

SUPREME COURT OF NIGERIA
11TH JANUARY, 2008 SC.193/2000
CORAM:- S. U. ONU, D. MUSDAPHER, A. M.
MUKHTAR, I. F. OGBUAGU, P. O. ADEREMI, JJSC

TSOKWA MOTORS (NIG) LTD APPELLANT
AND	
UNITED BANK FOR AFRICA PLC RESPONDENT

COURT PROCESSES - Service - Non-service of process on a proper party - Will render proceedings null and void - But there is evidence of service in this case (H1)

COURTS - Case file - Scrutinization of - Jurisdiction - Issue of - Was raised and canvassed before trial court - It was not raised suo motu by lower court - As wrongfully alleged (H2)

STATUTES - Interpretation - Pending proceedings - Before Creation of State - Under s. 6 of the Decree - Is one that has progressed appreciably - So that starting de novo could be unjust (H3)

APPEALS - Interference - Findings of fact - Will not be disturbed by appellate court - Save in certain circumstances - Including obvious error in appraisal of evidence (H4)

ACTIONS - Proof - Pleadings - Cheques - Where evidence is given on a fact not pleaded - Defendant is not bound to respond - Plaintiff failed to prove its claim in this case (H5)

COURTS - Damages - Double compensation - Where court has fully compensated a victim of an injury under one head - It is not proper to award damages for same injury - Under another head (H6)

FACTS

Before the Yola High Court Gongola State, plaintiff/appellant filed an action against defendant/respondent. Appellant claimed inter alia, a declaration that it is not indebted to respondent, that re-

spondent is not entitled to sell appellant's landed property, that respondent had been negligent in handling appellant's accounts and N500,000. 00 general damages for negligence. Pleadings were filed, exchanged, and amended in turn with the leave of court. Hearing of the case commenced before the Jalingo Judicial Division of the Taraba State High Court, may be as a result of subsequent Creation of State. Yet the landed property in issues is in Yola and the current accounts in dispute are also operated in Yola, Adamawa State.

The trial Judge granted the reliefs claimed by appellant in part, and awarded N100,000 nominal damages thereby slipping into the error of double compensation. Respondent appealed to the Court of Appeal, upon filing the omnibus ground of appeal. Subsequently, a motion on notice was filed by respondent as appellant for leave to file additional grounds of appeal, advance copy of which was served on appellant's counsel without indicating return date. The motion was heard and granted in the appellant's absence. Its preliminary objection against use of the additional grounds appeal incorporated into its brief of argument was overruled. Court of Appeal held that the appellant failed to prove his claims which were accordingly dismissed. Being aggrieved, appellant has now appealed to the Supreme Court.

ISSUES FOR DETERMINATION

“(1) Whether having regard to fundamental principle of fair hearing, the Learned Justices of the Court of Appeal were right in overruling the preliminary objection and failing to set aside their proceedings on 21/5/98 in relation to the additional ground of appeal on the ground that the failure to communicate the hearing date of the Motion on Notice to the appellant there from was not fatal as the appellant is said to be a nominal party.

(2) Whether having regard to the principles of fair hearing, the Learned Justices of the Court of Appeal were right in making copious references and utilizing the original case file as well as manuscripts contained thereof to resolve the issue of jurisdiction against the Appellant without affording the appellant and/or its counsel the opportunity of addressing them.

(3) Whether the Learned Justices of the Court of Appeal were correct in their interpretation and application of Section 16 of the

States (Creation and Transitional) Provisions (No 2) Decree No 41 of 1991, vis-a-vis the instant case let alone justified in nullifying and voiding the proceedings of the trial court.

(4) Whether from the Pleadings filed and exchanged, evaluation of evidence by the trial Court, the lower Court was justified to have interfered with the findings of fact and/or evaluation of evidence of DW2 thereby coming to the conclusion that the appellant had failed to establish that its money was transferred to unknown account without its authority.

(5) Whether the award of ₦100,000.00 damages amounted to double compensation to warrant its setting aside on the ground that the Appellant was earlier awarded its claim for unauthorised transfers and unreturned cheques."

HELD (Unanimously dismissing the appeal per **ADEREMI JSC**)
Non-service of process on a proper party

1. It is trite law that non-service of process on a party properly so-called will render proceedings on such unserved process null and void. But in the circumstances of this case the Registrar, an official of the court who is always seised with facts relating to the administrative aspect of the case in court such as the filing of same in the Registry, payment of the correct fees for filing, issue of service of processes etc, informed the court that the appellant had been served with the hearing notice in respect of the motion on notice for leave to file additional grounds of appeal. Reliance on this category of court officials by a Magistrate or a Judge is sine qua non to the smooth running of state of affairs in the citadel of justice. (p. 465 C)

COURTS - Case file - Scrutinising of

2. It has always been established in law, that scrutinising the original file of case to find out the truth as to what has gone on in the court from where an appeal has been lodged, is a necessity in the desire to do justice. It was the result of this exercise that made the court below to discover that the issue of jurisdiction had been raised in the trial court and both parties had canvassed arguments on the point and what was more, arguments on this point are well entrenched in their respective briefs. So it is wrong to contend that the court below raised that issue

suo motu. Issues Nos 1 and 2 in each of the two briefs must therefore, be resolved in favour of the respondent, and I hereby do. (p. 465 E)

STATUTES - Interpretation - Pending proceedings

3. *"Pending proceedings expressed in the section must be one in respect of which some appreciable progress has been achieved in its prosecution in order that it could qualify for continuation in the court in which it is initiated. Thus, Section 6 of Decree No 41 to my mind does not contemplate that every pending matter before any court of a state immediately before the commencement of the decree should so continue after it has come into force. The section appears to equally address situations in which starting a case de novo may wrest parties of vital witnesses who may have died or would not be traced after they had earlier testified in the matter. It is for the above reasons, in my judgment, that Section 6 of the Decree was enacted. Where, therefore, such factors do not exist in the sense that no witnesses have been taken at all in the proceeding, as in the appeal at hand, at the time Decree No 41 came into force, there cannot be justification in continuing the proceeding where the cause of action and everything in it occurred outside the territorial jurisdiction of the court where it is pending."*

I pause here to say that a quick perusal of the record or proceedings shows that the cause of action accrued at Yola, Adamawa State. The landed property upon which the declaratory judgment is sought is in Yola, Adamawa State. Also the current accounts in dispute are operated in Yola, Adamawa State where they were originally opened. With the aforesaid facts staring one in the face, can I fault the findings and interpretation given to the provisions of Section 6 by the court below? My answer is in the negative. (p. 466 C)

APPEALS - Interference

4. In appeals on findings on facts, the attitude of the appellate court (which this court is) is now well established; it is one of caution and of reluctance in interfering with the facts found by the trial courts. But where there is an obvious or patent error in appraisal of oral evidence and ascription of probative value to such evidence or even where there is an improper or imperfect use by the trial judge of the

opportunity he had in seeing and hearing the witnesses or where he has reached a wrong conclusion on proved or accepted facts, the appellate court in such circumstances, is duty bound in law to interfere and set aside such perverse findings. (p. 467 D)

ACTIONS - Proof - Pleadings - Cheques

5. Suffice it to say that the averment in paragraph 9 (d) was denied by the respondents in paragraphs 7 and 8 of its amended statement of defence. The court below in its judgment held as follows:

“The respondent whose case from its pleadings is that the appellant delayed returning its dishonoured cheques failed to prove that. Instead PW1 led evidence to the effect that the cheques in question were never returned at all - an issue not pleaded. Therefore the Appellant was not duty bound to prove when and how it returned the cheques in question as no evidence was led in proof of the averment in paragraph 9D of the Amended Statement of claim to the effect that the Appellant delayed returning the cheques. From the pleadings and the evidence on record therefore, the Respondent is not entitled to the sum of ₦28,253.00 as there is no evidence to prove that the respondent is so entitled to the amount.”

After a thorough review of the printed evidence, the court below held, which I am in agreement with, that the appellant/plaintiff did not discharge the onus on it to prove that the sum of ₦617,659.43 was transferred from its account to an unknown account. The case thus collapsed. (p. 467 G)

Damages - Double compensation

6. The award of the trial court of the sum of ₦100,000.00 as nominal damages having regard to the award earlier made to the appellant of its claim for unauthorised transfer and unreturned cheques is definitely double compensation.

It has been repeatedly held by this court that where a victim of an injury has been fully compensated under one head of damages, it is improper to award him damages in respect of the same injury under another head. See *Ezeani & Ors v Ejidike (1964) 1 All NLR 402*. I must not forget to say here that even having set aside the basis upon which the double compensation was awarded, the sum of ₦100,000.00

awarded as nominal damage is outrageous, the law will never allow it to stand. (p. 468 D)

NOTABLE POINTS OF INTEREST
MUSDAPHER JSC

B *1. Fair hearing - Appeals - Not every error counts*

There is no doubt a denial of fair hearing is a fundamental issue and where such a denial exists, the entire proceedings will be rendered a nullity. In the instant case, the appellant alleged that he was denied hearing in respect of an application by respondent to file and argue additional grounds of appeal. At the hearing of the appeal, and in his brief the appellant discussed the additional grounds and did not complain against the filing of the ground. I agree that leave to file and argue additional grounds of appeal granted the respondent cannot be said to be an order made against the appellant and neither would such a leave affect the appellant. The appellant had the opportunity to answer the additional grounds and he indeed did so at the hearing of the appeal. Considering all the circumstances of this case, it cannot be said that the appellant had suffered any miscarriage of justice. It is not every mistake or error that will suffice to set aside a judgment. It must be a substantial error affecting the justice of the case. (p. 471 C)

OGBUAGU JSC

F *2. Hearing de novo is null and void*

In respect of Issue 3 of both parties, the provision of *Section 6 of The States Creation and Transitional Provisions Decree No 41 of 1991*, is clear and unambiguous and has also been reproduced in the said lead judgment. As rightly submitted by Okafor Esq (SAN) at the hearing of this appeal and as contained at page 17 paragraph 5.03 (b) of the respondent's brief, the cause of action arose in Adamawa State. The property, the subject-matter that gave rise to this suit, i.e. Plot 19, Zanda Street, Demsawo Ward, Jimeta, Yola, is in Adamawa State: The said two accounts also the subject-matter of the suit, were opened in the respondent's branch bank in Adamawa. The hearing *de novo* of the suit by Audu, was in another state i.e. Taraba State in the Jalingo judicial division. The court below, was therefore right when it came to the inescapable conclusion at page 344 of the records inter alia, thus:

"Having regard to all that I have said above, it is my view that the appropriate court to hear the suit subject of this appeal is the High Court of Adamawa State. Consequently, the High Court of Taraba State was in grave error to have entertained the suit. I therefore declare the proceedings of the High Court of Taraba State in Suit No GSS/W/11/88 null and void and of no effect.

I maintain that I agree and I affirm this finding and the decision.
(p. 479 G)

REPRESENTATION

A. T. Kehinde, For the Appellant

G. Ofodile Okafor, (SAN), with him Goodluck Onyegbule, For the Respondent

CASES REFERRED TO

Chime v Chime (1995) 6 NWLR (pt.404) 734

Nuhu v Ogele (2003) 18 NWLR (pt.852) 251 at 271

Ezeani & Ors v Ejidike (1964) 1 All NLR 402

New Nigerian Newspapers v Otteh (1992) 4 NWLR (Pt 237) 626

Julius Berger (Nigeria) Ltd v Femi (1993) 5 NWLR (Part 295) 612

Umenwuluaku v Ezenwa (1972) 2 SC 343

Esoh v I.G.P. 1958 3 F.S.C. 37

Orugbo & Anor v Bulara Una & Anor (2002) 9 SCNJ. 12

Prince Sosanya v Engr. Onadeko & 5 Ors (2005) 2 SCNJ

Innocent Isichei v Saint Clair Industries Ltd

Egbuna v Egbuna (1989)2 NWLR (pt. 106) 773 C.A.

Folabi v Folabi (1976) 7 &10 S.C. 1@ 13-14

Alegbe v Abimbola (1978) 2 S C.39

National Bank v Are Brothers (1977)6 S.C.97

Kraus Thompson Organization Ltd v University of Calabar (2004) 9 NWLR

STATUTE REFERRED TO

States (Creation and Transitional) Provisions (No.2) Decree No. 41 of 1991 s.6

LEAD JUDGMENT BY ADEREMI JSC

The appeal in this matter is against the judgment of the Court of Appeal (Jos Division) in appeal No. CA/J/78/98 delivered on the 10th of April, 2000. The appellant, as plaintiff before the High Court of Justice sitting at Yola, Gongola State; per paragraph 15 of its amended statement of claim dated 4th November, 1996, claimed against the respondent, who was the defendant before that court the following reliefs: -

“(1) A declaration that the plaintiff is not indebted to the defendant in the sum of ₦773, 386.45 or any sum at all.

(2) A declaration that the actual positions of the plaintiff's accounts are as follows:-

(a) Account No. 1025 at 31/12/86 was ₦897,137.27k credit and not ₦352,066.64k as per statement of account given to the plaintiff.

(b) Account No. 1722 as at 4/2/86 was ₦1, 095, 732.20k credit and not ₦2,609. 32k debt as per the statement of account given to the plaintiff.

(3) A declaration that the defendant is not entitled/has no right to sell the property having regard to the disputed positions of the accounts and the plaintiff's strong averment that it is not indebted to the defendant.

(4) An injunction restraining the defendants, its agents or assigns from selling any property of the plaintiff, and an order compelling the defendant to release to the plaintiff the plaintiff's Certificate of Occupancy No. GS, 1801 in the defendant's keeps as plaintiff's bankers.

(5) A declaration that the defendant has been negligent in handling the accounts of the plaintiff.

(6) ₦500, 000.00 general damages to the plaintiff for the defendant's negligence in handling the plaintiffs said Account Nos 1722 and 1025.

(7) An order of the court that the defendant should correct and amend the plaintiff's books of account to reflect the actual position of the accounts by crediting the accounts with all unauthorised transfers, uncredited lodgements, value of dishonoured cheques not returned to the plaintiff, reversing all unauthorised/fictitious debits and interest charges. The plaintiff also claims 30% monthly interest on all such sums

found due and credited into its account (as herein claimed) from date due till paid.

(8) A declaration that the advertisement by the defendant to auction the plaintiff's motor workshop at plot 19 Zaranda Street, Demsawo Ward, Jimeta -Yola was improper and made in bad faith and adversely affected the plaintiff's business." B

Pleadings, as ordered were duly filed and exchanged between the parties and with the leave of court, their respective pleadings were amended in turn. Hearing of the case commenced in earnest before the trial court, holden at Jalingo Judicial Division of the High Court of Justice, Taraba State. In a considered judgment delivered on the 27th of October, 1997, the trial Judge granted the reliefs claimed by the appellant/plaintiff in part in the following terms:- C

"Taking the entire body of this judgment into consideration, particularly the issue of unauthorised transfer and unreturned cheques without proper records. I am of the view that the defendant was negligent in handling plaintiff's account. This has caused some hardship to the plaintiff and is therefore entitled to nominal damages which I assess at ₦ 100,000.00. D

Defendant is by this judgment to put the plaintiff's account in correct position by crediting to the accounts all unauthorised transfers, interests charged and value of dishonoured cheques not returned to plaintiff; uncredited lodgements, reverse all unauthorised debits and interest charges as adjudged. A fix interest of 20% is charged on such sums found due and credited into plaintiff's accounts. E F

With regards to relief 8, the plaintiff has not proved by evidence before this court that the defendant has put up an advertisement to auction plaintiff's workshop at plot 19 Zaranda Street, Demsawo Ward, Jimeta - Yola. It is therefore not proper to grant such a G declaration without evidence and same is refused."

Being dissatisfied with the judgment of the trial court, the present respondent, as the aggrieved party before the trial court appealed there from to the court below (Court of Appeal, Jos Division) upon a Notice of Appeal which contained duly the omnibus ground of appeal. Subsequently, a motion on notice dated 30th March, 1998, was brought by the present respondent as the appellant before that court for leave to file additional grounds of appeal. Suffice it to say that H

a copy of the said motion on notice was served on the counsel for the respondent before the court below (now the appellant in this court) on or about the 2nd of April, 1998, without any indication as to return date for the hearing of the said motion. It is the case of the present appellant that he was not served with the hearing notice of the
 B aforesaid motion which was granted by the court below in the absence of himself and his counsel. The present appellant incorporated into his brief of argument a preliminary objection as to the use of the additional grounds of appeal which were granted behind him. In its reserved
 C judgment delivered on the 10th of April, 2000, after taking the addresses of counsel, the court below overruled the preliminary objection and went ahead to allow the appeal as it was held that the plaintiff/respondent, now the appellant, failed to prove his claims which were accordingly dismissed.

D Being aggrieved by that decision, the appellant has appealed to this court by a Notice of Appeal dated 5th of July, 2000 and filed on the same date incorporating therein twelve grounds of appeal. Distilled there from are five issues for determination which as set out in the body of its amended appellant's brief of argument, they are in
 E the following terms:

*"(1) Whether having regard to fundamental principle of fair hearing, the Learned Justices of the Court of Appeal were right in overruling the preliminary objection and failing to set aside their
 F proceedings on 21/5/98 in relation to the additional ground of appeal on the ground that the failure to communicate the hearing date of the Motion on Notice to the appellant there from was not fatal as the appellant is said to be a nominal party.*

*(2) Whether having regard to the principles of fair hearing, the
 G Learned Justices of the Court of Appeal were right in making copious references and utilizing the original case file as well as manuscripts contained thereof to resolve the issue of jurisdiction against the Appellant without affording the appellant and/or its counsel the opportunity of addressing them.*

H *(3) Whether the Learned Justices of the Court of Appeal were correct in their interpretation and application of Section 16 of the States (Creation and Transitional) Provisions (No 2) Decree No 41 of 1991, vis-a-vis the instant case let alone justified in nullifying and*

voiding the proceedings of the trial court.

(4) *Whether from the Pleadings filed and exchanged, evaluation of evidence by the trial Court, the lower Court was justified to have interfered with the findings of fact and/or evaluation of evidence of DW2 thereby coming to the conclusion that the appellant had failed to establish that its money was transferred to unknown account without its authority.* B

(5) *Whether the award of ₦100,000.00 damages amounted to double compensation to warrant its setting aside on the ground that the Appellant was earlier awarded its claim for unauthorised transfers and unreturned cheques.”* C

The respondent, on its part also identified five issues for determination by this court. As gleaned from its brief of argument, the issues are as follows: -

“(1) *Whether the Appellant was denied fair hearing when the Court of Appeal heard the motion to file additional grounds of appeal on 21/5/98 and whether the appellant’s preliminary objection to the competence of the Respondent’s Appeal and Additional Grounds of appeal were properly dismissed.* D

(2) *Whether the Learned Justices of the Court of Appeal breached the principles of fair hearing in resolving the issue of jurisdiction of the trial court by reference to the docket or the case file.* E

(3) *Whether the Court of Appeal was right in holding that Section 6 of Decree No 41 of 1999 cannot be invoked to save the proceedings of the trial Court and that the appropriate court to hear the subject-matter of the appeal was the High Court of Adamawa State.* F

(4) *Whether the findings of the Learned Justice (sic) of the Court of Appeal that:* G

(a) *The Appellant failed to establish that money was transferred from his account to an unknown account.*

(b) *The Learned trial Judge did not evaluate evidence of DW2, and*

(c) *The trial Judges (sic) findings are not based on evidence of facts pleaded is correct in law.* H

(5) *Whether the Learned Justices of the Court of Appeal were right in holding that the award of ₦100,000.00 nominal damages to*

the Appellants (sic) by the Learned trial Judge amount (sic) to double compensation.”

When this appeal came before us on the 16th of October, 2007, for argument, Mr. Kehinde, learned counsel for the appellant referred to, adopted and relied on his client’s amended brief of argument filed on the 9th of November, 2006 and the reply brief filed on the 8th of February, 2007 and urged us to allow the appeal. Mr. Okafor, learned Senior Counsel for the respondent, referred to his client’s amended brief of argument filed on 21st December, 2006, while drawing our attention to the point that the interpretation of the provisions of Section 6 of Decree No 41 of 1991 is contained in the decisions in *Chime v Chime* (1995) 6 NWLR (pt.404) 734 and *Chime v Chime* (2001) 3 NWLR (pt.701) 527, he urged us to dismiss the appeal.

I have had a careful reading of all the issues raised by the parties. They are all materially similar. I shall therefore take issues Nos 1 and 2 on each of the two briefs together; issue No 3 on each of the briefs; issue No 4 on each of the briefs and issue No 5 on each of the processes again together.

On issues Nos 1 and 2, the appellant argued that neither it nor its counsel was served with the hearing notice of the motion of 21/5/98 by which the respondent was granted leave to file additional grounds of appeal. Although it conceded that it was served with an advance copy of the said motion on 2/4/98, that process bore no return date, it contended. It was its further argument that although the court below agree with its submission that it was not served with the hearing notice of the motion, but that court (court below) said it (the appellant) was a nominal party and therefore non-service of the hearing notice on it was not a fundamental vice and the proceedings were in no way adversely affected. On the objection it raised as to the issue of jurisdiction of the court to entertain the suit, while conceding that the court below had the right to have a resort to the case file/jacket as well as the manuscripts of the proceedings from the trial court, as the purpose of that exercise was to resolve the issue of jurisdiction, it was of importance that the court below gave the parties an opportunity to address it on that issue before coming to a conclusion on the issue of jurisdiction so raised by it. It was finally urged that issues Nos

1 and 2 be resolved in its favour.

On the same issues, the respondent has argued that even if the appellant was not served with the hearing notice of the motion, for reason of being a nominal party, according to him, that would not vitiate the proceedings as there was no relief against it. Moreover, it was further argued that, the court below found from the records and through the Registrar of the court that the appellant was served. On the point of referring to the case file or docket by the court below, it was its submission that the court below had the right to do so in the interest of justice and the case of *Nuhu v Ogele (2003) 18 NWLR (pt.852) 251 at 271* was relied on while urging that the two issues be resolved in favour of the respondent.

It is trite law that non-service of process on a party properly so-called will render proceedings on such unserved process null and void. But in the circumstances of this case the Registrar, an official of the court who is always seised with facts relating to the administrative aspect of the case in court such as the filing of same in the Registry, payment of the correct fees for filing, issue of service of processes etc, informed the court that the appellant had been served with the hearing notice in respect of the motion on notice for leave to file additional grounds of appeal. Reliance on this category of court officials by a Magistrate or a Judge is sine qua non to the smooth running of state of affairs in the citadel of justice. It has always been established in law, that scrutinising the original file of case to find out the truth as to what has gone on in the court from where an appeal has been lodged, is a necessity in the desire to do justice. It was the result of this exercise that made the court below to discover that the issue of jurisdiction had been raised in the trial court and both parties had canvassed arguments on the point and what was more, arguments on this point are well entrenched in their respective briefs. So it is wrong to contend that the court below raised that issue suo motu. Issues Nos 1 and 2 in each of the two briefs must therefore, be resolved in favour of the respondent, and I hereby do.

Issue No 3 on each of the two briefs relates to the issue of

interpretation of Section 6 of the States (Creation and Transitional) Provisions (No 2) Decree No 41 of 1991 - the grouse here is as to whether the court below was correct in its interpretation of the provision. Section 6 aforesaid; provides: -

B *“Any proceeding pending before any court of a state immediately before the commencement of this Decree may after such commencement be continued before that court and shall not be adversely affected by the provisions of this Decree.”*

In interpreting the above provision as to its applicability to this case, the court below held at pages 342/343 inter alia:-

C ***“Pending proceedings expressed in the section must be one in respect of which some appreciable progress has been achieved in its prosecution in order that it could qualify for continuation in the court in which it is initiated. Thus, Section***
D ***6 of Decree No 41 to my mind does not contemplate that every pending matter before any court of a state immediately before the commencement of the decree should so continue after it has come into force. To the extent that not every matter shall be***
E ***continued after the decree had come into force, there must be some compelling reasons why the matter must or must not be continued with. Clearly where some witnesses have been taken and the suit, with the creation of the new states, will have to be started de novo, the provision of Section 6 can be invoked to save obvious hardships that***
F ***will inevitably visit the suit. Every proceeding that is part-heard it must be realised, has gone some steps in expenses monetarily and materially as well as in terms of human energy. For such proceedings to start all over (de novo) by reason of States creation over which neither the court nor the parties had control, could be unjust. In order to deviate***
G ***from such glaring injustice, Section 6 was enacted. The section appears to equally address situations in which starting a case de novo may wrest parties of vital witnesses who may have died or would not be traced after they had earlier testified in the matter. It is for the above reasons, in my judgment, that Section***
H ***6 of the Decree was enacted. Where, therefore, such factors do not exist in the sense that no witnesses have been taken at all in the proceeding, as in the appeal at hand, at the time Decree No 41 came into force, there cannot be justification in continu-***

ing the proceeding where the cause of action and everything in it occurred outside the territorial jurisdiction of the court where it is pending.”

I pause here to say that a quick perusal of the record or proceedings shows that the cause of action accrued at Yola, Adamawa State. The landed property upon which the declaratory judgment is sought is in Yola, Adamawa State. Also the current accounts in dispute are operated in Yola, Adamawa State where they were originally opened. With the aforesaid facts staring one in the face, can I fault the findings and interpretation given to the provisions of Section 6 by the court below? My answer is in the negative. Issue No 3 in the appellant’s brief is, accordingly answered in the affirmative while I resolve issue No 3 in the respondent’s brief in its favour.

Issue No 4 of each brief turns on the evaluation of evidence. ***In appeals on findings on facts, the attitude of the appellate court (which this court is) is now well established; it is one of caution and of reluctance in interfering with the facts found by the trial courts. But where there is an obvious or patent error in appraisal of oral evidence and ascription of probative value to such evidence or even where there is an improper or imperfect use by the trial judge of the opportunity he had in seeing and hearing the witnesses or where he has reached a wrong conclusion on proved or accepted facts, the appellate court in such circumstances, is duty bound in law to interfere and set aside such perverse findings.*** The case of the appellant, from the inception, was that there was delay in the return of its dishonoured cheques not that they were not returned. It had contended that if the dishonoured cheques had been timeously returned, it would have quickly asked its debtors to make good their undertaking to pay their debts. Its pleadings on this issue is very clear - paragraph 9 (d) of the amended statement of claim is explicit on this point. ***Suffice it to say that the averment in paragraph 9 (d) was denied by the respondents in paragraphs 7 and 8 of its amended statement of defence. The court below in its judgment held as follows:***

“The respondent whose case from its pleadings is that the appellant delayed returning its dishonoured cheques failed

to prove that. Instead PW1 led evidence to the effect that the cheques in question were never returned at all - an issue not pleaded. Therefore the Appellant was not duty bound to prove when and how it returned the cheques in question as no evidence was led in proof of the averment in paragraph 9 D of the Amended Statement of claim to the effect that the Appellant delayed returning the cheques. From the pleadings and the evidence on record therefore, the Respondent is not entitled to the sum of N28, 253.00 as there is no evidence to prove that the respondent is so entitled to the amount."

After a thorough review of the printed evidence, the court below held, which I am in agreement with, that the appellant/plaintiff did not discharge the onus on it to prove that the sum of N617, 659.43 was transferred from its account to an unknown account. The case thus collapsed. Issue No 4 must therefore, be resolved in favour of the respondent. And I so do, while I resolve it against the appellant.

Issue No 5 on each brief poses no problem for quick resolution. The award of the trial court of the sum of N 100,000.00 as nominal damages having regard to the award earlier made to the appellant of its claim for unauthorised transfer and unreturned cheques is definitely double compensation. The trial judge had earlier held: -

"The sum of N617, 659.43 is hereby to be recredited by the defendant with all the interest charged on the same amount to the plaintiff's account No. 1025."

The trial judge had also held: -

"Consequently, the defendant is to re-credit the total sum of N 28,253.00 to the plaintiff's account No 1025 as the value to its eight dishonoured and unreturned cheques."

It has been repeatedly held by this court that where a victim of an injury has been fully compensated under one head of damages, it is improper to award him damages in respect of the same injury under another head. See Ezeani & Ors v Ejidike (1964) 1 All NLR 402. I must not forget to say here that even having set aside the basis upon which the double compensation was awarded, the sum of N100,000.00 awarded as nomi-

nal damage is outrageous, the law will never allow it to stand.

Issue No 5 on each of the two briefs is consequently resolved in favour of the respondent but against the appellant.

In the final analysis, for all I have said above, it is my judgment that this appeal is unmeritorious. It must be dismissed and I accordingly dismiss it with costs of N10, 000.00 awarded in favour of the respondent but against the appellant. B

ONU JSC

Having been privileged to read before now the judgment just delivered by my learned brother Aderemi, J.S.C, I am in entire agreement with him that this appeal is unmeritorious and must therefore stand dismissed with N10, 000 costs to the respondent against the appellant. C

A brief expatiation on issues 1 and 2 in each of the parties' briefs the purports of which are similar, I think, will suffice to dispose of this appeal. D

Issue 1

Whether the appellant was denied fair hearing when the Court of Appeal heard the motion to file additional grounds of appeal on 21/5/98 and whether the appellant's preliminary objection to the competence of the respondent's appeal and additional grounds of appeal were properly dismissed. E

Issue 2

Whether the learned justices of the Court of Appeal breached the principles of fair hearing in resolving the issue of jurisdiction of the trial court by reference to the docket or the case file. F

Issue Nos 1 and 2 argued together, which complain jointly that neither appellant nor its counsel was served with the hearing notice of the motion of 21/5/98 by which the respondent was granted leave to file additional grounds of appeal. Much as it (appellant) conceded that it was served with an advance copy of the said motion on the 2/4/98, the process bore no return date. It was its further contention that although the court below agreed with its submission that it was not served with the hearing notice of the motion but that court (court below) said it (the appellant) was a nominal party and therefore non-service of the G
H

hearing notice on it was not a fundamental vice and the proceedings were in no way adversely affected. On the objection it raised as to the issue of jurisdiction of the court to entertain the suit, while conceding that the court below had the right to have a resort to the case file/jacket as well as the manuscripts of the proceedings from the trial court, as the purpose of that exercise was to resolve the issue of jurisdiction, it was of importance that the court below gave the parties an opportunity to address it on that issue of jurisdiction so raised by it.

“A court can only be competent among other things if all the conditions precedent to its jurisdiction were fulfilled..... The service of the process on the defendant so as to enable him appear to defend the relief being sought against him and due appearance by the party or any counsel must be those fundamental conditions precedent required before the court can have competence and jurisdiction. This well accords with the principle of natural justice.”

See *Skenconsult (Nigeria) Limited and Another v Godwin Sekondi Ukey* (1981) 1 SC 6 at page 26.

It is well established that lack of service does not only affect the form but goes to the root of the matter. See (1943) K.B 256/262 at 263 where Lord Green’s dicta proffered:

“In my opinion, it is beyond question that failure to serve process as required, is a failure which goes to the root of our conception of the proper procedure in litigation.”

It was recently held that failure to effect service of process where it is required renders the subsequent proceeding and judgment a nullity. See also *New Nigerian Newspapers v Otteh* (1992) 4 NWLR (Part 237) page 626 and *Julius Berger (Nigeria) Ltd v Femi* (1993) 5 NWLR (Part 295) 612.

In the instant case, my learned brother, Aderemi J.S.C, in my view, therefore said right when he held in concluding his consideration of Issues 1 and 2 (supra) that:

“..... It was the result of this exercise that made the court below to discover that the issue of jurisdiction had been raised in the trial court and both parties had canvassed arguments on the point and what is more arguments on this point are well entrenched in their respective briefs. So it is wrong to contend that the court below raised that issue suo motu. “

Thus, my learned brother resolved Issues Nos 1 and 2 in each of the two briefs in favour of the respondent and so do I.

For the reasons given and those more comprehensively articulated in the leading judgment of my learned brother, Aderemi, J.S.C, I too dismiss this appeal and make similar consequential orders as to costs. B

MUSDAPHER JSC

I have had the preview of the judgment of my Lord Aderemi, J.S.C just delivered with which I entirely agree. I only want to comment on an issue in which the appellant's counsel had made heavy weather. He complained under issues 1 and 2 the denial of fair hearing. There is no doubt a denial of fair hearing is a fundamental issue and where such a denial exists, the entire proceedings will be rendered a nullity. In the instant case, the appellant alleged that he was denied hearing in respect of an application by respondent to file and argue additional grounds of appeal. At the hearing of the appeal, and in his brief the appellant discussed the additional grounds and did not complain against the filing of the ground. I agree that leave to file and argue additional grounds of appeal granted the respondent cannot be said to be an order made against the appellant and neither would such a leave affect the appellant. The appellant had the opportunity to answer the additional grounds and he indeed did so at the hearing of the appeal. Considering all the circumstances of this case, it cannot be said that the appellant had suffered any miscarriage of justice. It is not every mistake or error that will suffice to set aside a judgment. It must be a substantial error affecting the justice of the case. E F

I do not deem it necessary to discuss or consider the other issues raised. It suffices only to agree that by virtue of *Section 6 of the States Creation and Transitional Decree No 41 of 1991*, the cause of action arose in Adamawa State and had no connection with Taraba State when the suit was heard dc novo in the Jalingo Judicial Division of Taraba State, the Court below was there fore correct, when it concluded that Taraba State High Court had no jurisdiction to entertain the suit. G H

It is for this and for fuller reasons contained in the judgment of

my Lord aforesaid, that I too dismiss the appeal and affirm the decision of the court below. I abide by the order for costs contained in the judgment.

B

MUKHTAR JSC

This appeal against the decision of the Court of Appeal, Jos division does not stand on a very firm ground. Five issues for determination were distilled from twelve grounds of appeal, and yet not much can be said in its favour. The issues have already been reproduced in the lead judgment, but I will still reproduce the issues I wish to deal with here in this judgment they are:-

“1. Whether having regard to the fundamental principle of fair hearing, the learned Justices of the Court of Appeal were right in overruling the preliminary objection and failing to set aside their proceedings on 21/5/98 in relation to the additional grounds of appeal on the ground that the failure to communicate the hearing date of the motion on notice to the Appellant thereof was not fatal as the Appellant is said to be a nominal party.

2. Whether having regard to the principles of fair hearing, the learned Justices of the Court of Appeal were right in making copious references and utilizing the original case file as well as manuscripts containing thereof to resolve the issue of jurisdiction against the appellant without affording the Appellant and/or its counsel the opportunity of addressing them.”

It is on record that the respondent was served with the motion on notice for leave to file additional grounds of appeal. It is also on record that the appellant was served with the motion on notice, but the complaint here is that the motion did not bear a hearing date, and so the appellant was not present in court when the motion on notice was moved and granted. A counter-affidavit was not filed by the appellant, even though well over one month had lapsed before the motion was heard. The appellant was served with an advance copy of the motion and he did not deem it necessary to file a counter affidavit to challenge the motion and its supporting affidavit. With such omission it could be assumed that the appellant had no objection to the motion. But then if it could have wanted to object on the ground of law in which case

it didn't have to file a counter-affidavit. In the circumstance of the situation at hand, the pertinent question to ask is even though the prayer for additional grounds of appeal was granted, how has the order negatively affected the appellant and how has it been prejudiced? In the first place the respondent is allowed by law to file additional grounds of appeal to its original ground of appeal, and given such situation the court below had no alternative than to grant the leave to file and argue the additional grounds of appeal. Secondly the court at that stage of proceedings was not supposed to examine the merit, and the competence or otherwise of the proposed additional grounds of appeal. See *Esoh v I.G.P. 1958 3 F.S.C. 37*.

In this respect, I agree with the lower court when it held in its judgment as follows:-

"It has to be borne in mind that the respondent was served with the notice of motion one month and nineteen days before it was heard -albeit without any notification served on the respondent of the hearing date. However, the respondent filed no counter affidavit to challenge the application. It is on record that when the original notice and grounds of appeal was filed, the record of appeal was yet to be compiled - see page 81 of the record, and paragraphs 8 and 9 of the affidavit in support of the motion seeking for leave to file additional grounds of appeal. There is therefore nothing up normal and unusual in granting such applications that are by and large non contentious. One must perhaps observe that the orders of this court granting leave to the appellant to file additional grounds of appeal cannot by any stretch of imagination be said to be an order made against the respondent. Neither would the orders affect the respondent. Evidently therefore, the respondent is in no way prejudiced by the orders and no failure of justice is occasioned."

The heavy weather made of the failure/omission in the lower court by learned counsel for the appellant is absolutely unnecessary. Likewise the contention of learned counsel that the failure of the lower court to call for further address in respect of the revelations from the case file and manuscripts of proceedings was tantamount to a denial of fair hearing. I wonder what would have added to the merit of the appellant's appeal, if the appellant was given that chance for further address. Learned counsel has unnecessarily over flogged these issues

by tenaciously holding on to these minor points, as though the appeal depended on them, when it didn't. It is as though it was clutching at a straw to succeed in its appeal, because as far as I can see the points raised are inconsequential. The point of the date in the revenue receipt, and the nature of the judgment, whether non existing or not, are mere matters of technicality that will not be allowed to affect the substance and merit of the appeal, for doing so will lead to miscarriage of justice. In this vein, these first issues are resolved in favour of the respondent.

I have read in advance the lead judgment delivered by my learned brother Aderemi, JSC. I am in full agreement with him that the appeal completely lacks merit, and should be dismissed. I also dismiss the appeal, and abide by the consequential orders made in the lead judgment.

OGBUAGU JSC

This is an appeal against the decision of the Court of Appeal, Jos division (hereinafter called "the Court below") delivered on 10th April, 2000, allowing the appeal to it by the respondent and dismissing the claims of the appellant that was the plaintiff in the trial court.

Dissatisfied with the said decision, the Appellant has appealed to this Court on Twelve (12) grounds of appeal and has formulated in its amended brief of argument, five (5) issues for determination. The respondent, has also formulated five (5) issues for determination, both issues are distilled from the said grounds of appeal and which said issues have been reproduced in the lead judgment of my learned brother, Aderemi, JSC, which I had the privilege of reading before now.

The facts briefly stated, are that the appellant, is a customer of the respondent at its Yola Branch in Adamawa State. The appellant operated two (2) accounts with the Respondent at the said Branch - i.e. A/C 1025 and A/C 1722 respectively. By a letter dated 5th July, 1984 - Exh. 17, the appellant applied to the respondent, for an overdraft of ₦200,000.00 (two hundred thousand naira) and a loan of ₦250,000.00 (two hundred and fifty thousand naira). By a letter dated 28th October, 1984 - Exh. 15, the respondent, approved an

overdraft of ₦ 190,000.00 (one hundred and ninety thousand naira) and a loan of ₦ 300,000.00 (three hundred thousand naira) for the appellant repayable within twenty four (24) months. As a security for the loan, the appellant executed in favour of the respondent, a Deed of Legal Mortgage dated 23rd March, 1984 in respect of or over the appellant's workshop situate at Yola and covered by a certificate of occupancy No 98/1801. It is noted by me, that the Managing Director of the appellant - Danjuma Tsokwa, (who testified as PW1), also executed a guarantee in favour of the respondent to the tune of ₦ 500,000.00 (five hundred thousand naira).

By Exhibits 1 and 20 respectively, - i.e. letters dated 5th March, 1986 and 28th April, 1986, the Appellant requested for its Statement of Account from the Respondent. On 29th April, 1986, the respondent sent to the appellant, two sets statement of accounts in respect of A/C 1025 i.e. Exhibits 21 and 22 respectively. A statement of account, was also sent by the Respondent to the Appellant in respect of A/C 1722. On 10th March, 1986, the appellant wrote to the respondent, complaining of certain irregularities in respect of A/C 1722. The respondent replied the said letter; - both letters are Exhibits 18 and 19 respectively. However, the respondent later, sent letters of demand to the appellant when it was unable to repay the said loan facility within the said twenty four (24) months. The respondent, later advertised the mortgaged property, for sale by public auction. In order to stop the sale of the said property, the appellant, took out a writ of summons at the Yola High Court against the respondent and claimed certain reliefs which have also been reproduced in the said lead Judgment of my learned brother, Aderemi, J.S.C. Pleadings were duly filed and exchanged. Evidence was heard and after addresses by learned counsel for the parties, the learned trial Judge - Audu, J., sitting in Jalingo Judicial Division of the Taraba State Judiciary, on 27th October, 1997, in a considered judgment where he stated that he would not follow his usual practice of reproducing the submissions of learned counsel in their addresses before determining the case, but that the case "being a matter dealing with figures" he would "approach same in mathematical way", at the end, granted all the claims/reliefs of the Appellant except relief 8 in its amended statement of claim. Aggrieved by the said decision, the respondent, appealed to the court below

where its appeal succeeded, hence the instant appeal.

On 16th October, 2007, when this appeal came up for hearing, Kehinde, Esq., learned counsel for the appellant, told the court that the appellant's amended brief, was filed on 9th November, 2006 while their reply brief, was filed on 8th February, 2007. He relied on and
B adopted the two briefs and urged the court, to allow the appeal.

Okafor, Esq. (SAN) - Learned counsel for the respondent appearing with Goodluck Onyegbule, Esq., told the court that they filed the respondent's amended brief on 21st December, 2006. He
C adopted the same. As regards the interpretation of *Section 6 of Decree No 41 of 1991*, he cited and relied on the case of *Chime & Ors v Chime (2001) 3 NWLR (pt. 701) 727 @ 542 - 543*, (it is also reported in *(2001) 1 SCNJ. 182*). Learned SAN further told the court that both
D the accounts of the appellant and the property to be sold, were/are all in Adamawa State. That the issue of fair hearing, has been taken care of at pages 6 to 10 of their brief (Not so - it is at pages 10 to 14). That the case, was not heard behind the Appellant and its counsel. That he filed additional grounds of appeal and that both parties filed and
E exchanged briefs and were heard by the court below. He finally, urged the court to dismiss the appeal.

Since Kehinde, Esq. told the Court thereafter, that he had nothing more to say/reply, judgment, was reserved till to-day.

With the greatest respect to both learned counsel for the parties, as far as I am concerned, the only crucial issue in this appeal, is Issue
F 3 of the parties which deals squarely, with the jurisdiction of the High Court of Taraba State sitting in Jalingo Judicial Division and presided over by Audu, J., entertaining the suit which is the subject-matter leading to the instant appeal. However, and perhaps - a big perhaps,
G *ex debito justitiae* (in the interest of justice) of who? I may ask - the appellant is my answer.

I agree with my learned brother - Aderemi, J.S.C, that the said issues formulated by the parties, are substantially similar. Complaint of any denial of fair hearing, is a serious affair - more so as it is a
H constitutional provision in *Section 36 of the 1999 Constitution of the Federal Republic of Nigeria*. See the cases of *Orugbo & Anor v Bulara Una & Anor (2002) 9 SCNJ. 12; (2002) 9-10 S.C. 61* and recently, *Prince Sosanya v Engr. Onadeko & 5 Ors (2005) 2 SCNJ. 103 @ 131*

- 132: [2005] 2 S.C. (pt. II) 13 and many others. In fact to illustrate its seriousness, it is said that even God Almighty, gave Adam the opportunity to be heard before condemning him. But seriously speaking, can it be seriously and honestly said or contended by the appellant and its learned counsel, that there was a denial of fair hearing in respect of the application by the Respondent to file and argue additional grounds of appeal? - i.e. Grounds 2, 3 and 4) in that at the time the application was granted, the Appellant and its learned counsel, did not know of the hearing date and in fact, were absent? B

Speaking for myself, the reason proffered in the respondent's brief at page 11 and the holding of the court below that because the appellant was a "Nominal party as far as the application is concerned has in no way affected the proceedings of this court dated 21/5/98", with respect, does not persuade me. The question I or one may ask is "Why at all put the appellant on notice if it was merely a "nominal party in the said application?" I am rather persuaded in the fact that the appellant and his learned counsel, have not shown to this court, the miscarriage of justice occasioned to the appellant or prejudice the appellant suffered in respect of the said grant of the application. C

Firstly, I see at page 97 of the records, that an advance copy of the said motion, was served on, received and acknowledged by one N. D. U. Tukune, Esq., - a counsel in the appellant's counsel chambers on 2nd April, 1998. I note that no hearing date was fixed on the said application and this fact, appears on the said copy, although at page 109 thereof, the registrar confirmed to the trial court, this fact of service. What is not clear to me is whether the said registrar, had in the court's case file, evidence of the entry of a hearing date on the said motion paper in the court's own copy. Ordinarily, a court, is bound by the act or information given to it by the registrar of its court where such act or information, is backed up by the contents of its processes filed in the court's case file. See the unreported case of *Innocent Isichei v Saint Clair Industries Ltd Suit No CA/82/92* dated 5th July, 1995. F

Secondly, I note also that although the fact of service of the said motion paper is not disputed by the appellant and its learned counsel, curiously, the appellant through its said counsel, never filed any counter-affidavit challenging the affidavit in support of the said motion or application. The effect in law is trite. See the cases of *Egbuna v Egbuna (1989) 2 NWLR (pt. 106) 773 C.A.*; *Folabi v Folabi (1976)* G H

7 & 10 S.C. 1 @ 13-14 and Alegbe v Abimbola (1978) 2 S.C. 39 @ 40 just to mention but a few. A court may however, not be bound to accept the said depositions as representing the true facts. See the case of National Bank v Are Brothers (1977) 6 S.C. 97.

I am aware of the exceptions in the said principle of law. See for instance the case of *Royal Exchange Assurance (Nig.) Ltd & Ors v Aswani Textile Industries Ltd (1992) 2 SCNJ (pt. II) 346 @ 355* - per Akpata, J.S.C. But in the instant case, the court below at page 323 of the records dealt with the issue and with respect, thoroughly and satisfactorily speaking for myself. His Lordship - Mangaji, JCA., (of blessed memory), stated inter-alia, as follows:

"..... It has to be borne in mind that the Respondent (meaning the appellant through its counsel) was served with the notice of motion one month and nineteen days before it was heard - albeit without any notification served on the respondent of the hearing date. However, the respondent filed no counter affidavit to challenge the application."

His lordship continued thus:

"It is on record that when the original notice and grounds of appeal was filed, the record of appeal was yet to be compiled - see page 81 of the record, and paragraphs 8 and 9 of the affidavit in support of the motion seeking for leave to file additional grounds of appeal. There is nothing upnormal (sic) (abnormal) and unusual. In granting, such applications that are by and large non contentious. One must perhaps observe that the orders of this court granting leave to the appellant to file additional grounds of appeal cannot by any stretch of imagination be said to be an order made against the respondent. Neither would the orders affect the respondent."

(The underlining mine)

The non-compilation of the records, undoubtedly and in my view, occasioned the filing originally, of the omnibus ground of appeal, and in the said Notice of Appeal, at page 100 of the records, the following appear; inter alia:

"Additional grounds shall be filed on receipt of the record of proceedings."

In fact in fairness to His Lordship, he faulted/blamed the procedure (i.e. failure of Appellants' / Respondent learned SAN, to

follow up the motion and communicating the same to the Appellant/ Respondent) and eventually, stated as follows:

“..... I may however hasten to add that learned senior counsel may also have been taken by the ipse dixit of the Registrar to the effect that “the respondent was served but absent.”

It was after this observation, that His Lordship made the comment that has been capitalized upon by the respondent and its learned counsel and perhaps, myself to the effect that the respondent is a nominal party. I reacted to the said comment on the face of the parties, before reading the records. I therefore, hold that all the fuss in the respondent's two briefs, are, with respect, uncalled for. This is also because, lordly, the respondent in its brief in the court below, after thoroughly canvassing its preliminary objection, also comprehensively, dealt with the said additional pounds of appeal in its Issues 2 and 3 at pages 254 and 255 of the records.

Lastly, it is now firmly established that it is not every error or mistake of a court that will cause a reversal of a decision on appeal except there is a miscarriage of justice. See the case of *Kraus Thompson Organization Ltd v University of Calabar (2004) 9 NWLR (pt 879) 631 @ 653; (2004) 4 SCNJ. 182* - per Musdapher, JSC also cited and relied on in the respondent's brief. I have herein, found as a fact and held, that the respondent and its learned counsel, have failed woefully to show any prejudice suffered or miscarriage of justice occasioned to the appellant by the respondent or occasioned by the court below granting the said application for leave to file additional grounds in their absence. All the surrounding circumstances, the reasoning and conclusion of the court below in this respect, are justified and sound in my respectful view. Afterwards, in this court, many non-contentious motions or applications are granted in chambers. My answers to the said Issues one and two of the appellant, are rendered in the affirmative while that of the respondent, is rendered in the negative.

In respect of Issue 3 of both parties, the provision of *Section 6 of The States Creation and Transitional Provisions Decree No 41 of 1991*, is clear and unambiguous and has also been reproduced in the said lead judgment. As rightly submitted by Okafor Esq (SAN) at the hearing of this appeal and as contained at page 17 paragraph 5.03 (b)

of the respondent's brief, the cause of action arose in Adamawa State. The property, the subject-matter that gave rise to this suit, i.e. Plot 19, Zanda Street, Demsawo Ward, Jimeta, Yola, is in Adamawa State: The said two accounts also the subject-matter of the suit, were opened in the respondent's branch bank in Adamawa. The hearing *de novo* of the suit by Audu, was in another state i.e. Taraba State in the Jalingo judicial division. The court below, was therefore right when it came to the inescapable conclusion at page 344 of the records inter alia, thus:

"Having regard to all that I have said above, it is my view that the appropriate court to hear the suit subject of this appeal is the High Court of Adamawa State. Consequently, the High Court of Taraba State was in grave error to have entertained the suit. I therefore declare the proceedings of the High Court of Taraba State in Suit No GSS/W/11/88 null and void and of no effect. See *Umenwuluaku v Ezenwa* (1972) 2 SC 343. I accordingly strike them (sic) out."

I maintain that I agree and I affirm this finding and the decision.

With this finding and conclusion, it will be useless and a sheer waste of my precious time, going into the remaining two other issues of the parties. Where a trial court is found and held by an Appellate Court such as the court below, not to have jurisdiction to entertain a suit, the order to make, is that of striking out of the suit. In fact, this issue 3 should and ought to have been taken up by me first, but *ex debito justitiae*, I was obliged to deal with Issues Nos 1 and 2 which are non issues in the circumstances.

In conclusion, from the foregoing, and further reasoning in the lead Judgment of my learned brother, Aderemi J.S.C, I too dismiss this appeal as most unmeritorious and an exercise in gross futility. I too, accordingly, affirm the decision of the court below. I abide by the consequential order in respect of costs.