

SUPREME COURT OF NIGERIA
11TH APRIL 2008 SC. 306/2002
CORAM:- A. I. KATSINA-ALU, S. A. AKINTAN,
M. MOHAMMED, W. S. N. ONNOGHEN,
C. M. CHUKWUMA-ENEH, JJSC

WEST AFRICAN EXAMINATION APPELLANT
COUNCIL
AND
OMODOLAPO YEMISI ADEYANJU RESPONDENT

ACTIONS - Competence of - Issues of competence of action - Should be resolved first - As they touch on jurisdiction - Without which a suit must be struck out (H1)

APPEALS - Issues - Validity of - Issues for determination - Not raised from grounds of appeal - Are invalid - Any argument in respect thereof - Shall be discountenanced by the Court (H2)

FUNDAMENTAL RIGHTS - Enforcement of - Fundamental Rights (Enforcement Procedure) Rules 1979 - Applicability of - Where reliefs sought - Show that breach of fundamental right is merely incidental - The Rules are not applicable (H3)

ACTIONS - Commencement of - Proper procedure - Fundamental right breach - Where merely incidental to a main claim - As in the instant case - Proper procedure is writ of summons and pleadings (H4)

FACTS

The applicant/respondent had instituted an action under the Fundamental Rights (Enforcement Procedure) Rules 1979, in the High Court of Lagos State seeking to enforce her fundamental right of fair hearing against the respondent/appellant. The story of the respondent was that she entered and sat for the November/December 1995, Senior Secondary Certificate Examination conducted by the appellant and was successful in the examination. Accordingly, she was issued with a notification of result dated 3rd January, 1997, and

signed by one Wumi Ajiboye on behalf of the Head of Appellant's National Office, which notification she used to seek for and gained admission into the University of Lagos. But subsequently, in April 1998, she received a letter from the appellant dated 27th March 1998, and signed by one N. A. Onadeko in which she was informed the notification of results earlier issued to her was cancelled.

She made several efforts to secure a reversal of the cancellation of her said results by the appellant to no avail, hence her action in court. Respondent prayed the court for a declaration that the subsequent cancellation of her result without an opportunity to be heard was a violation of her right to fair hearing, an order quashing the cancellation and an order compelling the appellant to furnish the admission office of UNILAG with the revalidated results. After hearing, the learned trial judge ruled that the issue of fundamental rights did not arise since the relationship between the parties was a direct contract and governed by the terms of the contract. The application was therefore dismissed. The respondent appealed to the Court of Appeal which allowed the appeal and granted the reliefs sought. The appellant had brought this appeal against the judgment of the Court of Appeal. The parties each formulated four issues as arising for determination in this appeal. But the appeal was determined on one of the issues.

ISSUE FOR DETERMINATION

4. Whether the respondent's complain or claim against the cancellation and/or withdrawal of her senior school certificate (SSCE) result by the appellant could be validly brought by an application under the Fundamental Rights (Enforcement Procedure) Rules, 1979, wherein the violation of Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 and Article 7 of the African Charter on Human and Peoples' Rights is being alleged?"

HELD (Unanimously allowing the appeal per **MOHAMMED JSC**) ***ACTIONS - Competence of***

1. It is quite clear that the appellant's issue No. 3 and the respondent's issue No. 4 are touching on fundamental question on the competence of the respondent's action or suit. I shall therefore consider it first. This means that if the question is resolved in the appellant's favour then that would be the end of the matter because if the case of the respondent

that came before the trial High Court was not initiated by due process of the law, and upon the fulfillment of any condition precedent to the exercise of jurisdiction, then the fate of the case is obvious, namely, it ought to have been struck out and not dismissed. If this happens, then there may not be the need to proceed to the consideration of the remaining issues touching on the merits of the case of the respondent if indeed the trial court lack jurisdiction to hear and determine it having regard to the manner it was brought before it. (p. 1918 H)

APPEALS - Issues - Validity of

2. Taking the complaint of the respondent on the appellant's issue number 4 which is predicated on the question of public policy, there is no doubt whatsoever that the matter concerning public policy was not raised in any of the grounds of appeal filed by the appellant. The position of the law in this respect regarding the status of such an issue is that it is incompetent because an appellate court can only decide an appeal on issues raised on the grounds of appeal filed. In this respect, any argument in the Brief of Argument in support of such issues not arising from the grounds of appeal, will be discountenanced by the court in the determination of the appeal as stated in Momodu v. Momoh (1991) 2 S.C. 1; (1991) 1 NWLR (Pt. 169) at 620-621. In line with the requirement of the law, issue number 4 in the appellant's Brief of Argument together with all the arguments in support thereof shall be discountenanced in the determination of this appeal. (p. 1920 F)

FUNDAMENTAL RIGHTS - Enforcement of

3. Having carefully considered the respective submissions of the learned counsel on both sides on this jurisdictional issue, I am of the view that the proper approach is to examine the reliefs sought by the respondent as applicant before the trial court as a party seeking to enforce her fundamental right, the grounds for seeking the reliefs and the facts relied upon to support the reliefs being sought. If the reliefs sought, the grounds upon which the reliefs were sought together with the facts relied upon in support of such reliefs, have disclosed that a breach of fundamental right is the main plank upon which the reliefs are being sought, then redress may be sought by the Fundamental Rights (Enforcement Procedure) Rules, 1979. However, where the

alleged breach of Fundamental Right is incidental or ancillary to the main complaint, it is incompetent to proceed under the Rules. (p. 1923 B)

ACTIONS - Commencement of - Proper procedure

B 4. A party seeking relief under Section 46(1) of 1999, Constitution and Order 1 Rules 2 & 3(1) of Fundamental Rights (Enforcement Procedure) Rules, must ensure that the main relief and consequential reliefs point directly to a Fundamental Right under Chapter IV of the
C 1999, Constitution and a clear deprivation of the same by the other party being sued. The circumstances and the principle of law involved in the cases of Egbuonu v. Borno State Radio and Television Corporation (supra); and Tukur v. Government of Taraba State (supra); being the same as in the present appeal, I am bound by those
D decisions. Therefore, from the facts in support of the respondent's application, the proper procedure for her to seek redress for the restoration of her results, would have been to come by way of a Writ of Summons and pleadings so that issues would have been joined between the parties on the most disputed fact between the parties on
E the source or origin of the statement of result headed or addressed not to the University of Lagos which gave the respondent, admission based on it but to "Whom It May Concern." The court below is, with respect, clearly in error when it agreed that the respondent's action for
F the restoration of her cancelled results by the appellant, was properly brought under the provisions of the Fundamental Rights (enforcement Procedure) Rules, 1979. (p. 1925 D)

NOTABLE POINT OF INTEREST

G **MOHAMMED JSC**

1. *A ground of appeal from which no issue is raised is deemed abandoned*

Starting with ground 3 of the appellant's grounds of appeal, it was argued for the respondent that since no issue for determination was
H raised from that ground of appeal, it was deemed to have been abandoned.

This ground of appeal clearly relates to the question of the jurisdiction of the trial court to hear the respondent's suit having re-

gard to the curtailment of that jurisdiction by Section 251 of the 1999, Constitution which preserved such action to the Federal High Court. The ground being of law plainly questioning the jurisdiction of the trial court on the grounds mentioned therein, was not raised or surfaced in any of the 4 issues formulated by the appellant from the grounds of appeal filed by it in the Notice of Appeal to challenge the decision of the court below in this court. Therefore, the appellant having failed to formulate any issue for the determination of its appeal from its ground 3 of the grounds of appeal, that ground is deemed abandoned and liable to be struck out or ignored by an appellate court. (pp. 1919 E/1920 B) B
C

REPRESENTATION

Chief Uche Ohadugha, for the Appellant.

Jiti Ogunye, (with him; Lekan Alabi), for the Respondent. D

CASES REFERRED TO

Albert Afegbai v. Attorney-General Edo State & 1 Or. (2001) 7 S.C. (Pt. II) 1

Ogundiyan v. The State (1991) 4 S.C. 100 E

Management Enterprises v. Otusanya (1987) 2 NWLR (Pt. 55) 179

Onifade v. Olayiwola (1990) 11-12 S.C. 1

Egbuonu v. B.R.T.C. (1997) 12 NWLR (Pt. 531) 29

Tukur v. Government of Taraba State (1997) 6 NWLR (Pt. 510) 549 F

Momodu v. Momoh (1991) 2 S.C. 1; (1991) 1 NWLR (Pt. 169) at 620-621

Kuti v. Attorney-General of the Federation (2001) FWLR (Pt. 80) 1637 at 1709

Peterside v. I.M.B. (Nigeria) Ltd. (1993) 2 NWLR (Pt. 278) 712 G

Madukolu & Ors. v. Nkemdilim & Ors. (1962) 2 SCNLR 341

Sea Trucks (Nigeria) Ltd, v. Anigboro (2001) 1 S.C. (Pt. I) 45

STATUTE & RULES REFERRED TO

Constitution of the Federal Republic of Nigeria, 1999; sections 36, 46, and 251

African Charter on Human and People's Rights (Ratification and Enforcement) Act, Cap 10, L. F. N, 1990, Article 7

Fundamental Rights (Enforcement Procedure) Rules, 1979; Order 1 Rules 2 and 3

LEAD JUDGMENT BY MOHAMMED JSC

This is an appeal against the judgment of the Court of Appeal, Lagos Division delivered on 21st March, 2002, in which the appeal of the applicant at the trial High Court who is now the respondent before this court was allowed and judgment was entered in her favour in terms of her prayers before the trial High Court which had earlier refused and dismissed the respondent's case.

The respondent as applicant had instituted her action in the High Court of Justice of Lagos to enforce her Fundamental Right to fair hearing by filing a motion ex-parte dated 5th October, 1999, seeking for the leave of that court to do so under Sections 46(1) & (2) and 316 of the Constitution of the Federal Republic of Nigeria, 1999, in accordance with the procedure prescribed by Order 1 Rules 2 and 3(1) of the Fundamental Rights (Enforcement Procedure) Rules, 1979. The ex-parte application sought for the following orders:-

"1. An Order extending the time within which the applicant can enforce her fundamental right to fair hearing.

2. An Order granting leave to the applicant to enforce her fundamental right to fair hearing by seeking the reliefs set out in the statement hereto.

3. An Order permitting the granting of leave to operate as a stay of all actions of the respondent against the applicant by suspending the purported withdrawal and cancellation of the November/December, 1995, Senior School Certificate Examination (SSCE) Results of the applicant pending the hearing and final determination of the Motion on Notice to be filed hereunder."

The application was heard by the trial High Court on 14th October, 1999, granting 1st and 2nd prayers only while the Motion on Notice was fixed for hearing on 25th October, 1999. In the statement in support of the application, the respondent sought for the following reliefs -

"1. A Declaration that the cancellation of the results obtained by the applicant in the November/December, 1995, Senior School Certificate Examination by the respondent communicated to the

applicant vide the respondent's letter dated 27th March, 1998, is illegal, unconstitutional, null and void as same violates the applicant's rights to fair hearing guaranteed by Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 and Article 7 of the African Charter on Human and People's Rights (Ratification and Enforcement Act), Cap. 10, Laws of the Federation of Nigeria, 1990. B

2. *An Order quashing the decision of the respondent to cancel the said results and compelling the respondent to issue the applicant a certificate based on the said results forthwith.*

3. *An Order compelling the respondent to furnish the Admission Office of University of Lagos the purportedly cancelled Results of the applicant in the said November/ December, 1995, Senior School Certificate Examination.*" C

The grounds upon which the reliefs were being sought were stated in paragraphs 3 of the statement thus:- D

"i. *Under the WAEC Act, Cap. 468, Laws of the Federation of Nigeria, 1990, withdrawal and invalidation of Certificate or cancellation of Result of a candidate in an examination conducted by WAEC is a punishment for examination malpractice(s) on the part of such candidate.*" E

ii. *The respondent's unilateral cancellation of the result of the applicant obtained in the said November/December, 1995, Senior School Certificate Examination without any allegation being levelled against her or any representation hearing being received from her before the cancellation is violative of her right to fair hearing entrenched in Section 36 of the Constitution of the Federal Republic of Nigeria, 1999.* F

iii. *The Notification of Results of the said examination dated the 3rd day of January, 1997, issued to the applicant and her use of same between the said date and April, 1998, when the applicant was notified that the said results had been cancelled, constitute an estoppel in law, preventing the respondent from disenabling the applicant from further use of the said results.*

iv. *The respondent's non-issuance of the uncanceled results of the applicant to UNILAG is ultra-vires the respondent having regards to its powers under the West African Examination Council Act, illegal and unconstitutional being a step taken in furtherance of the* H

violation of the applicant's right to fair hearing guaranteed by the aforementioned constitution and Charter."

There was no affidavit filed in support of the application but facts in support of the application were given as part of the statement in support of the application in the following paragraphs:-

B *"1. The applicant is a Part-Three (300 Level) student of the Department of Accounting, Faculty of Business Administration University of Lagos (UNILAG). Attached hereto and marked Exhibit 'A' is a photocopy of her students identity card.*

C *2. The respondent is an examining body set up under the West African Examinations Council Act to conduct Secondary School final examination and award Certificates and Diplomas in respect of the results of examinations so conducted.*

D *3. The applicant was admitted into University of Lagos (UNILAG) in February, 1998, having accepted the provisional admission offered by the Joint Admission and Matriculation Board (JAMB). Attached hereto and marked Exhibits 'B' and 'C' are the applicant's University Matriculation Examination (UME) Notice of Result and the said letter of Admission.*

E *4. The applicant's provisional admission was predicated on the results of the West African Senior School Certificate Examination, conducted by the respondent in November/December, 1995, wherein she obtained two (2) distinctions, five (5) credits and a (1) pass. Attached hereto and marked Exhibits 'D', 'E' and 'T' are the applicant's*
F *particulars - Sheet in, Result Sheet of and the Notification of Results obtained in the said examination.*

G *5. The said Notification of Result (Exhibit T') dated 3rd January, 1997, was signed by one Wumi Ajiboye on behalf of the Head of respondent's National Office.*

6. The applicant progressed in UNILAG after her said admissions. Attached hereto and marked Exhibit 'G' is a photocopy of the applicant's Examination Result slip for the 2nd Semester of 1997/1998 session.

H *7. In April, 1998, the applicant received a letter from the respondent dated 27th March, 1998 and signed by "N.A." Onadeko for SDR/Head of National Office to which a Notification of Result was attached. The said notification cancelled the applicant's results in their*

entirety. Attached hereto and marked Exhibit "H" is the said letter and its said annexure (Notification of Results).

8. The said letter was received when the applicant was already in her second year in UNILAG.

9. The applicant and her mother have made several efforts to secure a reversal of the said cancellation from WAEC to no avail. B Indeed WAEC recently sent the details of the cancelled results to UNILAG's Admission Office as part of the latter's students' credentials verification exercise.

10. The applicant was never invited to appeal before any panel C or investigation committee to answer to allegations of examination malpractices nor was any representation received from her in respect thereof before her results were cancelled.

11. The applicant is a God fearing, diligent, upright brilliant student who has never engaged in examination malpractices in her D life.

12. The applicant did not engage in examination , malprac- tices in the November/December, 1995, Senior School Certificate Examination conducted by the respondent."

The statement of result which the respondent claimed was is- E sued to her and later cancelled by the West African Examination Council, WAEC, which is the appellant in this court marked as Ex- hibit 'F' before the trial court reads -

"The West African Examinations Council
Plots 16, 18 & 20, Ijaiye Road,
Ogba Estate,
P.M.B. 21582, Ikeja,
Lagos.

Ref. No. IK/ED/RESULTS/129/VOL.1/2

3rd January, 1997

TO WHOM IT MAY CONCERN

This is to confirm that ADEYANJU OMODOLAPO YEMISI (Fe- male) sat for the November/December, 1995 S.S.C.E. as candidate H Number 55834/019. Her results are as shown hereunder:

Subject	Grade	Result
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English Language	6	Credit
Yoruba Language	3	Good
Literature-in-English	6	Credit
Geography	5	Credit
Government	6	Credit
B Economics	5	Credit
Mathematics	3	Credit
Biology	5	Credit
Commerce	7	Pass

C “Number of subjects: Nine

As we have no other means of identifying the candidate, it is the responsibility of anyone accepting the results to satisfy himself that the bearer and ADEYANJU OMODOLAPO YEMISI (Female) of our records are the same person.

D “Wumi Ajiboye
for: Head of National Office.”

There are other documents placed before the trial court in support of the respondent’s application in addition to the confirmation of result exhibit.

E When the Motion on Notice was served on the appellant, WAEC which was the respondent in the application, it reacted by filing a further counter-affidavit sworn to by its legal officer in its’ Yaba Office, Lagos Mr. Patrick Emokpae. The relevant part of this further counter-affidavit are paragraphs 3, 4, 5 and 10-21:-

F “3. That the respondent herein is a body set up under the West African Examinations Council Act to inter alia review and consider examinations and award certificates and diplomas on the results of examinations so conducted.

G 4. That sometime in 1995 the respondents through newspaper advertisement in the national dailies called for interested candidates to apply to sit for the Senior School Certificate Examinations November/December, 1995.

H 5. That the applicant herein bought the examinations forms for the S.S.C.E. November/December, 1995, filled the same and also paid the examination fees and/or money to the respondent. The applicant solemnly declared to abide by the regulations guiding conduct of the examinations and appended her signature on the form.

suspects foul play and has proceeded to investigate same as the author(s) did not have the authorization of the respondent express or implied to unilaterally release a result of a candidate under investigation.

B 19. *That the Statement of results are not issued to individual candidates or persons. They are forwarded directly by the council (respondent) to institutions and other bodies on application by the candidate and payment of prescribed fees.*

C 20. *That the candidate among other requirements must forward to the council (respondent) 2 passport photographs, photocopies of his/her school testimonial and the statement of the result and certificate to be confirmed. Attached herewith and marked as Exhibit 4 is a copy of the circular/regulations guiding issuance of statement/confirmation of result by the respondent.*

D 21. *That the applicant was notified of the cancellation of her result on the 17th October, 1997.”*

E A number of documentary exhibits accompanied the further counter-affidavit including the marks and attendance sheet on which the respondent was marked absent in her examination centre when the commerce paper was being taken.

F After hearing the parties on their written addresses duly filed in order to give the matter accelerated hearing, the learned trial Judge, Hunponu-Wusu, J., came to the following conclusion on the respondent’s application at pages 107 -108 of the record -

“The issue of fundamental rights did not arise in this case since it was a direct contract between the applicant and the respondent which this applicant had agreed to abide with.

G I cannot therefore find in favour of this applicant on this issue. The sanctity of the contract must be maintained and the courts are not to read extraneous or moral issue into contract mutually entered into by the parties xxx

H For all the reasons stated above, I am unable to accede to the requests of this application for enforcement of her fundamental rights. This application fails and is accordingly dismissed.”

Dissatisfied with this Ruling/Judgment of the trial court, the respondent as applicant, appealed against it to the Court of Appeal Lagos Division, which after hearing the appeal, in a unanimous deci-

sion delivered on 21st March, 2002, allowed the appeal, set aside the decision of the trial High Court and granted all the reliefs sought by the respondent in her application to enforce her fundamental right of fair hearing.

West African Examination Council which is the appellant in this court, was not happy with the judgment of the Court of Appeal and has therefore appealed against it articulating its complaints in 9 grounds of appeal from which the following 4 issues were formulated in the appellant's Brief of Argument filed in accordance with the rules of this court. The issues are -

"1. Whether the result of the Senior School Certificate Examination was released to the respondent by the appellant through the "computer print-out" and/or the "confirmation of result" dated 3rd January, 1997, which the respondent claimed was obtained from the appellant and which was used to secure her admission in the University of Lagos in February, 1998, and whether the doctrine of estoppel would operate in this case.

2. Whether the relationship that exists between the appellant and the respondent in the conduct and writing of the S.S.C. Examinations was contractual and which empowers the appellant to withhold and cancel results of any candidate(s) including that of the respondent who engaged in examination malpractices.

3. Whether an application for a declaration under the Fundamental Right (Enforcement Procedure) Rules, 1979, that the cancellation of the respondent's result in the Senior School Certificate Examinations of November/December is illegal, unconstitutional and violates the respondent's right to fair hearing under Section 36 of the 1999, Constitution and Article 7 of the African Charter on Human and People's Rights (Ratification and Enforcement Act), Cap. 10, LFN, 1990 as the respondent was not heard either orally or in writing before the cancellation can be maintained, sustained or resolved as a constitutional issue, in a case of examination malpractice against a candidate and in the face of rules or regulations governing the conduct of the examinations.

4. Whether or not in the circumstances, there should be public policy considerations in arriving at a decision by the court."

The respondent however who has raised Preliminary Objec-

tion to ground 3 of the appellant's grounds of appeal and issue number 4 in the appellant's Brief of Argument, identified the following 4 issues for the determination of the appeal. The issues read -

B *"1. Whether the Court of Appeal was right in upturning the finding of the learned Judge in the High Court on facts which rejected the claim of the respondent that her result was actually released by the appellant, and whether the doctrine of estoppel does not operate in favour of the respondent to nullify the purported cancellation of her result having regard to the circumstances of this case?"*

C *2. Whether the cancellation of the result of the respondent in the November/December, 1995, West African School Certificate Examination, after the release of same to the respondent by the appellant, on the ground that the respondent engaged in examination malpractice, is not illegal, unconstitutional, null and void in view of*
D *the fact that the respondent was not accorded a fair hearing before the cancellation of the result?"*

3. What is the nature of the relationship between the respondent and the appellant whether the relationship between the respondent and appellant in the West African School Certificate Examination which she wrote in 1995 was contractual and whether the undertaking, by the respondent to abide by the examination when she registered for same empowered the appellant, while exercising its statutory disciplinary power under the West African Examination Council Act, Cap. 468 LFN, 1990, to cancel the respondent's result
E *without regard to the respondent's right to fair hearing under the Constitution and the African Charter on Human and Peoples' Right?*
F

4. Whether the respondent's complain or claim against the cancellation and/or withdrawal of her senior school certificate (SSCE) result by the appellant could be validly brought by an application under the Fundamental Rights (Enforcement Procedure) Rules, 1979, wherein the violation of Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 and Article 7 of the African Charter on Human and Peoples' Rights is being alleged?"
G

H ***It is quite clear that the appellant's issue No. 3 and the respondent's issue No. 4 are touching on fundamental question on the competence of the respondent's action or suit. I shall therefore consider it first. This means that if the question***

is resolved in the appellant's favour then that would be the end of the matter because if the case of the respondent that came before the trial High Court was not initiated by due process of the law, and upon the fulfillment of any condition precedent to the exercise of jurisdiction, then the fate of the case is obvious, namely, it ought to have been struck out and not dismissed. If this happens, then there may not be the need to proceed to the consideration of the remaining issues touching on the merits of the case of the respondent if indeed the trial court lack jurisdiction to hear and determine it having regard to the manner it was brought before it.

However, before I proceed to consider the issue on the competence or otherwise of the respondent's action brought before the trial court, it is necessary to look into the Preliminary Objection raised by the respondent to ground number 3 contained in the appellant's Notice of Appeal and issue number 4 in the appellant's Brief of Argument which apart from being a fresh or new issue which was not raised and determined at the two courts below but also not derived from any of the grounds of appeal filed by the appellant.

Starting with ground 3 of the appellant's grounds of appeal, it was argued for the respondent that since no issue for determination was raised from that ground of appeal, it was deemed to have been abandoned. This ground 3 reads:-

"The Court of Appeal erred in law when it held that the Lagos State High Court has jurisdiction to entertain or adjudicate in the matter as filed by the applicant as same was a declarative (sic) relief in view of the provisions of Section 251(q.), (r.) and (s.) of the 1999, Constitution.

Particulars

(i.) *It is not denied that the appellant herein is a statutory body established by the West African Examination Council Act, Cap. 468, Laws of the Federation, 1990.*

(ii.) *Appellant performs functions inter alia of conducting Senior School Certificate Examinations in Nigeria and other West African Countries.*

(iii.) *The appellant is a Federal Government Agency.*

(iv.) *The action of the respondent is for a declaration that the*

cancellation of the respondent's November/December, 1995, S.S.C. Examinations by the appellant is illegal, unconstitutional, null and void

(v.) *The Lagos State High Court by virtue of the provisions of Section 251 of the 1999, Constitution has no jurisdiction to entertain or adjudicate in the case.*

(vi.) *The courts jurisdiction was not been (sic) correctly involved, and it is not competent to adjudicate."*

This ground of appeal clearly relates to the question of the jurisdiction of the trial court to hear the respondent's suit having regard to the curtailment of that jurisdiction by Section 251 of the 1999, Constitution which preserved such action to the Federal High Court. The ground being of law plainly questioning the jurisdiction of the trial court on the grounds mentioned therein, was not raised or surfaced in any of the 4 issues formulated by the appellant from the grounds of appeal filed by it in the Notice of Appeal to challenge the decision of the court below in this court. Therefore, the appellant having failed to formulate any issue for the determination of its appeal from its ground 3 of the grounds of appeal, that ground is deemed abandoned and liable to be struck out or ignored by an appellate court. See *Albert Afegbai v. Attorney-General Edo State & 1 Or.* (2001) 7 S.C. (Pt. II) 1; (2001) 14 NWLR (Pt. 733) 425 at 451 and *Ogundiyan v. The State* (1991) 4 S.C. 100; (1991) 3 NWLR (Pt. 181) 519 at 532-533. Appellant's ground 3 of the grounds of appeal, is accordingly hereby struck out for having been abandoned.

Taking the complaint of the respondent on the appellant's issue number 4 which is predicated on the question of public policy, there is no doubt whatsoever that the matter concerning public policy was not raised in any of the grounds of appeal filed by the appellant. The position of the law in this respect regarding the status of such an issue is that it is incompetent because an appellate court can only decide an appeal on issues raised on the grounds of appeal filed. See *Management Enterprises v. Otusanya* (1987) 2 NWLR (Pt. 55) 179 and *Onifade v. Olayiwola* (1990) 11-12 S.C. 1; (1990) 7 NWLR (Pt. 161) 130 at 157. ***In this respect, any argument in the Brief of Argument in support of such issues not arising from the grounds of***

appeal, will be discountenanced by the court in the determination of the appeal as stated in Momodu v. Momoh (1991) 2 S.C. 1; (1991) 1 NWLR (Pt. 169) at 620-621. In line with the requirement of the law, issue number 4 in the appellant's Brief of Argument together with all the arguments in support thereof shall be discountenanced in the determination of this appeal. B

With this result, I do not find it necessary to go into the other leg of the Preliminary Objection that issue 4 being a fresh or new issue for which no leave was sought or obtained to raise it, the issue was also incompetent for consideration in the determination of the appeal. C

I shall now proceed to consider the fundamental issue of competence of the action brought by the respondent at the trial court as appropriately raised in the respective Briefs of Argument filed by the parties earlier quoted in this judgment. This issue is more comprehensively framed by the respondent's issue 4 which reads - D

"4. Whether the respondent's complaint or claim against the cancellation and/or withdrawal of her Senior School Certificate Examination (S.S.C.E) result by the appellant could be validly brought by an application under the Fundamental Rights (Enforcement Procedure) Rules, 1979, wherein the violation of Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 and Article 7 of the African Charter of Human and Peoples' Rights is being alleged." E

This issue was treated as issue 3 in the appellant's Brief of Argument. Learned appellant's counsel in the appellant's Brief of Argument and in his oral submission, had argued that the respondent's claim in the main is for the enforcement of her contractual rights under the terms of agreement between the parties in the conduct of the November/December, 1995, Senior School Certificate Examination conducted by the appellant in which the respondent was a candidate; that the rights of the respondent under the agreement are not the same as fundamental rights as defined in *Odogu v. Attorney-General of the Federation* (1996) 6 NWLR (Pt. 456) 508, learned counsel relying on the cases, of *Egbuonu v. B.R.T.C.* (1997) 12 NWLR (Pt. 531) 29 and *Tukur v. Government of Taraba State* (1997) 6 NWLR (Pt. 510) 549, argued that the issue of fundamental right of the respondent of fair hearing under the Constitution in the cancellation of her results is not directly in issue in the present case where the F G H

appellant merely exercised its powers under the statute, rules and regulations for the conduct of the Senior School Certificate Examination which the respondent specifically agreed to be bound with. Fair hearing, counsel observed, is both a constitutional and common law right, the idea and concept of which were explained in several
 B decisions of this court including *Ransome Kuti v. Attorney-General of the Federation* (2001) FWLR (Pt. 80) 1637 at 1709 and *Peterside v. I.M.B. (Nigeria) Ltd.* (1993) 2 NWLR (Pt. 278) 712. Counsel therefore concluded that the respondent's rights claimed in her action not
 C being constitutional rights, by the case of *Madukolu v. Nkemdilim* (1962) 2 SCNLR 341, the 25 respondent not having complied with the due process of the law in bringing the action, had deprived the trial court of the jurisdiction to determine the case.

For the respondent however, it was argued for her that her
 D case as instituted under Sections 46(1) and 316(1) of the 1999 Constitution and Order 1 Rules 2 and 3(1) of the Fundamental Rights (Enforcement Procedure) Rules, 1979, was correctly brought before the trial court as rightly found by the court below. Learned counsel stressed that the enforcement of the fundamental Right of the re-
 E spondent whose examination results released by the appellant with which she secured admission to the University only for the appellant to turn round and cancel the same results without affording the respondent the right of fair hearing in breach of Section 36(1) of the 1999, Constitution was the main claim of the respondent which ought
 F to have been heard and determined by the trial court. Respondent's counsel maintained that the cases of *Odogu v. Attorney-General Federation* (supra); *Egbuonu v. B.R.T.C.* (supra); *Tukur v. Government of Taraba State* (supra) and *Peterside v. I.M.B. (Nig.) Ltd.* (supra), are
 G distinguishable with the present case in which the totality of the claim of the respondent, right from the trial court, is founded on the allegation of breach of her fundamental right to fair hearing. Learned counsel therefore concluded that on broad interpretation of the Constitution, the claim of the respondent as brought before the trial court
 H was quite competent for adjudication under Section 46(1) of the Constitution and Order 1 Rules 1 and 3 of Fundamental Rights (Enforcement Procedure) Rules, 1979. This is because, according to the learned counsel, the Constitution of the Federal Republic of Nigeria

or any other constitution for that matter, did not provide that the right of an individual to enforce his fundamental rights depends on the consideration whether the right breached is the “*main or principal cause of action or fundamental issue before the court*” as contained in the decisions quoted and relied upon by the appellant. A Court of Appeal decision in Anuka Community Bank (Nigeria) Ltd. v. Felix Olua (2000) 12 NWLR (Pt. 682) 641 at 662-663, was put forward by the learned counsel to the respondent in support of this concluding submission.

Having carefully considered the respective submissions of the learned counsel on both sides on this jurisdictional issue, I am of the view that the proper approach is to examine the reliefs sought by the respondent as applicant before the trial court as a party seeking to enforce her fundamental right, the grounds for seeking the reliefs and the facts relied upon to support the reliefs being sought. If the reliefs sought, the grounds upon which the reliefs were sought together with the facts relied upon in support of such reliefs, have disclosed that a breach of fundamental right is the main plank upon which the reliefs are being sought, then redress may be sought by the Fundamental Rights (Enforcement Procedure) Rules, 1979. However, where the alleged breach of Fundamental Right is incidental or ancillary to the main complaint, it is incompetent to proceed under the Rules. There are many decisions of this court spelling out clearly the position of the law in this respect. Few among such decisions are; Egbunu v. Borno Radio Television Corporation (1997) 12 NWLR (Pt. 531) 29, Tukur v. Government of Taraba State (1997) 6 NWLR (Pt. 510) 549 and Sea Trucks (Nigeria) Ltd, v. Anigboro (2001) 1 S.C. (Pt. I) 45; (2001) 2 NWLR (Pt. 696) 159.

The competence of any court to exercise jurisdiction in hearing and determination of any action before it, depends on a number of conditions which Bairamian, FJ., (as he then was) set out in the leading case on the subject of jurisdiction and competence of court to adjudicate, Madukolu & Ors. v. Nkemdilim & Ors. (1962) 2 SCNLR 341; also reported in (1962) 1 All NLR 587 at 595, where His Lordship stated the position as follows:

“Before discussing those portions of the record, I shall make some observation on jurisdiction and the competence of a court. Put briefly, a court is competent when:

1. it is properly constituted as regard numbers and qualifications of the members of the bench, and no member is disqualified for one reason or another; and

2. the subject matter of the case is within jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction;

3. the case comes before the court initiated by due process of the law, and upon fulfillment of any condition precedent to the exercise of jurisdiction.”

It is my view that the combined effect of conditions 2 and 3 stated by the learned Jurist above, is that when the main or principal claim in an application for the enforcement of fundamental right or securing of the enforcement of that right is not for the enforcement or securing the enforcement of fundamental right, the court has no jurisdiction to entertain the application under the Fundamental Rights (Enforcement Procedure) Rules, 1979. In *Egbuonu v. Borno Radio Television Corporation* (supra), Kutigi, JSC, (as he then was) now CJN at page 40 paragraphs C-E of the report had this to say:-

“I think learned counsel is right when he said the facts of this case are quite distinguishable from the facts of Tukur’s case above. But I say straight away that there are similarities and that the principle involved is the same in both cases. In Tukur’s case the claims were partly chieftaincy and partly fundamental right. And this court held that the main or principal claim being a chieftaincy, claim which ought to have been initiated by a Writ of Summons and heard on pleadings and not on affidavit evidence, all claims, principal and accessory or subsidiary, which flowed from it ought to have been struck out as incompetent. The claims were therefore struck out. In this appeal the claims are partly for wrongful dismissal or termination of appointment and partly for breach of fundamental right. But here as in Tukur the principal claim being wrongful termination of appointment which ought to have been commenced by a Writ of Summons, which was not, then all the claims principal and subsidiary which flow directly from it, are incompetent and ought to be struck out. That was what

the Court of Appeal did in this case. I believe it was right."

Coming back to the case at hand, it is not difficult to identify the principal complaint of the respondent in her application before the trial court. It is a claim for the alleged wrongful or unlawful cancellation of the Senior School Certificate Examination results of the respondent. The principal relief sought was the restoration of the respondent's results by the appellant which the court below in allowing the respondent's appeal ordered the appellant to do. The ancillary or subsidiary reliefs sought by the respondent include the quashing of the decision of the appellant to cancel her results and an order compelling the appellant to furnish the Admission Office of the University of Lagos with the said results. It is observed that the alleged breach of the respondent's fundamental right flowed directly from the main complaint of the respondent that the cancellation of her results was done without affording her a fair hearing. The alleged breach of the respondent's fundamental right is therefore only ancillary or subsidiary to the main claim. **A party seeking relief under Section 46(1) of 1999, Constitution and Order 1 Rules 2 & 3(1) of Fundamental Rights (Enforcement Procedure) Rules, must ensure that the main relief and consequential reliefs point directly to a Fundamental Right under Chapter IV of the 1999, Constitution and a clear deprivation of the same by the other party being sued. The circumstances and the principle of law involved in the cases of Egbuonu v. Borno State Radio and Television Corporation (supra); and Tukur v. Government of Taraba State (supra); being the same as in the present appeal, I am bound by those decisions. Therefore, from the facts in support of the respondent's application, the proper procedure for her to seek redress for the restoration of her results, would have been to come by way of a Writ of Summons and pleadings so that issues would have been joined between the parties on the most disputed fact between the parties on the source or origin of the statement of result headed or addressed not to the University of Lagos which gave the respondent, admission based on it but to "Whom It May Concern." The court below is, with respect, clearly in error when it agreed that the respondent's action for the restoration of her can-**

celled results by the appellant, was properly brought under the provisions of the Fundamental Rights (enforcement Procedure) Rules, 1979. Those proceedings as initiated and prosecuted before the trial court are therefore incompetent thereby depriving that court of the jurisdiction to hear and determine the claims. The action ought to have been struck out and not dismissed as was erroneously done by the trial court. See the case of Okoye v. Nigerian Construction & furniture Company Limited (1991) 7 S.C. (Pt. III) 33; (1991) 6 NWLR (Pt. 199) 501 at 534.

Thus, as the proceedings in the trial court are a nullity, those in the court below are equally a nullity. See the case of Sea Trucks (Nigeria) Ltd, v. Anigboro (2001) 1 S.C. (Pt. I) 45; (2001) 2 NWLR (pt. 696) 159 at 177.

In view of this conclusion, it is quite unnecessary to wade into the determination of the remaining issues in this appeal which touch on the merits of the respondent's case which I have found was not initiated by due process of the law.

In the result, this appeal succeeds and it is hereby allowed. The judgment of the trial court dismissing the respondent's action is hereby set aside. Equally set aside is the judgment of the court below granting all the reliefs sought in the action brought by the respondent. In place of the judgments of the courts below now set aside, there shall be entered a judgment striking out the action or suit of the respondent with no order on costs.

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment delivered by my learned brother, Mahmud Mohammed, JSC. I entirely agree with it and, for the reasons he has given I also would allow the appeal and set aside the decision of the two courts below. In their place, I enter an order striking out the suit of the respondent. I also make no order as to costs.

AKINTAN JSC

The respondent was a candidate in the November/December, 1995, Senior School Certificate Examination conducted by the appellant. The respondent's contention was that she was successful in

the said examination and with the result she sought and was admitted into the University of Lagos. The document she presented to the University for her admission was a notification of results signed by one Wumi Ajiboye on behalf of the Head of the appellant's National Office. The respondent claimed that she was making good progress in her course in the University. But in April, 1998, she received a letter from the appellant dated 27th March, 1998 and signed by one N. A. Onadeko in which she was informed that the notification of results earlier issued to her was cancelled. B

The respondent made several efforts to secure a reversal of the cancellation of her said results by the appellant but all such efforts failed. She therefore commenced this action by applying ex parte to the High Court of Lagos for leave to enforce her fundamental right to fair hearing under Sections 46(1) and (2) and 316 of the 1999, Constitution. The court granted the prayers sought ex parte and then fixed the Motion on Notice for hearing on a later date. In the application on notice, the respondent prayed the court, inter alia, for (1) a declaration that the cancellation of her said results by the appellant was null and void as same violated her right to fair hearing guaranteed in Section 36 of the 1999, Constitution; (2) an order quashing the decision of the respondent to cancel her said results; and (3) an order compelling the appellant to furnish the Admission Office of the University of Lagos of the reversal of the cancelled results. C
D
E

The application was supported with an affidavit to which a number of documents were exhibited. The appellant also filed a counter-affidavit in which the appellant denied that it issued any result to the respondent, and that in fact investigations conducted by it showed that the respondent did not sit for one of the subjects she claimed she passed. F
G

After hearing the parties, the learned trial Judge ruled that the issue of fundamental rights did not arise since the relationship between the parties was a direct contract between them which the respondent had agreed to abide with. The application was therefore dismissed. But an appeal to the Court of Appeal was however allowed and all the reliefs sought were granted. The present appeal is from the judgment of the Court of Appeal. H

The main question raised and canvassed in this appeal is whether

the respondent's action could be brought under the Fundamental Rights (Enforcement Procedure) Rules. The answer to such question has long been resolved in a number of judicial decisions. The position of the law is that the procedure for instituting an action based on the infringement of a Fundamental Right under the constitution is prescribed by the Fundamental Rights (enforcement Procedure) Rules, 1979. Only a breach of any of the fundamental rights guaranteed in the constitution can be enforced under the procedure. Thus, an action for wrongful dismissal from employment cannot be brought under the Rules since it belongs to a different class of action from action on contravention or threatened contravention of a fundamental rights: See *Egbuonu v. B.R.T.C.* (1997) 12 NWLR (Pt. 531) 29, *Tukur v. Government of Gongola State* (1989) 9 S.C. 1 (1989) 4 NWLR (Pt. 117) 517 and *Tukur v. Government of Taraba State* (1997) 6 NWLR (Pt. 510) 549. When therefore an application is brought under the Rules a condition precedent to the exercise of the court's jurisdiction is that the enforcement of Fundamental Right or the securing of the enforcement thereof should be the main claim and not an accessory claim. See *Tukur v. Government of Taraba State supra*; and *B.R.T.C. v. Egbuonu, supra*.

In the instant case, the main grievance of the respondent was the cancellation of the examination result by the appellant. As the act does not come within the purview of fundamental right guaranteed by the Constitution, the action could not be commenced under the aforementioned Rules. In the result, and for the reasons given above and the fuller reasons given in the leading judgment written by my learned brother, Mahmud Mohammed, JSC., the draft of which I have read, I also allow the appeal and make similar consequential orders as are made in the leading judgment, including that on costs.

ONNOGHEN JSC

This is an appeal against the judgment of the Court of Appeal holden at Lagos in appeal No. CA/L/483/2000, delivered on the 21st day of March, 2002, allowing the appeal of the present respondent, then appellant before that court, against the judgment of the High Court of Lagos State in Suit No. M/483/99, delivered on the 19th

day of September, 2000, dismissing the application of the present respondent for enforcement of her fundamental human rights with particular reference to the right of fair hearing.

The facts of the case have been stated in detail in the leading judgment of my learned brother, Mohammed, JSC., and I do not intend to repeat them here except as may be needed for emphasis. B The action, as stated earlier is for the enforcement of the fundamental right to fair hearing of the respondent under the provisions of Section 46(1) and (2) and Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999, (hereinafter referred to as the 1999, Constitution) in which the respondent sought the following C reliefs:-

“1. A Declaration that the cancellation of the results obtained by the applicant in the November/December, 1995, Senior School Certificate Examination by the respondent communicated to the applicant vide the respondent’s letter dated 27th March, 1998, is illegal, unconstitutional, null and void as same violates the applicant’s rights to fair hearing guaranteed by Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 and Article 7 of the African Charter on Human and Peoples’ Rights (Ratification and Enforcement Act.), Cap. 10, Laws of the Federation of Nigeria, 1990. E

2. An Order quashing the decision of the respondent to cancel the said results and compelling the respondent to issue the applicant a certificate based on the said results forthwith.

3. An Order compelling the respondent to furnish the Admission Office of University of Lagos the purportedly cancelled results of the applicant in the said November/December, 1995, Senior School Certificate Examination.” F

The grounds on which the above reliefs were sought are four: G namely;

“1. Under the WAEC Act, Cap. 468, Laws of the Federation of Nigeria, 1990, withdrawal and invalidation of certificate or cancellation of result of a candidate in an examination conducted by WAEC is a punishment for examination malpractice(s) on the part of such candidate. H

ii. The respondent’s unilateral cancellation of the result of the applicant obtained in the said November/December, 1995, Senior School Certificate Examination without any allegation being levelled

against her or any representation hearing being received from her before the cancellation is violation of her right to fair hearing entrenched in Section 36 of the Constitution of the Federal Republic of Nigeria, 1999.

B iii. The notification of results of the said examination dated the 3rd day of January, 1997, issued to the applicant and her use of same between the said date and April, 1998, when the applicant was notified that the said results had been cancelled constitute an estoppel in law, preventing the respondent from disenabling the applicant from further use of the said results-

C iv. The respondent's non-issuance of the uncanceled results of the applicant to UNILAG is ultra-vires the respondent having regards to its powers under the West African Examination Council Act, illegal and unconstitutional being a step taken in furtherance of the violation of the applicant's right to fair hearing guaranteed by the D aforementioned Constitution and Charter.

At the conclusion of arguments for both parties the trial court held, *inter alia*, as follows:-

E "The issue of fundamental rights did not arise in this case since it was a direct contract between the applicant and the respondent which this applicant had agreed to abide with.

I cannot therefore find in favour of this applicant on this issue. The sanctity of the contract must be maintained and the courts are not to read extraneous or moral issue into contract mutually entered F into by the parties

For all the reasons stated above, I am unable to accede to the requests of this application for enforcement of her fundamental rights. This application fails and is accordingly dismissed."

G The applicant before that court, now respondent before this court, was not satisfied with the decision of the trial court and consequently appealed to the Court of Appeal holden at Lagos which appeal was allowed, with that court granting all the reliefs sought by the applicant, which reliefs had earlier been reproduced in this judgment.

H This appeal is against that judgment, the issues for determination of which have been identified by learned counsel for the appellant, Uche Ohadugha, Esq., in the appellant's Brief of Argument filed on 31/3/03 are as follows:-

“1. Whether the result of the Senior School Certificate Examinations was released to the respondent by the appellant through the “computer print-out” and/or the “confirmation of result” dated 3rd January, 1997, which the respondent claimed was obtained from the appellant and which was used to secure her admission in the University of Lagos in February, 1998, and whether the doctrine of estoppel would operate in this case. B

2. Whether the relationship that exists between the appellant and the respondent in the conduct and writing of the S.S.C. Examinations was contractual and which empowers the appellant to withhold and cancel results of any candidate(s) including that of the respondent who engaged in examination malpractices. C

3. Whether the application for a declaration under the Fundamental Rights (Enforcement Procedure) Rules, 1979, that the cancellation of the respondent’s result in the Senior School Certificate Examinations of November/December is illegal, unconstitutional and violates the respondent’s right to fair hearing under Section 36 of the 1999, Constitution and Article 7 of the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act, Cap. 10, LFN, 1990 as the respondent was not heard either orally or in writing before the cancellation can be maintained, sustained or resolved as a constitutional issue, in a case of examination malpractice against a candidate and in the face of rules or regulations governing the conduct of the examinations. E

4. Whether or not in the circumstances, there should be public policy considerations in arriving at a decision by the court.” F

On the other hand, learned counsel for the respondent Jiti Ogunye Esq., in the respondent’s Brief filed on 5/6/03, also formulated four issues for determination, to wit:- G

“2.0 4.1: Whether the Court of Appeal was right in upturning the finding of the learned Judge in the High Court on facts which rejected the claim of the respondent that her result was actually released by the appellant, and whether the doctrine of estoppel does not operate in favour of the respondent to nullify the purported cancellation of her result having regard to the circumstances of this case?” H

4.2: Whether the cancellation of the result of the respondent in the November/December, 1995, West African School Certificate

Examination, after the release of same to the respondent by the appellant, on the ground that the respondent engaged in examination, malpractice, is not illegal, unconstitutional, null and void in view of the fact that the respondent was not accorded a fair hearing before the cancellation of the result?

B 4.3: *What is the nature of the relationship between the respondent and the appellant (whether the relationship between the respondent and appellant in the West African School Certificate Examination which she wrote in 1995 was contractual and whether the undertaking, by the respondent to abide by the rules governing the said examination when she registered for same empowered the appellant, while exercising its statutory disciplinary power under the West African Examination Council Act, Cap. 468, LFN, 1990, to cancel the respondent's result without regard to the respondent's right to*
 C *fair hearing under the Constitution and the African Charter on Human and Peoples' Rights)?*
 D

4.4: *Whether the respondent's complaint or claim against the cancellation and/or withdrawal of her Senior School Certificate Examination (SSCE) result by the appellant could be validly brought by an application under the Fundamental Rights (Enforcement Procedures) Rules, 1979, wherein the violation of Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 and Article 7 of the African Charter on Human and Peoples' Rights is being alleged?"*

F From the above issues formulated by learned counsel for both parties, it is very clear that appellant's issue 3 and respondent's issue 4 are not only similar, they challenge the competence of the action as instituted by the respondent. They challenge the appropriateness of the mode of instituting the action, which was done under the Fundamental Rights (Enforcement Procedure) Rules, 1979, instead of the issuance of a Writ of Summons and the filing of pleadings. In short, is the action as constituted an action for the enforcement of the fundamental right to fair hearing of the respondent. A resolution of that issue is of primary importance as it affects the competence of both
 G the action and the court before which it was instituted to hear and determine same and as such it ought to be resolved first/before any other issue raised in the Briefs. In fact, appellant's issue 3 and
 H respondent's issue 4 ought to have been listed as issue 1 in both

Briefs.

It is the contention of learned counsel for the appellant that the issue of fundamental right of the respondent to fair hearing under the 1999, Constitution vis-a-vis the cancellation of her result of the November/December, 1995, Senior School Certificate Examination is not directly in issue in the action as can be gleaned from the reliefs claimed, relying on the case of Odogu v. A-G. of the Federation (1996) 6 NWLR (Pt. 456) 508, Egbonu v. B.R.T.C. (1997) 12 NWLR (Pt. 531) 29, Tukur v. Government of Taraba State (1997) 6 NWLR (Pt. 510) 549. B

On his part, learned counsel for the respondent submitted that the enforcement of fundamental right of the respondent to fair hearing in the circumstances of this case is the main claim before the court and that the action was properly constituted; that the cases cited and relied upon by the learned counsel for the appellant are distinguishable from the facts of this case and that the Constitution does not provide or state that the right of a person for enforcement of his fundamental right is dependent on the consideration of the issue whether the right breached is the main or principal cause of action or claim before the court. C

It is settled law that for an action to be competently commenced and determined under the fundamental rights procedure, the main or principal claim therein must be enforcement or securing the enforcement of a fundamental right otherwise the jurisdiction of the court cannot be invoked by the procedure - see Egbonu v. B.R.T.C. (1997) 12 NWLR (Pt. 531) 29; Tukur v. Government of Taraba State (1997) 6 NWLR (Pt. 570) 549. D

In Odogu v. A-G of the Federation supra at 552, this court defined fundamental rights as follows:- E

“Fundamental rights is a right guaranteed in the Nigerian Constitution and can be found entrenched in a particular chapter therein i.e.. chapter IV” F

It follows therefore that for an applicant to successfully institute an action under the Fundamental Rights (Enforcement Procedure) Rules, 1979, the claim must fall within Sections 33-44 of the 1999, Constitution being the sections under Chapter IV, of the said 1999, Constitution. In the instant case, the right allegedly breached by the G

appellant is said to be that of fair hearing which is provided for under Section 36(1) of the 1999, Constitution as follows}-

B “36. (1) In the determination of his civil rights and obligations, including any question or determination in or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.”

C The question is whether looking at the reliefs as reproduced in this judgment together with the grounds on which they are claimed it can be said that the breach of the right of fair hearing is the principal or main claim in the action before the trial court? It is very clear to me that the main claim of the respondent is the alleged wrongful or unlawful or unconstitutional cancellation of the results of the respondent coupled with a claim for restoration of the allegedly cancelled result.

E It is also clear from the reliefs that the alleged breach of the respondent’s right to fair hearing flowed directly from the above main reliefs/claims i.e. that the cancellation of the examination result of the respondent by the appellant was done without the respondent being first heard either orally or in writing thereby confirming the same to be ancillary relief/claim before the court.

F In the circumstance I agree with my learned brother, Mohammed, JSC., in the leading judgment that the action as constituted was incompetent and that the proper order is not that of dismissal as entered by the trial court, but striking out and that the lower court was in error when it allowed the appeal and set aside the judgment of the trial court.

G I order accordingly and abide by the order as to costs.

CHUKWUMA-ENEH JSC

H I have had the privilege of reading in advance the judgment of my learned brother, Mohammed, JSC., just delivered with which I agree entirely. Respectively, I adopt it as mine. I find the appeal meritorious and accordingly allow it.