

**SUPREME COURT OF NIGERIA**

8TH APRIL, 2005. SC. 93/2002

**CORAM:- M. L. UWAIJ CJN, A. I. KATSINA-ALU, D.  
MUSDAPHER, I. C. PATS-ACHOLONU, G. A. OGUNTADE, JJSC**

CHIEF OLUFEMI ODU ..... APPELLANT  
AND

1. CHIEF TIAMIYU JOLAOSO
  2. REV. OLOYEDE SODIPO
  3. CHIEF YUSUFU BALOGUN
  4. MADAM TETEOLA BOKUNMU ..... RESPONDENTS
  5. ALHAJI OLAYINKA AKINFEMI
  6. EMMANUEL ISHOLA OKEDIRAN
  7. SULAIMAN ADEKUNLE
- 

CONTEMPT OF COURT - Nature - It is invoked by the court - To protect its dignity - And ensure that court orders - Are not trivialized (H1)

CONTEMPT OF COURT - Notice to contemnor - Is by serving form 48 - If he then complies with the court order - The contempt proceedings will be terminated (H2)

CONTEMPT OF COURT - Contemnor - Definition of - It is a person who refuses to comply with court order (H3)

ORDERS OF COURT - Compliance with - Is very essential - Especially where there is no pending appeal - To avoid becoming a contemnor (H4)

APPEALS - Issues - Contempt of court - Real issue and state of affairs - Were misconceived by appellant - Service of forms 48 & 49 - Indicates an existing contempt (H5)

CONTEMPT OF COURT - Adjournment - Purpose - Forms 48 & 49 - Essence of - Is to afford the contemnor - The opportunity to recant and

976 Odu v. Jolaoso (2005) 4 KLR (pt. 195) 975; (2005) 16 NWLR  
comply (H6)

ORDERS OF COURT - Contempt of court - Order to exhume body - Buried on land in dispute - Sought to be evaded by appellant - Was rightly maintained - By Court of Appeal (H7)

### **FACTS**

The appellant brought an application ex parte before a Senior Magistrate's Court in Ogun State, praying for an order pursuant to s.6 of Ogun State Burial Law for permission to bury his deceased father in a community building. He did not disclose in his affidavit that there were rival claimants to the land, ie., that the land was in dispute. The application was granted. The respondents later brought an application praying that the order be discharged as it was fraudulently obtained by concealing the relevant facts from the court. The Magistrate's Court set aside the grant and ordered appellant to exhume the said body from that land. He appealed to the High Court against the order of the learned Magistrate, but the appeal was dismissed. He later appealed to the Court of Appeal and the same was struck out for want of prosecution. Appellant took no further step before any court, nor did he comply with the order of the learned Magistrate.

Respondents commenced proceedings before Ibadan High Court against the appellant for committal for Contempt of Court and caused forms 48 and 49 of the Sheriffs and Civil Process Act to be served on him. An adjournment was granted on the date the matter came up in response to the request of appellant's counsel. By the next adjourned date, appellant had not yet complied with the order of court and he was convicted for contempt of court. Appellant's appeal to the Court of Appeal was dismissed. He has further appealed to the Supreme Court.

**HELD** (Unanimously dismissing the appeal per **PATS-ACHOLONU JSC**)  
***Contempt of court - When to be invoked***

1. By its nature punishment for contempt is the exercise of the powers of the court to punish an offender for an act that somehow affects the

dignity of the court in the administration of justice. It is an inherent power in that it is innate to the court once it is established. Essentially, it is invoked by the court to protect its dignity and majesty so that its orders cannot be trivialized or treated with levity. In other words, a court exercises the power which is cognately vested in it as a judicial body

One therefore can conclude that wherever the circumstances of proceedings dictate the necessary invocation by the court of its inherent powers to punish for contempt and impose the desired punishment, it shall be seen to be, to preserve the magesterium of court's greatness in demonstrating that it is the bulwark against any invidious act or behaviour that strikes at the root of the rule of law. (p. 983 C / 984 C)

***Notice to contemnor - Is by serving form 48***

2. It is clear from the contents of the form 48, as set out above, that it is aimed at giving notice to anyone believed to be in contempt of an order of court that unless he takes steps to comply with the court order in question he would be committed to prison for contempt of the said order of court. It follows therefore that if the person upon whom the form was served takes immediate step to comply with the said order of court, all he needs to do is merely to immediately inform the court that he had complied with the order. There would therefore be no need to proceed further with him. The forms 48 and 49 are required to be signed by the registrar of the court in which the application for committal is made. (p. 985 H)

***Contemnor - Definition of***

3. The question that then arises is this: who is a contemnor? It is, in my view, the person to whom an order of the court of competent jurisdiction is directed to do or restrain from doing an act and who in defiance or seeking one subterfuge or the other refuses to comply with the order so made. It equally embraces such invidious acts as insults or unsavoury comments with very sinister motives against a court with a view to denigrating the court and smear or besmirch its nobility, its majesty, its aura, its responsibility, or indulging in expressive sinister and offensive acts or words that would lower the esteem of the court in the eye of the public.

There are two kinds of contempts; civil and criminal contempts. The first affects the party on whose behalf it was made while the criminal is a wilful disobedience or disregard of the court’s order, or command.  
(p. 986 E)

B

***ORDERS OF COURT - Compliance with***

4. There is a school of thought to the effect that when a court makes an order, it is desirable and I dare say essential that it be obeyed before a further step is taken in cases where no irreparable damage will be occasioned by compliance with the order before further complaint or an appeal is lodged.

When the Magistrate Court made the order against the appellant to exhume the body of his father buried in the land of the respondents which order he refused to obey, he went on appeal and lost. Then he appealed to the Court of Appeal but the same was struck out for want of prosecution having been abandoned. Still that initial order of the court was not complied with, he did nothing else in this regard. Having not pursued the appeal and not complying with the order to exhume, he could be regarded as a contemnor. A contemnor is one who has committed contempt of the court. (p. 986 H)

***APPEALS - Issues - Contempt of court***

5. The appellant complained that the Court of Appeal abandoned the real issue and delved into a different matter. The real issue he had in mind is the High Court not having allowed him to argue his preliminary objection before making the order, the subject matter of the appeal. The point that he failed to understand is that when he abandoned his former appeal, he inferentially had accepted that the order of the court to exhume was valid, and therefore by failure or refusal to abide by it, he became a contemnor.

So, when the matter came before the High Court and the lower court, he was already a contemnor and he could not obviously be expected to be treated with kid gloves. He and his counsel apparently misunderstood his status at that stage. The appellant totally misconceived

the true state of affairs, hence the nature of the issues he formulated. The essence of forms 48 and 49 is to appraise and warn him that he risked being put in prison if he did not comply with the contents of the forms which show that he is a contemnor.

Argument of the appellant that the court did confine itself to first determining the preliminary objection is obtuse. He had no bargaining power at that stage. (p. 987 C)

### ***Forms 48 & 49 - Essence of***

6. It is reasonable to infer that the purpose of the adjournment by the High Court when the appellant's counsel informed the court that he was not well disposed to continue with the matter, was to ensure that if the contemnor is to be committed to prison, it is only fair and in accordance with due process of the law that his counsel be available to explore the possibility of helping to mitigate whatever punishment the court might impose. The forms 48 and 49, when served, as in this case, afford the contemnor the opportunity to recant. These forms provide him with a chance to try and comply with the order of the court. (p. 988 D)

### ***Contempt of court - Order to exhume body***

7. In the whole ugly episode of this case, it can be discerned of an attempt or effort by the appellant to use all sorts of subtle, but nevertheless unacceptable, means to thwart and refuse to obey the order of the court. The Court of Appeal saw through all these gambits hence it affirmed the ruling of the court below. It will indeed be remiss on the part of the lower court if it had not confirmed the order made by the High Court in the light of the history of the dubious method of the appellant to evade the order to exhume the body. In the circumstances, I see no merit in the case and it is hereby dismissed. I affirm the judgment of the lower court. (p. 988 F)

## **NOTABLE POINTS OF INTEREST**

### **KATSINA-ALU JSC**

1. *Obligation to obey a court order even if believed to be irregular*

As I understand it, the plain and unqualified obligation of every person against or in respect of whom an order is made by a court of competent jurisdiction is to obey it unless and until that order is discharged. This is so even in cases where the person affected by an order believes it to be irregular or even void. So long as it exists, the order must be obeyed to the letter: See Mobil Oil (Nig.) Ltd. v. Assan (1995) 8 NWLR (Pt. 412) 129. (p. 990 D)

**OGUNTADE JSC**

***2. Contempt hearing is not equivalent to an ordinary criminal trial***

It is clear from a close perusal of Order 9 rule 13 above that whilst the intention of the lawmaker is to afford a person whose committal is sought for a failure to obey a court order a hearing before he is committed to prison, such hearing is not the equivalent of a criminal trial in the ordinary manner. It is rather a special procedure to expeditiously deal with a recalcitrant person. Once the court is satisfied that an order was made which a person has refused to obey, he may be sent to prison once it appears that notice as in Form 49 has been served on him and if the order was made in his absence that a copy thereof has been served on him.

The appellant in this case was brought before the High Court for committal for failure to obey a court order in accordance with the procedure prescribed under Order 9 rule 13 (1) and (2) above. There was evidence that Forms 48 and 49 had been served on the appellant. There was also an assertion that the appellant had not obeyed the order to ex-hume his father's body from the land in question. It would appear that the stage was set for appellant's committal to prison. (p. 995 C)

***3. Contempt trial - Putting appellant on bail does not mean conviction***

But at that stage on 13/5/98, when the application to commit the appellant to prison was to be heard, appellant's counsel, Mr. Tide Agbaje asked that the application be adjourned. The High Court did not order that the appellant be committed to prison which was a course open to the court if appellant was found to be still disobeying the court order. The order that the appellant be put on bail was no doubt an attempt by the High Court to

ensure that the appellant would turn up on the next date of hearing and to bring home to him the serious consequences attendant upon flagrantly disobeying an extant court order. The suggestion that the trial Judge had by merely putting appellant on bail, convicted and sentenced him as argued by appellant's counsel is untenable and totally preposterous. As I observed, the procedure is not akin to an orthodox criminal trial in which an accused is found guilty and sentenced. This appeal would appear to be a case of much ado about nothing and gravely abusive of the appellate procedure. (p. 995 G)

C

### **REPRESENTATION**

Fred Agbaje Esq., for the Appellant.

D. T. Akinbiyi Esq., with Messrs O. H. Oyajimi and I. O. Popoola, for the Respondents.

D

### **CASES REFERRED TO**

United Spinners Ltd. v. Chartered Bank Ltd. (2001)7 S.C. (Pt.II) 171; (2001) 14 NWLR (Pt.732) 195

E

Mobil Oil (Nig.) Ltd. v. Assan (1995) 8 NWLR (Pt. 412) 129

Elufioye v. Halilu (1993) 6 NWLR (P. 301) 570

Akapo v. Hakeem Habeeb (1992) 6 NWLR (Pt. 247) 266

R v. Almon (1765) Wilm 243

F

Orji v. Zaria Industries Ltd. (1992) NWLR (Pt. 216) 124 at 220

Atake v. Att. Gen. of Federation & Anor. (1982) NSCC 444 at 461 and 473

Deduwa & Ors. v. The State (1975) All NLR 1 at 12

G

Boyo v. A-G of Midwest State (1971) All NLR 343 at 354

McLeod v. St. Aubyn (1899) AC 549 at 561

### **STATUTES & RULES REFERRED TO**

Sheriffs and Process Laws Cap. 118, Laws of Ogun State s. 65, s. 63

H

Ogun State Burials Law s. 6

Judgment (Enforcement) Rules O. 9 rule 13

**LEAD JUDGMENT BY PATS-ACHOLONU JSC**

The facts and circumstances giving rise to this appeal are traceable to the appellant's action from the commencement of the proceedings in the case. The appellant was convicted for contempt proceedings in the High Court presided by Jacobs, J., in Ibadan, in that he failed to comply with the dictates or prescriptions of forms 48 and 49 of the Sheriff and Civil Process Act, Cap.407 served on him. It was his case that the High Court could not in all fairness convict him when he filed a preliminary objection to the issuance of the forms. Now the conviction came about on the alleged disobedience of an order made by a Magistrate Court which ordered him to exhume the body of his father buried in the land which the respondents claimed belonged to them. He appealed against the order of the learned Magistrate and the appeal was dismissed. He later appealed to the Court of Appeal but the same was struck out for want of prosecution. As the appellant appeared to have done nothing in respect of the prevailing situation, the respondents proceeded with contempt proceedings in the High Court, where the conviction for contempt took place. He thereupon appealed to the Court of Appeal, Ibadan Division, against his conviction. The appeal lodged before the Court of Appeal was premised on the fact that he ought not to have been convicted as there was a preliminary proceeding he had filed in the High Court. This appeal was dismissed, hence a further appeal to this court wherein 4 issues were formulated. They are as follows:-

1. Did the Court of Appeal actually consider the real issue raised in the appeal before it before reaching its verdict?
2. Was the Court of Appeal correct when it held that it was form 49 that was before the trial Judge on the 13/5/98?
3. Is the Court of Appeal right to have dwelt on issues yet to be decided by the trial court?
4. Whether the lower court having become functus officio can still make the order it made asking the appellant to report back to the court on 10/4/2002 to purge himself of contempt, an issue yet to be decided by the trial court.

On the other hand the respondents raised 3 issues for determina-



tion and they are:

(i) Whether the court below stayed away from considering the issue or issues for determination before them.

(ii) Whether the court below was right in upholding the procedure adopted by the trial Judge on the 13th May, 1998. B

(iii) Whether the court below was right in adjourning the case till a further date after delivering judgment for the appellant to purge himself of contempt.

Now, before delving into the nuances of this appeal, let me first address on the nature of the proceeding followed. **By its nature punishment for contempt is the exercise of the powers of the court to punish an offender for an act that somehow affects the dignity of the court in the administration of justice. It is an inherent power in that it is innate to the court once it is established. Essentially, it is invoked by the court to protect its dignity and majesty so that its orders cannot be trivialized or treated with levity. In other words, a court exercises the power which is cognately vested in it as a judicial body.** In order to fully appreciate the ramification of punishment for contempt, it is desirable to give a historical synopsis of the law as it evolved in order to understand courts' attitude to contempt matters. It has been stated that the history of the punishment for contempt by the court could be traced to an order made by one Lord Chief Justice of England, Lord Gascoigne, who in the middle ages upbraided Prince Henry of Monmouth for his uncouth and unbecoming behaviour in the court. The Prince used force to extricate his servant who was brought to the court for his unruly behaviour. The case which however, now forms the bedrock of our understanding of contempt matter can judicially speaking be traceable to the pronouncement of Wilmot, J., in *R. v. Almon* (1765) Wilm 243. The learned Judge stated as follows in this matter: C D E F G

*“The power which the courts in Westminster Hall have of vindicating their authority is coeval with their first foundation and institution; it is a necessary incident to any court of justice, either of record or not to fine and imprison for contempt to the court, acted in the face of it.... And the issuing of attachments by the Supreme Courts of Justice in* H

*Westminster Hall for contempts out of courts, stands upon the same immemorial usage as supports the whole fabric of the Common Law, it is as much the *lex terrae* and within the exception of Magna Cartas as the issuing of any other legal process whatsoever. I have examined very carefully to see if I could find any vestiges or traces of its introduction, but can find none. It is as ancient as any other part of Common Law, there is no priority or prosperity to be discovered about it, and therefore cannot be said to invade the common law, but to act in alliance and friendly conjunction with every other provision which the wisdom of our ancestors has established for the general good of the society.”*

**One therefore can conclude that wherever the circumstances of proceedings dictate the necessary invocation by the court of its inherent powers to punish for contempt and impose the desired punishment, it shall be seen to be, to preserve the magesterium of court’s greatness in demonstrating that it is the bulwark against any invidious act or behaviour that strikes at the root of the rule of law.**

Having so stated, let me now commence discussion on the arguments adumbrated before this court. On issue 1, I cannot but tend to repeat the sole issue formulated in the Court of Appeal, in different words:

*“Whether the Court of Appeal should have affirmed the judgment of the High Court when the committal proceedings were yet to be heard”.*

It is important to note that essentially this matter arose out of the allegation that the appellant refused to exhume the body of his father buried in the land belonging or claimed to belong to the respondents. The argument of the appellant is that the alleged contempt was not contempt *facie curiae* i.e., in the face of or before the court. He referred to the judgment of the Port Harcourt Divisional Court decision in Chief Gordon Dibai v. Chief Moses Igwe & 13 Ors. (there was no reference). In that case the learned counsel for the appellant submitted that when a contempt is alleged to have been committed outside the courts precinct, the matter should be referred to another judge for trial. It is his argument that in a situation such as in the present case, it would be wrong for the High Court to take over the matter and try him for contempt and therefore the

procedure adopted to convict him is wrong. What then happened in the High Court? What was that court's attitude to the matter before it? As a matter of fact, after the High Court, presided by Ogunlesi Adio, J., had at its hearing on the matter refused an order for committal against the appellant due to procedural irregularity, the respondents filed another motion for contempt proceeding in a subsequent proceeding in Suit No. HCT 11/94 before Jacobs. J., in a land matter, the subject matter of which is the land where the appellant buried his father. The parties in that suit are the same as in this appeal. The High Court, presided by Jacobs, J., made an order to the following effect when the learned counsel for the appellant had indicated that he was indisposed and could not go on with the case and asked for an adjournment:

*"This application is adjourned to 19th May, 1998. In the meantime, the contemnor is hereby granted bail in the sum of N50,000.00 with two sureties in N25,000.00 each. Sureties to reside within jurisdiction and possess immovable assets. Where the contemnor fails to provide suitable sureties he should be remanded in police custody till the next adjournment date....."*

In this matter, it is evident that right from the word go the High Court had described and therefore treated him as someone already in contempt of the court. In the Court of Appeal that court stated as follows:-

*"At the time the matter came up before the learned trial Judge both forms 48 and 49 had been served on the appellant. Form 48, titled: "Notice of Consequences of Disobedience to Order of Court" provides, inter alia, as follows:-*

*"To..... of..... Take notice that unless you obey the directions contained in this order you will be guilty of contempt of court and will be liable to be committed to prison.*

*Date ..... day of.....*

*Registrar".*

**It is clear from the contents of the form 48, as set out above, that it is aimed at giving notice to anyone believed to be in contempt of an order of court that unless he takes steps to comply with**

the court order in question he would be committed to prison for contempt of the said order of court. It follows therefore that if the person upon whom the form was served takes immediate step to comply with the said order of court, all he needs to do is merely to immediately inform the court that he had complied with the order. There would therefore be no need to proceed further with him. The forms 48 and 49 are required to be signed by the registrar of the court in which the application for committal is made.

Further below the Court of Appeal held:  
*"Both forms 48 and 49 had been served on the appellant in the instant case. He was in fact in the court before the learned trial Judge on 13th May, 1998, only to show cause why an order for his committal should not be made. His invitation to the court was not, at that stage, for the purpose of being tried for contempt. That stage had passed..... He did not deny the complaint when form 48 was served on him. He also failed to inform the court that he had complied when he appeared before the court on 13th May, 1998..... The contempt charge against the appellant was not one of committal in facie curiae (in the face of the court) hence the need to issue forms 48 and 49."*

The question that then arises is this: who is a contemnor? It is, in my view, the person to whom an order of the court of competent jurisdiction is directed to do or restrain from doing an act and who in defiance or seeking one subterfuge or the other refuses to comply with the order so made. It equally embraces such invidious acts as insults or unsavoury comments with very sinister motives against a court with a view to denigrating the court and smear or besmirch its nobility, its majesty, its aura, its responsibility, or indulging in expressive sinister and offensive acts or words that would lower the esteem of the court in the eye of the public. There are two kinds of contempts; civil and criminal contempts. The first affects the party on whose behalf it was made while the criminal is a wilful disobedience or disregard of the court's order, or command. There is a school of thought to the effect that when a court makes an order, it is desirable and I dare say essential that it be obeyed

before a further step is taken in cases where no irreparable damage will be occasioned by compliance with the order before further complaint or an appeal is lodged.

When the Magistrate Court made the order against the appellant to exhume the body of his father buried in the land of the respondents which order he refused to obey, he went on appeal and lost. Then he appealed to the Court of Appeal but the same was struck out for want of prosecution having been abandoned. Still that initial order of the court was not complied with, he did nothing else in this regard. Having not pursued the appeal and not complying with the order to exhume, he could be regarded as a contemnor. A contemnor is one who has committed contempt of the court.

**The appellant** complained that the Court of Appeal abandoned the real issue and delved into a different matter. The real issue he had in mind is the High Court not having allowed him to argue his preliminary objection before making the order, the subject matter of the appeal. The point that he failed to understand is that when he abandoned his former appeal, he inferentially had accepted that the order of the court to exhume was valid, and therefore by failure or refusal to abide by it, he became a contemnor. Section 65 of the Sheriffs and Process Laws Cap. 118, Laws of Ogun State which provides amongst others states:

*“If any person refuses to comply with an order made against him, other than for payment of money, the court, instead of dealing with him as a judgment debtor guilty of misconduct defined in paragraph (f) of Section 57, may order that he be committed to prison and detained in custody until he had obeyed the order in all things that are to be immediately performed and given such security as the court thinks fit to obey the other parts of the order, if any, at the future times thereby appointed, or in case of his no longer having the power to obey the order then until he has been imprisoned for such time as the court may prescribe or until he has paid such fine as the court directs.”*

So, when the matter came before the High Court and the lower court, he was already a contemnor and he could not obviously

be expected to be treated with kid gloves. He and his counsel apparently misunderstood his status at that stage. The appellant totally misconceived the true state of affairs, hence the nature of the issues he formulated. The essence of forms 48 and 49 is to appraise and warn him that he risked being put in prison if he did not comply with the contents of the forms which show that he is a contemnor.

Argument of the appellant that the court did confine itself to first determining the preliminary objection is obtuse. He had no bargaining power at that stage. The cases he cited such as United Spinners Ltd. v. Chartered Bank Ltd. (2001)7 S.C. (Pt.II) 171; (2001) 14 NWLR (Pt.732) 195; Elufioye v. Halilu (1993) 6 NWLR (P. 301) 570; Akapo v. Hakeem Habeeb (1992) 6 NWLR (Pt. 247) 266, and Orji v. Zaria Industries Ltd. (1992) NWLR (Pt. 216) 124 at 220 are not relevant or of any help to him. It is reasonable to infer that the purpose of the adjournment by the High Court when the appellant's counsel informed the court that he was not well disposed to continue with the matter, was to ensure that if the contemnor is to be committed to prison, it is only fair and in accordance with due process of the law that his counsel be available to explore the possibility of helping to mitigate whatever punishment the court might impose. The forms 48 and 49, when served, as in this case, afford the contemnor the opportunity to recant. These forms provide him with a chance to try and comply with the order of the court.

In the whole ugly episode of this case, it can be discerned of an attempt or effort by the appellant to use all sorts of subtle, but nevertheless unacceptable, means to thwart and refuse to obey the order of the court. The Court of Appeal saw through all these gambits hence it affirmed the ruling of the court below. It will indeed be remiss on the part of the lower court if it had not confirmed the order made by the High Court in the light of the history of the dubious method of the appellant to evade the order to exhume the body. In the circumstances, I see no merit in the case and it is hereby dismissed. I affirm the judgment of the lower court. I award

N10,000.00 costs to the respondents.

### UWAIS CJN

I have had the opportunity of reading in draft the judgments of my learned brothers, Pats-Acholonu and Oguntade, JJSC. I quite agree with them that this appeal lacks merit and that it should be dismissed. I award N10,000.00 costs to the respondents against the appellant.

### KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment of my learned brother, Pats-Acholonu, JSC. I agree with it.

The proceedings that gave rise to the present appeal are the proceedings of the Ota High Court of 13th May, 1998. This can be found at p. 8 of the record. The record reads as follows:

*“Applicants are absent except 1st, 7th & 8th*

*Respondent is present.*

*Jide Agbaje Esq., appears for the respondent.*

*O. T. Akinbiyi Esq., appears for the applicants.*

*(S. O. Dabo with him)*

*Mr. Agbaje says that he is not fit enough today to take the preliminary objection in this case. However in the interim his client continues to remain in contempt of the court’s order.*

*Agbaje asks for adjournment.*

*Court: This application is adjourned to 19/5/98. In the meantime the contemnor is hereby granted bail in the sum of N50,000.00 with 2 sureties in N25,000.00 each. Sureties to reside within jurisdiction and possess immovable assets. Where the contemnor fails to provide suitable sureties, he should be remanded in police custody till the next adjournment date which is 19th of May, 1998 to which this application stands adjourned”.*

The appellant took objection to the proceedings of 13th May, 1998 for the following reasons:

1. The appellant was called a contemnor.

2. The appellant was said to have continued to remain in contempt of the court's order and this he said was prejudicial.

3. Bail conditions were very stringent or excessive -and this meant  
B that the appellant was tried, convicted and sentenced.

The background facts are not in dispute. On 13 September, 1990, the Magistrate's Court ordered the appellant to exhume the body of his father buried on the land in dispute. This order was confirmed by the  
C High Court of Ogun State on the 8th of May, 1992. There was no appeal from the judgment of the High Court. And by the 13th of May, 1998, the appellant had not exhumed the body of his father. He was thus in flagrant and deliberate disobedience of the court order. I would like to add that the appellant has not asked for and obtained a stay of execution of the order  
D of the court pending the determination of the appeal.

As I understand it, the plain and unqualified obligation of every person against or in respect of whom an order is made by a court of competent jurisdiction is to obey it unless and until that order is dis-  
E charged. This is so even in cases where the person affected by an order believes it to be irregular or even void. So long as it exists, the order must be obeyed to the letter: See Mobil Oil (Nig.) Ltd. v. Assan (1995) 8 NWLR (Pt. 412) 129.

F This appeal has no merit whatsoever. In my view, it is also vexatious. I also dismiss it with N10,000.00 costs in favour of the respondents.

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G **MUSDAPHER JSC**

I have had the honour to read in advance the judgment of my Lord, Acholonu, JSC., just read, with which I entirely agree. For the same reasons so lucidly set out, which I adopt as mine, I too dismiss the  
H appeal and abide by the order for costs proposed in the aforesaid judgment.



**OGUNTADE JSC**

The facts leading to this appeal had its roots in a dispute over land and the attempt by the appellant to bury his deceased father on the land at a time that the ownership dispute was still raging. The appellant brought an application ex-parte before the Senior Magistrates' Court sitting at Ifo, B Ogun State, praying for an order pursuant to Section 6 of the Ogun State Burials Law for permission to bury his deceased father in a community building. He did not disclose in the affidavit in support of his application that there were rival claimants to the land.

The Ifo Senior Magistrate's Court granted the application. The respondents later brought an application before the same court praying that the order granted the appellant be discharged on the ground that the appellant had fraudulently obtained it by concealing the relevant facts from the court. The Senior Magistrate acceded to the respondents' request and set aside the order. He also ordered the applicant to exhume his deceased father's body from the land. D

Dissatisfied, the appellant brought an appeal to the High Court against the ruling of the Senior Magistrate. The appeal was heard by E Odubiyi, J., and was dismissed. The appellant brought a further appeal before the Court of Appeal, Ibadan Division. The appeal was struck out for the failure of the appellant to pursue it.

The appellant, however, did not exhume his father's body from F the land as ordered. This situation caused the respondents to bring an application before Ogunlesi-Adio, J. They wanted the appellant committed to prison for failure to obey the court order. Forms 48 and 49 of the Judgment (Enforcement) Rules, Cap. 118 Laws of Ogun State, 1978, were served on the appellant. Ogunlesi-Adio, J., found that there were G technical defects in the Form 49 served on the appellant. She struck out the application to commit the appellant for contempt. She remarked however that the appellant had not complied with the order that he should exhume his father's body from the land. H

The appellant later took courage to have the ownership of the land resolved as between himself and the respondents by initiating a suit at the High Court of Ogun State for declaration of title, damages for trespass

and injunction. In the suit, the parties filed and exchanged pleadings. Determined to ensure that the order to exhume the body from the land against the appellant was not disobeyed, the respondents brought a new application before Jacobs, J., (as he then was), to commit the appellant for contempt. On the new application it was manifested that Forms 48 and 49 had been served on the appellant. On 13/05/98, the application came up for hearing. The court record for that day reads:

*"Applicants are absent except 1st, 7th and 8th*

*Respondent is present, Jide Agbaje Esq., appears for the respondent.*

*O. T. Akinbiyi Esq., appears for the applicants. (S. O. Dabo with him)*

*Mr. Agbaje says that he is not fit enough today to take the preliminary objection in this case.*

*However, in the interim his client continues to remain in contempt of the court's order.*

*Agbaje asked for adjournment.*

*Court: This application is adjourned to 19/5/98. In the mean time, the contemnor is hereby granted bail in the sum of N50,000.00 with 2 sureties in N25,000.00 each. Sureties to reside within jurisdiction and possess immovable assets. Where the contemnor fails to provide suitable sureties he should be remanded in police custody till the next adjournment date which is 19th of May, 1998, to which this application stands adjourned."*

Innocuous on the face of it as the above order of Jacobs, J., would appear, the appellant still found cause enough to appeal against it before the Court of Appeal, Ibadan Division (hereinafter referred to as 'the court below'). He contended before the court below that the proceedings before Jacobs, J., were a nullity. His ground for the assertion was that he had been 'convicted' and 'sentenced' when he had not been antecedently arraigned for trial. The court below in its judgment on 21/3/02 dismissed the appeal. The appellant has yet come before this court on a further appeal. In his appellant's brief, the issues identified as arising for determination are:

*"1. Did the Court of Appeal actually consider the real issue raised in the appeal before it before reaching its verdict?*

*2. Is the Court of Appeal correct when it held that it was Form 49 that was before the trial Judge on the 13/5/98.*

*3. Is the Court of Appeal right to have dwelt on issues yet to be decided by the trial court.*

*4. Whether the lower court having become functus officio can still make the order it made asking the appellant to report back to the court on 10/4/2002 to purge himself of contempt, an issue yet to be decided by the trial court."*

In the respondents' brief, the issues for determination were stated to be the following:

*"(i) Whether the court below strayed away from considering the issue or issues for determination before it.*

*(ii) Whether the court below was right in upholding the procedure adopted by the trial Judge on the 13th May, 1998.*

*(iii) Whether the court below was right in adjourning the case till a further date after delivering judgment for the appellant to purge himself of contempt."*

The learned counsel for the appellant, Fred Agbaje, Esq., in his appellant's brief submitted that there was a difference in the procedure to be followed in court when dealing with contempt in the face of the court and contempt outside the court. Counsel said that the trial court did not follow the proper procedure in the consideration of the contempt in the face of the court. Counsel submitted that the court below was therefore in error to have failed to observe that the procedure followed by the trial court was wrong. Counsel argued further that it was wrong for a court to delve into a consideration of issues in the substantive case when dealing with interlocutory matters. He referred to *United Spinners Ltd. v. Chartered Bank Ltd.* (2001) 7 S.C. (Pt. II) 171; (2001) 14 NWLR (Pt 732) 195; *Elufioye v. Halilu* (1993) 6 NWLR (Pt. 301) 570; *Akapo v. Hakeen-Habeeb* (1992) 6 NWLR (Pt. 247) 266 and *Orji v. Zama Industries Ltd.* (1992) 1 NWLR (Pt. 216) 124 at 220. It was further submitted that the two courts below were wrong to have referred to the appellant

as contemnor when he had not yet been guilty of contempt.

My learned brother, Pats-Acholonu, JSC., has in the lead judgment amply demonstrated that this appeal is devoid of any merit and I agree with him. The argument of appellant's counsel to the effect that the two courts below were wrong to refer to the appellant as a contemnor when he had not yet been found guilty would appear to show that counsel did not appreciate the true essence of the procedure prescribed under Order 9 rule 13 of the Judgment (Enforcement) Rules made pursuant to the Sheriffs and Civil Process Law, Cap. 118, Laws of Ogun State, 1978. Counsel would also appear not to have paid due regard to the facts leading to the issuance of Forms 48 and 49 against the appellant. Section 63 of the Sheriffs and Civil Process Law, Cap. 118, Ogun State provides:

*"If any person refuses to comply with an order made against him, other than for payment of money, the court instead of dealing with him as a judgment debtor guilty of misconduct defined in paragraph (f) of Section 57, may order that he be committed to prison and detained in custody until he has obeyed the order in all things that are to be immediately performed and given such security as the court thinks fit, to obey the other parts of the order, if any, at the future times thereby appointed or in case of his no longer having the power to obey the order then until he has been imprisoned for such time or until he has paid such fine as the court directs."*

Order 9 rule 13 of the Judgment (Enforcement) Rules which provides the procedure to be followed in the case of a person who refuses to obey a court order made against him provides:

*"13.(1) When an order enforceable by committal under Section 63 of the Law has been made, the registrar shall, if the order was made in the absence of the judgment debtor and is for the delivery of goods without the option of paying their value or is in the nature of any injunction, at the time when the order is drawn up, and in any other case, on the application of the judgment creditor, issue a copy of the order indorsed with a notice in Form 48, and the copy so indorsed shall be served on the judgment debtor in like manner as a judgment summons.*

*(2) If the judgment debtor fails to obey the order, the registrar on*

*the application of the judgment creditor shall issue a notice in Form 49 not less than two clear days after service of the indorsed copy of the order; and the notice shall be served on the judgment debtor in like manner as a judgment summons.*

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

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

*(b) if the order was made in his absence, that the indorsed copy thereof has also been served on him.*

*may order that he be committed to prison and that a warrant of commitment issues.”*

It is clear from a close perusal of Order 9 rule 13 above that whilst the intention of the lawmaker is to afford a person whose committal is sought for a failure to obey a court order a hearing before he is committed to prison, such hearing is not the equivalent of a criminal trial in the ordinary manner. It is rather a special procedure to expeditiously deal with a recalcitrant person. Once the court is satisfied that an order was made which a person has refused to obey, he may be sent to prison once it appears that notice as in Form 49 has been served on him and if the order was made in his absence that a copy thereof has been served on him.

The appellant in this case was brought before the High Court for committal for failure to obey a court order in accordance with the procedure prescribed under Order 9 rule 13 (1) and (2) above. There was evidence that Forms 48 and 49 had been served on the appellant. There was also an assertion that the appellant had not obeyed the order to exhume his father’s body from the land in question. It would appear that the stage was set for appellant’s committal to prison.

But at that stage on 13/5/98, when the application to commit the appellant to prison was to be heard, appellant’s counsel, Mr. Tide Agbaje asked that the application be adjourned. The High Court did not order that the appellant be committed to prison which was a course open to the court if appellant was found to be still disobeying the court order. The

order that the appellant be put on bail was no doubt an attempt by the High Court to ensure that the appellant would turn up on the next date of hearing and to bring home to him the serious consequences attendant upon flagrantly disobeying an extant court order. The suggestion that the trial Judge had by merely putting appellant on bail, convicted and sentenced him as argued by appellant's counsel is untenable and totally preposterous. As I observed, the procedure is not akin to an orthodox criminal trial in which an accused is found guilty and sentenced. This appeal would appear to be a case of much ado about nothing and gravely abusive of the appellate procedure.

The learned authors of Borrie and Lowe's Law of Contempt 2nd edition at page 3 write:

*"Civil contempt basically comprises the failure to comply with an order of court. The rules of civil contempt are equally concerned to uphold the effective administration of justice. It is indeed essential that the law provides sanctions for the enforcement of the process and orders of a court. Dealing with the case of a party in civil litigation who refused to answer interrogatories, Chief Justice McKean of the United States said in 1778:*

*'Since, however, the question seems to resolve itself into this, whether you shall bend to the law, or the law shall bend to you, it is our duty to determine that the former shall be the case.'*

*Although civil contempt is basically a wrong to the person who is entitled to the benefit of the court order, there has always been a punitive element in civil contempt-disobedience of a court order of injunction, for example, can result in a committal to prison just as a criminal contempt can. Because of this, the various distinctions between the two types of contempt and the procedures for dealing with them have sometimes caused confusion. However, it is worth emphasizing in an introduction to the law of contempt in general, that the rationale of both criminal and civil contempt is essentially the same: upholding the effective administration of justice. If a court lacked the means to enforce its orders, if its orders could be disobeyed with impunity, not only would individual litigants suffer, the whole administration of justice would be brought into disre-*

pute.” (Underlining mine)

Now, it is undisputed that His Worship, Magistrate M. A. Ajeigbe, had in his ruling on 13th September, 1990, ordered the appellant to exhume his father’s body from the land in dispute. The Magistrate in his ruling at page 18 of the record of proceedings had said: B

*“In view of all these, I hereby set aside the order granted on 18th July, 1990, giving the respondent permission to bury the corpse of one Rabiū Odu in his house at Abule-Oko, Ifo and it is hereby ordered that the said corpse buried on 22nd July, 1990, in the community building, C  
Oko village, Ifo, be exhumed.”*

When the above ruling was given, the records show that the appellant was present in court. The appellant was dissatisfied with the order of the Magistrate, he exercised his right of appeal against it. The appeal was dismissed on 8th May, 1992, by Odubiyi, J. A further appeal D  
to the court below was abandoned. The result is that the order that appellant exhume his father’s corpse from the community building at Ifo though extant, remained unobeyed as at 13th May, 1998, when Jacobs, J., (as he then was), made the order which is the subject-matter of this appeal. E

The application brought to commit the appellant for contempt for failure to obey a court order stated that the appellant was still disobeying the order. The appellant did not depose that the order was not made against him or that he had obeyed it or that he had a pending appeal F  
against it. Rather, the appellant filed a preliminary objection against the respondent’s application and when the time came for the application and his objection to be heard, his counsel sought for an adjournment, thus creating a situation which meant the order made in 13th September, 1990, G  
remained unobeyed even at 13th May, 1998.

It seems to me that the procedure by which Forms 48 and 49 would be served and followed up by a formal application for committal was an opportunity of some sort for the appellant. It is also beneficial to the appellant in that it afforded him an opportunity to retrace his step and H  
show compliance. The facts in this case suggest that the appellant was recalcitrant and intent on escaping obedience of a valid and extant court order hiding behind technicalities. Indeed, it seems to me that the appeals

to the court below and this court were part of the attempt by the appellant to sustain his recalcitrance.

The court below in the lead judgment, per Akintan, JCA., (as he then was), said at pages 86-87 of the record:

B “Both Forms 48 and 49 had been served on the appellant in the instant case. He was in fact in court before the learned trial Judge on 13/5/98 only to show cause why an order for his committal should not be made. His invitation to court was not, at that stage, for the purpose of being tried for contempt. That stage had passed. The applicants had lodged a complaint against him that he failed to comply with the court order that he should exhume the body of his late father from where it was buried. He did not deny the complaint when Form 48 was served on him. He also failed to inform the court that he had complied when he appeared before the court on 13/5/98. The court was therefore quite right in describing him as a contemnor. The description of the appellant by the court is no doubt in accordance with the practice in contempt cases: See *Atake v. Att. Gen. of Federation & Anor.* (1982) NSCC 444 at 461 and *E 473; Deduwa & Ors. v. The State* (1975) All NLR 1 at 12; *Boyo v. A-G of Midwest State* (1971) All NLR 343 at 354; and *Mcleod v. St. Aubyn* (1899) AC 549 at 561.”

F I agree with the above observation of the court below. The stage the proceedings had reached was to enable the appellant show cause why he should not be committed for contempt. He was not at that stage being tried for contempt. It is therefore, a misconception on the part of counsel to argue that appellant had not been arraigned. The circumstances of this case only warranted a determination whether or not the appellant had exhumed the corpse of his father not a contempt trial in the ordinary sense.

H I would also dismiss the appeal as in the lead judgment of my learned brother, Pats-Acholonu, JSC. I award in favour of the respondents against the appellant costs assessed at N10,000.00.