

SUPREME COURT OF NIGERIA
15TH JULY, 2005. SC. 38/2001
CORAM:- I. L. KUTIGI, S. U. ONU, U. A. KALGO,
D. MUSDAPHER, I. C. PATS-ACHOLONU, JJSC

1. MERCANTILE BANK OF NIG. PLC. APPELLANTS
2. NIGERIA DEPOSIT INSURANCE
CORPORATION
AND
LINUS NWOBODO RESPONDENT

APPEALS - Grounds of appeal - Issues - Framing of - Where one ground of appeal is filed - Appellant can only frame a sole issue (H1)

APPEALS - Grounds of appeal - Must be connected to controversy between parties - Where a ground has no connection with the judgment appealed against - Then the appeal is incompetent (H2)

APPEALS - Issues - Purpose - An issue will serve no useful purpose - Where it emanates from an incompetent appeal (H3)

FACTS

Before the High Court, the plaintiff/respondent instituted an action against defendants/appellants. The 1st appellant bank had in the course of its operation, the respondent as a customer. The respondent lodged a large sum of money in the bank which became distressed and unable to meet its customary obligation. The bank was eventually sold over to the Central Bank which handed it over to Nigeria Deposit Insurance Corporation to manage. The respondent being one of its customers made efforts to get his deposits in the Bank back but all to no avail. The 1st appellant stated that on their part they tried to negotiate and made several attempts to pay but the respondent wanted all his money or nothing. The respondent went to court and judgment was given to him, but the appellants argued that they were not served with any process. The appellants stated that on the date

the judgment was slated to be delivered, a staff of the 1st appellant was in court and raised objection but the Judge ignored it and entered judgment for the respondent.

After the judgment, the respondent applied to the court and sought to garnish the account of the 1st appellant in the Central Bank. Although an order nisi was granted, it was not absolute. The respondent thereafter made effort to attach for sale the goods and chattels of the Bank but for some unaccountable reasons none was attached. Instead the respondent moved to have the Banks real property situate at Harcourt Street, Calabar, sold. The appellants after trying to stop the sale filed an application at the High Court to stay the sale. The trial court dismissed the appellants' arguments, granted all the prayers of the respondent and ordered the bailiffs to proceed with the sale of the bank's real property. The appellants being dissatisfied with the ruling, appealed to Court of Appeal but the appeal was unanimously dismissed. They have further appealed to the Supreme Court.

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

Issues - Framing of

1. From the record before this court, there was one ground of appeal filed. To file only one ground of appeal, the necessary inference is that there is only one issue which stands as a source of contention or dispute. It means or portends in effect that there is indeed not more than one question to be determined. In other words, the appellant would inevitably frame or formulate only a sole issue. Surprisingly, the appellant strove ungainly, inelegantly and shockingly to formulate 4 issues. The attempt to foist on the court to determine 4 issues arising out of one ground of appeal, ex facie, bespeaks of ignorance of the methodology of approach in framing issues. Where the number of issues distilled are far in excess of the number of grounds of appeal, then the implication is that there has been a parade or display of palpable ignorance nay culpable lack of the knowledge of the law. It means that the appellant does not even know or is not sure what he is appealing against.

Let me set down the appellant's sole ground of appeal as contained in the record:

"I. The learned Justices of the Court of Appeal erred in law when they held that failure to comply with the provisions of Section 44 of the Sheriffs and Civil Process Act, Laws of the Federation, 1990, did not amount to a miscarriage of justice."

Then they set out in no less than eight (8) paragraphs what they euphemistically described or labelled as particulars of error. The whole matter I must confess, is mind boggling to say the least. (p. 2106 H)

Grounds of appeal - Must be connected to controversy

2. It is always an elementary law that grounds of appeal must of necessity arise from the judgment, ruling or decision or any pronouncement of the court below. When a ground has not the remotest connection with what the court below decided and which agitated the mind of the appellant to seek for a review and overturn the decision, but he misconceived what he ought to complain against and confused himself by setting up a case not in existence, the appellate court would naturally throw away the incompetent appeal. In the event that there is only one such ground, then of course, there would simply be no appeal as what is set down as a ground of appeal is non-existent being no more than a figment of imagination of the appellant. I shall in this connection refer to two judgments. In *Bello v. Aruwa* (supra) the Court of Appeal held thus:

"It is well settled proposition of the law in respect of which there can hardly be a departure, that grounds of appeal against a decision must be related to the decision being appealed against and should constitute a challenge to the ratio of the decision."

See Egbe v. Alhaji (1990) NWLR (Pt. 128) 5c 46 at 590. Grounds of appeal are not formulated in abstract. They must arise from the judgment in the same way as the issues arising from the grounds of appeal. However meritorious a ground of appeal may be, it must be connected with the controversy between the parties, so also is the issue arising from the ground. This is indeed a precondition for the vesting of judicial powers under the Constitution in the courts. (p. 2107 H)

APPEALS - Issues - Purpose

3. Now let me address on the issue of the sole ground. I have carefully read the leading judgment and the concurring judgments of the Court of Appeal and there was no single place where the Court (of Appeal) expressed a view or decision to the effect that failure to comply with the provision of Section 44 of the Sheriffs and Civil Process Act, Laws of the Federation 1990, did not amount to a miscarriage of justice. Indeed, in respect of the import of Section 44 of the Sheriffs and Civil Process Act, what was said in the leading judgment by Ekpe, JCA., runs thus:

“From the foregoing paragraphs of the respondent’s affidavit, I hold that the respondent complied with Section 44 of the Sheriffs and Civil Process Act, 1990 by satisfying the conditions set out therein which enable him to be granted leave by the lower court to levy execution, on the said immovable property of the 1st appellant.”

We should ignore the strange and unknown method of procedure of trying to embellish the sole ground and make multiple grounds from it. Since what was not said by the lower court formed the fulcrum of the appellants’ case, the inevitable conclusion is that there is no appeal or better still, the appellants have not the foggiest idea what to appeal against. In other words, there is simply no appeal in a strict sense before this court. No useful purpose will be served in considering issues that emanate from incompetent appeal.

In the circumstance, there is nothing worth considering in the appeal. It lacks everything that any court should look for in an attempt to determine the credit of an appeal from forensic point of view.

(p. 2110 A)

REPRESENTATION

Appellants not represented.

Jacob A. Dada, (with him Eugene A. Okpara), for the Respondent.

CASES REFERRED TO

Oba v. Egbe Rongbe (1999) 6 S.C. (Pt.1) 63; (1999) 8 NWLR (Pt. 615) 485 at 489-490

Bello v. Aruwa (1999) 8 NWLR (Pt. 615) 454 at 468

D.F Ogbonna v. Oti (2000) 8 NWLR (Pt. 670) 582 at 591

Igbinovia v. UBTH & Anor. (2000) 8 NWLR (Pt. 667) 65-66

Saraki v. Kotoye (1992) 9 NWLR (Pt. 264) 156 at 184

Bakule v. Tanerewa (Nig.) Ltd. (1995) 2 NWLR (Pt. 308) 724 at 73 9-740

Iloabachie v. Iloabachie (2000) 5 NWLR (Pt. 626) 194 at 203

Egbe v. Alhaji (1990) NWLR (Pt. 128) 5c 46 at 590

Niger Construction Ltd. v. Okugbemi (1987) 4 NWLR (Pt. 67) 787

Ella v. Agbo (1999) 8 NWLR (Pt. 613) 139

Akibu v. Aduntan (2000) 13 NWLR (Pt. 685) 446

LEAD JUDGMENT BY PATS-ACHOLONU JSC

The 1st appellant, a financial institution, had in the course of its operation, the respondent as a customer who lodged a reasonably large sum of money in the Bank. It became distressed and was unable to meet its customary obligations in that it could not pay its customers money lodged therein. It was eventually sold over to the Central Bank for N1.00. The Central Bank handed it over to Nigeria Deposit Insurance Corporation to manage.

The respondent being one of its customers made efforts to get his deposits in the Bank back but all to no avail due to the 1st appellant’s impecuniosity. The appellants stated that on their part they tried to negotiate, and verily explored several opportunities and options to attempt to pay but the respondent wanted all his money or nothing and was not amenable for any discussion that was not geared towards full payment of his money in the Bank. In consequence of failure to meet the demands of the respondent, the respondent went to court. At the court of first instance, judgment was given to the respondent, but the appellants argued that they were not served with any process filed by the respondent until judgment

was given in the case.

The appellants stated that on the date the judgment was slated to be delivered, a staff of the 1st appellant was in court and raised objection to the non-service of the processes. This was ignored by the presiding Judge, Binang, J., who of course entered judgment for the respondent. After the judgment had been given, the respondent applied to the court, and had striven to garnish the account of the 1st appellant in the Central Bank. Although an order nisi was granted, it was not made absolute. The respondent thereafter made effort to attach for sale the goods and chattels of the Bank but for some unaccountable reasons none was attached. Instead, the respondent moved to have the Bank's real property situate at No. 17, Harcourt Street by Bassey Duke Street, Calabar, sold to satisfy the debt.

When all efforts to prevent the sale proved fruitless, the appellants filed an application at the High Court to stay the sale. An interim order was made but subsequently the respondent filed a motion to set aside the interim order and prayed for the sale of the immovable property hither mentioned. The appellants filed a counter affidavit. The mainstay of the 1st appellant's stand is that pursuant to Section 44 of the Sheriffs and Civil Process Act, Laws of the Federation of Nigeria, 1990, a judgment creditor who wishes to execute a writ of fieri facias must first attach movable property arguing that this was not done in this case by the respondent. It further argued that since the bank had been sealed for the purpose of liquidation, it would be improper to levy execution on its property which in its belief would go against the grain of Sections 413 and 414 of the Companies and Allied Matters Act, 1990. The trial court (incidentally another court) dismissed the appellants argument and granted all the prayers of the respondent and ordered the Bailiffs to proceed with the sale of the bank's immovable property. Incensed by the realities of the situation that its cherished property might indeed be sold, the two appellants appealed against the ruling of the High Court. It was unanimously dismissed. Not satisfied with the judgment of the court below, they appealed to this court.

From the record before this court, there was one ground of appeal filed. To file only one ground of appeal, the necessary inference is that there is only one issue which stands as a source of contention or

dispute. It means or portends in effect that there is indeed not more than one question to be determined. In other words, the appellant would inevitably frame or formulate only a sole issue. Surprisingly, the appellant strove ungainly, inelegantly and shockingly to formulate 4 issues. The attempt to foist on the court to determine 4 issues arising out of one ground of appeal, ex facie, bespeaks of ignorance of the methodology of approach in framing issues. Where the number of issues distilled are far in excess of the number of grounds of appeal, then the implication is that there has been a parade or display of palpable ignorance nay culpable lack of the knowledge of the law. It means that the appellant does not even know or is not sure what he is appealing against.

Let me set down the appellant's sole ground of appeal as contained in the record:

"I. The learned Justices of the Court of Appeal erred in law when they held that failure to comply with the provisions of Section 44 of the Sheriffs and Civil Process Act, Laws of the Federation, 1990, did not amount to a miscarriage of justice."

Then they set out in no less than eight (8) paragraphs what they euphemistically described or labelled as particulars of error. The whole matter I must confess, is mind boggling to say the least.

The respondent filed a notice of preliminary objection based on:

(a) That the sole ground does not arise from the judgment of the Court of Appeal. He cited several cases notably:

Oba v. Egbe Rongbe (1999) 6 S.C. (Pt.1) 63; (1999) 8 NWLR (Pt. 615) 485 at 489-490; Bello v. Aruwa (1999) 8 NWLR (Pt. 615) 454 at 468; D. F Ogbonna v. Oti (2000) 8 NWLR (Pt. 670) 582 at 591; Igbinovia v. UBTH & Anor. (2000) 8 NWLR (Pt. 667) 65-66.

(b) That the issues formulated from the incompetent ground are and should be incompetent.

It is always an elementary law that grounds of appeal must of necessity arise from the judgment, ruling or decision or any pronouncement of the court below. When a ground has not the remotest connection with what the court below decided and which agitated the

mind of the appellant to seek for a review and overturn the decision, but he misconceived what he ought to complain against and confused himself by setting up a case not in existence, the appellate court would naturally throw away the incompetent appeal. In the event that there is only one such ground, then of course, there would simply be no appeal as what is set down as a ground of appeal is non-existent being no more than a figment of imagination of the appellant. I shall in this connection refer to two judgments. In *Bello v. Aruwa* (supra) the Court of Appeal held thus:

"It is well settled proposition of the law in respect of which there can hardly be a departure, that grounds of appeal against a decision must be related to the decision being appealed against and should constitute a challenge to the ratio of the decision.

See Egbe v. Alhaji (1990) NWLR (Pt. 128) 5c 46 at 590. Grounds of appeal are not formulated in abstract. They must arise from the judgment in the same way as the issues arising from the grounds of appeal. However meritorious a ground of appeal may be, it must be connected with the controversy between the parties, so also is the issue arising from the ground. This is indeed a precondition for the vesting of judicial powers under the Constitution in the courts. See Adesanya v. President of Nigeria (1987) 7 NCLR 358. In other words, like pleading, parties are bound by their grounds of appeal and are not at liberty to argue grounds or raise issues not related to the judgment appealed against. See Saraki v. Kotoye (1992) 9 NWLR (Pt. 264) 156 at 184. See also Bakule v. Tanerewa (Nig.) Ltd. (1995) 2 NWLR (Pt. 308) 724 at 73 9-740."

Equally too in *Iloabachie v. Iloabachie* (2000) 5 NWLR (Pt. 626) 194 at 203, the Court of Appeal held thus:

"A ground of appeal which purports to raise and attack an issue not decided by the judgment is incompetent. Thus, where the factual basis for attacking a judgment is false or non-existent, the ground of appeal based on the fictitious or misleading premise is incompetent. It constitutes a clear misrepresentation of the decision of the trial court which vitiates the basis of the complaint on appeal. In the instant case, the ground of appeal which dealt with the issue of the trial court deciding the question

of title to land in dispute did not arise from a determination of the trial court and is therefore incompetent. Issue 7 formulated therefore is also incompetent".

What is the appellants' answer? They filed an appellant's reply brief on 4/10/2001, nearly 5 months after the respondent's brief.

There is nothing in the record to show that the appellants obtained the leave of the court to file the reply brief out of time.

Order 6 Rule (3) of the Supreme Court Rule states as follows:

"The appellant may also file in the court and serve on the respondent a reply brief within four (4) weeks after service of the brief of the respondent on him but except for good and sufficient cause shown, a reply brief shall be filed and served at least 3 three days before the date set down for the hearing of the appeal."

There is nothing on the record to show that the reply brief filed nearly 5 months after the filing of the respondent's brief received the endorsement of the court by way of prayer for leave to file out of time. Assuming for the sake of argument, that the appellant might have for some unaccountable reason filed the reply brief within 4 weeks after service of the respondent's brief, let me examine the worthwhileness and substantiability of the reply brief.

In the main, the so-called and described reply brief is a feeble attempt by the appellants to state that in point of fact they filed 5 grounds of appeal. It is interesting that they now in their reply brief attempted to improvise and convert the sole ground with not less than 8 particulars into 5 grounds of appeal. It should be observed that if the appellants have made a mistake in their notice of appeal, they could have striven to move the court for leave to amend the notice of appeal. Like elfins, they wanted to have the sole ground to metamorphose into 5 grounds of appeal by a magic wand on the puerile premise that they made a mistake in their numbering. How shall I liken this unheard of method of appeal by the appellants. I remember what was said of the mythical Humpty Dumpty who said that whatever he wants something to be is what it is going to be. It is equivalent to saying that one can make a square- circle which is impossible. The attempt is like what Shakespeare describes in Macbeth

in these words.

“It is like a tale told by an idiot full of sound and fury signifying nothing”.

Now let me address on the issue of the sole ground. I have carefully read the leading judgment and the concurring judgments of the Court of Appeal and there was no single place where the Court (of Appeal) expressed a view or decision to the effect that failure to comply with the provision of Section 44 of the Sheriffs and Civil Process Act, Laws of the Federation 1990, did not amount to a miscarriage of justice. Indeed, in respect of the import of Section 44 of the Sheriffs and Civil Process Act, what was said in the leading judgment by Ekpe, JCA., runs thus:

“From the foregoing paragraphs of the respondent’s affidavit, I hold that the respondent complied with Section 44 of the Sheriffs and Civil Process Act, 1990 by satisfying the conditions set out therein which enable him to be granted leave by the lower court to levy execution on the said immovable property of the 1st appellant.”

We should ignore the strange and unknown method of procedure of trying to embellish the sole ground and make multiple grounds from it. Since what was not said by the lower court formed the fulcrum of the appellants’ case, the inevitable conclusion is that there is no appeal or better still, the appellants have not the foggiest idea what to appeal against. In other words, there is simply no appeal in a strict sense before this court. No useful purpose will be served in considering issues that emanate from incompetent appeal.

In the circumstance, there is nothing worth considering in the appeal. It lacks everything that any court should look for in an attempt to determine the credit of an appeal from forensic point of view. I hereby strike out the appeal for its incompetence with cost to the respondent assessed at N10,000.00 only.

H

KUTIGI JSC

I read in advance the judgment just delivered by my learned brother. Pats-Acholonu, JSC. I agree with him that the appeal is incompetent because the sole ground of appeal did not arise from the judgment of the Court of Appeal. The appeal is accordingly struck-out with N10,000.00 costs to the respondent.

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ONU JSC

I agree with my learned brother, Pats-Acholonu, JSC., that this appeal lacks any iota of merit and ought therefore to fail. Accordingly, I strike out the appeal for its incompetence with costs to the respondent assessed at N 10,000 only.

KALGO JSC

I have had the privilege of reading in draft the judgment of my learned brother, Pats-Acholonu, JSC., in this appeal. I entirely agree with him that the appeal is not legally based as the sole ground of appeal did not arise from any decision, ruling or order of the Court of Appeal from where the appeal came. An appeal must constitute a complaint from a decision of a court from where the appeal came and cannot be based on imagination or whims and caprices of an appellant. See *Niger Construction Ltd. v Okugbemi* (1987) 4 NWLR (Pt. 67) 787; *Degi v. Francis* (1999) 3 NWLR (Pt. 596) 576; *Ella v. Agbo* (1999) 8 NWLR (Pt. 613)139; *Akibu v. Aduntan* (2000) 13 NWLR (Pt. 685)446.

In this appeal, or purported appeal, the sole ground of appeal did not attack or complain against any decision of the Court of Appeal in this matter and as such it is incompetent. There is no basis upon which the appeal can stand.

I therefore find, for the above and more detailed reasons in the

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leading judgment, that this appeal is incompetent and must perforce be struck out. I accordingly strike out the appeal as incompetent with N 10,000.00 costs in favour of the respondent.

B

MUSDAPHER JSC

There is no doubt that an appeal is a complaint against the decision and is premised upon a ground of appeal. So where the ground of appeal has no connection with the decision appealed against the ground of appeal becomes incompetent. I have carefully read the sole ground of appeal in this matter together with its complex and prolix particulars and I cannot find any connection between the ground and the decision appealed against. That is why I agree with the conclusion of my Lord. Pats-Acholonu, JSC., in his leading judgment, that the appeal is incompetent and is struck out.

D I abide by the order for costs contained in the aforesaid judgment.

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