

SUPREME COURT OF NIGERIA
23RD JANUARY, 2009. SC. 123/2002
CORAM:- G. A. OGUNTADE, W. S. N. ONNOGHEN, I. F.
OGBUAGU, I. T. MUHAMMAD, P. O. ADEREMI, JJSC

1. SULE ANYEGWU APPELLANTS
2. ALHAJI NUHU ATODO	
AND	
AIDOKO ONUCHE RESPONDENT

APPEALS - Briefs - Badly written - Duty of courts - Court should do its best to understand and resolve the issues arising therefrom on the merits - As courts are in favour of considering cases on merits rather than technicalities of law (H1)

EVIDENCE - Evaluation - Duty of trial Court - It has the primary duty not only to admit or reject evidence but also to ascribe probative value thereto - Appellate court will only interfere where trial court fails to do so - Or does so improperly - Which was not the case herein (H2)

FACTS

The plaintiff/respondent sued the defendants/appellants at the Upper Area Court Idah, Kogi State. Respondent's claim was for injunction to restrain the appellants from trespassing on the land in dispute, i.e. their 'stool land', by collecting tributes from the inhabitants thereof. Appellants denied respondent's claim of ownership of the land. In their defence, they tendered the judgment in an earlier suit which they claimed was in respect of the same land and between the predecessors-in-title of the parties herein. They claimed title to the land purportedly in reliance on the earlier judgment, Exhibit 1.

After hearing, the learned trial court, by a majority decision, to which the chairman dissented, held that the respondent had proved his case. Accordingly, it gave judgment to the respondent as prayed. Dissatisfied, appellants appealed to the High Court of Kogi State which appeal was successful resulting in a dismissal of the respondent's case. The respondent appealed to the Court of Appeal which reversed the High Court decision and restored that of the trial court. Aggrieved,

appellants have brought this appeal against the judgment of the Court of Appeal.

ISSUE FOR DETERMINATION

"Whether the finding of fact in respect of "Exhibit 1" made by the Trial Upper Area Court was perverse or unsound".

HELD (Unanimously dismissing the appeal per **MUHAMMAD JSC**)
APPEALS - Briefs - Badly written

1. The grounds upon which the Preliminary Objection was based alleged also that all the issues of the appellant were not an attack against the decision of the Court of Appeal but were based on matters treated in the High Court of Kogi State. This objection is well noted. However, although the learned counsel for the appellant did not file a reply brief in answer to the points raised by the Preliminary Objection, the courts are always in favour of considering cases on their merits rather than on technicalities of the law. Such a brief of argument which fails to adhere to the format of a well written brief can at best be taken to be a badly written brief out of which the court should do its very best to understand it in order to resolve the relevant issues arising there from on their merits. This is the way I take the appellant's brief and I shall give it the consideration it deserves. (p. 7 A)

EVIDENCE - Evaluation - Duty of trial Court

2. Certainly, a trial court has the primary duty in a trial whether civil or criminal to listen to, watch and observe the demeanor of witnesses. It has a duty to admit or reject documents or other materials or objects tendered in evidence as exhibits. It has a duty finally, at the close of trial to weigh and ascribe probative value to all the evidence placed properly before it.

I agree with both the learned counsel for the appellants and the High Court appellate division that an Appeal Court can also exercise such power/jurisdiction. Yes, an Appeal Court can do so where the trial court fails, neglects or refuses to do so or does it in an improper way.

From the record of appeal, the trial court weighed Exhibit 1 and it found at the end that no probative value could be attached to the said document. It discountenanced same. This decision of the

trial court, to my mind, and as rightly found by the court below is quite unassailable. (pp. 11E / 12 C /E)

NOTABLE POINTS OF INTEREST

MUHAMMAD JSC

1. Evidence - Evaluation entails weighing on the imaginary scale

The trial court normally does that by placing the totality of the testimonies adduced by the parties on an imaginary scale/balance. It will place the evidence adduced by the plaintiff on one side of that scale and place equally, the evidence adduced by the defendant on the other side. It then weighs them together. It then cautiously observes which side weighs heavier. The large number or large retinue of witnesses called by a party, or the bulkiness or beauty of a document should not influence the mind of the trial judge. What must influence his mind in ascribing the probative value is the quality of the evidence or document tendered. In achieving that, the trial judge has to have regard to, among other things, the followings:

1. admissibility of the evidence
2. relevancy of the evidence
3. credibility of the evidence
4. conclusivity of the evidence
5. probability of the evidence in the sense that it is more probable than the evidence of the other party and
6. Finally, after having satisfied himself that all the above have been complied with, he shall now apply the law to the situation presented in the case before him so as to arrive at a conclusion in one way or the other. (p. 11 F)

OGBUAGU JSC

2. The two remaining issues ought to have been struck out as incompetent

In my respectful view, the two remaining issues of the Appellants, appear to be incompetent. This is because, issue 3.0.2 is about the findings of fact in respect of Exhibit 1 made by the trial Upper Area Court, while issue 3.0.3 relates to the right or otherwise of the Appellate High Court of re-assessing and re-evaluating the said Exhibit 1.

Firstly, Section 233(1) of the Constitution of the Federal Re-

public of Nigeria, 1999, provides as follows:

“The Supreme Court shall have jurisdiction, to the exclusion of any other court of law in Nigeria, to hear and determine appeals from the Court of Appeal”.

B Secondly, it is now firmly established that this Court, will not consider a matter or issue from Area or Upper Area Court or High Court.

C On this ground, this appeal ought to and should have been struck out by me as being incompetent since the said issues relate to matters or issues from or in the Upper Area Court and High Court. But in the interest of justice, having regard at least, to the grounds of appeal and to the issues of the Respondent, I will go into the merits even briefly. This is because, it is settled that a bad or inelegant brief, need not be struck out. The court should make the best that it can D out of it. (pp. 14 H / 15 D)

REPRESENTATION

P. O. Okolo Esq. for the appellants with him P. Eboka, F. U. Okolo and Usman Sani

E Dr. S. E. Mosugu, for the respondent with him is T. E. Mosugu.

CASES REFERRED TO

Adeleke & Ors v. Iyande & Ors (2001) 13 NWLR (Pt.729)

F Onwuquibufor & 2 Ors v. Okoye & 3 Ors (1996) 1 SCNJ 1 at pp. 33 Nteogwuile v. Otuo (2001) 6 SCNJ 231 at p. 233

Chief Akpan & Ors v. Chief Otonq & Ors (1996) 12 SCNJ 213 at page 222

Iyayi v. Eyigebe (1987) 7 SCNJ 48

G Olowosogo v. Adefanjo (1988) 4 NWLR (Pt.88) 275 at p.289

Ebba v. Oqodo 1 S. C. N. L R. 372

Ibodo v. Enarofia (1980) 5 S.C 42

Adeye v. Adesanya (2001) 6 NWLR (Pt.708) 1 S.C

Enang v. Audu (1981) 11 - 12 S.C 25

H Ojonu v. Ajao (1983) 2 SCNLR 156

Fatoyinbo v. Williams (1956) SCNLR 274

Mogaji v. Odofin (1978) 4 SC 91

Adeyeye v. Ajiboye (1987) 3; NWLR (pt. 61) 432

Woluchem v. Gudi (1981) 5 S.C 291 at 326

Mrs. Lydia Thompson & anor. v. Alhaji Arowolo (2003) 4 SCNJ. 20 @ 43

STATUTE REFERRED TO

Evidence Act, L. F. N., 1990, s. 132 (1)

B

LEAD JUDGMENT BY MUHAMMAD JSC

This case originated from the Upper Area Court, Idah, in Kogi State (trial court). The plaintiffs cause of action before the trial court reads as follows:

“seeking court assistance to restrain the deft for (sic) further collecting (sic) of my stool land tributes called ogbajele.”

When the cause of action was read and explained through the assistance of an interpreter, to the two defendants, each denied liability. That was on the 5th day of June, 1996. This exercise was repeated on the 11th day of July, 1996 as there was a reconstitution of the panel members of that court. Each of the defendants maintained that he was not liable. Trial commenced on the 12th of November, 1996 with the plaintiff and three witnesses testifying. The 1st and 2nd defendants testified. Two other witnesses were called by the defendants. There was a visit to the locus in quo by the court, the parties and their witnesses. That was on 5/9/97. Thereafter, the parties addressed the trial court. On the 24th day of October, 1997, the panel members of the trial court delivered the court’s judgment by a majority while one of the members i.e. the Chairman of the panel dissented. In the majority judgment, the trial court found that the plaintiff was able to prove his case and judgment was entered in his favour. The land in dispute i.e. Ogbajele land was awarded to the plaintiff and his family as “Family Stool Land.” The trial court also restrained the defendants, their agents, servants and privies from collecting tributes from anyone on Ogbajele land.

Dissatisfied with the trial court’s judgment (majority judgment) the defendants appealed on seven grounds of appeal to the High Court of Justice of Kogi State, appellate division, holden at Idah. There was also filed by the plaintiff a Notice of cross-appeal against the dissenting judgment. In course of dealing with the preliminary

matters, the High Court struck out Grounds D, E and F of the consolidated Notice of Appeal dated 24/11/97 and the cross-appeal as they raised complaints against the dissenting judgment. Having considered the remaining grounds of appeal the learned judges of the High Court allowed the appeal and set aside the majority decision with a dismissal order of the plaintiffs case before the trial court.

Aggrieved by the High Court's decision, the plaintiff/respondent appealed to the Abuja Division of the Court of Appeal (court below). After reviewing the whole case, the court below allowed the appeal and set aside the judgment of the High Court. It restored and affirmed the majority decision of the trial court.

Dissatisfied further, the defendants/respondents/appellants filed their Notice of Appeal to this court. The Notice of Appeal contained two grounds of appeal.

The parties filed and exchanged their respective briefs of argument.

The appellants distilled three issues for determination viz:

1. *"whether the finding of fact in respect of traditional evidence was perverse or unsound to warrant the Appellate Court Intervention."*

2. *Whether the finding of fact in respect of "Exhibit 1" made by the Trial Upper Area Court was perverse or unsound.*

3. *Whether the High Court (Appeals Division) was right to have reassessed and re-evaluated "Exhibit 1" tendered in this case."*

The respondent filed a Notice of Preliminary Objection which he argued in his respondent's brief of argument. He then formulated the following issues:

1. *Whether there was evidence to support the Court of Appeal's preference of the trial Upper Area Court's Judgment on traditional history as against the High Court's position on same, such as to entitle the Respondent to the judgment of the Court of Appeal.*

2. *Whether Exhibit 1 has the effect and force of Estoppel per rem Judicata on the present appeal."*

On the date this appeal was heard, i.e. 28/10/08 learned counsel for the appellant applied to abandon issue No. 1 of the issues formulated for consideration. Appellant's issue No.1 and its corresponding arguments were accordingly struck out.

I think the learned counsel for the appellant, having been alerted by Dr. Mosugu, of counsel for the respondent, in his Notice of Preliminary Objection, took a wise decision to abandon issue one and its arguments so as to avoid multiplicity of issues arising from the same ground of appeal. But ***the grounds upon which the Preliminary Objection was based alleged also that all the issues of the appellant were not an attack against the decision of the Court of Appeal but were based on matters treated in the High Court of Kogi State. This objection is well noted. However, although the learned counsel for the appellant did not file a reply brief in answer to the points raised by the Preliminary Objection, the courts are always in favour of considering cases on their merits rather than on technicalities of the law. Such a brief of argument which fails to adhere to the format of a well written brief can at best be taken to be a badly written brief out of which the court should do its very best to understand it in order to resolve the relevant issues arising there from on their merits. This is the way I take the appellant's brief and I shall give it the consideration it deserves.*** See: ACME Builders Ltd, v. KSWB (1999) 2 NWLR (Pt.590) 288.

Issue No.2 of the appellant's brief is on the trial court's finding in respect of 'Exhibit 1'. Learned counsel for the appellant submitted that the finding of fact in respect of the said exhibit was perverse unsound and it amounted to a miscarriage of Justice. Learned counsel argued that the trial court unequivocally declared in a ruling that the land was clearly part of the land in dispute. This position was however, radically reversed by the trial court without any reason. The trial court was bound to give reasons for its decision. Learned counsel cited 3.132(1) of the Evidence Act to argue that the defendant produced and tendered the Record of Proceedings which was duly certified in order to prove previous proceedings or judgment. To require evidence to corroborate and confirm the authenticity, genuineness or correctness of Record of Proceedings would be tantamount to acting outside the provisions of the law thereby occasioning miscarriage of justice. He submitted further that Exhibit 1 is an evidence that richly deserves a high probative value to establish the fact that the appellants have by this Exhibit an evidence of title to the

land. Learned counsel argued further that the denial of the plaintiffs witnesses were made before the exhibit was tendered and admitted in evidence. In the cause of admitting the said exhibit the trial court declared that the exhibit was relevant to the case. The trial court, he submitted, failed to carefully examine, understand and appreciate Exhibit 1 to enable it resolve the issues before it in accordance with the law.

Where a trial court fails to evaluate evidence and findings of fact, it tantamounts to an invitation of the appellate court to make its own findings from the evidence, i.e. Exh. 1. He cited Adeleke & Ors v. Iyande & Ors (2001) 13 NWLR (Pt. 729) 1 at 20 B-D. Learned counsel urged this court to hold that the findings of fact made by the trial court on Exhibit 1 was perverse or unsound.

In his issue No.1, learned counsel for the respondent made the following submissions; that acts of recent possession/ownership were demonstrated by the respondent. These included the investiture of the Madaki of Ogbajele who was physically presented or paraded during the visit to the locus in quo. Further, 2nd appellant's shaky story that he was given four pieces of land by the Attah Igala was contradicted by the same Attah who testified as DW2 and who said that he gave 2nd defendant two pieces of land. Learned counsel argued further that the traditional history of the defendants was found to be complete falsehood and unreliable. Learned counsel called in aid the provision of section 44 of the Evidence Act.

Appellant's issue No.3 is on the High Court's revaluation and reassessment of Exhibit 1 tendered before the trial Upper Area Court. This, according to the learned counsel for the appellants, was done by the High Court because the finding of fact in respect of Exhibit 1 made by the trial court was perverse or unsound. The learned counsel urged this court to uphold the decision of the High Court as the decision of the trial judge was not based on credibility of the witnesses but also on making findings on such important document as Exhibit 1. He submitted that the High Court on appeal and this court has the right to reverse the decision of a lower court if satisfied that same is wrong in law. He cited the case of Nteogwuile v. Otuo (2001) 6 SCNJ 231 at p. 233.

On the issue of res-judicata treated under this issue the learned

counsel for the appellants contended that the parties in this case are the same as Exhibit 1 and the subject matter is the same. The trial court he argued, had drawn wrong conclusion from Exhibit 1. The trial court had also taken an erroneous view of Exhibit 1 and the finding did not flow from the content of Exhibit 1. He cited and relied on the case of Onwugbufor & 2 Ors v. Okoye & 3 Ors (1996) 1 SCNJ 1 at pp. 33. He urged this court to hold that the High Court appellate division was right to have intervened and made necessary findings as it did to Exhibit 1. Learned counsel submitted finally that Exhibit 1 being a previous judgment of a court can either be considered as estoppel per rem judicata or properly constitutes an act of ownership and possession. He relied on the case of Chief Akpan & Ors v. Chief Otong & Ors (1996) 12 SCNJ 213 at page 222.

Learned counsel for the respondent treated the issue of res judicata in his issue No.2. He made the following submissions: that Exhibit 1 in totality has no relevance to the present case and has not occasioned any miscarriage of justice to the appellants. Exhibit 1 has failed all the tests of res judicata as enunciated by the Supreme Court in numerous cases e.g. Iyayi v. Eyigebe (1987) 7 SCNJ 48.

Exhibit 1 does not relate to the case presently on appeal as the parties, issues and subject matter are not the same in the two cases. It is learned counsel's submission that the trial Upper Area Court did not reassess nor re-evaluated Exhibit 1 on the basis of its credibility. The findings of the trial court on Exhibit 1 were very reasonable. The Appeal Court, Abuja was right to have reversed the High Court's judgment which interfered with the trial court's finding. He cited and relied on Olowosogo v. Adefanjo (1988) 4 NWLR (Pt.88) 275 at p.289, among other cases.

In treating appellants' issue No.2, I think I should refer to the record of appeal to identify Exhibit 1. What is that Exhibit? Exhibit '1' as reflected in the record of proceedings placed before this court is the proceedings of "Ata Gals 'B' court held at Idah in 1957. The finding of fact on Exhibit 1 (referred to as 'D1' by the trial court) reads as follows:

"We have critically examined this Exhibit and we feel that it does not support the defence case in anyway. This exhibit does not contain specific land with boundaries or certainty of the land upon which the

palm fruits were disputed. Notwithstanding the existence of this suit or any other suit for that matter on the land which is not tied to any plan, an action for declaration of title can be brought. The case of Ezekpelechi & Ors v. Ugoji & Ors (1991) 7 SCNJ 244 is relevant to this position of the law. Both the pit and his witnesses were cross-examined about the existence of Exhibit "B1" but they denied having the knowledge of such suit. The defence was cross-examined and the reply by the 1st defendant was that Idih Ikani has children and one called Ojomaje Idih was in court. 'Non (sic) of the children was called to testify to the existence of the exhibit "D1". Therefore, no probative value can be attached to this Exhibit. We discountenance same.'

The complaint laid in ground C of the Notice and Grounds of Appeal before the High Court appellate division was that the Hon. Members of the Upper Area Court erred in law in not giving due weight to Exhibit 1 and this occasioned a miscarriage of justice. Same complaint was placed before the lower court and was formulated in issue 1. The High Court on appeal, held, among other things on Exhibit 1 as follows:

"The failure by the trial court to have accorded the desired probative value to Exhibit 1 has indeed occasioned a miscarriage of justice and to that extent we agree with A.B. Akogu of counsel that the trial court would have reached a different conclusion then (sic) the one arrived at if they (trial court) did Otherwise. This they did not."

The court below, while dealing with issue 1, quoted the definition of miscarriage of justice given by this court in the case of Total Nig. Ltd. & Anor v. Wilfred Nwako & Anor (1978) 5 S.C. 1. The court below further opined as follows:

"To my mind the decision of the trial court does not fall under that definition. There was proper assessment and evaluation of the Court. It was not the duty of the Appellate Court to re-evaluate and re-assess what had all ready been evaluated. The duty of evaluating and appraising evidence belongs to the Trial Court that saw and heard the witnesses, and an appellate court may not disturb a finding or conclusion in a Judgement simply because it would have come to a different finding or conclusions on the facts of the case. Woluchem v. Gudi (1981) 5 SC 291 at 326. In the instant case all that is before the

Court below is the cold printed Record, without the benefit of watching the demeanor of the witnesses, the court cannot embark on a re-evaluation of the evidence or ascription of other probative value to the evidence adduced as to arrive at a different conclusion from the one arrived at by the Trial Court. Thus, unless found to be perverse or where wrong inferences have been raised or drawn from accepted facts or that wrong principles have been applied to facts, the Appellate Court has no business in interfering with findings of facts of a trial court and substituting it with their own. Ebba v. Ogodo 1 S. C. N. L. R. 372; Ibodo v. Enarofia (1980) 5 S.C. 42.”

From the decisions of the High Court on appeal and that of the court below as set out above, I prefer to lend my weight to the latter. It is a settled principle of law that where a trial court has carried its assignment satisfactorily, an appeal court shall be left with no option but to affirm such a decision. To do otherwise will institutionalize what the appellant is complaining of, that is: miscarriage of justice. See: Adeye v. Adesanya (2001) 6 NWLR (Pt.708) 1 S.C; Enang v. Audu (1981) 11 - 12 S.C 25; Ojonu v. Ajao (1983) 2 SCNLR 156; Fatoyinbo v. Williams (1956) SCNLR 274.

Certainly, a trial court has the primary duty in a trial whether civil or criminal to listen to, watch and observe the demeanor of witnesses. It has a duty to admit or reject documents or other materials or objects tendered in evidence as exhibits. It has a duty finally, at the close of trial to weigh and ascribe probative value to all the evidence placed properly before it. The trial court normally does that by placing the totality of the testimonies adduced by the parties on an imaginary scale/balance. It will place the evidence adduced by the plaintiff on one side of that scale and place equally, the evidence adduced by the defendant on the other side. It then weighs them together. It then cautiously observes which side weighs heavier. The large number or large retinue of witnesses called by a party, or the bulkiness or beauty of a document should not influence the mind of the trial judge. What must influence his mind in ascribing the probative value is the quality of the evidence or document tendered. In achieving that, the trial judge has to have regard to, among other things, the followings:

1. admissibility of the evidence

2. relevancy of the evidence
3. credibility of the evidence
4. conclusivity of the evidence
5. probability of the evidence in the sense that it is more prob-

able than the evidence of the other party and

- B 6. Finally, after having satisfied himself that all the above have been complied with, he shall now apply the law to the situation presented in the case before him so as to arrive at a conclusion in one way or the other. See: Mogaji v. Odojin (1978) 4 SC 91; Adeyeye v. Aji
C boye (1987) 3; NWLR (pt. 61) 432. this assignment is an exclusive preserve of the trial court.

I agree with both the learned counsel for the appellants and the High Court appellate division that an appeal court can also exercise such power/jurisdiction. Yes, an appeal court can do so where the trial court fails, neglects or refuses to do so or does it in an improper way. The appeal court can conveniently embark on such re-evaluation where for instance

- a) the trial court's evaluation of the evidence is clearly perverse
- b) the trial court drew wrong inferences from the totality of the evidence
- E c) the trial court applied wrong principles of the law to accepted facts in the case

From the record of appeal, the trial court weighed Exhibit 1 and it found at the end that no probative value could be attached to the said document. It discountenanced same. This decision of the trial court, to my mind, and as rightly found by the court below is quite unassailable. The view held by the High Court appellate division was that it could have attached probative value to Exhibit C 1, if it were the trial court. The High Court perhaps, forgot that, it had no liberty at that stage to translate into reality what it would have done if it was acting as the trial court. This is prohibited by law. See: Woluchem v. Gudi (1981) 5 S.C 291 at 326. This issue fails and it is decided against the appellants.

H I do not think I will waste anybody's time in considering issue two on whether the High Court (Appellate Division) was right to have reassessed and re-evaluated Exhibit 1. This is an unnecessary repetition of the issue treated by me above. The simple answer to this issue

as I elaborated earlier is that it is not under every circumstance that an appeal court, including a High Court sitting on appeal from courts lower to it, will have the liberty of reassessing or re-evaluating evidence tendered before a trial court. Our High Courts all over the country are fully loaded with cases. It is rare to find a High Court creating or scavenging for more work where none exists. A High Court Judge should discourage the move by parties to overflow his court by allowing unnecessary processes of re-trying or re-evaluating evidence already properly assessed by a competent court of law or tribunal. This case is one of them, it should have terminated by the High Court's decision if that court did not submit to the gimmicks played by the appellants' counsel

In the final result, this appeal lacks merit and it is hereby dismissed by me. I affirm the decision of the court below. The respondent is entitled to N50,000. 00 costs from the appellants.

OGUNTADE JSC

I have had the advantage of a preview of the lead judgment by my learned brother T. Muhammad, JSC. I agree with his reasoning and conclusion. I would also dismiss the appeal with N50,000.00 costs in favour of the respondent.

ONNOGHEN JSC

I have had the opportunity of reading in draft, the lead judgment of my learned brother MUHAMMAD, JSC just delivered. I agree with his reasoning and conclusion that the appeal is without merit and should be dismissed.

In the circumstance I too dismiss the appeal and abide by the consequential orders contained in the lead judgment of my learned brother MUHAMMAD, JSC including the order as to costs. Appeal dismissed.

OGBUAGU JSC

This is an appeal against the decision of the Court of Appeal,

Abuja Division (hereinafter called “the court below”) delivered on 21st December, 2000 setting aside the Judgment of the High Court of Kogi State - Appellate Division and affirming the majority decision of the Idah Upper Area Court delivered on 24th October, 1997.

B Dissatisfied with the said decision, the Appellants, have appealed to this Court on two grounds of appeal. In their Brief of Argument, the Appellants formulated three issues for determination, namely,

“3.01 *Whether the finding of fact in respect of traditional evidence was perverse or unsound to warrant the Appellate Court (sic) intervention.*”

C 3.02 *Whether the finding of fact in respect of “EXHIBIT 1” made by the Trial Upper Area Court was perverse or unsound.*

D 3.03. *Whether the High Court (Appeals Division) was right to have re-assessed and re-evaluated “EXHIBIT 1” tendered in the case”.*

The Respondent on his part has formulated two issues for determination, namely,

E “(1) *Whether there was evidence to support the Court of Appeal’s preference of the trial Upper Area Court’s Judgment on traditional history as against the High Court’s position on same, such as to entitle the Respondent to the Judgement of the Court of Appeal.*”

F (2) *Whether Exhibit 1 has the effect and force of Estoppel per rem Judicata on the present appeal”.*

I note that in his Brief, the Respondent raised a Preliminary Objection to the effect that there were more issues formulated than the grounds of appeal. When this appeal came up for hearing on 28th October, 2008, the leading learned counsel for the Appellants - G Okolo, Esq, informed the Court that they filed a motion for the Court to strike out their Issue No. 1. He moved the said motion in terms of the motion paper. As Dr. Masugu of learned counsel for the Respondent, did not oppose the application, Issue 3.0.1, was accordingly struck out.

H It is now settled that neither party in an appeal, is allowed or entitled to formulate more issues than the grounds of appeal. See the case of Gwar. v. Adole (2003) FWLR (Pt.176) 747 @ 760.

In my respectful view, the two remaining issues of the Appel-

lants, appear to be incompetent. This is because, issue 3.0.2 is about the findings of fact in respect of Exhibit 1 made by the trial Upper Area Court, while issue 3.0.3 relates to the right or otherwise of the Appellate High Court of re-assessing and re-evaluating the said Exhibit 1.

Firstly, Section 233(1) of the Constitution of the Federal Republic of Nigeria, 1999, provides as follows:

“The Supreme Court shall have jurisdiction, to the exclusion of any other court of law in Nigeria, to hear and determine appeals from the Court of Appeal”.

Secondly, it is now firmly established that this Court, will not consider a matter or issue from Area or Upper Area Court or High Court. See the cases of Harriman v. Chief Harriman (1987) 3 NWLR (Pt.60) 244 @ 257; (1987) 6 SCNJ. 218; Chief Olatunde & anor. v. Abidosun & anor. (2001) 12 SCNJ. 225 @ 254 and Chief Ibori v. Engr. Agbi. & 5 ors. (2004) 6 NWLR (Pt.868) 78 @ 143-144; (2004) 2 SCNJ. 1 @ 52 and Guobadia v. The State (2004) 2 SCNJ. 53 @ 63; (2004) 2 S.C. (Pt.II) 1

On this ground, this appeal ought to and should have been struck out by me as being incompetent since the said issues relate to matters or issues from or in the Upper Area Court and High Court. But in the interest of justice, having regard at least, to the grounds of appeal and to the issues of the Respondent, I will go into the merits even briefly. This is because, it is settled that a bad or inelegant brief, need not be struck out. The court should make the best that it can out of it. See the case of Chinweze & 2 ors. v. Veronica Masi (Mrs.) & anor. (1989) 1 NWLR (Pt.97) 265; (1989) 1 SCNJ. 148 and many others.

Now, since the complaint of the Appellants, is mainly on the re-assessment and re-evaluation of the evidence before the trial Upper Area Court, by the Appellate High Court, the court below - per Bulkachuwa, JCA at pages 257 and 258 of the Records, stated inter alia, as follows:

“..... There was proper assessment and evaluation of the evidence by the Trial Court. It was not the duty of the Appellate Court to re-evaluate and re-assess what had already been evaluated.

The duty of evaluating and appraising evidence belongs to the

Trial Court that saw and heard the witnesses, and an Appellate Court may not disturb a finding or conclusion in a judgment simply because it would have come to a different finding or conclusions on the facts of the case. WOLUCHEM VS. GUDI (1981) 5 SC. 291 at 326".

My learned brothers, Musdapher and Muntaka-Coomassie, JJCA (as they then were), concurred.

His Lordship continued thus:

"In the instant case all that is before the Court below is the cold printed Record, without the benefit of watching the demeanor of the witnesses, the Court cannot embark on a re-evaluation of the evidence or ascription of other probative value to the evidence adduced as to arrive at a different conclusion from the one arrived at by the Trial Court. Thus, unless found to be perverse or where wrong inferences have been raised or drawn from accepted facts or that wrong principles have been applied to facts, the Appellate Court has no business in interfering with findings of facts of a Trial Court and substituting it with their own. EBBA VS. OGODO. 1 S.C.N.L.R. 172, IBODO VS. ENAROFIA. (1980) 5 S.C.. 42

The issue must therefore be resolved in favour of the Appellant and I so hold".

His Lordship then concluded inter alia, as follows:

"On the totality of the foregoing, I am of the view that the Idah High Court sitting in its Appellate Jurisdiction was wrong to have re-evaluated the evidence as adduced before the Trial Court. This appeal must succeed and I so hold.....".

The above pronouncements, have the support in a line of many decided authorities of this Court. See the cases of Akinloye v. Eyiyele (1968) NMLR 92 @ 95; Asani Balogun v. J.R. Akinrinmisi (1974) 1 All NLR (Pt.2) 66 @ 72-73; Akpapuna & ors. v. Nzeka & ors. (1983) 2 SCNLR 1 @ 14; Alhaji Surakatu Amida & ors. v. Taiye Oshoboja (1984) 7 S.C. 68 @ 89; Obodo & anor. v. Ogba & ors. (1987) 3 S.C. 459 @ 460-461, 466; (1987) 2 NWLR (Pt.54) 1; Agbaje & ors. v. Chief Ajibola & ors. (2002) 2 NWLR (Pt.750) 127 @ 752, 134; 135: (2002) 1 SCNJ. 64 and Mrs. Lydia Thompson & anor. v. Alhaji Arowolo (2003) 4 SCNJ. 20 @ 43 and too many others.

I have had the privilege of reading before now, the lead Judgment of my learned brother, Muhammad, JSC, just delivered. It is

from the foregoing and the more detailed said Judgment of my learned brother the reasoning and conclusion of which I agree, that I too, hold that this appeal, is unmeritorious and I also dismiss it and hereby affirm the said decision of the court below. I abide by the consequential order in respect of costs as awarded in the said lead Judgment aforesaid. B

ADEREMI JSC

I have had a preview of the judgment just delivered by my learned brother, Muhammad JSC. I agree with his reasoning and conclusion. As I have nothing to add, I also dismiss the appeal while affirming the decision of the court below. C

I abide by all other orders therein contained in the leading judgment including the order as to costs. D

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