

**SUPREME COURT OF NIGERIA**  
FRIDAY 3RD MAY, 2002. SC. 74/1993  
**CORAM:- U. MOHAMMED, A. I. IGUH, A. I. KATSINA-  
ALU, A. O. EJIWUNMI, E. O. AYOOLA, JJSC**

CARIBBEAN TRADING & FIDELITY  
CORPORATION ..... APPELLANT  
AND  
NIGERIAN NATIONAL  
PETROLEUM CORPORATION ..... RESPONDENT  
IN THE MATTER OF AWARD BY:  
1. I. B. M. HARUNA ESQ. ... ARBITRATORS/RESPONDENTS  
2. ADEGBOYEGA  
OGUNSANYA ESQ

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COURT PROCESSES - Service - Outside jurisdiction - Leave to issue  
- Lagos High Court Rules O.2 r.4 - Judge should consider the purpose of the rules - In granting or refusing leave - So as to avoid indulging in technicalities (H1)

COURT PROCESSES - Originating summons - Service outside jurisdiction - Validity - The issue of the summons was valid - Though without obtaining leave - Since there is an address for service within Nigeria (H2)

COURTS - Exercise of discretion - Correctness of - Service of process outside jurisdiction - Trial judge exercised discretion properly - By ordering the service - Though no leave was obtained before it was issued (H3)

**FACTS**

Before the Lagos High Court, respondent filed this action by way of originating summons whereby it sought to set aside an award made by arbitrators/respondents in favour of appellant. Appellant were served through Mr. Akinlolu. Thereafter, respondent brought an application for accelerated hearing of the originating summons. On the hearing day, one Mr. Olanihun claiming to be appearing for Mr. Akinlolu informed the court that Mr. Akinlolu was no longer agent

for respondent. The trial judge was of the view that although Mr. Akinlolu was duly served, the court could not force him to represent appellant. Hence, the court ordered a service out of jurisdiction on appellant.

Being dissatisfied, Mr. Olanihun filed a notice of preliminary objection that the originating summons was issued without leave of court as stipulated by Order 2 rule 4 of the High Court of Lagos State (Civil Procedure) Rules 1972. The court did not find merit in the objection and thus dismissed same. Aggrieved, appellant filed appeal at the Court of Appeal, Lagos division. The court dismissed the appeal which led appellant to appeal to Supreme Court.

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

*COURT PROCESSES - Service - Outside jurisdiction*

**1. In my judgment, to hold that notwithstanding that leave to serve an originating summons or process out of the jurisdiction has been granted before its service but after its issue, the service or issue of the summons becomes a nullity is to apply the rule mechanically without regard to its purpose. I venture to think that the test that should immediately occur to a judge called upon to grant leave to serve an originating process out of the jurisdiction after it has been issued but before service, or who is faced with a situation in which a grant of such leave subsequent to the issue of the process, but before service thereof, seemed necessary to meet the purpose of the rule is to ask: Had the facts now placed before me been placed before me before the process was issued, would I have granted leave to issue it? If the answer is "Yes", refusing to grant leave at that stage will be mere indulgence in technicality at the expense of substantial justice, particularly in this case where to set aside the originating summons would probably have shut out the respondent from pursuing its remedy by reason of limitation of time within which to apply to set aside the award.**

(p. 1178 C)

*Originating summons - Service outside jurisdiction - Validity*

**2. On the facts of this case I am of the same view as the trial judge and the court below that the originating summons which bore on its face an address for service within Nigeria was, prima facie, properly issued because on the face of it, it was not a summons to be served out of the jurisdiction.** (p. 1179 C)

*COURTS - Exercise of discretion - Correctness of*

**3. Upon the facts that subsequently emerged, that it was one to be served out of the jurisdiction, the trial judge exercised her discretion on the materials before her by making an order that it to be so served. That, in my opinion, was a fitting way to do substantial justice in the circumstances.** (p. 1179 D)

## NOTABLE POINTS OF INTEREST

### **AYOOLA JSC**

**1. Provisions of the rules of court concerning writ of summons may not apply to originating summons**

At the outset, it is expedient to say that consideration of this question is not an endorsement of the view held by the court below that the definition of “originating summons” as “every summons in a pending cause or matter”, by itself, makes provisions of the Rules concerning writ of summons applicable to “originating summons”. Order 1 r. 2 was only intended to distinguish originating summons from summons by which application is made in a pending cause or matter. Notwithstanding the undoubted distinction between a writ of summons and an originating summons, whether Order 2 r 4 should apply or not is no more an issue on this appeal since the arguments proceeded on the footing that leave should be obtained before issue of an originating process for service out of the Jurisdiction, although the route taken by the appellant to that conclusion was not through the definition of “originating summons” but by recourse to the English Rules of the Supreme Court. (p. 1175 E)

### **2. Purpose of s.12 High Court of Lagos Act**

In my opinion, Tobi, JCA., misconceived the purpose of section 12 when he conceived of its enactment as paying “loyalty to our colonial

past with such servility or servitude”, commented that: “After all, we are no more in slavery”, and, chastised its makers as going on a ‘borrowing spree’. Quite apart from the fact that borrowing from other legal systems has always been and continues to be a common form of legal change and development and that legal transplantation is not foreign to most legal systems, the purpose of section 12 is to provide against procedural incompleteness in our legal system between the period of its infancy and its full development. Nigeria does not cease to be Nigerian because it has chosen a particular mode for ensuring the procedural completeness of its legal system, just as Nigerian does not cease to be Nigerian by choosing the English language, in which, incidentally, the learned Justice had flawlessly expressed himself, as the language of official communication. Our legal system draws much of its strength from being part of a common law system having its roots in the past while remaining organic. Our efforts should be directed to how best to build on the legacy of that great system of laws rather than to a denigration of the past we have built on and are building on. (p. 1181 A)

**REPRESENTATION**

Chief (Mrs.) C. J. Aremu for the Respondent  
Appellant Absent

**CASES REFERRED TO**

Nwabueze & Anor v. Okoye (1988) 4 NWLR (Pt. 91) 666  
Laibru Ltd. v. Building and Civil Engineering Contractors (1962) 1 All NLR 387

**STATUTE & RULES REFERRED TO**

High Court of Lagos State Law, s. 12  
High Court of Lagos State Rules 1972, O. 1 r. 2, O. 2 r. 4  
English Rules of the Supreme Court, O. 2 r. 1, O. 6 r. 7, O. 7 r. 5

**BOOK REFERRED TO**

Halsbury’s Law of England (vol. 37) 4th Ed. para. 171

**LEAD JUDGMENT BY AYoola JSC**

The question which gave rise to this appeal came before the

High Court of Lagos State by way of preliminary objection to the originating summons issued at the instance of the respondent whereby the respondent sought to set aside an award made on 28th March, 1990 by the arbitrators/respondents in favour of the appellant which was, at all material times, a company resident in the United States of America. The substance of the preliminary objection was that the originating summons had been issued without the leave of the High Court as stipulated by Order 2 r. 4 of the High Court of Lagos State (Civil Procedure) Rules 1972 ("the Rules") which was then the applicable Rules. Those rules have now been replaced by the High Court of Lagos State (Civil Procedure) Rules 1994. B  
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However, reference in this judgment is to the 1972 Rules. Order 2 r 4 provided that:

*"Subject to the provisions of Part VII of the Sheriff and Civil Process Act, no writ of summons for service out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be issued without the leave of the Court or a Judge in Chambers."*

The Rules did not make similar provisions in regard to issue of originating summons. However, notwithstanding that there is a difference between a writ of summons and an originating summons, the court below held that Order 2 r. 4 applied to originating summons as it applied to writ of summons. The main question which arises in this appeal is whether having so held it should not have declared the originating summons issued, without leave, to commence the proceedings a nullity by reason of non-compliance with Order 2 r. 4. The circumstances in which that question arose are as follows: E  
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The originating summons in question was filed on the 26th June, 1990. The address for service of the appellant endorsed on it was: "c/o Mr. M. S. Akinlolu, 33 Kano Street, Ebute Metta." The matter came before the High Court first on 16th July, 1990. On 20th September, 1990 the respondent brought an application for accelerated hearing of the application. An affidavit of service placed before the High Court indicated that service had been effected on all parties on 20th September, 1990. The application for accelerated hearing was adjourned to be heard by the trial court on 27th September, 1990. On that day one Mr. Olanihun claiming to be appearing for Mr. Akinlolu informed the court that the arbitration proceedings in which Mr. Akinlolu had been counsel for the appellant having G  
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been concluded, Mr. Akinlolu was no longer agent for the respondent. The trial judge (Omotosho, J., as she then was) took the view, notwithstanding opposition by the respondent's counsel, that although Mr. Akinlolu was duly served, the court could not force him to represent the appellant. She thereon decided that the appellant be served  
 B out of the jurisdiction. She explained:

*"Right up to that stage, there was nothing to show on the face of the originating summons and the Motion for Accelerated hearing that service on the Respondent will be service outside the jurisdiction of this Court. It was after hearing all parties present on the issue of service duly acknowledged for and on behalf of Akinlolu for the Respondents, that the Court decided that it would serve the interest of justice that the Respondents, themselves be served and Akinlolu released from his obligations as agent since he claimed not to be an agent of the Respondents"*.  
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The application for accelerated hearing was then adjourned to 16th October, 1990. However, on 12th October, 1990 Mr. Olanihun filed a notice of preliminary objection:

*"That the originating summons was issued without leave of the court as stipulated by order 2 Rule 4 and in compliance with the Sheriffs and Civil Process Act and should be set aside."*  
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Ruling on the preliminary objection the trial judge recalled what she had stated in her ruling on the occasion when service out of the jurisdiction had been ordered as follows:  
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*"...because of the urgency attaching to the matter, the court shall dispense with the extra time it will take to bring a motion for service outside the jurisdiction and for substituted service. Instead I shall and I hereby make an order that the originating summons and all other processes in this case shall be served on the Respondent in the United States of America, a place outside the jurisdiction of this Court by Courier Service which will take about three or four days to reach the Respondents."*  
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Being of the view that the Court had power to order service out of the jurisdiction at any time depending on the circumstances of the case; that in the case in hand, the Court had on record sufficient material and affidavit evidence to justify an Order for service out of the jurisdiction; and, that Rule 14 gave the Court discretion to make order for service by Air mail, she dismissed the preliminary objection,  
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but not without considering other objections which are not material at this stage of the narration of the background facts.

The Court of Appeal (Kolawole, Tobi and Ubaezonu, JJCA) dismissed the appellant's appeal from that decision. Tobi, JCA, who delivered the leading judgment, with which Kolawole and Ubaezonu, JJCA, agreed, reasoned that since Order 1 r. 2 defined "*Originating summons*" as "*every summons other than a summons in a pending cause or matter*", the leave requirement in Order 2 r. 4 covered the issuance of originating summons. However, he held that the trial judge was right when she held that nothing was shown on the originating summons to indicate that it was for service outside the jurisdiction. He justified the address for service endorsed on the originating summons by the fact that Mr. Akinlolu acted for the appellant in the arbitration and that up to the time the originating summons was issued there was no notice to third parties, the respondent included, that his : "*professional or agency*" relationship had ceased. Tobi, JCA, considered some other incidental issues of substituted service, service by courier and the short return date set by the judge. Whatever importance these incidental issues may have assumed in the court below, they do not appear to me to be of much importance in this appeal, having regard to what I consider to be the decisive question, which is whether the originating summons was a nullity by reason of its being issued without leave.

At the outset, it is expedient to say that consideration of this question is not an endorsement of the view held by the court below that the definition of "*originating summons*" as "*every summons in a pending cause or matter*", by itself, makes provisions of the Rules concerning writ of summons applicable to "*originating summons*". Order 1 r 2 was only intended to distinguish originating summons from summons by which application is made in a pending cause or matter. Notwithstanding the undoubted distinction between a writ of summons and an originating summons, whether Order 2 r 4 should apply or not is no more an issue on this appeal since the arguments proceeded on the footing that leave should be obtained before issue of an originating process for service out of the jurisdiction, although the route taken by the appellant to that conclusion was not through the definition of "*originating summons*" but by recourse to the English Rules of the Supreme Court.

Proceeding on the footing that leave was a precondition to the issue of an originating summons, the primary question that the trial judge had set out to answer was whether the originating summons in this case was one *“for service out of the jurisdiction.”* The trial judge and the court below were of the view that on the face of it, it was not a process *“for service out of the jurisdiction.”* Following from this view was that its issue could not have been in contravention of Order 2 r 4 or any rule making the grant of leave a pre-condition to the issue of a process for service out of the jurisdiction. The trial judge and the court below reasoned that the respondent’s counsel who believed that the appellant had as its address for service within the jurisdiction the address of Mr. Akinlolu who had represented it in the arbitration proceedings, evidently, did not think that he needed any leave to serve the originating summons. It was thus not regarded as a case in which Mr. Akinlolu’s address was used as a ruse to avoid seeking leave to serve the appellant out of the jurisdiction.

Counsel for the appellant placed at the forefront of his submissions in this court enumeration of several misdirection of fact made by the court below, such as: that Mr. Akinlolu appeared in the High Court to argue a motion on behalf of the appellant on 27th September 1990, or counseled an affidavit to be sworn upon being served with the originating summons, or filed an affidavit. These, indeed, may have been instances of misdirection of fact in the court below, but they did not amount to much since they neither led to any finding that Mr. Akinlolu at any time accepted that he was the appellant’s agent for the purpose of accepting service of court process on its behalf, nor to any estoppel binding on the appellant, nor indeed, to any miscarriage of justice.

Counsel for the appellant, more importantly, put the appellant’s case thus: On the authority of *Nwabueze & Anor v. Okoye* (1988) 4 NWLR (Pt 91) 666 and *Laibru Ltd. v. Building and Civil Engineering Contractors* (1962) 1 All NLR 387, since the High Court of Lagos State (Civil Procedure) Rules were silent as to leave to issue an originating summons for service out of the jurisdiction there was a lacuna in the Rules which fell to be filled by recourse to practice and procedure of the High Court of Justice in England by virtue of section 12 of the High Court of Lagos State Law then applicable at the material time. Such recourse would lead to the English Rules of the Supreme



Court (RSC) Order 7 r. 5 and Order 6 r. 7. The same pre-condition which applied to the issue of writ of summons for service out of the jurisdiction applied to the issue of originating summons for service of originating summons out of the jurisdiction, except for instances specified in the English rules which should not be applicable in Nigeria. On the strength of Nwabueze's case (*supra*) the issue of a writ of summons and the service of the same on a defendant were conditions precedent for the exercise of a Court's jurisdiction over the defendants. There were no factual grounds and/or legal basis for the plaintiff to put the defendant's address care of Mr. Akinlolu. It is evident that since the court below held that leave was necessary to issue originating summons much of these arguments based on the case of Nwabueze (*supra*) and intended to establish that leave was needed became unnecessary.

In my opinion it makes for a better understanding and application of our rules to appreciate the *raisons d'être* which underlie their prescription. In this regard, the *raison d'être* of the rule that leave should be obtained before the issue of an originating summons to be served out of the jurisdiction of the court is well put in Halsbury's Laws of England [Vol. 37] (4th Edition) at para. 171 as follows:

*"Service out of the jurisdiction is recognized as the exercise by the English court of judicial power over a foreigner who owes no allegiance to the United Kingdom or over a person who is resident or domiciled out of the jurisdiction, but is nevertheless called upon to contest claims made against him in England and Wales. However, it is generally accepted that, in accordance with the comity of nations, each nation is entitled, in circumstances permitted by its own laws, to exercise judicial power over persons in other countries; but, of course, the exercise of such sovereign power by the issue and service of judicial process over persons in another country is prima facie an infringement of the sovereignty of the other country."*

*For these reasons, the plaintiff is not entitled, as of right, save for specified exceptions, to issue and serve judicial process out of the jurisdiction; he must first obtain the leave of the court to do so. In all cases, therefore, in which application for such leave is made, the court has two separate questions to decide sequentially, namely:*

- (1) whether the court has jurisdiction to grant such leave; and*
- (2) even if the court has such jurisdiction, whether as a mat-*

*ter of judicial discretion the court should grant or refuse such leave.”*

It is evident that the restriction on the plaintiff’s right to issue and serve judicial process out of the jurisdiction is to enable the court, an agency of the State, to decide whether it is a fitting case to exercise judicial power of the state over a person in another country to which its jurisdiction does not extend. When related to its purpose, the rule ceases to be a technical rule. Once the court has decided that it has jurisdiction to grant such leave whether it would grant it is a matter of discretion. Where the discretion to grant it has been exercised and the party has been served out of the jurisdiction of the court, he is nevertheless, at liberty to apply to the court which granted it to set aside the service upon a reconsideration of the exercise of its discretion.

***In my judgment, to hold that notwithstanding that leave to serve an originating summons or process out of the jurisdiction has been granted before its service but after its issue, the service or issue of the summons becomes a nullity is to apply the rule mechanically without regard to its purpose. I venture to think that the test that should immediately occur to a judge called upon to grant leave to serve an originating process out of the jurisdiction after it has been issued but before service, or who is faced with a situation in which a grant of such leave subsequent to the issue of the process, but before service thereof, seemed necessary to meet the purpose of the rule is to ask: Had the facts now placed before me been placed before me before the process was issued, would I have granted leave to issue it? If the answer is “Yes”, refusing to grant leave at that stage will be mere indulgence in technicality at the expense of substantial justice, particularly in this case where to set aside the originating summons would probably have shut out the respondent from pursuing its remedy by reason of limitation of time within which to apply to set aside the award.*** It is to be noted that where leave is sought before issue of a process the application is made to the court ex parte and the defendant may have the order for service set aside. Upon such application the court may be invited to reconsider its exercise of discretion.

In this case, there is no doubt that the trial judge exercised a discretion that she would have exercised had an application for leave

to serve the originating summons out of the jurisdiction been made before the summons was issued. Other than that she exercised the discretion after the summons had been issued, nothing has been urged to indicate that the discretion had not been properly exercised. The trial judge had said in her ruling:

*"In the case in hand, the Court has on record sufficient material and affidavit evidence to justify the grant of an Order for service out of the jurisdiction."* B

It has not been suggested that she did not have such material and affidavit before her.

***On the facts of this case I am of the same view as the trial judge and the court below that the originating summons which bore on its face an address for service within Nigeria was, prima facie, properly issued because on the face of it, it was not a summons to be served out of the jurisdiction. Upon the facts that subsequently emerged, that it was one to be served out of the jurisdiction, the trial judge exercised her discretion on the materials before her by making an order that it to be so served. That, in my opinion, was a fitting way to do substantial justice in the circumstances.*** C D E

The current trend is towards de-emphasizing the distinction between nullity and mere irregularity in cases of non-compliance with the requirement of rules of procedure, except in cases where such non-compliance is of a statutory requirement or is of a fundamental nature. In jurisdictions which have adopted the English Order 2 r 1 RSC that distinction has disappeared. Lagos State, as the decision in Laibru's case shows, was one of such jurisdictions until it enacted its own non-compliance rules in the 1994 Rules. It is in consonance with the trend towards substantial justice that it has been stated that: F G  
*"the failure to obtain leave to serve out of the jurisdiction was an irregularity which could be cured by the exercise of the court's discretion under O 2 r 1"* (RSC England) (See the Supreme Court Practice 1999 para 12/1/3.) It thus becomes a matter of the court's discretion whether or not to set aside such originating process irregularly issued. Nwabueze's case (supra) on which counsel for the appellant set so much store for a contrary view is distinguishable for several reasons among which is that in Nwabueze's case the writ of summons issued without leave was served whereas in this case the originating H

summons had not been served before the trial judge ordered that it be served out of the jurisdiction. Besides, I do not think that that case decided that non-compliance with the rules in the issue of an originating process was a nullity.

B There is the outstanding matter of the remark made by Tobi, JCA, as follows:

C *“English is English. Nigerian is Nigerian. The English are English. So also the Nigerians are Nigerians. Theirs are theirs. Ours are ours. Theirs are not ours. Ours are not theirs. We cannot therefore continue to ‘enjoy’ this ‘borrowing spree’ or ‘merry frolic’ at the detriment of our legal system. We cannot continue to pay loyalty to our colonial past with such servility or servitude. After all, we are no more in Slavery.”*

D Counsel for the appellant’s reaction to that remark was that the “lower court unreasonably and unnecessarily fanned the embers of Nationalism” and that the court below was “not invited nor admonished to interpret the provisions of Section 12 with a Nationalistic fervour but must and should be seen to interpret same with a sense of justice and within the purview of existing parameters.”

E Section 12 of the High Court of Lagos Act (Cap 80 Laws of the Federation and Lagos, (1958) provided that:

F *“The jurisdiction vested in the High Court shall, so far as practice and procedures are concerned, be exercised in the matter provided by this or any other Ordinance, or by such rules and orders of court as may be made pursuant to this or by any other Ordinance, and in the absence of any such provisions in substantial conformity with the practice and procedure for the time being of Her Majesty’s High Court of Justice in England.”*

G The ambit of the section had been considered by this court in Laibru Ltd. v. Building and Civil Engineering Contractors (1962) NSCC 260, 261. This court did not in that case find anything objectionable or offensive to the autonomy of our legal system in its provisions. Indeed, Tobi, JCA, did rightly appreciate and emphasize the purpose of the provisions of section 12 and the need not to apply them beyond what was provided in their terms. His descent into unnecessary rhetoric which had nothing to do with the interpretation of the section was what elicited the rather irreverent comment of counsel for the appellant.

In my opinion, Tobi, JCA., misconceived the purpose of section 12 when he conceived of its enactment as paying “loyalty to our colonial past with such servility or servitude”, commented that: “After all, we are no more in slavery”, and, chastised its makers as going on a ‘borrowing spree’. Quite apart from the fact that borrowing from other legal systems has always been and continues to be a common form of legal change and development and that legal transplantation is not foreign to most legal systems, the purpose of section 12 is to provide against procedural incompleteness in our legal system between the period of its infancy and its full development. Nigeria does not cease to be Nigerian because it has chosen a particular mode for ensuring the procedural completeness of its legal system, just as Nigerian does not cease to be Nigerian by choosing the English language, in which, incidentally, the learned Justice had flawlessly expressed himself, as the language of official communication. Our legal system draws much of its strength from being part of a common law system having its roots in the past while remaining organic. Our efforts should be directed to how best to build on the legacy of that great system of laws rather than to a denigration of the past we have built on and are building on. For my part, while this appeal will be dismissed, I do not endorse the view of the court below in the passage last quoted from Tobi, JCA’s judgment which will sentence our legal system to unnecessary parochialism.

Be that as it may, in my judgment this appeal lacks merit. In the result, I dismiss the appeal with N10,000.00 costs to respondent.

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### MOHAMMED JSC

I have had the advantage of reading in draft the opinion of my learned brother, Ayoola, JSC, and I entirely agree with him that this appeal ought to be dismissed. I agree with the observation of my Lord Ayoola on the remarks made by Niki Tobi, JCA, in his judgment when he criticized the enactment of Section 12 of the High Court of Lagos Act (Cap 80) Laws of the Federation and Lagos 1958. To say that the enactment is “loyalty to our colonial past with such servility or servitude” and to comment further “after all, we are no more in slavery” is in my respectful view, nothing short of playing to the gallery. In writing judgment judges should express their opinion to de-

note the reason which they give for their decisions and no more. Lord Denning in his book *“The Family Story”* at page 216 wrote about judges and said;

“Judges do not speak, as do actors, to please. They do not speak as do advocates, to persuade. They do not speak, as do historians, to recount the past. They speak to give judgment. And in their judgments you will find passages which are worthy to rank with the greatest literature which England holds”.

The appeal is dismissed. I also award N10,000.00 costs in favour of the respondent.

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### **IGUH JSC**

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Ayoola, JSC, and I agree that this appeal is without substance and ought to be dismissed.

For the reasons he has given in the said judgment with which I agree, I, too, dismiss this appeal with N10,000.00 costs to the respondent against the appellant.

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### **KATSINA-ALU JSC**

I have had the advantage of reading in draft the judgment of my learned brother AYOOOLA JSC., just delivered. I entirely agree with it. And for the reasons he gives I also dismiss the appeal with costs as awarded.

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### **EJIWUNMI JSC**

I have had the privilege of reading before now the draft of the judgment just delivered by my learned brother, Ayoola JSC., in respect of this appeal. It is manifest from the said judgment that he had properly considered the issues raised in the appeal before concluding that the appeal is devoid of any merit. This appeal is also dismissed by me for the reasons given by Ayoola JSC in his judgment.

I would also describe to the observation in the said judgment with regard to that part of the judgment of the Court below where in the course of considering Section 12 of the High Court of Lagos Act,

Cap 80 (1980) Niki Tobi, JCA said thus:

*“English is English. Nigerian is Nigerian. The English are English. So also the Nigerians are Nigerians. Theirs are theirs. Ours are ours. Theirs are not ours. Ours are not theirs. We cannot therefore continue to ‘enjoy’ this ‘borrowing spree’ or ‘merry frolic’ at the detriment of our legal system. We cannot continue to pay loyalty to our colonial past with such servility or servitude. After all, we are no more in slavery”*

It is my humble view to say that the reference to Section 12 of the High Court of Lagos Act, Cap 80 (1980) is a total misconception of the reasons that led to the enactment of the provisions. Obviously, at the time it was enacted, it was clear that then the corpus of our procedural law did not cover all situations that might arise in the course of prosecuting an action. Hence, it was thought desirable that there should be a fall back position should the need arise. It is in my humble view unnecessary to berate the people who diligently and faithfully provided such a legacy of law and judicial administration in the country. We should acknowledge what we have inherited and pursue means by which our judicial system would be in accord with other jurisdictions that are acknowledged leaders in their justice delivery system.

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