

SUPREME COURT OF NIGERIA
FRIDAY 12TH DECEMBER, 2003. SC. 96/1998
**CORAM:- M. L. UWAIS CJN, S. U. ONU, A. I. KATSINA-
ALU, D. O. EDOZIE, I. C. PATS-ACHOLONU, JJSC**

ALHAJI BANI GAA BUDO NUHU APPELLANT
AND
ALHAJI ISHOLA ARE OGELE RESPONDENT

JUDGMENTS - Final judgment - Meaning - Any judgment that has the effect of declaring to the parties - The state of affairs on the matter in dispute - Such that there is no further reference to it - Is final judgment (H1)

APPEALS - Grounds - Vagueness of - Meaning - When a ground is framed in a language - Which lacks elegance necessary to make it understandable - It is said to be vague (H2)

APPEALS - Cross appeal - Non-consideration - Where the result of main appeal - Has effectively nullified the judgment of trial court - Cross appeal becomes of no moment (H3)

COURTS - Records of proceedings - Presumption of genuineness - The presumption is not absolute - As it can be rebutted by facts which show - That it does not represent the true state of affairs (H4)

CONSTITUTIONAL LAW - Constitution - Supremacy of - Constitutional provision has general application - And any law inconsistent with it - Is null and void to the extent of the inconsistency (H5)

COURTS - Proceedings - Sitting in camera - Constitutionality - Under the 1979 constitution - Except where there was express permission to do so - Such sitting was unconstitutional (H6)

FACTS

Plaintiff/appellant sued defendant/respondent in the Upper Area Court Ilorin claiming ownership of the land in dispute. At the end of trial, the trial court gave judgment to appellant as per his claim. Ag-

grieved, respondent appealed to the High Court of Kwara State Ilorin. The notice of appeal originally contained 8 grounds of appeal but was subsequently amended to include a 9th ground which ground complained that the trial court committed a fatal error when it gave its judgment in chambers instead of doing so in the open court. After the amendment, respondent applied to argue only the 9th ground. The application was opposed by appellant. The court however over-ruled appellant's objection and heard respondent on the said ground alone.

The court eventually dismissed the appeal on that one ground without making any reference to the other 8 grounds. The appellate High Court held that there was nothing on the record of proceedings to show that the judgment of trial court was delivered in camera. Still dissatisfied, respondent appealed to the Court of Appeal. Appellant also cross-appealed on the ground that the High Court should have struck out the un-argued 8 grounds as having been abandoned. The court allowed the appeal and held that the judgment of trial court was a nullity for being delivered in camera. It held that in the circumstance, the hearing of the cross-appeal would be an academic exercise. Being aggrieved, appellant filed appeal at Supreme Court.

ISSUES FOR DETERMINATION

"1. Whether the lower court was right to have dismissed the cross-appeal before it based on the un-argued eight grounds of appeal at the Ilorin High Court (Appellate Session).

2. Whether the lower court was right in its construction of the Ilorin Upper Area Court's proceedings and reliance on other court processes outside it to hold that the Upper Area Court delivered its judgment in secret/chambers.

3. Whether or not it is right in the interest of doing substantial justice to declare the judgment of the Ilorin Upper Area Court delivered in Chambers as therefore unconstitutional."

HELD (Unanimously dismissing the appeal per **PATSA-ACHOLONU JSC**)

Final judgment - Meaning

1. What then is the test of a final Judgment? I believe that

when a matter comes for adjudication before a tribunal of justice for the determination of an issue in controversy in order to enable parties know for certainty the state of affairs in respect of the matter, a finding that would finally settle that issue, the subject matter of the appeal at that material time in the sense that there shall be no more reference to it in that matter, is a decision that can be said to be final for that purpose. In the course of the history of a civil matter or any controversy, such a matter or cause may make a second journey, and there may be various legal off-shoots of the case which call for a thorough examination, synthesis and analysis, with a view to finding an answer. The determination of that issue by the court called upon to pronounce on the singular subject matter arising from the main action is to all intents and purposes a final judgment. (p. 2883 B)

APPEALS - Grounds - Vagueness of - Meaning

2. The term vague connotes something woolly, equivocal, a state of affairs that does not lend itself easily to comprehension, something blurry and nebulous, uncertain or shadowy.

A vague expression because of its uncertainty or obscurity leads to speculation as to what is intended.

When a ground of appeal is framed or couched in a language which lacks elegance and a flowing prose that should lend itself readily to be understood then it has a hallmark of vagueness. Such uncertainty arising out of awkward phrasing would no doubt cast a shadow of incomprehension in such a ground. (pp. 2884 B/ H/ 2885 E)

Cross appeal - Non-consideration

3. Now it must be noted that the Ilorin Upper Area Court gave judgment to the appellant and on appeal to the High Court, although ostensibly on 9 grounds, it transpired that the respondent argued only one ground, that sole ground was dismissed. The effect of this dismissal was that the appellant was effectively put where he was before the determination of that appeal in the High Court. I am therefore unable to grasp the rationale for the appellant to cling to the non-consideration

of his cross-appeal. I find his argument utterly bizarre. One cannot but wonder what the consideration of the cross-appeal would achieve.

I cannot for my part see the wisdom or the desirability or even the relevance of delving for one minute on the nature of the cross-appeal which from the nature of decisions of the High Court and the subsequent nullification of the Upper Area Court judgment has become moribund. Issue No. 1 becomes really a non - issue. (pp. 2886 G/ 2887 H)

C COURTS - Records of proceedings - Presumption of genuineness
4. A party affected by the proceedings of a court who was present in court and was able to observe the nature of the proceedings in the court shall not or ought not be precluded from asserting, by way of affidavit, that what is contained in the records does not exactly represent the true state of affairs of what happened on that date or other dates of the proceedings.

E It is essential to emphasise that the presumption of the genuineness of a court's Record is not absolute. It can still be rebutted by facts which show or tend to show that what is contained in the record does not quite reflect the true state of affairs. (pp. 2888 H/ 2889 D)

F Constitution - Supremacy of
5. The appellant placed reliance on Section 29 of the Kwara State Area Court's Edict of 1967. He contended that Section 33(3) of the 1979 Constitution, then still in vogue and extant, was not absolute and its construction should reflect the nature of the particular court's rules. To suggest that the provision of the Constitution should be constructed subject to the prescription of an inferior statute is a legal apostasy. Nothing could be further from the truth. The provision of the Constitution is all embracing in its operationality and has general application and any law inconsistent with such provisions would have done violence to the spirit of the organic and primary law and therefore to the extent of such inconsistency is null and void and of no effect - see Section 1(3) of the Constitu-

tion. (p. 2889 H)

COURTS - Proceedings - Sitting in camera - Constitutionality

6. The spirit of Section 33(3) of the 1979 Constitution postulated and invariably dictated when it held sway that all proceedings of the courts without exceptions save where there was a Constitutional provision to the contrary, (and that is inclusive of rendition of judgments, ruling and or orders), should be in open court. B

I hold that no excuse should be advanced in any form to give the impression that the court could sit in camera and be “cabined, confined and cribbed not to saucy doubts and fears”, (Apologies to William E Shakespeare), but to perform an act in a way that violates the tenor and intendment of Section 33(3) of the 1979 Constitution, analogous to Section 36 (3) of the present Constitution. (pp. 2890 G/ 2891 B) C D

REPRESENTATION

Akin Akinloye, Jnr, for the appellant

Chief Wole Olanipekun, SAN, with Mohammed Shuaib, Waheed Gbadamosi, D.S. Malik, for the respondent E

CASES REFERRED TO

Ude v. Agu (1961) All NLR 65

Ojora v. Odunsi (1964) NMLR 12 F

Oviazu v. Oviazu (1973) 8 NSCC 502

Ezeanya v. Okeke (1995) 4 SCNJ 76

Bensah v. G.B. Ollivant Ltd. 14 WACA 40

Nabham v. Nabham (1967) 1 NMLR 130 G

Blay v. Solomon (1947) WACA Vol. 12, 175

Ifediorah v. Ume (1988) 2 NWLR (Pt. 74) 5

Kuusu v. Udoma (1990) 1 NWLR (Pt. 127) 42

Igunbor v. Afolabi (2001) 11 NWLR (Pt.723) 148

Toun Adeyemi v. Theophilus Awobokun (1968) 2 All NLR 318 H

Omolowo v. African Newspapers Ltd (1991) NWLR (Pt.209) 371

STATUTES REFERRED TO

Constitution of the Federal Republic of Nigeria 1979, s. 33

Kwara State Area Court's Edict 1967, s. 29

Constitution (Amendment) Decree No. 3 of 1998, s. 1

LEAD JUDGMENT BY PATS-ACHOLONU JSC

The appellant was the plaintiff who instituted an action in Ilorin
B Upper Area Court claiming a parcel of land from the defendant now
the respondent. After hearing the parties that court gave judgment in
favour of plaintiff, i.e. appellant. The respondent appealed to the
High Court and framed 8 grounds of appeal. At the date the matter
C was set down for hearing he sought the leave of the court to file an
additional ground of appeal making it up to 9 grounds, on that same
date the respondent (as appellant therein) decided to argue only
ground 9. This method or practice adopted by the respondent then
was obviously opposed by the other party. The High Court over-
D ruled the appellant's counsel but in a reserved judgment dismissed
the appeal on that one ground and made no further mention of the
other 8 grounds. The point in contention and adumbrated in the 9th
ground was that the Upper Area Court gave its judgment in cham-
bers and not in open court and therefore such a procedure did vio-
E lence to the Constitution.

The respondent thereupon appealed to the Court of Appeal
on the ground that it was perverse for the High Court to hold that
there was nothing on the records to suggest that the judgment was
delivered in camera. The successful party cross-appealed on the
F ground that the un-argued eight grounds should have been regarded
as having been abandoned and should therefore have been struck
out. The Court of Appeal in a reserved judgment allowed the ap-
peal, stating in unmistakable terms that the trial in the Upper Area
G Court was obviously a nullity, having found that the judgment was
given in Chambers. It dismissed the cross-appeal describing the quest
for its agitation and pure academic exercise. The appellant then ap-
pealed to this court and filed 7 grounds in the notice of appeal.

Parties filed their briefs of argument but the respondent mean-
H while filed a notice of preliminary objection on the premise that the
appellant did not obtain the leave of the court before filing his appeal
and therefore the court could not validly exercise any jurisdiction. In
the alternative he argued that grounds (iii), (iv) and (v) are vague for
non-compliance with the Rules of the Supreme Court.

The learned counsel for the respondent Chief Olanipekun, SAN, contended in his argument that the decision of the Court of Appeal appealed was a mere interlocutory decision and not a final judgment. His postulation is that the decision being an interlocutory judgment and not a final judgment as he conceived it, the appellant should have sought the leave of this court. B

What then is the test of a final Judgment? I believe that when a matter comes for adjudication before a tribunal of justice for the determination of an issue in controversy in order to enable parties know for certainty the state of affairs in respect of the matter, a finding that would finally settle that issue the subject matter of the appeal at that material time in the sense that there shall be no more reference to it in that matter, is a decision that can be said to be final for that purpose. In the course of the history of a civil matter or any controversy, such a matter or cause may make a second journey, and there may be various legal off-shoots of the case which call for a thorough examination, synthesisation and analysis, with a view to finding an answer. The determination of that issue by the court called upon to pronounce on the singular subject matter arising from the main action is to all intents and purposes a final judgment. Thus in *Ex parte Moore*, in *Re Faithful* (1885) 14 QBD 627, 54 LJ QB 190 Brett, MR., said: C D E

“If the court orders something to be done, according to the answer to the enquiries, without further reference to itself, the judgment is final.” F

Also in *Standard Discount Co. v. Le Grange* (1877) 3 CPD 71, 37 LT. 372, Brett, LJ., (as he then was), held;

“No order, judgment or other procedure can be final which does not at once affect the status of the parties for whichever side the decision is given.” G

See also *Blay v. Solomon* (1947) WACA Vol. 12, 175, *Ifediorah v. Ume* (1988) 2 NWLR (Pt. 74) 5, NSCC Vol. 19 at 570, *Ude v. Agu* (1961) All NLR 65, *Omolowo v. African Newspapers Ltd. & Anor.* H (1991) NWLR (Pt.209) 371 at 380.

Having regard to the judgment appealed against and which states unequivocally that the decision given by a lower court is a nullity, it is unquestionably a final judgment. I therefore hold that the

decision of the Court of Appeal that the judgment of Upper Area Court which it was roundly convinced was held in chambers was a final judgment in the sense that it outrightly disposed of the question referred to it.

B The learned counsel for the respondent had equally contended that grounds (iii) and (v) were vague or novel in that they do not challenge the decision of the lower court on either a mistake of law or fact, and that ground (iv) is vague for lack of expatiation. I shall deal with the objections. **The term vague connotes something woolly, equivocal, a state of affairs that does not lend itself easily to comprehension, something blurry and nebulous, uncertain or shadowy.** C In considering ground (iv) of the ground of appeal it is note-worthy that the appellants stated thus:-

D *"The learned Justices of the Court of Appeal erred in law in their exposition of what a Record of Appeal is."*

I would have expected the appellant to expatiate this ground by way of stating the particulars that would define, elucidate or expound with clarity the nature of the exposition of what the record of appeal is all about. This type of ground is with the greatest respect E very difficult to understand. It is difficult to ascertain what the appellant has in mind. Since I am unable to fathom and readily appreciate what message he is sending across, I hold and I agree with the respondent that this ground is vague. Having so held, I hereby strike it F out. It is essential to state that clarity of thought should precede clarity of expression. A ground of appeal should not lend itself to obscure expression which would inevitably task the reader as to what message is being put across.

G The respondent has equally found fault with the nature and quality of grounds (iii) and (v) which he equally described as being vague. I have carefully read ground (iii) and I must confess that there is nothing vague about it as I understand the purport and intent of that ground. In explaining the alleged misdirection, the appellant seeks to show this court that the Court of Appeal misjudged by not appreciating that there is nothing in that record that suggests that the judgment was given or delivered in Chambers. I understand the message H that ground is sending across and that being the case. I would not ascribe to it the description of vagueness. **A vague expression because of its uncertainty or obscurity leads to speculation as**

to what is intended. I therefore do not share the view expressed by the learned counsel for the respondent. To mind that ground is quite clear as there is nothing nebulous about it. That objection does not hold any water.

In respect of Ground (v) which states as follows:-

“The learned Justices of the Court of Appeal misdirected themselves when holding that “I have no doubt that the record of proceedings for that day was manipulated by showing on the face of the record that the presiding Judge Abu Olanrewaju sat on that day with the other two members, when in fact he was not even around,” B

I am clearly aware of what the appellant is saying. The complaint there is that the Court of Appeal did not fully appreciate or understand what was addressed before it in respect of the record hence it misdirected itself for alleged lack of comprehension of the nuances of the matter. Whether the appellant is correct or not is not the issue now, but suffice it for me to say that I fully grasp what his grouse against the lower court’s judgment is all about. That being the case, I do not agree that ground No. (v) is vague. If it is vague I would not be able to understand its purport. C

When a ground of appeal is framed or couched in a language which lacks elegance and a flowing prose that should lend itself readily to be understood then it has a hallmark of vagueness. Such uncertainty arising out of awkward phrasing would no doubt cast a shadow of incomprehension in such a ground. In that case, the court should strike it out for its uncertainty. F
This is not the case in respect of ground (v).

Having disposed of the objections raised, I now come to the main case. The appellant formulated 3 issues arising out of his grounds of appeal for determination by this court. They are as follows:- G

The respondent on the other hand framed only one issue which is:

“Whether or not the lower court was right in allowing the respondents’ appeal (then acting as appellant) and dismissing the appellants’ appeal (then acting as Cross-appellant)” H

The appellant contends that he is miffed with the dismissal of his cross-appeal in the court below which court described as mere academic exercise and would not achieve any worth-while purpose. The bulwark of his submission is that the judgment of the lower court

is wrong as it seemed to rely overwhelmingly on *N.B.N. v. Alakija* (1978) 9-10 S.C. 59, which he submitted ought not to apply to the present case. Counsel for the appellant cited the cases of *Eholor v. Osayande* (1992) 7 SCNJ 355. The respondent's counsel replicando disagreed and submitted that following the judgment of the lower court nullifying the decision of the Upper Area Court, it would have been purely an academic exercise in futility for that court to start discussing the substance of the cross-appeal. It cannot be doubted that the purpose of the respondent in this case by latching, as it were, on the sole ground, to wit, that the proceedings in the Chambers was a nullity, was that he sought to put all other grounds in the cooler, feeling no doubt that the sole ground could conceivably dispose of the whole matter. In other words, if he managed to convince the Court of Appeal on the weight and substantiality of his submission by well researched and argued points that would reflect forensic advocacy at its best, the decision of the Upper Area Court and the High Court would be rendered non-event.

Counsel for the respondent referred the court to P. 81 of the record wherein the appellant had urged the court below to disallow the appeal adding that the appellant never urged the court to dismiss the whole appeal contending that the appellants' submission could be interpreted to mean that he restricted himself to that sole ground which is the bone of contention. The Court of Appeal in its judgment per Abdullahi, JCA., (as he then was), said;

"Before I finish with the cross-appeal I must also observe that despite the position taken by the lower court on this issue at the time it allowed the appellant to file and argue the additional ground 9, it is clear at the end of the day, the lower court reversed its position on the issue by dismissing the ground, thereby giving judgment so to speak in favour of the cross-appeal. This in my view had rendered the cross-appeal a mere academic exercise. For these reasons, I find no merit in the cross-appeal and accordingly dismiss it."

Now it must be noted that the Ilorin Upper Area Court gave judgment to the appellant and on appeal to the High Court, although ostensibly on 9 grounds, it transpired that the respondent argued only one ground, that sole ground was dismissed. The effect of this dismissal was that the appellant was effectively put where he was before the determination of that

appeal in the High Court. I am therefore unable to grasp the rationale for the appellant to cling to the non-consideration of his cross-appeal. I find his argument utterly bizarre. One cannot but wonder what the consideration of the cross-appeal would achieve.

When the matter of argument of the sole point was before the High Court, the counsel for the respondent had stated at p. 79 of the Record that the sole ground which he was seeking the court to dwell on at length is “like an issue of jurisdiction which was capable of disposing of the case one way or the other.”

That court ruled as follows:-

“There is no doubt that the issue whether the decision of the Upper Area court is a nullity is fundamental and its decision on it is capable of disposing of the entire appeal. We would rather confine ourselves to the additional ground and consider the same one way or the other.”

In N.B.A & Anor. v. Lady Ayodele Alakija & Anor. (1978) 9 - 10 SC. 59 hitherto referred to us, the Supreme Court, per Eso, JSC., slated as follows:- at p. 67.

“Dr. F.A. Ajayi, learned counsel representing the appellants in this court abandoned grounds 1 and 4 of the grounds of appeal and argued all the other grounds of appeal including ground 20A. As ground 20A is in the alternative to all the other grounds of appeal, it becomes necessary that we examine the submissions of learned counsel thereupon first, particularly as the alternative relief sought, that is, for a rehearing of the case on pleadings, flows from that ground of appeal and our decision on this ground of appeal might put a stop to our consideration of the other grounds of appeal.”

This was a case where some of the grounds were abandoned.

After a full consideration of the purport and ramification of the argument of Chief Ajayi in that case, this court held:-

“It follows that ground 20A of the grounds of appeal must succeed. We have already stated that the appellant asked for a retrial on this ground. Having regard to the order we intend to make we do not think it would be wise to pronounce on the other grounds of appeal....”

In this case under consideration **I cannot for my part see the wisdom or the desirability or even the relevance of delving for one minute on the nature of the cross-appeal which from**

the nature of decisions of the High Court and the subsequent nullification of the Upper Area Court judgment has become moribund. Issue No. 1 becomes really a non - issue.

The second issue is whether the Court of Appeal should have relied on extrinsic factors or facts outside what is contained in the records before it to hold that the judgment was given in Chambers. The learned counsel for the appellant expressed some disquietness that as the Court of Appeal had accepted the authenticity of the proceedings of the High Court as contained in the records, it has no business looking elsewhere. The affidavits filed by both parties were in respect of an issue not reflected in the record to the effect that the proceedings of Ilorin Upper Area Court were not in the open court. In considering the nature of the record before it the lower court said,
"A record of appeal generally is what is compiled by the appellant normally or in some cases, what both parties settled and agreed as the record of appeal."

However, the court below went further and stated thus:-

"In this case, the additional ground of appeal filed by necessity became part of the record of appeal so was (sic) all other documents filed and used to facilitate the filing of the additional ground of appeal, which includes the supporting affidavits and the counter-affidavits.

There is no gainsaying the fact that the contents of the affidavits and the counter-affidavits disclosed cogent and direct facts to beat down the integrity and genuineness of the proceedings of the Upper Area Court on 23rd January, 1996, to its lowest level. Not only that the contents of the affidavits brought out clearly that the judgment of the court and other proceedings for that day were conducted in Chambers, but worst of all the record was manipulated by showing that the presiding Judge Abu Olarewaju was present and participated; while in actual fact he was indisposed as clearly stated by the respondent himself in his affidavit."

The court below did not choose to ignore the deposition before it that the proceedings in the Upper Area Court were tainted with fundamental irregularity that would vitiate irredeemably the cause of justice that was supposed to have emerged from that court. **A party affected by the proceedings of a court who was present in court and was able to observe the nature of the proceed-**

ings in the court shall not or ought not be precluded from asserting, by way of affidavit, that what is contained in the records does not exactly represent the true state of affairs of what happened on that date or other dates of the proceedings. The

Court of Appeal is bound to look at the depositions to ascertain the veracity or otherwise of the complaint. Where such facts so deposed go to the root of the proceedings and the surrounding circumstances tend to support same as to render it nugatory and void, it is, I believe and I so strongly hold, that it is the duty of the court seised with the proceedings to use the new facts to determine the legality or irregularity complained of. It is uncharitable to say that the Court of Appeal relied on extraneous factors to find for the respondent. The affidavits and the counter-affidavits in respect of the issues in question formed an inextricable part of the record of the High Court. It was on it that the High Court ruled. Arising out of the ruling or decision an appeal was lodged in the Court of Appeal to take a second look at the complaint of the respondent. The lower court must inevitably look at all the contents of the record before it.

It is essential to emphasise that the presumption of the genuineness of a court's Record is not absolute. It can still be rebutted by facts which show or tend to show that what is contained in the record does not quite reflect the true state of affairs. In the administration of justice it is important to note that

justice though intangible was nevertheless worshipped by the Romans as a goddess. The symbol of woman holding the scale of balance represents justice and in order to get thorough justice, it is only fair and in accordance with the end of justice, that its administration should not be seen as in a cloak which the light cannot penetrate. The Court of Appeal alive to its responsibility did the correct thing by looking at the affidavits and using and relying on what they seek to convey as an instrument of meting out justice. What the Court of Appeal did in its search for truth to bring about justice, is praise worthy and is to be commended.

The last issue is as to whether the lower court should have declared the judgment of the Ilorin Upper Area Court of 23rd January, 1996, a nullity. ***The appellant placed reliance on Section 29 of the Kwara State Area Court's Edict of 1967. He contended that Section 33(3) of the 1979 Constitution, then still***

in vogue and extant, was not absolute and its construction should reflect the nature of the particular court's rules. To suggest that the provision of the Constitution should be constructed subject to the prescription of an inferior statute is a legal apostasy. Nothing could be further from the truth. The provision of the Constitution is all embracing in its operationality and has general application and any law inconsistent with such provisions would have done violence to the spirit of the organic and primary law and therefore to the extent of such inconsistency is null and void and of no effect - see Section 1(3) of the Constitution.

The learned counsel for the appellant equally referred us to Section 61 of the Kwara State Area Court's Edict which states as follows:-

"No proceedings in an area court and no summons, warrant, process, order or decree issued or made thereby shall be varied or declared void upon appeal or revision solely by reason of any defect in procedure or want of form but every court or authority established in and for the state and exercising powers of appeal or revision under this Edict shall decide all matters according to substantial justice without undue regard to technicalities."

The appellant sought to embellish his argument by citing Nwanezie v. Idris (1993) 1 SCNJ 139 in which Nnaemeka-Agu, JSC., (as he then was), said,

"One clear principle which flows through all the proceedings before all our 'native tribunals' and appeals therefrom is that they must aim at doing substantial justice. To that intent technicalities of strict rules of practice and procedure in English type of courts are not applicable."

I do not with the greatest respect share the enthusiastic view being espoused by the appellant by a skewed construction of the above case. ***The spirit of Section 33(3) of the 1979 Constitution postulated and invariably dictated when it held sway that all proceedings of the courts without exceptions save where there was a Constitutional provision to the contrary, (and that is inclusive of rendition of judgments, ruling and or orders), should be in open court.*** It cannot be doubted that in a democratic setting where the Rule of Law prevails, id est, where all people, or-

gans and institutions of the Government are under the law, it is the indisputable right of the public to have undeniable and unlimited access to court proceedings, courts exist for the citizenry. They adjudicate on the rights of the parties and the method of adjudication can only be adjudged right and in keeping with the dictates of the primary law if the proceedings are open for all to see. ***I hold that no excuse should be advanced in any form to give the impression that the court could sit in camera and be “cabined, confined and cribbed not to saucy doubts and fears”, (Apologies to William E Shakespeare), but to perform an act in a way that violates the tenor and intendment of Section 33(3) of the 1979 Constitution, analogous to Section 36 (3) of the present Constitution.***

The appellant further referred this court to Ezeanya v. Okeke (1995) 4 SCNJ at 76, and Kuusu v. Udoma (1990) 1 NWLR (Pt. 127) 42, and Ajagbonnwa v. Iledare (1979) 6 SCNJ to show that the proceedings of native courts do not come within the provisions of Section of 33(3) aforesaid. Nothing can be further from the truth. In Kuusu v. Udoma (supra), referred to by this court, the main issue there was that the trial court had admitted an evidence taken at the locus in quo without the witnesses taking any oath. The Court of Appeal held that the Area Court was not bound by Section 179 of the Evidence Law. At the Supreme Court, Nnamani, JSC., (as he then was), in the leading judgment said:

“Area Courts and Customary Courts were the successors of the old Native Courts. It seems clear to me, as it was to the Court of Appeal, that there is nothing in the Evidence Act which is applicable to the proceedings of the Grade II Area Court. Section 179 of the Evidence Act did not therefore apply to that court.”

Karibi-Whyte, JSC., (as he then was), in a concurring judgment said:

“It is important to appreciate the fundamental factor that Area Courts created under the Area Courts Edict, 1968, which are the successors of the former Native Courts, which in turn were the courts which replaced the pristine traditional methods of the administration of justice are designed to maintain and adhere to our indigenous methods of administering justice in so far as such is not repugnant to natural justice and it is not oppressive or prejudicial to either of the

parties to the civil cause or matter before the court.”

It is therefore evident that this case is inapplicable. The provisions of the Constitution applies to even the Area Courts or Customary Courts all inclusive. There is simply no escape route for any court from the operation of the Constitution. The Court of Appeal having
B found that the proceedings of Upper Area Court contravened or failed to treat with reverence the majestic provision of the Constitution, did the correct thing by giving a decision that is a credit to it and to the furtherance of jurisprudence.

C In the final analysis the appeal fails as lacking in merit and is hereby dismissed. The judgment of the Court of Appeal is affirmed. The appellant shall pay N10,000.00 costs to the respondent.

D **UWAIS CJN**

I have had the advantage of reading in draft the judgment read by my learned brother, Pats-Acholonu, JSC. I agree with him that this appeal is devoid of merit.

E Accordingly, I too hereby dismiss the appeal with N10,000.00 costs against the appellant in favour of the respondent.

ONU JSC

F Having been privileged to read before now the judgment of my learned brother, Pats-Acholonu, JSC., just delivered, I am in agreement with him that the appeal lacks merit and I too accordingly dismiss it.

G **KATSINA-ALU JSC**

I have had the advantage of reading in draft the judgment delivered by my learned brother, Pats-Acholonu, JSC. I agree with it, and for the reasons which he has given I also dismiss the appeal with
H costs.

EDOZIE JSC

The respondent was the plaintiff before the Ilorin Upper Area

Court in a suit in which he claimed a parcel of land from the appellant as defendant. At the conclusion of the trial, the Ilorin Upper Area Court on 23/1/96 entered judgment in favour of the appellant.

Dissatisfied by the judgment, the respondent lodged an appeal to the High Court, Kwara State. The appeal was predicated on eight grounds of appeal and was after compilation of the record of appeal fixed to 24/4/96 for hearing on which date, however, the respondent by a motion on notice prayed the court to argue an additional ground of appeal as the 9th ground of appeal alleging that the decision of the Upper Area Court, Ilorin, delivered on 23/1/96 was a nullity by reason of its having been delivered in chambers or in camera. There were affidavits in support of the motion and counter-affidavits in opposition thereto. The motion was heard and granted. Thereupon, the respondent's counsel proceeded to argue only the additional ground, a procedure vehemently objected to by the appellants' counsel who insisted that all the grounds of appeal should be argued. The objection was over-ruled by the High Court in a short ruling which it concluded thus:-

"Court: There is no doubt that the issue whether the decision of the U.A.C. (Upper Area Court) is nullity is fundamental and its decision on it (sic) is capable of disposing of the entire appeal.

It will not make sense to hear the entire appeal and only write judgment in respect of only one ground.

We would rather confine ourselves to the additional ground and consider the same one way or the other.

Mr. Akintoye, Jr. is hereby overruled and should proceed to respond to the learned SAN's argument."

Upon overruling the objection, the appellant's counsel replied to the submission of the respondent's counsel on the additional ground of appeal after which the High Court in its judgment delivered on 16/5/96 dismissing that ground of appeal held thus:-

"By the present position we are unable to agree with the learned senior advocate that the challenge of a court record may be through an affidavit. Rather we are in full agreement with the submission of the learned counsel for the defendant/respondent that it will be ultra vires for the appellate court to look outside the record of proceedings of the lower court to make a decision in the absence of a challenge of the court record. It is our considered view therefore that the pro-

ceedings of the lower court on that day of its judgment is as recorded on pages 48 to 64 of the record. For the foregoing reasons we find that this ground of appeal has no merit and it is hereby accordingly dismissed.”

B In effect, what the appellate High Court decided was that from
he record of the proceedings of the Ilorin Upper Area Court in ques-
tion which must be presumed to be correct, there being no formal
challenge of its authenticity, there was no evidence that the Ilorin
Upper Area Court delivered its judgment in chambers. The High Court
C accordingly dismissed the additional ground of appeal but made no
order with respect to the original eight grounds of appeal, which had
not been argued.

Upon the foregoing, the respondent appealed to the Court of
Appeal against the dismissal of the additional ground of appeal, while
D the appellant cross-appealed against the overruling of his objection
against the procedure adopted by the respondent in arguing only
the additional ground of appeal. Before the lower court, the parties
by their counsel filed and exchanged their briefs of argument and
after hearing the appeal, the court below dismissed the cross-appeal
E and allowed the appeal. Consequently the appellant lodged the in-
stant appeal.

Briefs were filed and exchanged wherein counsel formulated
the issues for the determination of the appeal. The respondent with
the leave of the court filed an amended brief of argument and in it he
F raised a preliminary objection on the competency of this appeal con-
tending that the judgment of the Court of Appeal dated 15th Sep-
tember, 1997, was an interlocutory decision based on an interlocu-
tory judgment of the Ilorin High Court. He contended that as at the
G time the appeal against the judgment of the Court of Appeal was
lodged in this court, interlocutory appeals did not lie to this court as
provided by Section 1(a) of the Constitution (Amendment) Decree
No. 3 of 1998, now repealed by the 1999 Constitution, and the case
of *Eco Consult Ltd. v. Pancho Villa Ltd.* (1998) 1 S.C. 83, (1998) 1
H NWLR (Pt.588) 507. In his response, learned counsel to the appel-
lant in oral argument submitted that the decision of the Court of
Appeal appealed against is a final and not an interlocutory decision
and therefore not caught by Section 1(a) of the Constitution (Amend-
ment) Decree No. 3 of 1998, which was extant at the material time.

In my view, the contention that the decision of the Court of Appeal appealed against is an interlocutory decision is not well founded. In the case of *Akinsanya v. U.B.A. Ltd.* (1986) 4 NWLR (Pt. 35) 273 at 325, this court, per Coker, JSC., (as he then was), observed:-

“I agree that from practical purposes what should be considered is what effect the order appealed against has on the rights of the parties. If the order determines finally the rights of the party, then it is a final order. If not, it is an interlocutory order. The order of the court below relating to the jurisdiction of the trial court was therefore a final one not an interlocutory decision of the court below. This is because the order terminated the right of the plaintiff/appellant so far as the suit before the court was concerned.”

The case of *Omonuwa v. Oshodin & Ors.* (1985) 2 S.C. 1 at 27, (1985) 2 NWLR (Pt. 10), 935 is also apposite. This court, per Karibi-Whyte, JSC., (as he then was), opined that:-

“An order for non-suit even though disposing of the rights of parties pro tempore in the sense that the parties are at liberty to commence proceeding afresh in respect of the same subject-matter is a final order. Thus to determine whether the decision of the court is final or interlocutory, this must be related to the lis inter partes and confined to the function of the court making the order”

See also *Toun Adeyemi v. Theophilus Awobokun* (1968) 2 All NLR 318, *Bensah v. G.B. Ollivant Ltd.* 14 WACA 40, *Nabham v. Nabham* (1967) 1 NMLR 130; *Igunbor v. Afolabi* (2001) 11 NWLR (Pt. 723) 148 at 165; *Ojora v. Odunsi* (1964) NMLR 12, *Ude v. Agu* (1961) 1 SCNLR 98. Guided as I am by the above authorities, it is my judgment that even though by the decision of the Court of Appeal, the respondent could relitigate his claims afresh in the Upper Area Court, the decision of the Court of Appeal is a final and not an interlocutory decision.

In regard to the main appeal, the central issue agitated by the parties is whether the Court of Appeal was right in declaring the proceedings before the Ilorin Upper Area Court null and void based on the affidavit evidence in relation to the application for the 9th ground of appeal. The contention of learned counsel for the respondent in that regard is that the affidavit evidence was not part of the record of the court and that it could not have been used for the purpose with-

out the leave of the Court of Appeal which leave the respondent had not sought and obtained. With respect to counsel, that contention is misconceived.

All the documents filed before the Ilorin Upper Area Court and the High Court Ilorin in the case under consideration form the
B record of appeal before the Court of Appeal. A court is entitled to look at the record in its possession and make use of the information therein: *West African Provincial Insurance Co. Ltd. v. Nigeria Tobacco Co. Ltd.* (1987) 2 NWLR (Pt. 56) 299 at 306.

C In the case of *Texaco Panama Inc. v. Shell P.D.C.N. Ltd.* (2002) 2 S.C. (Pt.II) 222; (2002) 5 NWLR (Pt.759), 209 at 234, this court per Kalgo, JSC., opined thus:

*“Furthermore an appeal court is fully and correctly entitled to look or refer to the record of appeal before it in consideration of any
D matter before it. This is what this court held in the case of Fundunk Engineering Ltd. v. M.C. Arthur (1995) 4 NWLR (Pt. 392) 640 at 652.”*

In the instant case, the affidavit evidence relied upon by the parties in respect of the application by the appellant to argue the 9th
E ground of appeal was before the Court of Appeal in the record of appeal. It was therefore eminently justified in utilising the content of the aforesaid affidavit evidence. Indeed, I think the High Court, Ilorin, was in grave error to have restricted itself to the judgment of the
F Ilorin Upper Area Court in deciding whether that judgment was or was not given in chambers. This is so because it is not normal for a court to indicate in its proceedings whether its proceedings were taken in public or in camera. Therefore, where in a matter both parties to a
G case have sworn to an affidavit unequivocally stating that the proceedings before the court on a particular day which they observed were conducted in chambers and not in open court, and there is nothing to the contrary, the court seised of the matter ought to accept and act upon that affidavit evidence. I do not accept the contention by the respondent’s counsel that the appellant’s counsel ought
H to have obtained the leave of the Court of Appeal before he could make use of the affidavit in question because it was specifically used in the application for the 9th ground of appeal. That ground of appeal is to the effect that the decision of the Upper Area Court, Ilorin, delivered on 23/1/96 was a nullity. This borders on the jurisdiction of

that court. It has been long settled that where an objection to the jurisdiction of an inferior court appears on the face of the proceedings and I will add, manifested in the uncontroverted affidavit evidence of the parties, it is immaterial by what means or by whom the court is informed of such objection: see *Westminster Bank Ltd. v. Edwards* (1942) 1 All ER 470 at 474. The issue of jurisdiction being fundamental to the existence of the writ or claim, the form, nature or procedure of how it is raised is not strictly material. Where a challenge to the decision of a court is founded on lack of jurisdiction, the court is bound to consider such challenge. A party to a litigation cannot be shut out and the court inhibited from entertaining a matter on technical ground particularly where the issue of jurisdiction is concerned. *Adeigbe v. Kushimo* (1965) 1 All NLR 248; *Galadima v. Tambai* (2000) 6 S.C. (Pt. 1) 196; (2000) 11 NWLR (Pt. 677) 19.

On the question as to whether the delivery of judgment in chambers renders the judgment null and void. Section 33(3) of the Constitution of the Federal Republic of Nigeria, 1979, which was the applicable law at the material time provided:

“The proceedings of a court or the proceedings of any tribunal relating to the matter mentioned in subsection (1) of this section (including the announcement of the decision of the court or tribunal) shall be held in public.”

In the case of *Nigeria Arab Bank v. Barri Engineering Ltd.* (1985) 8 NWLR (Pt. 413) 257, this court interpreted the above provision and at p. 274 held, per Belssgore, JSC., thus:-

“Therefore the provisions of Section 33(3) of the Constitution are fundamental and must be adhered to strictly by all courts of record subject to the exception explained above in respect of certain applications before the Supreme Court. The Supreme Court itself is confined to such applications as enumerated in Order 6 rule 2(1), (2), (3) and (4) and also Order 6 rule 3(1), (2) and (3) to decide on documents filed, and in other cases apart from such applications, it must hear matters and give judgments and rulings upon them in open court or in public. I regret that this issue has vitiated the trial through the error of the trial Judge and misapplication of the error by the Court of Appeal. On this issue alone of giving judgment not in public as demanded in Section 33 (3) under Fundamental Rights in Chapter IV of 1979 Constitution, but in chambers, the judgment is a

nullity and vitiates the entire proceedings. I therefore allow this appeal and order a retrial before another Judge of Lagos State High Court.”

The outcome of this decision is that apart from the exceptions stated therein where pursuant to the Supreme Court Rules made under the Constitution where decisions on certain applications are permitted to be made in chambers, a judgment of court delivered in chambers is a fundamental breach of the Constitution which renders the entire proceedings relating to the judgment null and void. See also *Oviazu v. Oviazu* (1973) 8 NSCC 502. It needs to be stressed that the Kwara State Area Court Edict of 1967 which regulates proceedings before the Area Courts provides in Section 29 (1) thereof that:-

“The room or place in which an Area Court shall sit to hear and determine any proceedings shall be an open and public court to which the members of the public shall have a right of access while they shall be of good behaviour and to the extent to which the capacity of the court shall allow.”

The judgment of the Court of Appeal nullifying the proceedings of the Ilorin Upper Area Court delivered in chambers is unassailable. For the foregoing reasons as elaborated in the lead judgment of my learned brother, Pats-Acholonu, JSC., I will also dismiss the appeal with costs to the appellant assessed and fixed at N10,000.00.

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