

**SUPREME COURT OF NIGERIA**

16<sup>TH</sup> DECEMBER, 2005. SC. 416/2001

**CORAM:- S. M. A. BELGORE, A. O. EJIWUNMI, I. C. PATS-  
ACHOLONU, M. MOHAMMED, I. F. OGBUAGU, JJSC**

PATRICK D. MAGIT ..... APPELLANT  
AND  
UNIVERSITY OF AGRICULTURE,  
MAKURDI AND ORS. .... RESPONDENTS

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APPEALS - Notice of - Can be filed on the day of judgment - And miscarriage of justice - Was not shown as arising from the filing - Which at most may amount to mere harmless irregularity (H1)

APPEALS - Leave - Preliminary objection - Method of raising - Where contained in respondent's brief - It must be raised with leave of court (H2)

ADMINISTRATIVE LAW - University Senate - Duty of - Is to award or refuse degrees - As it considers fit - To any student (H3)

FAIR HEARING - Reliance on - In appeals - Should not be as if it is a magic wand - It is facts that determine whether fair hearing is denied (H4)

ADMINISTRATIVE LAW - University Senate - Powers of - As the Supreme Academic Authority - It has the duty to judge thesis placed before it - And courts lack jurisdiction - To dabble into administrative affairs of a University (H5)

JUDICIAL PRECEDENTS - Garba case - University Senate - Thesis consideration - Fair hearing is not breached - As in Garba case - Because student was absent - When his thesis was considered (H6)

ADMINISTRATIVE LAW - Discretion - University Senate - Award of degrees - Exercise of discretion - In refusing to award degree to a dishonest student - Is not malicious but within its jurisdiction (H7)

ADMINISTRATIVE LAW - University degree - Process of earning M.Sc degree - Cannot be complete - Without a successful thesis - Subject to a certain condition (H8)

APPEALS - Concurrent findings - Where not perverse - Supreme Court will not interfere (H9)

### **FACTS**

Before the High Court of Benue State, sitting at Markurdi, the plaintiff/appellant under the Fundamental Human Rights Rules 1979, sought leave to apply for a judicial review to wit: Orders of certiorari, Mandamus and Prohibition against the defendants/respondents. The appellant in the 1993/1994 Academic session was admitted by the 1st respondent to pursue an M.Sc degree in Agricultural Economics. As part of the programme, he was required to write an acceptable thesis. The appellant submitted his thesis to the Board of Examiners who invited him to defend the thesis orally, which he did.

The Board thereafter recommended that the thesis be accepted and the degree awarded subject to corrections to be certified as may be determined by the panel. The Senate rejected the appellant's thesis as a result of the report submitted to it and advised the appellant to withdraw from the University, asking him to hand over certain items/properties of the University in his possession. The appellant's application to the trial Court was dismissed, so also his appeal to the Court of Appeal. He has further appealed to the Supreme Court

### **ISSUES FOR DETERMINATION**

*“(1) Whether the Senate of the University acted maliciously or capriciously in refusing to award an M.Sc. degree to the Appellant and whether a recommendatory panel below the Senate has the power to award a degree.*

*(2) Whether the learned trial Judge and the learned Justices of the Court of Appeal were right in their approval of the procedure adopted by the respondents leading to the issuance of exhibit “6”.*

*(3) Whether or not the issues of judicial Review by way of certiorari, mandamus or prohibition was available to the appellant in the circumstances of the case; especially having regard to the fact that the appellant at no time earned an M.Sc. degree of the University”.*

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

***APPEALS - Notice of - Can be filed on the day of judgment***

1. Before going into the merits of this appeal, I will deal first, with the said Preliminary objection. I have no hesitation in dismissing the said objection because, it is, in my respectful view of no consequence. It is not uncommon that Counsel who perceive/anticipate, that they are going to lose a matter or appeal, before coming to Court on the date of the Ruling or Judgment, arm themselves, with a prepared Notice of Appeal. Sometimes, the Omnibus Ground, is the only ground with the statement that *“Additional Grounds will/may be filed on the receipt of the Records of Proceedings and/or the copy of the Ruling or Judgment”*. As soon as the Ruling or Judgment is delivered, they walk into the Registry and file the Process/Notice and perhaps, ensure that service of the Notice or process, is served/effected on the opposite side, on the same date. Such appeals, are never rendered void because of their having been filed on the same date the Ruling or Judgment was delivered.

But assuming that it is a non-compliance of the said Rules, I will treat it as a mere irregularity that will not affect the merits of the appeal. In any case, the party complaining as in the instant appeal, has not shown, what prejudice or miscarriage of justice, such filing, has occasioned him. (p. 2902 B)

***Preliminary objection - Method of raising***

2. However, on a more serious note, the method of raising a Preliminary Objection, apart from giving the Appellant, three clear days notice before the date of hearing is now firmly settled. It may be in the Respondent’s

Brief, by a formal separate notice or written objection or both. But there is the need for the Respondent or his Counsel, with the leave of the Court, to move the objection ,before the hearing of the substantive appeal.

It need be stressed and this is also settled, that the object/purpose B of filing the notice, is to safeguard against embarrassing an appellant and taking him by surprise.

It must always be borne in mind, that the failure to bring the Notice in accordance with Order 2 Rule 9 of the Supreme Court, does not render C it ineffective. (p. 2902 G)

***University Senate - Duty of***

3. *It is noted by me and as was done by the Court below at pages 105 and 106 of the Records, that before Exh. 6 was written, the said Prof. Njike, D had written Exh. 'C' titled "Report on The Corrected M.Sc. Thesis. The Economic Analysis of Irish Potato Production in Plateau State, by Magit. P.D. (M.Sc./282/23)".*

It should be noted that Prof. Njike, was at the relevant time, the E Acting Dean of the Post Graduate School of the University. He was not a "busy body". It was his said Report, that the Senate in Exh. 6 stated that it considered. I note that the averments in his counter-affidavit, were not controverted in any further-affidavit, by the Appellant. The Senate , has F the duty and responsibility, to award or refuse to award a degree or degrees, certificates and such other qualification, as it considers fit, to any student or students of/in the University. (p. 2906 F)

***FAIR HEARING - Reliance on - In appeals***

G 4. Let me pause here and deal, even briefly, with Fair Hearing. Fair Hearing, and what it is all about, has been "flogged", stated and restated or defined/interpreted in a number of decided authorities by this Court, See Mohammed v. Kano Native Authority (1968 ANLR 411, NLR 424 @ 426, H 428-428; (1968) ANLR 411, 413 ; The Attorney-General of Bendel State & 2 ors. v. Aideyan (1989) 4 NWLR (pt 118) 646 @ 675; (1989) 9 SCNJ. 85 and many others.

Surely, the great pronouncements in the above cases, with respect,

have no relevance to a University system and procedure as in the instant appeal, whereby Section 7 of the University Decree/Act of 1992, vests, in the Senate, to the exclusion of any other body or organ, of the University, the responsibility of “*the award of degrees and such other qualifications, as may be prescribed in connection with examinations held*”. B

Indeed in the case of T. M. Orugbo & anor. v. Buhari Una & 10 ors (2002) 9-10 S.C. 61 @ 85-86; (2002) 9 SCNJ 12, the following appear, inter alia,

“*It has become a fashion for Litigants to resort to their right to fair hearing on appeal as if it is a magic wand to cure all their inadequacies at the trial Court - But it is not so and it cannot be so ..... the Courts must not give a burden to the provision which it cannot carry or shoulder*”. C

“*Fair Hearing is not a cut and dry principle which parties can, in the abstract, always apply to their comfort and convenience. It is a principle which is based on the facts of the case before the Court. Only the facts of the case can influence and determine the application or the applicability of the principle. The principle of fair hearing is helpless or completely dead outside the facts of the case*”. D E

This great pronouncement, is also applicable in this case on appeal. (p. 2907 A)

### **University Senate - Powers of**

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5. Surely and as rightly submitted by the learned counsel for the Respondents, a bad or dishonest and fraudulent Thesis, is ipso facto, a failed thesis. The Senate, as the Supreme and ultimate Academic Authority in the University, has and in the instant case leading to this appeal, the duty to ascertain the quality of the Thesis placed before it. Since an appeal is in the nature of a re-hearing and this Court, can draw its own inferences from the Records, G

“I hold as follows: H

(a) that the decision of the 2<sup>nd</sup> Respondent - the Senate, was an administrative/academic act intended, to ensure the good and stable administration of the University and this it had/has the powers to do or

perform by the Act establishing it. See Section 7 of the Act.

(b) that the Appellant, did not appeal to the University Council against the said decision of the Senate. Therefore, the application to the trial Court, was premature.

B (c) that in considering the Appellant's corrected thesis by the 2<sup>nd</sup>  
Respondent, his presence was no longer necessary. Dishonest and/or un-  
academic practice on his part, was discovered and so, his Thesis was  
rejected by the 2<sup>nd</sup> Respondent. This means, that the Appellant, has failed  
C his Master's Degree Programme/Examination. Being an administrative or  
academic act, an order of certiorari, with respect, cannot lie. A Writ of  
Mandamus can also not avail the Appellant because, he did not pass his  
Master's Degree and none was ever awarded to him by the 1<sup>st</sup> Respondent  
or any other Respondent. So also, a Writ of Prohibition, cannot also lie  
D because, the said decision of the 2<sup>nd</sup> Respondent, has already been taken  
or completed and therefore, there is nothing to be stopped or prohibited  
by the Court.

(d) that the functions of the Post Graduate School, are merely  
E recommendatory. A recommendation is not mandatory. The Senate has  
the last say, except where the matter is further referred to the University's  
Council.

(e) that in so far as the award of a degree or certificate to a student  
F is concerned, in the discretion to award or refuse to award, the Courts,  
have no jurisdiction in the matter. The Courts, have no business, to flirt  
into the arena of a University deciding whether a Thesis, has met the  
standard of which it has set, has been met. Any attempt by any Court,  
including this Court, to dabble or encroach into the purely administrative  
G and domestic affairs of a University including that of the 1<sup>st</sup> Respondent,  
that may lead to undue interference, nay, the weakening inadvertently so  
to speak, of the powers and authority conferred on the Universities by  
Statute as that conferred on the 1<sup>st</sup> Respondent, will not be justifiable or  
H justified. (p. 2908 A)

### ***University Senate - Thesis consideration***

6. Learned counsel for the Appellant at page 8 of the Brief, has referred

to the cases of Adeniyi v Governing Council of Yaba College of Technology (1993) 7 SCNJ (pt.11) 304 @ 322 - 333 and Garba v University of Maiduguri (1986) 1 NWLR (pt.18) 550 @ 580-582 which were also cited and relied on by him, at the lower Court. In dealing with these cases, the learned Justice, stated inter alia, thus;

“..... *Be that as it may the Senate being the only competent body that has the power to award any degree and can refuse to award a degree to a student whose academic work is not worthy of the conferment of any degree,....., I am of the opinion that the cases of (i.e. the above cases and that of Federal Civil Service Commission & 2 ors. v. Laoye (1989) 2 NWLR (pt.106) 652 etc), relied upon by the learned counsel for the Appellant in his brief of argument are of no material assistance to this discussion. I think the learned trial Judge was correct when he held as follows in his Judgment:-*

*“I agree with Professor M. C. Njike that if the opportunity to hear him was necessary, that opportunity was given when the applicant was called upon to correct his original Thesis and submit same to the Attestation Panel. When this thesis reached the Senate, it was like placing his answer papers (the corrected thesis) before his examiners and his presence was not required. I cannot see in the procedure followed by the Respondents a breach of the rules of fair hearing”.* [The underlining mine]

I am in complete agreement not only with the holding of the learned trial judge hereinabove, but I endorse in their entirety, the pronouncement of the Court below reproduced by me hereinabove.

I will add that the said cases cited by the learned counsel for the Appellant, relate especially, to situations, where crime is alleged. As have been observed in some cases by this Court, the case of Garba v University of Maiduguri (supra), has either been used both as a sword and a shield by litigants. (p. 2909 C)

### ***University Senate - Award of degrees***

7. Surely, if a University has a discretion and not a mandatory duty to decide who it can/will award its degree and Section 7 of the University Act, 1992 vests in the 2<sup>nd</sup> Respondent, to the exclusion of any other body of the

University, the sole responsibility for the award of degrees and such other qualifications as may be prescribed in connection with examinations held, how, can/could it be said that it acted maliciously, capriciously or whimsically in its said decision contained in Exh. 6? I or one may ask. I think not. On the said authority relied on by Mr. Okutepe, whether it is foreign or not and as the law is the law and it is universal, and even if it is foreign, I am persuaded by it and hold that this appeal lacks merit. It fails abysmally and it is accordingly dismissed.

Furthermore, in respect of Issue 3 of the Respondents, the arguments in respect thereof, have been taken care of in the consideration by me, of the said two Issues of the parties in this Judgment. However, for the avoidance of any doubt, I agree with the submission of the learned counsel for the Respondents, that the Respondents, did not exceed their powers (jurisdiction) since the Senate is competent to ask a dishonourable student such as the Appellant, to withdraw from the University and to refuse awarding him the M.Sc. Degree for the reasons that appear in the said Exh. 6. (pp. 2913 E/ 2915 A)

***University degree - Process of earning M.Sc degree***

8. I wish to state firmly here, that the submission of the learned counsel for the Appellant that the Appellant “*has earned his degree and therefore, entitled to his certificate*”, with respect, does not impress me. This is because, the Appellant had/has not passed his M.Sc. Degree. Employing dishonest and un-academic methods/means, are weighty words that amount to gross misconduct which attract severe consequences like the one metted out to the Appellant. The acceptance of the Thesis and the award of the Degree, was subject to a certain condition I hold therefore, that at no material time, did the 2<sup>nd</sup> Respondent, award any M.Sc. degree to the Appellant. Had or if the Appellant had simply complied with the said recommendation in (b) of Exh. 3, I believe that he should have “*earned*” or should have been awarded the said degree.. It is rather unfortunate ! But the Appellant has only himself to blame for what he got in the end in Exh. 6. (p. 2914 D)

***Concurrent findings - Where not perverse***

9. In concluding this Judgment, I also note that there are concurrent Judgments of the two lower Courts. It is now firmly settled in a line of decided authorities, that this Court, will not interfere with the concurrent findings of fact by the two lower Courts unless they are not justified by the evidence and have occasioned a miscarriage of justice. See recently, the case of Daniel Holdings Ltd. v. Union Bank For Africa (2005) 7 S.C. (pt. II) 18; (2005) 7 SCNJ; (2005) All FWLR (pt.277) 895 @ 902 citing some other cases in this regard. The Judgments of the two lower Courts, in my humble view, are not perverse. Their decisions, are clearly justified and supported by law and decided authorities of this Court. The Judgment of the Court below affirming the judgment of the trial Court, is hereby affirmed by me.

In the end result or final analysis, this appeal is clearly unmeritorious. It fails and it is accordingly dismissed. (p. 2915 D)

**NOTABLE POINTS OF INTEREST**

**OGBUAGUJSC**

*1. Need to relate issues to grounds of appeal*

Before proceeding with the said issues of the parties. I will pause here to observe, that the Respondents in formulating their issues for determination, did not distil, relate or derive any of the issues from any of the grounds of appeal of the Appellant. This Court has stated and restated the firmly established principle that every issue for determination, must be formulated from, or based upon and related to or distilled from a competent ground of appeal.

In other words, an issue for determination, is incompetent, when it does not arise from any of the grounds of appeal. Thus, the issues, must encompass the grounds of appeal, otherwise, any argument in support of an issue, not adequately backed by a ground or grounds of appeal, will be discountenanced and struck out. (p. 2903 F)

*2. Correct import of the decision in Garba case*

The decision in Garba v University of Maiduguri (supra), in my respectful

view, is that it should be taken as a prohibition of instituting disciplinary measures against Civil Servants, when there has been a criminal charge or accusation. That other considerations might be involved. That once such criminal allegations are involved, care must be taken that the provisions of Section 33(1) of the 1979 or Section 36(1) of the 1999 Constitution, are adhered to. That where the person so accused accepts his misconduct in the acts complained of, no proof of the criminal charges against him would be required. That he as in such a case, has been confronted with the accusation and he had admitted it and could face discipline thereafter. Regrettably, learned counsel for some litigants, have stretched this case, with respect, to a point of absurdity. (p. 2910 G)

### 3. *Need for counsel not to pursue a bad appeal*

It is now settled that where a counsel finds and knows, that there are no chances of his/their appeal succeeding, he should honourably, throw in the towel, so to speak, and think less of his fees and more of the fact, that he is also an officer/minister, in the temple of justice. In other words, “Where the chances of an appeal succeeding are extremely remote, it behoves counsel in the case to advise his client of the uselessness of pursuing such an appeal which patently, lacks merit”.

See K. R. Textile Allied Products Ltd. v. Henry Stephens Shipping Co. Ltd. 2 ors (1989) 1 NWLR (pt. 95) 115 C.A. and Chief Titus Ojo v. Chief Bode Philips (1993) 5 NWLR (pt. 296) 751 @ 764 para C -.D. - per Kolawole, JCA (of blessed memory), who stated in the later case, inter alia, thus:

“.....It is no credit to any counsel who takes a brief knowing fully well that there is not a Slim chance of success to blindly prosecute the case. A case is never prosecuted just for the fees due, counsel must have confidence in the success of the case before obtaining the brief”.

There is the need therefore, for counsel, to have confidence, in the success of a case before accepting it. (p. 2913 H)

### 4. *Power to award a degree lies with the University*

For the Court to use its awesome magisterial powers to compel a

University to award a degree would in effect mean that the Court has invested itself with the necessary powers to fully appreciate the nuances taken into consideration to award University degree. Too often nowadays ever since the case of Garba v University of Maiduguri (Supra), many litigants have tended to inundate the Courts with frivolous claims and have tried to invest the Court with powers to run a University usually described as Ivory Tower with their strange claims. A University is a place of great learning and research. I would view with consternation and trepidation the day the Court would immerse itself into the cauldron of academic issue which is an area it is not equipped to handle. It will indeed be alarming for any Court worth its salt to enter into the arena of questioning why a University has refused to award a degree to any student. The danger posed by such venture is better imagined than expressed.

It is my view that it is the indisputable right of a University to award or withhold the award of a degree and it is no business of the Court to question its motives let alone compelling it to award a degree which it has stated that a claimant is not qualified for. The duty or the power of a University in subjecting the work of any student in its portals of learning to merciless scrutiny is naturally to carefully evaluate the academic quality of his or her work. It alone possesses the power to state whether a particular work is below the standard or not. I do not think that in considering or appraising the academic soundness of any work of a scholar the University should invite the student to help in assessing his or her work particularly if it appears that an act not in keeping with the tenets of the university is patently manifested in the work being considered. (p. 2921 F)

##### *5. Judges will distinguish precedents to ensure that due justice is rendered*

It is said that the function of the Court is to interpret laws made by the legislature and not to make laws. In theory that is so. But it must equally be admitted that judges are not robots (or zombies) who have no mind of their own except to follow precedents. They are intrepid by their great learning and training and can distinguish in order to render justice to whom it is due. As the society is eternally dynamic and with fast changing nature

of things in the ever changing world and their attendant complexities, the Court should empirically speaking situate its decisions on realistic premise regard being had to the society's construct and understanding of issues that affect the development of jurisprudence. (p. 2923 E)

B

*6. Court to exercise caution in cases of this nature*

Let us pray that there shall be never come a time when the Court shall use its powers to constitute itself into a Senate of a University or a degree awarding body. When faced with a case of this nature the court should exercise utmost caution knowing fully that it is not versed in the University method of assessing the intellectual work of a scholar and is not vested with the power to arrogate to itself the function of a University. For a student or research scholar to approach the Court to cause a degree to be awarded to him when his university had rejected his work on the ground that there is something unethical bordering on dishonesty, is not only importune but equally petulant and utterly ridiculous. When the Court in the exercise of its constitutional duties unwittingly invests itself with the power to compel a University to award degrees then we should say goodbye to academic pursuit and excellence and cause to be reeled out from our Universities half baked people and ignoramuses masquerading as intellectuals and scholars. That would be the beginning of systematic obliteration of our Universities. (p. 2923 H)

### **REPRESENTATION**

J. S. Okutepa Esqr., for the Appellant.

Chief/Senator Adejo A. Ogiri, for the Respondents, with him, Owucho A. Ogiri, Esqr.

### **CASES REFERRED TO**

Tiza & anor v. Bepha (2005) 5 SCNJ. 168 (5) 178

H Chief Nsirim v. Nsirim (1990) 5 SCNJ. 174; (1990) 3 NWLR (pt. 138) 295

Okolo v. Union Bank of Nig. Ltd. (1990) 2 NWLR (pt.539) 618

Arewa Textile Plc. v. Abdullahi & anor. (1998) 6 NWLR (pt. 554) 508

Fawehinmi v. NBA (No. 1) (1989) 2 NWLR (pt.105) 494 @ 575. 516;

(1989) 4 SCNJ 1

Attorney-General of Bendel State & 2 ors. v. Aideyan (1989) 4 NWLR (pt 118) 646 @ 675; (1989) 9 SCNJ. 80

Salami v. Mohammed (2000) 9 NWLR (pt. ) 469; (2000) 6 SCNJ 281

Chief Agbaka & 3 Ors. v. Chief Amadi & anor. (1998) 11 NWLR (pt. 572) B 16 @ 25; (1998) 7 SCNJ 367 @ 370

Auto Import Export v. Adebayo & 2 Ors. (2002) 18 NWLR (pt 799) 554; (2002) 2 SCNJ 124 (5) 139

Kim v. The State (1992) 4 NWLR (pt 233) 17 @ 37; (1992) 4 SCNJ. 81

Donatus Ndu v. The State (1990) 7 NWLR (pt.164) 550 @ 578; (1990) 12 SCNJ. 50

Ekiyor & anor. v. Chief Bomor (1997) 9 NWLR (pt.519) @ 12, 14-15: (1997) 7 SCNJ. 179

T. M. Orugbo & anor. v. Buhari Una & 10 ors (2002) 9-10 S.C. 61 @ 85- 86; (2002) 9 SCNJ 12

Adeniyi v. Governing Council of Yaba College of Technology (1993) 7 SCNJ (pt.11) 304 (a) 322 - 333

Garba v. University of Maiduguri (1986) 1 NWLR (pt.18) 550 @ 580-582 E

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

Constitution of the Federal Republic of Nigeria 1979 s. 33(1)

Constitution of the Federal Republic of Nigeria 1999 s. 36(1)

Supreme Court Act s. 27(2)

Supreme Court Rules O. 2 r. 9

### **LEAD JUDGMENT BY OGBUAGU JSC**

The case leading to this appeal, commenced at the Benue State High Court sitting at Makurdi under the Fundamental Human Rights (Enforcement Procedure) Rules, 1979 wherein, the Appellant sought leave to apply for a Judicial Review, to wit: Orders of Certiorari, Mandamus and Prohibition against the Respondents. The case was canvassed on affidavit evidence and at the end, the learned trial Judge, - Ahura, J. in his Ruling dated 16<sup>th</sup> June, 2000, dismissed the application. The Appellant's appeal to the Court of Appeal (herein called "*the Court below*"), was dismissed

hence the instant appeal.

The facts of the case briefly stated, are that the Appellant in the 1993/94 Academic Session, was admitted by the 1<sup>st</sup> Respondent, to do an M.Sc. degree in Agricultural Economics. As part of the M.Sc. programme, the Appellant was required to write/submit an acceptable thesis. A topic for the thesis, was chosen and duly approved. The Degree awarding Authority, is the Senate of the University - i.e. the 2<sup>nd</sup> Respondent.

The Appellant was given two (2) Supervisors, namely, Dr. G. B. Ayoola as the Major Supervisor and Dr. J. C. Umeh an Associate Professor with the 1<sup>st</sup> Respondent, as the Internal Examiner. The External Examiner of the Appellant, was Prof. J. O. Olukosi of the Ahmadu Bello University, Zaria. According to the Masters Degree Programme, the Appellant's thesis, must be attested by an External as well as an Internal Examiner. Prof. M. C. Njike, was the Dean of Post Graduate School in the 1<sup>st</sup> Respondent's employment.

The Appellant, submitted his thesis to the Board of Examiners comprising the above-named gentlemen/personalities who invited the Appellant to defend his thesis orally, which he did. Thereafter, the Panel/Board, recommended in Exh. 3 at page 14 of the Records, inter alia, thus:

*“(b) That the thesis be accepted and the degree awarded subject to corrections to be certified as may be determined by the panel.”*

As a result of the Report submitted to it on the Appellant's corrected thesis, the 2<sup>nd</sup> Respondent, rejected the said thesis and advised the Appellant to withdraw from the University with immediate effect and asked him to hand-over certain items/property of the University in his possession to the Acting Dean of Students before he leaves the Campus. In its letter of “*withdrawal*” to the Appellant -Exh. 6, the 2<sup>nd</sup> Respondent, gave its reasons for its said decision.

The Appellant at the High Court, sought the following reliefs:

*“(i) An order quashing the decision of the respondents contained in a letter Ref: No. UAM/ACA/COM/04/V dated 18/2/2000, on the grounds that the said decision was arrived at in breach of the rules of natural justice and the fundamental right of the applicant to fair hearing as guaranteed by the 1999 constitution of the Federal Republic of*

Nigeria..

(ii) *An order quashing the decision of the Respondents in the said letter on the grounds that the decision Ultra vires (sic) the powers of the Senate of the University of Agriculture, Makurdi, and or that the said decision of the University of Agriculture, Makurdi, and or that the said decision was taken in breach of the University of Agriculture Decree No. 48 of 1992.* B

(iii) *An order compelling the Respondents herein to produce before this Honourable Court for the purpose of their being quashed, every decision taken, every reports of any panel that may have been set up and the results thereof, every recommendations made to the Respondents by any person or group of persons in relation to the thesis of the applicant contrary to the report of the examination panel headed by Prof. J. C. Olukosi and the accepted corrections made thereto, and accepted by D applicant's major supervisor and internal examiner.*

(iv) *An order of mandamus against the Respondents herein, compelling them to issue to the applicant has (sic) M.S.c. (Agric. Econs.) Degree Certificate.* E

(v) *Any other legal or equitable remedies that may be available to the applicant in the circumstances of this case.*

### 3. GROUNDS UPON WHICH RELIEFS ARE SOUGHT

(i) *Before the thesis of the Applicant was rejected by the Senate of the 1<sup>st</sup> Respondent and applicant advised to withdraw with immediate effect from the University on the grounds of "employing unacademic means" and "academic dishonesty" in arriving at the results, applicant was not given the opportunity to defend the allegations, nor was his attention drawn to this allegations at any time before the decision.* F G

(ii) *By S. 19 of the University of Agriculture Decree No. 48 of 1992, Senate of the University lacked the jurisdiction to discipline the applicant even if applicant "employed unacademic means" and "academic dishonesty" in arriving at the results" though not conceding, since the power of H discipline of students resides in the Vice-chancellor of the University.*

(iii) *Since the applicant is a Master Degree Programme student of the University and he completed his course works in 1996, defended the*

*thesis in 1997 and submitted bound copies of the thesis in January, 1998, after the corrections spotlighted by a panel of External examiner were corrected and accepted by applicant's major supervisor and internal examiner acting in the course of their employment, the Respondents are*  
B *estopped from turning around to reject the thesis and asking applicant to withdraw from the University.*

*(iv) Since the applicant is a Master Degree programme student with the Respondents and he completed his course works in 1996, defended his*  
C *thesis in 1997 and submitted bound copies of the thesis in January., 1998 after doing the corrections spotlighted by the panel of external examiner duly constituted by the University and the corrections subsequently done and accepted by Dr. G. B. Ayoola (Major supervisor) and Dr. J. C. Umeh, internal examiner and in the course of their employment, the Respondents*  
D *cannot reject the entire works of the applicant and then ask applicant to withdraws from the University since the only grudge of the Respondents is the thesis and a fortiori the only thing the Respondents can lawfully do is to ask the applicant to re-write the aspect of the thesis considered not*  
E *well written.*

*(i) Applicant has met all requirements for the award of M.Sc. (Agric. Econs.) and his results declared to him by the panel of examiners only constituted by the University and the University is yet to issue him with*  
F *his certificate in M.Sc. Econs,).*

*(ii) Applicant is being made to suffer from the dust of the encounter of personality clash and not that the thesis is not well written and or that the corrections done by the applicant were radically and fundamentally different from what the applicant was asked to correct by the panel of*  
G *external examiner”..*

The Appellant has filed some lengthy Grounds of Appeal and particulars in his Notice and Grounds of Appeal containing seven (7) Grounds of Appeal. In his Brief of Argument, two issues have been  
H identified/formulated, namely,

*“(i) Whether the rules of natural Justice and the Constitutional right of fair hearing guaranteed the appellant were infringed upon by the Respondents, having regard to the facts and the circumstances of this case,*

and, the allegations in Exhibits 'C', 'D' and 6. (Grounds 1,2,3,' and 4 of the Notice and Grounds of Appeal).

(ii) *Whether the learned Trial Judge and learned Justices of the Court of Appeal were right to have approved of the procedures adopted by the Respondents herein leading to the issuance of Exhibit 6, having regard to the provisions of Decree No. 48 of 1992, and the fact that exhibit 'D' was not even signed by anybody and did not contain the name of the authors and if not, whether Appellant is entitled to the reliefs on the statement in support of application. (Grounds 5 and 6 of the Notice and Grounds of Appeal)*".

The Respondents, before the formulation of their issues for determination, have raised a Preliminary objection to the appeal, thus:

"1. THAT THIS APPEAL HAVING BEEN FILED BEFORE TIME IS THEREFORE INCOMPETENT"

*The Appellant filed his Appeal to the Supreme Court on the 10<sup>th</sup> day of December 2001, the very day the Court of Appeal, Jos Division delivered its Judgment Section 27(2) (a) of the Supreme Court Act 1990 fixes three months, within which a person can file his Appeal to the Court.*

*A limited time does not include the day of the happening of the event, but commences at the beginning of the day next following that day. We submit with respect that by filling (sic) the Appeal on the 10 day of December, 2001 the Appellant was not acting within but before the limited time permitted by the Supreme Court Act 1990. Within means "in the limits", "inside" and not before or after the limited time. We urge the Court to strike out the Appeal for the reason that it was prematurely filed.*

*2. In the unlikely event of our not succeeding in the preliminary objection we now present our brief of Argument".*

The following issues which are described in their Brief as "material", have been formulated for determination, namely,

*"(1) Whether the Senate of the University acted maliciously or capriciously in refusing to award an M.Sc. degree to the Appellant and whether a recommendatory panel below the Senate has the power to award a degree.*

*(2) Whether the learned trial Judge and the learned Justices of the*

*Court of Appeal were right in their approval of the procedure adopted by the respondents leading to the issuance of exhibit “6”.*

(3) *Whether or not the issues of judicial Review by way of certiorari, mandamus or prohibition was available to the appellant in the circumstances of the case; especially having regard to the fact that the appellant at no time earned an M.Sc. degree of the University”.*

**Before going into the merits of this appeal, I will deal first, with the said Preliminary objection. I have no hesitation in dismissing the said objection because, it is, in my respectful view of no consequence. It is not uncommon that Counsel who perceive/anticipate, that they are going to lose a matter or appeal, before coming to Court on the date of the Ruling or Judgment, arm themselves, with a prepared Notice of Appeal. Sometimes, the Omnibus Ground, is the only ground with the statement that “Additional Grounds will/may be filed on the receipt of the Records of Proceedings and/or the copy of the Ruling or Judgment”. As soon as the Ruling or Judgment is delivered, they walk into the Registry and file the Process/Notice and perhaps, ensure that service of the Notice or process, is served/effected on the opposite side, on the same date. Such appeals, are never rendered void because of their having been filed on the same date the Ruling or Judgment was delivered.**

**But assuming that it is a non-compliance of the said Rules, I will treat it as a mere irregularity that will not affect the merits of the appeal. In any case, the party complaining as in the instant appeal, has not shown, what prejudice or miscarriage of justice, such filing, has occasioned him.**

**However, on a more serious note, the method of raising a Preliminary Objection, apart from giving the Appellant, three clear days notice before the date of hearing is now firmly settled. It may be in the Respondent’s Brief, by a formal separate notice or written objection or both. But there is the need for the Respondent or his Counsel, with the leave of the Court, to move the objection, before the hearing of the substantive appeal. See the recent case of Tiza & anor v. Bepha (2005) 5 SCNJ. 168 (5) 178 - per Musdapher, JSC citing**

the cases of Chief Nsirim v. Nsirim (1990) 5 SCNJ. 174; (1990) 3 NWLR (pt. 138) 295; Okolo v. Union Bank of Nig. Ltd. (1990) 2 NWLR (pt.539) 618 C.A.; Arewa Textile Plc. v. Abdullahi & anor. (1998) 6 NWLR (pt. 554) 508 C.A. and Ajide v. Kelani (1985) 3 NWLR (pt.12) 248 (a) 257, 258. See also Fawehinmi v. NBA (No. 1) (1989) 2 NWLR (pt.105) 494 B @ 575. 516; (1989) 4 SCNJ 1 and Salami v. Mohammed (2000) 9 NWLR (pt. ) 469; (2000) 6 SCNJ 281.

**It need be stressed and this is also settled, that the object/ purpose of filing the notice, is to safeguard against embarrassing an appellant and taking him by surprise.** See Chief Agbaka & 3 ors. V. Chief Amadi & anor. (1998) 11 NWLR (pt. 572) 16 @ 25 ; (1998) 7 SCNJ 367 @ 370 and recently, Auto Import Export v. Adebayo & 2 ors. (2002) 18 NWLR (pt 799) 554 (2002) 2 SCNJ 124 @ 139; also cited and relied on by the Respondents in their Additional Case Law without inserting at what page of the NWLR Report.

**It must always be borne in mind, that the failure to bring the Notice in accordance with Order 2 Rule 9 of the Supreme Court, does not render it ineffective.** See Chief Agbaka v. Chief Amadi & anor. E (Supra) at p.375 of the SCNJ; Alhaji Maigoro v. Chief Garba (1999) 7 SCNJ 270 and Ajide v. Kelani (Supra) which is also reported in (1985) 2 NSCC @ 1306.

Since the learned Counsel for the Respondent, never sought for leave to move the said objection neither did he breath/say a word about it before or during the oral hearing of the appeal, the same, is deemed by me as having been abandoned.,

Before proceeding with the said issues of the parties. I will pause here to observe, that the Respondents in formulating their issues for determination, did not distil, relate or derive any of the issues from any of the grounds of appeal of the Appellant. This Court has stated and restated the firmly established principle that every issue for determination, must be formulated from, or based upon and related to or distilled from a competent ground of appeal.

In other words, an issue for determination, is incompetent, when it does not arise from any of the grounds of appeal. Thus, the issues, must

encompass the grounds of appeal, otherwise, any argument in support of an issue, not adequately backed by a ground or grounds of appeal, will be discountenanced and struck out. See at least the recent cases of Adah v. Adah (2001) 2 SCNJ. 90 @ 97 citing several other cases therein; Alhaji B Kokoro-Owo & 6 ors. v. Lagos State Government & 4 ors. (2001) 5 SCNJ 203; Alhaji Adeleke v. Alhaja Raji & anor. (2002) 6 SCNJ. 341 @ 348 referring to several other cases; Mobile Producing Nig. Unlimited & Anor. v. Chief Monokpor & anor (2003) 12 SCNJ. 206 (a) 245; Adelesola & 4 ors. v. Akinola & 3 ors (2004) 12 NWLR (pt. 887) 295 (2004) 5 SCNJ C 235 (5) 246 and Stirling Civil Engineering (Nig.) Ltd. v. Ambassador Yahaya (2005) 4 SCNJ 133 @ 147. See also earlier cases of Alhaji Kala v. Alhaji Potiskum & anor. (1998) 8 NWLR (pt.540) 1; (1998) 1 SCNJ. 143; Godwin v The Christ Apostolic Church (1998)14 NWLR (pt.584) 16 D ; (1998) 12 SCNJ. 213 cited in Calabar East Cooperative Thrift & Credit Society Ltd. & 3 ors. v. Etim E. Ikot (1999) 14 NWLR (pt.658) 225 : (1999)12 SCNJ. 321 @ 340- per Achike, JSC, (of Blessed memory) and many others.

E However, although the general rule, is that issue for determination must relate to the grounds of appeal filed, otherwise, the issue is incompetent, but since it is also firmly settled that issues should be formulated in general particular terms and tailored to the real issues in F controversy in such a way, that they must of necessity be limited by circumscribed and fall within the scope of the grounds of appeal and the judgment appealed against See Chief Ikpoku & 5 ors. v. Chief Ikpoku & 3 ors. (1991) 5 NWLR (pt.193) 571 @ 588 and Chief Agbaisi & 3 ors. Ebikurefe & 6 ors. (1997) 4 NWLR (pt. 502) 630 @ 650; (1997) 4 SCNJ. G 147 @ 157 citing several other cases therein, This “*omission*” perhaps, “*inadvertence*”, can be “*tolerated*” and dealt with by me in this Judgment because, the said issue of the Respondents are germane or reasonably relevant, in my respectful view, to the real issues in controversy in the H instant appeal. This “*tolerance*”, I plead with counsel who appear in this Court or prepare Briefs, should not be regarded as an excuse or licence for not complying with the well established principle of formulating issues which must be related or distilled from grounds of appeal.

ISSUES (i) ONE AND (ii) TWO OF THE APPELLANT AND  
ISSUE 2 OF THE RESPONDENTS.

The summary of the Appellant's complaint under the two issues is firstly, that because, he the Appellant, did not appear before the 2<sup>nd</sup> Respondent when it deliberated on the matter and took its said decision as evidenced in Exh. 6, amount/amounted to a denial of fair hearing of the Appellant. Secondly, about the procedures adopted by the Respondents. I note that these same issues were raised and canvassed also in the court below by the Appellant or his same learned counsel. The Court of Appeal - per Mukhtar, JCA (as he/she then was), at pages 107 and 108 of the Records, dealt with the said issues, inter alia, thus:

“..... Professor M. Njike, Dean of the Post Graduate School in his counter-affidavit made the following depositions:-

(40) *That I further aver that when a Student's Thesis reaches the Senate of the University it is like placing the answer papers of such a student before his examiners and his presence is not required and this is a world wide practice and procedure”.*

(41) *That I have read paragraph 21 of the Affidavit in support of the application and I aver that if opportunity to defend was necessary, that opportunity was given when the Applicant was called upon to correct his original thesis and submit same to the Attestation Panel.”*

*The learned Jurist then stated inter alia, as follows:*

“..... First, the Appellant was told to make some corrects (sic) (meaning corrections) which he did, and at the end of the day, the Dean of the Post Graduate School who supervises Post Graduate work found the corrections done not only below standard as per Exh. 'C', but also made certain recommendations to the Senate that was not satisfied with the Thesis and rejected it. I believe that should have been the end of the story, for it is only when the student's Thesis meets the standard required that the University can award the M.Sc. Degree. Besides, the Appellant was in my opinion given ample opportunity to correct whatever errors were contained in the Thesis.....” . (the underlining mine)

I cannot fault this reasoning which I humbly endorse and agree with.

Now Exh. 6, addressed to the Appellant, reads as follows:

‘WITHDRAWAL

*Senate at its 122<sup>nd</sup> (Continuation) meeting held on Tuesday 1<sup>st</sup> February 2000 considered the report on your corrected M.Sc. Thesis.*  
B *Senate acted that you were earlier requested by the Oral Examination Panel to effect suggested corrections to improve the thesis. Paramount among these was that you should run other functional forms in addition to the Cobb-Douglas. Senate exhaustively discussed the report and observed with concern that the re-run function in the corrected thesis had*  
C *produced a result which is radically different from the original one. After careful analysis of the circumstances which might have brought about the radical changes in the results, Senate was convinced that you employed unacademic means in arriving at the results. Senate viewed this as*  
D *academic dishonesty and unacceptable. (the underlining mine)*

*Consequently, Senate decided that:*

*“(i) Your M.Sc Thesis be rejected;*

*(ii) You be advised to withdraw from the University with immediate*  
E *effect.*

*You should hand-over your Student’s Identity Card, Library Card and books and other University property in your possession to the Ag. Dean of Students before you leave the Campus.*

F *P.A. Uzer*

*For: Ag. Registrar”.*

*It is noted by me and as was done by the Court below at pages 105 and 106 of the Records, that before Exh. 6 was written, the said Prof. Njike, had written Exh. ‘C’ titled “Report on The Corrected M.Sc. Thesis. The Economic Analysis of Irish Potato Production in Plateau State, by Magit. P.D. (M.Sc./282/23)”.*  
G

*It should be noted that Prof. Njike, was at the relevant time, the Acting Dean of the Post Graduate School of the University. He*  
H *was not a “busy body”. It was his said Report, that the Senate in Exh. 6 stated that it considered. I note that the averments in his counter-affidavit, were not controverted in any further-affidavit, by the Appellant. The Senate , has the duty and responsibility, to award or*

refuse to award a degree or degrees, certificates and such other qualification, as it considers fit, to any student or students of/in the University.

**Let me pause here and deal, even briefly, with Fair Hearing. Fair Hearing, and what it is all about, has been “flogged”, stated and restated or defined/interpreted in a number of decided authorities by this Court, See Mohammed v. Kano Native Authority (1968 ANLR 411, NLR 424 @ 426, 428-428; (1968) ANLR 411, 413; The Attorney-General of Bendel State & 2 ors. v. Aideyan (1989) 4 NWLR (pt 118) 646 @ 675; (1989) 9 SCNJ. 80; Kim v The State (1992) 4 NWLR (pt 233) 17 @ 37; (1992) 4 SCNJ. 81; Donatus Ndu v The State (1990) 7 NWLR (pt.164) 550 @ 578; (1990) 12 SCNJ. 50 and Ekiyor & anor. v. Chief Bomor (1997) 9 NWLR (pt.519) @ 12, 14-15: (1997) 7 SCNJ. 179 and many others.**

**Surely, the great pronouncements in the above cases, with respect, have no relevance to a University system and procedure as in the instant appeal, whereby Section 7 of the University Decree/Act of 1992, vests, in the Senate, to the exclusion of any other body or organ, of the University, the responsibility of “*the award of degrees and such other qualifications, as may be prescribed in connection with examinations held*”.**

**Indeed in the case of T. M. Orugbo & anor. V Buhari Una & 10 ors (2002) 9-10 S.C. 61 @ 85-86; (2002) 9 SCNJ 12, the following appear, inter alia,**

***“It has become a fashion for Litigants to resort to their right to fair hearing on appeal as if it is a magic wand to cure all their inadequacies at the trial Court - But it is not so and it cannot be so ..... the Courts must not give a burden to the provision which it cannot carry or shoulder”.***

***“Fair Hearing is not a cut and dry principle which parties can, in the abstract, always apply to their comfort and convenience. It is a principle which is based on the facts of the case before the Court. Only the facts of the case can influence and determine the application or the applicability of the principle. The principle of fair hearing is helpless or***

*completely dead outside the facts of the case”.*

This great pronouncement, is also applicable in this case on appeal.

**Surely and** as rightly submitted by the learned counsel for the Respondents, a bad or dishonest and fraudulent Thesis, is ipso facto, a failed thesis. The Senate, as the Supreme and ultimate Academic Authority in the University, has and in the instant case leading to this appeal, the duty to ascertain the quality of the Thesis placed before it. Since an appeal is in the nature of a re-hearing and this Court, can draw its own inferences from the Records,

“I hold as follows:

(a) that the decision of the 2<sup>nd</sup> Respondent - the Senate, was an administrative/academic act intended, to ensure the good and stable administration of the University and this it had/has the powers to do or perform by the Act establishing it. See Section 7 of the Act.

(b) that the Appellant, did not appeal to the University Council against the said decision of the Senate. Therefore, the application to the trial Court, was premature.

(c) that in considering the Appellant’s corrected thesis by the 2<sup>nd</sup> Respondent, his presence was no longer necessary. Dishonest and/or un-academic practice on his part, was discovered and so, his Thesis was rejected by the 2<sup>nd</sup> Respondent. This means, that the Appellant, has failed his Master’s Degree Programme/Examination. Being an administrative or academic act, an order of certiorari, with respect, cannot lie. A Writ of Mandamus can also not avail the Appellant because, he did not pass his Master’s Degree and none was ever awarded to him by the 1<sup>st</sup> Respondent or any other Respondent. So also, a Writ of Prohibition, cannot also lie because, the said decision of the 2<sup>nd</sup> Respondent, has already been taken or completed and therefore, there is nothing to be stopped or prohibited by the Court.

(d) that the functions of the Post Graduate School, are merely recommendatory. A recommendation is not mandatory. The Senate has the last say, except where the matter is further referred to the

University's Council.

(e) that in so far as the award of a degree or certificate to a student is concerned, in the discretion to award or refuse to award, the Courts, have no jurisdiction in the matter. The Courts, have no business, to flirt into the arena of a University deciding whether a Thesis, has met the standard of which it has set, has been met. Any attempt by any Court, including this Court, to dabble or encroach into the purely administrative and domestic affairs of a University including that of the 1<sup>st</sup> Respondent, that may lead to undue interference, nay, the weakening inadvertently so to speak, of the powers and authority conferred on the Universities by Statute as that conferred on the 1<sup>st</sup> Respondent, will not be justifiable or justified

Learned counsel for the Appellant at page 8 of the Brief, has referred to the cases of Adeniyi v Governing Council of Yaba College of Technology (1993) 7 SCNJ (pt.11) 304 @ 322 - 333 and Garba v University of Maiduguri (1986) 1 NWLR (pt.18) 550 @ 580-582 which were also cited and relied on by him, at the lower Court. In dealing with these cases, the learned Justice, stated inter alia, thus;

*“..... Be that as it may the Senate being the only competent body that has the power to award any degree and can refuse to award a degree to a student whose academic work is not worthy of the conferment of any degree,....., I am of the opinion that the cases of (i.e. the above cases and that of Federal Civil Service Commission & 2 Ors. v. Laoye (1989) 2 NWLR (pt.106) 652 etc), relied upon by the learned counsel for the Appellant in his brief of argument are of no material assistance to this discussion. I think the learned trial Judge was correct when he held as follows in his Judgment:-*

*“I agree with Professor M. C. Njike that if the opportunity to hear him was necessary, that opportunity was given when the applicant was called upon to correct his original Thesis and submit same to the Attestation Panel. When this thesis reached the Senate, it was like placing his answer papers (the corrected thesis) before his examiners and his presence was not required. I cannot see in the procedure followed by the Respondents a breach of the rules of fair hearing”.* [the underlining

2910 Magit v. Uniagric Makurdi (2005) 12 KLR Ogbuagu JSC  
mine]

I am in complete agreement not only with the holding of the learned trial judge hereinabove, but I endorse in their entirety, the pronouncement of the Court below reproduced by me hereinabove.

B I will add that the said cases cited by the learned counsel for the Appellant, relate especially, to situations, where crime is alleged. As have been observed in some cases by this Court, the case of Garba v University of Maiduguri (supra), has either been used both as a sword and a shield by litigants - See per Pats Acholonu, JSC, C in the case of Chief Ikwunze Esiaga v. University of Calabar & 2 ors. (2004) 4 S.C. (pt.11) 1 @ 4; (2004) 4 SCNJ. 13.

In the above case, Belgore, JSC, in his concurring contribution at page 17 of the S.C. Report and page 31 of the SCNJ, had this to say, inter D alia:-

“.....If the act of the student amounts to crime, the normal report should be lodged with the police but this will not preclude the University exercising its power under its statute to punish misconduct by E any student The case of Garba v University of Maiduguri (1986) 1 NWLR (pt.18) 550 has not precluded the University taking action against misconducting student within its campus”. [the underlining mine]

Kalgo, JSC, on his part, stated inter alia, as follows at page 18-19 F of the S.C. Report & page 33 of the SCNJ:

“.....This was an administrative act intended to ensure good and stable administration of the institution and which he (meaning the Vice Chancellor) was empowered to do..... Therefore, the question of fair hearing did not arise at all in the circumstances of this case and so neither G Section 33 of the 1979 Constitution nor the ratio decidendi in Garba v University of Maiduguri case (supra) are applicable in the circumstances of this case”.

H The decision in Garba v University of Maiduguri (supra), in my respectful view, is that it should be taken as a prohibition of instituting disciplinary measures against Civil Servants, when there has been a criminal charge or accusation. That other considerations might be involved. That once such criminal allegations are involved, care must be

taken that the provisions of Section 33(1) of the 1979 or Section 36(1) of the 1999 Constitution, are adhered to. That where the person so accused accepts his misconduct in the acts complained of, no proof of the criminal charges against him would be required. That he as in such a case, has been confronted with the accusation and he had admitted it and could face discipline thereafter. Regrettably, learned counsel for some litigants, have stretched this case, with respect, to a point of absurdity. B

Indeed, in the case of University of Calabar & 2 ors v Esiaga (infra) the Court of Appeal, interpreted the holding of this Court in Garba's case (supra) at pages 741-742 inter alia, as follows: C

*“Whether or not a student is guilty of a crime is not an internal affair of the University but whether or not he should continue to retain his status or be suspended or dismissed is an internal affair of the University”*

*“That where a student has been adjudged by a Court not guilty of the offence charged, the University acting by due process, can still satisfy itself of the commission of a misconduct which attracts severe disciplinary measures, such as suspension or dismissal .....”* D

It need be stressed, that every case, must be determined or decided, on its own peculiar facts and circumstances. The Appellant was not accused of the committal of a criminal offence. What the 2<sup>nd</sup> Respondent in Exh. 6 gave as its reason, for its action or decision, is that the Appellant E

*“employed unacademic means in arriving at the results. Senate viewed this as academic dishonesty and unacceptable”.* F

Period ! What is the criminal allegation or accusation levelled against the Appellant by the 2<sup>nd</sup> Respondent? I or one may ask. I see or find none. The learned counsel for the Appellant, with respect, dissipated a lot of energy and harped and harped on an alleged or purported accusation of crime against the Appellant. It needs be emphasized and this is also settled, that repetition of an argument by any counsel, with respect, does not improve an earlier arid, weak or completely unacceptable argument; See Calabar East Co-operative Thrift & Credit Society Ltd. & 3 ors. v. Etim H E. Ikot (supra) @ p. 339 of the SCNJ. Report and F.S.B. International Bank Ltd. v. Imano Nig. Ltd. & anor. (2000) 7 SCNJ. 65 (a) 74. G

I will also, respectfully, share the views of Tobi, JCA, (as he then H

was) in his lead Judgment in the case of University of Calabar & 2 Ors. v. Esiaga (1997) 4 NWLR, pt (502) 719 C.A. (cited and relied on by the learned counsel for the Respondents also in their Additional Case Law and which came an appeal to this Court and was also reproduced at page 10 B of the S.C. Report), where His Lordship, stated inter alia, as follows:

*“In so far as the examinations are conducted according to the University rules and regulations and duly approved and ratified by the University Senate, the Courts have no jurisdiction in the matter. A Court of law which dabbles or flirts into the arena of University examinations, C a most important and sensitive aspect of University function should remind itself that it has encroached into the bowels of University authority. Such a Court should congratulate itself of being party to the destruction of the University and that will be bad not only for the University but also D for the entire nation. Let that day not come”.*

The powers of the 1<sup>st</sup> Respondent, are statutorily provided in the said Decree/Act establishing it.

Now, both learned counsel for the parties, in their respective Brief, E referred to the Book - the “Law and University Administration in Nigeria by J. D. Ojo”. The Appellant’s learned counsel relied on pages 131-133. I note that in the case of Miss Akintemi & 2 ors. v. Prof. Onwumechili (1981) O.Y.S.H.C. 457 referred to by the learned counsel for the F Appellant, (he did not cite the report) the learned trial Chief Judge, dismissed the claims of the applicants for mandamus and declarations which fell for consideration, on the grounds that the issues/questions of setting, sitting and marking of examination papers and publishing the results of such examinations, were matters of domestic dispute which G could be looked at by the Visitor. The appeal to the Court of Appeal, was dismissed - per Akanbi, JCA (as he then was). But Mr. Okutepe of counsel to the Appellant, has submitted that the issues in the instant case, had/have gone beyond this question. That while a University has the discretion to H award or not to award a degree (not a degrees) or Certificate to those participating in its programme or curricular, it “cannot act maliciously, whimsically and capriciously, in refusing to award a degree to a student who fulfils its degree requirement”.

Learned counsel then referred to the case of Tarnner v Board of Trustees of University of Illinois 363 N-E 2d. 208 (111 ct. App. 1977) cited by J. D. Ojo in his said book afore-mentioned at pages 110 - 111 and also referred to by Chief Ogiri of counsel to the Respondent in their Brief. In the above-named case, a University student brought an action for an order of mandamus compelling the State University to issue him the degree of Doctor of Philosophy, or in the alternative, pay \$100,000 damages for breach of an implied contract to issue the degree. On appeal, the Court of Appeal, held that although the University was under a discretionary and not a mandatory duty to issue degrees to those participating in its curricular, it cannot act maliciously and capriciously in refusing to award a degree to a student who fulfils its degree requirements.

Significantly and remarkably, Okutepa, Esq. has submitted that the above case and the cases of Akintemi v Prof. Onwumechili (supra) and The University of Ibadan v Judith A. Asein (not Essien) also cited in J. D. Ojo's said book, (the learned counsel did not state its reference, but it is the Unreported Suit No. CA/1/163/84 of 22<sup>nd</sup> May, 1985), are inapplicable to this case because, according to him, the facts and circumstances are not the same as those in the instant case leading to this appeal. **Surely, if a University has a discretion and not a mandatory duty to decide who it can/will award its degree and Section 7 of the University Act, 1992 vests in the 2<sup>nd</sup> Respondent, to the exclusion of any other body of the University, the sole responsibility for the award of degrees and such other qualifications as may be prescribed in connection with examinations held, how, can/could it be said that it acted maliciously, capriciously or whimsically in its said decision contained in Exh. 6? I or one may ask. I think not. On the said authority relied on by Mr. Okutepa, whether it is foreign or not and as the law is the law and it is universal, and even if it is foreign, I am persuaded by it and hold that this appeal lacks merit. It fails abysmally and it is accordingly dismissed.**

It is now settled that where a counsel finds and knows, that there are no chances of his/their appeal succeeding, he should honourably, throw in the towel, so to speak, and think less of his fees and more of the

fact, that he is also an officer/minister, in the temple of justice. In other words,

“Where the chances of an appeal succeeding are extremely remote, it behoves counsel in the case to advise his client of the uselessness of pursuing such an appeal which patently, lacks merit”.

See K. R. Textile Allied Products Ltd. v Henry Stephens Shipping Co. Ltd. 2 ors (1989) 1 NWLR (pt. 95) 115 C.A. and Chief Titus Ojo v Chief Bode Philips (1993) 5 NWLR (pt. 296) 751 @ 764 para C -.D. - per Kolawole, JCA (of blessed memory), who stated in the later case, inter alia, thus:

“.....It is no credit to any counsel who takes a brief knowing fully well that there is not a Slim chance of success to blindly prosecute the case. A case is never prosecuted just for the fees due, counsel must have confidence in the success of the case before obtaining the brief”.

There is the need therefore, for counsel, to have confidence, in the success of a case before accepting it.

**I wish to state firmly here, that the submission of the learned counsel for the Appellant that the Appellant “has earned his degree and therefore, entitled to his certificate”, with respect, does not impress me. This is because, the Appellant had/has not passed his M.Sc. Degree. Employing dishonest and un-academic methods/ means, are weighty words that amount to gross misconduct which attract severe consequences like the one metted out to the Appellant. The acceptance of the Thesis and the award of the Degree, was subject to a certain condition I hold therefore, that at no material time, did the 2<sup>nd</sup> Respondent, award any M.Sc. degree to the Appellant. Had or if the Appellant had simply complied with the said recommendation in (b) of Exh. 3, I believe that he should have “earned” or should have been awarded the said degree.. It is rather unfortunate! But the Appellant has only himself to blame for what he got in the end in Exh. 6.**

My answer to Issue ONE of each of the parties and Issue 3 of the Respondents, are in the Negative, while my answer to Issue No (ii) and 2 of the respective parties, is in the Positive.

Furthermore, in respect of Issue 3 of the Respondents, the arguments in respect thereof, have been taken care of in the consideration by me, of the said two Issues of the parties in this Judgment. However, for the avoidance of any doubt, I agree with the submission of the learned counsel for the Respondents, that the Respondents, did not exceed their powers (jurisdiction) since the Senate is competent to ask a dishonourable student such as the Appellant, to withdraw from the University and to refuse awarding him the M.Sc, Degree for the reasons that appear in the said Exh. 6. The cases of Wiseman v. Borneman (1971) A.C. 297 (5) 310-311 and L.P.D.C. (LEGAL PRACTITIONERS DISCIPLINARY COMMITTEE) v. Chief Gani Fawehinmi (1985) 7 S.C. (pt.1) 178 are also cited and relied on by Chief Ogiri (who added Esqr to his name).

In concluding this Judgment, I also note that there are concurrent Judgments of the two lower Courts. It is now firmly settled in a line of decided authorities, that this Court, will not interfere with the concurrent findings of fact by the two lower Courts unless they are not justified by the evidence and have occasioned a miscarriage of justice. See recently, the case of Daniel Holdings Ltd. v Union Bank For Africa (2005) 7 S.C. (pt. II) 18; (2005) 7 SCNJ; (2005) All FWLR (pt.277) 895 @ 902 citing some other cases in this regard. The Judgments of the two lower Courts, in my humble view, are not perverse. Their decisions, are clearly justified and supported by law and decided authorities of this Court. The Judgment of the Court below affirming the judgment of the trial Court, is hereby affirmed by me.

In the end result or final analysis, this appeal is clearly unmeritorious. It fails and it is accordingly dismissed. Although costs follow the events, no order as to costs. The parties are to bear their respective costs.

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**BELGORE JSC**

One of the issues raised by the respondent as preliminary objection

is that the appellant had no right to appeal on the day the judgment was delivered in the Court below. This is novel to our procedure. Counsel sometimes have some inkling of where a judgment might go and prefer to lodge an instant appeal after its delivery. This manner of giving Notice of Appeal can only amount to an abuse of court process if filed before judgment is delivered. But the Notice of Appeal filed even the very first minute after judgment is delivered can never be an abuse of process.

The authority of a university to award a degree is vested in approval by the Senate in accordance with the statute of the university concerned. Some reasons were advanced for refusing to award the Master degree to the appellant and nothing on the face of the reasons given is malicious or capricious. The refuge being sought under Fundamental Rights of the Constitution is a legal mirage and the appellant is in serious misapprehension of the statute of the university especially the discretion of the Senate in awarding a degree. Senate of the University is the custodian of the integrity of their degrees and once they are satisfied for some valid reasons, as in this case, that the award of the degree to a candidate is not justified it will not award it.

I agree therefore with my learned brother, Ogbuagu JSC that this appeal lacks merit. I also dismiss it with N10,000.00 costs to respondents.

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### **EJIWUNMI JSC**

I have had the opportunity of reading in advance the draft of the judgment of my learned brother, Ogbuagu, JSC that has just been delivered. I agree with the reasons given in the said judgment for dismissing the appeal as it lacks merit. It is also dismissed by me for the same reasons and I abide with the order made as to costs.

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### **PATS-ACHOLONU JSC**

I have read the judgment of my learned brother Ogbuagu J.S.C. in draft and I agree with him. Let me however set down a few comments of mine.

The Appellant was a Post Graduate Student at the University of Agriculture Makurdi. He did a course work leading as he had hoped, to the award of an M. Sc. Degree in (Agric-Econs.) which course of thesis he felt he had completed. However to his chagrin, the appellant was asked to withdraw from the University. There was of course no award of degree B made to him. The charges the University had against him for not awarding him the degree were: -

(a) *“Employment of nonacademic means in arriving at the results of his thesis;*

(b) *Academic Dishonesty”* C

Apparently it would appear that as he was unable to understand the situation or how the University arrived at such a decision, he applied to the High Court for a writ of certiorari and an order of Mandamus. These prerogative writs or order are meant essentially to set aside a decision taken D by an inferior body that has exercised a quasi judicial function, and too to compel that body, the University to rescind its decision and award him the degree he felt he had laboured to get but being denied him.

At the High Court, his prayers were dismissed and on appeal to the E Court of Appeal, that Court equally dismissed the appeal for lacking in merit. Wholly dissatisfied with this turn of events he appealed to this Court and framed 2 issues for determination.

(i) Whether the rules of natural Justice and the Constitutional right F of fair hearing guaranteed the appellant were infringed upon by the Respondents, having regard to the facts and the circumstances of this case, and the allegations in exhibits ‘C’ ‘D’ and 6. (Grounds 1,2,3 and 4 of the notice and grounds of appeal).

(ii) Whether the learned Trial Judge and learned Justices of the G Court of Appeal were right to have approved of the procedures adopted by the Respondents herein leading to the issuance of exhibit 6, having regard to the provisions of Decree No. 48 of 1992, and the fact that exhibit ‘D’ was not even signed by any body and did not contain the name of the H author (s) and if not whether appellant is entitled to the reliefs in the statement in support of application.

(Grounds 5 and 6 of the notice and grounds of appeal) The

Respondent while equally admitting that the appellant was a Post Graduate Student in the University stated that to qualify for the award of a Post Graduate degree such as M.Sc the prospective Student must necessarily submit on acceptable thesis to the Senate of the University which is the authority that awards a degree. It is their case that the thesis submitted must be attested as to its quality and suitability by both the external and internal examiners. In this case the external examiner was one Professor J. O. Olukosi of the Ahmadu Bello University Zaria while the internal examiner was one Dr. J. C. Umeh an Associate Professor in Makurdi University of Agriculture. When the thesis was first submitted for evaluation the Respondents observed some errors and pointed these out and a recommendation of its acceptability was made subject so however to the corrections being made. According to the University, one Dr. G. B. Ayoola the supervisor of the Appellant blocked the external examiner from doing its duty by traveling to Zaria to lobby Professor Olukosi to approve the thesis as corrected. When the University Senate sat to consider the appellant's work, after the expected correction there was not to be found the Attestation of the external examiner and further there was a change in the "*co-efficient of potatoes from negative to positive*"

What is the definition of the term "attestation". It means averment, affirmation, vouch for, provide evidence for, substantiate e.t.c. in other words the Respondents are saying that such testification or verification was absent. On the basis of that finding the University felt uncomfortable with the situation as it reasoned and concluded that something untoward bordering on unethical conduct had taken place and asked the appellant to withdraw from the University which of course means that the issue of award of degree to him was out of the question. They formulated three (3) issues for consideration by the Court, and they are as follows;

(1) Whether the senate of the University acted maliciously or capriciously in refusing to award an M. Sc degree to the Appellant and whether a recommendatory panel below the senate has the power to award a degree.

(2) Whether the learned trial judge and the learned justices of the Court of Appeal were right in their approval of the procedure adopted by

the respondents leading to the issuance of exhibit “6”

(3) Whether or not the issues of judicial review by way of certiorari, mandamus or prohibition was available to the applicant in the circumstances of the case; especially having regard to the fact that the appellant at no time earned an M. SC degree of the University.

I observe that the issues as made out by the Appellant is not only regrettably verbous but are so circumlocutous in that they lack precision and clarity. One would of course assume that having regard to what happened, the complaint which he asked the Court to address upon and give him the remedy is that the University had committed an infraction of his constitutional right of fair hearing in not only hearing his own side of the story to proffer an answer, but in refusing to award him the degree he believes he has worked for and therefore had earned. This he complained is unfair.

The gravamen of the Appellant’s case is that after the correction was made, the 2<sup>nd</sup> Respondents accepted and gave approval to the thesis. He therefore expressed surprise that it was difficult to understand why after such approval, the University should ask him to withdraw from the institution. Now it is not in doubt that the degree awarding Authority in this case is the Senate of the university. There is no where in the record where it is shown that the 2<sup>nd</sup> Respondent accepted the thesis after the “*correction*” The main argument or contention of the Appellant is that the University by which I understand to mean the Senate having approved of the thesis, it could not competently purport to disapprove of it, by describing the thesis in a salacious language. While one Dr. Ayoola was the supervisor of the Appellant of his work, the dean of the faculty was Professor M. Njike who incidentally swore a counter-affidavit in response to the affidavit of the Appellant in this matter. The exerts from the Counter-Affidavit of Professor Njike read thus;

1. “*That I know as fact that by the terms of the statute that established the University the senate of the University is the only body competent to award any degree and that this power has not been delegated to anyone or other inferior organ of the University.*”

2. *That I also know as a fact that the senate of the University at no*

*time approved the award of any degree to the plaintiff/Applicant.*

3. *That I know as a fact that the senate, the degree awarding body of the University at one of its sittings in its collective wisdom found Mr. Patrick D. Magit not fit and proper to be awarded a higher degree of the University.*

4. *That I know as a fact that the senate has such wide powers as the withdrawal of any degree awarded by it for good cause.*

5. *That I know as a fact that on or about the 6<sup>th</sup> day of August, 1998, I did put up a recommendation to the senate praying that Patrick Magit be awarded a Master Degree.*

6. *That I know as of fact that this not the first time that the senate is turning down the recommendation for the award of a Post-Graduate Board.*

7. *That I know as of fact that the senate met on 28<sup>th</sup>, 29<sup>th</sup>, 30<sup>th</sup> and 31<sup>st</sup> of August, 1998.*

8. *That I also know that at the time the senate met to consider the thesis of the Applicant, the Attestation of the external examiners was not available and the reason for this unavailability was given by the students major-supervisor, Dr. G. B. Ayoola was an "Omission".*

9. *That I now know as a fact that the Attestation of the External examiners was then blocked by Dr. G. B. Ayoola the Applicants major Supervisor and Head of Department.*

10. *That a letter written by the External Examiner, one Dr. Olukosi of the Ahmadu Bello University Zaria, provided the knowledge referred to in paragraph 25 above. Photocopy of that letter is hereby annexed and marked "Exhibit A".*

The Appellant had made heavy weather of the decision of the Court in *Adeniyi v Governing Council of Yaba College of Technology* (1993) 7 SCNJ (Pt 11) 304 at 322 and also *Garba v. University of Maiduguri* (1986) 1 N. W.L.R. (Pt, 18) 550 at 580. In the two cases mentioned the operative subject matter or the legal issue considered is that where a person is alleged to have done a wrong or accused of doing something untoward and therefore disagreeable, he should be informed so as to exercise his inalienable right to proffer a defence or answer before any adverse action

is taken. In other words, the Courts frown at any institutional body meting out disciplinary punishment without observing the rules of natural justice. The case being made out by the Appellant is that he was not given the opportunity to clear himself of any allegation of dishonesty and therefore the Court should set aside that decision by which he was asked to B withdraw from the University. The resume of the reliefs claimed is that he was not given a fair hearing of his case, and furthermore that the decision that culminated in his not being awarded a degree be reversed, and further that neither the University Per se nor the Senate body is competent to take C the decision to disallow the award of a degree he had ably worked for.

I am well aware that in the case of University of Nigeria Teaching Hospital Management Board v. Hope C. Nnoli (1994) 10 SCNJ at 98-99 Oguntade JSC. said;

*“Where a Public body fails to comply with certain procedural D safeguard in an enabling act or regulations, there is a breach of duty imposed on it and its decision in such circumstances is ultra vires”*

However no two cases are the same. When a student has submitted his exam paper for correction, or for evaluation, and, if a thesis is written, E it is the content of the work that determines suitability of award of a degree unless in an appropriate case where there must necessarily be a viva voce exam. It must be pointed out that it is erroneous to assume that there is some similarity between this case and the cases cited above for compara- F tive analysis. Nothing can be further from the truth. A University is a “Degree awarding Institution” and, as stated by Professor Njike in his counter-affidavit, can neither delegate its degree awarding powers nor be stampeded to make award where it does not see it fit to do so. For the Court G to use its awesome magisterial powers to compel a University to award a degree would in effect mean that the Court has invested itself with the necessary powers to fully appreciate the nuances taken into consideration to award University degree. Too often nowadays ever since the case of H Garba v University of Maiduguri (Supra), many litigants have tended to inundate the Courts with frivolous claims and have tried to invest the Court with powers to run a University usually described as Ivory Tower with their strange claims. A University is a place of great learning and research.

I would view with consternation and trepidation the day the Court would immerse itself into the cauldron of academic issue which is an area it is not equipped to handle. It will indeed be alarming for any Court worth its salt to enter into the arena of questioning why a University has refused to award  
B a degree to any student. The danger posed by such venture is better imagined than expressed.

It is my view that it is the indisputable right of a University to award or withhold the award of a degree and it is no business of the Court to question its motives let alone compelling it to award a degree which it has  
C stated that a claimant is not qualified for. The duty or the power of a University in subjecting the work of any student in its portals of learning to merciless scrutiny is naturally to carefully evaluate the academic quality of his or her work. It alone possesses the power to state whether a  
D particular work is below the standard or not. I do not think that in considering or appraising the academic soundness of any work of a scholar the University should invite the student to help in assessing his or her work particularly if it appears that an act not in keeping with the tenets  
E of the university is patently manifested in the work being considered. Is the Court going to substitute its standard with that of the University? I think not. In the case of *Esiaga v University of Calabar* (2004) 7 N.W.L.R. 387 this Court expatiated on the tenor of the decision in *Garba's* case to show  
F that it does not provide a limitless licence for any one in the University system to do as he likes. This Court Said;

*"It is perhaps tempting for a student who is suspended or expelled by a University to put himself in the garb or dress of "Garba" in the Garba's case (Supra) and cry blue murder for the suspension or outright  
G expulsion. Are we now to Understand that a University should be incapable of enforcing ultimate and extreme disciplinary measures of expulsions where the facts and circumstances of the case demand that it so acts. The celebrated case of Garba v University of Maiduguri (Supra)  
H is not intended to be a Court given licence and judicial umbrella to provide students of unbridled, recalcitrant and impetuous behaviour in the University system who have no sense of ethics and acceptable level of decency in a civilized society to cause ruination to the educational*

*institution by their uncouth and display of primitive characterizations. No it is not. "It is equally not intended to tie the hands of the college Authority and debar it from making an effort temporarily to arrest a perceiving evil that is seen rearing its head which if not nipped in the bud might conceivably raise Cain"*

When a suit is instituted its contents may be considered either from the points of view of its inherent benefits to the proponent of the action or from the benefit derivable jurisprudentially speaking by the society at large such as in a case on constitutional or administrative law. In the context of the case before us the Court would necessarily consider the effects on the University to wit, on how such an ivory tower would be affected by the nature of the suit, regard being had to its statutory & traditional functions. Speaking analytically, it is safe to postulate that the determinants of justice while demonstrating the latitude of individual liberty ought generally to be consistent with the welfare and ethos of the society. A University is the bastion of learning and research, the reservoir of scholarship, and I dare say the think tank of the society, and as such it should be given or allowed general leeway to operate with its independence unshackled by inanities or such humbugs that might compromise its stature and dignity without necessarily trying to hamstring it with a decision that would adversely affect its duties in maintaining excellence in scholarship.

It is said that the function of the Court is to interpret laws made by the legislature and not to make laws. In theory that is so. But it must equally be admitted that judges are not robots (or zombies) who have no mind of their own except to follow precedents. They are intrepid by their great learning and training and can distinguish in order to render justice to whom it is due. As the society is eternally dynamic and with fast changing nature of things in the ever changing world and their attendant complexities, the Court should empirically speaking situate its decisions on realistic premise regard being had to the society's construct and understanding of issues that affect the development of jurisprudence.

Let us pray that there shall be never come a time when the Court shall use its powers to constitute itself into a Senate of a University or a degree awarding body. When faced with a case of this nature the court

should exercise utmost caution knowing fully that it is not versed in the University method of assessing the intellectual work of a scholar and is not vested with the power to arrogate to itself the function of a University. For a student or research scholar to approach the Court to cause a degree to be awarded to him when his university had rejected his work on the ground that there is something unethical bordering on dishonesty, is not only importune but equally petulant and utterly ridiculous. When the Court in the exercise of its constitutional duties unwittingly invests itself with the power to compel a University to award degrees then we should say goodbye to academic pursuit and excellence and cause to be reeled out from our Universities half baked people and ignoramus masquerading as intellectuals and scholars. That would be the beginning of systematic obliteration of our Universities.

I see no merit at all in this case. Therefore I dismiss it and affirm the judgment of the lower Courts. I abide by the consequential Order in the leading Judgment.

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### MOHAMMED JSC

The judgment just delivered by my learned brother Ogbuagu, J.S.C. was read by me in draft before today. I entirely agree with the judgment.

F The appellant in his brief of argument had distilled two issues for determination of the appeal.

The issues are -

G “1. Whether the rules of natural justice and the Constitutional right of fair hearing guaranteed the appellant were infringed upon by the respondents, having regard to the facts and the circumstances of this case, and, the allegations in Exhibits ‘C’, ‘D’ and 6.

H 2. Whether the learned trial Judge and learned Justices of the Court of Appeal were right to have approved of the procedures adopted by the respondents herein leading to the issuance of Exhibit 6, having regard to the provisions of Decree No. 48 of 1992, and the fact that exhibit ‘D’ was not even signed by anybody and did not contain the name of the authors and if not, whether appellant is entitled to the reliefs on the statement in

*support of the application.”*

Although three issues were formulated in the respondent’s brief of argument, all these issues revolve around the central issue for determination in this appeal namely, whether the contention of the appellant that the rules of natural justice and his fundamental right to fair hearing as guaranteed by the Constitution of the Federal Republic of Nigeria 1999 have been breached by the respondents herein when the letter Exhibit 6 was issued and served on the appellant accusing him of having employed un-academic means in arriving at the results in his corrected M.Sc. Thesis and asking him to withdraw from the University without affording him a hearing.

From the undisputed facts contained in the record of this appeal, the appellant was duly afforded the opportunity to defend his written M.Sc. Thesis before the Board of Examiners appointed by the respondents. In the course of oral examination, errors were discovered in the appellant’s M.Sc. Thesis. All the same, the M.Sc. Thesis of the appellant was duly recommended to the Senate of the University, the 2<sup>nd</sup> respondent, to pass the appellant in his M.Sc. Degree examination subject to the corrections to be made by the appellant to be attested and certified by the Board of Examiners. However, the corrections made by the appellant were found to have changed the co-efficient of the subject of his M.Sc. Thesis namely, potatoes, from negative in the original Thesis to positive in the corrected Thesis. This rather sad event resulted in the failure of the appellant’s corrected M.Sc. Thesis to have full certification and attestation of the external examiners particularly the one from the Ahmadu Bello University Zaria, a condition precedent to satisfy the requirement of the earlier recommendation to the Senate of the University to pass the appellant. It is quite clear from the undisputed facts that the appellant was indeed afforded a fair hearing. The Senate of the University, the 2<sup>nd</sup> respondent, was therefore right in rejecting the appellant’s M.Sc. Thesis and in asking him to withdraw from the University in its capacity under the law as the sole body empowered to award the Degree to the appellant after being satisfied that he had duly passed the examination.

As the appellant had woefully failed to show that he had passed his

examination for the award of M.Sc. Degree in Agricultural Economics, his application for orders of certiorari, mandamus and prohibition against the respondents to compel them award him a University Degree he did not pass, was rightly refused by the trial court. The lower court was equally B right on the facts before it and the law, in dismissing the appellant's appeal.

Thus, for the above reasons stated and the fuller reasons contained in the lead judgment of my learned brother Ogbuagu, J.S.C., I also find no merit in this appeal which I hereby dismiss. I subscribe to the order on C costs in the lead judgment.

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