

SUPREME COURT OF NIGERIA
23RD FEBRUARY, 2007 SC. 209/2006
CORAM:- S. U. ONU, D. MUSDAPHER, G. A. OGUNTADE,
W. S. N. ONNOGHEN, I. F. OGBUAGU, JJSC

1. RALPHUWAZURIKE
2. CHIBUIKENWOSU
3. BENEDICT ALAKWEM
4. CHIMANKPAM OKOROCHA APPELLANTS
5. KELECHIUBABUIKE
6. AMBROSE ANYANSO
7. AUGUSTINE IHUOMA
AND
ATTORNEY-GENERAL OF THE FEDERATION RESPONDENT

APPEALS - Competence - Jurisdiction - Criminal appeals - Filing a joint notice of appeal - And signing of it by counsel instead of appellants - Renders the appeal incompetent (H1)

APPEALS - Notice of Appeal - Signing of - Should not be done by counsel - But appellant himself - In criminal appeals (H2)

STATUTES - Interpretation of - Clear words - Should be given their ordinary and natural meaning - Unless such would produce absurdity (H3)

APPEALS - Foundation of - Defect - A notice of appeal is the substratum of every appeal - Defect therein renders the whole appeal incompetent (H4)

APPEALS - Competence - Notice of appeal - Where held to be incompetent by Court of Appeal - It should strike out the appeal - Without considering the other issues (H5)

APPEALS - Supreme Court - Notice of appeal - Where signed by counsel instead of appellants - Contrary to O. 9 r. 3(1) Supreme Court Rules - The appeal is incompetent (H6)

FACTS

The appellants were arraigned before the Federal High Court, Abuja, for various offences including treason against the President of the Federal Republic of Nigeria. They filed different applications for bail, and in the alternative an order of court transferring them to prison custody. Appellants on 9-1-2006 also filed an application praying for two orders, the first being dismissal of the charges in limine. The trial court refused the applications, save that it granted the prayer that appellants be remanded in prison custody.

Appellants being aggrieved appealed to the Court of Appeal. They filed a joint notice of appeal signed by their learned senior counsel. Respondent filed a preliminary objection against the appeal. He contended that the appeal was incompetent for not complying with O. 4 r. 4(1) of the Court of Appeal Rules which provided that the notice of appeal shall be signed by appellants not their counsel. The lower court upheld the objection and struck out the appeal. Appellants have further appealed to the Supreme Court without they themselves signing the Notice of Appeal again, contrary to O. 9 r. 3(1) of the Supreme Court Rules.

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

APPEALS - Competence - Jurisdiction

1. It is not in doubt that appeals are creatures of Statutes. So, the jurisdiction of the Court of Appeal to adjudicate on any matter brought before it, is statutory and also guided by the Rules of the court. The failure by any appellant or appellants, to comply with the statutory provision or requirement prescribed by the relevant law/laws or Rules - (which are in the nature of a subsidiary legislation and perforce, must be obeyed) under which such appeals may be competent and properly before the court, will certainly deprive the Appellate Court, jurisdiction to entertain and/or adjudicate on the appeal.

I have no hesitation in finding as a fact and holding that by the provisions of the said Order 4 Rule 4 (1) of the said Rules, the filing of a joint Notice of Appeal or one single Notice of Appeal signed by all the Appellants, will be or is grossly defective and therefore, incompetent. It is worse, if the Notice of Appeal, is signed by the learned counsel for the Appellant or Appellants (as is/was the case in the Notice of Appeal leading to the instant appeal). The statutory provision, is that every Notice of Appeal, shall be signed by the Appellant himself and no other (including Counsel) and not jointly. Period! The provision is not only clear and unambiguous, but it is mandatory. This is not one of the exceptions in sub-rules (5) and (6) of the Rules. (p. 1065 C)

Notice of Appeal - Signing of

2. From the foregoing, it is plain to me, that there is no reason in the Records, why Chief Ahamba (SAN), signed the said Notice of Appeal and the Amended Notice of Appeal dated 3rd April, 2006, instead of adopting the same method or procedure, when the Appellants, applied for bail individually and separately. I am also not in doubt that from all intents and purposes from the facts I have stated hereinabove, that Chief Ahamba (SAN), had access to the Appellants who he should have made, to sign the said Notice of Appeal and as Amended. He was clearly in error when he signed them. I so hold.

In the case of the State v. Jammal (1996) 9 NWLR (Pt. 473) 384 @ 399 C.A, it was held that the Court of Appeal, ought to take judicial notice of the fact and in law, that a notice of appeal in a criminal appeal filed in the lower or trial court which was signed by a counsel for the appellant instead of the appellant himself, is defective by virtue of Order 4 Rule 4(1) of the Court of Appeal Rules, 1981. That the provisions are clear, unambiguous and mandatory. That the Notice of Appeal, must be signed by the appellant himself and not by his counsel. (p. 1066 H)

STATUTES - Interpretation of - Clear words

3. It need be stressed at this stage, that where the language of a statute is plain, clear and unambiguous, the task of interpretation, can hardly arise.

It is therefore, the duty of the courts in such a situation, to give the words, their ordinary, natural and grammatical construction unless such interpretation, would lead to absurdity or some repugnancy or inconsistency with the rest of the legislation. See the case of *Alhaji Adisa v. B Oyinwola & ors.* (2000) 10 NWLR (Pt.674) 116; (2000) 6 SCNJ. 290.

I say this because, firstly, in paragraph 4.01 B(14) of their Brief, Chief Ahamba (SAN), correctly submitted that the rules of interpretation of statutes, do not permit the expansion of the content of a statutory provision beyond what is discernible from the express letters of the provision being applied. (p. 1067 H)

APPEALS - Foundation of - Defect

4. It must be borne in mind always and this is also settled, that a Notice of Appeal, is the foundation and substratum of every appeal. Any defect thereto or therein, will render the whole appeal incompetent and the Appellate Court, will lack the required jurisdiction, to entertain it or any interlocutory application based on the said appeal. (p. 1069 B)

Notice of appeal - Where held to be incompetent

5. I agree with the submission of the Respondent in their Brief, that once the Notice of Appeal even as Amended, was held by the court below to be defective and therefore, incompetent, there was nothing left for it to consider in the appeal, other than to strike out the appeal in its entirety. I hold that the court below, was not entitled and could not, consider or deal with any other issue in respect of an incompetent appeal. This is because, there was no competent appeal before it. Since the appeal was initiated by an incompetent and defective Notice of Appeal (even as Amended) or due process, that is/was the end of the appeal.

In fact and indeed, in the case of *Hambe & anor. v. Hueze & ors.* (2001) 2 SCNJ. 31 @ 43, cited and relied on in the Respondent's Brief, this Court - per Ogundare, JSC. (of blessed memory) stated as follows, inter alia:

"I notice that the court below struck out the Notice of Appeal and at the same time dismissed the appeal. I think these are inconsistent or-

ders. An appeal is initiated by a Notice of Appeal. See Order 3 Rule 2(1) of Court of Appeal rules. If therefore, a Notice of Appeal is struck out for being incompetent, (and I add as in the instant case leading to this appeal) then there can be no appeal to be dismissed”.

This is why it has to be borne in mind and this is also settled, that once a court holds that it has no jurisdiction to entertain and/or determine a matter, it merely strikes the case or matter out and not to dismiss it. Thus, where a Preliminary Objection to an appeal succeeds, there would be no need to go further to consider the arguments in support of the issues for determination. (p. 1069 E)

Notice of appeal - Where signed by counsel instead of appellants

6. Contrary to Order 9 Rule 3(1) of the said Rules which provide that the Notice of Appeal, shall be signed by the Appellant, the Notice of Appeal to this Court dated 22nd July, 2006 and filed on 27th July, 2006, was also signed by Chief Ahamba (SAN) and not by the Appellants or any of them. There is no evidence that his so signing, was authorized by the Appellants or that they all, had knowledge of the signing or consented to his so signing. The said Notice of Appeal, is therefore, incompetent. On this ground again, there is no competent appeal before this Court. This Court takes judicial notice of the said Rules and the said Notice of Appeal. This being so, the Court has no jurisdiction to entertain the appeal. I need not hear arguments from Counsel as the rule is clear, unambiguous and also mandatory. This appeal also fails on this ground. It is therefore, struck out. But since it has failed on its merits, it stands dismissed. (p. 1071 F)

NOTABLE POINT OF INTEREST

ONNOGHEN JSC

1. When counsel may invoke equitable jurisdiction of the court

It should be noted that the respected senior advocate has not stated that the steps taken by him in the proceedings is in error so as to invoke the equitable jurisdiction of the court. He insists that he is right in what he has done. He has also not gone back to the trial court with fresh application for bail after the refusal of the earlier one which he can validly do.

Rather he has chosen to pursue the issue of the validity of his appeal in the form it was presented right up to this court while his clients continue to remain in custody. (p. 1078 E)

B REPRESENTATION

Chief M. I. Ahamba (SAN) for the Appellants, with him, V. I. Ikeonu, Esq., A. O. Mozie, Esq., Kevin Emeka Okoro, Esq., and Nathaniel Nwoke, Esq.

C R. A. Lawal-Rabana, Esq., for the Respondent, with him, M. K Olawale, Esq., Sikiru Oke, Esq., Eytayo Fatogun, Esq., Iynola Adzuanaganre (Miss), Okunnya Ohair, Esq., and Olujinmi, Esq.

CASES REFERRED TO

- D** State v. Jammal (1996) 9 NWLR (Pt. 473) 384 @ 399 C.A
 Dr. Femi Adekanye & 2 ors. v. Federal Republic of Nigeria (2005) 13 NWLR (Pt. 949) 433 @ 454 to 456
 Chief Agbaka & 3 ors. v. Chief Amadi & anor. (1998) 11 NWLR (Pt.572) 16 @ 25; (1998) 7 SCNJ. 367
 Alhaji Adisa v. Oyinwola & ors. (2000) 10 NWLR (Pt.674) 116; (2000) 6 SCNJ. 290
 Hambe & anor. v. Hueze & ors. (2001) 2 SCNJ. 31 @ 43
- F** Aqua Ltd. v. Ondo Sports Council (1988) 4 NWLR (Pt.91) 622
 Oviawe v. IRP (NIG.) Ltd. (1997) 3 SCNJ. 29; (1997) 3 NWLR (Pt.492) 126 @ 139F
 Bawai & anor. v. The State (2004) 16 NWLR (Pt.899) 285 @ 296
- G** Christopher Ebugharia & anor. v. Commissioner of Police (1965) NMLR 169
 Aviagents Ltd. v. Balstravst Investment (1966) 1 All E.R. 450
 Olowokere v. African Newspapers (1993) 5 NWLR (Pt.295) 583
 Olarewaju v. BON. Ltd. (1994) 8 NWLR (Pt.364) 622
- H** Attorney-General of the Federation v. Guardian Newspapers Ltd. (1999) 9 NWLR (Pt.618) 233 C.A
 Okoye v. Nigerian Construction & Furniture Co. Ltd. (1991) 6 NWLR (Pt.199) 501

Chief Bright Onyemah & ors. v. Lambert Egbuchulam & ors. (1996) 5 NWLR (Pt.448) 255 @ 268, 269; (1996) 4 SCNJ. 237

STATUTES & RULES REFERRED TO

Court of Appeal Rules O. 4 rr. 3(1), (2) & 4(1), (5), (6)

B

Criminal Code Act Cap. 77 LFN 1990, ss. 37, 64, 62(2)

Supreme Court Rules O. 2 r. 9(1), O. 9 r. 3(1)

LEAD JUDGMENT BY OGBUAGU JSC

C

This is an appeal against the decision of the Court of Appeal, Abuja Division [hereinafter called “the court below”], delivered on 7th July, 2006, sustaining the Preliminary Objection raised by the Respondent challenging the competency of the appeal before it and consequently, striking out the said appeal.

D

Dissatisfied with the said decision, the Appellants, have appealed to this Court on seven (7) grounds of appeal. The parties, have filed and exchanged their respective Briefs. The Appellants in the Brief filed on their behalf, have formulated three (3) issues for determination, namely:- E

“(a) Whether Order 4 Rules 3(1) (2) and 4(1) of the Court of Appeal Rules are applicable to a Notice of Appeal that did not arise out of a conviction (Ground 1 & 3) (sic).

“(c) Whether the failure of the Court of Appeal to pronounce on other issues raised and argued in the appeal before it was proper (Ground1)”.

F

On its part, the Respondent formulated two (2) issues for determination namely;

“3.1.0 Whether the provisions Order 4 Rules 4(1) (sic) of the Court of Appeal rules was properly interpreted and applied by the Court of Appeal.

G

3.2.0 Whether the Court of Appeal was obliged to pronounce on other issue/grounds from the incompetent Notice of Appeal”.

H

It is stated that Issue No. 1 relates to grounds, 1, 3, and 4 while issues 2 (sic) relates to ground 2.

I will pause here, to state briefly, the facts of this case leading to

this appeal. The Appellants, were arraigned before the Federal High Court, Abuja on a four (4) count charge, to wit:

“1. *Treason against The President of the Federal Republic of Nigeria, contrary to Section 37(2) of the Criminal Code Act, Chapter 77, Laws of the Federation of Nigeria 1990, and punishable under Section 37 of the Criminal Code Act;*

2. *Felony contrary to and punishable under Section 37(1) of the Criminal Code Act Chapter 77, Laws of the Federation of Nigeria, 1990.*

3. *Felony contrary to and punishable under Section 64 of the Criminal Code Act, Chapter 77, Laws of Nigeria, 1990.*

4. *Offences contrary to Section 62(2) and punishable under Section 63 of the Criminal Code Act, Chapter 77, Laws of the Federation of Nigeria, 1990”.*

The Appellants *ex debito justitiae*, filed respectively, a different application for bail and in the alternative, an order of Court transferring the Applicants to prison custody from their present place of abode. The Appellants also filed an application dated 9th January, 2006, praying for:

“(a) *AN ORDER of Court dismissing the charges against the Accused/Applicants before this Honourable Court in limine,*

(b) *AN ORDER of Court, granting relief above restraining the Respondent from prosecuting or purporting to prosecute the Accused/Applicants on the same facts as contained in the application for remand dated 1st November, 2005 and filed in this proceeding”.*

After hearing arguments of the learned counsel for the parties, the learned trial Judge, Nyako, J., in a considered Ruling, dated 27th January, 2006, refused the applications except that he granted the prayer for the Appellants being remanded in prison custody. His Lordship, also directed the prosecution, to file proof of evidence in court. It is noted by me, that in their appeal to the court below, the Appellants through their learned counsel, filed a joint Notice of Appeal dated 31st January, 2006 - i.e. signed by Chief Ahamba (SAN) himself/personally.

Although the Appellants filed their Brief of Argument on all the grounds of appeal, the Respondent, filed a Notice of Preliminary Objection challenging the competence of the said Notice of Appeal. Arguments

in respect of the Objection, were incorporated in the Respondent's Brief. Arguments were heard by the court below on 16th January, 2006 and in a considered Judgment on 7th July, 2006, it sustained the objection and struck out the appeal.

For the avoidance of doubt, I will reproduce the relevant provision B of Order 4 Rule 4(1) of the said Rules. It reads as follows:

"Every Notice of Appeal or notice of application for leave to appeal or notice of application for extension of time within which such notice shall be given, shall be signed by the applicant himself....." C
[the underlining mine]

It should be noted that the appeal to the Court of Appeal, does not arise out of a conviction by the trial court. As it is clear, the appeal is/was against the refusal of grant of bail by the trial court pending appeal. **It is not in doubt that appeals are creatures of Statutes. So, the jurisdiction of the Court of Appeal to adjudicate on any matter brought before it, is statutory and also guided by the Rules of the court. The failure by any appellant or appellants, to comply with the statutory provision or requirement prescribed by the relevant law/laws or Rules - (which are in the nature of a subsidiary legislation and perforce, must be obeyed) under which such appeals may be competent and properly before the court, will certainly deprive the Appellate Court, jurisdiction to entertain and/or adjudicate on the appeal.** D E F

I have no hesitation in finding as a fact and holding that by the provisions of the said Order 4 Rule 4 (1) of the said Rules, the filing of a joint Notice of Appeal or one single Notice of Appeal signed by all the Appellants, will be or is grossly defective and therefore, incompetent. It is worse, if the Notice of Appeal, is signed by the learned counsel for the Appellant or Appellants (as is/was the case in the Notice of Appeal leading to the instant appeal). The statutory provision, is that every Notice of Appeal, shall be signed by the Appellant himself and no other (including Counsel) and not jointly. Period! The provision is not only clear and unambiguous, but it is mandatory. This is not one of the exceptions in sub-rules (5) and (6) G H

of the Rules.

Now, in the case of *Ikpasa v. Bendel State (1981) 9 S.C. 7*, the appellant, was a *convicted prisoner* involving a capital offence and was confined in the cell for condemned prisoners. In short, the extenuating
B circumstances in Ikpassa’s case, are distinguishable from those of the Appellants. There is no evidence or averment in any of the affidavits of the Appellants, that their Counsel, was unable to have access to them. As I stated earlier, the Appellants are yet to stand their trial. I observe that it
C was the 1st Appellant, who is a lawyer - Legal Practitioner, who even signed the affidavit in support of his application for bail at page 11 of the Records. In paragraph 14 of his supporting affidavit, he averred as follows:

*“I have been invited on several occasions to the Imo State Office
D of the S.S.S. and other places for discussions on the facts upon which they are fabricating charges on me, but I never absconded thereafter. I always answered the invitations”.*

[the underlining mine]

E He also signed the counter-affidavit dated 12th June, 2006, the 1st further affidavit in support of their application for bail dated 10th January, 2006. He also signed the affidavit in support of their application for an Order of the court, dismissing the charge against the Appellants *in limine*.
F More importantly, it was all the Appellants, who each/individually, signed their respective affidavits in support of each of their motions/applications for bail also filed on 10th January, 2006. I observe from the signatures thereon, that none of them, is an illiterate. I note that at the time each of
G them swore to their said individual supporting affidavits at the Registry of the Federal High Court and signed the same, there is an averment in each of the said affidavits, that each of them, had been in custody of the S.S.S. (State Security Service) since 7th November, 2005. On 27th January, 2006, when the said Ruling of the trial court, was given/delivered, all
H the Appellants, were present in Court.

From the foregoing, it is plain to me, that there is no reason in the Records, why Chief Ahamba (SAN), signed the said Notice of Appeal and the Amended Notice of Appeal dated 3rd April, 2006,

instead of adopting the same method or procedure, when the Appellants, applied for bail individually and separately. I am also not in doubt that from all intents and purposes from the facts I have stated hereinabove, that Chief Ahamba (SAN), had access to the Appellants who he should have made, to sign the said Notice of Appeal and as Amended. He was clearly in error when he signed them. I so hold.

In the case of the State v. Jammal (1996) 9 NWLR (Pt. 473) 384 @ 399 C.A, it was held that the Court of Appeal, ought to take judicial notice of the fact and in law, that a notice of appeal in a criminal appeal filed in the lower or trial court which was signed by a counsel for the appellant instead of the appellant himself, is defective by virtue of Order 4 Rule 4(1) of the Court of Appeal Rules, 1981. That the provisions are clear, unambiguous and mandatory. That the Notice of Appeal, must be signed by the appellant himself and not by his counsel.

In the recent case of Dr. Femi Adekanye & 2 ors. v. Federal Republic of Nigeria (2005) 13 NWLR (Pt. 949) 433 @ 454 to 456, also referred to by the court below, the above cases, were referred to and followed. In effect, it is now beyond doubt, argument or speculation that,

(i) the provision of Order 4 Rule 4 (1) of the said Rules, is not one of the exceptions under sub-rules 4 (5) and (6) of the Rules ,

(ii) that the provision is clear, unambiguous and mandatory,

(iii) that Rules of court prima facie, must be obeyed in compliance and not in breach.

(iv) that failure to comply with the provisions of the Court of Appeal Rules, will render the Notice of Appeal filed fundamentally defective and incompetent and therefore, is liable to be struck out.

(v) that the said Rules, do not permit the filing of a joint Notice of Appeal, nor the signing of such Notice by Counsel for the Appellants.

It need be stressed at this stage, that where the language of a statute is plain, clear and unambiguous, the task of interpretation, can hardly arise. It is therefore, the duty of the courts in such

a situation, to give the words, their ordinary, natural and grammatical construction unless such interpretation, would lead to absurdity or some repugnancy or inconsistency with the rest of the legislation. See the case of *Alhaji Adisa v. Oyinwola & ors. (2000) 10 B NWLR (Pt.674) 116; (2000) 6 SCNJ. 290.*

I say this because, firstly, in paragraph 4.01 B(14) of their Brief, Chief Ahamba (SAN), correctly submitted that the rules of interpretation of statutes, do not permit the expansion of the content of a statutory provision beyond what is discernible from the express letters of the provision being applied. He cited and relied on the cases of *Aqua Ltd. v. Ondo Sports Council (1988) 4 NWLR (Pt.91) 622.* (it is also reported in *(1988) 10-11 SCNJ. 26* and *Oviawe v. IRP (NIG.) Ltd. (1997) 3 SCNJ. 29; (1997) 3 NWLR (Pt.492) 126 @ 139F.*

Even at the hearing of this appeal on 30th November, 2006, the learned SAN rightly, stated that in all matters in which there are signatures, are those in which there have been convictions. He referred to their cases Nos. 5 - *Bawai & anor. v. The State (2004) 16 NWLR (Pt.899) 285 @ 296* and No.6 -*Christopher Ebugharia & anor. v. Commissioner of Police (1965) NMLR 169* in their List of Authorities. He stated that the court below relied on these two cases, but that they have distinguished them in the cases in which the Appellants have not been tried and are protesting the trial. He referred to Order 4 Rules 3(1) & (2) and Order 4 Rules 4(1) of the said Rules. I note that the learned Senior Advocate of Nigeria was talking about a person convicted. In paragraph 4.01 (11) of the Brief, it is submitted that,

“Apart from the express exclusion of pre-trial application from Order 4 Rule 3(1) & (2) and 4(1) it is noteworthy that bail pending trial being a constitutional right under section 35(4) of the Nigerian Constitution is a civil right”.

It is further submitted that there is no provision for bail under the Criminal or Penal Code or the Criminal Procedure Act. That seeking a civil right in the course of a criminal trial, does not render such an application a criminal trial which must necessarily, be initiated by a prosecutor. I will refrain from commenting on these submissions. This is be-

cause, they are not the relevant issue before this Court. What is before us, is whether or not the Notice of Appeal and the Amended Notice of Appeal, are defective and therefore, incompetent. I will pause here to state that at page 298 of the Records, the court below, contrary to the submission of Chief Ahamba (SAN), stated that Bawal's case and that of B Ebugharia, "*cited by the respondent are not applicable*".

It must be borne in mind always and this is also settled, that a Notice of Appeal, is the foundation and substratum of every appeal. Any defect thereto or therein, will render the whole appeal incompetent and the Appellate Court, will lack the required jurisdiction, to entertain it or any interlocutory application based on the said appeal. See the cases of Aviagents Ltd. v. Balstravst Investment (1966) 1 All E.R. 450; Olowokere v. African Newspapers (1993) 5 NWLR (Pt.295) 583 and Olarewaju v. BON. Ltd. (1994) 8 NWLR (Pt.364) 622 just to mention but a few.

On the above principle of law and the said provisions of Order 4 Rule 4 (1), of the said Rules, I rest this Judgment.

But before I am done, I will deal with issue 2 of the Appellant. **I agree with the submission of the Respondent in their Brief, that once the Notice of Appeal even as Amended, was held by the court below to be defective and therefore, incompetent, there was nothing left for it to consider in the appeal, other than to strike out the appeal in its entirety. I hold that the court below, was not entitled and could not, consider or deal with any other issue in respect of an incompetent appeal. This is because, there was no competent appeal before it. Since the appeal was initiated by an incompetent and defective Notice of Appeal (even as Amended) or due process, that is/was the end of the appeal. See the case of the Attorney-General of the Federation v. Guardian Newspapers Ltd. (1999) 9 NWLR (Pt.618) 233 C.A.**

In fact and indeed, in the case of Hambe & anor. v. Hueze & ors. (2001) 2 SCNJ. 31 @ 43, cited and relied on in the Respondent's Brief, this Court - per Ogundare, JSC. (of blessed memory) stated as follows, inter alia:

"I notice that the court below struck out the Notice of Appeal and at the same time dismissed the appeal. I think these are inconsistent orders. An appeal is initiated by a Notice of Appeal. See Order 3 Rule 2(1) of Court of Appeal rules. If therefore, a Notice of Appeal is struck out for being incompetent, (and I add as in the instant case leading to this appeal) then there can be no appeal to be dismissed".

This is why it has to be borne in mind and this is also settled, that once a court holds that it has no jurisdiction to entertain and/or determine a matter, it merely strikes the case or matter out and not to dismiss it. See *Okoye v. Nigerian Construction & Furniture Co. Ltd.* (1991) 6 NWLR (Pt.199) 501 and *Auto Import & Export v. J. A. Adebayo* (2003) FWLR (Pt.140) 1686. **Thus, where a Preliminary Objection to an appeal succeeds, there would be no need to go further to consider the arguments in support of the issues for determination.** See *Chief Bright Onyemah & ors. v. Lambert Egbuchulam & ors.* (1996) 5 NWLR (Pt.448) 255 @ 268, 269; (1996) 4 SCNJ. 237; *NEPA v. Ango* (2001) 15 NWLR (Pt.737) 627 @ 645-646 C.A.; *ANPP v. The Returning Officer Abia State Senatorial District- (Mr. Festus Ukagwu) & 2 ors.* (2005) 6 NWLR (Pt.120) 140 @ 170-171 C.A. and *Attorney-General of the Federation v. ANPP & ors.* (2003) 12 SCNJ. 67 @ 81-82 - per Tobi, JSC.

I wish to state in my respectful but humble view, that, after the decision of the court below, all that Chief Ahamba (SAN) should have done, in view of the welter of decided authorities, is, in compliance with the said Order 4(1) Rule 4(1) of the Rules, to get each of the Appellants, to sign and file a separate Notice of Appeal. This should have saved all these wasted time and energy. The consequence is that instead, while the Appellants are languishing in custody, this most frivolous appeal is brought.

Before concluding this Judgment, I see and note that at page 1 of the Respondent's Brief, there is a heading thus -

"SUBMISSION IN SUPPORT OF PRELIMINARY OBJECTION"

Then, there are submissions in respect thereof. I have searched in vain in the Records and from my enquiries in the Litigation Section of the Registry, there is no Notice of Preliminary Objection ever filed and/or

served by the Respondent. My concern was heightened because of (i) the seriousness and the weighty arguments, in respect thereof and (ii) that there is no Reply Brief in respect of the said objection. There is no doubt and this is also settled, that a Notice of Preliminary Objection, could be incorporated or may be validly raised in a Respondent's Brief of B argument. See the cases of Ajide v. Kelani (1985) 3 NWLR (Pt.12) 248 @ 257, 258 and Salami v. Mohammed & anor. (2000) 9 NWLR (Pt.673) 469; (2000) 6 SCNJ. 281. But there is no such Notice in the Respondent's said Brief which was even amended at the date of hearing of this appeal C by the addition of "(i)" after Rule 3 of the Rules of this Court.

For purposes of emphasis, firstly, I see and note that contrary to Order 2 Rule 9(1) of the Rules of this Court (as Amended in 1999), which requires a Respondent seeking to raise a Preliminary Objection to the hearing of the appeal, to give three (3) days Notice to the Appellant D (or Appellants) before the hearing of the appeal, setting out the grounds of objection, and shall file such Notice together with ten (10) copies thereof with the Registrar within the same time. I am aware that failure to bring the Notice in accordance with the above, does not render it ineffec- E tive. See Alhaji Maigoro v. Alhaji Garba (1999) 7 SCNJ. 270 @ 282. However, Order 9 Rule 2 provides that on failure to comply with the above rule, the Court may refuse to entertain the objection or may ad- F journ the hearing thereof at the cost of the respondent. Since the Court cannot now adjourn although there is no such Notice setting out the grounds of the Objection (not submissions) in respect thereof, I will ignore/discountenance the said "submission" and strike it out.

Secondly, **contrary to Order 9 Rule 3(1) of the said Rules** G **which provide that the Notice of Appeal, shall be signed by the Appellant, the Notice of Appeal to this Court dated 22nd July, 2006 and filed on 27th July, 2006, was also signed by Chief Ahamba (SAN) and not by the Appellants or any of them. There is no evidence that his so signing, was authorized by the Appellants or that they all, had H knowledge of the signing or consented to his so signing. The said Notice of Appeal, is therefore, incompetent. On this ground again, there is no competent appeal before this Court. This Court takes**

judicial notice of the said Rules and the said Notice of Appeal. This being so, the Court has no jurisdiction to entertain the appeal. I need not hear arguments from Counsel as the rule is clear, unambiguous and also mandatory. See the case of Chief Agbaka & 3 ors. v. Chief Amadi & anor. (1998) 11 NWLR (Pt.572) 16 @ 25; (1998) 7 SCNJ. 367. This appeal also fails on this ground. It is therefore, struck out. But since it has failed on its merits, it stands dismissed.

In the final result, I hold that, this appeal, with respect, lacks merit. It fails and it is hereby and accordingly dismissed. I hereby affirm the said decision of the court below.

ONU JSC

D I have had the privilege to read in draft the judgment of my learned brother, Ogbuagu, JSC just delivered. I agree with him that the appeal lacks merit and ought therefore to fail.

Accordingly, I too dismiss the appeal and affirm the preliminary objection to the lone issue proffered before the court below.

MUSDAPHER JSC

F I have read before now the judgment of my Lord Ogbuagu, JSC just delivered with which I entirely agree. I respectfully adopt the reasons as mine and find the appeal lacking in merit and I accordingly dismiss it.

G I affirm the decision of the court below.

OGUNTADE JSC

H The appellants had before the Federal High Court been arraigned on a four-count charge. The offences were of a very serious nature. The appellants applied for bail. They also brought an application wherein they prayed for:

“(a) An order of court dismissing the charges against the accused/

applicants before this Honourable Court.

(b) An order of court, granting relief above restraining the Respondent from prosecuting or purporting to prosecute the accused/applicants on the same facts as contained in the application for remand dated 1st November, 2005 and filed in this proceeding.”

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The trial judge Nyako J. arguments on the application and in a Ruling delivered on 27/01/06 refused the prayers. She ordered that appellants/applicants be remanded in prison custody. Dissatisfied with the Ruling, the applicants brought an appeal before the Court of Appeal, Abuja (hereinafter referred to as ‘the court below’). The appeal was brought vide a joint Notice of Appeal dated 31-1-06 which was not signed by each of the appellants but by their counsel Chief Ahamba S.A.N.

C

Before the court below, respondent’s counsel filed a Notice of Preliminary Objection wherein it was contended that the Notice of Appeal filed by the appellants was ineffectual as it was signed by the appellants’ counsel and not by the appellants as prescribed under Order 4 Rule 4(1) of the Court of Appeal Rules. The court below heard arguments on the preliminary objection; and in a Ruling delivered on 16/1/06 struck out the appeal for non-compliance with Order 4 rule 4(1) of the Court of Appeal Rules. Dissatisfied with the Ruling, the appellants have brought before this Court a final appeal.

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The central issue for decision in this appeal is whether or not the court below was correct in striking out the appellants’ appeal for non-compliance with Order 4 rule 4(1) of the Court of Appeal Rules which provides:

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“Every Notice of Appeal or Notice of Application for leave to appeal or Notice of Application for extension of time, within which such notice shall be given, shall be signed by the applicant himself”

G

It is apparent that Order 4 rule 4(1) above is in mandatory language. This means that a Notice of Appeal filed without compliance with the terms of the rule ought not to be accepted by the Court of Appeal. Such Notice is ineffectual to activate a right of appeal.

H

I have had the advantage of reading in draft a copy of the lead judgment by my learned brother Ogbuagu J.S.C., I agree with his rea-

soning and conclusion that this appeal has no merit. I would also dismiss it.

B

ONNOGHEN JSC

This is an appeal against the ruling of the Court of Appeal holden at Abuja in appeal No. CA/A/41/M.06 delivered on the 7th day of July, 2006 following a preliminary objection raised by the respondent challenging the competence of the joint notice of appeal signed by counsel for the appellants.

The appellants were arraigned before the Federal High Court holden at Abuja on a four count charge of:

D (a) Treason against the President of the Federal Republic of Nigeria, contrary to section 37(2) of the Criminal Code Act, Cap. 77 Laws of the Federation of Nigeria 1990.

(b) Felony contrary to and punishable under section 37(1) of the Criminal Code Act Cap. 77, Laws of the Federation of Nigeria, 1990.

E (c) Felony contrary to and punishable under section 64 of the Criminal Code Act, Cap. 77 Laws of the Federation of Nigeria, 1990, and,

F (d) Offences contrary to section 62(2) and punishable under section 63 of the Criminal Code Act, Cap 77 Laws of the Federation of Nigeria, 1990.

On the 8th day of November, 2005 the appellants pleaded not guilty to the charge and were remanded in custody. Appellants subsequently applied for bail pending trial on the 9th day of January, 2006 which application included “*AN ORDER of court dismissing the charges against the Accused/Applicants before this Honourable Court in*” The application was refused by the learned trial judge resulting in an appeal to the Court of Appeal in which the appellants filed a joint Notice of Appeal signed by their counsel giving rise to the preliminary objection raised by learned counsel or the respondent earlier referred to in this judgment. The Court of Appeal sustained the preliminary objection resulting in the present appeal to this Court where the issues identified by learned coun-

G

H

sel for the appellants, CHIEF M. I. AHAMBA, SAN in the Appellants' Brief of Argument filed on 11/10/06 and adopted in argument of the appeal, are stated therein as follows:-

“(a) Whether Order 4 Rules 3(1) and (2) and 4(1) of the Court of Appeal Rules are applicable to a Notice of Appeal that did not arise out of a conviction (Ground 1 & 3)

(b) Whether the striking out of the Notice of Appeal was proper in law (Ground 4)

(c) Whether the failure of the Court of Appeal to pronounce on the other issues raised and argued in the appeal before it was proper (Ground 2).”

On the other hand, learned counsel for the respondent, CHIEF R. A. LAWAL-RABANA in the respondent's brief filed on 2/11/06 identified two issues for determination. These are:

“3.1.0 Whether the provisions of Order 4 Rules 4(1) of the Court of Appeal Rules was properly interpreted and applied by the Court of Appeal.

3.2.0 Whether the Court of Appeal was obliged to pronounce on other issue/grounds from the incompetent Notice of Appeal.”

In arguing the appeal, learned counsel for the respondent referred the court to the Notice of Appeal at pages 85 to 87 of the record and submitted that it was signed by the learned counsel for the appellants, instead of the appellants as required by the provision of order 9 Rule 3 of the Supreme Court Rules and that only one notice of appeal was filed for seven appellants; that the appeal being in a criminal matter each appellant ought to have filed a separate and individual notice of appeal which had not been done. Learned counsel further submitted that rules of court are to be obeyed and once a party fails to bring his matter before the court as specially provided in the rules, the court will not have the requisite jurisdiction to entertain the matter and urged the court to strike out the appeal as being incompetent, relying on *Unilorin vs Oluwadare* (2006) 14 NWLR (pt. 1000) 751 at 767.

Learned Counsel for the appellants submitted that the form which requires that appellants must each sign their notice of appeal applies to

appellants who are appealing against conviction unlike the present appellants who are appealing against the refusal of the trial court to grant them bail; that the trial of the appellants has not even started; that the lower court relied on the provisions of order 4 Rules 3(1), (2) and order 4 Rule 4(1) of the Court of Appeal Rules in arriving at its decision. Learned senior counsel then referred to the provisions of order 9 Rule 3 of the Supreme Court Rules and submitted that the said rule makes a distinction between criminal and civil appeals and that an application for bail is purely a civil proceeding, not criminal and urged the court to overrule the preliminary objection and allow the appeal.

Order 9(1) of the Supreme Court Rules provides as follows:-

“(1) This order shall apply to appeals from the Court of Appeal in criminal cases and to matters related thereto.”

The provision means that matters such as appeals against refusal of an application for bail in a criminal proceeding is a matter relating to criminal proceeding and as such must be brought within the ambit of Order 9 so as to confer jurisdiction on this Court to entertain the appeal. In the instant case, there is no doubt that the decision giving rise to the appeal to the Court of Appeal arose from court to grant them bail; that the trial of the appellants has not even started; that the lower court relied on the provisions of order 4 Rules 3(1), (2) and order 4 Rule 4(1) of the Court of Appeal Rules in arriving at its decision. Learned senior counsel then referred to the provisions of order 9 Rule 3 of the Supreme Court Rules and submitted that the said rule makes a distinction between criminal and civil appeals and that an application for bail is purely a civil proceeding, not criminal and urged the court to overrule the preliminary objection and allow the appeal.

Order 9(1) of the Supreme Court Rules provides as follows:-

“(1) This order shall apply to appeals from the Court of Appeal in criminal cases and to matters related thereto.”

The provision means that matters such as appeals against refusal of an application for bail in a criminal proceeding is a matter relating to criminal proceeding and as such must be brought within the ambit of Order 9 so as to confer jurisdiction on this Court to entertain the appeal.

In the instant case, there is no doubt that the decision giving rise to the appeal to the Court of Appeal arose from the refusal of the High Court to grant two applications praying for an order

(a) admitting the appellants to bail pending trial and

(b) dismissing the charges against the appellants in Limine, B
which applications were consolidated and determined by the trial court giving rise to the appeal in question. It should also be noted that at the trial court the appellants submitted separate applications for bail pending trial not a single application. The two applications as consolidated were refused by the trial court on 27/1/06 and the Amended Notice of appeal C
against that decision complained against the whole decision as can be seen at page 97 of the record.

Now ground one of the Amended grounds of appeal against that decision complains thus: D

“GROUND ONE.

The learned trial judge erred in law when she refused to set aside the charges against the accused persons on the ground that the charges were valid and investigations were still going on by the State Security E services.

Particulars of Error.

(a) *The decision whether to allow a prosecution to proceed or not rests on the evidence of prima facie case against an accused person in the processes before the court and not on the validity of the charges.* F

(b) *There was nothing brought before the court by way of proof of evidence or other process manifesting a prima-facie case against any of the accused persons.*

(c) *Inconclusive investigation is admission of no prima facie case yet.”* G

Ground one is one out of seven grounds of appeal dealing with the refusal of the trial judge to set aside the charges against the appellants - the rest dealing mainly with the refusal of the court to grant bail. H

When one looks at the issues formulated by learned senior counsel for the appellants in the appellant’s brief of argument filed before the Court of Appeal particularly at page 131 of the record the following ap-

pear-

“(a) Whether the failure of the trial judge to dismiss the charges against the appellants was proper in law (Grounds 1, 4 & 6)

(b) Whether the refusal of the trial judge to grant bail to the appellants was justified under the law.

(c) Whether a capital offence was triable summarily under Nigerian Law.

(d) Whether the trial judge’s failure to invoke the disciplinary jurisdiction of the Court to quash the charges against the appellants was proper in the face of a clear order of the Federal High Court Owerri to the contrary.”

From the totality of the grounds of appeal and the above issues, it is obvious that the submission of Learned Senior Advocate that the appeal before the lower court was on refusal of bail; that since bail proceeding is a civil, as opposed to criminal proceedings and, further still that since the appellants were not convict appellants, they are not required under the law, to sign and file individual notices of appeal, and that a single notice of appeal signed by learned counsel for the appellants is enough, cannot be a true reflection of the facts on record and the applicable law. It should be noted that the respected senior advocate has not stated that the steps taken by him in the proceedings is in error so as to invoke the equitable jurisdiction of the court. He insists that he is right in what he has done. He has also not gone back to the trial court with fresh application for bail after the refusal of the earlier one which he can validly do. Rather he has chosen to pursue the issue of the validity of his appeal in the form it was presented right up to this court while his clients continue to remain in custody.

As stated earlier, the Court of Appeal held that the Notice of Appeal, which initiated the appeal was incompetent under the Rules of the court and struck same out. From what has been revealed from the record, it is very clear that the matter giving rise to the present appeal is a criminal matter, not a civil one as the learned Senior Advocate would want the court to believe. That being the case I again hold the view that in appeal against the decision in that proceeding, the appellants must comply with

the provisions of order 9 Rule 3(1) of the Supreme Court Rules which provides that:

“3(1) Subject to the provisions of sub-rule (3) of this rule, appeals shall be brought by notice (hereinafter called “the notice of appeal”) to be filed in the Registry of the court below which shall set forth the grounds of appeal and shall state clearly whether the appeal is against some decision of the court below other than conviction or sentence. A notice of appeal shall be in the form prescribed in the first Schedule to these Rules and shall be signed by the appellant:

Provided.....”

The above provision does not say that the notice of appeal shall be signed by counsel for the appellant but by the appellant himself.

In the instant appeal the notice of appeal was not signed by any of the appellants but by learned Senior Advocate of Nigeria

I therefore agree with my learned brother OGBUAGU, JSC that the appeal lacks merit and should be dismissed. I order accordingly.

Appeal is hereby dismissed.