

COURT OF APPEAL
BENIN DIVISION
13TH JULY 2005. CA/B/126/2002
CORAM:- P. I. AMAIZU, A. A. AUGIE, U. M. ABBA AJI, JJCA

1. NIGERIA CUSTOMS SERVICE APPELLANTS
2. NIGERIA CUSTOMS SERVICE BOARD
AND
SUNDAY OSARO BAZUAYE RESPONDENT

APPEALS - Interlocutory appeals - Time within which to appeal - Computation of - It presupposes existence of an interlocutory order - It is from the time of making the order that time begins to run (H1)

CROSS EXAMINATION - Effect - Witnesses - Failure to cross examine a witness - Upon a particular matter - Is a tacit acceptance of the truth of his evidence (H2)

EVIDENCE - Documents - Admissibility - Duty of court and the opposite party - Court is to admit and act only on legally admissible evidence - While opposite party should immediately object - To admission of inadmissible evidence (H3)

APPEALS - Issues - Fresh issue on appeal - Manner of raising - Where an issue is not raised at the trial - It can not be properly raised on appeal except with the leave of court - Which leave was not obtained in this case (H4)

FACTS

The plaintiff/ respondent had sued the defendant/appellant at the Federal High Court holden in Benin. Respondent's claim was for various declarations and injunctions (or damages in the alternative) aimed at contesting his alleged wrongful dismissal from the services of the appellant. Pleadings were filed and exchanged and the case went to trial.

At the end of hearing, the trial court held that the respondent had proved his case and was entitled to reinstatement in the absence of any legal obstacles intervening between the period of the pur-

ported dismissal and the date of judgment. Accordingly, he ordered his reinstatement, inter alia. Aggrieved, appellant has brought this appeal against the judgment of the trial court. Appellant's sole contention in the appeal is that trial court erred by admitting and relying on inadmissible evidence.

ISSUE FOR DETERMINATION

“Whether the learned trial Judge was right in admitting in evidence, a medical report (exhibit CC1) from a private hospital as amounting to sick leave or evidence of absence from duty against the provision of chapter 9 to the Public Service Rules.”

HELD (Unanimously dismissing the appeal per **ABBA AJI JCA**)

Interlocutory appeals - Time within which to appeal

1. There is no law or rule of practice that says, any appeal in respect of admissibility of a document is an interlocutory appeal that must be brought within 14 days from the time the document was admitted in evidence. In fact, learned counsel for the respondent seem to have confused the submission of counsel in the case of *Tijani v. Akinwunmi* (supra) and the finding of the trial court. In that case, the defendant orally applied to court at an address stage to reopen the defence in order to tender a vital document pleaded in paragraph 7 of the statement of defence. The learned trial judge refused the application. The defendant appealed to the Court of Appeal that the High Court ought not to have admitted exhibit “A” the deed of conveyance executed in favour of the plaintiff/respondent since it was not duly registered. Learned counsel for the respondent submitted that since the complaint of the appellant was against an interlocutory order, by section 25(2)(a) of the Court of Appeal Act, 1976, the appeal against it ought to have been lodged within 14 days of the ruling.

The question here is, what was the interlocutory order referred to by counsel? The interlocutory order being referred to, is the order of the court admitting exhibit A, the deed of conveyance executed in favour of the respondent in evidence. There was a ruling by the lower court admitting exhibit A in evidence and the contention is that since he has not appealed against the interlocutory ruling admitting exhibit A in evidence, he cannot now raise the issue since the time provided by section 25(2)(a) of the Court of Appeal Act has lapsed and if he

intends to do that, leave of the court must be obtained in accordance with section 15(1) of the Court of Appeal Act since the ground of appeal raise an issue of mixed law and fact. (p. 3454 H)

Failure to cross examine a witness

2. The effect of failure to cross-examine a witness upon a particular matter is a tacit acceptance of the truth of the evidence of the witness. In other words, it is not proper for a defendant not to cross-examine a plaintiff's witness on a material point and to call evidence on the matter after the plaintiff had closed his case. In this instant case, appellants' counsel failed to cross-examine the respondent on exhibit CC1 the medical report and card tendered by him in evidence. (p. 3458 C)

Documents - Admissibility

3. The question now is, is exhibit CC1 a document that is legally admissible or not? Admissibility of evidence in any judicial proceedings before any court of law established in the Federal Republic of Nigeria is governed by the Evidence Act. A court of law is expected to admit and act only on evidence which is admissible in law. But when inadmissible evidence is tendered, it is the duty of the opposite party to immediately object to its admissibility. Where the party fails to object, the court may in civil cases reject such documents and must reject such evidence in criminal cases. (p. 3458 E)

Fresh issue on appeal - Manner of raising

4. The question that arises is, where a party fails to object to its admissibility, is it open to the party to raise an objection on that ground in a Court of Appeal as the appellants are now doing?

Where an issue is not raised at the trial, it cannot be properly raised on appeal. It is clear from the record of appeal that the issue of chapter 9 of the Public Service Rules did not arise even remotely for determination before the trial court.

The general state of the law is that a party cannot raise an issue for the first time on appeal except with the leave of the court. The appellant has not sought for and obtain such leave to raise this issue on appeal. He cannot therefore raise the issue now.

NOTABLE POINTS OF INTEREST

ABBA AJI JCA

1. Citation of authorities - Need for counsel not to mislead court

- B The Supreme Court and this court have had cause to admonish counsel on the need to exercise care in citing authorities. Counsel are to cite relevant authorities in arguing their case and should always refrain from attempting to mislead the court by citing authorities which do not support their case. See *Araka v. Ejeugwu* (1999) 2 NWLR (Pt.589) 107; *Bamgbade v. Balogun* (1994) 1 NWLR (Pt.323) 718 (p. 3456 A)

2. Whether a decision is final or interlocutory

- D Whether a decision is final or interlocutory depends on its results. If the decision finally disposes of the rights of the parties, it is final decision and not an interlocutory decision and such a decision can only be reviewed or reversed by an appellate court and not by the judge who gave it.
- E Where a decision has determined the rights of the parties in the substantive case or application the decision is final and not an interlocutory decision. In the instant case, the decision appealed against is final in that it determines the rights of the parties in the substantive case, so there cannot be any interlocutory appeal as attended by the respondent's counsel. (p. 3456 H)

3. An issue not arising from any ground of appeal is incompetent

- G It is also observed that the respondent formulated his own issue for determination which is not tied down to the appellants' ground of appeal. An issue for determination in an appeal is distilled from the ground or grounds of appeal filed. An issue not tied to any of the grounds of appeal is improper and will be discountenanced. In the instant case, the appellant's ground of appeal and the issue is on the admissibility of exhibit CCI, whether the exhibit is legally admissible in law, and the respondent avoided appellants' issue and formulated his own. The respondent's issue is whether the admission of exhibit CC1 occasioned a miscarriage of justice. It is my view that the two

issues are not the same. Admissibility has to be determined before examining whether the admissibility had occasioned a miscarriage of justice or otherwise. It is a common ground that the respondent did not cross-appeal and to that extent he cannot postulate an issue for determination which is not predicated on the ground of appeal filed by the appellant. Such a postulation is misconceived and therefore incompetent. It is therefore imperative for counsel formulating issues for determination to keep in mind that any issue not in consonance with the grounds of appeal does not fall for determination.
(p. 3457 C)

REPRESENTATION

D. A. Hassan, Esq. for the Appellants

E. T. A. Macfoy, Esq. for the Respondent

CASES REFERRED TO

IB. W.A v. Imano (Nigeria) Ltd. (2001) FWLR (Pt.44) 421 at 429;
(1988) 3 NWLR (Pt. 85) 633

Raimi v. Akintoye (1986) NSCC Vol. 17 (Pt.1) 649 at 654; (1986) 3 NWLR (Pt. 26) 97

Alashe v. Olori-Ilu (1964) 1 All NLR 390

Nigeria Customs Service v. Bazuwaye (2001) 7 NWLR (Pt. 712) 357

Tijani v. Akinwunmi (1990) 1 NWLR (Pt. 125) 237

Jacob v. A-G., Akwa Ibom State (2002) 7 NWLR (Pt. 765) 18 at 25 & 26

Mobil Producing (Nig.) Unlimited v. Monokpo (2002) 3 NWLR (Pt.753) 48 at 59

Morah v. Okwuyanga (1990) 1 NWLR (Pt.125) 225 at 227

American, Cyanamid v. Vitality Pharm. (1991) 2 NWLR (Pt. 171) 15

STATUTE & RULES REFERRED TO

Court of Appeal Act, ss. 15 (1) and 25 (2) (a)

Court of Appeal Rules, O. 3 r. 22

Public Service Rules, Chapter 9, s. 3

LEAD JUDGMENT BY ABBA AJI JCA

This appeal is against the judgment of the Federal High Court Edo State sitting in Benin City presided over by Hon. Justice I.N. Auta delivered on the 13th day of November, 2001.

B The respondent herein was the plaintiff before the trial court. He was employed by the Federal Ministry of Works and Housing on 21st March, 1971. His appointment was confirmed and as was the practice, gazetted. He enjoyed rapid promotion so much so that as at 1988 he was transferred to the customs department and by the 1988 C Civil Service Reform he now became a permanent staff of the Custom Service.

As at 1989, the respondent's duty post was Tin Can Island Port, Lagos where he was a senior accountant. Sometimes in 1989 a D fraud was perpetrated in Tin Can island Port, Lagos. Two Union Bank Cheques No. 784216 for N64,456.36k and No. 784215 for N4,511.95k issued by Pfizer Products to Panalpina World Transport were stolen at the Murtala Mohammed Airport. The said cheques were later found to have been used at Tin Can Island Port to pass for E an entry for motor vehicle. The cheques were alleged to have passed through the table of the respondent and his two assistants.

Consequently, the respondent was accused of aiding and abetting the Commission of the fraud and thereby causing the Federal Government the loss of N64,456.36K.

F The respondent denied the allegation and stated that during the period the fraud was alleged to have occurred he was ill having obtained permission from his officer to be absent from work as he and his immediate family had been afflicted by small pox. The appellants were not satisfied by the respondent's explanation and by a G letter dated the 26th September, 1995 the respondent was dismissed from the services of the Nigeria Customs Service with effect from 27th April, 1993.

H Apparently dissatisfied with his dismissal from service, the respondent instituted this action before the Federal High Court vide a writ of summons dated the 16th day of April, 1996 and claimed as per paragraph 22 of amended statement of claim the following reliefs:-

“(a) A declaration that the alleged or purported dismissal of the plaintiff from the Nigeria Customs Service is involuntary, illegal, null, void and of no effect whatsoever.

“(b) A declaration that the plaintiff is still in the employment of the Nigerian Customs Service.

“(c) An injunction restraining the defendants from interfering with the plaintiff’s performance of his duties as an Assistant Chief Accountant of Customs.

“(d) An Order to re-instate plaintiff to his status as a Civil Servant, and as an Assistant Chief accountant of customs in such a manner that all outstanding salaries, entitlements and promotions which is due or might have accrued to the plaintiff now or during the period of the alleged or purported dismissal be given to him.

“(e) In the alternative, the plaintiff shall claim the sum of fifty million Naira (N50,000,000,000) as compensation, special and general damages for unlawful and wrongful dismissal from service by the defendants.”

The parties filed and exchanged pleadings. The case eventually went to trial. The respondent gave evidence and was cross-examined. The appellant somehow abandoned the case and thus did not call any evidence. In a considered judgment delivered on the 21st of November, 2001 the learned trial Judge Auta, J. granted all the reliefs of the respondent. This is what the trial court said while giving judgment to the respondent:-

“I have already considered in the body of my judgment, the fact that the employment of the plaintiff has statutory flavour and as stated in the case of U.N.T.H.M. B. v. Nnoli (1992) 6 NWLR (Pt.250) page 752, “where the act relied upon for the dismissal or termination of an employee is a contravention of an enacting statutory provision, the reinstatement of the employee (bearing legal obstacles intervening between the period of purported dismissal and the date of judgment) is the only remedy”. In this case, the plaintiff sought the following reliefs from the court, like a declaration that his dismissal from service of the defendant was invalid, and was entitled to continue in his employment. The plaintiff also promptly protested his dismissal from service vide exhibit “E and H. This court now has declared that the dismissal was ‘ null and void. That means that he was never dis-

missed from the service, I find also that there is nothing (before this court) legally standing in his way to have his job or office back with the attendant rights, privileges and benefits. I hereby enter judgment in favour of the plaintiff, and grant reliefs a-d of the statement of claim.”

B The appellants were dissatisfied with the judgment and appealed to this court on a lone ground of appeal vide a notice and ground of appeal dated 12th day of February, 2002.

The lone ground of appeal and the particulars read:-

C Ground 1

The learned trial Judge erred in law, when he considered the respondent medical reports as amounting to sick leave. Particulars of Error

1. The respondent admitted during cross examination that he D was given a sick report and not sick leave by the hospital.

2. The respondent also admitted that he did not take the sick report to any General Hospital in Lagos for confirmation as stipulated by civil service regulations. The respondent did not tender any sick leave certificate to grant him a leave of absence from his duty E post when the alleged offence was committed.

In compliance with the rules of this court, briefs of argument were filed and exchanged. In the appellants brief prepared by D. A. Hassan, Esq., he identified one issue for determination, viz:-

F *“Whether the learned trial Judge was right in admitting in evidence, a medical report (exhibit CC1) from a private hospital as amounting to sick leave or evidence of absence from duty against the provision of chapter 9 to the Public Service Rules.”*

In the respondent’s brief prepared by E.T.A. Macfoy, Esq. he G also identified one issue for determination, namely:-

Did the admission of exhibit C, the Medical report occasion a miscarriage of justice?

At the hearing of the appeal, learned counsel for the appellant D. A. Hassan, Esq. did not appear to adopt his brief of argument. H However, his brief dated 13th February, 2003 and deemed filed on the 17/11/2003 is deemed to have been properly argued before us. The learned respondent counsel E.T.A. Macfoy, Esq. adopted his brief of argument dated 28th April, 2004 and filed on the same date and

urged us to dismiss the appeal.

In the determination of the appeal, I will adopt the lone issue formulated by the appellant as it is in my view more apt to the resolution of the issue in dispute.

It is the submission of learned counsel for the appellant that this appeal is solely on the admissibility of inadmissible evidence. It is the view of learned counsel that chapter 9 of the Public Service Rules gives effect only to medical reports from Government Hospitals. It is submitted that this is to check abuses occasioned by the use of fake medical reports from private hospitals. It is argued that medical report from private hospitals that has no reference from Government hospital is invalid and cannot be admitted in evidence as legal authority for being absence from duty (without permission) or be regarded as sick leave. It is submitted that court of law is expected in all proceedings before it to admit and act only on legal evidence citing *IB. W.A v. Imano (Nigeria) Ltd. (2001) FWLR (Pt.44) 421 at 429; (1988) 3 NWLR (Pt. 85) 633*. It is further submitted that where a trial court inadvertently admits evidence which is absolutely inadmissible, it has a duty generally not to act upon it but to discountenance it. It is further submitted that the lower court ought to have discountenanced the medical report in its judgment but instead went ahead to give it effect. The case of *Raimi v. Akintoye (1986) NSCC Vol. 17 (Pt.1) 649 at 654; (1986) 3 NWLR (Pt. 26) 97* was referred to the effect that it is the duty of the court to reject such evidence.

It is also submitted that a Medical Report from a private hospital, is in-admissible in law even if the appellant had not objected to its admissibility in the trial court citing *Alade v. Olukada (1976) 2 S.C. 183* and *I.B.W.A. v. Imano (Nig.) Ltd. (supra)*. It is also submitted that, it is the duty of the Court of Appeal to reject evidence which has been improperly received and to decide a case on legal evidence citing *Alashe v. Olori-Ilu (1964) 1 All NLR 390*. We were urged to resolve the issue in favour of the appellant and to allow the appeal.

For the respondent, it is submitted that the admission of exhibit C, the medical report, did not occasion a miscarriage of justice. It is the view of the learned counsel for the respondent that the appeal of the appellants is on the admission of a document which should have been an interlocutory appeal which should have been initiated

within fourteen days from the time the document was admitted in evidence on the 27/6/2001, It is submitted that the appellant did not appeal within the time but raised the issue in the main appeal. He cited the following cases; Nigeria Customs Service v. Bazuwaye (2001) 7 NWLR (Pt. 712) 357 and Tijani v. Akinwunmi (1990) 1 NWLR (Pt. 125) 237. However, learned counsel went on to submit that recent authorities are more liberal and benevolent as they have indicated that such matter could be raised in the substantive appeal, citing Jacob v. A-G., Akwa Ibom State (2002) 7 NWLR (Pt. 765) 18 at 25 & 26. Learned counsel then posed the question, can an interlocutory appeal about the admission of a document be the sole and only ground in a substantive appeal? He did not proffer any solution but simply urged us to strike out the ground on the ground that it is interlocutory in nature and ought not to be the sole ground of appeal.

In the event that this argument is not acceptable, learned counsel restated the facts giving rise to the present case and submitted that the respondent denied the allegation and pleaded “alibi” that during the period when the fraud occurred he was not around. He submitted that evidence not challenged and contradicted is therefore true and correct, citing the following cases; Mobil Producing (Nig.) Unlimited v. Monokpo (2002) 3 NWLR (Pt.753) 48 at 59; Morah v. Okwuyanga (1990) 1 NWLR (Pt.125) 225 at 227; American, Cyanamid v. Vitality Pharm. (1991) 2 NWLR (Pt. 171) 15 and Iwuno v, Dieli (1990) 5 NWLR (Pt.149) 126. Learned counsel concluded that the appellants did not call any evidence to justify the said dismissal, the cheques were not tendered, no evidence to show the involvement of the respondent and the report of the investigation panel was not tendered (and thus the admission of exhibit C did not occasion any miscarriage of justice. We were urged to dismiss the appeal.

Let me say that the issue canvassed by the respondent in his brief that this appeal is an interlocutory appeal which should have been brought within fourteen days from the date the document was admitted, being an appeal against the admissibility of a document, which cannot stand on its own as a final appeal in the absence of other grounds of appeal is totally misconceived. In the first place, ***there is no law or rule of practice that says, any appeal in respect of admissibility of a document is an interlocutory ap-***

peal that must be brought within 14 days from the time the document was admitted in evidence. In fact, learned counsel for the respondent seem to have confused the submission of counsel in the case of Tijani v. Akinwunmi (supra) and the finding of the trial court. In that case, the defendant orally applied to court at an address stage to reopen the defence in order to tender a vital document pleaded in paragraph 7 of the statement of defence. The learned trial judge refused the application. The defendant appealed to the Court of Appeal that the High Court ought not to have admitted exhibit "A" the deed of conveyance executed in favour of the plaintiff/respondent since it was not duly registered. Learned counsel for the respondent submitted that since the complaint of the appellant was against an interlocutory order, by section 25(2)(a) of the Court of Appeal Act, 1976, the appeal against it ought to have been lodged within 14 days of the ruling.

The question here is, what was the interlocutory order referred to by counsel? The interlocutory order being referred to, is the order of the court admitting exhibit A, the deed of conveyance executed in favour of the respondent in evidence. There was a ruling by the lower court admitting exhibit A in evidence and the contention is that since he has not appealed against the interlocutory ruling admitting exhibit A in evidence, he cannot now raise the issue since the time provided by section 25(2)(a) of the Court of Appeal Act has lapsed and if he intends to do that, leave of the court must be obtained in accordance with section 15(1) of the Court of Appeal Act since the ground of appeal raise an issue of mixed law and fact. That was the submission of the respondent's counsel before the court. It did not by any stretch of imagination mean to convey the meaning that any appeal on the admissibility of a document is an interlocutory appeal that must be brought within 14 days otherwise the appeal is incompetent. This is what the court held:-

"where a ground of appeal relates to an interlocutory decision which did not finally dispose of the rights of the parties and the appeal itself is against the judgment which finally determined the case between the parties, such ground of appeal cannot be brought as of

right particularly when it involves issues of mixed law and fact..."

The Supreme Court and this court have had cause to admonish counsel on the need to exercise care in citing authorities. Counsel are to cite relevant authorities in arguing their case and should always refrain from attempting to mislead the court by citing authorities which
B do not support their case. See *Araka v. Ejeugwu* (1999) 2 NWLR (Pt.589) 107; *Bamgbade v. Balogun* (1994) 1 NWLR (Pt.323) 718; *Franchal (Nig.) Ltd. v. N.A.B. Ltd.* (2000) 9 NWLR (Pt.671) 1 *Adio v. A.-G., Oyo State* (1990) 7 NWLR (Pt. 163) 448. To any case, section
C 25(2)(a) and 15(1) of the Court of Appeal Act Cap. 75 Laws of the Federal Republic of Nigeria 1990 provides:-

Section 25(2)(a)

"The periods for the giving of notice of appeal or notice of application for leave to appeal are:-

D *(a) in an appeal in a civil cause or matter, fourteen days where the appeal is against an interlocutory decision and three months where the appeal is against a final decision."*

Section 15(1):-

E *"Where in the exercise by the High Court of a state or, as the case may be, by the Federal High Court of its original jurisdiction an interlocutory order or decision is made in the course of any suit or matter, an appeal shall, by leave of that court or of the Court of Appeal, lie to the Court of Appeal; but no appeal shall lie from any
F order made ex-parte, or by consent of the parties, or relating only to costs."*

In any case, assuming this is the position, the Supreme Court have decried the practice of filing interlocutory appeals while the main suit is placed in limbo if the point can be conveniently taken and
G argued at the end of the case. This being so, the appellant's right of appeal against interlocutory decision is not prejudiced because he has not appealed against the ruling. See Order 3 rule 22 of the Court of Appeal Rules 2002. This argument of counsel is only superfluous and totally misconceived.

H Whether a decision is final or interlocutory depends on its results. If the decision finally disposes of the rights of the parties, it is final decision and not an interlocutory decision and such a decision can only be reviewed or reversed by an appellate court and not by

the judge who gave it. See *Nwekeson v. Onuigbo* (1991) 3 NWLR (Pt.178) 125; *Akinsanya v. UBA Ltd.* (1986) 4 NWLR (Pt. 35) 273; *Ifediorah v. Ume* (1988) 2 NWLR (Pt.74) 5 and *Muhammed v. Olawunmi* (1990) 2 NWLR (Pt. 133) 458.

Where a decision has determined the rights of the parties in the substantive case or application the decision is final and not an interlocutory decision. In the instant case, the decision appealed against is final in that it determines the rights of the parties in the substantive case, so there cannot be any interlocutory appeal as attended by the respondent's counsel. See also *Ocean Steamship Nig.) Ltd. v. Sotumino (No. 2)* (1987) 4 NWLR (Pt.67) 996.

It is also observed that the respondent formulated his own issue for determination which is not tied down to the appellants' ground of appeal. An issue for determination in an appeal is distilled from the ground or grounds of appeal filed. An issue not tied to any of the grounds of appeal is improper and will be discountenanced. In the instant case, the appellant's ground of appeal and the issue is on the admissibility of exhibit CC1, whether the exhibit is legally admissible in law, and the respondent avoided appellants' issue and formulated his own. The respondent's issue is whether the admission of exhibit occasioned a miscarriage of justice. It is my view that the two issues are not the same. Admissibility has to be determined before examining whether the admissibility had occasioned a miscarriage of justice or otherwise. It is a common ground that the respondent did not cross-appeal and to that extent he cannot postulate an issue for determination which is not predicated on the ground of appeal filed by the appellant. Such a postulation is misconceived and therefore incompetent. It is therefore imperative for counsel formulating issues for determination to keep in mind that any issue not in consonance with the grounds of appeal does not fall for determination. See *Ebo v. N.T.A* (1996) 4 NWLR (Pt.442) 314 and *Eze v. Federal Republic of Nigeria* (1987) 1 (Pt.51) 506.

Now, having disposed of the preliminary issues in the appeal, I will turn to the appeal proper. The appellants' complaint in a nutshell is the admissibility of CCI, the medical reports. The contention of the appellant is that even though exhibit CCI was admitted without objection before the trial court, the learned trial Judge ought to dis-

countenance the same in his judgment because exhibit CCI is an inadmissible evidence by virtue of chapter 9 of the Public Service Rules which gives effect only to medical reports from Government Hospital.

B Exhibit CC1, is the report and card from Itua Medical Centre, Lagos where the respondent was alleged to have been admitted when he was afflicted with chicken pox with his family at the time the fraud was alleged to have been perpetrated at the respondents' office.

C The said exhibits were admitted in evidence without objection from the appellants' counsel.

The effect of failure to cross-examine a witness upon a particular matter is a tacit acceptance of the truth of the evidence of the witness. In other words, it is not proper for a defendant not to cross-examine a plaintiff's witness on a material point and to call evidence on the matter after the plaintiff had closed his case. In this instant case, appellants' counsel failed to cross-examine the respondent on exhibit CC1 the medical report and card tendered by him in evidence. See Oforlete v. State (2000) 12 NWLR (Pt. 681) 415; Gaji v. PAYE (2003) 8 (Pt. 823) 583 and Agbonifo v. Aiwereoba (1988) 1 NWLR (Pt. 70) 325.

The question now is, is exhibit CC1 a document that is legally admissible or not? Admissibility of evidence in any judicial proceedings before any court of law established in the Federal Republic of Nigeria is governed by the Evidence Act. A court of law is expected to admit and act only on evidence which is admissible in law. But when inadmissible evidence is tendered, it is the duty of the opposite party to immediately object to its admissibility. Where the party fails to object, the court may in civil cases reject such documents and must reject such evidence in criminal cases. The question that arises is, where a party fails to object to its admissibility, is it open to the party to raise an objection on that ground in a Court of Appeal as the appellants are now doing?

There is in law a distinction between documents which are - inadmissible in law in any event, wherein counsel would be allowed to raise the issue on appeal, and documents admissible under certain

circumstances wherein counsel would not be so allowed. In the instant case, it is the contention of the appellant counsel that exhibit CC1 is inadmissible in law. It is his view that by virtue of chapter 9 of the Public Service Rules, the said document is inadmissible in law and even if admitted it must be expunged from the record of the court. This leads me to another question, what is chapter 9 of Public Service Rules? The Public Service Rules I believe, are rules or regulations that governs and regulates the conduct of employees in the Public Service of Federal Government of Nigeria and Chapter 9 particularly section 3 thereof deals with absence from duty on account of illness-Medical Certificates. It is my view that the admissibility of exhibits CC1 the medical report only applies to Federal Government Ministries and establishments and/or parastatals to which the rules apply and not a court of law. However, it is observed that chapter 9 Public Service Rules has not been raised before the trial court.

Generally, ***where an issue is not raised at the trial, it cannot be properly raised on appeal. It is clear from the record of appeal that the issue of chapter 9 of the Public Service Rules did not arise even remotely for determination before the trial court.*** The appellant merely raised the issue in his brief of argument, but he did not make it a ground of appeal in his notice of appeal. Consequently, learned counsel cannot make it an issue for determination in the appeal. See *Idika v. Erisi* (No.1) (1988) 2 NWLR (Pt. 78) 568 and *Nahman v. Wolowicz* (1993) 3 NWLR (Pt. 282) 443.

The general state of the law is that a party cannot raise an issue for the first time on appeal except with the leave of the court. The appellant has not sought for and obtain such leave to raise this issue on appeal. He cannot therefore raise the issue now. Grounds of Appeal are the complaints appellant have against a judgment. Therefore where there is no appeal on an issue decided by the trial court an appellate court will rightly assume that the appellant is satisfied with the decision on that issue.

The general position is that issues not canvassed at the trial court cannot be raised on appeal. See *V. S. Steel (Nig.) Ltd. v. Government of Anambra State* (2001) 8 NWLR (Pt. 715) 454. Similarly issues canvassed but not pronounced upon cannot be raised on ap-

peal except if the appeal is on the failure of the trial court to pronounce on the issue canvassed before it.

Based on the foregoing, it is my considered view that this appeal has no merit and it is hereby dismissed. I make no order as to costs.

B

AMAIZU JCA

I have had the preview of the lead judgment just delivered by my learned brother, Abba - Aji J.C.A. I agree with his conclusion that the appeal has no merit. Accordingly, I also dismiss it.

I abide by the consequential orders made in the lead judgment, including the order as to costs.

D

AUGIE JCA

I have read before now the lead Judgment just delivered by my learned brother, Abba-Aji, J.C.A., and I agree with him that the appeal lacks merit and should be dismissed. It is trite law that a fresh issue cannot be entertained on appeal without the leave of court - see *Ezukwu v. Ukachukwu* (2004) 17 NWLR (Pt. 902) 227 S.C. Even then, such leave is not granted as a matter of course. It is normally given, though, where the issue sought to be raised is substantial and already covered by the evidence adduced before the trial court and will therefore not require any new evidence to support it - see *N.D.I.C. v. Akahall & Sons Co. Ltd.* (2004) 6 NWLR (Pt. 869) 245, *U.B.A. Plc. v. S.A.F.P.U.* (2004) 3 NWLR (Pt.861) 516, and *Oredoyin v. Arowolo* (1989) 4 NWLR (Pt.114) 172 S.C. The appellant neither sought nor obtained the requisite leave to raise the issue of chapter 9 of the Public Service Rules on appeal, It is for this and the other reasons in the lead Judgment that I dismiss the appeal. I make no order as to costs.

Appeal dismissed.

H