

SUPREME COURT OF NIGERIA

12TH MAY, 2006. SC. 263/2001

**CORAM:- S. U. ONU, A. O. EJIWUNMI, D. MUSDAPHER,
W. S. N. ONNOGHEN, I. F. OGBUAGU, JJSC**

1. ODUTOLA HOLDINGS LIMITED

2. PROF (MRS.) OYINADE ODUTOLA-
OLURIN

3. MRS. OLABIMPE O. ODUTOLA-
OSINAIKE

4. PASTOR OLUFUNMILAYO A.
ODUTOLA

..... APPELLANTS

5. MRS ADESOLA A. ADEYEMI

6. MADAM S. A. ODUTOLA

7. MADAM M. A. ODUTOLA

AND

1. MR. KUNLE LADEJOBI

2. MADAM OLAYIDE ODUTOLA

3. MR. OLADIPO ODUTOLA

4. MR. ADEMOLA ODUTOLA

5. CHIEF (MRS) ADEBISOLA OKUPE

6. CHIEF (MRS.) F. A. ADEUJA

7. MR. ADEBOYE ODUTOLA

8. DR. ADERONKE ODUTOLA

9. MR. OLUFEM1 ODUTOLA

..... RESPONDENTS

10. MR. ADEGBOLA ODUTOLA

11. MR. ADEREMI ODUTOLA

12. MR. OLADELE ODUTOLA

13. MS. ADETUTU ODUTOLA

14. THE CORPORATE AFFAIRS

COMMISSION

INTERLOCUTORY APPLICATIONS - Pronouncements - On matters
in dispute between the parties - Was wrongfully made - By the two lower

Courts (H1)

STATUTES - Interpretation - Company directors - S. 63(3) of CAMA permits directors - To authorize that action be taken - To protect the company's business (H2)

COMPANY LAW - Evidence - Directors - Right to protect business of the company - Cannot be successfully opposed - Without producing evidence to show - That the right does not exist (H3)

COMPANY LAW - Directors - Authority to institute action - On behalf of the company - As contained in Exhibit H - Is sufficient in this matter - As held in Sotiminu case (H4)

COURTS - Relief - Not considered by trial court - Was Wrongfully granted by Court of Appeal - Seeing that where a court grants the 1st relief - It is precluded from pronouncing on the alternative relief (H5)

FACTS

Before the Federal High Court the plaintiffs/appellants commenced an action against the defendants/respondents. Plaintiffs in the main claimed a declaration that the purported meeting of shareholders of the 1st plaintiff company held on 12-9-2000 is illegal, a declaration that the purported removal of the 2nd to 7th plaintiffs as directors of the 1st plaintiff and purported appointment of the 1st to 10th defendants as directors is null and void being contrary to the Company's Articles of Association and s. 262 of CAMA, 1990. Upon service of the writ of Summons and the Statement of Claim, defendants filed an application seeking for an order striking out name of the 1st plaintiff as a party to the action. In the alternative they prayed the trial court to order a meeting of shareholders of the 1st plaintiff as to determine their directions as to whether 1st plaintiff should continue as a party to this suit.

Affidavits were filed in supporting and in opposing the motion, by the parties. After hearing the addresses of counsel, the trial court found

in favour of the appellants by holding that the action was properly commenced by the 1st and other appellants. It however erroneously made pronouncements on certain issues that relate to the substantive suit. Being dissatisfied, the respondents appealed, while the appellants cross appealed to the Court of Appeal which found in favour of the respondents. Appellants have now further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

“(1) Whether the Court of Appeal did not err when it made pronouncements or decisions at an interlocutory stage on issues in the substantive case as to whether the 1st defendant has the competence to deal with the estate of late Chief T. A. Odotola without first obtaining the grant of letters of administration and when it placed reliance on the disputed Form C07 filed by the defendants at the Corporate Affairs Commission, Abuja, as evidence of the competence or locus of the 2nd-13th defendants.

(2) Whether the institution of this action in the name of the 1st plaintiff company was authorized by the company.

(3) Whether the Court of Appeal did not misinterpret and misapply the provisions of Section 63 of the Companies and Allied Matters Act, 1990 when it decided that subsection 63(5)(5) gives the General Meeting exclusive control over the issue - whether to institute legal proceedings in the name of the company.

(4) Whether the Court of Appeal did not err when it found that the 1st to 13th defendants had the locus to challenge the commencement of this action in the name of the 1st plaintiff company.

(5) Whether the Court of Appeal did not err when it granted without qualification, the alternative relief sought by the respondents by ordering that a general meeting of the 1st plaintiff be held for the purpose of determining its directions or instructions as to whether the 1st plaintiff company should continue as a party to the suit.

HELD (Unanimously allowing the appeal per **EJIWUNMI JSC**)

Pronouncements - On matters in dispute between the parties

1. It is manifest from the pronouncements of the courts below which I

have referred to that they touched and resolved questions that are matters which are in dispute between the parties. In this regard, while the courts may consider that certain matters are not legally in dispute; yet it may not be proper to make definite statements thereon as if the parties have been heard fully on them. It is not in dispute that the application before the court is by its very nature an interlocutory one. Therefore it cannot be proper for the courts to have made pronouncements which would still have to be considered and decided in relation to the dispute between the parties in the main suit that is still pending. I therefore hold that the courts below erred in making pronouncements upon matters in dispute. This court has held in its various judgments that it is wrong so to do. The pronouncements are therefore set aside. (p. 1842 F)

D STATUTES - Interpretation

2. It is undoubtedly good law that in order to interpret an Act and/or a section of an Act, it is necessary to read the entire provisions together in order to discover the intention of the legislator in enacting the said provisions of the Act or a section of it. But with due respect to learned counsel for the respondents, the question that falls for consideration here is, whether there is any power in Companies and Allied Matters Act that permits directors of a company to protect the interest of the company. The main contention made for the appellants is that the business of the 1st appellant/company would be adversely affected if action was not taken to protect the business of the 1st appellant company.

It is my humble view that given the circumstances, Section 63(3) of the Companies and Allied Matters Act allows Directors of a company to authorize that action be taken to protect the business of the company. The plain reading of Section 63(3) of Companies and Allied Matters Act that except as otherwise provided in the company's articles, the business of the company shall be managed by the board of directors who may exercise all such powers of the company as are not by this Decree or the articles required to be exercised by the members in general meeting. (p. 1846 D)

Directors - Right to protect business of the company

3. It is patent that throughout the proceedings in this court and the courts below, the respondents have not presented any evidence to show that the 1st appellant/company's article had provisions which prevent the Board of Directors from acting to protect the business of the company. Nor B was there any evidence also that the members in general meeting have deprived the directors of the power to act as was done in the instant case to protect the business of the 1st appellant company.

It is also my view, that the burden lies on the respondents to present C such evidence as would persuade the court that the appellants do not have the power they exercised under Section 63(3) of the Companies and Allied Matters Act. And as there is no evidence to that effect from them, they cannot invite the court to hold that the appellants as directors of the 1st appellant company had no right to act to protect the business D of the company. (p. 1847 A)

Directors - Authority to institute action

4. I have earlier in this judgment reviewed the argument of learned coun- E sel for the respondents on why Exhibit H cannot be relied upon by the appellants to sustain their authority for instituting the action. With due respect to learned counsel for the respondents, it is my view that the argument proffered for the rejection of Exhibit H is specious to say the F least. Exhibit H in my view sufficiently authorized the appellants to institute the main action against the respondents and I so hold.

In my humble view, I do not think that the case of Sotiminu v. Ocean Steamship (Nig) Ltd. (1987) 4 NWLR (Pt. 66) 691 is not an G authority for the proposition that an authority duly conveyed to a Solicitor by Directors of a company cannot be relied upon by the Solicitor to institute proceedings as in this case. There is no doubt from the facts presented in this case and as evidenced by Exhibit H that the 2nd-7th appellants duly were authorized to institute this action with themselves H and the 1st appellant. For the above reasons, I will therefore resolve Issue 2 in favour of the appellants. (p. 1848 B)

Relief - Not considered by trial court

5. That relief which was not considered by the trial court was granted by the court below. The appellants have in this appeal argued that the pronouncement of the court below was made erroneously. This view of the
B decision of the court below rests on the principle that where the court below had considered and pronounced upon the 1st relief, the court is precluded from considering and making any pronouncement on the alternative relief. I think that submission has merit. Moreso, where in the
C instant case, the trial court did not even consider the alternative relief and therefore there was nothing before the court below to be considered as an Appellate Court. It must be remembered that appeals must stem from the failure of the trial court to properly consider an issue before it or had erroneously reached a decision upon an issue that was argued before it.
D It follows that the pronouncement made in the alternative relief in the circumstances was made in error. It is therefore set aside.

Having regard to what I have said above, Issues 1, 2 and 5 are resolved in favour of the appellants, this appeal therefore succeeds and
E the judgment of the court below is hereby reversed and set aside.
(p. 1849 A)

NOTABLE POINTS OF INTEREST

ONNOGHEN.JSC

F *1. Interlocutory applications - Court to refrain from pronouncing on substantive matters*

The Court of Appeal also made pronouncements on other issues in the substantive action unrelated to the interlocutory application ruled upon
G by the trial court. The issues have to do with the appointment of 1st-10th defendants as directors of the 1st plaintiff and Form CO7 in relation to reliefs (ii), (iii) and (vii) claimed in the action and reproduced (supra).

The Court of Appeal made the following pronouncement at page 304:

H *“The learned trial Judge had in his ruling said that there was no evidence before him that supported the existence of locus by which the defendants could challenge the institution of the action. But Exhibit 001B, Form CO7 attached to the application (see pp. 20-33 of the record)*

brought by the plaintiffs on 10th October, 2000 shows that the 2nd-13th defendants (majority of them are the appellants) as directors of the company.”

This court has held times without number that courts should desist from making positive pronouncements on substantive matters pending before them while dealing with interlocutory application as the practice prejudices the real matter in controversy between the parties. (p. 1857 A)

OGBUAGU JSC

2. Court of Appeal fell into same error as trial court

It can be seen from the above, that the court below, with respect, fell into the same error in respect of which it had faulted the said pronouncement or holding by the trial court. It cannot be overemphasized and this has been stated and restated by way of an advise in a line of decided authorities as stated by the court below hereinabove, that it is now firmly settled, that care should be taken when a court is hearing an interlocutory application, to avoid making any observation, comment or pronouncement in its ruling on that application, which may appear to prejudice the main issue in the proceedings relative to the interlocutory application. (p. 1868 D)

REPRESENTATION

Dr. B. A. M. Ajibade, for the Appellants.

G. M. O. Oguntade, for the 1st-13th Respondents.

I. E. Ekwo, (with him, M. D. Barau), for the 14th Respondent.

CASES REFERRED TO

Mortune v. Alhaji M. Gambo (1979) 3-4 S.C. (Reprint) 36; (1979) 3-4 S.C. 54 at 56

Omonuwa v. Attorney-General, Bendel State (1983) 4 NCLR 237

Chief Akapo v. Alhaji Hakeem-Habeeb & 16 Ors. (1992) 7 SCNJ. 119; (1997) 6 NWLR (Pt. 247) 266

University Press Ltd. v. Martins (Nig) Ltd. (2000) 2 S.C. 125; (2000) 4

NWLR (Pt. 654) 584 at 593

Help (Nig.) Ltd. v. Silver Anchor (Nig.) Ltd. (2006) 2 S.C. (Pt. I) 19

Agidigbi v. Agidigbi (1996) 6 NWLR (Pt. 454) 300 at 313 G-H

Sotiminu v. Ocean Steamship (Nig) Ltd. (1987) 4 NWLR (Pt. 66) 691

B

LEAD JUDGMENT BY EJIWUNMI JSC

This appeal is the culmination of the action commenced at the Federal High Court by the appellants when they instituted this action against the respondents for the following reliefs as depicted in paragraph 32 of their Statement of Claim dated 9th October, 2000 thus:-

C “32. *WHEREOF the plaintiffs claim as follows:*

(i) *A DECLARATION that the purported meeting of shareholders of the 1st plaintiff company held on 12th September, 2000 is illegal, null and void having been convened contrary to the provisions of the Articles of Association of the 1st plaintiff company and the provisions of the Companies and Allied Matters Act, 1990 concerning the convening of general meetings.*

D (ii) *A DECLARATION that the purported removal of the 2nd to 7th plaintiffs as directors of the 1st plaintiff company and the purported appointment of the 1st to 10th defendants as directors of the 1st plaintiff company by a resolution allegedly passed at the purported meeting of shareholders of the 1st plaintiff company held on 12th September, 2000 is illegal, null and void being contrary to the provisions of Article 36 of the Articles of Association of the 1st plaintiff company.*

E (iii) *A DECLARATION that the purported removal of the 2nd to 7th plaintiffs as directors of the 1st plaintiff company and the purported appointment of the 1st to 10th defendants as directors of the 1st plaintiff company by a resolution allegedly passed at the purported meeting of shareholders of the 1st plaintiff company held on 12th September, 2000 is illegal, null and void being contrary to the provisions of Section 262 of the Companies and Allied Matters Act, 1990.*

G (vi) *A DECLARATION that the 4th defendant is not a shareholder of the 1st plaintiff company.*

(v) *AN ORDER OF INTERLOCUTORY INJUNCTION to restrain*

the 1st to 10th defendants whether by themselves, their servants and agents or otherwise howsoever from acting as directors of the 1st plaintiff company and to restrain all the defendants whether by themselves, their servants and agents or otherwise howsoever from holding the 1st to 10th defendants out as directors of the 1st plaintiff company pending the final determination of this suit. B

(vi) AN ORDER OF MANDATORY INJUNCTION directing the 16th defendant to remove or cancel from the 1st plaintiff company's file held at the Corporate Affairs Commission in Abuja, all documents reflecting the purported removal of the 2nd to 7th plaintiff as directors of the 1st plaintiff company and the purported appointment of the 1st to 10th defendants as directors of the 1st plaintiff company." C

Following the service of the Writ of Summons and the Statement of Claim, the defendants, now respondents brought an application before the trial court wherein they sought for the orders framed in the alternative thus:- D

"(i) An order striking out the name of the 1st plaintiff herein as a party to the action. ALTERNATIVELY E

(ii) An order staying proceedings in this action and ordering a meeting of the shareholders of the Odutola Holdings Ltd. with a view to determining whether their directions or instructions as to whether the 1st plaintiff company should continue as a party to this suit." F

In support of this application, Kunle Ladejobi, a Chartered Accountant as the 1st defendant swore to a 14 paragraphed affidavit on behalf of himself and for the 2nd-6th, 8th-11th and 13th-15th defendants which read thus:-

"1, KUNLE LADEJOBI, Nigerian, Chartered Accountant of 58 Ogunlana Drive, Surulere, Lagos, make oath and say as follows:- G

1. That I am the 1st defendant/applicant and I have the authority of the 2nd-6th, 8th- 11th and 13th- 15th defendants (hereinafter referred to as the Applicants) to swear to this affidavit in support of the motion herein. H

2. That I am the personal representative of Chief T. A. Odutola, deceased, the majority shareholder and the last Chairman of the 1st plain-

tiff herein having been appointed as the Administrator Pendente Lite of his estate by order of the High Court of Ogun State (Coram Delano CJ) made in Suit No. AB/130/96 on the 1st day of August, 1997. A certified true copy of the Order of court aforesaid is now produced and shown to me marked Exhibit 'KL1'

B *2(a) That on two different occasions in Appeal No. CA/M.150/99, the Ibadan Division of the Court of Appeal, approved my appointment as the Administrator pending suit in respect of the Estate of Chief T. A. Odutola, deceased. Certified true copies of the Order and the ruling of*
C *the Court of Appeal aforesaid are now produced and shown to me marked Exhibits 'KL2' and 'KL3'.*

3. That the 1st plaintiff is a Private Limited Liability Company No. RC 23492 incorporated on the 6th day of February, 1978 with an
D *initial share capital N1,000,000 divided into 1,000,000 ordinary shares of N1 each. A certified true copy of the Memorandum and Articles of Association of the 1st plaintiff issued at incorporation is now produced and shown to me marked Exhibit 'KL4'.*

E *4. Sometime in April, 1987, the Memorandum and Articles of Association of the 1st plaintiff was amended and the share capital was increased to N5,000,000 divided into 5,000,000 ordinary shares of N1.00 each. A copy of the amended version signed jointly by Chief T. A. Odutola deceased and the 2nd plaintiff (for Mrs. T. A. Odele) was filed at the*
F *Corporate Affairs Commission. A certified true copy of the Amended Memorandum and Articles of Association of the 1st plaintiff aforesaid is now produced and shown to me marked Exhibit 'KL5'*

G *5. That I have been served with the plaintiffs' Motion on Notice dated 9th October, 2000 for an interlocutory injunctive relief against me and the other 14 defendants herein, wherein Exhibit 002 attached to the motion aforesaid is alleged by the 2nd plaintiff to be the Memorandum and Articles of Association of the 1st plaintiff.*

H *6. That on many occasions since my appointment as the Administrator Pendente Lite of the estate of Chief T. A. Odutola, deceased, by the Ogun State High Court, I have conducted searches at the Corporate Affairs Commission Abuja so as to determine the quantum of shares held*

by the deceased in different companies including the 1st plaintiff.

7. *That during my searches aforesaid, I have come to know that Exhibit 002 attached to the motion of interlocutory relief filed by the plaintiffs does not exist at the Corporate Affairs Commission and it is therefore not an authentic Memorandum and Articles of Association of* B
the 1st plaintiff.

8. *That the 2nd-5th plaintiffs and the 2nd-15th defendants are children of late Chief T. A. Odutola and are also shareholders of the 1st plaintiff while the 6th and 7th plaintiffs are wives of the late Chief T. A.* C
Odutola, but not shareholders of the 1st plaintiff.

9. *That since my appointment on the 1st day of August, 1997 as the Administrator Pendente Lite of the estate of Chief T. A. Odutola, deceased, whose estate is alleged by the 2nd plaintiff to hold 39.5% of the shares of the 1st plaintiff, I have not received any notice of any* D
meetings of the 1st plaintiff from any of the 2nd-7th plaintiffs.

10. *That I have consulted the 2nd-15th defendants herein except the 7th and the 12th defendants and they told me and I verily believe them that the 2nd plaintiff and or the other plaintiffs do not have au-* E
thority to sue in the name of the 1st plaintiff in this action and Chief B. A. Aiku SAN., has no authority of the shareholders to commence the action herein in the name of the 1st plaintiff.

11. *That I verily believe that the action of the plaintiffs herein* F
could be determined one way or the other if this Honourable Court could adjourn this suit and with an order that a meeting of the 1st plaintiff be held to decide on the authority of the plaintiffs in commencing this suit.

12. *That the present action is a further attempt by the 2nd-7th* G
plaintiffs to waste the assets of the 1st plaintiff in unnecessary litigation.

13. *That at a meeting of the shareholders of the 1st plaintiff held on the 12th day of September, 2000, the 2nd-7th plaintiffs were removed as directors of the 1st plaintiff.*

14. *That from the records available to me, and from information* H
given to me by the 2nd-6th, 8th-11th and 13th-15th defendants which I verily belief (sic), I am aware that the 2nd plaintiff was never appointed as the Chairman of the 1st plaintiff and could not have been so ap-

pointed in view of Article 36 of Exhibits KL4 and KL5.”

The plaintiffs upon being served also filed a 21 paragraphed counter-affidavit. As the depositions reveal graphically the plaintiffs’ version of the continuing conflict between the parties, it is desirable to set them
B down in this judgment. They read thus:-

“1, PROFESSOR (MRS.) OYINADE ODUTOLA-OLURIN, female, Christian, Nigerian, retired University Professor now Consultant Ophthalmologist of Vision house, Mokola, Ibadan do hereby make oath
C and say as follows:-

1. That I am the Chairman of the 1st plaintiff company and a shareholder thereof.

2. That I am familiar with the facts of this case by virtue of my position.

D 3. That the 2nd-7th plaintiffs are directors of the 1st plaintiff company.

4. That I have the authority of the Board of Directors of the 1st plaintiff company to swear to this counter affidavit.

E 5. That I have read the affidavit in support of the defendants’ motion dated 27/10/2000 deposed to by the 1st defendant.

6. That Paragraphs 2, 2(a), 4, 6, 7, 9, 10, 11, 12, 13 and 14 of the affidavit are not true.

F 7. That there is now pending before the Ogun State High Court, Suit No. AB/148/99: Mabogunje & Ors. v. Adewumi Odutola & Ors. seeking inter alia, an order to set aside the appointment of the 1st defendant as administrator pendente lite of the estate - of late Chief T. A. Odutola together with an application for an order of injunction to re-
G strain him from performing in the office of such administrator. A copy of the Statement of Claim and motion are attached herewith marked Exhibits A and B.

H 8. That there is also now pending in Suit No. FHC/L/CS/697/2000 before this Honourable Court, a motion seeking to restrain the 1st defendant from holding himself out as being entitled to hold 55% of the shares in the capital of the 1st plaintiff company.

9. That the 1st defendant has not obtained any grant of letters of

Administration of the estate of late Chief T. A. Odutola since his purported appointment as administrator pendente lite.

10. That the 1st defendant has no lawful authority to deal with the estate of late Chief T. A. Odutola or to perform the office of administrator pendente lite in respect thereof and is not entitled to any notice of any meetings of the 1st plaintiff company. B

11. That Exhibit KL5 attached to the 1st defendant's affidavit is not the current memorandum and articles of association of the 1st plaintiff. C

12. That contrary to Paragraph 4 of the affidavit, the capital of the 1st plaintiff was increased from N1,000,000 to N2,000,000 in 1980 and from N2,000,000 to N5,000,000 in 1982. A copy each of the resolutions effecting the alterations in capital are attached hereto marked Exhibits C and D. D

13. That in April 1987, the articles of association of the 1st plaintiff company was altered by a resolution dated 3 April, 1987 which was duly filed together with the then existing memorandum and articles of association at the Companies Registry, Federal Ministry of Commerce on 6th April, 1987. It is the certified copy of the said existing memorandum and articles of association that is attached to the 1st defendant's affidavit as Exhibit KL5. A copy each of the resolution and the receipt issued for filing are attached hereto marked Exhibits E and F. E

14. That subsequently, the said memorandum and articles of association were reprinted to incorporate the amendments made by the said resolution dated 3rd April, 1987 duly filed on 6th April, 1987, an uncertified copy of which was attached to the plaintiffs' motion on notice dated 9th October, 2000. A certified true copy thereof reflecting all the foregoing alterations, obtained from the Corporate Affairs Commission is attached hereto marked Exhibit G. F G

15. That the 2nd-5th plaintiffs and 2nd-15th defendants referred to in Paragraph 8 of the affidavit are some of the children of late Chief T. A. Odutola and shareholders of the 1st plaintiff company. H

16. That the Board of Directors of the 1st plaintiff company duly authorized the commencement of this action in the name of the company

by the company Solicitors. A copy of the resolution in respect thereof is attached hereto marked Exhibit H.

17. That Chief Bandele A. Aiku, SAN, of Bandele A. Aiku & Co. is one of the Solicitors to the 1st plaintiff company and he was duly authorized by the Board of Directors to commence this action in the name of the company.

18. That I did not receive notice of the purported meeting allegedly held on 12th September, 2000 and I am informed by the 3rd to 7th plaintiffs and I verily believe them that they did not receive any notice of any meeting either.

19. That the late Chief T. A. Odutola by his will expressed the wish that I should always be the chairman of the 1st plaintiff. A copy of the 1987 will is attached herewith marked Exhibit 1.

20. That I was at a meeting of the Board of Directors of the 1st plaintiff held on 6th July, 1995 regularly and duly appointed chairman of the company as successor to late Chief T. A. Odutola in accordance with the company's articles of association and the expressed wishes of the deceased. A copy of the minutes of the meeting is attached hereto marked Exhibit J.

21. That I swear to this counter affidavit in good faith believing the facts stated therein to be true and in accordance with the Oaths Act."
Learned counsel for the parties, then addressed the trial court upon the meaning and legal effect of the various depositions made in the affidavit and counter-affidavit which have been set out above. The learned trial Judge who delivered a well considered ruling decided that the questions raised in the application could be resolved by the consideration of the following two issues:-

"(1) Whether the present action can be maintained in the name of the 1st plaintiff herein a limited liability company without the authority of the company.

(2) Whether the 1st-16th defendants/applicants herein are competent to challenge the authority of the 1st plaintiff to institute this action."

The learned trial Judge considered the 2nd issue first and that is

whether 1st-16th defendants/appellants are competent to challenge the authority of the 1st plaintiff to institute this action. That question was resolved in two parts. First, the learned trial Judge determined that the onus lies on the defendants to establish lack of authority in the 1st plaintiff to institute the action. And having so held, he held that as no evidence B either documentary or affidavit was led by the 2nd-16th defendants to prove their capacity or status to challenge the authority of the 1st plaintiff to institute the action, the learned trial Judge therefore resolved that question against them.

However, with regard to the 1st defendant/applicant, the learned C trial Judge formed the view that he has the competence to challenge the institution of the action by the 1st plaintiff by virtue of his appointment as administrator pendente lite of the Estate of Chief T. A. Odutola. However, the trial court further observed that as the alleged wrong com- D plained of is against a company, the 1st defendant/applicant can only bring an action in the name of the company and not as an individual. The 2nd issue was therefore also resolved against the 1st defendant/applicant. E

With regard to the first issue raised by the learned trial Judge as to whether the plaintiffs had any authority to commence the action in the name of the 1st plaintiff/company, to resolve this question, the learned trial Judge felt that its determination depends on the meaning and effect F of the provisions of Section 63 of the Companies and Allied Matters Act, 1990 which vests in the Directors of a company the power to exercise such powers of the company which are not by the Act or its Articles of Association required to be exercised by the members at a General Meeting. The learned trial Judge therefore formed the view that there is G authority in the form of a Board Resolution (Ex. H) in the present proceeding for the institution of this action by the 1st plaintiff. The learned trial Judge therefore resolved this 2nd issue in favour of the plaintiffs. It is patent from the above views held by the learned trial Judge that the trial H court determined the application solely on the basis that the action was properly commenced by the 1st plaintiff and the other plaintiffs. In effect, the learned trial Judge did not make any pronouncement and did not

consider the alternative prayer of the defendants/applicants.

In any event, as the defendants were dissatisfied with the ruling of the learned trial Judge, they appealed to the court below. Now, in view of the decision of the court below in respect of the issues raised before that court that led to this appeal, I consider it desirable to reproduce the issues raised particularly by the defendants. They are:-

“(1) Whether the learned trial Judge in the light of the application and the evidence before him was right in formulating question 2 at page 234 of the Records in respect of which he proffered an answer in the ruling appealed against.

(2) Whether the action before the court below was properly brought in the name of the 1st plaintiff/respondent in the sense that it was authorized on behalf of the 1st plaintiff.

(3) Whether in the circumstance of the dispute as to who are the authentic Directors of the 1st plaintiff/respondent, should the court below have refused to order a meeting of all the Shareholders so as to decide whether the 1st plaintiff/respondent should continue as a party to the action.”

The plaintiffs/respondents also filed a cross-appeal as they were not satisfied with that portion of the judgment where the trial court held that all the personal estate of Late Chief T. A. Odutola including his shares in the 1st plaintiff/company had become vested in the 1st defendant from the date of the order of the court below appointing him as an administrator pendente lite by the single act of that appointment and that, without the 1st defendant obtaining Letters of Administration. Consequently, the trial court held that the 1st defendant was competent to challenge the institution of this action in the name of the 1st plaintiff.

Pursuant thereto, the plaintiffs filed a four ground notice of cross-appeal and whereon they raised three issues for the determination of their cross-appeal. The issues raised are:-

“(1) Whether in view of the state of the law, the learned trial Judge was right in making a finding that all the personal estate of late Chief T. A. Odutola became vested in the 1st defendant from the date of his appointment as pendente lite by the single act of that appointment by

the court without obtaining letters of administration.

(2) Whether it was proper in law for the learned trial Judge at the interlocutory stage to make pronouncements that touches (sic) on the merits of the substantive case.

(3) Whether on the unchallenged affidavit evidence before him, the learned trial Judge did not err in finding that the 1st defendant has the locus and competence to challenge the authority for the commencement of this action in the name of the 1st plaintiff.”

After the court below was addressed by the learned counsel for the parties, that court by its judgment held that the appeal has merit, and therefore set aside the decision of the trial court dismissing the application. Also the court below declined to strike out the name of the 1st defendant, as to do that would pre-empt the outcome of the meeting of the shareholders. That court further ordered that a meeting of the shareholders of the 1st plaintiff/company be held to determine whether or not the 1st plaintiff should continue as a party in the suit. The trial court was also ordered to give necessary directives as to the conduct of the shareholders’ meeting. Apart from holding that there is merit in the contention of the cross-appellant that the trial court was wrong to have, in the interlocutory proceedings, made pronouncements that touch on the merits of the substantive case, the cross-appeal was dismissed as it found it unmeritorious. The plaintiffs who were dissatisfied appealed against the decision of the Court of Appeal to this court. From henceforth, I will refer to the plaintiffs as appellants and the defendants, respondents.

In consonance with the Rules of this court, briefs were filed and exchanged. For the appellants, the following are the six issues for the determination of the appeal:

“(1) Whether the Court of Appeal did not err when it made pronouncements or decisions at an interlocutory stage on issues in the substantive case as to whether the 1st defendant has the competence to deal with the estate of late Chief T. A. Odutola without first obtaining the grant of letters of administration and when it placed reliance on the disputed Form C07 filed by the defendants at the Corporate Affairs Commission, Abuja, as evidence of the competence or locus of the 2nd-13th

defendants.

(2) *Whether the institution of this action in the name of the 1st plaintiff company was authorized by the company.*

(3) *Whether the Court of Appeal did not misinterpret and misap-
B ply the provisions of Section 63 of the Companies and Allied Matters
Act, 1990 when it decided that subsection 63(5)(5) gives the General
Meeting exclusive control over the issue - whether to institute legal
proceedings in the name of the company.*

(4) *Whether the Court of Appeal did not err when it found that the
C 1st to 13th defendants had the locus to challenge the commencement of
this action in the name of the 1st plaintiff company.*

(5) *Whether the Court of Appeal did not err when it granted with-
out qualification, the alternative relief sought by the respondents by or-
D dering that a general meeting of the 1st plaintiff be held for the purpose
of determining its directions or instructions as to whether the 1st plaintiff
company should continue as a party to the suit.*

(6) *Whether the Court of Appeal was right in failing to strike out
E the only issue identified by the defendants/cross-respondents which does
not arise from the grounds of appeal formulated by the plaintiffs/cross-
appellants?"*

In the brief filed on behalf of the 1st to 13th respondents, two
F issues were identified for the determination of the appeal. They are:-

*"(i) Whether the lower court was right in holding that the substan-
tive suit in the trial court was improperly commenced in the name of the
1st respondent company and therefore, a meeting of the shareholders of
the 1st respondent company should be held to decide whether the 1st
G respondent company should continue as a party to the substantive suit.
This issue relates to Grounds 1, 2, 3, 4, 5, 6, 8 and 9.*

*(ii) Whether the lower court made any pronouncements which touch
on the substantive issues before the trial court and therefore warrant a
H setting aside of the judgment of the Court of Appeal. This issue relates to
Grounds 7 and 10."*

Before considering any or all of the issues raised on behalf of the parties by their respective counsel, it is desirable to make the following

observations. First, it is not in dispute that the appellants took out a Writ of Summons in the Federal High Court, Lagos, in Suit No. FHC/L/CS/992/2000 against 16 respondents including the Corporate Affairs Commission wherein they sought for seven reliefs. As these reliefs and the Statement of Claim filed pursuant to the writ have been set out earlier in this judgment, I do not need to set them down here. However, rather than join issues with the appellants on the Statement of Claim filed against them, the 1st-6th, 8th-11th and 13th-15th respondents by their learned counsel filed an application for two prayers which were clearly framed in the alternative. Though they have been quoted above, I think it is pertinent to restate them:

“(i) An Order striking out the name of the 1st plaintiff herein as a party to this action.

ALTERNATIVELY

(ii) An Order staying proceedings in this action and ordering a meeting of shareholders of the Odutola Holdings Limited with a view to determining their directions or instructions as to whether the 1st plaintiff/company should continue as a party to this suit.”

As aforesaid, the trial court refused to strike out the name of the 1st appellant for reasons given in the judgment of the court. The court below overturned that ruling of the trial court and went on to make an order in respect of the alternative prayers.

Against the reversal of this decision, the appellants have raised several issues which I have reiterated above already. But in my humble view, not all the issues raised are necessary for the determination of the appeal. This is because several of the issues raised by the appellants and which the court below made pronouncements upon did not flow from the ruling given by the trial court in respect of the application brought before it by the respondents

After a careful perusal of the judgment of the court below, the grounds of appeal filed against that decision and the subject matter of the application that led to the ruling of the trial court, it is my respectful view that the only issues that are germane to this appeal are the 1st and 5th issues filed by the appellants. As the issues raised by the respondents are

not dissimilar, they will be considered in the light of the arguments advanced in the consideration of the merits of the appeal.

I begin with Issue 1. The question raised under this issue is, whether the court below did not err when it made pronouncements or decision at an interlocutory stage on issues in the substantive case as to whether the 1st defendant has the competence to deal with the estate of late Chief T. A. Odutola without first obtaining a grant of administration. Also, the court below as part of its decision placed reliance on the disputed Form CO7 filed by the defendants at the Corporate Affairs Commission, Abuja as evidence of the competence or locus of the 2nd-13th defendants.

Now, the contention made for the appellants is that the court below erred in making such pronouncements so they duly identified in their brief. And that the pronouncements so made are prejudicial to the just determination of the outstanding questions that are pending in the courts between the parties. On the other hand, learned counsel for the respondents has argued to the contrary in the respondents' brief. In other words, he wants this court to hold that the court below did not make any pronouncement capable of being prejudicial to the just determination of the substantive suit.

In the circumstances, it would be helpful for the proper resolution of this question to refer to some of the pronouncements made by the court below in this regard. And in this context, it is desirable to refer to the 4th relief endorsed in the Statement of Claim which is for:

"A declaration that the 1st defendant has no locus or authority to exercise any power as an administrator pendente lite over the shares which form part of the estate of late Chief T. A. Odutola without first obtaining a grant of administration from the Ogun State High Court pursuant to the order appointing him."

It is clear from the relief quoted above that the appellants were raising a dispute between the parties with regard to the status of the 1st respondent and his right to administer the estate of the late Chief T. A. Odutola. I have already noted that the respondents filed an affidavit in support of the application before the High Court which is the subject of

the ailing and that a counter-affidavit was also filed by the appellants. The respondents were still to file a defence to the claim of the appellants but the trial court went on to say in the course of its ruling as follows:

“Although these averments are denied by the 1st plaintiff company in the counter affidavit caused to be deposed to and filed on his behalf. Nevertheless, I believe this is an issue of law and in this regard this court is not in a position to query the appointment of the 1st defendant/applicant as an administrator pendente lite of the Estate of Chief F. A. Odutola (Deed) pursuant to the power conferred on the Ogun State High Court under the provision of Section 27 of the Administration of Estate Law Cap. 1 Laws of Ogun State as the personal law of Chief T. A. Odutola (Deed). On the contrary, this court is entitled to take judicial notice of same and to hold that as at today, the 1st defendant remains the personal representative of the Deceased and that all the personal Estate of Chief T. A. Odutola (Deed) including his shares in the 1st plaintiff company became vested in the 1st defendant from the date of the Order of Court appointing him as an administrator pendente lite, by the single act of that appointment by the court without obtaining Letters of Administration. He is therefore in my view competent to challenge the authority of the 1st plaintiff in instituting this action by virtue of his office as administrator pendente lite of the Estate of Chief T. A. Odutola in whom all the personal Estates of the Deceased including the shares in the 1st plaintiff Company became vested on appointment, by the said Order of Ogun State High Court.”

After a careful perusal of the above quoted passage from the ruling of the trial court, it seems to me that the learned counsel for the appellants was right in his submission. There can be no doubt that the pronouncement of the learned trial Judge went beyond what is required of him, to rule on the application before him.

The court below did not fare any better. At page 325 of the Record, Aderemi JCA., said:

“With due respect, I cannot conceive any other force of law which is higher than that given by the court in the course of the appointment. That order of appointment made by the Chief Judge of Ogun State on the

1st of August, 1997 was made pursuant to the exercise of his judicial powers under the law. And until it is revoked, judicial notice of its sanctity must always be taken by court of law. To demand that the administrator should still obtain letter of administration after the order of 1/8/97 is to engage in the verification of what is obvious to the court. Let it be said that the law does not require that which is apparent to the court to be verified. It must be realized that the appointment of Kunle Ladejobi as an administrator pendente lite, is just to last the period the litigation would take”.

And continues at p. 326 as follows:-

“In the instant case, there has been a pronouncement against the Will. The order of appointment of an administrator pendente lite is a stop-gap to avoid wastage of the estate of the deceased. The order of the court dated 1/8/97 appointment (sic) Kunle Ladejobi is the totality of the force of law he would require to perform his duty under the law in relation to the estate. Flowing from all I have been saying, I proffer an answer in the affirmative to issue No. 1 on the cross-appellants’ brief. It is resolved against them (cross-appellants). I also answer issue No. 3 in the negative. The learned trial Judge did not err in finding that the 1st defendant/cross-respondent had the locus to challenge the authority for the commencement of this action in the name of the 1st plaintiff. And based on the judicial authorities that I have reviewed (supra) my answer to the only issue identified by the cross-respondents in their brief is that the duty of an administrator pendente lite commences from the date of the order of his appointment.”

It is manifest from the pronouncements of the courts below which I have referred to that they touched and resolved questions that are matters which are in dispute between the parties. In this regard, while the courts may consider that certain matters are not legally in dispute; yet it may not be proper to make definite statements thereon as if the parties have been heard fully on them. It is not in dispute that the application before the court is by its very nature an interlocutory one. Therefore it cannot be proper for the courts to have made pronouncements which would still have to be

considered and decided in relation to the dispute between the parties in the main suit that is still pending. I therefore hold that the courts below erred in making pronouncements upon matters in dispute. This court has held in its various judgments that it is wrong so to do. The pronouncements are therefore set aside. See *Orji v. B Zaria Industries Ltd.* (1992) (Pt. 216) 124 at 141; *University Press Ltd. v. Martins (Nig) Ltd.* (2000) 2 S.C. 125; (2000) 4 NWLR (Pt. 654) 584 at 595; *Bocon v. Kudu Holding Ltd.* (2000) 12 S.C. (Pt. 1) 136; (2000) 15 NWLR (Pt. 691) 493 at 506 to 509. Issue 1 is therefore resolved in C
favour of the appellants.

Now, the question raised by the appellants by issue 2 is, whether the institution of this action in the name of the 1st plaintiff company was authorized by the company. On this, learned counsel for the appellants referred to the approval given to the reasoning of the learned trial Judge D
which reads thus:-

“The learned trial Judge of the court below had correctly stated the principle of law when he said that an action cannot be maintained in the name of a company without the authority of that company relying on the decision in Sotuminu v. Steamship Nigeria Ltd. (1987) 4 NWLR (Pt.66) 691.” E

But rather than follow the observation properly made by the court below to the facts in the instant case, that court fell into error when it F
held that:-

“the action brought in the name of the 1st plaintiff/respondent was not authorized on behalf of the 1st plaintiff/respondent. It is therefore improper.” G

In coming to that conclusion, it is submitted for the appellants that the learned trial Judge was wrong to have placed reliance on Exhibit H as the authentic proof of authority.

However, it is argued for the appellants that if the court below had closely examined Exhibit H, that court would have discovered that Exhibit H shows: H

(a) that the authority contained therein was given because of some threats by the 1st defendant which was considered prejudicial to the

interest of the 1st plaintiff, and

(b) that Exhibit H gives the solicitors powers to bring actions generally against Mr. Kunle Ladejobi and any other persons to protect the interest of the 1st plaintiff.

B In support of his submission that the court below wrongly appraised Exhibit H, reference was made to the English case of *Daimler Co. Ltd. v. Continental Tyre & Rubber Co. Ltd.* (1916) 2 AC 307 at 327; *Macdougall v. Gaudiner* (1875) 1 Ch D 13 at 23. And also *Palmer's Company Law* 21 Ed. at p.109. Concluding his submission, learned counsel
C for the appellants invited the court to note that if the Court of Appeal had appreciated that the reliefs claimed inure for the benefit of the 1st appellant and that the authority (Exhibit H) given by the 2nd-7th appellants for the commencement of the action was given by them as directors in the
D control of the management of the 1st appellant and not as shareholders thereof, the court would not have described the action as a derivative action.

In any event, argues learned counsel for the appellants, that complaint of the appellants as formulated in the Writ of Summons and the Statement of Claim remains live issues which affect the rights of the shareholders. Until the issue whether the respondents had a right to do what they allegedly did on 12th September, 2000 is determined, the 2nd -
F 7th appellants remain the duly appointed and subsisting directors of the 1st appellant. And then submits that the decision of the Court of Appeal directing a meeting of shareholders amounts to a pre-determination of substantive questions before the Federal High Court or otherwise prejudicial to the merits of the substantive matter.

G For the respondents, the thrust of the contention made for them by their learned counsel is that the court below was right to have held that Exhibit H relied upon by the appellants as the authority to institute the main action did not give them any such authority. In the view of learned
H counsel, the court below was right when it made the finding that Exhibit H could not have been the authority to bring the substantive suit in the trial court in the name of the 1st appellant company. The main reason for this view appears to be that as Exhibit H was made on the 7th September,

2000, it could not have been the authority to sue for an act which the respondents did not do until 12th September, 2000. Therefore argues learned counsel, Exhibit H cannot be the authority to use the name of the 1st appellant company to file an action against other shareholders of the 1st appellant company.

It is manifest from the argument of counsel for the parties that in the resolution of this issue, it is necessary to consider Exhibit H and Section 63 of the Companies and Allied Matters Act. I will however set out first the said provisions of the said Act. It reads:-

“(i) A company shall act through its members in general meeting or its board of directors or through officers or agents, appointed by, or under authority derived from the members in general meeting or the board of directors.

(ii) Subject to the provisions of this Decree, the respective powers of the members in general meeting and the board of directors shall be determined by the company’s articles.

(iii) Except as otherwise provided in the company’s articles, the business of the company shall be managed by the board of directors who may exercise all such powers of the company as are not by this Decree or the articles required to be exercised by the members in general meeting.

(iv) Unless the articles shall otherwise provide, the board of directors when acting within the powers conferred upon them by this Decree or the articles, shall be bound to obey the directions or instructions of the members in general meeting: Provided that the directors acted in good faith and with due diligence.

(v) Notwithstanding the provisions of subsection (3) of this section, the members in general meeting may -

a) Act in any matter if the members of the board of directors are disqualified or are unable to act because of a deadlock on the board or otherwise.

b) Institute legal proceedings in the name and on behalf of the company if, the board of directors refuse or neglect to do so.

c) Ratify or confirm any action taken by the board of directors.

d) Make recommendations to the board of directors regarding ac-

tion to be taken by the board.

(vi) No alterations of the articles shall invalidate any prior act of the board of directors which would have been valid if that alteration had not been made.”

B Now, learned counsel for the respondents had argued that if the provisions of Section 63 of Companies and Allied Matters Act are read together, it would be clear that the said provisions enjoin the Directors to obey the directions or instructions of the shareholders in general meeting in the situation where a Board acts within the powers donated to it under
C Companies and Allied Matters Act or the Articles of Association. Therefore, argued learned counsel, in the absence of any contract to the contrary, the majority of the shareholders of a company have the ultimate control of its affairs and are entitled to decide whether or not an action in
D the name of the company shall proceed. In support of his submission, he cited *Pender v. Lushington* (1877) 6 Ch.D; *Harben v. Philips* (1882) 23 Ch.D 14; *Marshall’s Valve Gear Co. Ltd. v. Manning Wardle & Co. Ltd.* (1909) 1 Ch. 267.

E **It is undoubtedly good law that in order to interpret an Act and/or a section of an Act, it is necessary to read the entire provisions together in order to discover the intention of the legislator in enacting the said provisions of the Act or a section of it. But with**
F **due respect to learned counsel for the respondents, the question that falls for consideration here is, whether there is any power in Companies and Allied Matters Act that permits directors of a company to protect the interest of the company. The main contention made for the appellants is that the business of the 1st appellant/**
G **company would be adversely affected if action was not taken to protect the business of the 1st appellant company.**

It is my humble view that given the circumstances, Section 63(3) of the Companies and Allied Matters Act allows Directors of a
H company to authorize that action be taken to protect the business of the company. The plain reading of Section 63(3) of Companies and Allied Matters Act that except as otherwise provided in the company’s articles, the business of the company shall be managed

by the board of directors who may exercise all such powers of the company as are not by this Decree or the articles required to be exercised by the members in general meeting.

It is patent that throughout the proceedings in this court and the courts below, the respondents have not presented any evidence to show that the 1st appellant/company's article had provisions which prevent the Board of Directors from acting to protect the business of the company. Nor was there any evidence also that the members in general meeting have deprived the directors of the power to act as was done in the instant case to protect the business of the 1st appellant company.

It is also my view, that the burden lies on the respondents to present such evidence as would persuade the court that the appellants do not have the power they exercised under Section 63(3) of the Companies and Allied Matters Act. And as there is no evidence to that effect from them, they cannot invite the court to hold that the appellants as directors of the 1st appellant company had no right to act to protect the business of the company.

The appellants, on the other hand, rest their authority to take the action they took on Exhibit H which reads thus:

"ODUTOLA HOLDINGS LIMITED

RC. 24392

EXTRACT FROM THE MINUTES OF THE BOARD OF DIRECTORS' MEETING HELD AT ONIBUDO HOUSE, IJEBU-ODE ON THURSDAY, 7TH SEPTEMBER, 2000. AUTHORITY TO FILE FURTHER ACTION AS AND WHEN NECESSARY

Further to the resolution passed on 6th July, 2000, members were informed that an action has been filed at the Federal High Court, Lagos against Mr. Kunle Ladejobi, the administrator pendente lite appointed over the estate of Chief T. A. Odutola and that the solicitors have advised that a further resolution is necessary to authorize the filing of any further actions against Mr. Kunle Ladejobi and any other persons as may be necessary in view of the threat contained in the letter dated 1st September 2000 addressed to the company's Secretaries by the Solicitors to

Mr. Kunle Ladejobi, in order to protect the interests of the company. IT WAS RESOLVED: THAT the company's solicitors be and are hereby authorized to file any further actions as may be necessary against Mr. Kunle Ladejobi and any other persons in order to protect the interest of the Company.

FOR GENASEO NOMINEES LTD (CHAIRMAN)"

I have earlier in this judgment reviewed the argument of learned counsel for the respondents on why Exhibit H cannot be relied upon by the appellants to sustain their authority for instituting the action. With due respect to learned counsel for the respondents, it is my view that the argument proffered for the rejection of Exhibit H is specious to say the least. Exhibit H in my view sufficiently authorized the appellants to institute the main action against the respondents and I so hold.

In my humble view, I do not think that the case of *Sotiminu v. Ocean Steamship (Nig) Ltd. (1987) 4 NWLR (Pt. 66) 691* is not an authority for the proposition that an authority duly conveyed to a Solicitor by Directors of a company cannot be relied upon by the Solicitor to institute proceedings as in this case. There is no doubt from the facts presented in this case and as evidenced by Exhibit H that the 2nd-7th appellants duly were authorized to institute this action with themselves and the 1st appellant. For the above reasons, I will therefore resolve Issue 2 in favour of the appellants.

The next issue that deserves to be considered in this appeal is appellants' Issue 5. Here the appellants are asking whether the Court of Appeal did not err when it granted the alternative relief sought by the respondents. Earlier in this judgment, I have referred to the alternative relief sought by the respondents by their application made to the trial court. That alternative relief for ease of reference reads thus:-

"An order staying proceedings in this action and ordering a meeting of the shareholders of the Odutola Holdings Ltd, with a view to determining whether their directions or instructions as to whether the 1st plaintiff company should continue as a party to this suit."

That relief which was not considered by the trial court was granted by the court below. The appellants have in this appeal argued that the pronouncement of the court below was made erroneously. This view of the decision of the court below rests on the principle that where the court below had considered and pronounced upon the 1st relief, the court is precluded from considering and making any pronouncement on the alternative relief. I think that submission has merit. Moreso, where in the instant case, the trial court did not even consider the alternative relief and therefore there was nothing before the court below to be considered as an Appellate Court. It must be remembered that appeals must stem from the failure of the trial court to properly consider an issue before it or had erroneously reached a decision upon an issue that was argued before it. See Help (Nig.) Ltd. v. Silver Anchor (Nig.) Ltd. (2006) 2 S.C. (Pt. I) 19; Agidigbi v. Agidigbi (1996) 6 NWLR (Pt. 454) 300 at 313 G-H. It follows that the pronouncement made in the alternative relief in the circumstances was made in error. It is therefore set aside.

Having regard to what I have said above, Issues 1, 2 and 5 are resolved in favour of the appellants, this appeal therefore succeeds and the judgment of the court below is hereby reversed and set aside. The ruling of the trial court is upheld where the appellants were adjudged to have properly initiated this suit with the main action. This appeal having succeeded, the appellants are entitled to costs of N5,000.00 in respect of costs awarded against them in the court below and the sum of N10,000.00 in this court.

ONU JSC

Having been privileged to read before now the leading judgment just delivered by my learned brother, Ejiwunmi, JSC., I agree with his reasoning and conclusion that issues 2 and 5 therein be and are hereby resolved in favour of the appellants, judgment of the court below is hereby reversed and set aside. In effect, the ruling of the trial court wherein the appellants were adjudged to have properly instituted this suit with the

main action is upheld. This appeal having succeeded, I award similar costs, to wit: N5,000.00 and N10,000.00 costs against them in the court below and in this court respectively.

B

MUSDAPHER JSC

I have had the honour to read in advance, the judgment of my Lord, Ejiwunmi, JSC., just delivered with which I am entirely in agreement. In the aforesaid judgment, his Lordship has comprehensively and lucidly dealt with the issues submitted to this court for the determination of the appeal. With respect, I adopt the reasoning as mine. I accordingly, also allow the appeal and set aside the decision of the court below. The ruling of the trial court is upheld, the appellants had properly initiated this suit with the substantive action. I abide by the order for costs proposed in the aforesaid judgment.

D

ONNOGHEN JSC

E In the Writ of Summons and Statement of Claim in Suit No. FHC/L/CS/992/2000, appellants claimed against the respondents the following reliefs:-

“(i) A declaration that the purported meeting of shareholders of the 1st plaintiff company held on 12th September, 2000 is illegal, null and void having been convened contrary to the provisions of the Articles of Association of the 1st plaintiff Company and the provisions of the Companies and Allied Matters Act, 1999, concerning the convening of general meetings.

F

G (ii) A declaration that the purported removal of the 2nd-7th plaintiffs as directors of the 1st plaintiff company and the purported appointment of the 1st-10th defendants as directors of the 1st plaintiff company by a resolution allegedly passed at the purported meeting of shareholders of the 1st plaintiff company held on 12th September, 2000 is illegal, null and void being contrary to the provisions of Article 36 of the Articles of Association of the 1st plaintiff company.

H

(iii) A declaration that the purported removal of the 2nd-7th plain-

tiffs as directors of the 1st plaintiff company and the purported appointment of the 1st-10th defendants as directors of the 1st plaintiff company by a resolution allegedly passed at the purported meeting of shareholders of the 1st plaintiff company held on 12th September, 2000 is illegal null and void being contrary to the provisions of Section 262 of the Companies and Allied Matters Act 1990. B

(iv) A declaration that the 1st defendant has no locus or authority to exercise any power as an administrator pendente lite over the shares in the capital of the 1st plaintiff company which form part of the estate of the late Chief T. A. Odutola, without first obtaining a grant of letters of administration from the Ogun State High Court pursuant to the order appointing him. C

(v) A declaration that the 4th defendant is not a shareholder of the 1st plaintiff company. D

(vi) An order of interlocutory injunction to restrain the 1st to 10th defendants whether by themselves, their servants and agents or otherwise howsoever from acting as directors of the 1st plaintiff company and to restrain all the defendants whether by themselves, their servants and agents or otherwise howsoever from holding the 1st-10th defendants out as directors of the 1st plaintiff company pending the final determination of the suit. E

(vii) An order of mandatory injunction directing the 16th defendant to remove or cancel from the 1st plaintiff company's file held at the Corporate Affairs Commission in Abuja all documents reflecting the purported removal of the 2nd to 7th plaintiffs as directors of the 1st plaintiff company and the purported appointment of the 1st to 10th defendants as directors of the 1st plaintiff company." F G

Following the service of the processes on them, the 1st-6th, 8th-11th and 13th-15th defendants through their counsel, filed a motion on notice on 27th October, 2000, praying the trial court for the following:

"(i) An order striking out the name of the 1st plaintiff herein as a party to this action. H

ALTERNATIVELY

(ii) An order staying proceedings in this action and ordering a

meeting of the shareholders of the Odutola Holdings Limited with a view to determining their directors on instructions as to whether the 1st plaintiff company should continue as a party to this suit.”

It is the ruling of the trial court on the above motion that resulted
B in the appeal to the Court of Appeal and the further appeal to this court
now subject of this judgment. Apart from the action resulting in the inter-
locutory application originating this appeal, there are various other suits
some of which were still pending in either the Federal High Court or State
C High Court touching and concerning some aspects of the relationship
between the parties to this appeal, which suits have served to influence,
if confuse, the main issue for determination arising from the interlocu-
tory application. The resultant confusion has led the lower courts to wander
away from the substantive matter before them or to deal with issues in
D controversy between the parties in the substantive suits while dealing
with the interlocutory matter before them. The same attempt has been
made by counsel before this court.

It is important to note that the appellants in their counter affidavit
E to the interlocutory application of the respondents challenged the compe-
tence and locus of the defendants to bring the application on the ground
that though the 1st defendant was appointed as administrator pendente
lite of the estate of late Chief T. A. Odutola by an order of the Ogun State
F High Court, he could not act in that capacity or exercise the rights of
administrator until he had obtained a grant of the letters of administration,
and that he could not act in the capacity of administrator pendente lite, in
view of the pending application for injunction to restrain him from so
acting which were pending before the Ogun State High Court and the
G Federal High Court, Lagos. This complaint is the same with relief (iv) on
the substantive action before the trial court, (supra).

The Federal High Court in its ruling delivered on 29th January,
2001 dismissed the application of the respondents after finding that there
H was indisputable evidence that the commencement of the action was
authorized by the 1st appellant as evidenced in Exhibit H, the resolution
of the Board of Directors of the 1st appellant, and refused the alternative
prayer on the motion papers. However, due to the challenge to the locus

standi of the 1st defendant, the trial Judge made a finding that all the estate of late Chief T. A. Odutola became vested in the 1st respondent upon his appointment as administrator pendente lite without any need for him to obtain Letters of Administration, and that 1st respondent has competence to challenge the commencement of the action in the name of 1st appellant. B

The respondents were dissatisfied with that ruling and appealed while the appellant cross-appealed against the portion of the ruling holding 1st respondent competent to challenge the institution of the action. C On the 16th day of July, 2001, the Court of Appeal allowed the appeal of the respondents and dismissed the cross-appeal of the appellants. In allowing the appeal, the Court of Appeal held that the commencement of the action in the name of the 1st appellant was not authorized by the 1st appellant and was therefore not proper, and went further to grant the D alternative prayer on the motion papers by making an order that a meeting of the 1st appellant should be held for the purpose of determining its directions or instructions as to whether the 1st appellant should continue as a party to the suit. As regards the cross appeal, the Court of Appeal E agreed that the trial court erred in determining at an interlocutory stage, a matter to be determined in the substantive action and which was pending but ended up by committing the same error by pronouncing on the competence of 1st respondent to perform duties as an administrator pendente F lite without first obtaining Letters of Administration.

In the appellants' brief of argument filed in this court by Bandele A, Aiku SAN., and adopted in argument of the appeal, learned counsel has formulated six issues for determination. These are as follows:-

"(1) Whether the Court of Appeal did not err when it made pronouncements or decision at an interlocutory stage on issues on the substantive case as to whether the 1st defendant has the competence to deal with the estate of late Chief T. A. Odutola without first obtaining the grant of letters of administration and when it placed reliance on the H disputed Form C07 filed by the defendants at the Corporate Affairs Commission Abuja, as evidence of the competence or locus of the 2nd-13th defendants.

(2) *Whether the institution of this action in the name of the 1st plaintiff company was authorized by the company.*

(3) *Whether the Court of Appeal did not misinterpret and misapply the provisions of Section 63 of the Companies and Allied Matters Act, 1990 when it decided that sub-section 63(5)(b) gives the General Meeting exclusive control over the issue - whether to institute legal proceedings in the name of the company.*

(4) *Whether the Court of Appeal did not err when it found that the 1st-13th defendants had the locus to challenge the commencement of this action in the name of the 1st plaintiff company.*

(5) *Whether the Court of Appeal did not err when it granted, without qualification, the alternative relief sought by the respondents, by ordering that a general meeting of the 1st plaintiff be held for the purpose of determining its directions or instructions as to whether the 1st plaintiff company should continue as a party to the suit.*

(6) *Whether the Court of Appeal was right in failing to strike out the only issue identified by the defendants/cross respondents, which does not arise from the ground of appeal formulated by the plaintiffs/cross appellants."*

On the other hand, learned counsel for the respondents Chief M. O. Ayorinde in the respondents' brief of argument filed on the 16/2/04 has identified two issues for determination. These are:

"(i) *Whether the lower court was right in holding that the substantive suit in the trial court was improperly commenced in the name of the 1st respondent company and therefore, a meeting of the shareholders of the 1st respondent company should be held to decide whether the 1st respondent company should continue as a part to that substantive suit. This issue relates to Grounds 1, 2, 3, 4, 5, 6, 8 and 9.*

(ii) *Whether the lower court made any pronouncements which touch on the substantive issues before the trial court and therefore warrant a setting aside of the judgment of the Court of Appeal. This issue relates to Grounds 7 and 10."*

Looking at the grounds of appeal in relation to the decision appealed against, I hold the view that the two issues formulated by learned

counsel for the respondents best represent the issues for determination in this appeal and that they are the same with appellants' issues 1 and 2. However, in addition to the above issues, appellant's issue 5 is also relevant and necessary. Therefore, for the purposes of determining this appeal, the relevant issues are appellants' issues 1, 2 and 5. This is necessary so as not to fall into the traps which the trial and lower courts fell into. One of the traps is hidden in appellants' issue No. 4, the very issue that was raised by the appellants before the trial court and was decided against them and which they later accused that court of deciding in error the same being an issue in the substantive case. It is that same issue which the Court of Appeal also decided which forms part of the present appeal. It appears learned counsel for the appellants while arguing against the court deciding a substantial issue at interlocutory stage, is urging the court at the same time to do the same.

On issue 1, it is very clear that relief (iv) in the suit challenges the locus or authority of the 1st respondent to exercise any power as an administrator pendente lite over the shares and or estate of late Chief T. A. Odutola. As has earlier been noted in this judgment, learned counsel for the appellants invited the attention of the trial court to that issue when he presented argument thereon based on the counter affidavit resulting in the trial court finding, at page 236 as follows:-

"The 1st defendant remains the personal representative of the deceased and that all the personal estate of Chief T. A. Odutola including his shares in the plaintiff company became vested in the 1st defendant from the date of the order appointing him as administrator pendente lite by the single act of that appointment by the court without obtaining letters of administration."

The above finding and holding by the trial Judge was in error because it is settled law that it is the duty of the trial court, or all courts for that matter, when dealing with interlocutory matters, to avoid making statements giving the impression that it has made up its mind on the substantive issue before it - See Orji v. Zaria Industries Ltd. (1992) NWLR (pt. 215) 124. The principle applies even if it was appellants' counsel as in this case, who introduced the argument on the issue in question.

Looking at the decision of the Court of Appeal, it is obvious that court did not fare better on the matter when at pages 325-326 it held as follows:-

“That order of appointment made by the Chief Judge of Ogun State on the 1st August 1997 was made pursuant to the exercise of his judicial powers under the Law. And until it is revoked, judicial notice of its sanctity must always be taken by court of law. To demand that the administrator should still obtain Letters of Administration after the order of 1/8/97 is to engage in the verification of what is obvious to the court. Let it be said that the law does not require that which is apparent to the court to be verified. It must be realized that the appointment of Kunle Ladejobi as administrator pendente lite is just to last the period the litigation would take. And whatever the Administrator pendente lite (Kunle Ladejobi) does with this estate of the deceased for as long as litigation lasts, is done under the cover of law. It is in this respect that I do agree with the reasoning of the cross-respondent that by virtue of Section 27 of the Administration of Estate Law of Ogun State and under Order 40 of Ogun State High Court Rules, the property of the deceased became vested in the 1st defendant/appellant/cross-respondent following the order made by the Chief Judge of Ogun State on the 1st August, 1997 The order of the court dated 1/8/97 appointing Kunle Ladejobi is the totality of the force of Law he would require to perform his duty under the Law in relation to the estate.”

The above decision is all the more unfortunate because at page 324, the same court had held that the decision of the trial court on the issue was prejudicial to the issue in the substantive action. The court held, inter alia, as follows:-

“I agree with the reasoning of cross appellants, that in law, a court must refrain from making any pronouncement on the substratum of the main reliefs in the suit when determining an interlocutory application..... when the court below, in its ruling, said it was making a pronouncement which was prejudicial to the main issue in the proceedings. Issue No. 2 on the cross-appellants’ brief must and it is hereby resolved in favour of the cross appellants.”

The Court of Appeal in this case approbated and reprobated all at the same time which the law also frowns upon.

That apart, the Court of Appeal also made pronouncements on other issues in the substantive action unrelated to the interlocutory application ruled upon by the trial court. The issues have to do with the appointment of 1st- 10th defendants as directors of the 1st plaintiff and Form CO7 in relation to reliefs (ii), (iii) and (vii) claimed in the action and reproduced (supra). The Court of Appeal made the following pronouncement at page 304:

“The learned trial Judge had in his ruling said that there was no evidence before him that supported the existence of locus by which the defendants could challenge the institution of the action. But Exhibit 001B, Form CO7 attached to the application (see pp. 20-33 of the record) brought by the plaintiffs on 10th October, 2000 shows that the 2nd-13th defendants (majority of them are the appellants) as directors of the company.”

This court has held times without number that courts should desist from making positive pronouncements on substantive matters pending before them while dealing with interlocutory application as the practice prejudices the real matter in controversy between the parties; See *University Press Ltd. v. Martins (Nig) Ltd.* (2000) 2 S.C. 125; (2000) 4 NWLR (Pt. 654) 584 at 593 per Achike JSC, (as he then was); *Biocon v. Kudu Holding Ltd.* (2000) 12 S.C (Pt. 1) 139; (2000) 15 NWLR (Pt. 691) 493 at 509.

On issue 2 which is simply whether the institution of the action was authorized by the 1st appellant company both parties agree that an action of this nature cannot be commenced in the name of a company without its authority. That is also the position of the law. The Court of Appeal however in reversing the decision of the trial Judge held that:

“The action brought in the name of the 1st plaintiff/respondent was not authorized on behalf of the 1st plaintiff/respondent. It is therefore improper.”

Looking closely at Exhibit H, it is clear that it contains authority from the directors of 1st appellant to the solicitors of the company to institute actions following some threats by the 1st respondent which the

said directors considered prejudicial to the interest of the 1st appellant. There is no disputing the fact that at the time Exhibit H was issued, the 2nd to 7th appellants were directors of the 1st appellant and by virtue of that office had the authority to so act on behalf of 1st appellant. I therefore hold the view that the Court of Appeal had no valid reason in setting aside the ruling of the trial court on the issue, which ruling is hereby restored and affirmed.

On issue No. 5 which is regarded in this judgment as the third and final issue for determination, it is clear from the prayers on the motion papers, which had earlier been reproduced in this judgment, that they were in the alternative. In other words, the court was called upon to grant either of the two prayers not both. Looking at the record, the trial Judge granted the main prayer, leaving out the alternative.

In dealing with the appeal, the Court of Appeal held at page 319 that the action which was brought in the name of the 1st appellant was not authorized on behalf of the 1st appellant and therefore improper. At that stage, that court ought to have gone ahead to strike out the name of the 1st appellant from the suit but it did not, rather, the court went on, at Page 327, to hold thus:

“An order striking out the name of the 1st plaintiff would preempt the outcome of the meeting of the shareholders. It is therefore premature to make that order. It is hereby ordered that a meeting of the shareholders of the 1st plaintiff company should be held to determine whether or not the 1st plaintiff should continue as a party in the suit. The court below is ordered to give necessary directive as to the conduct by the meeting of the shareholders.”

It is very clear that the Court of Appeal granted the two prayers as if they were main prayers when they were in fact, prayed for in the alternative, and either of them ought to have been validly granted. That apart, the court having held earlier that the action was not authorized, there was thus no basis for a consideration of the alternative prayer of holding a general meeting of the 1st appellant. It is settled law that once the main claim or relief succeeds, there is no need to consider or grant an alternative relief -See Agidigbi v. Agidigbi (1996) 6 NWLR (Pt. 454) 300

at 313.

In conclusion, I agree with the reasoning and conclusion of my learned brother, Ejiwunmi, JSC., in the lead judgment that the appeal has merit and should be allowed. I order accordingly and abide by all consequential orders contained in the said lead Judgment including the order as to costs. B

Appeal allowed.

OGBUAGU JSC

C

I have had the privilege of reading before now, the lead Judgment of my learned brother, Ejiwunmi, JSC., just delivered by him. I entirely agree with his reasoning and conclusion that the appeal has merit and succeeds. However, for purposes of emphasis, I will make my own contribution. D

The appellants as plaintiffs, sued the respondents, at the Federal High Court, Lagos, seeking some declaratory reliefs, and orders for Interlocutory and Mandatory Injunctions. Upon the service of the Writ of Summons and the Statement of Claim on them, the defendant/respondents, after entering a Conditional Appearance, filed, on 25th October, 2000, an application, seeking the following reliefs: E

“i. An order striking out the name of the 1st plaintiff herein as a party to the action”. F

ALTERNATIVELY

ii. An order staying proceedings in this action and ordering of meeting of the Shareholders of the Odutola Holdings Limited with a view to determining their directions or instructions as to whether the 1st plaintiff company should continue as a party in this suit”. G

The ground for the said application, is stated to be that the “suit, was filed without the authority of the 1st plaintiff to bring same in its name, or its behalf. The learned trial Judge, Sanyaolu J, in a considered H ruling on 29th January, 2001, dismissed the respondents’ said application.

Aggrieved by the said decision, the respondents, appealed to the

Court of Appeal, Lagos Division (hereinafter called “the court below”). Briefs were filed and exchanged by the parties. On 1st July, 2004, in a considered judgment, the court below, unanimously allowed the appeal, set aside the order made by the trial court and ordered that a meeting of
B the 1st plaintiff/respondent company, “should be held to determine whether or not the 1st plaintiff should continue as a party in the suit”.

C The plaintiffs/appellants being dissatisfied with the said decision, have now appealed to this court in their Notice of Appeal filed on 23rd January, 2002. The said Notice was later amended with the leave of this court on 26th May, 2003. The Amended Notice of Appeal, was filed on
C 2nd June, 2003.

D While the appellants have formulated six (6) issues for determination, the respondents, formulated two (2) issues for determination. On 7th March, 2006, when this appeal came up for hearing, Dr. Ajibade, learned counsel for the appellants, adopted their Brief of Argument and in amplification, made some oral submissions before he urged the court to allow the appeal.

E Mr. Oguntade, learned counsel for the respondents, relied entirely on the arguments in their Brief of Argument. He also made some oral submissions by way of amplification. When he stated that finally, he would add that the order of the court below that a meeting of the 1st
F plaintiff company should be held, was a consequential order, I noted in my Record Book thus;

“This is running away from his earlier agreement that the Court of Appeal was wrong in ordering a meeting”.

G I then posed for myself and for my later consideration, the question:

*“What was their (meaning the court below) business?” I then stated in my Record Book “That was an alternative prayer. The only issue before the court, was whether or not Exhibit “H” authorized the
H holding of the meeting”.*

Oguntade, continuing in his oral submission, then at that stage, stated that Exhibit “H” is still the question. He urged the court, to dismiss the appeal.

In order to appreciate my conclusion in this Judgment, I will state briefly, what I humbly consider to be the background facts in this matter leading to this appeal. They are as follows:

1. I note that in the Judgment of the Ogun State High Court of 24th May, 2000, while pronouncing against the Will and Codicil of late Chief T. A. Odutola, revoked the Probate granted in favour of the Executors of the said Will. I also note that the appeal of the said Executors, is still pending in the Court of Appeal.

2. I also note that in the trial court, that High Court, upon the application of the plaintiffs therein, in its Ruling of 1st August, 1997, appointed the 1st defendant/respondent (who is an Accountant but who is not a member of Chief Odutola's family) as an Administrator Pendente Lite, to the estate of Chief Odutola. See pages 86-87 of the Records.

3. I also note that the Executors of the said Will, appealed against the said order appointing the 1st defendant/respondent as the Administrator. They later filed an application for stay of the said order of the trial High Court. An objection was taken as to the competency of the appeal (i.e. as to the prior leave of the court not having been sought and obtained and that the 1st defendant/respondent, was not joined or made a party in the process). The Objection was upheld/sustained and so, the said application was dismissed.

4. The said Executors, on discovering the relationship between the plaintiffs and the Administrator - 1st defendant/respondent and on the ground of the "likelihood of bias", instituted an action in the Ogun State High Court in the Abeokuta Judicial Division in Suit No. AB/148/99 - Prof. Akin Mabogunje & Ors. v. Adetola Adewunmi & Ors. seeking an order setting aside, the said appointment of the 1st defendant/respondent. They also filed a motion for an order of Interlocutory Injunction to restrain the 1st defendant/respondent, from acting in that office. I note that all the respondents in that suit, joined issues with the said Executors. Both the suit and the said motion, are still pending at the Abeokuta High Court.

5. I note that despite the pendency of the said suit aforementioned, the 1st defendant/respondent, has, according to the said Executor:

“(a) persistently harassed the management of the 1st appellant by letters and press publications. See pages 150 to 153 of the Records.

(b) The 1st defendant/respondent claims that he was entitled to 55% of the Share Capital of the 1st Appellant Company. See pages 63 B and 64 of the Records.

(c) The 1st defendant/respondent, has challenged the appointment of the 2nd plaintiff/appellant as Chairman of the 1st appellant.

Comment:- Well, in view of the said Revocation of the said Will.

(d) That 1st defendant/respondent, has called a meeting or that he C is demanding a meeting to be convened of the shareholders for the purpose of reconstituting the Board of Directors”

6. I note that at page 65 of the Records, the 1st defendant/respondent, has filed a motion for an order of the court authorizing the D convening of the general meeting of the shareholders. I note that as a result of the activities of the 1st defendant/respondent, the 1st plaintiff/appellant, commenced before the Federal High Court, Lagos, Suit No. FHC/L/CS/697/2000 - Odutola Holdings Ltd. v. Kunle Ladejobi, seeking E for the following reliefs:

“(a) A declaration that the 1st defendant was not entitled to exercise the voting rights attached to 55% of its shareholding.

(b) (An Ex-Parte and a Motion on Notice), Injunction restraining F the 1st defendant from claiming to be so entitled and from interfering or intermeddling in the Chief Odutola Company - 1st plaintiff’s business”.

I note that the 1st defendant/respondent, has joined issues in the above-named suit. The said Suit and motion, are still pending in that court. See pages 56 to 57 of the Records.

G 7. It is also noted by me that in spite of the pendency of the above suit, the 1st defendant/respondent, has written to the 1st plaintiffs/appellants Secretaries, demanding that his directives, be complied with and has issued non-specific threats of the consequences of non-compliance. H Consequent upon these, a meeting of the 1st plaintiff/appellant Board of Directors, was convened on the 7th September, 2000, at which a resolution was passed, authorizing the Company’s Solicitors, to file further actions against the 1st defendant/respondent and any other persons as

may be necessary, to protect the interest of the Company in view of the threats of the 1st defendant/respondent. See page 190 of the Records.

8. This appears to me, to be the situation as at 12th September, 2000, when the present defendants on record, held a general meeting of the Company at which the 2nd to 7th plaintiffs/appellants, were removed B as Directors and some of the defendants/respondents, were appointed in their stead. See pages 18, 24 to 25 of the Records. I note that at the said page 25, the 1st defendant/respondent, has been allotted 39.5% shares.

9. The appellants have instituted an action in the Federal High Court, Lagos in Suit No. FHC/L/CS/723/98, in which the 1st plaintiff/appellant, C is now the 17th defendant in the said suit. See pages 65 to 72. On 24th March, 1999, the said Federal High Court, in its Ruling, ordered the status quo ante litem in relation to or concerning the composition of the Board of the Company, to be maintained. In the words of the learned trial D Judge at page 78 of the Records:

"I hereby extend the interim order of the court made on the 20th day of July, 1998 to the effect that the status quo ante litem be maintained by the parties to the present suit until the hearing and determination of the substantive suit" (the underlining mine) E

See pages 73 at 77-78 of the Record.

It is noted by me, that the said order subsists. So that the said general meeting and removal of the plaintiffs and appointment of new F Board members on 12th September, 2000, appears to me, were in contempt of the said Federal High Court. I also note, that the said order of that court, has not been challenged in any appeal as borne out by the Records before this court. It is noted by me, that the 1st defendant/ G respondent, is a party to the two suits i.e. AB/148/99 and FHC/L/CS/697/ 2000 that are still pending.

10. On 19th October, 2000 - the plaintiffs/appellants, sued the defendants/respondents in the same Federal High Court, Lagos in Suit No. FHC/L/CS/992/2000. I see at page 79 of the Records, that the 1st H defendant/respondent, caused a conditional appearance to be entered for him. The ground for the said suit, is that they, the plaintiffs, had no notice of the general meeting and that the convening of the said meeting, was

contrary to the Articles of Association of the Company and the relevant provisions of the Companies & Allied Matters Act, 1990.

In the above-named suit, the 1st to 6th, 8th-11th and 13th to 15th defendants/respondent/appellants, filed a motion on 27th October, 2000
B for

“(i) An Order striking out the name of the 1st plaintiff as a party to this claim.

ALTERNATIVELY

C *“(ii) An Order staying proceedings in this action and ordering a meeting of the Shareholders of the Odutola Holdings Limited with a view to determining their directions or instructions as to whether the 1st plaintiff Company should continue as a party to this suit”.*

D In his ruling at pages 228 to 237 of the Records, the learned trial Judge, Sanyaolu, J., referred to Exhibit “H” and to paragraph 16 of the counter-affidavit at page 140 of the Records where it was averred as follows:

“That the Board of Directors of the 1st plaintiff company duly
E authorized the commencement of this action in the name of the company by the company Solicitors. A copy of the resolution in respect thereof is attached hereto marked Exhibit H”.

He concluded thus:

F *“It is therefore the conclusion of this court that once a court finds as in the present case that the authority exists in the Form of a Board Resolution as in Exhibit H (sic), the application challenging the authority must fail. In the circumstances therefore, I hold that this application fails and is accordingly dismissed”.*

G 11. It is also noted by me that the 1st defendant/ respondent, appealed against the said Ruling of Sanyaolu, J, while the appellants, cross-appealed in respect of the second arm of the said ruling to the effect, that all the estate of late Chief Odutola, became vested in the 1st defendant/
H respondent upon his appointment as the Administrator. Therefore, that he had the locus standi and competence to challenge the commencement of the action in the name of the Company. See pages 238 to 241; 251 to 253 and the Brief of the Appellants at pages 254 to 291 of the Records.

12. The court below, in its Judgment on 16th July, 2001, allowed the appeal of the 1st defendant, set aside the said decision of Sanyaolu, J and dismissed the Cross-Appeal. It held that the commencement of the action by the plaintiffs/appellants, was not authorized by the Company and therefore, improper. I note that despite the findings of the court below, yet, it proceeded to grant the alternative prayer which is the subject-matter of the instant appeal. B

I will pause here to state that the court below, having granted the first prayer in the said application of the 1st defendant/respondent afore-reproduced by me in this Judgment, - i.e. to strike out the name of the Company from the said suit on the ground that it was not authorized by the Company, to commence the suit, that should have been the end of the matter before it. I say so respectfully, because and this is also settled, that the duty of the court where a claim or relief is in the alternative, the court, should first consider whether the principal or main claim or relief, ought to have succeeded. It is only after the court may have found that it could not for any reason, grant the principal claim or relief, that it would only consider the alternative claim or relief. See *Merchantile Bank of Nig. Ltd. v. Adalma Tanker & Bunkering Services Ltd.* (1990) 5 NWLR (Pt. 153) 747. I note however, and remarkably, that the learned trial Judge, later, refused to strike out the suit or action. D E

In respect of the Cross-Appeal, the court below, held that whatever the Administrator Pendente lite i.e. the 1st defendant/respondent, does with the estate of the deceased, that as long as litigation lasts, it is done under the law. It agreed with the reasoning of the cross-respondent that by virtue of Section 27 of the Administration of Estates Law of Ogun State and Order 49 of the Ogun State High Court Rules, that the property of the deceased, became vested in the 1st defendant/respondent following the order made by the Chief Judge of Ogun State High Court on 1st August, 1997. It referred to and relied on the cases of *Taylor v. Taylor* (1881) 6 L.R.P.D. 29 and the Indian case of *Promila Bola Debi v. Tyotindra Nath Berneji & Ors.* (1924) A.I.R. (Calcutta spelt as Calarita) 631. It reproduced the head notes in Taylor's case and the observation of the court in *Debi v. Berneji* (supra). See page 326 of the Records. F G H

The court below at page 327 of the Records, stated, inter alia, as follows:

“..... *An order striking out the name of the 1st plaintiff would pre-empt the out-come of the meeting of the shareholders. It is therefore premature to make the order.*”

This latest order, with respect, appears contradictory, having earlier, granted the first or No. (1) prayer/relief. This may have been the reason for the said order that is the subject-matter of this appeal - i.e. that a meeting of the shareholders of the Company should be held to determine whether or not the Company should continue as a party in the suit.

I have taken pains to go this far, because, in my respectful view, the foregoing, will give a fairly true picture of what had transpired in respect of the controversy arising from the said Estate of late Chief T. A. Odutola and his said Will and Codicil. In my humble but firm view, the complaint of the appellants, is the said order of the court below, refusing later, the No. 1 prayer of the 1st defendant/respondent. I make haste to state that in my respectful view, this said order, does not arise in the instant appeal. What is relevant and the paramount issue in this appeal, is the said order in respect of the alternative prayer.

Now, in view of the finding of the court below (though uncalled for at that stage), that there was no need for the 1st defendant/respondent to obtain Letters of Administration in respect of the Estate of the deceased Chief T. A. Odutola, it should have not even struck out the name of the 1st plaintiff/appellant - i.e. the Company. This is because, with profound humility, having regard to the subsisting order of the Federal High Court of 24th March, 1999 of allowing or extending the order of 1st July, 1998 that the status quo ante litem is to be maintained by the parties to the said suit pending the determination of the substantive suit.

What I find quite worrisome and some how odd to me, is that the trial court in the Ruling, had held that as the date it gave its said ruling, the 1st defendant/respondent, remains the personal representative of the Deceased and that all the personal Estate of Chief T. A. Odutola including his shares, in the 1st plaintiff's Company, became vested in the 1st defendant/respondent from the date of the order of court appointing him as

an administrator pendente lite, by the single act of that appointment by the court without obtaining Letters of Administration. Therefore, that he is competent to challenge the authority of the 1st plaintiff in instituting this action by virtue of his office as administrator pendente lite.

I note that in relief (iv) of paragraph 32 of the Statement of Claim, B the plaintiffs/appellants claimed for a declaration that the 1st defendant/respondent has no locus or authority to exercise any power as an administrator pendente lite over the shares in the capital of the 1st plaintiff company which form part of the estate of late Chief T. A. Odutola without first obtaining a grant of Letters of Administration. From the above C holding of the trial court, it is beyond doubt in my humble but firm view, that it had pronounced at that interlocutory stage, the very issue yet to be determined in the substantive suit.

I note also that the court below, with respect, in its contradictory D finding and holding in respect of this issue, in one breath at page 324 of the Records, had this to say, inter alia:

“..... I agree with the reasoning of cross-appellants, that in law, a court must refrain from making any pronouncement on the substratum of the main reliefs in the suit when determining an interlocutory application.....” (the underlining mine) E

It referred in support of this proposition to the case of Ideh v. God bless (1991) NWLR (Pt. 188) 699. It referred to the said ruling or holding F of the trial court referred to by me hereinabove and stated that the trial court, by so holding, “it was making a pronouncement which was prejudicial to the main issue in the proceedings”. It therefore, resolved Issue No. 2 in the said Cross-Appellants’ Brief in their favour.

However, in another breath and very surprisingly and remarkably, G while considering Issues Nos. 1 and 3 of the Cross-Appellants in their Brief which related to their contention that without a grant of Letters of Administration to the 1st defendant/respondent, the properties of late Chief T. A. Odutola, could not lawfully vest in the duties of an Administrator H Pendente defendant/respondent, the court below delved into the matter most extensively at pages 325 to 326 and made, with profound respect, a “somersault” or “U-turn” so to say, and “landed”, by stating inter alia,

as follows at page 325:

“..... To demand that the administrator should obtain letters of administration after the order of 1/8/97 is to engage in the verification of what is obvious to the court. Let it be said that the law does not require that which is apparent to the court to be verified. It must be realized that the appointment of Kunle Ladejobi, as an administrator pendente lite, is just to last the period the litigation would take. And whatever the administrator pendente lite (Kunle Ladejobi) does with the estate of the deceased for as long as litigation lasts, is done under the cover of law. It is in this respect that I do agree with the reasoning of the cross-respondents that by virtue of Section 37 of the Administration of Estates Law of Ogun State and Order 49 of Ogun State High Court Rules, the property of the deceased became vested in the 1st defendant/appellant/cross-respondent following the order made by the Chief Judge of Ogun State on 1st August, 1997.....”. (the underlining mine)

It can be seen from the above, that the court below, with respect, fell into the same error in respect of which it had faulted the said pronouncement or holding by the trial court. It cannot be overemphasized and this has been stated and restated by way of an advise in a line of decided authorities as stated by the court below hereinabove, that it is now firmly settled, that care should be taken when a court is hearing an interlocutory application, to avoid making any observation, comment or pronouncement in its ruling on that application, which may appear to prejudge the main issue in the proceedings relative to the interlocutory application. See *Mortune v. Alhaji M. Gambo* (1979) 3-4 S.C. (Reprint) 36; (1979) 3-4 S.C. 54 at 56 cited in the case of *Omonuwa v. Attorney-General, Bendel State* (1983) 4 NCLR 237; *Globe Fishing Industries Ltd. & 4 Ors. v. Chief Coker* (1990) 11-12 S.C. 80; (1990) 7 NWLR (Pt. 162) 265; (1990) 11 SCNJ. 56 at 63, 71, 85 - 86; *Chief Akapo v. Alhaji Hakeem-Habeeb & 16 Ors.* (1992) 7 SCNJ. 119; (1997) 6 NWLR (Pt. 247) 266; *Ojukwu v. Governor of Lagos State* (1986) 3 NWLR (Pt. 26) 35 at 45 - per Nnaemeka-Agu, JSC., and *Elufioye & 9 Ors. v. Halilu & 17 Ors.* (1993) 6 NWLR (Pt. 301) 570; (1993) 7 SCNJ. (Pt. II) 347 at 368 per Omo, JSC., just to mention but a few.

On the said authorities, my answer to Issue No. 1 of the appellants which is couched in the negative, is that the court below erred in making the said pronouncements in respect of the interlocutory application.

Finally, and in concluding this Judgment, I have a “hunch”, and I agree with the learned counsel for the appellants, that in the scenario or circumstances as things stand now, there is the possibility (which may be real), that if the 1st defendant/respondent, is given an unrestricted opportunity, he is likely to exercise the voting rights attached to the 39.5% shareholding of late Chief T. A. Odutola which has been allotted to him, purportedly by the said new Board of Directors. In this wise, such exercise, may be in a manner he would irreversibly, alter the said status quo ante litem ordered by the trial court, before the determination of the said substantive suit now pending at the said Federal High Court, Lagos, the consequence of which, I am unable to speculate in this Judgment. The court below has held that the duties of the Administrator i.e. the 1st defendant/respondent, commences from the date of his appointment and continues as long as litigation lasts. Well, I suppose that the longer the litigation, the better for the 1st defendant/respondent. This is perhaps, why it is submitted at page 14 in the brief of the 1st to 13th respondents and rightly too, that a decision of a competent court of Law, is binding and takes immediate effect until set aside. I say no more on this matter.

It is from the foregoing and the more detailed lead judgment of my learned brother, Ejiwunmi, JSC, that I too allow the appeal as being meritorious. I too, hereby, set aside the said order of the court below in respect of the said alternative prayer.

I abide by the consequential orders made in the lead judgment in respect of costs.