

**SUPREME COURT OF NIGERIA**  
18TH FEBRUARY, 2005. SC. 298/2000  
**CORAM:- S. M. A. BELGORE, U. A. KALGO, D. MUSDAPHER,**  
**D. O. EDOZIE, S. A. AKINTAN, JJSC**

E. O. FALOLA ..... APPELLANT  
AND  
UNION BANK OF NIGERIA PLC ..... RESPONDENT

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COURTS - Judgment - Definition - Connotes a binding determination -  
By a court or tribunal - Means a decision - As defined in s. 318 (1) 1999  
Constitution (H1)

JUDGMENTS - Final or interlocutory - Depends on whether that judgment completely disposed of the parties' rights - Requiring no further reference to that court (H2)

ACTIONS - Claims - Judgments - Distinct and independent claims - Trial court's judgment on the first claim - Is final as it fully dealt with the issue (H3)

EVIDENCE - Affidavits - Conflict therein - Needs to be resolved by evidence - Any judgment without that resolution - Is invalid (H4)

**FACTS**

The plaintiff/appellant filed an action against the defendant/respondent before the Lagos High Court. Appellant by paragraph 20 of his Statement of Claim prayed for 4 distinct independent and separate reliefs which will require evidence for the proof of each of the reliefs. The first relief was an order compelling the respondent to pay the sum of N4,500,560.00 with interest to the appellant. By a motion dated 30-5-1995, appellant prayed the trial court for an order entering judgment against the respondent in respect of the said first relief. He came by way of application for summary judgment under the High Court Rules relying on a letter at-

tached to his affidavit which he claimed was an admission of liability by the respondent as being signed by its staff.

In a considered ruling, the trial court found in favour of the appellant and ordered that the principal sum in the said first relief be paid to the appellant. Respondent's appeal to the Court of Appeal was allowed and it ordered that the claim be determined de novo before another judge based on the parties' pleadings. Appellant being aggrieved has now appealed to the Supreme Court.

**ISSUES FOR DETERMINATION**

*“1. Whether the court of first appeal was right in holding that the judgment of Longe, J., dated 19th April, 1996 was a final judgment.*

*2. In the alternative, whether the Court of Appeal was right in holding that there exists (sic) irreconcilable affidavit evidence requiring calling oral evidence to clear before the court of trial.”*

**HELD** (Unanimously dismissing the appeal per **KALGO JSC**)

***Judgment - Definition***

1. In any judicial proceedings, the word “*judgment*” connotes a binding determination by a court or tribunal in a dispute between two parties. See *Osafire v. Odi* (No. 1) (1990) 3 NWLR (Pt.137) 130. And the expression “*final decision*” has been construed as a decision completely determining the rights of the parties before the court. “*Decision*” as defined by Section 318(1) of the 1999 Constitution means, in relation to a court, any determination of that court and includes judgment, decree, order, conviction, sentence or recommendation. From this definition, it is clear that “*decision*” includes “*judgment*” and so a “*final decision*” is and includes a “*final judgment*.” (p. 456 E)

***JUDGMENTS - Final or interlocutory***

2. The test for determining whether a judgment or order is final or interlocutory as in this case is whether that judgment or order has finally and completely disposed of the rights of the parties in the case, so much so that if it is given for the plaintiff, it is conclusive against the defendant and if it is given for the defendant, it is conclusive against the plaintiff, and

no further reference can be made to the court in respect of the judgment or order. See *Omonuwa v. Oshodin* (supra). (p. 457 A)

***Distinct and independent claims***

3. These 3 claims are in my view distinct, separate and independent and must be proved on the preponderance of evidence for the appellant to succeed. Number 1, according to the trial court is admitted and therefore needs not be proved in law, and judgment is given on it fully including the claim of interest. Therefore, the right of the appellant in that claim was fully and completely determined by the trial court. There is nothing more the court could have done in respect of that item of claim as between the parties. It is therefore a final judgment of that court in respect of item (1). In this case, as I stated earlier in this judgment, the trial court found a pre-existing right of the plaintiff/appellant against the defendant/respondent vide the admission in Exhibit 'A' and this was finally a determination in favour of the appellant in the judgment.

In this case, the issue in dispute is the deposit of N4,500,560.00 allegedly made by the appellant with the respondent and the interest charged thereon. The judgment of the trial court fully dealt with the issue leaving nothing undone and so the appellant's right on that claim was fully and completely disposed of. This does not affect the function or powers of the court to make the order as it did. The judgment of the trial court on that issue is therefore final. The fact that there are 2 other independent claims of the appellant against the respondent does not and cannot affect the finality of the judgment on the first claim.

I, therefore, agree entirely with the Court of Appeal that the judgment of the trial court on item (I) above was a final and not interlocutory judgment. (p. 458 A)

***Affidavits - Conflict therein***

4. There is apparent conflict of sworn evidence between the above two paragraphs of the appellant and the respondent and in order to resolve the conflict, it has been well established by myriad of decisions of this court that evidence must be called to resolve the conflict before any decision is

taken on the matter. This was not done here and I agree with the Court of Appeal that the trial court was in error for doing what it did in this case. I therefore find that although the Court of Appeal did not, in so many words, use the words “*irreconcilable conflicts in affidavits*,” their finding B that the admission in Exhibit A was specifically denied by the respondent, is enough to point directly to the conflict which was not properly resolved by the trial court as required by law. This therefore destroys the validity of the order of the trial court giving judgment to the appellant on the alleged C admission in Exhibit A. (p. 460 A)

### **REPRESENTATION**

Appellant absent not represented.  
Segun Idowu, for the Respondent.

### **CASES REFERRED TO**

- Falobi v. Falobi (1975) 9-1 S.C. 1  
Adkins Scientific Ltd. v. Alade Toyinbo (1995) 7 NWLR (Pt.409) 526;  
E Osafire v. Odi (No. 1) (1990) 3 NWLR (Pt.137) 130  
Sodipo v. Lemminkainen Oy (1985) 2 NWLR (Pt.8) 547  
Ebokam v. Ekwenibe & Sons Trading Co. Ltd. (1990) 10 NWLR (Pt.622) 242  
F First Bank of Nig. Plc v. May Medical Clinic & Diagnostic Centre Ltd. & Anor. (2001) 4 S.C. 108  
Din v. A-G Federation (1986) 1 NWLR (Pt. 17) 471 at 487  
Omonuwa v. Oshodin (1985) 2 NWLR (Pt.938)  
Akinsanya v. U.B.A. (1986) 4 NWLR (Pt.35) 273  
G Chike Obi v. D.P.P. (No.2) 1961 All NLR 458

### **STATUTE & RULES REFERRED TO**

- H Constitution of the Federal Republic of Nigeria 1999 s. 318(1)  
Lagos State High Court (Civil Procedure) Rules 1972 O. 28(6)

**LEADJUDGMENTBYKALGOJSC**

The appellant who was the plaintiff in the trial court claimed against the defendant now respondent as per paragraph 20 of the Statement of Claim, the following reliefs:-

“(i) *An order compelling the defendants to pay to the plaintiff the said sum of N4,500,560.00 with interest thereon at the rate of 20% per annum with effect from 28th day of October, 1983.* B

(ii) *The sum of N25 Million as damages for wrongful detention of the said N4,500,560.00 property of the plaintiff.*

(iii) *The sum of N5 Million for false imprisonment of the plaintiff when on or about 10th day of January, 1984, the defendant acting through its Ikeja branch wrongfully and by means of false and malicious allegation procured the police to arrest the plaintiff whereby the plaintiff was arrested and kept at Ita Oke detention camp near Epe Lagos for a period of 18 (Eighteen) months.* C D

(iv) *An order that the continuous refusal by the defendant to pay the plaintiff his N4,500,560.00 is illegal and malicious.”*

Pleadings were ordered, filed and exchanged between the parties. E

By an application dated 30th of May, 1995 the appellant prayed the trial court for an order entering judgment against the respondent on the ground of clear, unambiguous and unequivocal admission of liability, pursuant to the provisions of Order 28(6) of the Lagos State High Court (Civil Procedure) Rules 1972. The application was heard on the 13th of February, 1996 and on the 19th of April, 1996, the learned trial Judge, Longe, J., in a considered ruling ordered thus:- F

“*There is therefore judgment for the plaintiff against the defendant for the sum of N4,500,560.00 being plaintiff’s money deposited with the defendant and of which the defendant admitted in its letter of 10th August, 1990.*” G

The respondent appealed against this order to the Court of Appeal. The appeal was heard and in a unanimous judgment, the Court of Appeal H allowed the appeal, set aside the decision of the trial court and ordered that the case be remitted to the Lagos State High Court to be tried de novo by another judge on the pleadings already filed by the parties. The appellant

was dissatisfied with this decision and he appealed to this court.

In this court, the parties filed their respective briefs and exchanged them between them. The appellant identified 3 issues for determination which read thus:-

B “1. *Whether the court of first appeal was right in holding that the judgment of Longe, J., dated 19th April, 1996 was a final judgment.*

2. *If issue No. 1 hereof is answered in the negative, whether the grounds of appeal filed by the respondent (appellant at the court below) are grounds of law, fact (sic) mixed law and fact.*

C 3. *In the alternative, whether the Court of Appeal was right in holding that there exists (sic) irreconcilable affidavit evidence requiring calling oral evidence to clear before the court of trial.”*

D The respondent’s 2 issues are the same as issues 1 and 3 of the appellant. The appellant’s issue 3 is in the alternative to issue 2 and looking at the contents of the grounds of appeal filed by the appellant, I find his issues 1 and 3 more germane to this appeal. I will therefore consider appellant’s issues 1 and 3 as in 1 and 2 of the respondents.

E Issue 1 deals with whether the judgment of Longe, J., was final or interlocutory. This calls for the consideration of what is a final or interlocutory judgment.

F **In any judicial proceedings, the word “judgment” connotes a binding determination by a court or tribunal in a dispute between two parties. See Osafire v. Odi (No. 1) (1990) 3 NWLR (Pt.137) 130. And the expression “final decision” has been construed as a decision completely determining the rights of the parties before the court. See Omonuwa v. Oshodin (1985) 2 NWLR (Pt.938); Akinsanya v. U.B.A. (1986) 4 NWLR (Pt.35) 273; Ude v. Agu (1961) 1 All NLR 61; Chike Obi v. D.P.P. (No.2) 1961 All NLR 458; Akintola v. Aderemi (1962) 1 All NLR 461 “Decision” as defined by Section 318(1) of the 1999 Constitution means, in relation to a court, any determination of that court and**  
 G **H includes judgment, decree, order, conviction, sentence or recommendation. From this definition, it is clear that “decision” includes “judgment” and so a “final decision” is and includes a “final judgment.”** A “final judgment” and “interlocutory judgment” are not

defined in any statute or the rules of court and must therefore be seen through case law as interpreted by the courts.

**The test for determining whether a judgment or order is final or interlocutory as in this case is whether that judgment or order has finally and completely disposed of the rights of the parties in the case, so much so that if it is given for the plaintiff, it is conclusive against the defendant and if it is given for the defendant, it is conclusive against the plaintiff, and no further reference can be made to the court in respect of the judgment or order. See Omonuwa v. Oshodin (supra).**

In the instant case, the appellant as plaintiff applied to the trial court for summary judgment under Order 28(6) of the High Court of Lagos (Civil Procedure) Rules 1972 against the defendant now respondent on the ground of a clear, unambiguous and unequivocal admission of liability in his favour in a letter Exhibit A, dated 10th August, 1990, written and signed by the defendant/respondent's staff. The learned trial Judge made the following order:-

*"There is therefore judgment for the plaintiff against the defendant for the sum of N4,500,560.00 being plaintiff's money deposited with the defendant and of which the defendant admitted in its letter of 10th August, 1990."*

He also proceeded to make a consequential order which reads:-

*"The plaintiff has also claimed the interest of 21% per annum in the writ on this suit but in the Statement of Claim it has been inadvertently stated to be 20% per annum. Since the Statement of Claim takes over from the writ the court can only give 20% interest rate. Thus this judgment sum of N4,500,560.00 shall carry an interest rate of 20% from 28/10/1983 till the amount is liquidated."*

Looking at paragraph 20 of the Statement of Claim, it is abundantly clear that the appellant as plaintiff made 3 distinct and separate claims of money against the respondent, which are:-

- (1) Payment of N4,500,560.00 deposited with the respondent with interest at the rate of 20% per annum;
- (2) N25 Million as damages for wrongful detention of the said

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N4,500,560.00;

(3) N5 Million for false imprisonment of himself caused by the respondent in January, 1984 at Epe, Lagos State,

**These 3 claims are in my view distinct, separate and independent and must be proved on the preponderance of evidence for the appellant to succeed. Number 1, according to the trial court is admitted and therefore needs not be proved in law, and judgment is given on it fully including the claim of interest. Therefore, the right of the appellant in that claim was fully and completely determined by the trial court. There is nothing more the court could have done in respect of that item of claim as between the parties. It is therefore a final judgment of that court in respect of item (1).** In *Sodipo v. Lemminkainen Oy* (1985) 2 NWLR (Pt.8) 547, it was held by this court that a final judgment is a judgment obtained in an action by which a previous existing liability of the defendant to the plaintiff is ascertained and established or where the question whether there was a pre-existing right of the plaintiff against the defendant is finally determined in favour of either the plaintiff or the defendant. **In this case, as I stated earlier in this judgment, the trial court found a pre-existing right of the plaintiff/appellant against the defendant/respondent vide the admission in Exhibit 'A' and this was finally a determination in favour of the appellant in the judgment.** Also in the case of *Ebokam v. Ekwenibe & Sons Trading Co. Ltd.* (1990) 10 NWLR (Pt.622) 242 in considering a similar situation such as in the instant appeal and after reviewing decisions on final or interlocutory judgments or decisions, I came to the inevitable conclusion that:-

*"In order to determine whether the decision is final or interlocutory, the decision must relate to the subject matter in dispute between the parties and not the function of the court making the order."*

**In this case, the issue in dispute is the deposit of N4,500,560.00 allegedly made by the appellant with the respondent and the interest charged thereon. The judgment of the trial court fully dealt with the issue leaving nothing undone and so the appellant's right on that claim was fully and completely disposed of. This does not affect the**



**function or powers of the court to make the order as it did. The judgment of the trial court on that issue is therefore final. The fact that there are 2 other independent claims of the appellant against the respondent does not and cannot affect the finality of the judgment on the first claim.**

**I, therefore, agree entirely with the Court of Appeal that the judgment of the trial court on item (I) above was a final and not interlocutory judgment. I answer issue 1 in the affirmative.**

I now consider alternative issue 3 of the appellant and issue 2 of the respondent. The learned counsel for the respondent submitted in his brief that alternative issue 3 did not arise from ground of appeal 2 and the decision of the Court of Appeal. I think I will disagree with him. The Court of Appeal, after examining the pleadings of the parties found that they joined issue on the alleged admission. It then went further and examined the affidavits filed by the parties in the appellant's application for judgment and hold that -

*"Whereas the plaintiff (appellant) believed and accepted that the letter written on 10/8/90 and signed by one Mr. E. H. Akpan for and on behalf of the defendant had the permission and authority or imprimatur of the defendant, the defendant however contended that its Mr. E. H. Akpan did not write the said letter."*

This was conceived from the contents of the parties' affidavits. Paragraph 3 of the appellant's affidavit in the application for judgment reads:-

*"3. That the plaintiff/appellant informed me and I have no doubt to disbelieve him that on 12/8/90 the defendant wrote a letter to him specifically admitting liability of his claim of N4.5 Million which money the defendant had converted."*

And by paragraph 4 of the respondent's counter-affidavit in the application, the respondent specifically denied being the maker of the letter of admission. He deposed that:-

*"I was informed by Mr. E. H. Akpan at 10 am in our chambers on the 12th day of May, 1999 that he did not write nor sign any letter to the plaintiff at all."*

**There is apparent conflict of sworn evidence between the above two paragraphs of the appellant and the respondent and in order to resolve the conflict, it has been well established by myriad of decisions of this court that evidence must be called to resolve the conflict before any decision is taken on the matter. This was not done here and I agree with the Court of Appeal that the trial court was in error for doing what it did in this case.** See *Falobi v. Falobi* (1975) 9-1 S.C. 1; *Adkins Scientific Ltd. v. Alade Toyinbo* (1995) 7 NWLR (Pt.409) 526; *First Bank of Nig. Plc v. May Medical Clinic & Diagnostic Centre Ltd. & Anor.* (2001) 4 S.C. 108 (cited in the respondent’s brief); *Din v. A-G Federation* (1986) 1 NWLR (Pt. 17) 471 at 487; *Akinsete v. Akinlitire* (1966) 1 All NLR 471 at 148; **I therefore find that although the Court of Appeal did not, in so many words, use the words “*irreconcilable conflicts in affidavits*,” their finding that the admission in Exhibit A was specifically denied by the respondent, is enough to point directly to the conflict which was not properly resolved by the trial court as required by law. This therefore destroys the validity of the order of the trial court giving judgment to the appellant on the alleged admission in Exhibit A.** I also answer issue 3 in the affirmative.

Having resolved issues 1 and alternative issue 3 of the appellant against him, I find that there is no merit in this appeal. I accordingly dismiss it and affirm the decision of the Court of Appeal. I also award the costs of N10,000.00 in favour of the respondent.

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### BELGOREJSC

G My learned brother, Kalgo, JSC., availed me a draft of his judgment in this appeal after a conference. I entirely agree with his conclusion that this appeal has no merit and must be dismissed. I also for the reasons in that judgment dismiss this appeal with N10,000.00 costs to respondent.

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### MUSDAPHERJSC

I have had the honour to read before now, the judgment, of my

Lord, Kalgo, JSC., just delivered. In the aforesaid judgment his Lordship had meticulously and comprehensively set out the fact and has also lucidly dealt with the relevant issues submitted to this court for the determination of the appeal. I respectfully adopt the clear exposition of the law and the reasoning as mine and accordingly dismiss the appeal and affirm the decision of the court below. I abide by the order for costs contained in the aforesaid judgment. B

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### EDOZIE JSC

The plaintiff maintained a current account No.502415964 with the Ikeja branch of the defendant bank. On 28th October, 1983, the plaintiff alleged that the sum of N4,500,560.00 (N4.5m for short) was credited into his said account from the Alagbon House branch of the defendant bank. D Apparently suspicious about the transaction, the defendant invited the plaintiff for questioning and later referred the matter to the police who in the course of investigation kept the plaintiff in custody in a place at Ita Oko near Epe for about 18 months. Upon his release and clearance by the police, E the plaintiff made several unsuccessful attempts to withdraw from the said account. On 4th August, 1990, he addressed a letter to the defendant threatening to take legal action against it if within 7 days it failed to release his money. The plaintiff alleged that in a reply dated 10th August, 1990, F the defendant admitted his claim and advised him to approach its Ikeja branch for payment but despite this, his subsequent efforts to withdraw the money failed. In consequence, he filed an action against the defendant bank with the following 4 heads of claims:-

“(i) *An order compelling the defendant to pay to the plaintiff the said sum of N4,500,560.00 with interest thereon at the rate of 20% per annum with effect from 28th day of October, 1983.* G

(ii) *The sum of N5 million for false imprisonment of the plaintiff when on or about 10th day of January, 1984 the defendant acting through H its Ikeja branch wrongfully and by means of false and malicious allegation procured the police to arrest the plaintiff whereby the plaintiff was arrested and kept at the Oko detention camp near Epe, Lagos State by*

police for a period of 18 months.

(iv) *An order that the continuous refusal by the defendant to pay the plaintiff his N4,500,560.00 is illegal and malicious”.*

Pleadings were duly filed and exchanged. The defendant in its Statement of Defence denied vital allegations in the plaintiff’s Statement of Claim particularly the statement that it wrote the reply letter dated 10th August, 1990, admitting the plaintiff’s claim to the sum of N4,500,560.00. Notwithstanding this, on 30th May, 1995, the plaintiff, pursuant to Order 28 rule 6 of the then High Court of Lagos State (Civil Procedure) Rules 1972 brought a motion on notice praying for:-

*“An order entering judgment in this suit against the defendant on the ground of clear, unambiguous and unequivocal admission of liability by the defendant vide defendant’s letter of 10/8/90 to the plaintiff.”*

The motion was supported by a 12 paragraph affidavit in which the deponent alleged that by the defendant’s letter of 10/8/90 annexed as Exhibit A, the defendant admitted liability of his claim of N4.5 Million. The defendant in opposition to the motion for judgment filed a counter-affidavit specifically denying that its staff, Mr. E. H. Akpan, signed the said Exhibit A. Despite the conflict in the pleadings and the affidavit evidence on the authenticity of Exhibit A, the learned trial Judge, Longe, J., proceeded to enter judgment for the plaintiff on 18th April, 1996, in a ruling which he concluded thus:-

*“Although the plaintiff in his Writ of Summons dated 28/8/91 has claimed for various amounts of money, present application relates to the admission of N4,500,560.00 of such claims.*

*There is therefore judgment for the sum of N4,500,560.00 being plaintiff’s money deposited with the defendant and of which the defendant admitted in its letter of 10th August, 1990..... Thus this judgment sum of N4,500,560.00 shall carry an interest rate of H 20% from 28/10/83 till the amount is liquidated.”*

Thus the learned trial Judge entered judgment for the plaintiff in respect of the 1st of the 4 heads of his claim endorsed on the Writ of Summons and the Statement of Claim.

Dissatisfied with the ruling, the defendant lodged an appeal to the Court of Appeal, Lagos Division. By Notice of Preliminary Objection, the plaintiff challenged the competency of the appeal alleging that the ruling was an interlocutory decision or judgment and that since no leave of court was obtained to appeal against it, the appeal was incompetent. In a unanimous judgment delivered on 11th July, 2000, the Court of Appeal dismissed the Preliminary Objection, after holding that the Ruling of the court below was a final and not an interlocutory judgment. On the merit of the appeal, it allowed the appeal, dismissed the motion for judgment and remitted the case for retrial on pleadings before another judge.

The plaintiff, herein appellant has lodged the instant appeal against the judgment of the Court of Appeal. The appeal was predicated upon two grounds of appeal. The appellant formulated one issue and two issues in the alternative. These are:-

*“1. Whether the court of first appeal was right in holding that the judgment of Longe, J., dated 18th April, 1996 was a final judgment?”*

*2. If issue No. 1 hereof is answered in the negative, whether the grounds of appeal filed by the respondent (appellant at the court below) are grounds of law, fact, mixed law and fact.*

*3. In the alternative, whether the Court of Appeal was right in holding that there exists irreconcilable affidavit evidence requiring calling oral evidence to clear before the court of trial.”*

In the brief filed on behalf of the defendant, respondent in this appeal, the following two issues were identified for determination:-

*“(1) Whether the decision of Longe, J., delivered on 19th April, 1996 is a final decision as held by the Court of Appeal.*

*(2) Were their irreconcilable conflict on the two affidavits evidence before the trial court that require oral evidence to resolve as allegedly held by the Court of Appeal.”*

The appellant’s 2nd issue for determination is not related to any of the two grounds of appeal. It is incompetent and accordingly it is struck out: See *Madumere v. Okafor* (1996) 4 NWLR (Pt.445) 437; *Atunrase v. Philips* (1996) 1 NWLR (Pt.427) 637; *Adamu v. A-G Bornu State* (1996) 8 NWLR (Pt.455) 203, where it was held that it is an elementary principle

in brief writing that issues for determination are confined to and circumscribed by the grounds of appeal and any issue not so related to the ground of appeal is incompetent.

With respect to the appellant's first issue for determination, the contention of the appellant in his brief is that the appeal to the Court of Appeal by the respondent was interlocutory since the judgment of the learned trial Judge was only in respect of parts of the claims before that court stressing that the judgment did not finally determine the rights of the parties in the claim before that court having regard to the other three heads of claim that had not been determined. The following cases were cited and relied on :- Ebokam v. Ekwenibe & Sons (1999) 7 S.C. (Pt.I) 39; (1999) 7 SCNJ (no page indicated); Omonuwa v. Oshodin (1985) 16 NSCC 147 at 148; Dawodu v. Ologundudu (1986) 4 NWLR (Pt.73) 104; Bakule v. Tanerewa Nig. Ltd. (1985) 2 NWLR (Pt.380) 728.

It was reiterated that the determining factor as to whether or not an order or judgment is interlocutory or final is not whether the court has finally determined an issue, rather it is whether or not it has finally determined the rights of the parties in the claim before the court. It was submitted that in this case what was finally determined by the trial court was an issue and not all the issues in controversy between the parties. It was, therefore, urged that since the judgment was interlocutory and no leave of court was obtained to appeal against it and the grounds of appeal not being of law alone, the appeal against the judgment was incompetent.

Dealing with the appellant's 3rd issue, learned counsel submitted in his brief that there were no real conflicts in the application for judgment upon the admission before the court of trial to warrant the calling of oral evidence adding that such oral evidence was not necessary where, as in this case, there was documentary evidence that is, Exhibit "A" which the court was entitled to use to reconcile if there were any conflict in the affidavit evidence of the parties. The following cases were referred to:- Falobi v. Falobi (1976) 9-10 (Reprint) 1; (1976) 9-10 S.C. 1; Shugaba v. Union Bank of Nigeria Plc. (1997) 4 NWLR (Pt.500) 481.

The respondent with regard to its first issue for determination expressed the view that the judgment of the trial court in question is a final

and not an interlocutory judgment stressing that the test to be applied in deciding the issue is the nature of the order made in the judgment and not the nature of the proceedings in which the judgment was given. The following authorities were cited and relied upon:- *Bozrin v. Altrincham Urban District Council* (1903) 1 QB 547; *BLAY v. Solomon* 12 WACA 177; *A. M. O. Akinsanya v. United Bank for Africa Limited* (1986) 4 NWLR (Pt.35) 273 at 290; *Alhaji Sulaiman Mohammed & Ors. v. Lasisi Sanusi Olawumi & Ors.* (1990) 2 NWLR (Pt. 133) 458 at 496 and *Clement C. Ebokam v. Ekwenibe & Sons Trading Company Limited* (1999) 7 S.C. (Pt.I) 39; (1999) 7 S.C. 39 at 47.

With respect to the respondent's 2nd issue for determination, learned counsel for the respondent in his brief of argument raised a preliminary objection to ground 2 of the appellant's grounds of appeal from which the issue is distilled. The objection is to the effect that the ground of appeal is incompetent because the Court of Appeal did not hold that *"there were irreconcilable conflicts in the affidavits of the parties at the trial court which required the calling of oral evidence to resolve"*. Referring to the cases of *Egbe v. Alhaji* (1990) 1 NWLR (Pt. 123) 546 at 590 and *Saraki v. Kotoye* (1992) 9 NWLR (Pt.264) 156 at 199, it was emphasized that a ground of appeal must be predicated on the findings of the court and any ground of appeal not as premised is incompetent and must be struck out or discountenanced along with any issue distilled from such ground. In the event, the preliminary objection is overruled, learned counsel submitted that as a general rule, the court can arrive at a conclusion based on two opposing affidavit evidence without calling oral evidence provided the said affidavits do not contain divergent and conflicting disposition of facts on material issues to be adjudicated upon stressing that where the two opposing affidavits are fundamentally at variance on material facts, oral evidence is required to resolve the conflict. The following cases were cited:- *First Bank of Nigeria Plc v. May Medical Clinics and Diagnostic Centre Ltd. & Anor.* (2001) 4 S.C. (Pt. 1) 108 at 114-115; *Falobi v. Falobi* (1976) 9-10 S.C. (Reprint) 1; (1976) 9-10 S.C. 1; *Adkins Scientific Limited v. Alade Toyinbo* (1995) 7 NWLR (Pt.409) 526 at 535-536. Learned counsel submitted that the assertion in appellant's

affidavit to the effect that the letter signed by Mr. E. H. Akpan, an employee of the respondent was an admission by the latter of the appellant's claim and the respondent's counter-affidavit that Exhibit A was not written by its employee, Mr. Akpan constitutes a material conflict which cannot be resolved without taking oral evidence.

I think that the question that calls for determination in this appeal is whether the Court of Appeal was right in holding that the judgment of the trial court is a final judgment and in dismissing the appellant's application for judgment and remitting the case for trial upon pleadings by another judge.

The distinction between final and interlocutory judgments has been decided in a plethora of decisions of this court. In the case of *Akinsanya v. U.B.A. Ltd.* (1986) 4 NWLR (Pt.35) 233 at 298, Eso, JSC., had this to say:-

*"I think the current attitude is to be found in the dictum of Brett, MR., in the case of ex parte, In re Faithful which I have referred to supra. Once there is no further reference to a court after it has made its order that something be done according to the answer to the enquiries, all the rights and not just an issue or some issues, have been determined. In which case, in a Court of Appeal, it is in regard to the proceedings before that court and the nature of the order made thereupon by that court, that would determine whether the matter is final or interlocutory. See Chike Obi v. D.P.P. (supra), Adegbenro v. Akintola (supra). And this will still be in accord with the Bozrin v. Altrinehan test if applied in the Court of Appeal."*

More recently in the case of *Igunbor v. Afolabi* (2001) 5 S.C. (Pt.I) 105; (2001) 11 NWLR (Pt.723) 148, at p.165, this court per Karibi-Whyte, JSC., restated the position thus:-

*"The determination of the question whether an order is interlocutory or final has never been one of mean difficulty. The test has been to look at the nature of the order made rather than the nature of the proceedings resulting in the order. What has to be considered is whether the order has finally determined the rights of the parties in the proceedings in issue appealed against and not whether the rights of the parties in the*



*substantive action have been finally disposed of - see Omonuwa v. Oshodin (1985) 2 NWLR (Pt. 10) 924; U.B.A. Plc. v. Akinsanya (1986) 4 NWLR (Pt.35) 273, (1986) 7 S.C. 235; Ude v. Agu (1961) 1 SCNLR 98; Ojora v. Odunsi (1964) NMLR 12; Western Steel Works Ltd. v. Iron and Steel Workers Union of Nigeria (1986) 3 NWLR (Pt.30) 617.*

*A final order or judgment at law is one which brings to an end the right of the parties in the action. It disposes of the subject matter of the controversy or determines the litigation as to all parties on the merits. On the other hand, an interlocutory order or judgment is one given in the process of the action or cause which is only intermediate and does not finally determine the rights of the parties in the action. It is an order which determines some preliminary or subordinate issues or settles some stage or question but does not adjudicate the ultimate rights of the parties in the action. However, where the order made finally determines the rights of the parties as to the particular issue disputed, it is a final order even if arising from an interlocutory application. For instance, an order of committal for contempt arising in the course of proceedings in an action is a final order: see Toun Adeyemi v. Theophilus Awobokun (1968) 2 All NLR 318. The instant case as rightly submitted by appellant's counsel is an interlocutory motion by the appellant to be joined as co-administrators with the respondents. The order of the learned trial Judge granting the application determined the rights of the parties in the application. It is an order which did not require something else to be done in answer and without any further reference to itself or any other court of co-ordinate jurisdiction. The order of the learned trial Judge is therefore a final order. An appeal on the final order is of right under Section 220(4) of the 1999 Constitution."*

In the instant appeal, the subject-matter before the trial court upon which it gave its ruling, the subject-matter of the present appeal, was the relief sought by the appellant in his motion on notice for judgment dated 30th May, 1995. At the risk of repetition, the prayer reads:-

*"An order entering judgment in the suit against the defendant for the sum of N4,500,560.00 being plaintiff's money deposited with the defendant and of which the defendant admitted in its letter of 10th August, 1990."*

In reacting to that prayer, the learned trial Judge entered judgment in favour of the appellant and thereby determined finally the issue of the subject matter before it. It is immaterial that the issue relates to only one of the four claims in the substantive suit. What is material is the subject matter before the trial court with respect to the appellant's motion for judgment. The court below was justified in holding that the judgment of the trial court was a final and not an interlocutory one. Equally justified is the decision of the Court of Appeal remitting the case for retrial before another judge. This is so because the genuineness of Exhibit A on which the appellant's case hinged was disputed and it cannot be used to reconcile the divergent stances of the parties as erroneously postulated by appellant's counsel.

For the forgoing reasons as fully discussed in the leading judgment of my learned brother, Kalgo, JSC., which I adopt as mine, I also dismiss the appeal with N10,000.00 costs to the respondent.

#### E **AKINTANJSC**

I had the privilege of reading the leading judgment just delivered by my learned brother, Kalgo, JSC. The facts of the case and all the issues raised in the appeal are well set out and discussed fully therein. I therefore, need not repeat them. I entirely agree with his reasoning and conclusion that there is no merit in the appeal.

The entire appeal rests on resolution of two questions. The first is whether the decision of Longe, J., on 19/4/96 in which he entered judgment for the plaintiff in respect of the first leg of his claim was a final judgment for which the defendant could appeal without leave. The second question is whether there was in fact an admission of that leg of the plaintiff's claim at the close of pleading which could justify the action of the learned trial Judge.

H The question whether the said order made by Longe, J., on 19/4/96 is final or interlocutory would depend on whether it passes the test prescribed by law. In *Anoghalu v. Oraelosi* (1994) 2 NWLR (Pt.324) 68 at 78, I had cause to state the position of the law as follows:

*“There is no doubt that if the orders appealed against are interlocutory and the grounds of appeal are of facts and/or mixed law and facts, the appellants would require the leave of the court below or this court to bring the appeal on those grounds. (See Sections 220(1)(b), 221(1) of the 1997 Constitution).*

*The first question to be resolved therefore is whether the orders appealed against are final or interlocutory. The test to be followed in this respect is as laid down by Lord Alverstone, CJ., in Bozson v. Alterinchan U. D. C. (1903) 1 KB 547 at 548 which is: “Does the judgment or order, as made, finally dispose of the rights of the parties? If it does, then I think it ought to be treated as a final order, but if it does not, it is then, in my opinion, an interlocutory order. (See Akinsanya v. U.B.A. (1986) 4 NWLR (Pt.35) 273 where this test was followed)”*

The facts of the instant case are that at the close of pleadings, the plaintiff prayed the court in a motion supported with an affidavit that the defendant had admitted the first leg of his claim which is for:

*"An order compelling the defendants to pay to the plaintiff the said sum of N4,500,560 with interest thereon at the rate of 20% per annum with effect from 28th day of October, 1983."*

The learned trial Judge entered judgment for the plaintiff for the said sum claimed together with the interest claimed thereon. I have no doubt that there was nothing left to be determined by that court in respect of that leg of the claim after the learned trial Judge had entered his said judgment in the case. He has by his act, determined the dispute between the parties as far as that leg of the claim was concerned. His said judgment is therefore a final judgment. See also Balogun v. Adejobi (1995) 2 NWLR (Pt.376) 131 at 161-162; Omonuwa v. Oshodin (1985) 2 NWLR (Pt.10) 924; and Afuwape v. Shodipe (1957) SCNLR 265.

On the second question, which is whether the learned trial Judge was right in holding that the defendant had admitted the first leg of the claim which he granted, I agree with the view expressed in the leading judgment that from the averments presented by the parties in the case that the claim could not be said to have been admitted by the defendant.

In the result, and for the reasons given above and the fuller reasons

given in the leading judgment, which I also adopt, I too hold that there is no merit in the appeal and I accordingly dismiss it with costs as assessed in the leading judgment.

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