

entitles defendant to avoid the policy (H5)

APPEALS - Issues - Competence - Respondent's issues - That are not related to the ground of appeal - Will be struck out as incompetent (H6)

CONTRACTS - Interpretation - Cross appeal - Clause 8(c) of the contract being very clear - Court of Appeal erred in making a finding - That will alter the meaning of that clause (H7)

FACTS

Before the Lagos High Court, plaintiff/appellant filed an action against the defendant/respondent. Appellant claimed the sum of over N3 Million plus interest based on the fire insurance policy between the parties upon the occurrence of a fire accident that completely destroyed the insured goods in the night of 10-1-1993. The parties entered into the contract on 8-10-1992. The goods were tyres of various sizes contained in appellant's shop situate at No, 32 Enu-Owa Street Lagos, which were insured for the sum of N3.5Million. Appellant's case is that as a result of stealing/destructive acts of some vandals (area boys), appellant moved its business and insured goods to Block 3 Ijegun Road, Ikotun - Egbe, Lagos, and wrote a letter dated 2-11-1992, by which it gave notice of relocation of the insured goods to the respondent. That it delivered the said letter to respondent's office on the 7-12-1992.

Respondent denied liability, placing reliance on clause 8 (c) of the parties' agreement. By the said clause, any relocation of the insured goods was to be approved by the respondent vide an endorsement on the insurance policy. It denied receiving appellant's notification of relocation letter dated 2-11-1992. The trial Court found in respondent's favour and dismissed appellant's claim. Appellant's appeal to the Court of Appeal was dismissed. Still aggrieved, it has further appealed to the Supreme Court. Respondent filed a cross appeal.

ISSUES FOR DETERMINATION

"1. Whether the Court of Appeal Lagos by failing to pay attention to or make a consideration of the Appellant's Reply Brief dated 27th

April 2000 in the hearing and determination of the Appellant's appeal before it had not denied the Appellant of its right to fair hearing thus occasioning a failure of justice.

2. Whether the single issue formulated by the court below upon which it determined the appeal truly captured and embraced the six germane issues formulated by the appellant and whether in the light of that, the court could be said to have done substantial justice in this case.

3. Whether the Court of Appeal Lagos was right in holding that the only credible evidence which can fix the Respondent Company with the knowledge of the content of the original of Exhibit "D" is the signature of the designated official of the company.

4. Whether because of the mere fact that the Respondent failed to give its consent to the relocation of the insured goods to a new location before the occurrence of the risk insured against, the insurance policy became vitiated by that fact.

5. Was the court below right in law to hold that the Appellant did not prove that the original of Exhibit D was delivered to the Respondent notwithstanding the trial courts, holding that the said Exhibit D is not a forgery, a holding the court below did not reverse."

HELD (Unanimously dismissing the appeal and allowing the cross appeal per **ONNOGHEN JSC**)

APPEALS - Issues - Reply brief

1. It is the duty of the appellant to demonstrate to the satisfaction of this Court the nature of or legal points canvassed in the reply brief and the possible effect they had or would have had on the appeal thereby leading the court to come to the conclusion that the failure of the lower court to consider the said points in its judgment resulted in a miscarriage of justice or, as canvassed by learned counsel for the appellant denial of the right of fair hearing. It is my considered view that it is not enough for a party to complain that his arguments were not considered in a judgment without going further to show how relevant or substantial the said argument is to the issues in controversy between the parties. I hold the further view that reply briefs are normally filed in answer to substantial

point(s) of law or fact raised in the respondent's brief not as an opportunity for the appellant to reargue his appeal.

In the instant case, I have gone through the issues for determination before the lower court, the appellant's and respondent's briefs as well as the reply brief in question and have not seen any difference in substance between the argument in the appellant's brief and that preferred in the reply brief.

I have to go to this length to demonstrate clearly that the non consideration or reference to the argument in the reply brief specifically has not resulted in a denial of the appellant's right to fair hearing nor has it occasioned a miscarriage of justice, the arguments therein being nothing more than a further amplification of the points already raised and dealt with in the appellant's brief and which points were duly taken into consideration by the lower court in arriving at its single issue for determination and the decision now on appeal before this Court. It is therefore clear that appellant's issue 1 has no substance whatsoever, and is consequently resolved against the appellant. (pp. 2548 D/ 2552 E)

E

APPEALS - Issues - Insurance contract

2. It must be kept in focus that the cause of action arose from a contract of insurance which contract is supposed to contain the terms and conditions of same including the rights and liabilities of the parties thereto. It follows therefore that the fulcrum of such an action is the contract itself and for a plaintiff to succeed in an action under such a contract, he/it must bring itself/himself within the terms and conditions of the policy or contract. Looking at the facts of the case, the reasons for the judgment of the trial court, the grounds of appeal before the lower court and the issues formulated therefrom learned counsel for the parties particularly that for the appellant vis-à-vis the single issue formulated by the lower court. I hold the considered view that the said issue captured the crux of the matter and its determination completely disposes the appeal one way or the other. I hold the further view that the single issue so formulated has not resulted in any miscarriage of justice, the substance of the dispute between the parties being substantially the interpretation to be given

to the terms and conditions contained in clause 8(c) of the Insurance Policy/Contract and issues 2, 3, 4, 5 & 6 are directed in aid of the version of interpretation preferred by the appellant. I hold the view that whether exhibit D is a forgery or not or whether it was received by the respondent or not, the issue remains whether by the provisions of clause 8(c) of the Insurance Policy or Contract such a receipt without more is sufficient to invoke the liability of the respondent in terms of the insured goods. I therefore resolve issue 2 against the appellant. (p. 2554 G) B

Letters - Delivery and receipt of C

3. The issue as to whether a document is received or not is purely an issue of fact, to be proved by evidence and that it is the primary duty of the trial court to evaluate evidence, make finding of facts, and apportion probative value thereto and not that of the appellate court to so do particularly where the findings of facts so made by the trial court had not been demonstrated to be perverse. In the instant case there is concurrent finding of fact to which learned counsel for the appellant also agrees, that there is no signature of the staff who purportedly received the original of exhibit D and affixed the stamp of the respondent to the said exhibit signifying the said receipt on the document, exhibit D. It is on this basis that the courts have held that appellant has failed to prove the receipt of the original of exhibit D, which finding I find to be supported by the evidence on record and therefore very sound. (p. 2556 C) D E F

Written contract - Construction of - Court's function

4. It is settled law that where parties are ad idem on the terms of a contract, the function of the court is to give effect to the terms without more as it is the duty of the court to give effect to the intention of the parties. In the instant case, the contract is in writing, exhibit C, and the court is faced with the construction of clause 8(C) supra. The question that consequently arises is not what the parties have intended to do by entering into exhibit C but what is the meaning of the words as used in clause 8(C). See *Ladipo vs Lajide* (1973) 5S.C 207 at 225. It follows therefore that the submission of learned counsel for the appellant as to G H

what the parties understood clause 8(C) of exhibit C to mean does not arise, the same being very, irrelevant, the issue being the meaning of the words used in the said clause 8(C) of exhibit C.

B Learned Counsel for the appellant has referred to the testimonies of certain witnesses particularly DW1 - DW3 as regards clause 8(C) of exhibit C. I wish to say in that respect that exhibit C is a document which legally speaking speaks for itself and therefore cannot speak through the testimonies of DW1, DW2 or DW3 or any other person or witness for that matter. The court is concerned not with what these witnesses or parties alleged to be their understanding of clause 8(C) of exhibit C but with what the said clause 8(C) actually says through the interpretation of the words used therein to express the intention of the parties thereto. To me the words used are very simple and straight forward and need no complicated rules of interpretation. I therefore resolve issue 4 against the appellant. (pp. 2557 H/ 2560 A)

CONTRACTS - Breach - Appeals - Insurance contract

E 5. To my mind the provisions of clause 8(C) are very clear and unambiguous. At pages 114 to 115 of the record, the learned trial judge in dealing with the issue stated thus:-

F *“From clause 8(C) of Exh. C, if by any reason the plaintiff should remove the insured goods from No. 32 Enu-Owa Street to any other building, the insurance would cease to attach to the insured goods, unless the plaintiff had obtained the approval or ratification of defendant in respect of the removal before any the (sic) occurrence of any loss or damage.*

G *The approval or ratification shall be by endorsement upon the policy.*

H *A cursory look at Exh. C. clearly shows that there is no approval or sanction by the defendant signified by any endorsement upon the policy document Exh. C. The parties are bound by their agreement.*

Having removed the insured goods from 32 Enu Owa Street Lagos to Block 3, Ijegun Road, Ikotun Egbe, I think plaintiff had it a duty to see that the approval or sanction of the defendant was obtained by the

defendant endorsing the policy document - Exh. C.

Clause 8(C) of Exh. C does not say that the plaintiff should write to the defendant informing the defendant of the removal of the insured goods to another building or place. What clause 8(C) of the policy document Exh. C says is that the plaintiff must obtain the approval of the defendant by endorsement upon the policy. Such endorsement could be obtained by the plaintiff taking the policy direct to defendant for endorsement; it may also be obtained by first writing and thereafter see that the policy is endorsed by the defendant.....” Emphasis supplied.

The above findings by the trial court was affirmed by the lower court at pages 211 -212, inter alia:-

“..... Condition (e) of the Insurance Policy quoted supra by interpretation provides, in substance, that, in the event of a breach of the warranty, the policy shall be void, and the insurer (defendant/respondent) shall reserve the right to avoid the policy.... In short the plaintiff/appellant has to prove that before the occurrence of the complete destruction, by fire, of his commodities, he had obtained sanction of the respondent signifying the endorsement on the policy by the defendant/respondent.....”

I hold the view that the lower courts are very correct in their interpretation of clause 8(C) of exhibit C and I cannot improve on their interpretation which I therefore adopt as mine. (p. 2558 G)

APPEALS - Issues - Competence

6. Cross respondent's issues have no relationship whatsoever with the ground of cross appeal. None of the two issues can be said to have been formulated from the single ground filed in this cross appeal. It is settled law that issues for determination must be formulated from the ground(s) of appeal which in turn must be complaints against the ratio decidendi of the judgment or decision appealed against otherwise the issue(s) is/are incompetent and liable to be struck out.

Looking at the above ground of appeal it is very clear that the two issues formulated by learned counsel for the cross respondent have no bearing whatsoever with the above ground of appeal and therefore very

irrelevant to the determination of the cross appeal and are consequently hereby struck out. The end result of the above exercise is that there is legally no cross respondent brief in opposition to the cross appeal and I so hold. (pp. 2562 C/ 2563 A)

B

CONTRACTS - Interpretation - Cross appeal

7. By the provisions of clause (C) of exhibit. C what is relevant and very material is not the receipt of the letter of notification, exhibit D, but the sanction of the cross appellant endorsed on the policy approving or consenting to the relocation of the insured goods from the place where the insured was localized by the terms of the contract to another location outside the locality accepted by the cross appellant in the contract. The words of clause 8(C) of exhibit C are so clear and unambiguous that they require no interpretation at all. The facts of the case being what they are and having regard to the provisions of clause 8(C) of exhibit “C”, I am of the considered view that the Court of Appeal was in error when it held that: “if Exhibit “D” had been signed by the official of the Defendant/ Respondent that would have sufficed for proof that the original was delivered and the mere fact that the Defendant/Respondent later failed or refused to sanction the relocation of the stocks by endorsing the policy to that effect will not avail it” and consequently allow the cross appeal and set aside that holding by the lower court. (p. 2563 C)

NOTABLE POINT OF INTEREST

AKINTANJSC

1. Insurance claim - Implication of unendorsed relocation

In the instant case, the proposal accepted by the respondent was in respect of the appellant’s goods and stocks in the warehouse at 32 in respect of the appellant’s goods and stocks in the warehouse at 32 Enuowa Street Lagos. When the .appellant relocated to a new place at Block 3, Ijegun Road, Ikotun-Egbe, Lagos and wrote to the respondent about the change in the address of the insured warehouse, the letter, in my view, was an offer to amend one of the terms of the insurance contract. The parties could only be bound if the offer was accepted. There was no

such acceptance before the fire incident that led the appellant to make the claim. I therefore believe and hold that the respondent rightly refused to honour the claim since the agreement it had with the appellant was yet to be endorsed to cover the new address. (p. 2566 D)

B

REPRESENTATION

Chief A. A. ARIBISALA, SAN for the appellant with him F.N.B. NJUKO Esq.

TOYIN PINHEIRO Esq. for the respondent.

C

CASES REFERRED TO

Ladipo vs Lajide (1973) 5S.C 207 at 225

Onyemeh vs Eghuchulam (1996) NWLR (pt, 448) 255 at 265

Tunbi vs Opawole (2000) 2 NWLR (pt. 644) 275 at 288

Yakubu vs Omaiboje (1998) 1 NWLR (pt. 559) 708 at 719.

Onwuchuruba vs Onuchuruba (1993) 5 NWLR (pt. 292) 185

Ojibah vs Ojibah (1991) 5 NWLR (pt. 191) 296 at 314

Katto vs C.B.N (1999) 6 NWLR (pt. 607) 390 at 411 -412

A-G -Oyo State vs Fairlakes Hotels Ltd (1989) 5 NWLR (pt.121) 255

Labiya vs Moberuagba (1992) 8 NWLR 139 at 158

Yeni vs Dada (1978) 11 NSCC 147

Nwobodo vs Onoh (1983) 14 NSCC 470

Agbanelo vs UBN Ltd (2000) 7 NWLR (pt. 666) 535 at 550 - 551

Soviet Airlines vs UBA Ltd (1986) 17 NSCC (pt.1) 698 at 728

Nigerian Maritime Services Ltd vs. Afolabi (1978) 2 S.C 79

Hauma vs Akpe Ime (2000) 12 NWLR (pt. 680) 156 at 168, 177, 180

STATUTE REFERRED TO

Evidence Act ss. 91 and 138

H

LEAD JUDGMENT BY ONNOGHEN JSC

This is an appeal against the judgment of the Court of Appeal holden

at Lagos in appeal No.CA/L/390/99 delivered on October, 2000 in which it dismissed the appeal of the appellant against the judgment of the Lagos State High Court in suit No. LD/960/93 delivered by O. O OBADINA J (as he then was) on the 14th day of November, 1997.

B On the 8th day of October 1992 the appellant and the respondent entered into an insurance contract by which the appellant insured against fire, the appellant's stock and materials in trade consisting of tyres of various sizes and contained in the sales shop, forming part of a building occupied as business premises by the appellant at No. 32 Enu-Owa Street
C Lagos for the sum of N3.5 million.

It is the case of the appellant that sometime between October and November, 1992, certain vandals also known as "Area Boys" began acts of stealing and/or destruction of properties on Lagos Island where No.
D 32 Enu-Owa Street is situate necessitating the appellant re-locating the insured goods from No. 32 Enu-Owa Street Lagos to another location at Block 3 Ijegan Road, Ikotun-Egbe, Lagos State. Appellant contends that it wrote a letter dated 2nd November, 1992 to the respondent informing
E the respondent that the appellant had moved the insured goods from No. 32 Enu-Owa Street, Lagos to Block 3, Ijegan Road, Ikotun-Egbe, Lagos State and that the said letter was delivered to the office of the respondent on the 7th day of December, 1992 Appellant further stated that during the
F night of 10th and 11th January, 1993 a fire incident occurred at the appellant's new warehouse at Block 3 Ijegan, Ikotun-Egbe resulting in the complete destruction of the insured goods which incident was reported to the respondent who denied liability.

On the other hand, the respondent denied receipt of the letter al-
G legedly informing it of the movement of the insured goods from the insured premises to the new location out admitted receipt of the letter notifying it of the fire incident which resulted in the respondent dispatching its surveyor and claims - manager to No. 32, Enu-Owa Street, Lagos
H where the insured goods were stored under the policy to access the loss but the said officers reported that there had been no fire incident at the said address which information was conveyed to the appellant vide a letter dated 13th January, 1993. On the 15th day of January, 1993 the ap-

pellant wrote to inform the respondent that appellant had changed the location of the goods from 32, Enu-Owa Street, Lagos to Block 3, Ijegan Road, Ikotun-Egbe Lagos State and alleged that it had earlier informed the respondent of the change through a letter of 2nd November 1992.

It is the case of the respondent that it got the information that the appellant had moved to another location for the first time from the appellant's letter of 15th January 1993 to which a Photostat copy of the letter of 2nd November 1992 was attached. The respondent contends that it never received the letter of 2nd November, 1992. Appellant thereafter prepared a list of the properties burnt in the fire incident and forwarded same to the respondent and thereafter instituted an action in suit No. LD/960/93 in which it claimed the following reliefs:-

“17. WHEREOF the plaintiff claims from the defendant the sum of N3,003,610.00 (Three Million, Three Thousand and Six Hundred and Ten Naira) being the amount due and payable as at 11th January, 1993 to the plaintiff as a claim due on Fire Policy, No. FBP/1012369/L from the defendant in result of the fire accident that completely destroyed the insured goods during the night of 10th and 11th January, 1993.

And the plaintiff also claims interest on the said sum of N3,003,610.00 (Three Million, Three Thousand and Six Hundred and Ten Naira) at the rate of 30% per annum from 11th January, 1993 until judgment and thereafter at the rate of 30% per annum until final liquidation of the whole debt/claim together with costs.”

As stated earlier in this judgment, the appellant, as plaintiff in the trial court, lost the action and consequently appealed to the Court of Appeal holden in Lagos and lost. The present appeal is therefore a further appeal by the plaintiff.

In the appellant's brief of argument filed on 22/5/02 by learned counsel for the appellant, the following issues have been identified for determination:-

“1. Whether the Court of Appeal Lagos by failing to pay attention to or make a consideration of the Appellant's Reply Brief dated 27th April 2000 in the hearing and determination of the Appellant's appeal before it had not denied the Appellant of its right to fair hearing thus

occasioning a failure of justice.

2. Whether the single issue formulated by the court below upon which it determined the appeal truly captured and embraced the six germane issues formulated by the appellant and whether in the light of that, the court could be said to have done substantial justice in this case.

3. *Whether the Court of Appeal Lagos was right in holding that the only credible evidence which can fix the Respondent Company with the knowledge of the content of the original of Exhibit "D" is the signature of the designated official of the company.*

4. *Whether because of the mere fact that the Respondent failed to give its consent to the relocation of the insured goods to a new location before the occurrence of the risk insured against, the insurance policy became vitiated by that fact.*

5. *Was the court below right in law to hold that the Appellant did not prove that the original of Exhibit D was delivered to the Respondent notwithstanding the trial courts, holding that the said Exhibit D is not a forgery, a holding the, court below did not reverse."*

It is important at this stage, to mention the fact that the respondent has cross appealed against the decision of the Court of Appeal and filed a cross Appellant's Brief on 5th October 2006 in which learned counsel for the Respondent/cross Appellant formulated a single issue for determination. The issue is as follows:-

"Whether in the light of clause 8(c) of Exhibit C, the Court of Appeal was correct in its pronouncement that "if Exhibit "D" has been signed by the official of the Defendant/Respondent that would have sufficed for proof that the original was delivered and the mere fact that the Defendant/Respondent latter failed or refused to sanction the re-location of the stocks by endorsing the policy to that effect will not avail it."

On the other hand, learned counsel for the respondent formulated the following issues for the determination of the main appeal:-

"(i) Whether the failure of the Appellant to seek and obtain the leave of this Honourable Court to appeal against the concurrent findings of fact of the Court of Appeal and court of first instance and to disclose exceptional circumstances pursuant to which it may appeal against the

concurrent findings of fact of the court below and the court of first instances renders this appeal incompetent.

(ii) Whether the Plaintiff/Appellant was in breach of clause 8(C) of the Insurance Policy (Exh.C) by moving the insured goods from 32 Enu-Owa Street, Lagos (the location where the goods were insured) to No. 3 Ijegun Road, Ikotun, Egbe resulting in the breach of a condition of the insurance contract and thereby rendering the insurance contract void and unenforceable.

(iii) Whether the Plaintiff/Appellant committed a breach of the Documentary Evidence Warranty in the insurance contract, thereby vitiating the insurance contract.

(iv) Whether the Court of Appeal was right in formulating a single and “cardinal issue,” which in its opinion exhaustively determined the appeal before it.”

I have to observe that the respondent’s issue No. 1 clearly does not arise from the grounds of appeal filed by the appellant in this case. It is settled law that for an issue to be competent it must have been formulated from the ground(s) of appeal filed in the appeal which ground(s) must attack the ratio decidendi of the case. The respondent’s issue No. 1 is more-of a preliminary objection than an issue for determination. I have gone through the record and have seen no Notice of Preliminary objection filed by the respondent upon which respondent’s said issue 1 could be predicated. In the circumstance, particularly as the said issue does not arise from the grounds of appeal and there being no preliminary objection on which the said issue could be grounded, I hold the view that respondents issue No. 1 is grossly incompetent and is consequently struck out.

In arguing appellant’s issue 1, learned counsel for the appellant stated that appellant filed a reply brief before the lower court on the 27th day of April 2000 which was adopted in argument by learned counsel for the appellant but complained that no reference whatsoever was made by the lower court to the argument in the said reply brief in the judgment of that court neither was any reason given by the court for ignoring the argument canvassed therein; that the failure of the lower court to consider the argument in the reply brief amounts to a denial of its right to fair

hearing as enshrined in section 36(1) of the Constitution of the Federal Republic of Nigeria 1999. Learned Counsel also cited and relied on the following cases in support of his contention on the matter, namely Onyemeh vs Eghuchulam (1996) NWLR (pt. 448) 255 at 265; Tunbi vs B Opawole (2000) 2 NWLR (pt. 644) 275 at 288.

Learned Counsel for the respondent addressed the argument in appellant's issue No. I in his issue No. IV in the respondent's brief of argument in which learned counsel referred the court to the judgment of the lower court particularly the first line of the last paragraph of page 208 of the record to show that the lower court actually took cognizance of the reply brief in its judgment; that the proper issue is not whether the lower court considered all the issues but whether it was entitled to formulate a single issue in determining the appeal; the appellant's reply brief was a repetition of its brief of argument.

It is the duty of the appellant to demonstrate to the satisfaction of this Court the nature of or legal points canvassed in the reply brief and the possible effect they had or would have had on the appeal thereby leading the court to come to the conclusion that the failure of the lower court to consider the said points in its judgment resulted in a miscarriage of justice or, as canvassed by learned counsel for the appellant denial of the right of fair hearing. It is my considered view that it is not enough for a party to complain that his arguments were not considered in a judgment without going further to show how relevant or substantial the said argument is to the issues in controversy between the parties. I hold the further view that reply briefs are normally filed in answer to substantial point(s) of law or fact raised in the respondent's brief not as an opportunity for the appellant to reargue his appeal.

In the instant case, I have gone through the issues for determination before the lower court, the appellant's and respondent's briefs as well as the reply brief in question and have not seen any difference in substance between the argument in the appellant's brief and that preferred in the reply brief.

The issues for determination before the lower court, as formu-

lated in the appellant's brief are as follows:-

"1. Whether the trial judge was in error to have held that the stamp print of the defendant company on exhibit D did not establish the Ipse dixit that the original of exhibit D was delivered by the plaintiff company to the defendant company.

B

2. Whether the learned trial judge made a correct approach in law by applying S.91 of the Evidence Act in determining whether or not the original of exhibit D was delivered to the respondent company and the weight to attach to it.

3. Whether the learned trial judge on the proper evaluation of evidence led in this case erred in holding that the insurance contract cease to attach as regards the property insured once the property insured is removed to any building or place other than that in which it is in the policy stated to be insured unless the sanction of the defendant company is obtained.

C

4. Whether the learned trial (sic) (judge) erred in holding that the original of exhibit D was not delivered to the defendant company when the said defendant company failed to prove that exhibit D was a forgery.

E

5. Whether in the circumstances of this case it was the case of the defendant/respondent at the trial that the plaintiff/appellant breached the documentary evidence of warranty contained in the policy exhibit C.

6. Whether the learned trial judge properly discharged his duty of dispassionately evaluating all the evidence adduced in this case and arrived at the correct decision."

F

The submissions of learned counsel for the appellant on the above issues by way of summary and as contained in the appellant brief are as follows:-

G

"1. The learned trial judge misdirected himself in holding that the stamp print of the defendant's company on exhibit D did not establish that the original exhibit D was delivered by the appellant and received by the respondent on 07/12/92. Aeroflot Soviet Airline vs UBA Ltd (supra). H

2. The learned trial judge erred in law by applying S.91 of Evidence Act in determining whether or not the original of Exhibit D was delivered and received by the respondent and therefrom held that because

the maker was not called it was not possible to determine what was actually received. Aeroflot case (supra)

B 3. *The learned trial judge was in error when he failed to take into consideration the evidence led at the trial and facts established in determining the implication of the appellant relocating the insured goods exposed to losses not covered by the insurance on the contract of insurance between the parties. See Yakubu vs Omaiboje (1998) 1 NWLR (pt. 559) 708 at 719.*

C 4. *The learned trial judge was in error when after perfectly agreeing that the respondent failed to prove that exhibit D was forged nevertheless went on to hold that its original was not delivered to the respondent. Nwobodo vs Onoh & ors (1983) 14 NSCC 470.*

D 5. *The learned trial judge misdirected himself by setting up for the respondent in particular and, the parties generally cases they did not make for themselves at the trial and on that basis found against the appellant. See Omoborinola vs. Mil. Governor, Ondo State (1998) 14 NWLR (pt. 584) 89.*

E 6. *The learned trial judge failed in his duty to dispassionately evaluate the evidence led at the trial and thereby occasioned a miscarriage of justice against the appellant.”*

Onwuchuruba vs Onuchuruba (1993) 5 NWLR (pt. 292) 185.

F On the other hand, learned counsel for the respondent, submitted by way of conclusion in the respondent’s brief as follows:-

G (1) The respondent submits that the plaintiff at the lower court did not discharge the burden of proof on him in the action. Since the plaintiff had admitted that the insured goods were moved from 32, Enu-Owa Street, Lagos to Block 3 Ijegun Road Ikotun Lagos State it was its duty to prove that the conditions of exhibit C dealing with change of location of the insured goods were fully complied with. Although the plaintiff stated that the letters informing the defendant about change in location H was delivered to the defendant by hand it did not call the person who delivered it when from the pleadings it was clear that the defendant had made the delivery of the said letter an issue.

2. From the findings and decisions of the learned trial judge it is

clear that exhibit C was given a proper examination. All the learned trial judge did was to follow the known principles of law in interpreting provisions of the said exhibit.

The above submissions provoked the following submissions in the reply brief, which learned counsel complains have not been taken into consideration in the judgment of the lower court.

“1. The respondent conceded in paragraph 5.1 page 7 of the respondent’s brief that this court can and should disturb the findings of the lower court if it is found by this court that the lower court’s findings are perverse or that there is a miscarriage of justice or a violation of some important principles of law or procedure, which if corrected, the findings cannot stand. See Ojibah vs Ojibah (1991) 5 NWLR (pt. 191) 296 at 314.

2. It has been painstakingly shown that the trial court committed serious errors of law in that:-

(a) After holding that Exhibit D. is not a forgery, it still denied it the evidential value due to it

(b) It confused the meaning and purport of S.91 of the Evidence Act which only requires the production of the MAKER of a document as a witness and not the deliverer and used the section to hold that the non production of the deliverer is fatal to the appellant’s case.

(c) While the said section 91 of the Evidence Act deals with the admissibility of a document upon the production of the MAKER, as a witness the court admitted exhibit D, the maker- PW1- having been called as a witness by the appellant, the trial court veered off the ambit and purport of the section when it sought to use and did use it to deny the exhibit of its evidential value and weight even though the section does not deal with attachment of evidential weight.

(d) The trial court was in serious error to hold that the original of exhibit D was not received by the respondent despite its holden that the exhibit D is not a forgery.

It is respectfully submitted that the judgment is flawed in all material respects and is perverse and has consequently occasioned miscarriage of justice to the-prejudice of the appellant and should be over-

turned by this Court....”

At page 20.8 the lower court stated thus:-

“When this appeal came before us on the 25th of September 2000 for argument, Chief Aribisala, learned counsel for the plaintiff/appellant adopted the appellant’s brief filed on 29th December 1999 and the reply brief filed on the 27th April 2000 and urged that the appeal be allowed_____

I have had a careful study of the issues formulated by the two parties for determination. It is my view that, all the issues can be summarized into one cardinal issue or point that, is whether the plaintiff/appellant could be said, on the evidence before, the court below, to have noticed (sic) (notified) the defendant/respondent of the relocation of the Insured stock from 32, Enu-Owa. Street, Lagos to 3 Ijegan Road, Ikotun Egbe and obtained the sanction of the defendant/company, the respondent in this appeal, which sanction is signified by endorsement on the policy document by or on behalf of the Company.”

I have to go to this length to demonstrate clearly that the non consideration or reference to the argument in the reply brief specifically has not resulted in a denial of the appellant’s right to fair hearing nor has it occasioned a miscarriage of justice, the arguments therein being nothing more than a further amplification of the points already raised and dealt with in the appellant’s brief and which points were duly taken into consideration by the lower court in arriving at its single issue for determination and the decision now on appeal before this Court. It is therefore clear that appellant’s issue 1 has no substance whatsoever, and is consequently resolved against the appellant.

On issue 2 learned counsel for the appellant reproduced the six issues submitted for determination by the lower court, which had earlier in this judgment been reproduced during the consideration of issue No. 1, and stated that the lower court ignored the said issues and proceeded to formulate a single issue which it proceeded to determine the appeal thereon; that it is the duty of the lower court to consider all the six issues raised and that the failure to so act occasioned denial of fair hearing to the

appellant, relying on the case of *Katto vs C.B.N* (1999) 6 NWLR (pt. 607) 390 at 411 -412; that the single issue formulated by the lower court and on which it determined the appeal did not accommodate most of the six issues raised by the appellant, particularly issues 2, 3, 4, 5, and 6.

Learned Senior Counsel then proceeded to reargue issues 2, 3, 4, 5 and 6 and submitted that the parties understanding of clause 8(c) of the insurance contract is that what was required of the appellant in event of relocating the insured goods was to notify the respondent company by a letter which was duly done by the appellant and that the trial court erred in holding otherwise; that the trial court erred in holding that the original of exhibit D was not delivered to the respondent when the respondent failed to prove that exhibit D was a forgery which failure establishes the fact that exhibit D is credible, cogent and deserves the necessary weight without more, relying on *A-G -Oyo State vs Fairlakes Hotels Ltd* (1989) 5 NWLR (pt.121) 255; *Yeni vs Dada* (1978) 11 NSCC 147; *Nwobodo vs Onoh* (1983) 14 NSCC 470; that if the lower court had not ignored the above submissions its decision would have been different.

Learned Counsel for the respondent responded to the argument in appellant's issue No: 2 in the respondent's issue IV and submitted that the only issue for determination is not whether the Court of Appeal considered all the issues raised by the appellant but whether it was entitled to formulate a single issue in determining the appeal; that the lower court was right in formulating the single issue which was sufficient to decide and exhaustively dealt with the appeal before the court, relying on *Labiya vs Moberuagba* (1992) 8 NWLR 139 at 158 and urged the court to resolve the issue against the appellant. Appellant's reply brief filed on 26/10/06 had nothing substantial to urge on the court on the issue.

It is not disputed that the learned counsel for the appellant submitted six issues for determination by the Court of Appeal which court, rather than adopt the said issues formulated its own single issue which it used in determining the appeal. It is settled law that an issue or issues formulated for the determination of an appeal must arise from the ground(s) of appeal filed in the appeal, which ground(s) must attack the ratio decidendi of the judgment of the lower court. The question that calls for

determination in the issue under consideration, in my opinion, is therefore whether the single issue formulated for determination of the appeal by the lower court and on which it proceeded to, determine the said appeal arose from the grounds of appeal filed in the appeal by the appellant. There is no disputing the fact that an appellate court has the right, indeed duty, where appropriate to formulate issue(s) for the determination of an appeal particularly, where it is of the opinion that the issue(s) as formulated by learned counsel does/do not deal with the substantive issue in controversy in the appeal provided the issue(s) is/are consistent with the ground(s) of appeal filed in the appeal. It is not the complaint of the appellant that the single issue formulated by the lower court did not arise from the grounds of appeal. What, therefore, is the issue formulated by the lower court?

At pages 207 to 209 of the record, the lower court, in its judgment now on appeal referred to and reproduced the six issues formulated by learned counsel for the appellant for determination and the two issues formulated by learned counsel, for the respondent and stated, inter alia, as follows:-

“I have had a very careful study of the issues formulated by the two parties for determination. It is my view that all the issues can be summarized into one cardinal issue or point: that is whether the plaintiff/appellant could be said, on the evidence before the court below, to have notified the defendant/respondent of the relocation of the insured stock from 32, Enu-Owa Street, Lagos to 3 Ijgun Road, Ikotun Egbe and obtained the sanction of the defendant/company, the respondent in this appeal, which sanction is signified by endorsement, on the policy document by on behalf of the company.”

It must be kept in focus that-the cause of action arose from a contract of insurance which contract is supposed to contain the terms

and conditions of same including the rights and liabilities of the parties thereto. It follows therefore that the fulcrum of such an action is the contract itself and for a plaintiff to succeed in an action under such a contract, he/it must bring itself/himself within

the terms and conditions of the policy or contract. Looking at the facts of the case, the reasons for the judgment of the trial court, the grounds of appeal before the lower court and the issues formulated therefrom learned counsel for the parties particularly that for the appellant vis-à-vis the single issue formulated by the lower court. I hold the considered view that the said issue captured the crux of the matter and its determination completely disposes the appeal one way or the other. I hold the further view that the single issue so formulated has not resulted in any miscarriage of justice, the substance of the dispute between the parties being substantially the interpretation to be given to the terms and conditions contained in clause 8(c) of the Insurance Policy/Contract and issues 2, 3, 4, 5 & 6 are directed in aid of the version of interpretation preferred by the appellant. I hold the view that whether exhibit D is a forgery or not or whether it was received by the respondent or not, the issue remains whether by the provisions of clause 8(c) of the Insurance Policy or Contract such a receipt without more is sufficient to invoke the liability of the respondent in terms of the insured goods. I therefore resolve issue 2 against the appellant.

On issue 3. learned counsel for the appellant submitted that the lower court was in error in holding that the only credible evidence which can fix the respondent company with knowledge of the contents of the original of exhibit D is the signature of the designated official particularly as there was no provision in the said exhibit for the signature of such an official and that the respondent is legally responsible for the default of its staff, relying on the case of Agbanelo vs UBN Ltd (2000) 7 NWLR (pt. 666) 535 at 550 - 551; that the stamp print could only have found its way to exhibit D through the act of a staff of the respondent who must have acted upon the receipt of the original of exhibit D; relying on Aeroflot Soviet Airlines vs UBA Ltd (1986) 17 NSCC (pt.1) 698 at 728; that the respondent is trying to take advantage of the absence of a signature on exhibit D to deny receipt of the original which learned counsel contends, is unconscionable; that though the onus of proof of the receipt of the original of exhibit D rests with the appellant, once it has adduced a prima

facie evidence to show delivery of the original of exhibit D to the respondent, the onus shifts to the respondent to debunk the evidence; relying on Nigerian Maritime Services Ltd vs. Afolabi (1978) 2 S.C 79; Elema vs Akenzua (2000) 13 NWLR (pt.683) 93 at 104; Hauma vs Akpe Ime (2000) B 12 NWLR (pt. 680) 156 at 168, 177, 180, section 138 of the Evidence Act Cap. 112 of the Laws of the Federation, 1990.

I have carefully gone through the respondent's brief and have not found where, argument has been canvassed by learned counsel for the respondent in answer to the arguments of learned counsel for the appellant summarized above. The above notwithstanding, I hold the view that **the issue as to whether a document is received or not is purely an issue of fact, to be proved by evidence and that it is the primary duty of the trial court to evaluate evidence, make finding of facts, and apportion probative value thereto and not that of the appellate court to so do particularly where the findings of facts so made by the trial court had not been demonstrated to be perverse. In the instant case there is concurrent finding of fact to which learned counsel for the appellant also agrees, that there is no signature of the staff who purportedly received the original of exhibit D and affixed the stamp of the respondent to the said exhibit signifying the said receipt on the document, exhibit D. It is on this basis that the courts have held that appellant has failed to prove the receipt of the original of exhibit D, which finding I find to be supported by the evidence on record and therefore very sound.**

That apart, I had earlier stated that the substantive issue is really not whether exhibit D was received by the respondent but whether by the provisions of clause 8(c) of exhibit C such, a receipt was sufficient to attach liability to the respondent with regard to the insured goods. It follows therefore that there is some aspects of this issue to be determined when considering issue 4. For now, I find no reason why I should disturb the concurrent findings of fact with regard to exhibit D and therefore resolve the issue against the appellant.

On issue 4 learned counsel for the appellant submitted that the Court of Appeal erred in holding that appellant has to prove that before

the occurrence of the complete destruction by fire of the goods insured, it had obtained the sanction of the respondent signifying the endorsement on the policy by the respondent; that all that the appellant is required to prove is that it notified the respondent of the relocation of the insured goods from No. 32 Enu-Owa Street, Lagos to Ijegun Road, Ikotun Egbe, Lagos State before the occurrence of the loss; that upon notification it became the duty of the respondent to signify its consent by due endorsement on the policy. Learned counsel then referred to the evidence of DW1, DW2, DW3 and submitted that the parties, understanding of clause 8(C) of the Insurance Policy, exhibit C, is that all that was required of the appellant in event of relocation of the insured goods was notification of the respondent by a letter on the basis of which the respondent was promptly to act on the letter of notification by giving its consent by way of endorsement on the policy and that the appellant therefore was discharged of any further obligation for the purpose of procuring the necessary sanction and endorsement.

Learned counsel for the respondent argued the issue as his issue 2 in the respondent's brief of argument. After reproducing clause 8(C) of exhibit C, learned counsel for the respondent submitted that a breach of clause 8(C) render the contract void and that the submission of his learned friend to the effect that what is required of the appellant is notification of relocation of the insured goods is to read into the contract what was never there. Learned Counsel then submitted that the appellant was in breach of clause 8(C) particularly as it had not discharged the burden of proof on it that it complied therewith.

What does clause 8(C) of exhibit C state? It provides thus:-

“Under any of the following circumstances the insurance ceases to attach as regards the property affected unless the insured before the occurrence of any loss, or damage obtains the sanction of the company signified by endorsement upon the policy by or on behalf of the company.

(C) If the property insured be moved to any building or place other than that in which it is herein stated to be insured.” Emphasis supplied.

It is settled law that where parties are ad idem on the terms

of a contract, the function of the court is to give effect to the terms without more as it is the duty of the court to give effect to the intention of the parties. In the instant case, the contract is in writing, exhibit C, and the court is faced with the construction of clause 8(C) supra. The question that consequently arises is not what the parties have intended to do by entering into exhibit C but what is the meaning of the words as used in clause 8(C). See *Ladipo vs Lajide* (1973) 5S.C 207 at 225. It follows therefore that the submission of learned counsel for the appellant as to what the parties understood clause 8(C) of exhibit C to mean does not arise, the same being very, irrelevant, the issue being the meaning of the words used in the said clause 8(C) of exhibit C.

It is clear that clause 8(C) is a condition in the Insurance Policy a breach of which clearly gives the aggrieved party an excuse for non-performance of his side of the bargain or contract. The aggrieved party, may however decide to affirm the contract after being aware of the breach of the condition if he so desires - he has the election.

There is no dispute as to the fundamental nature of clause 8(C) what is being disputed is whether the said clause 8(C) is satisfied where there is only notification of the relocation, of the insured goods from No. 32 Enu-Owa Street, Lagos where they were insured to Block 3 Ijegan Road, Ikotun, Egbe, in Lagos State where there were lost without approval or sanction of the respondent first had and obtained by endorsement of same on the policy document, exhibit C. In other words does the appellant need to do more than write to notify the respondent of the relocation of the insured goods? There is no dispute that the appellant relocated the insured goods as stated in this judgment but does the relocation comply with the provisions of clause 8(C) of exhibit C?

To my mind the provisions of clause 8(C) are very clear and unambiguous. At pages 114 to 115 of the record, the learned trial judge in dealing with the issue stated thus:-

“From clause 8(C) of Exh. C, if by any reason the plaintiff should remove the insured goods from No. 32 Enu-Owa Street to any other building, the insurance would cease to attach to the insured goods,

unless the plaintiff had obtained the approval or ratification of defendant in respect of the removal before any the (sic) occurrence of any loss or damage.

The approval or ratification shall be by endorsement upon the policy.

A cursory look at Exh. C. clearly shows that there is no approval or sanction by the defendant signified by any endorsement upon the policy document Exh. C. The parties are bound by their agreement.

Having removed the insured goods from 32 Enu Owa Street Lagos to Block 3, Ijegun Road, Ikotun Egbe, I think plaintiff had it a duty to see that the approval or sanction of the defendant was obtained by the defendant endorsing the policy document Exh. C.

Clause 8(C) of Exh. C does not say that the plaintiff should write to the defendant informing the defendant of the removal of the insured goods to another building or place. What clause 8(C) of the policy document Exh. C says is that the plaintiff must obtain the approval of the defendant by endorsement upon the policy. Such endorsement could be obtained by the plaintiff taking the policy direct to defendant for endorsement; it may also be obtained by first writing and thereafter see that the policy is endorsed by the defendant.....”
Emphasis supplied.

The above findings by the trial court was affirmed by the lower court at pages 211 -212, inter alia:-

“..... Condition (e) of the Insurance Policy quoted supra by interpretation provides, in substance, that, in the event of a breach of the warranty, the policy shall be void, and the insurer (defendant/respondent) shall reserve the right to avoid the policy.... In short the plaintiff/appellant has to prove that before the occurrence of the complete destruction, by fire, of his commodities, he had obtained sanction of the respondent signifying the endorsement on the policy by the defendant/respondent.....”

I hold the view that the lower courts are very correct in their interpretation of clause 8(C) of exhibit C and I cannot improve on their interpretation which I therefore adopt as mine.

Learned Counsel for the appellant has referred to the testimonies of certain witnesses particularly DW1 - DW3 as regards clause 8(C) of exhibit C. I wish to say in that respect that exhibit C is a document which legally speaking speaks for itself and therefore cannot speak through the testimonies of DW1, DW2 or DW3 or any other person or witness for that matter. The court is concerned not with what these witnesses or parties alleged to be their understanding of clause 8(C) of exhibit C but with what the said clause 8(C) actually says through the interpretation of the words used therein to express the intention of the parties thereto. To me the words used are very simple and straight forward and need no complicated rules of interpretation. I therefore resolve issue 4 against the appellant.

Having considered and resolved the issues against the appellant, particularly issue 4, I hold the considered view that a resolution of appellant's issue 5 is unnecessary and is consequently discountenanced.

On the cross appeal, learned counsel for the respondent/cross appellant in the cross appellant's brief filed on 5/10/06 formulated the following issue for determination:-

“Whether in the light of clause 8(C) of Exhibit “C” the Court of Appeal was correct in its pronouncement that “if Exhibit “D” has been signed by the official of the Defendant/Respondent that would have sufficed for proof that the original was delivered and the mere fact that the Defendant/Respondent later failed or refused to sanction the re-location of the stocks by endorsing the policy to that effect will not avail it.”

It is the submission of learned counsel for the cross appellant that the movement of the goods from one location to another forms a new contract or a quasi - new contract because it introduces a new term into the contract in the form of a new or increased risk; that the essence of the provision of clause 8(C) is to enable the respondent assess the new risk introduced into the contract; that it is the acceptance of the risk that constitutes the obtaining of the sanction of the insurance company which is signified by the endorsement on the policy by or on behalf of the insurance company.

Learned Counsel further submitted that merely notifying the insurance company cannot and would not automatically qualify as a fulfillment or compliance with clause 8(C). It is the submission of learned counsel, by reference to Halsbury's Laws of England 4th Edition page 250 paragraphs 452 - 455 that four categories which qualify as an alteration of the risk insured against exist which are:-

- (a) Increase in the likelihood of loss
- (b) Alteration of the subject matter
- (c) Change of identity and
- (d) Change of circumstances comprised in the definition;

that during the period when the goods are not at the applicable locality whether the policy is voided by express provision or is merely inoperative, the insurance at the time ceases to attach, for which learned counsel referred the court to the case of *Dawsohs Ltd vs Bonin* (1992) 2 AC 413; *Zachariah Pearson vs The Directors & C of the Commercial Union Assurance Co.* (1876) A.C 498 at 502; that parties are bound by the agreement they entered into and that clause 8(C) clearly stated the mode, by which consent of the relocation or alteration of risk will be communicated which is by endorsement upon the policy by or on behalf of the company and that anything short of that will not suffice.

In the cross respondent's brief of argument filed on 26/10/06 learned counsel for the cross respondent formulated two issues, for determination. These are:

“(i) Whether this Cross-Appeal is maintainable by reason of failure of the Cross-Appellant to appeal to the Court of Appeal against the finding the subject of this appeal by the High Court;

(ii) Whether it is not against public policy for the Cross-Appellant to use its own failure to sanction the relocation of the insured goods to avoid its obligation to the insured Cross Respondent.”

I have to observe that there is only one ground of cross appeal as is contained in the Notice of Cross Appeal filed on 5/10/06. It is settled law that a party is not allowed to formulate more than one issue for determination out of a ground of appeal even though he can combine two or more grounds of appeal in formulating an issue for determination.

This is the principle against proliferation of issues for determination. In the instant case learned counsel has submitted two issues out of the single ground of appeal for determination thereby rendering the issues incompetent.

B Secondly the first issue appear to wear the garb of a preliminary objection without being properly so called and whereas there is no notice of preliminary objection to the ground of appeal as filed in this Court on record. I hold the view that there being no preliminary objection to ground
C cross respondents issue 1, the said issue is incompetent and liable to be struck out.

Thirdly, **cross respondent's issues have no relationship whatsoever with the ground of cross appeal. None of the two issues can be said to have been formulated from the single ground filed in this**
D **cross appeal. It is settled law that issues for determination must be formulated from the ground(s) of appeal which in turn must be complaints against the ratio decidendi of the judgment or decision appealed against otherwise the issue(s) is/are incompetent and li-**
E **able to be struck out.**

The ground of appeal complains as follows:-

“GROUNDS OF APPEAL

The Learned Justices of the Court of Appeal erred in law in hold-
F *ing as follows:-*

“If Exhibit “D” had been signed by the official of the Defendant/Respondent that would have sufficed for proof that the original was delivered and the mere fact that the Defendant/Respondent later failed
G *or refused to sanction the relocation of the stocks by endorsing the policy to that effect will not avail it.”*

PARTICULARS OF ERRORS

Whilst in paragraph 1 of page 11 of its judgment, the Court of Appeal accurately formulated/determined we burden of proof placed on
H *the appellant, it erred in law when it failed to give credence to the contract between the parties by equation of “obtaining the sanction of the company evidenced by endorsement on the policy” as stipulated in clause 8(C) of the insurance policy (Exhibit “C”) with the notification of the*

company by the Respondent of the movement of the goods from the location where it was insured to another location, even though It rightly held that there had been notification.”

Looking at the above ground of appeal it is very clear that the two issues formulated by learned counsel for the cross respondent have no bearing whatsoever with the above ground of appeal and therefore very irrelevant to the determination of the cross appeal and are consequently hereby struck out. The end result of the above exercise is that there is legally no cross respondent brief in opposition to the cross appeal and I so hold.

As regard the issue for determination, I had earlier held; during the determination of the main appeal that **by the provisions of clause (C) of exhibit. C what is relevant and very material is not the receipt of the letter of notification, exhibit D, but the sanction of the cross appellant endorsed on the policy approving or consenting to the relocation of the insured goods from the place where the insured was localized by the terms of the contract to another location outside the locality accepted by the cross appellant in the contract. The words of clause 8(C) of exhibit C are so clear and unambiguous that they require no interpretation at all. The facts of the case being what they are and having regard to the provisions of clause 8(C) of exhibit “C”, I am of the considered view that the Court of Appeal was in error when it held that: “if Exhibit “D” had been signed by the official of the Defendant/Respondent that would have sufficed for proof that the original was delivered and the mere fact that the Defendant/Respondent later failed or refused to sanction the relocation of the stocks by endorsing the policy to that effect will not avail it and consequently allow the cross appeal and set aside that holding by the lower court.**

In conclusion I find no merit in the main appeal which is Consequently dismissed with costs of N10,000.00 in favour of the respondent. On the other hand, the cross appeal is meritorious and is hereby allowed by me with costs which I assessed and fix at N10,000.00 m favour of the cross appellant.

Main appeal is dismissed while the cross appeal is allowed.

ONU JSC

B The appeal herein arose from the operation of a contract enforce-
ment entered into between the parties on 8th October, 1992. The Appel-
lant had insured against fire its stock and materials in trade comprising of
tyres contained in the shop forming part of a building occupied as a
C business premises by the Appellant at No.32 Enu-Owa Street, Lagos for
the sum of N3,500,000.00. After executing the contract, the Appellant
without first obtaining the approval of the Respondent, decided to move
the Insured stock in trade from the insured shop at No.32 Enu-Owa
Street, Lagos to Block 3, Ijegan Road, Ikotun Egbe, Lagos. When the
D Appellant's stock and materials insured were completely destroyed by
fire at the new premises to which they were moved and the Appellant
sought to invoke its right under the policy to be compensated for the
loss in accordance with the insurance policy, the Respondent declined
E liability. In consequence, the Appellant headed to the Lagos State High
Court of Justice for redress.

The learned trial Judge, Obadina J. (as he then was) in what
amounted to clear findings dismissed the Appellants case as follows:

F *"Having removed the insured goods from 32 Enu-Owa Street Lagos
to Block 3, Ijegan Road Ikotun Egbe, I think plaintiff had it a duty to
see that the approval or sanction of the Defendant was obtained by the
Defendant endorsing the policy document Exhibit C.*

G *Clause 8(c) of exhibit C does not say that the Plaintiff should
write to the Defendant informing the Defendant of the removal of the
insured goods to building or place. What clause 8(c) of the policy docu-
ment Exhibit C says is that the Plaintiff must obtain by the approval of
the Defendant by endorsement upon the policy. Such endorsement could
H be obtained by the Plaintiff taking the policy direct to the Defendant for
endorsement; it may also be obtained by first writing and thereafter see
that the policy is endorsed by the Defendant."*

The Appellant's appeal to the Lagos Division of the Court of Ap-

peal was also heard and dismissed. This further and final appeal to this court is equally, in my view, without merit, being in my opinion, concurrent findings of fact.

For the foregoing reasons, I am in entire agreement that the appeal against the decision of the court below being devoid of merit fails. Accordingly, I also dismiss the appeal and allow the Cross-Appeal.

I abide the orders contained in the leading judgment including those as to costs.

C

MUSDAPHER JSC

I have had the preview of the judgment of my Lord Onnoghen, JSC just delivered with which I entirely agree. For the same reasons contained in the aforesaid judgment, which I hereby respectfully adopt as mine, I too do hereby dismiss the appeal and allow the cross-appeal. I abide by the order for costs proposed in the judgment aforesaid.

E

AKINTAN JSC

The appellant, Yadis Nigeria Ltd., was the plaintiff in this action instituted against the respondent, as defendant, at Lagos High Court. The dispute arose over claim by the appellant for loss of goods insured with the respondent which were destroyed when fire gutted the appellant's warehouse at Block 3, Ijegan Road, Ikotun-Egbe, Lagos on the night of 10th and 11th January, 1993.

The brief facts of the case are that the appellant had taken an insurance policy which covered fire in respect of its stocks and materials in its warehouse at 32 Enuowa Street, Lagos. The appellant, however, relocated its warehouse from the 32 Enuowa Street Lagos to Block 3, Ijegan Road, Ikotun-Egbe, another location in Lagos. The appellant wrote to the respondent informing it of the relocation to the new address. There was no reply from the respondent acknowledging the receipt of the appellant's letter and endorsing the policy to reflect the change in the insured address before fire gutted the goods in the new warehouse. The

respondent refused to honour a claim made by the appellant for the losses suffered as a result of the fire out break.

The appellant's claim at the High Court was dismissed. An appeal to the court below was also dismissed, hence the present appeal.

B The position of the law is that a contract of insurance should be one of utmost good faith, *uberrima fidei*. To constitute a contract of insurance, therefore, there must be an unqualified acceptance by the other party. A *prima facie* contract of insurance only comes into existence the moment an insurance proposal in the normal form is accepted unequivocally, without qualification by the insurers: See *Ngillari v. N. I. C.O.N* (1998) 8 NWLR (Pt. 560) 1; *Northern Assurance. Co. Ltd. v. Wuraola* (1969) All NLR 14; and *Royal Exchange v. Chukwurah* (1976) 11 SC 295.

D In the instant case, the proposal accepted by the respondent was in respect of the appellant's goods and stocks in the warehouse at 32 Enuowa Street Lagos. When the .appellant relocated to a new place at Block 3, Ijegun Road, Ikotun-Egbe, Lagos and wrote to the respondent E about the change in the address of the insured warehouse, the letter, in my view, was an offer to amend one of the terms of the insurance contract. The parties could only be bound if the offer was accepted. There was no such acceptance before the fire incident that led the appellant to F make the claim. I therefore believe and hold that the respondent rightly refused to honour the claim since the agreement it had with the appellant was yet to be endorsed to cover the new address.

I had the privilege of reading the draft of the lead judgment written by my learned brother, Onnoghen, JSC. I agree with his reasoning and G conclusion that there is no merit in the appeal. For the reasons I have given above, and the fuller reasons given in the lead judgment, which I also adopt, I too make an order dismissing the appeal and I allow the cross-appeal. I abide with costs as assessed in the lead judgment.

H

MOHAMMED JSC

The dispute between the parties in this appeal arose out of the operation and enforcement of an insurance contract entered into between the parties on 8th October, 1992 by which the Appellant insured against fire, the Appellant's stock and materials in trade comprising of tyres contained in the shop forming part of a building occupied as a business premises by the Appellant at No. 32 Enu-Owa Street Lagos for the sum of N3,500,000.00. After executing the contract, the Appellant decided to move the insured stock in trade from the insured shop at No. 32 Enu-Owa Street Lagos to Block 3, Ijegun Road, Ikotun-Egbe, Lagos without first obtaining the approval of the Respondent which was required to endorse the change of premises on the contract document namely, the Insurance Policy executed by the parties. When the Appellant's stock and materials insured were completely destroyed by fire at the new premises to which they were moved and the Appellant sought to invoke his right under the policy to be compensated for the loss in accordance with the insurance contract, the Respondent declined liability resulting in the Appellant heading to the Lagos State High Court of Justice as a Plaintiff for redress. B C D E

The manner the trial Lagos State High Court resolved the dispute between the parties is contained in the judgment of that Court at pages 114 -115 where Obadina J (as he then was) stated the position as follows: F

“Having removed the insured goods from 32 Enu-Owa Street Lagos to Block 3, Ijegun Road Ikotun Egbe, I think Plaintiff had it a duty to see that the approval or sanction of the Defendant was obtained by the Defendant endorsing the policy document - Exhibit C. G

Clause 8(c) of Exhibit C does not say that the Plaintiff should write to the Defendant informing the Defendant of the removal of the insured goods to another building or place. What Clause 8(c) of the policy document Exhibit C says is that the Plaintiff must obtain the approval of the Defendant by endorsement upon the policy. Such endorsement could be obtained by the Plaintiff taking the policy direct to the Defendant for endorsement; it may also be obtained by first writing and H

thereafter see that the policy is endorsed by the Defendant.”

With these clear findings by the learned trial judge, the Plaintiff/Appellant’s claim against the Defendant/Respondent was dismissed. In addition to that, the Appellant’s appeal to the Lagos Division of the Court of Appeal was also heard and dismissed. This further and final appeal to this Court is by the Appellant against the dismissal of his appeal by the Court of Appeal. Although as many as five issues for determination were formulated in the Appellant’s brief of argument for the determination of this appeal, it is quite clear from the facts of this case which are largely not in dispute, that the crux of the dispute between the parties revolves around the compliance or non-compliance by the Appellant with the provisions of Clause 8(c) of Exhibit ‘C’, the Insurance Policy. The document which was in evidence does not contain any endorsement modifying the terms of the contract between the parties allowing the movement of the insured goods from the original premises insured, to the new premises which was not part of the contract. On the face of overwhelming evidence therefore, I am of the firm view that the trial Court was right in dismissing the Plaintiff/Appellant’s claim and the Court below was equally on very strong grounds in dismissing the Appellant’s appeal.

For the foregoing reasons and full reasons contained in the leading judgment of my learned brother Onnoghen, JSC which he has just delivered, I completely agree that this appeal is without merit. Accordingly I also dismiss this appeal and allow the Cross-Appeal.

I abide the orders made in the leading judgment including the order on costs.

G

H