any way considered whether or not the respondents were present in court when the order of injunction, the subject matter of the complaint, was made, whether the order was subsequently drawn up by the Registrar of Court, and whether a copy of the said order endorsed with a Notice in Form 48 was issued and duly served on the respondents in like manner as judgment summons or at all. There was no evidence and this was not addressed whether by learned counsel or considered by the trial court whether Form 49 was appropriately issued not less than two clear days after service of the endorsed copy of the order if at all it was served on the defendants in like manner as a judgment summons. As was pointed out by the court below, all that transpired before Ayorinde J. was whether or not the respondents appearing before the court had accepted and / or complied with the terms of settlements as dictated by the appellants. Nothing was said about any disobedience of the order of court which was the crux of the application before the trial court even though the respondents had in their counter-affidavit denied any contempt of the court order in issue. It was their case that the appellants'

claim against them for title to the land in issue was dismissed by the trial court, that the claim against them for possession of the land also failed and was stuck out and that the respondents were only restrained from further trespass on the land and not from living peacefully in their houses on the said land. The respondents further argued that the Ijebu Epe Community in suit No. ID/26/74 at the Lagos High Court sued the appellants for title and trespass to the same land upon which the respondents were being asked to be held in contempt. None of these issues was taken cognisance of by the learned trial Judge who at no time called upon the respondents to show cause why they should not be sent to prison for the alleged contempt of the order of the court. As the court below put it, and quite rightly in my view, all that the learned trial Judge was interested in was that the respondents should pay the monetary compensation demanded from them by the appellants if they must be let off the hook of the committal proceedings.

It is crystal clear from the record of proceedings that the main reason the learned trial Judge committed the respondents to prison for 6 months in the first instance is because of their failure to pay the monetary compensation demanded from them by the appellants. I think the court below was perfectly right by describing the procedure adopted by the learned trial Judge in the committal proceedings as bizarre and a travesty of justice. I am also in complete agreement with Court of Appeal that the complaint that the respondents were not heard and that the whole proceedings fell short of the standard of fair hearing are clearly justified and sustainable. Issue 1 must therefore be resolved against the appellants. I will now consider issues 2 and 3 together.

The central point raised under issues 2 and 3 is whether the Court of Appeal was right when it ordered that no committal proceedings should be made against the respondents during the pendency in any court of suit No. ID/26/94. For the appellants, it was submitted that no such relief was claimed by the respondents in their Notice of Appeal before the Court of Appeal and that, at all events, that issue was raised *suo motu* by the court below without giving the parties an opportunity to be heard on

the point. The respondents on the other hand, argued that the relief complained about is a consequential order which flowed directly and naturally from the decision of the court below in the appeal.

It is a basic principle of law that when an issue is not placed before a court of law, it has no business whatsoever to deal with it. See Florence Olusanya v. Olufemi Olusanya (1983) 3 S.C.41 at 56/57, Ochonma v. Unosi (1965) N.W.L.R. 321 at 323. It is plain in the present case that the issue of the competence of the Court of Appeal to order a stay or suspension of execution of a lawful order of High Court or indeed of any other superior court of record during the pendency of another case in another court never came into question before the Court of Appeal in the present case. In the second place, the issue was raised by the court below suo motu without hearing the parties thereupon. **It is another basic principle of law that when a court raises a point suo motu, as the Court of Appeal did in the present case, the parties must be given an opportunity to be heard on the issue, particularly the party that may be adversely affected as a result of point raised suo motu and thus avoid any breach of the parties right to fair hearing. See Adegoke v. Adibi (1992) 5 N.W.L.R. (Part 242) 410 at 420, Odiase v. Agho (19720 1 All N.L.R. (Part 1) 170, Ejowhomu v. Edok-Eter Mandilas Ltd. (1986) 5 N.W.L.R. (Part 39) 1, Oje v. Babalole (1991) 4 N.W.L.R. (Part 185) 267 at 280.**

In the present case, it cannot be disputed that the order of the Court of Appeal complained of is clearly grievous in nature, it was not an issue placed by parties before that court and it was raised suo motu by that court without giving an opportunity to learned counsel for the parties to be heard on the point. I think that the Court of Appeal, in these circumstances, was in error to have made the order complained of which clearly was gravely prejudicial to the interests of the appellants who were given no opportunity to be heard on the point before the order was made. Issues 2 and 3 must therefore be resolved against the respondents.

In the final result, the order of the court below that no committal proceedings should be made against the respondents in suit No. IK/95/71 during the pendency in any court of suit No. ID/26/ 74 is hereby set

aside. Subject thereto, this appeal is otherwise without substance and it is hereby dismissed with costs to the respondents against the appellants which I assess and fix at N10,000.00.

B

OGWUEGBU JSC

I have had the advantage of reading in advance the draft of the judgment just delivered by my learned brother Iguh, JSC and I find myself in agreement with him on the opinions expressed therein on the issues for determination in this appeal. I too dismiss the appeal and affirm the judgment of the court below excepting the order suspending committal proceedings against the defendants in Suit No. ID/26/74. That order is hereby set aside. I abide by the order as to costs contained in the leading judgment of my learned brother Iguh, JSC.

E

KATSINA-ALU JSC

My Lords, I have had the opportunity of reading in draft the judgment just delivered by my learned brother IGUH, JSC. In this appeal. I entirely agree with it, and for reasons which he gives I, too, would dismiss this appeal with N=10,000.00 cost to the respondents.

G

KALGO JSC

I have had the privilege of reading in advance the judgment just delivered by my learned brother Iguh JSC in this appeal and I am in full agreement with his reasoning and conclusions therein. He has painstakingly dealt with the issues which arose in the appeal and I have nothing useful to add thereto. I therefore agree with him that this appeal lacks merit in substance and it ought to be dismissed. I accordingly dismiss the appeal and award N10,000.00 costs to the respondents.

EJIWUNMI JSC

I have had the privilege of reading before now in its draft from the judgment just delivered by my learned brother Iguh JSC. Being satisfied that the facts germane to this appeal have been duly set down and the issues raised thereon carefully considered, I shall also dismiss this appeal for the reasons so given.

In the result, I adopt the judgment of my learned brother Iguh JSC, as my own, and dismiss the appeal accordingly. The respondents are awarded costs in the sum of N10,000.00.

D

E

F

G

H