

SUPREME COURT OF NIGERIA

11TH JULY, 2008. SC. 324/2001

**CORAM:- W. S. N. ONNOGHEN, F. F. TABAI, I. T.
MUHAMMAD, J. O. OGBE, M. S. MUNTAKA-COO-
MASSIE, JJSC**

CHIEF N. P. UGBOAJA APPELLANT
AND

1. SODOLAMU AKITOYE-SOWEMIMO

2. MOTOLA SOWEMIMO

3. EFUNIKE ANIMASHAWUN

4. JAIYEOLA SOWEMIMO RESPONDENTS

(For themselves and on behalf of
all the beneficiaries of the Estate of
Chief Sobo Sowemimo (Deceased)
Substituted by order of court made the
12th day of May, 2008

APPEALS - Grounds of fact - Right of appeal - Extent - Where grounds of appeal are of facts or mixed law and fact - As in the instant case - Appeal must be with leave - Which the appellant failed to seek and obtain (H1)

APPEALS - Grounds of law - Meaning - They are grounds that raise questions to be answered in accordance with rules of law - Allowing no exercise of discretion to the court in whatever manner (H2)

APPEALS - Ground of appeal - Meaning - It is the totality of the reasons why the decision appealed against - Is considered wrong in law or fact or both - Unlike the purported ground 1 of instant appellant (H3)

FACTS

The Plaintiffs/Respondents sued the Defendant/Appellant at the High Court of Lagos State claiming declaration of title to the land in dispute, damages for trespass and injunction. Both parties filed their pleadings. The Respondents led evidence in support of their

case. On 27th September 1996, Respondents closed their case and the matter was adjourned to 9th October, 1996 for defence to open. On the said date, defence counsel wrote for adjournment on the ground that he had a matter at the Supreme Court, Abuja and on the ground that he had filed an application for further direction on the date on which the Respondents had closed their case, which application was fixed for hearing on 21st October. Respondents' counsel was opposed to the application for adjournment and moved the court to close the case of the Appellant instead, which the court obliged. The matter was adjourned to 24th October for address. Though Respondents' counsel addressed the court in the presence of Appellant's counsel, the latter made no reply, nor did he make any application to the court. Judgment was given to Respondents. Appellant appealed to the Court of Appeal purportedly against the final judgment but the grounds of appeal attacked the interlocutory decision of the judge closing Appellant's case as it did. The court construed the appeal as interlocutory appeal and struck it out as incompetent. Hence, Appellant has brought this further appeal to the Supreme Court.

ISSUE FOR DETERMINATION

"Whether the grounds or any of the grounds of appeal is of fact or mixed law and fact so as to make it necessary for the appellant to seek and obtain the leave of court before filing the appeal?"

HELD (Unanimously striking out the appeal per **ONNOGHEN JSC**)
Grounds of fact - Right of appeal

1. I had earlier in this judgment reproduced the two grounds of appeal in this appeal and the particulars in full. It is settled law that where a ground(s) of appeal is/are of fact or mixed law and fact, the appellant must obtain the leave of either the court that gave the decision against which the ground(s) is (are) raised or of the appellate court. In the instant case, if the ground(s) of appeal is/are of fact or mixed law and fact, the appellant is expected, by the provisions of Section 233(3) of the constitution of the Federal Republic of Nigeria, 1999 (hereinafter referred to as the 1999 Constitution) to obtain the leave of either the Court of Appeal or the Supreme Court.

Looking at the grounds of appeal particularly ground 2 together with its particulars, it is very clear that the said ground is clearly

a ground of mixed law and facts. It is not a ground of law which requires no leave. It is settled law that in order to determine the nature of the ground of appeal, one must look closely at the main ground together with the particulars thereof to see whether it is a ground of law, fact, or mixed law and fact. It is therefore, not enough for counsel for the appellant to brand a ground of appeal a ground of law to make it one. It is also settled law that a ground of appeal is the totality of the reasons why the decision complained of is considered wrong by the party appealing. (p. 3071 E/H)

Grounds of law - Meaning

2. A question of law or grounds of law can be said to have three meanings, to wit:-

a) a question the court is bound to answer in accordance with a rule of law, the process of answering of which question the court would exercise no discretion in whatever manner; it is a question predetermined and authoritatively answered by the law;

b) the second meaning is as to what the law is; an appeal in which the question for argument and determination is what the true rule of law is on a certain matter which question usually arises out of the uncertainty of the law;

c) the third meaning is in respect of those questions which are committed to and answered by the authority which normally answers questions of law only; that is any question which is within the province of the judge instead of a jury is a question of law, even though in actual sense it is a question of fact. Within this meaning can be identified the interpretation of documents, which is often a question of fact, but is within the province of the judge.

In addition to the above is the determination of the reasonable and probable cause for a prosecution in the tort of malicious prosecution, which is one of fact, but is a matter of law to be determined by the judge.

A "question of fact" also does not have one meaning as it may mean:-

- (i) a question which is not determined by a rule of law;
- (ii) any question except the question as to what the law is; and
- (iii) any question that is to be answered by the jury rather than

the Judge, is a question of fact. (p. 3072 C)

Ground of appeal - Meaning

3. In fact strictly speaking, ground 1 as couched by the learned counsel for the appellant is no ground of appeal at all as it contains no complaint or question or challenge against the judgment of the lower court. I have to once more state that a ground of appeal is the totality of the reasons why the decision appealed against is considered wrong in law or fact or a mixture of both law and fact. In ground 1, the appellant stated what the lower court held in the form of a statement of fact without stating whether the lower court erred in law or misdirected itself on the facts. At the pain of repetition, I hereby reproduce the said ground 1, once more:-

"(i) The appellant appealed against the final judgment of the trial court, B. O Martins J. (Rtd), and NOT an appeal, on the ruling of the trial court, dated 9/10/96.

Tersely put, the appellant did NOT file, an interlocutory appeal, as assumed by the lower court in paragraph 2, page 3 of the judgment". (p. 3073 E)

NOTABLE POINT OF INTEREST

TABAI JSC

1. Appeal is not foreclosed by being struck out

It is perhaps necessary to emphasise, for the benefit of the appellant, that his rights of appeal are not foreclosed by the striking out order either of this court or that of the court below. Rather than engage himself in this highly technical battle of the construction of the grounds of appeal, learned counsel for the appellant is better advised to go back to the courts below and file a fresh and appropriate appeal process so as to enable the Appellant ventilate his grievances and the appeal heard and determined on the merits. (p. 3075 B)

REPRESENTATION

Gabriel Opayinka Esq. For the appellant
F. O Akerele Esq. For the respondents

CASES REFERRED TO

Olowolagba & Ors vs R. A Bakare (1998) 3 NWLR (Ft. 643)

Nyambi vs Osadion (1997) 2 NWLR (Ft. 485) 1

Maigoro vs Garba (1999) 10 NWLR (Ft. 624) 555 at 557-561

Agrochemicals (Nig) Ltd vs Kudu Hold (Nig) Ltd (2000) 15 NWLR (Pt. 691) 493

Anoghalu vs Oraelosi (1999) 13 NWLR (Ft. 634) 297

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STATUTE REFERRED TO

Constitution of the Federal Republic of Nigeria, 1999, s. 233(3)

LEAD JUDGMENT BY ONNOGHEN JSC

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This is an appeal against the judgment of the Court of Appeal holden at Lagos in appeal NO. CA/L/136/98 delivered on the 30th day of April, 2001 in which the court struck out the appeal of the appellant against the judgment of the High Court of Lagos State in Suit NO. ID/7307/90 delivered on the 21st day of November, 1996.'

By a writ of summons filed on the 20th day of November, 1990, the original respondent claimed against the appellant as follows:-

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“(i) Declaration that he is the registered proprietor of the parcel of land situate at 41, Ogundana Street, Off Alien Avenue, Ikeja, Lagos State or in the alternative is entitled to certificate of occupancy of the said parcel of land by virtue of a Deed of Conveyance registered as NO. 48 in Volume 48 at page 1482 in 1975 in the Lagos Lands Registry.

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(ii) N50,000.00 (fifty thousand naira) as damages for trespass on the said land.

(iii) Perpetual injunction to restrain the defendant from further trespass on the said land”.

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It is the case of the respondent that he acquired a large piece of land including the land in dispute from one A. T BAKARE whose title to the land was confirmed by the Supreme Court in Suit NO. SC/121/74 between: A. T Bakare vs Owodina & Ors and a Deed of Declaration registered in favour of the said respondent's predecessor in title as NO. 50 at page 50 in Volume 1072 at the Lagos State Lands Registry, Lagos, which said title was again confirmed by the

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Supreme Court in another case, to wit, Suit NO. SC/528/98 between Olowolagba & Ors vs R. A Bakare (1998) 3 NWLR (Ft. 643). The respondent stated that he had leased portions of the large parcel of land so acquired to third parties who developed their respective portions without let or hindrance; that the piece or parcel of land now in dispute between the parties forms part and parcel of the large piece or parcel of land acquired from the said A. T Bakare.

On the other hand, it is the case of the appellant as stated in his pleading that the land in dispute belongs to him tracing his title thereto to one S. A BAMSILLE as evidenced in a Deed of Conveyance dated the 16th day of October, 1975 and registered as NO. 10 at page 10 in Volume 1528 in the Lagos State Lands Registry, Lagos, and the Deed of Assignment dated 7th June, 1983 and registered as NO.74 at page 74 in Volume 1866 in the Lagos State Lands Registry, Lagos.

Both parties filed their pleadings pleading the above facts. The respondent, as plaintiff, testified in support of his case and called two witnesses. On the 27th day of September, 1996, the plaintiff closed his case and the matter was adjourned to the 9th day of October, 1996 for defence to open.

When the case came up for defence on the said date, learned counsel for the defendant/appellant, Chief O. O Ajala wrote for an adjournment on the ground that:-

- (1) he had a matter before the Supreme Court in Abuja and,
- (2) he had filed an application for further direction on the 27th day of September, 1996 which application was fixed for hearing on 21/10/1996.

It should be noted that the application for further direction was filed the same day the plaintiff closed his case and was not fixed for hearing on the date the defence was to open but about two weeks thereafter. The plaintiffs counsel was opposed to the application for adjournment and requested the court to close the case of the defendant/appellant as a result of which the trial judge ruled as follows :-

"I am of the view that the defendant has been given an opportunity to be heard and he is not interested (sic) in the utilization of that opportunity. In the circumstances, the case of the defendants shall be closed and it is hereby closed for his lack of interest in pros-

ecuting his defence. Accordingly I so rule, case adjourned till 16th October, 1996 for address”.

The learned counsel for the plaintiff however addressed the court on the 24th day of October, 1996 in the presence of O. O Ojo Esq, learned counsel for the defendant/appellant at the conclusion of which address Mr. Ojo made no reply neither did he make any application to that court for anything. The matter was then adjourned to the 8th day of November, 1996 for judgment, which judgment was eventually delivered on the 21st day of November, 1996. Meanwhile, the defendant/appellant never appealed against the ruling of the court made on the 9th day of October, 1996 closing the case for the defence.

On the 21st day of November, 1996, the trial court delivered its judgment in favour of the plaintiff/respondent and granted all the reliefs claimed.

The appellant was dissatisfied with the judgment and appealed to the Court of Appeal, holden at Lagos on a notice of appeal containing the following ground and particulars :-

“GROUNDS OF APPEAL

The learned trial judge misdirected himself, by closing the case of the defendant, and giving judgment for the plaintiff, without hearing the other side, who has filed a further Statement of Defence, and counter claim on the suit.

PARTICULARS

1. There were abundant documents before the trial court, that the defendant has filed a Motion on Notice for further direction, and a letter for an adjournment which the learned trial judge rejected, when my solicitor, was before the Supreme Court, Abuja for an urgent application.

2. That the order to (sic) the Honourable Court made on the 9th day of October, 1996, refusing the letter for an adjournment, and/or failing to give the notice of further direction dated 27/9/96, an accelerated hearing, were made NOT in the interest of justice. “

It should also be noted that out of the above ground of appeal, the learned counsel for the appellant formulated two issues for determination by the lower court!! The issues are as follows:

“(i) Whether the appellant was given a fair hearing in the cir-

cumstances of this case by the learned trial judge.

(ii) Whether the learned trial judge was right in giving judgment in favour of the respondent herein”.

In considering the appeal, the lower court held as follows:-

B *“It is easy to deduce from the above ground of appeal that the complaint of the appellant concerns that refusal of the lower court to grant the adjournment which the appellant’s counsel has sought from the lower court on 9/10/96. The Notice of Appeal however, was directed against the judgment of the lower court delivered on 21/11/96. Nothing in the grounds of appeal can be construed as directed against the contents of the judgment of the lower court. In the interest of justice, I ought to consider this appeal as directed against the ruling delivered on 9/10/96.*

D *However, the ruling of 9/10/96 was an interlocutory decision of the lower court against which the defendant could only appeal with the leave of this court or the court below unless the ground of appeal is on law alone. Further, the appeal ought to be brought within 14 days unless an extension of time was sought and obtained. The ruling of the lower court was given on 9/10/96. The appeal was filed on 25/11/96. No leave was obtained, if one was required. And in any case, no extension of time to appeal was sought or obtained. Accordingly, this appeal is incompetent. It is struck out with N5,000.00 (five thousand Naira) costs to the respondent”.*

F It is against the above judgment that the present appeal has been lodged in this court, the grounds of which are stated in the Notice of Appeal filed on the 27th day of July, 2001 as follows.

GROUND OF APPEAL:

G (i) The appellant appealed against the final judgment of the trial court, B. O Martins J. (Rtd) and NOT an appeal on the ruling of the trial court, dated 9/10/96. Tersely put, the appellant did NOT file an interlocutory appeal as assumed by the lower court in paragraph 2, page 3 of the judgment.

H (ii) The lower court misdirected itself, when its decision, was based on an interlocutory Appeal, which the appellant did not ask for.

PARTICULARS OF MISDIRECTION:

a. The Notice of Appeal, filed at the lower court, shows clearly

that the appeal is on a final judgment of the trial court. The appellant appealed on FAIR HEARING

b. The briefs of argument for the appellant, on the respondent, were based on the Final Judgment of the trial court and on Fair Hearing.

c. The lower court, went on a frolic of its own, when assumption took over the direction of the learned justices of the Court of Appeal. The lower court, made an appeal, for the appellant, and gave judgment, on what the appellant, did not ask for.

d. The case for the appellant at the lower court, is that the trial court did NOT hear the summons for further directions, to end the Statement of Defence, before he could open his case. Despite the refusal by the trail (sic) court, the facts in the proposed Statement of Defence were used in his judgment.

e. The briefs of argument, of both the appellant and the respondent -were on a FINAL APPEAL. The lower court erroneously abandoned the appeal, and struck it out, with five thousand naira (N5,000.00) cost, in favour of the respondent, on interlocutory appeal. The costs had been paid by -the appellant - See the Brief of Argument, in the (sic) lower court's RECORD OF APPEAL

It should be noted that learned counsel for the appellant appears to be very much in love with the punctuation sign of comer which he deploys randomly and lavishly in the drafting of the above grounds of appeal.

However, out of the above grounds of appeal, learned counsel for the appellant Chief O. O Ajala has formulated two issues for the determination of the appear in the appellant's brief of argument filed on the 14th day of June, 2002. The issues are as follows:-

"4.01 Whether the appellant appealed, on a final judgment or the appeal, is an interlocutory appeal. To determine the effect of such judgment, on the appellant.

4.02 Whether there is a misdirection of facts, and law, at the lower court leading to the lower court's judgment, giving to the appellant, what the appellant did NOT ask for, from the lower court, and to pronounce, on the validity of the judgment of the lower court".

On the other hand, learned counsel for the original respondent, F. O AKERELE Esq, in the respondent's brief of argument filed

on 6/3/07 identified a single issue for the determination of the appeal. The issue posited thus:-

“*Whether Notice of Appeal filed by the appellant at the lower court which was directed against the judgment of the trial court, did by its Grounds of Appeal raised (sic) any complaint against the judgment of the trial court which could have been considered by the Court of Appeal*”.

At this stage, it is necessary to mention that the learned counsel for the original respondent filed a notice of preliminary objection against the grounds of appeal on the 18th day of March, 2003 and followed same up with arguments thereon in the respondent’s brief filed on 6/3/07 and adopted in the argument of this appeal. It is his contention that the appeal is incompetent on the ground that:-

(i) Though the appellant’s Notice of Appeal dated 17th day of July, 2001 is directed against the judgment of the Court of Appeal delivered on 10th day of April, 2001 and there is no ground of appeal which can be construed as directed against the judgment of the Court of Appeal i.e. the grounds of appeal are not relevant to the decision appealed against and are founded upon a lack of comprehension of the Court of Appeal

(ii) Neither of the two grounds of appeal raised by the appellant is a ground of law which would entitle the appellant to appeal to this court without leave of the lower court or the Supreme Court.

(iii) The issues for determination in this appeal as formulated by the appellant are not relevant to the judgment appealed against and are not consistent nor related to the grounds of appeal filed as they are constructed upon a lack of comprehension of the judgment of the Court of Appeal and the issues in no way represent the appellant’s notice of appeal dated 17th day of July, 2001, though is directed against the judgment of the Court of Appeal delivered on the 30th day of April, 2001, there is no grounds of appeal which can be constructed as directed against the judgment of the Court of Appeal.

It is the contention of learned counsel for the respondent that the grounds of appeal are not relevant to the judgment appealed against; that the two grounds of appeal are grounds of fact or at best mixed law and facts for which the appellant needed the leave of

either the lower court or of this court before appealing thereon; that the appellant neither sought nor was granted leave by either court to so appeal on facts or mixed law and fact, and submitted that for that reason the appeal is incompetent and liable to be struck out, relying on Nyambi vs Osadion (1997) 2 NWLR (Ft. 485) 1; Maigoro vs Garba (1999) 10 NWLR (Ft. 624) 555 at 557-561. It is the further submission of learned counsel that the issues formulated for determination do not fall within the parameters of the grounds of appeal which grounds are, in any event, not directed at the judgment of the lower court, and urged the court to strike same out, relying on Agrochemicals (Nig) Ltd vs Kudu Hold (Nig) Ltd (2000) 15 NWLR (Pt. 691) 493. B
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The learned counsel for the appellant filed no reply brief in which he could have replied to the issues raised and canvassed on the preliminary objection. Though it is settled law that where a party fails or neglects to react to an issue in contention between the parties, the party in default is deemed to have conceded the point/issue to his opponent, I will however, proceed to consider the objection on its merit. D

I had earlier in this judgment reproduced the two grounds of appeal in this appeal and the particulars in full. It is settled law that where a ground(s) of appeal is/are of fact or mixed law and fact, the appellant must obtain the leave of either the court that gave the decision against which the ground(s) is (are) raised or of the appellate court. In the instant case, if the ground(s) of appeal is/are of fact or mixed law and fact, the appellant is expected, by the provisions of Section 233(3) of the constitution of the Federal Republic of Nigeria, 1999 (hereinafter referred to as the 1999 Constitution) to obtain the leave of either the Court of Appeal or the Supreme Court. There is no evidence on record that the appellant did seek and obtain the said leave. That is therefore not in issue. E
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What is in issue is whether the grounds or any of the grounds of appeal is of fact or mixed law and fact so as to make it necessary for the appellant to seek and obtain the leave of court before filing the appeal.

Looking at the grounds of appeal particularly ground 2 together with its particulars, it is very clear that the said ground

is clearly a ground of mixed law and facts. It is not a ground of law which requires no leave. It is settled law that in order to determine the nature of the ground of appeal, one must look closely at the main ground together with the particulars thereof to see whether it is a ground of law, fact, or mixed law and fact. It is therefore, not enough for counsel for the appellant to brand a ground of appeal a ground of law to make it one. It is also settled law that a ground of appeal is the totality of the reasons why the decision complained of is considered wrong by the party appealing. On the other hand, a question of law or grounds of law can be said to have three meanings, to wit:-

a) a question the court is bound to answer in accordance with a rule of law, the process of answering of which question the court would exercise no discretion in whatever manner; it is a question predetermined and authoritatively answered by the law;

b) the second meaning is as to what the law is; an appeal in which the question for argument and determination is what the true rule of law is on a certain matter which question usually arises out of the uncertainty of the law;

c) the third meaning is in respect of those questions which are committed to and answered by the authority which normally answers questions of law only; that is any question which is within the province of the judge instead of a jury is a question of law, even though in actual sense it is a question of fact. Within this meaning can be identified the interpretation of documents, which is often a question of fact, but is within the province of the judge.

In addition to the above is the determination of the reasonable and probable cause for a prosecution in the tort of malicious prosecution, which is one of fact, but is a matter of law to be determined by the judge - See Anoghalu vs Oraelosi (1999) 13 NWLR (Ft. 634) 297.

A “question of fact” also does not have one meaning as it may mean:-

(i) a question which is not determined by a rule of law;

(ii) any question except the question as to what the law is; and

(iii) any question that is to be answered by the jury rather than the Judge, is a question of fact - See Anoghalu vs Oraelosi supra.

In determining whether a ground of appeal is of law or fact or mixed law and fact, the court is to be guided by the following principles:-

(a) where the court is being invited to investigate the existence or otherwise of certain facts upon which the award of damages to the respondent was based, such a ground is of mixed law and fact;

(b) a ground which challenges the findings of fact made by the trial court or involves issues of law and fact can only be argued with the leave of the appellate court;

(c) where the evaluation of facts established by the trial court before the law in respect thereof is applied is under attack or question, the grounds of appeal is one of mixed law and fact;

(d) where the evaluation of evidence tendered at the trial is exclusively questioned, it is a ground of fact, and;

(e) a ground of law arises where the ground of appeal shows that the court of trial or appellate court misunderstood the law or misapplied the law to the proved or admitted facts.

When one looks closely at ground 1 of the grounds of appeal, it is very clear that it is also a ground of fact. ***In fact strictly speaking, ground 1 as couched by the learned counsel for the appellant is no ground of appeal at all as it contains no complaint or question or challenge against the judgment of the lower court. I have to once more state that a ground of appeal is the totality of the reasons why the decision appealed against is considered wrong in law or fact or a mixture of both law and fact. In ground 1, the appellant stated what the lower court held in the form of a statement of fact without stating whether the lower court erred in law or misdirected itself on the facts. At the pain of repetition, I hereby reproduce the said ground 1, once more:-***

"(i) The appellant appealed against the final judgment of the trial court, B. O Martins J. (Rtd), and NOT an appeal, on

the ruling of the trial court, dated 9/10/96.

Tersely put, the appellant did NOT file, an interlocutory appeal, as assumed by the lower court in paragraph 2, page 3 of the judgment”.

B Applying the above principles to the grounds of appeal in the instant appeal, it is obvious that the ‘complaint’ of the appellant on grounds 1 and 2 together with the particulars thereof are grounds of fact or at best mixed law and fact for which the leave of either the lower court or of this court must first be sought and obtained before
C such a ground(s) of appeal can be competent. In the instant case and as had earlier been found and held in this judgment, the appellant neither sought nor obtained the leave of the court below nor of this court as a result of which the said grounds are incompetent and liable to be struck out. I order accordingly. With the grounds of appeal
D gone, there is nothing to support the notice of appeal in the instant case.

Appeal is therefore struck out for being incompetent with N50,000.00 (fifty thousand naira) costs against the appellant and in
E favour of the respondent.

TABAI JSC

I had a preview of the judgment prepared by my learned
F brother, Onnoghen JSC and I agree that the appeal be struck out for incompetence.

The Notice of Appeal dated the 17th July 2001 contained the following which are described therein as grounds of appeal.

G *“The Appellant appealed against the final judgment of the Trial Court B.O. Martins (Rtd) and NOT an appeal on the ruling of the trial court dated 9/10/96. Tersely put, the appellant did NOT file an interlocutory appeal as assumed by the lower court in paragraph 2 page 3 of the judgment.*

H *(ii) The Lower Court misdirected itself when its decision was based on an interlocutory appeal which the Appellant did NOT ask for.”*

He then went on to give a five paragraph particulars of misdirection.

Clearly the first ground is not a ground of appeal properly so called. It does not complain either of error in law nor misdirection of facts. The second ground alleges misdirection and is at best a ground of mixed law and facts. Such a ground can only be competent if it is filed with leave either of the Court below or this Court. The result is that this appeal is incompetent and same is accordingly also struck out by me. I also abide by the order on costs contained in the lead judgment. B

It is perhaps necessary to emphasise, for the benefit of the appellant, that his rights of appeal are not foreclosed by the striking out order either of this court or that of the court below. Rather than engage himself in this highly technical battle of the construction of the grounds of appeal, learned counsel for the appellant is better advised to go back to the courts below and file a fresh and appropriate appeal process so as to enable the Appellant ventilate his grievances and the appeal heard and determined on the merits. C D

MUHAMMAD JSC

I have had the advantage of reading before now the judgment of my learned brother, Onnoghen, JSC. I agree with his reasoning and conclusion.. The appeal is incompetent and it is hereby struck out by me. I abide by all consequential orders made in the lead judgment of my learned brother, Onnoghen, JSC, including order as to costs. E F

OGEBE JSC

I had a preview of the lead judgment of my learned brother Onnoghen, JSC just delivered and I agree entirely with his reasoning and conclusion. The preliminary objection to the competence of the appeal is well taken and I hereby strike out the appeal for incompetence with costs as assessed in the lead judgment. G

MUNTAKA-COOMASSIE JSC

The judgment of my learned brother, Onnoghen JSC, just de- H

livered, was read by me in draft form. The reasons and conclusions stated in the lead judgment accord with my understanding of the law. I with respect adopt same as mine. His Lordship has competently thrashed out the issues as presented to us in a most admirable manner. He did not leave any stone unturned. There is no need for me to
B repeat what he stated without improving on same. What appeared to be legal intricate, complicated and intriguing his Lordship ably wriggled out from them, and competently and correctly in my view, arrived at a proper decision.

C In the result, and for the reasons adduced in the lead judgment of my learned brother Onnoghen JSC, I too hold that the appeal before this Court is incompetent same is hereby struck out, with £450,000:00 costs to the Respondent in this appeal.

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