

COURT OF APPEAL
ABUJA DIVISION
THURSDAY, 16TH DECEMBER, 2004, CA/A/164/M/2004
CORAM:- I. T. MUHAMMAD, Z. A. BULKACHUWA,
M. P. ODILI, JJCA

1. ADAMS OSHIOMHOLE
2. NIGERIA LABOUR CONGRESS

AND

1. FEDERAL GOVERNMENT OF NIGERIA
2. ATTORNEY-GENERAL OF THE FEDERATION

APPEALS - Preliminary objection - Abandonment of - Where the objection is not moved - It is deemed abandoned (H1)

APPEALS - Preliminary objection - Service of notice of, O. 3 r. 15 (1)
CA Rules - Where served instantly - Without 3 clear days notice - The court lacks jurisdiction - Even where no objection was raised by the other party - About the wrongful service (H2)

COURTS - Judgments - Binding effect of - Strike action - Where there is a subsisting judgment - Restraining respondents from embarking on any strike - It remains binding until set aside (H3)

ACTIONS - Motions - Evidence - Cogency of - Strike moves - Affidavits - Where attached documents - Were not retracted - It goes to support alleged disrespect - To court orders (H4)

TRADE UNIONS - Strike action - Nigeria Labour Congress - Is not authorized by the section of the Constitution - It relied upon - And other relevant laws - To embark on strike action (H5)

TRADE UNIONS - Strikes - Definition - Under Trade Dispute Act - Strike is defined as cessation of work - By employed body of persons -

To compel their employer accept terms of employment (H6)

COURTS - Orders - Rule of law - Strike action - Democracy - To ridicule a court's order - Is an onslaught on democracy - Such order's - remain binding - And must be obeyed (H7)

TRADE UNIONS - Strike - Nigeria Labour Congress - Strike over increase in pump price of petroleum products - Though in good spirit - Is illegal - Dialogues will achieve more positive results (H8)

FACTS

Before the Court of Appeal Abuja Division, the applicants/respondents filed a motion on notice against the appellants/respondents praying for some reliefs. They sought an order restraining the appellant from continuing their acts of contempt by disobeying the order of the court made on 21-9-2004, which is now the subject of appeal before the Court of Appeal. Next was an order restraining the appellants from embarking on any strike action until the determination of their appeal. They further sought that the appellants give an undertaking not to disobey the subsisting order of court, and an order of injunction restraining the 2nd appellant, his officers, etc. from summoning any meeting or holding any rally towards planning for any strike action pending the determination of the appeal.

The grounds upon which the application was premised include inter alia, the fact that in spite of a subsisting order of court restraining the appellants from embarking on strike action, they gave notice of strike action in defiance of the said court order. Applicants motion was filed pursuant to s.18 of the Court of Appeal Act and O. 1 rr. (19) & (20) of the Court of Appeal Rules 2002. The application was supported by 28 paragraphs affidavit and a further affidavit. Appellants filed a counter affidavit and preliminary objection on the morning of this ruling. They contended inter alia, that the prayers sought by the applicants is an invitation to the court to violate the constitutionally guaranteed right of the respondents/appellants. And urged the court to dismiss the application in

its entirety.

HELD (Unanimously allowing the application in part per **MUHAMMAD JCA**)

Preliminary objection - Abandonment of

1. In considering this application, let me observe that Mr. Falana informed the court on the hearing date that he filed along with his counter-affidavit a notice of preliminary objection. He didn't however move the court on that notice of preliminary objection.

The trite position of the law is that although it is mandatory for a court to give its ruling on preliminary objections raised before delving into the appeal/application as the case may be, such notice of preliminary objection is deemed abandoned if not moved. (p. 1838A)

Preliminary objection - Service of notice of

2. Although there was no objection raised by learned SAN for the applicant on the instant service of the notice of preliminary objection on him on the date of hearing, his concession cannot confer jurisdiction on this court to entertain the preliminary objection as it offends our rules of court. Order 3 rules 15(1) of the Court of Appeal Rules, 2002 provides as follows:-

“15(1) A respondent intending to rely upon a preliminary objection to the hearing of the appeal shall give the appellant three clear days notice thereof before the hearing, setting out the grounds of objection, and shall file such notice together with twenty copies thereof with the registrar within the same time.”

Court rules are meant to be obeyed.

Thus, having not been moved, the preliminary objection raised by the respondent is deemed abandoned and accordingly struck out. (p. 1838D)

Judgments - Binding effect of

3. From the affidavit evidence made available before this court, 5 including the admissions and denials thereof, it is my finding that:

“(a) There is no denial from the respondents that there is a

subsuming judgment of the lower court which made orders, among others, restraining the respondents from embarking on or resuming any strike based on the acts espoused in the notice dated 7/1/04. The respondents vide their notice of appeal, annexed to the further affidavit as exhibit 'B' filed their appeal to this court. Although the respondents denied paragraphs 7 and 19 of the affidavit in support, as per paragraph 3 of their counter-affidavit, it is clear from the record, which certainly binds this court, that there is a subsisting judgment which has not up till now been set aside by any superior court of competent jurisdiction. It remains binding on the parties. The Supreme Court, in the case of *Abacha v. Fawehinmi* (2000) 6 NWLR (Pt. 660) 228 to at page 317 E-F, held as follow:-

"It is the law that a decision of a court of competent jurisdiction, no matter that it is seems palpably null and void, unattractive or insupportable, remains good law and uncompromisingly binding until set aside by a superior court of competent jurisdiction." (p.1841D)

ACTIONS - Motions - Evidence

E 4. The denial by the respondent of paragraphs 11 and 14 of the affidavit in support is not supported by any cogent evidence. On the other hand, the applicants attached some exhibits to their further affidavit such as exhibits 'C', 'D' and 'E' which were the motions and their accompanying exhibit at the court below. Some of such exhibits were excerpts from some print media reports which portrayed that the respondents ignored, disrespected and refused to give heed to, or obey the letter and spirit of judicial pronouncements by the court below. I will only cite few instances:-

(i) Exhibit B attached to exhibit D before the court below. It is an excerpt from Saturday Punch of 25/09/04 page 7 thereof and it reads:-

"If Nigerians must be free, we must be ready to fight. Those of you who have knickers should wear it. Nothing good comes without pains. The struggle to make Nigeria great must be sustained. Our mandate as working people is to protest against bad laws. Nigerians must rise against poverty, bad governance and dictatorship."

In the Punch of 28/9/2004 (pages 1, 6 and 7) attached as exhibit B1 to the said exhibit D before the court below, the following was reported:

“Adams: if after October 11, we government failed to comply, workers and working family would be called out to embark on an indefinite stay at home protest ... we have resolved to give the Federal Government 14 days within which to revert to the old prices and if they don’t by October 1, we will begin to enforce a stay-at- home all over the country.” B

It should be noted that all these utterances were made after the delivery of the judgment by the court below. There is nothing to indicate that any of such utterances was retracted by the makers or the Organizations/Associations they represent. (pp. 1842 B & 1843 A)

C

Strike action - Is not authorized by the Constitution

5. The legal authorities cited by the respondents learned counsel, which he claimed entitled the respondents to stage or continue to stage strike require a sober and passionate look. For instance section 38(1) of the Constitution empowers the NLC to embark on strike. The section provides as follows:- D

“38(1) Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, E and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.”

I do not think this section has the desired relevance which was F advocated for the 2nd respondent. The 2nd respondent, I believe, as a juristic person, can hardly have any religious denomination talkless of propagating or changing alone or together with others, “his/her” religious belief. The idea advocated by Mr. Falana may well be with other provision G of the Constitution.

On section 42 of the Trade Disputes Act, the section provides as follows:-

"42(1) Notwithstanding anything contained in this Act or in any other law:- H

(a) where any worker takes part in a strike he shall not be entitled to any wages or other remuneration for the period of the strike and any such period shall not count for the purpose of reckoning the period of

continuous employment and all rights dependent on continuity of employment shall be prejudicially affected accordingly; and

(b) where any employer locks out his workers the workers shall be entitled to wages and any other applicable remuneration for the period of lockout and the period of the lockout shall not prejudicially affect any rights of the workers being rights dependent on the continuity period of employment.”

It is my understanding of the above provisions that the section does not legalize strike actions or lock-outs. Rather, in the event of any of the two happening and a worker participates in a strike or he is locked out by his employer, his entitlements are as provided by the section. Period! Section 34 of the Trade Unions Act stipulates:-

“34(1) The Central Labour Organisation shall have power, subject to its rules:-

(a) to represent the general interest of its members on any national advisory body set up by the Government of the Federation;

(b) to collect and disseminate to its members information and advice on economic and social matters.

Here too, I fail to see where strike actions are authorized. The provisions appear to me to be welfare oriented scheme for the members of the Nigeria Labour Congress. Period! (p. 1843G)

Strikes - Definition - Under Trade Dispute Act

6. Strikes are more of actions than mere expressions which, more often than not, connote making known an opinion by words. The Trade Dispute Act, gives the interpretation of strike to mean:-

“the cessation of work by a body of persons employed acting in combination, or a concerted refusal or a refusal under a common understanding of any number of persons employed to continue to work for an employer in consequence of a dispute, done as a means of compelling their employer or any person or body of persons employed, or to aid other workers in compelling their employer or any persons or body of persons at employed, to accept or not to accept terms of employment and physical conditions of work; and in this definition:-

(a) cessation of work' includes deliberately working at less than usual speed or with less than usual efficiency; and

(b) 'refusal to continue to work includes a refusal to work at usual speed or with usual efficiency.' (p. 1845C)

B

Rule of law - Strike action - Democracy

7. Thus as there is nothing to justify the refusal of the respondents to obey the lower court's order, one may agree with the applicants in their submission that it was a brazen affront to the jurisdiction of the lower court for the respondents to embark or continue embarking on strikes and lock outs carried out or intended to be carried out by the respondents. It is a matter of common knowledge and of course supported by evidence contained in exhibit D that the respondents staged a nation-wide strike from the 11th - 14th of October, 2004, in spite of the subsisting court order.

But in a democratic polity, where principles of rule of law are firmly entrenched in the system, it will be working in an anti- clockwise direction, an affront and indeed an onslaught on democracy if a person or body of persons however highly placed, shall decide to brush aside, downgrade and ridicule a court's order. The court, on the other hand is always jealous of its decisions and will not allow anyone to ridicule it. A court of law is never a toothless bull-dog, it can bark, bite, brake and may, as circumstance may warrant, eat up the bones. The thorny issue of disobedience of court orders had been pronounced upon as long ago as 1846 by Lord Cottenham L.C. in the case of *Chuk v. Craner, Cooper Temp. Cott.* 338 at 342; 47 ER 884 at 885. *Ogundare, JSC*, in the case of *Rossek v. A.C.B. Ltd* (1993) 8 NWLR (Pt. 312) 382 at pages 434-435 E-C treated the matter extensively. Below is, inter, alia, what he said:-

“A party, who knows of an order, whether null or valid, regular or irregular cannot be permitted to disobey it. It did not even signify whether the order was drawn up. That there were many cases in which a party had been held to have committed a contempt for disobeying an order, which had not only not been served, but have not even been draw up. It would be most dangerous to hold that the suitors, or their solicitors, could

themselves Judge whether an order was null or valid - whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it existed it must not be disobeyed.’

Generally, therefore, orders of a competent court must be obeyed as long as they subsist, if the authority and administration of the court are not to be brought into disrepute, scorn or disrespect. They remain binding on parties thereto until set aside by a superior court of competent jurisdiction or declared null and void. Thus, once a party knows of the subsistence of an order of court, whether valid or not and whether regular or irregular or even perverse, he is obliged to obey it.

(p. 1845G & 1847F)

Strike over increase in pump price of petroleum products

8. One can understand the spirit of the respondents which seems to be geared towards achieving better socio-economic conditions for their members and the generality of the citizenry of this great nation. That is alright. But by embarking on strikes, I dare say, the problem will be more compounded. I believe that meaningful discussions, dialogues and conciliation’s, rather than strike, will achieve more positive results to the satisfaction of both parties and the general citizenry.

All the statutory authorities cited by learned counsel for the respondents must be in consonance with the provisions of the Constitution. I find no provision which legalizes strike actions in whatever form. I recall that I earlier on made an interim order restraining the respondents from embarking on any form of strike pending the determination of this application. (p. 1848A)

H REPRESENTATIONS

Chief Bayo Ojo, SAN (with him, Femi Falana Esq., Adesina Oke Esq., Wasiu Ajiboye Esq., Augustine Afolabi, Esq.) -for the Appellants
 Seeni Okunloye, SAN (with him, Remi Awe [Miss], Wole

Aladedoye Esq., A. Balogun [Mrs.] and Anthony Jatau Esq.) -for the Respondents

CASES REFERRED TO

Onyekwuluje v. Animashaun & Anr. (1996) 3 NWLR (Pt. 439) 637, B
(1996) 3 SCNJ 24
Ajibade v. Pedro (1992) 5 NWLR (Pt. 241) 257
NHRI v. Ayoade (1997) 11 NWLR (Pt. 530) 541
Jadesimi v. Okotie-Eboh (1986) 1 NWLR (Pt. 16) 264
Ezegbu v. F.A.T.B Ltd. (1992) 1 NWLR (Pt. 216) 197 C
Iroegbu v. Okwordu (1990) 6 NWLR (Pt. 159) 643
Anambra State (1992) 8 NWLR (Pt. 261) 528
Babatunde and Anor v. Olatunji and Anor. (2000) 2 NWLR (Pt. 646) 557
Ezeokafor v. Ezeilo, (1999) 9 NWLR (Pt. 619) 513, (1999) 6 SC (Pt. 11) 1 D
Nkwo v. Uchendu (1996) 3 NWLR (Pt. 434) 1
Chuk v. Craner, Cooper Temp. Cott. 338 at 342; 47 ER 884 at 885
Rossek v. A.C.B. Ltd (1993) 8 NWLR (Pt. 312) 382 at pages
Adebayo v. Johnson (1969) 1 All NLR 176 E
Aladegbemi v. Fasanmade (1988) 3 NWLR (Pt. 81) 129
Komolafe v. Omole (1993) 1 NWLR (Pt. 268) 213

STATUTES & RULES REFERRED TO

Trade Disputes Act Cap. 432, LFN, 1990, s. 42
Trade Unions Act Cap. 437, LFN, 1990, s. 34
Constitution of Nigeria 1999, ss. 40, 38(1)
Court of Appeal Rules 2002, O. 3 r. 15(1)

LEAD JUDGMENT BY MUHAMMAD JCA

In a motion on notice dated and filed on 5th November, 2004, the applicants prayed for the following reliefs: -

“1. An order restraining the appellants/respondents by themselves, H
their officers, privies, associates and any Person howsoever described
from continuing their acts of contempt by disobeying the order of the court
delivered in this suit on Tuesday, 21st September, 2004 which is now the

subject of appeal before this Honourable court.

2. An order restraining the appellants/respondents by themselves, agents, privies or otherwise howsoever called from embarking on strike action on 16th November, 2004 or any other day thereafter until the determination of the appeal.

3. An order of court directing the appellants to give undertaking not to disobey the subsisting order of court which is the subject matter of appeal before this Honourable court pending the determination of the appeal pending in this suit.

4. An order of injunction restraining the 2nd appellant/respondent, his officers, privies, associates, servants, agent and any other person however described from summoning any meeting, holding any rally and or convocating any gathering or implementing or planning or preparing for any strike action in respect of the subject-matter of this appeal pending the hearing and determination of the appellants' appeal."

The grounds upon which the application was premised are given as follows:-

"1. Judgment was delivered in this suit on September 21, 2004 which inter alia restrained the appellant from embarking on strike action to protest issues outside their terms of employment.

2. Immediately after the judgment of the lower court and before filing motion for stay, the appellant gave notice of strike action in defiance of the judgment of the lower court.

3. The appellant filed notice of appeal on 27/9/2004 and a motion for stay of execution dated the same day.

4. The respondent/applicant filed a motion on notice on 6th October, 2004 seeking an order that the defendants give undertaking not to go on strike or flout the subsisting order of the lower court pending the determination of the application.

5. On 13th October, 2004 the lower court refused to entertain both the appellants' motion for stay of the appellants' motion to restrain the applicants from going on with the proposed strike.

6. The appellant went on strike in defiance of the subsisting judgment of the lower court.

7. *The appellants have given yet another notice to embark on strike on November 16, 2004.*

8. *The appellants especially the 2nd appellant have been holding meetings and rallies, inciting people that unless the Federal Government accedes to their demand they will make the country ungovernable.*

9 *Unless this court grants this application the appellant will proceed on the proposed strike.”*

Chief Bayo Ojo, SAN, for the respondents/appellants, appeared along with him, other counsel. He informed the court that Mr. Femi Falana will handle the motion on notice on behalf of the appellants/ respondents.

In moving the motion on notice, learned Senior counsel for the respondents/applicants Mr. Okunloye, stated that the application was dated and filed on 5/11/04. It was brought pursuant to section 18 of the Court of Appeal Act and Order 1 rules (19) and (21) of the Court of Appeal Rules 2002. The applicants prayed for four reliefs as set out above. The application was supported by a 28 paragraphs affidavit sworn to by Remi Awe who is a legal practitioner in applicants' counsel's chambers. On 8/11/04, a further-affidavit of 7 paragraphs was filed attaching to it exhibits A-C. On 15/11/04, a further and better affidavit of 6 paragraphs was filed exhibiting the ruling of the lower court striking out the motion for stay of execution of its judgment of 13/10/04. Learned SAN placed reliance on all the paragraphs of the affidavits but particularly paragraph 8 of the affidavit in support which the learned SAN read out in open court. In further submission, learned SAN stated that in contravention of the orders made by the lower court averred to in paragraph 8 of the affidavit in support, the appellants/respondents declared and embarked on strike action from 11th to 14th of October, 2004, even while they filed an application for stay which was not heard by the lower court but struck out. The appellants/respondents refused to file any application for stay of execution of that order before this court.

The appellants/respondents, it was submitted further, gave another notice to embark on strike on 16/11/04 on same subject-matter which the lower court ordered that they should not go on strike. Reference was made to paragraph 6(3) and (4) of the further-affidavit and also to exhibits D and

E. Learned SAN stated further that the appellants made public declaration that no court can stop them from going on strike contrary to the subsisting order of the lower court. It was argued that the conduct of the appellants/respondents constituted a deliberate disobedience of the judgment of the lower court and is a reprehensible contempt of that court's order. All parties, according to the learned SAN, have an unqualified duty not to disobey a subsisting order of court to abide by it to the letter. He referred to the case of Fame Publications Ltd. v. Encomium Ventures Ltd. (2000) 8 NWLR (Pt. 667) 105 at 111; Rossek v. A. C.B. (1993) 8 NWLR (Pt. 312) 382 at 434-435; Babatunde v. Olatunji (2000) 2 NWLR (Pt. 646) at 557 and 568 and 571. Learned SAN urged this court to hold that the appellants/respondents were not entitled to continue to disobey the judgment in exhibit A. They are not entitled to embark on any strike action on petroleum products until such a judgment is overturned.

In dealing with the contemptuous act, learned SAN, submitted, the court can make any of the following orders:-

- "1. the party in contempt can be committed to prison;*
- 2. order respondent to give security as to good behaviour not to flout the court's order;*
- 3. the court is entitled to make a further order of injunction to restrain the act of contempt or from continuing the act of contempt."*

Learned SAN cited and relied on the white book (2002) volume 1 page 1497 paragraphs SC 52.1.5. Learned SAN reminded this court that on 11/11/04, it made an order against the respondents not to embark on strike. He urged this court to extend the order.

In his response, Mr. Falana, submitted as follows:-

That he filed a counter-affidavit and a preliminary objection just this morning. That in determining the question of injunction the court determines the right of the applicants sought to be protected. No such right has been disclosed in the bundle of documents filed by the applicants. The purport of the application is to restrain the respondents from convoking meetings or any gathering and that is not right. It is the fundamentals of the respondents to assemble freely under section 40 of the Constitution in so far as they do so within the ambit of the law. Staging strike is permissible

under the Trade Dispute Act, particularly section 42 of the Trade Disputes Act, Cap. 432, LFN, 1990. Section 34 of the Trade Unions Act, Cap. 437 LFN, 1990, permits the Nigerian Labour Congress to collect and disseminate information to its members and advise them on economic and social matters including the process of petroleum products. Section 38(1) of the Constitution has empowered the NLC to embark on strike action. Strike, learned counsel argued further, is part of freedom of expression once it is peaceful. Reliance was placed on the case of INEC v. Musa (2003) 3 NWLR (Pt. 806) 72. B

Learned counsel stated that the prayers sought by the applicants is an invitation to this court to violate the constitutionally guaranteed right of the respondent. He cited the case of Ransome-Kuti v. A.-G., of the Federation (1985) 2 NWLR (Pt. 6) 211 at 229-230. It is only in a state of emergency that fundamental human right can be suspended by virtue of section 45 of the Constitution. Learned counsel cited page 254 of Afe Babalola's book on Injunctions and Enforcement of Orders which spelt out that the affidavit supporting an application for injunction pending appeal must state the legal rights to be protected and the balance of convenience. C D E

Mr. Falana, submitted that the only prayer the applicants could seek is to have their duty protected, guaranteed by section 5 of the Constitution. He went on to define what duty is while differentiating it from a right. Section 46 of the Constitution conferred a duty on High Court in Nigeria to enforce the fundamental rights of Nigerians. Similar rights are guaranteed in the African Charter on Human and Peoples Rights, Articles 10 and 11 thereof. Nigeria is a signatory to that charter. Learned counsel referred to: New Patriotic Party v. Inspector General of Police, Accra (2000) H.R.L.R.A. 1 at 73-74. Lastly, learned counsel submitted that as there was no contempt proceedings before the court no party can be said to be contemnors. He referred to the averments in paragraphs 5, 6, 7 and 13 of the counter-affidavit. He urged this court to dismiss this application in its entirety. F G H

Mr. Okunloye answered some issues on points of law that all the submissions made by learned counsel for the respondents are 'not useful

for the determination of this application. He stated that “the applicants legal right is the one determined by the lower court i.e. exhibit A. That it is contempt for a party to give up or compromise his rights as determined by the court.

B In considering this application, let me observe that Mr. Falana informed the court on the hearing date that he filed along with his counter-affidavit a notice of preliminary objection. He didn’t however move the court on that notice of preliminary objection.

C The trite position of the law is that although it is mandatory for a court to give its ruling on preliminary objections raised before delving into the appeal/application as the case may be, such notice of preliminary objection is deemed abandoned if not moved. See Onyekwuluje v. Animashaun & Anr. (1996) 3 NWLR (Pt. 439) 637, D (1996) 3 SCNJ 24; Ajibade v. Pedro (1992) 5 NWLR (Pt. 241) 257; NHRI v. Ayoade (1997) 11 NWLR (Pt. 530) 541; Jadesimi v. Okotie-Eboh (1986) 1 NWLR (Pt. 16) 264.

E Secondly, although there was no objection raised by learned SAN for the applicant on the instant service of the notice of preliminary objection on him on the date of hearing, his concession cannot confer jurisdiction on this court to entertain the preliminary objection as it offends our rules of court. Order 3 rules 15(1) of the Court of Appeal Rules, 2002 provides as follows:-

F “15(1) A respondent intending to rely upon a preliminary objection to the hearing of the appeal shall give the appellant three clear days notice thereof before the hearing, setting out the grounds of objection, and shall file such notice together with twenty copies thereof G with the registrar within the same time.”

H Court rules are meant to be obeyed. See Ezegbu v. F.A.T.B Ltd. (1992) 1 NWLR (Pt. 216) 197; Iroegbu v. Okwordu (1990) 6 NWLR (Pt. 159) 643; C.C.B. (Nig.) Plc. v. A.-G., Anambra State (1992) 8 NWLR (Pt. H 261) 528.

Thus, having not been moved, the preliminary objection raised by the respondent is deemed abandoned and accordingly struck out.

The main complaint as under relief 1, encapsulated in ground one

of the grounds upon which the application is premised is that there is a subsisting judgment delivered by the Federal High Court on September 21, 2004, in Suit No. FHC/ABJ/CS/52/2004 which {inter alia, restrained the appellants/respondents from embarking on strike action to protest issues outside their terms of employment. That immediately after the judgment of the lower court and before filing motion for stay, the appellants/respondents gave notice of strike action in defiance of the judgment of the lower court. The appellants went on strike in defiance of the subsisting judgment of the lower court. The appellant have given yet another notice to embark on strike on November 16, 2004. And unless this court grants this application the appellant will proceed on the proposed strike. These seem to be the grounds upon which the above relief is sought.

In his oral submissions, the learned SAN for the applicants stated that the appellants made public declaration that no court can stop them from embarking on strike contrary to the subsisting order of the lower court. Their conduct constituted a deliberate disobedience of the judgment of the lower court and is reprehensible. In the affidavit in support, the applicants deposed to the following facts:

“7. That on 21st day of September, 2004, the learned trial Chief Judge delivered a considered judgment on the case wherein the reliefs of the respondents/applicants were granted while the counter-claim of the appellants were dismissed.

9. That the appellants were dissatisfied with the judgment of the lower court and filed an appeal against it on 27th September, 2004.

10. That on the same day, the appellants also filed an application for stay of execution of the judgment of the lower court pending the determination of the appeal herein.

11. That in utter (sic-utter) disregard for the processes filed by the appellants themselves and all known principles of observance of rule of law, the appellants gave a notice of intention to go on strike from 11th October, 2004.

12. That the respondents/applicants in reaction to the said notice filed an application before the lower court for an order directing the appellants to give an undertaking not to go on strike or flout the subsisting

order of the lower court pending the determination of their appeal.

14. *That in a brazen affront to the authorities and jurisdiction of the lower court to entertain the applications before it, the appellants embarked on strike and lock out of all public and private institutions across the country on 11th October, 2004.*

15. *That on 13th October, 2004, the trial court struck out the applications of both parties on the ground that the Court of Appeal having become seised of the appeal, all applications should be made to the Court of Appeal."*

In his response, learned counsel for the respondents stated that staging a strike is permissible under the Trade Dispute Act section 42 thereof. Section 34 of the Trade Union Act also, permits the Nigeria Labour Congress to collect and disseminate information to its members and advise them on economic and social matters including the prices of petroleum products. Section 38(1) of the Constitution, he further argued, empowered the NLC to embark on strike action. Strike, he aid, is part of freedom of expression once it is peaceful.

In the counter-affidavit filed, the respondents admitted the averments in paragraphs 1, 3, 4, 6, 9, 10, 12, 13, 15 and 20 while Key stated that the averments in paragraphs 2, 7, 8, 11, 14, 16, 17, 8, 19, 20, 21, 22, 23, 24, 25 and 26 are untrue.

Further averments from the counter-affidavit of the respondents which was sworn to by one Salihu Lukman, acting general secretary of the 1st respondent, and having the authority and consent of the respondents to make the declarations contained therein, stated:-

That the applicants have appointed four other representatives of the Nigeria Labour Congress into the said palliative committee.

7. That representatives of the Government, employers of Labour and civil society were also appointed into the palliative committee headed by Senator Ibrahim Mantu, Senate Deputy President

8. That the representatives of Labour and civil society refused to serve on the committee up till its terms of reference were expanded to include the review of the m prices of petroleum products.

9. That following the recommendation of the committee that the

September 23rd, 2004, price increases be suspended the applicants accused the committee of going beyond its terms of reference.

10. That the representatives of both Labour and civil society decided to pull out of the committee to protest the lack of commitment on the part of Government to solve the perennial fuel crisis in the country. B

11. That as soon as the representatives of Labour and civil society gave a strike notice the applicants quickly announced that the committee could make recommendation on the prices of petroleum products.

12. That the respondents have returned to the palliative committee following the decision of the applicants to allow a discussion on the prices of petroleum products. C

13. That the lower court upheld the rights of individual trade unions to embark on strike.

14. That the decision to embark on strike on November 16, 2004 was taken by the representatives of the Trade Union and the Coalition of Civil Society Organizations.” D

From the affidavit evidence made available before this court, 5 including the admissions and denials thereof, it is my finding that: E

“(a) There is no denial from the respondents that there is a subsisting judgment of the lower court which made orders, among others, restraining the respondents from embarking on or resuming any strike based on the acts espoused in the notice dated 7/1/04. The respondents vide their notice of appeal, annexed to the further affidavit as exhibit ‘B’ filed their appeal to this court. Although the respondents denied paragraphs 7 and 19 of the affidavit in support, as per paragraph 3 of their counter-affidavit, it is clear from the record, which to certainly binds this court, that there is a subsisting judgment which has not up till now been set aside by any superior court of competent jurisdiction. It remains binding on the parties. The Supreme Court, in the case of Abacha v. Fawehinmi (2000) 6 NWLR (Pt. 660) 228 to at page 317 E-F, held as follow:- F G H

‘It is the law that a decision of a court of competent jurisdiction, no matter that it is seems palpably null and void, unattractive or insupportable, remains good law and uncompromisingly binding

until set to aside by a superior court of competent jurisdiction.”

See further: *Babatunde and Anor v. Olatunji and Anor.* (2000) 2 NWLR (Pt. 646) 557; *Ezeokafor v. Ezeilo*, (1999) 9 NWLR (Pt. 619) 513, (1999) 6 SC (Pt. 11)1; *Nkwo v. Uchendu* (1996) 3 NWLR (Pt. 434)1.

B “(b) That **the denial** by the respondent of paragraphs 11 and 14 of the affidavit in support is not supported by any cogent evidence. On the other hand, the applicants attached some exhibits to their further affidavit such as exhibits ‘C’, ‘D’ and ‘E’ which were the motions and their accompanying exhibit at the court below. Some of
C such exhibits were excerpts from some print media reports which portrayed that the respondents ignored, disrespected and refused to give heed to, or obey the letter and spirit of judicial pronouncements by the court below. I will only cite few instances:-

D (i) Exhibit B attached to exhibit D before the court below. It is an excerpt from Saturday Punch of 25/09/04 page 7 thereof and it reads:-

“If Nigerians must be free, we must be ready to fight. Those
E of you who have knickers should wear it. Nothing good comes without pains. The struggle to make Nigeria great must be sustained. Our mandate as working people is to protest against bad laws. Nigerians must rise against poverty, bad governance and dictatorship.”

F In the Punch of 28/9/2004 (pages 1, 6 and 7) attached as exhibit B1 to the said exhibit D before the court below, the following was reported:

G “Adams: if after October 11, we government failed to comply, workers and working family would be called out to embark on an indefinite stay at home protest ... we have resolved to give the Federal Government 14 days within which to revert to the old prices and if they don’t by October 1, we will begin to enforce a stay-at-
H home all over the country.”

In the Guardian of 27/9/2004 (pages 1, 2 & 4) attached as exhibit B2 to exhibit D before the court below, the following report was made:-

“Fuel price: Afenifere, TUC, others back strike. Chief Gani Fawehinmi

said at pages 1, 2 and men don't die twice but once. I must drop my life for this country. Let the government be ready with most obnoxious gas, I am prepared to die with dignity..."

It should be noted that all these utterances were made after the delivery of the judgment by the court below. There is nothing to indicate that any of such utterances was retracted by the makers or the Organizations/Associations they represent. Paragraphs 11, 14, 16, 18, 25 and 26 of the affidavit in support of the motion under consideration, though quoted earlier, but at the risk of, a meaningful repetition, state as follows:-

"11. That in alter (sic-utter) disregard for the processes filed by the appellants themselves and all known principles of observance of rule of law, the appellants gave a notice of intention to go on strike from 11th October, 2004.

14. That in a brazen affront to the authorities and jurisdiction of the lower court to entertain the application before it, the appellants embarked on strike and lock out of all public and private institutions across the country on 11th October, 2004.

16. That the appellants thereon continued with the strike action until the 14th day of October, 2004.

18. That the appellants have again given notice to embark on another round of indefinite strike action and total grounding of the nation's systems from 16th of November, 2004.

25. That unless this application is granted the appellants strike action will paralyse the economy, cause chaos in the polity and the entire system.

26. That the appellants have a well-settled intention not to obey the order of court made against them in this appeal."

The legal authorities cited by the respondents learned counsel, which he claimed entitled the respondents to stage or continue to stage strike require a sober and passionate look. For instance section 38(1) of the Constitution empowers the NLC to embark on strike. The section provides as follows:-

"38(1) Every person shall be entitled to freedom of thought,

conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.”

B I do not think this section has the desired relevance which was advocated for the 2nd respondent. The 2nd respondent, I believe, as a juristic person, can hardly have any religious denomination talkless of propagating or changing alone or together with others, “his/her” religious belief. The idea advocated by Mr. Falana may
C well be with other provision of the Constitution.

On section 42 of the Trade Disputes Act, the section provides as follows:-

D “42(1) Notwithstanding anything contained in this Act or in any other law:-

(a) where any worker takes part in a strike he shall not be entitled to any wages or other remuneration for the period of the strike and any such period shall not count for the purpose of
E reckoning the period of continuous employment and all rights dependent on continuity of employment shall be prejudicially affected accordingly; and

(b) where any employer locks out his workers the workers shall be
F entitled to wages and any other applicable remuneration for the period of lockout and the period of the lockout shall not prejudicially affect any rights of the workers being rights dependent on the continuity period of employment.”

G It is my understanding of the above provisions that the section does not legalize strike actions or lock-outs. Rather, in the event of any of the two happening and a worker participates in a strike or he is locked out by his employer, his entitlements are as provided by the
H section. Period! Section 34 of the Trade Unions Act stipulates:-

“34(1) The Central Labour Organization shall have power, subject to its rules:-

(a) to represent the general interest of its members on any

**national advisory body set up by the Government of the Federation;
(b) to collect and disseminate to its members information and
advice on economic and social matters;**

(c) to give advice, encouragement or financial assistance to any of
its members in need thereof; B

(d) to promote the education of members of trade unions in the
field of labour relations and connected field; and

(e) to render any other assistance provided for under the articles
of affiliation.” C

Here too, I fail to see where strike actions are authorized. The
provisions appear to me to be welfare oriented scheme for the members
of the Nigeria Labour Congress. Period!

**Strikes are more of actions than mere expressions which,
more often than not, connote making known an opinion by words.** D
The Trade Dispute Act, gives the interpretation of strike to mean:-

**“the cessation of work by a body of persons employed acting
in combination, or a concerted refusal or a refusal under a common
understanding of any number of persons employed to continue to E
work for an employer in consequence of a dispute, done as a means
of compelling their employer or any person or body of persons
employed, or to aid other workers in compelling their employer or
any persons or body of persons at employed, to accept or not to accept F
terms of employment and physical conditions of work; and in this
definition:-**

(a) cessation of work’ includes deliberately working at less
than usual speed or with less usual efficiency; and

(b) ‘refusal to continue to work includes a refusal to work at G
usual speed or with less than usual efficiency.”

Thus as there is nothing to justify the refusal of the respon-
dents to obey the lower court’s order, one may agree with the
applicants in their submission that it was a brazen affront to the H
jurisdiction of the lower court for the respondents to embark or
continue embarking on strikes and lock outs carried out or intended
to be carried out by the respondents. It is a matter of common

knowledge and of course supported by evidence contained in exhibit D that the respondents staged a nation-wide strike from the 11th - 14th of October, 2004, in spite of the subsisting court order.

But in a democratic polity, where principles of rule of law are firmly entrenched in the system, it will be working in an anti-clockwise direction, an affront and indeed an onslaught on democracy if a person or body of persons however highly placed, shall decide to brush aside, downgrade and ridicule a court's order. The court, on the other hand is always jealous of its decisions and will not allow anyone to ridicule it. A court of law is never a toothless bulldog, it can bark, bite, brake and may, as circumstance may warrant, eat up the bones. The thorny issue of disobedience of court orders had been pronounced upon as long ago as 1846 by Lord Cottenham D.L.C. in the case of *Chuk v. Craner*, Cooper Temp. Cott. 338 at 342; 47 ER 884 at 885. Ogundare, JSC, in the case of *Rossek v. A.C.B. Ltd* (1993) 8 NWLR (Pt. 312) 382 at pages 434-435 E-C treated the matter extensively. Below is, *inter, alia*, what he said:-

“ A party, who knows of an order, whether null or valid, regular or irregular cannot be permitted to disobey it. It did not even signify whether the order was drawn up. That there were many cases in which a party had been held to have committed a contempt for disobeying an order, which had not only not been served, but have not even been draw up. It would be most dangerous to hold that the suitors, or their solicitors, could themselves Judge whether an order was null or valid - whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it existed it must not be disobeyed.’

This view was re-echoed by Romer L. J in *Hadkinson v. Hadkinson* (*supra*) where he observed:

It is plain and unqualified obligation of every person against, or in respect of whom an order is made by a court of competent jurisdiction,

to obey it unless and that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void and affirmed by the privy council in *Isaacs v. Robertson (supra)*, Eso, JSC stated the same view in *Oba Aladegebemi v. Oba Fasanmade (supra)* where B
he observed:

....for a court of competent jurisdiction, not necessarily of unlimited jurisdiction (and I will come to this anon) has jurisdiction to decide a matter rightly or wrongly. If that court never had jurisdiction in the matter, C
 then its decision is, without jurisdiction, void, but then should a court of law not even decide the point? That is, the court without jurisdiction decided without jurisdiction?

Should the decision be ignored? Surely it would not make for peace and finality which a decision of a court seeks to attain. It would at least be D
 against public policy for persons, without the backing of the court, to pronounce a court decision a nullity, act in breach of the decision whereas others may set out to obey it. In respectful view it is not only desirable but necessary decisions set aside first by another court before any act is built E
 upon it despite the colourful dictum of the law Lord in *U.A.C. v. Macfoy (supra)*. ” *Isaacs v. Robertson* has not decided anything new to Nigerian law on this point. There is always a presumption of correctness in favour of a court’s judgment. And until that presumption is rebutted and judgment F
 is set aside, it subsists and must be obeyed.”

Generally, therefore, orders of a competent court must be obeyed as long as they subsist, if the authority and administration of the court are not to be brought into disrepute, scorn or disrespect. G
They remain binding on parties thereto until set aside by a superior court of competent jurisdiction or declared null and void. Thus, once a party knows of the subsistence of an order of court, whether valid or not and whether regular or irregular or even perverse, he is obliged to obey it. See *Adebayo v. Johnson* (1969) 1 All NLR 176; *H*
Aladegebemi v. Fasanmade (1988) 3 NWLR (Pt. 81) 129; *Komolafe v. Omole* (1993) 1 NWLR (Pt. 268) 213; *Rossek v. African Continental Bank Ltd. (supra)*.

One can understand the spirit of the respondents which seems to be geared towards achieving better socio-economic conditions for their members and the generality of the citizenry of this great nation. That is alright. But by embarking on strikes, I dare say, the problem will be more compounded. I believe that meaningful discussions, dialogues and conciliation's, rather than strike, will achieve more positive results to the satisfaction of both parties and the general citizenry.

All the statutory authorities cited by learned counsel for the respondents must be in consonance with the provisions of the Constitution. I find no provision which legalizes strike actions in whatever form. I recall that I earlier on made an interim order restraining the respondents from embarking on any form of strike pending the determination of this application.

Accordingly, it is my ruling in this application that:-

1. Relief 1 is granted as prayed. An order is hereby made restraining the appellant/respondents by themselves, their officers, privies, associates and any person howsoever described from continuing their acts of contempt by disobeying the order of the lower court delivered on the 21st day of September, 2004 which is now the subject of appeal before this Honourable court.

2. I hereby make an order restraining the appellants/ respondents by themselves, agents, privies or otherwise howsoever called from embarking on strike pending the determination of the appeal before this court. Accordingly, I hereby discharge the interim order I made on the 11/11/04 in respect of the same subject matter.

3. In view of the above order in paragraph 2 above, I do not consider it necessary to direct the appellants to give an undertaking not to disobey the subsisting order of court. The law has made several remedies available for dealing with disobedience to court orders. This relief appears speculative. Courts of law do not speculate. The relief is hereby refused.

4. Relief No. 4, if granted, will cripple some of the activities of the respondents, which may not relate to strikes. There was no evidence before this court to show that all the meetings convoked by the respon-

dents were in relation to strikes. It is my view that the order restraining the respondent from embarking on strikes will suffice. This relief is hereby refused.

Finally, reliefs Nos. 1 and 2 of the motion on notice are hereby granted as prayed while reliefs 3 and 4 are hereby refused. I make no order as to cost in this application.

BULKACHUWAJCA

I agree.

C

ODILI, J.C.A.

I have read the ruling of my learned brother, I.T. Muhammad, JCA. I agree and adopt his views and the reasons hereof. I also adopt decisions and orders accordingly. Therefore I grant reliefs 1 and 2 of the reliefs sought. I refuse reliefs 3 and 4 for the reason stated in the lead ruling. Application granted in part

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