

SUPREME COURT OF NIGERIA

24TH JUNE, 2005. SC. 275/2003

**CORAM:- S. M. A. BELGORE, S. U. ONU, U. A. KALGO,
D. MUSDAPHER, D. O. EDOZIE, JJSC**

1. S. O. UTUKS
2. C. I. NWORIGU
3. E. OKOCHA
4. A. ADUBE
5. A. ASHERI
6. C. AKUKAM
7. J. ONI
8. IKUJORE
9. C. C. OFOHA
10. S. ABA

..... APPELLANTS

(For and on behalf of NPA Retrenched
Staff June, 1999)

AND

NIGERIAN PORTS AUTHORITY RESPONDENT

APPEALS - Controversy - Notices of appeal - Are to be examined -
Where there is controversy - On the notices of appeal filed - Relating to
the judgment of the Court of Appeal (H1)

APPEALS - Objection - Where defendant's preliminary objection was
upheld - Court was right to have struck out plaintiff's application (H2)

FACTS

Before the High Court of Lagos State, the plaintiffs/appellants for themselves and on behalf of the retrenched staff of the defendants/respondents sued in respect of their rights to pension and gratuity. The trial court entered judgment for the plaintiffs for some of their reliefs. The defendant therefore, filed an appeal against the judgment to the Court of Appeal. The Court of Appeal dismissed the appeal for want of diligent

prosecution. To effect the judgment, the plaintiffs filed a motion on notice and prayed for an order directing defendant's managing director to file and serve a comprehensive list of all persons entitled to the benefit of the judgment and also comply with section 74 of Ports Decree No. 74 of 1993 by paying the sum of N2,547,000,000.00.

In reaction to it, the defendant filed a preliminary objection praying the trial court to strike out the motion on the ground that the court lacked jurisdiction to entertain the plaintiffs' motion. The trial court dismissed the preliminary objection and granted the plaintiffs' first prayer. Aggrieved by the decision, the defendant appealed to the Court of Appeal on separate notices in respect of the two motions. The Court of Appeal allowed the appeal, dismissed the plaintiffs' preliminary objection but upheld the defendant's preliminary objection and struck out the plaintiffs' motion. The plaintiffs have now appealed to the Supreme Court.

ISSUES FOR DETERMINATION

“1. Whether the court below had power to set aside the Order of 29th March, 1999, dismissing the respondent's preliminary objection and strike out the appellants motion leading to the order of 7th May, 1999, which was the appeal before the court below, the order dismissing the preliminary objection having been overtaken by events as can be seen from the notice of appeal dated 8th March, 2000, and not the notice of appeal dated 6th April, 1999, relating to the dismissal of the preliminary objection?

2. Whether the respondent (defendant) argued the appeal dated 6th April, 1999, in its brief of arguments to enable the court below grant the reliefs not sought in the appeal before the court.”

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

Controversy - Notices of appeal

1. It is, therefore, crystal clear that the judgment of the court below addressed the ruling of the trial court which was delivered on 29th March, 1999. This much is conceded by both sides. The controversy is whether the Notice of Appeal dated 6/4/99 or that dated 8/3/2000 and filed on 9/3/2000 related to the judgment of the Court of Appeal delivered on 3/2/2003. To determine this entails an examination of the Notice of Appeal, the

grounds of appeal subjoined thereto, the relief sought and the judgment of the Court of Appeal. The Notice of Appeal dated 6/4/99 in respect of the ruling of 29/3/99 synchronizes with the judgment of the court below the subject matter of the instant appeal. As the learned counsel for the plaintiffs has submitted, quite rightly, in my view, no reference whatsoever was made in the judgment of the court below to the Notice of Appeal dated 8/3/2000 and filed on 9/3/2000 in respect of the ruling of II 5/99.

(pp. 1618A & 1619 B)

APPEALS - Objection

2. Learned counsel for the plaintiffs has submitted that the court below could have struck out the application or the substantive motion on notice dated 10/3/99 as no relief to that effect was prayed for in the Notice of Appeal of 6/4/99. The prayer sought therein at the risk of repetition is:-

“An order setting aside the ruling of Sahid, J., made on the 29th of March, 1999, and upholding in its stead the appellant’s preliminary objection of 23rd March, 1999 (sic).”

It will be recalled that the preliminary objection raised the competency of the application of 10th March, 1999. If the preliminary objection was upheld the implication is that the application of 10th March, 1999, was incompetent. The court below having upheld the preliminary objection, it was justified in striking out the application of 10th March, 1999, as a consequential order.

From all that has been said hereinbefore, I have come to the conclusion that the defendant in the court below argued the appeal relating to the Notice of Appeal dated 6/4/99 and not the one dated 8/3/2000. It is also my view that the court below having upheld the defendant’s Preliminary Objection was right to have struck out the plaintiffs’ application and by so doing the appeal dated 7/5/99 had abated since it no longer has any substratum. I resolve the plaintiffs’ two issues in favour of the defendant.

In sum, the appeal lacks merit. (p. 1619 C)

REPRESENTATION

A. M. Makinde Esq., (with him, M. E. Ebo, Esq., J. G. Lebo, Esq., Mrs. Ajuyah and H. Amakor Esq.), for the Appellants.
O. Idemudia Esq., for the Respondent.

B CASE REFERRED TO

Matari v. Dangaladima (1993) NWLR (Pt. 281) 266

LEAD JUDGMENT BY EDOZIE JSC

C The appellants were plaintiffs before the High Court of Lagos State in Suit No. LD/182/92 wherein they, for themselves and on behalf of the retrenched staff of the respondent authority sued the latter in respect of their right to pension and gratuity. As spelt out in their Statement of Claim, they prayed for: -

D “1. A declaration that all the staff particularly those plaintiffs who put in a service period of between 5 to 9^{1/2} years with the defendant corporation are entitled to gratuity.

E 2. A declaration that those plaintiffs who have served the defendant for a period of 10 to 14^{1/2} years qualify for pension and redundancy benefit under the Pensions Act 1990 as amended by circular No. 063216/81/X/618 of 13th September, 1991, and the plaintiffs’ condition of service.

F 3. A declaration that each of the staff is entitled to productivity bonus which was approved when the plaintiffs were in service.

4. A declaration that all the plaintiffs are each entitled to 28 loads as contained in their condition of service.

5. An order compelling defendant to comply with the circular.”

G After due trial, the learned Judge of the High Court, Sahid, J., on 12th of July, 1996, entered judgment for the plaintiffs in terms of reliefs 1, 2 and 5 of their claim. An appeal by the defendant against that judgment to the Court of Appeal Lagos Division was on 28th May, 1993, dismissed for want of diligent prosecution.

H Subsequently, the plaintiff in an effort to enforce the judgment of 12th July, 1996, filed a motion on notice dated 10th March, 1999, for the following prayers:-

“(1) An order directing the Managing Director of the judgment/

debtor to file and serve the comprehensive list of all the persons entitled to benefit in the judgment of 12th July, 1996, delivered by this honourable court on the applicants' solicitors forthwith.

ALTERNATIVELY

(2) *An order directing the Managing Director of the judgment debtor by virtue of his position as the Chief Executive and Chief Accounting Officer to comply with Section 74 of the Ports Decree No. 74 of 1993 by payment of the sum of N2,547,000,000.00 being the entitlements of the persons represented by the applicants from the judgment debtor's funds to the applicants forthwith.*

In its reaction, the defendant filed a preliminary objection against the plaintiffs' motion praying the trial court to strike out the motion on the ground that the trial court having delivered its final judgment of 12th July, 1996, was functus officio and therefore lacked the jurisdiction to entertain the plaintiffs' motion. In a ruling delivered on 29th March 1999, the learned trial Judge, Sahid, J., dismissed the preliminary objection.

Thereafter, the trial court proceeded to hear the plaintiffs' motion on notice dated 10th March, 1999, and in a subsequent ruling delivered on 7th May, 1999, the learned trial Judge, Sahid, J., granted the first prayer in the motion of 10th March, 1999, for "*an order directing the Managing Director of the defendant to file in court and serve on the plaintiffs' solicitors the comprehensive list of all the persons entitled to benefit in the judgment of this court delivered on the 12th day of July, 1996.*"

Aggrieved by both the ruling of 29th March, 1999, on the preliminary objection against the motion of 10th March, 1999, and the ruling of 7th May, 1999, on the substantive motion of 10th March, 1999, the defendant, by separate Notices of Appeal, appealed against the rulings. The Notice of Appeal against 1st ruling of 29th March, 1999, was dated and filed on 6th April, 1999, while that of the 2nd ruling of 7th May, 1999, was dated 8th March, 2000, and filed on 9th March, 2000. The Court of Appeal, Lagos Division heard the appeal on the 1st ruling of 29th March, 1999, and on 3rd February, 2003, delivered a considered judgment whereby, it allowed the appeal, set aside the 1st ruling of 29th March, 1999, dismissing the preliminary objection. It upheld the said preliminary

objection and struck out the plaintiff's motion on notice dated 10th of March, 1999.

The plaintiffs have now lodged the instant appeal against the judgment of the Court of Appeal, Lagos Division. Briefs of arguments were filed and exchanged. In the appellants' brief filed on behalf of the plaintiffs the issues identified for determination are the following:-

- "1. Whether the court below had power to set aside the Order of 29th March, 1999, dismissing the respondent's preliminary objection and strike out the appellants motion leading to the order of 7th May, 1999, which was the appeal before the court below, the order dismissing the preliminary objection having been overtaken by events as can be seen from the notice of appeal dated 8th March, 2000, and not the notice of appeal dated 6th April, 1999, relating to the dismissal of the preliminary objection?"
2. Whether the respondent (defendant) argued the appeal dated 6th April, 1999, in its brief of arguments to enable the court below grant the reliefs not sought in the appeal before the court."

The respondents' brief filed on behalf of the defendant contains the following three issues, to wit:-

- "1. Whether the judgment of the Court of Appeal was directed against the ruling of the High Court dated 29th of March, 1999, or the ruling of 7th May, 1999, as alleged by the appellant in their Notice of Appeal?"*
- 2. Whether the lower court granted the respondent the relief not sought in its appeal of 9th April, 1999, (error for March, 2000) as alleged by the appellant.*
- 3. Whether the judgment of the lower court was based on the Notice of Appeal dated the 6th of April, 1999?"*

The substance of the plaintiffs complaint on their two issues for determination is that whereas the appeal properly before the Court of Appeal and which was argued was the one on the 2nd Ruling of 7/5/99 predicated on the Notice of Appeal dated 8/3/2000 and filed on 9/3/2000, the Court of Appeal delivered its judgment of 3/2/2003 in respect of the 1st ruling of 29/3/99 based on the notice of appeal of 6/4/99. It was contended on the authority of the case of Matari v. Dangaladima (1993)

NWLR (Pt. 281) 266 that the Court of Appeal lacked the jurisdiction to adjudicate on the appeal not properly before it.

It was further submitted that the court below misapprehended the nature of the case before it and as such its decision should be set aside. Learned counsel for the plaintiffs argued that the court below could not in its judgment in respect of the 1st ruling of the trial court dated 29/3/99 strike out the plaintiff's substantive motion the subject matter of the trial court's 2nd ruling of 7/5/1999 as that was not the relief prayed for in the Notice of Appeal dated 29/3/99.

In response, the learned counsel for the defendant referred to the opening paragraph, the last paragraph of the lead judgment of the Court of Appeal, the notice of appeal dated 6th April, 1999, and the relief prayed for therein and the opening paragraph of the defendant/appellant's brief at the court below and submitted that the judgment of the Court of Appeal was in respect of the 1st ruling of the High Court dated 29/3/99 predicated on the Notice of Appeal of 6/4/99 and not on the 2nd ruling of 7/5/99 as erroneously contended by the plaintiffs' counsel. It was pointed out that nowhere in the judgment or Notice of Appeal was reference made to the ruling of 7/5/99 and that the relief granted by the court below was in terms of the Notice of Appeal of 6/4/99.

In considering the merit of this appeal, I think that a convenient starting point is the contention by the plaintiffs that the judgment delivered by the Court of Appeal on 3/2/2003, the subject matter of this appeal, relates to the 1st ruling of the trial court delivered on 29/3/99. In this respect, there is common ground on both sides. A careful perusal of the judgment of the court below leaves no one in doubt that the subject-matter adjudicated upon by the court below was the judgment of the High Court delivered on 29/3/99. This is borne out from the opening paragraph of the lead judgment of Ibiyeye, JCA., where the learned Justice stated:-

"This is an appeal against the ruling of Sahid, J., of the Lagos High Court delivered on 29th of March, 1999."

Again, in the concluding part of that judgment, the learned Justice at p. 397 of the record stated:-

".....In sum, the appeal is meritorious and it is allowed, I set aside

the ruling of 29th March, 1999, dismissing the preliminary objection of the appellant as well as cost (sic). I instead uphold the preliminary objection and strike out the attendant application.”

It is, therefore, crystal clear that the judgment of the court below addressed the ruling of the trial court which was delivered on 29th March, 1999. This much is conceded by both sides. The controversy is whether the Notice of Appeal dated 6/4/99 or that dated 8/3/2000 and filed on 9/3/2000 related to the judgment of the Court of Appeal delivered on 3/2/2003. To determine this entails an examination of the Notice of Appeal, the grounds of appeal subjoined thereto, the relief sought and the judgment of the Court of Appeal.
 ‘The examination reveals or discloses the following facts:

“1. The Notice of Appeal dated 6/4/99 refers expressly to the ruling of the High Court delivered on 29th March, 1999. In the opening sentence, it stated:-

“TAKE NOTICE that the defendant/appellant herein, being dissatisfied with the ruling of the High Court of the Lagos State, per Sahid J., dated the 29th March, 1999, doth hereby appeal to the Court of Appeal.

2. There are three grounds of appeal subjoined to the Notice of Appeal dated 29/3/99 and they relate to the ruling on the preliminary objection which was dismissed by the trial court. Shorn of their particulars, the three grounds of appeal are:

(a) The learned trial Judge erred in law in dismissing the preliminary objection

(b) The learned trial Judge erred in law in holding that though the judgment of the court delivered on the 12th of July, 1996, was a declaratory judgment it could however be executed as a judgment debt even though there was no judgment debt to be executed.

3. The relief prayed for in the Notice of Appeal dated 6/4/99 is “An order setting aside the ruling of Sahid, J., made on the 29th of March, 1999, and upholding in its stead the appellants’ preliminary objection.

4. The defendant/appellant’s brief of argument filed in the court below indicated that the brief was in respect of the Notice of Appeal dated 6/4/99. The two issues formulated for determination in the said brief

derived from the three grounds of appeal contained in the Notice of Appeal dated 6/4/99.

5. In the judgment of the Court of Appeal, the relief granted related specifically to the preliminary objection the subject of the ruling of 29/3/99 against which the Notice of Appeal dated 6/4/99 was filed. B

As can be seen from the above analysis, **the Notice of Appeal dated 6/4/99 in respect of the ruling of 29/3/99 synchronizes with the judgment of the court below the subject matter of the instant appeal.** As the learned counsel for the plaintiffs has submitted, quite rightly, in my view, no reference whatsoever was made in the judgment of the court below to the Notice of Appeal dated 8/3/2000 and filed on 9/3/2000 in respect of the ruling of II 5/99. C

Learned counsel for the plaintiffs has submitted that the court below could have struck out the application or the substantive motion on notice dated 10/3/99 as no relief to that effect was prayed for in the Notice of Appeal of 6/4/99. The prayer sought therein at the risk of repetition is:- D

“An order setting aside the ruling of Sahid, J., made on the 29th of March, 1999, and upholding in its stead the appellant’s preliminary objection of 23rd March, 1999 (sic).” E

It will be recalled that the preliminary objection raised the competency of the application of 10th March, 1999. If the preliminary objection was upheld the implication is that the application of 10th March, 1999, was incompetent. The court below having upheld the preliminary objection, it was justified in striking out the application of 10th March, 1999, as a consequential order. F

From all that has been said hereinbefore, I have come to the conclusion that the defendant in the court below argued the appeal relating to the Notice of Appeal dated 6/4/99 and not the one dated 8/3/2000. It is also my view that the court below having upheld the defendant’s Preliminary Objection was right to have struck out the plaintiffs’ application and by so doing the appeal dated 7/5/99 had abated since it no longer has any substratum. I resolve the plaintiffs’ two issues in favour of the defendant. G H

In sum, the appeal lacks merit. I dismiss it and affirm the judgment of Court of Appeal, Lagos Division, delivered on 3/2/2003. There will be costs to the defendant against the plaintiffs assessed at N10,000.00.

B

BELGOREJSC

I am in full agreement with the judgment of my learned brother, Edozie, JSC., that this appeal has no merit. For the reasons he has ably adumbrated which I adopt as mine, I also dismiss this appeal with
C N10,000.00 costs to the respondents.

ONUJSC

I am in entire agreement with the judgment of my learned brother, D Edozie, JSC., just delivered that there is no merit in this appeal which therefore fails. I accordingly dismiss it and affirm the judgment of the Court of Appeal, Lagos Division, delivered on 3/2/2003. There will be costs to the defendant against the plaintiffs assessed at N10,000.00.

E

KALGOJSC

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Edozie, JSC. I agree with his reasoning and conclusions reached therein which I adopt as mine. I therefore find
F no merit in the appeal and I dismiss it with costs as assessed in the said judgment.

MUSDAPHERJSC

G I have seen before now the judgment read by my Lord, Edozie, JSC., with which I entirely agree. His Lordship had meticulously and comprehensively dealt with all the points that had arisen for the determination of the appeal. For the same reasons so lucidly canvassed in the
H aforesaid judgment which I respectfully adopt as mine, I too dismiss this appeal and affirm the judgment of the court below. I abide by the order for costs proposed.