

SUPREME COURT OF NIGERIA
23RD JANUARY, 2009 SC. 244/2006
CORAM:- D. MUSDAPHER, G.A. OGUNTADE,
I. F. OGBUAGU, P.O. ADEREMI,
M. S. MUNTAKA-COOMASSIE, JJSC

SAMUAEL OSIGWE APPELLANT

(For himself and as representative
of those who have registered
to purchase shares in public
companies under the Privatization
Share Purchase Scheme)

AND

1. PSPLS MANAGEMENT CONSORTIUM LTD

2. AFEX BANK PLC

3. FIRST BANK NIGERIA PLC

4. UNION BANK PLC

5. DIAMOND BANK PLC

6. STANDARD TRUST BANK PLC RESPONDENTS

7. HALLMARK BANK PLC

8. UNITED BANK FOR AFRICA PLC

9. ZENITH INTERNATIONAL BANK

10. ALL STATES TRUST BANK PLC

11. HABIB BANK OF NIGERIA

12. OCEANIC BANK [NIGERIA] LTD

13. CONTINENTAL TRUST BANK

14. FSB INTERNATIONAL BANK PLC.

(For themselves and as representatives
of all financial intermediaries
engaged in the PSPLS scheme
as registration agents)

COMPANY LAW - Securities & Investment - Investment & Securities
Act - Duty on promoters' agents - Respondents are mere registration
agents in the PSPLS scheme - And the statute does not impose any
duty on such agents in the exercise of their function as such (H1)

AGENCY - Liability of agents - Extent - Where principal is disclosed

- An agent acting on behalf of a known & disclosed principal - Incurs no personal liability - Neither is he a necessary party to an action founded on the transaction with him (H2)

JUDGMENTS - Mistakes - Power of court to amend - Extent - There is inherent jurisdiction vested in courts or tribunals to amend their rulings - To take care of accidental slips - Exercise of this power does not depend on application being in writing (H3)

FACTS

The plaintiff/appellant brought this action in a representative capacity before the Investment and Securities Tribunal against the defendants/respondents for themselves and as representatives of all the financial intermediaries engaged in the PSPL (Privatization Share Purchase Loan) Scheme. Appellant's claim was for sundry orders aimed at holding respondents liable for noncompliance of the PSPL Scheme with various provisions of the Investment and Securities Act. He also claimed punitive damages and costs against respondents.

It was common ground that all the respondents were mere agents of the Bureau of Public Enterprises for purposes of the PSPL Scheme. Respondents variously challenged the competence of the action against them by means of preliminary objections. In its ruling after the hearing of the objections, the tribunal held that the respondents were not necessary parties to the action, being agents of a disclosed principal. It therefore struck out the names of all the respondents. Dissatisfied, appellant appealed to the Court of Appeal which dismissed the appeal. Appellant has brought this further appeal to the Supreme Court.

ISSUES FOR DETERMINATION

“ 1. Whether the lower court was right in upholding the decision of the Honourable Tribunal which struck out the respondents from the proceedings on the ground that as agents of a disclosed principal they are not necessary parties to the proceedings.

2. Whether the lower court was right in holding that the appellant failed to draw attention to the provisions of the Investment and Securities Act which excludes the applicability of the general principle of law of principal and agent to the facts and circumstances of this

case, or any part of the Investment and Securities Act making the respondents directly liable as agents.

3. Whether the lower court was right in upholding the Honourable Tribunal's decision which granted the 1st respondent's oral application to review the Tribunal's previous ruling by further striking out the 1st respondent from the proceedings."

HELD (Unanimously dismissing the appeal per **MUSDAPHER JSC**)
COMPANY LAW - Securities & Investment

1. I have carefully considered Sections 50, 52, 57, 62, 83, 84 and 86 of ISA and Rules 51 and 110 to 118 made pursuant to ISA and in my view it has absolutely nothing to do with the respondents. In other words the statutory provisions did not impose any act or duty to be performed by any of the respondents herein. Perhaps, I need to emphasize, that the role of each of the respondents herein as registration agents in the scheme is solely that of collection, collation, certification of the authenticity of the information provided on the registration form and the registration of the participants in the PSPLS Scheme at their respective registration centers.

I am of the view, that the appellant has woefully failed to show the existence of any reasonable cause of action against the respondents herein. It is settled law that there must be a cause of action before an intending litigant can initiate any legitimate proceedings. A suit is aimed at vindicating some legal right or claim and such legal right can only arise when certain material facts arise. In the instant case the respondents were merely to register a would be purchaser of shares under the scheme. It was not the function of any of the respondents herein to issue, for example, a prospectus or to carry out any of statutory the functions recited above. (p. 86 A)

Liability of agents - Extent

2. The respondents also by the pleading of the appellant, are unmistakably agents of a revealed principal and as agents, they cannot be liable under all the circumstances of this case. It is manifestly clear that the respondents acted at all the material times in this matter and in relation to PSPLS scheme as agents and on behalf of the BPE and in accordance with the directives of the BPE. Every action or inaction

the appellant complained against the respondent could only arise, if any, in the course of discharging the duties and responsibilities entrusted to them by a known and a fully disclosed principal. An agent acting on behalf of a known and disclosed principal incurs no personal liability.

B And as agents of a revealed principal, they are unnecessary parties to this action. I accordingly resolve the first and second issues as formulated by the appellant against the appellant. (p. 86 H/ 87 D)

C ***JUDGMENTS - Mistakes - Power of court to amend***

3. In any event, I have very carefully examined the record and have discovered that the Tribunal in the course of delivering its ruling inadvertently referred to the parties which it ordered to be struck out of the proceedings as the 3rd - 15th respondents.

D When its attention was drawn to the inadvertence the Tribunal there and then corrected the error. It is a settled law that there is an inherent jurisdiction vested in courts or tribunals to amend their rulings or decisions to take care of accidental slips or omissions. The exercise of this power should not however, be used to review or
E rehear the case nor to alter the rights and obligations of the parties under the ruling or order made.

The mere fact that there was no formal application in writing did not render the decision wrong. Breach of a rule of practice and
F procedure does not render the proceedings a nullity but merely an irregularity. (p. 88 B / G)

NOTABLE POINTS OF INTEREST

OGBUAGU JSC

G 1. *An agent binds his principal not himself*

For purposes of emphasis and in respect of Issue 1 of the Appellant, I or one may ask, who is an Agent? At page 64 of Black's Law Dictionary, 7th Edition, an Agent is defined as,

H *"One who is authorised to act for or in place of another, a representative".*

The word "agent" or "agency", it is stated therein, denotes one who acts, a doer, etc. that accomplishes a thing or things. The agent normally, binds his principal and certainly not himself by the contract

he makes. (p. 91 G)

ADEREMI JSC

2. When an agent can not be personally liable

I have always understood the law on master/servant relationship as to where the principal remains undisclosed to say that a man, though an agent, may very well intend to bind himself and in fact binds himself if he contracts without restrictive words to show that he does not do so personally or where he makes a contract in his own name, without disclosing either the name or the existence of a principal, he (the agent) is personally liable on the contract to the other contracting party, even though, he may in fact be acting on a principal's behalf. Once a person puts himself forward as a contracting party whether as an agent or a principal, he will continue to be liable even after the discovery of the agency by the other party. The only thing that stops his liability is the clear and unequivocal election by the other contracting party to look to the principal alone. (p. 98 F)

3. Operation of the Slip Rule does not extend to variation of operative parts of a judgment

The third issue relates to the correction of mistakes made by the judex in the course of writing his judgment and when his attention is drawn to that mistake either by way of oral or written application, in the open court, he then proceeds to effect the correction. The exercise of that power of correction by the judex is often said to be under "THE SLIP RULE." Let it be said that the power of amendment or correction of its records inherent in the jurisdiction of the court is undoubtedly wide and of course subject to the limitation that it must only be exercised whenever the purposes of justice demand same. But it is imperative that a judgment or order which correctly represents what the judex decided will stand until perhaps varied by the appellate court. No exercise of the power of amendment under the "SLIP" RULE will be allowed to vary the operative and substantive part of its judgment so as to substitute a different form. Issues relating to facts and law must never be subjected to an amendment by the judex once he has delivered the judgment. (p. 99 H)

REPRESENTATION

Mr. Tony Anyanwu for the appellants with Mr. Tolu Francis and Mr. I.A. Agwu.

Mrs. A. Akeredolu for the 1st, 2nd, 3rd, 5th, 6th, 7th, 8th, 10th, 11th, 12th, 13th and 14th respondents.

B Mrs. Dorothy Ufot for the 4th respondents with her Okey Arubike Esq.

Mr. John Erameh for the 9th respondent.

CASES REFERRED TO

C MOFAS SHIPPING LINE [NIG] LTD Vs. NATIONAL MARITIME AUTHORITY [2000] 9 NWLR (Pt.672) 391

NEPA Vs. ONAH [1997] 1 NWLR (Pt.484) 680

D ONYEANUSI Vs. MISC. OFFENCES TRIBUNAL, [2002] 12 NWLR (PT. 731) 227 at 250

A.G. Of BENDEL STATE Vs. AGBO FODOH [1999] 2 NWLR (Pt. 592) 476

AKALONU Vs. OMOKARO [2003] 8 NWLR (Pt 821) 190

E BAMGBOYE Vs. UNIVERSITY OF ILORIN [1999] 10 NWLR (Pt. 622) 290

JOWL PWOL Vs. UNION BANK PLC [1999] 1 NWLR (Pt 588) 631

NIGER PROGRESS LTD Vs. N.E.L. CORP. [1989] 3 NWLR (Pt. 107) 68

F CARLEN (NIG) LTD Vs. UNIVERSITY OF JOS [1994] 1 NWLR (Pt.323) 631

OKAFOR V. EZENWA [200] 13 NWLR (Pt 784] 319

STATUTES & RULES REFERRED TO

G Investment and Securities Act, ss. 50, 52, 57, 62, 83, 84 and 86

Public Enterprises (Privatisation and Commercialisation) Act 1999

Securities and Exchange Commission Rules, rr. 51, 110 to 118

BOOK REFERRED TO

H Black's Law Dictionary, 7th Edn.

LEAD JUDGMENT BY MUSDAPHER JSC

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

Abuja, delivered on the 19/4/2007 whereby the appellant's appeal against the ruling of the INVESTMENT AND SECURITIES TRIBUNAL hereinafter referred to as "*the Tribunal*", delivered on 4/2/2004, by which the Tribunal struck out the names of all the respondents herein, from the proceedings before the tribunal on the grounds inter-alia that the respondents were merely agents of a disclosed principal. The matter started this way: By an Originating Application filed by the appellant in a class action, for himself and as representative of those who have registered to purchase shares in public companies under the Privatization Share Purchase Loan (PSPLS) Scheme against the respondents herein who are sued for themselves and as representatives of all the financial intermediaries engaged in the PSPLS Scheme. The claim of the appellant against the respondents herein and the 1st respondent before the Tribunal i.e. BUREAU OF PUBLIC ENTERPRISES - BPE was for the following Orders:-

- (I) *Issuance of an order directing the respondents to suspend the share acquisition Scheme as presently structured until the 1st respondent [BPE] complies with the relevant provisions of the INVESTMENT AND SECURITIES ACT and the Rules/Regulations promulgated there under;*
- (ii) *In the alternative, an Order directing the respondents to immediately comply with the provisions of the ISA and the underlying rules and regulations with respect to the PSPLS by ensuring that the relevant registration/statement/prospectuses are duly filed with and effectuated by the SEC;*
- (iii) *Judgment against the respondents in an amount to be determined at trial as punitive damages;*
- (iv) *Reasonable counsel fees,*
- (v) *Costs and expenses for these proceedings; and*
- (vi) *Such other and further relief as the court deems appropriate."*

The appellant alleged that he and the members of the class he represents who registered to participate in the PSPL Scheme designed by the 1st respondent [BPE] have suffered damage because the BPE and the respondents offered and sold shares to him and members of his class in breach of certain provisions of ISA and the rules and regulations issued by Securities Exchange Commission [SEC] pursuant to

ISA specifically by not filing the appropriate statements with SEC. The appellant further asserted that the respondents made untrue statements of material facts and omitted to state other material facts which misled the appellant and the members of his class.

B By means of Notices of Preliminary Objections the respondents separately challenged among other things the competence of the action against them. In its Ruling delivered on the 12/2/2004 the Tribunal held in part;-

C “3” the 2nd - 15th respondents/applicants are not necessary parties to the proceedings, they are agents of a disclosed principal and do not fall within the exceptions to the general rules; accordingly their names are hereby struck out.”

D Immediately after the Ruling aforesaid, counsel to the first respondent herein PSPLS MANAGEMENT CONSORTIUM LTD drew the attention of the Tribunal that the first respondent was in the same category with the 2nd-15th respondents. It was also an agent of a disclosed principal, the BPE, and it was an error not to have included the first respondent in the ruling striking out the other respondents. The Tribunal acceded to the request of counsel and also struck out E the 1st respondent as a necessary party to the proceedings and that the omission is only as result of a typographical error.

F The appellant felt unhappy with the decision of the Tribunal and appealed to the Court of Appeal. Upon its consideration of all the issues submitted to it for the determination of the appeal, the Court of Appeal affirmed the decision of the Tribunal and dismissed the appeal of the appellant. The Court of Appeal held:-

G “The appellant has failed to draw attention to the provisions of the Investment and Securities Act and the Public Enterprises [Privatization and Commercialization] Act 1999 to exclude the applicability of the general principle of law of principal and agent to the facts and circumstances of this case, or any part of the Investment and Securities Act making the 2nd - 15th respondents directly liable as agents. Moreover the appellant has not disclosed any reasonable H cause of action against the 2nd - 15th respondents personally for which he is entitled to a relief which therefore make them a necessary party xxxxx.”

It was further decided by the Court of Appeal, that the Tribu-

nal has the power to review, set aside and vary its decision by virtue of Rule 74 order (1) and (2) of the Investment and Securities procedure Rules 2002 and that the Tribunal rightly invoked this rule to correct the error of omission made in the final order to cover the 1st respondent herein.

The appellant still felt unhappy with the decision of the Court of Appeal and has now appealed to this Court. By the Notice of Appeal, the appellant has filed seven grounds of appeal. In his brief for the appellant, the learned counsel has formulated and submitted three issues for the determination of the appeal:-

“1. Whether the lower court was right in upholding the decision of the Honourable Tribunal which struck out the respondents from the proceedings on the ground that as agents of a disclosed principal they are not parties to the proceedings.

2. Whether the lower court was right in holding that the appellant failed to draw attention to the provisions of the Investment and Securities Act which excludes the applicability of the general principle of law of principal and agent to the facts and circumstances of this case, or any part of the Investment and Securities Act making the respondents directly liable as agents.

3. Whether the lower court was right in upholding the Honourable Tribunal’s decision which granted the 1st respondent’s oral application to review the Tribunal’s previous ruling by further striking out the 1st respondent from the proceedings.”

Mrs. Akeredolu, the learned counsel for the 1st to 3rd, 5th to 8th and 10th to 14th respondents, Mrs. Ufot for the 4th Respondent and Mr. Eremeh for the 9th respondent adopted the issues as formulated in the appellant’s brief.

Issues One & Two together

Issues one and two can conveniently be taken together. The appellant submits that the Court of Appeal was in error in upholding the decision of the Tribunal striking out the respondents on the ground that as agents of a disclosed principal, the respondents are not proper or necessary parties because the appellant had made specific allegations against them in that they breached sections 50, 52, 57, 62, 83, 84 and 86 of the ISA and Rules 51 and 110 to 118 of the Sec Rules any part of the Investment and Securities Act making the respon-

dents directly liable as agents.

It is submitted that the common law principle that limits the liability of an agent when the principal is revealed does not apply in this case where the respondents are accused of breaches of statutory duties and requirements. It is submitted that the respondents have
 B breached specific statutory duties imposed upon them by statute and as such they cannot claim immunity by pleading the presence of a disclosed principal. Learned Counsel referred to MOFAS SHIPPING LINE [NIG] LTD Vs. NATIONAL MARITIME AUTHORITY [2000] 9
 C NWLR (Pt.672) 391. It is argued that the exception is not only limited to admiralty cases but to all similar situations. See also NEPA Vs. ONAH [1997] 1 NWLR (Pt. 484) 680. It is argued that the respondents were sued because they breached the statutory provisions of ISA, the claim of the appellant was not based on contract or the
 D common law but was based on statutory duty of the respondents. See paragraphs 21-25 of the Originating Application. It is submitted that the statutory provisions envisaged the responsibility of the respondents regardless of their agency status. The words used in the statute are clear and unambiguous and the court has the duty to give
 E the words their natural and ordinary meaning vide ONYEANUSI Vs. MISC. OFFENCES TRIBUNAL, [2002] 12 NWLR (PT. 731) 227 at 250. See also A.G. Of BENDEL STATE Vs. AGBO FODOH [1999] 2 NWLR (Pt. 592) 476.

F The common law rule that an agent's liability is vitiated where the principal is revealed cannot apply in statutory provisions. See ASABA Vs. ALRAINE [2002] 12 NWLR (Pt 781) 353.

The learned counsel for the 1st to 3rd; 5th - 8th; and 10th to 14th respondents on the other hand submits that the decisions of
 G courts below was based on the overwhelming evidence contained in the Appellant's Originating Application by which the appellant pleaded that the respondents are agents of the BPE in the implementation of the privatization programme, and that all the respondents were merely appointed as the registration agents. The appellant further pleaded
 H that the PSPLS Scheme is that of the BPE and that the functions of the respondents as the registration agents do not contemplate the violations of the sections of ISA and the rules made there under.

In any event, the respondents are agents of a disclosed princi-

pal and are not necessary parties in the suit filed by the appellant. Learned counsel referred to the cases of AKALONU Vs. OMOKARO [2003] 8 NWLR (Pt 821) 190; BAMGBOYE Vs. UNIVERSITY OF ILORIN [1999] 10 NWLR (Pt. 622) 290. In the case at hand, it is clear from the records that the respondents acted at all material times in relation to the PSPLS for and on behalf of BPE and in accordance with the BPE's directives. The appellant himself described the respondents as merely agents in the Originating Application. See paragraphs 1, 2 and 3 there of. B

It is therefore submitted that the respondents are not necessary parties to the disputes herein vide GREEN Vs. GREEN [1987] 3 NWLR (Pt 61) 480. The appellant's dispute with the BPE can be completely decided without the respondents being made parties. The respondents cannot be held responsible or liable for the in-action or action of their disclosed principal. See JOWL PWOL Vs. UNION BANK PLC [1999] 1 NWLR (Pt 588) 631. NIGER PROGRESS LTD Vs. N.E.L. CORP. [1989] 3 NWLR (Pt. 107) 68. It is further argued that MOFAS case supra is only limited to admiralty cases and cannot apply to the facts for this case and is/only limited to the provisions of section 16 of Admiralty Jurisdiction Act No. 59 of 1991. C D E

The learned counsel for the 4th respondent repeated the arguments of counsel immediately referred to and added that the appellant under paragraphs 18-34 of his Originating Claim stated the reasons of the suit he has taken. It is submitted that all the allegations of the violations could not be referable to the 4th respondent or to any of the respondents as the registration agents. The only connection between the appellant and members of his class to the 4th respondent and all the other respondents is in paragraph 17 of the Originating Claim where the appellant admitted that the respondents were merely registration agents. Learned Counsel refers to Exhibit "A" in which it is clearly stated that the role of a registration agent is merely that of collection of application forms and registration and that the function of a registration agent is to act as an intermediary and does not provide any information to the public. Therefore the 4th respondent is not a necessary party to the suit of the appellant against the BPE. Learned Counsel referred to CARLEN (NIG) LTD Vs. UNIVERSITY OF JOS [1994] 1 NWLR (Pt.323) 631. NIGER F G H

84 Osigwe v. PSPLS Mgt. Consortium Ltd (2009) 1 KLR Musdapher JSC
PROGRESS CASE supra. OKAFOR V. EZENWA [2000] 13 NWLR
(Pt 784] 319.

It is further stressed that the 4th respondents have no role or function to perform outside the registration, so the allegations of the violations of the statutory provisions cannot be attributable to them.

B It is further added that the decision in MOFAS case is inapplicable to these facts and is limited to admiralty matters. See HILARY FARMS LTD Vs. M. V. MARTHA [2007] 14 NWLR (Pt 1054) 210.

C The learned Counsel for the 9th respondent also made similar submissions and I do not think it is necessary for me to repeat what I recorded above.

Now, in his Originating Claim the appellant pleads:-

D *“17. Pursuant to the 1st respondent’s offer, the applicant and his class approached the registration agents and registered in the Scheme. The applicant was given a PSPLS Form as a guide on how to fill his registration Form. Find attached and marked Exhibit’ “A” the said PSPLS guide xxxxxx.”*

E *18. In the course of registering in the 1st respondents BPE share acquisition scheme, the applicant and his class relied on the respondents’ publication, press releases, relating to the share acquisition scheme.*

19. However, the aforesaid publications and press releases were false and misleading in at least the following respects.

F *(i) Although the publications and statements qualify as prospectus, they were neither registered with nor exempted from registration with Securities And Exchange Commission [SEC].*

G *(ii) The publications and statements failed to disclose the financial statements of the public enterprise where shares were the subject of solicitation.*

(iii) The statements which purportedly guaranteeing investors a maximum loan of N10,000 at 10% annual interest failed to disclose the expected return on the investment and the correlation between them.

H *(iv) The Statement failed to disclose the commission payable to the registration agents xxxxxxxxxxxx.”*

“24. By offering to sell the securities to the applicant and his class, the respondents violated the provisions of Sections 50, 52, 55,

57, 62, 83, 84 and 86 of The Investment and Securities Act, 1999 and rules 51, 110-118 promulgated there under in one or more of the following particulars:-”

i. 1st respondent [BPE] permitted unlicensed securities dealers and brokers to participate as registration agents for the scheme when they were in fact not licensed or qualified as brokers/dealers under the aforesaid ISA and the underlying rules/regulations. B

ii. Respondents offered the securities to the applicant and his class prior to any registration of the securities or authority given to sell the securities under the provisions of the ISA and the underlying rules/regulations. C

iii. Respondents have failed to disclose material information to enable the applicant evaluate the risk vis-a-vis the return potential of the public enterprises proposed for initial public offerings to wit: NITEL and Nigerdock Plc. D

iv. Respondents engaged in an on-going scheme to issue NITEL and Nigerdock's securities in violation of the federal securities laws, to inflate and manipulate the market prices of public enterprises securities and to defraud the investing public.

v. To effectuate this scheme, numerous public documents and statements were issued which contained materially false and misleading information as to the revenue, net income and earnings per share of the public enterprises, such as NITEL and Nigerdock, Plc., as well as to the operations and financial condition of the public enterprises. E F

vi. The Respondents violated Section 86 of the investments and Securities Act in that the publications, statements and press releases contained untrue statements of material facts and omitted to state material facts necessary in order to make the statements made in light of the circumstances in which they were made, not misleading. G

As has been recorded above the function of the respondents herein was merely the registration of a would be purchaser of the shares under the loan scheme. All the statutory provisions the appellant is claiming to have been breached could only be breached by the BPE who issued all the statements, publications and press - releases. The function of the respondents as pleaded by the appellant is merely to register a would be purchaser of the shares after he has H

satisfied himself with the information published for the public by BPE.

I have carefully considered Sections 50, 52, 57, 62, 83, 84 and 86 of ISA and Rules 51 and 110 to 118 made pursuant to ISA and in my view it has absolutely nothing to do with the respondents. In other words the statutory provisions did not impose any act or duty to be performed by any of the respondents herein. Perhaps, I need to emphasize, that the role of each of the respondents herein as registration agents in the scheme is solely that of collection, collation, certification of the authenticity of the information provided on the registration form and the registration of the participants in the PSPLS Scheme at their respective registration centers.

I am of the view, that the appellant has woefully failed to show the existence of any reasonable cause of action against the respondents herein. It is settled law that there must be a cause of action before an intending litigant can initiate any legitimate proceedings. A suit is aimed at vindicating some legal right or claim and such legal right can only arise when certain material facts arise. In the instant case the respondents were merely to register a would be purchaser of shares under the scheme. It was not the function of any of the respondents herein to issue, for example, a prospectus or to carry out any of the statutory functions recited above. See OSHOBOJA Vs. AMUDA [1992] 7 SCNJ 317 at 326. It is only when facts establishing a civil right or obligation and facts establishing infraction or trespass on that right and obligation exist side by side, a cause of action is said to accrue. See AFOLAYAN Vs. OGUNRINDE [1990] 1 NWLR (Pt. 369) at 382. From the Originating claim, I cannot find any reasonable cause of action revealed by the appellant against any of the respondents herein and it is settled law that it is only the Writ of Summons or the Statement of Claim that one has to look at to see if there is a cause of action. See ADOSOKAN Vs. ADEGOROLU [1997] 3 SCNJ 1.

Again, it is clear from the appellant's pleading that each of the respondents herein are merely agents of the BPE solely appointed for the registration of would be purchasers of the shares of the public companies to be privatized. The respondents also by the plead-

ing of the appellant, are unmistakably agents of a revealed principal and as agents, they cannot be liable under all the circumstances of this case see OKAFOR Vs. EZENWA [supra]. **It is manifestly clear that the respondents acted at all the material times in this matter and in relation to PSPLS scheme as agents and on behalf of the BPE and in accordance with the directives of the BPE. Every action or inaction the appellant complained against the respondent could only arise, if any, in the course of discharging the duties and responsibilities entrusted to them by a known and a fully disclosed principal. An agent acting on behalf of a known and disclosed principal incurs no personal liability.** See NIGER PROGRESS Case supra.

I am also of the firm view that the appellant has failed to show that the respondents had any thing to do with the publication of materials complained of and that the statutory provisions did not place any responsibility of the respondents as claimed by the appellant. **And as agents of a revealed principal, they are unnecessary parties to this action. I accordingly resolve the first and second issues as formulated by the appellant against the appellant.**

Issue 3

This is concerned only with the 1st respondent. The matter arose after the Tribunal had ruled that the 2nd - 15th were improper parties to the proceedings, that the counsel to the 1st respondent PSPLS Management Consortium Ltd. successfully made an oral application urging the Tribunal to review its decision by also striking out the first respondent from the proceedings as it was in same position as the other respondents who were struck out. The appellant objected to the application on the grounds that there must be a formal application as required by Rule 74 (4) of the Rules. The Tribunal ruled that it was only an omission occasioned by a typographical error when the 1st respondent who was in the same boat with the other respondents was not struck out and the Tribunal corrected the error.

But all the arguments of counsel in this issue is limited to the decision of the Tribunal to review its decision by including the name of the 1st respondent as unnecessary party to the proceedings. There

was no discussion on how the Court of Appeal erred in upholding the decision. It must be emphasized, and it is elementary law, which has been settled, that this court has no jurisdiction to hear appeals from the decision of the Tribunal, the jurisdiction of this court is limited to hear the appeal from the decision of the Court of Appeal. In this issue there is no discussion whatever on how the Court of Appeal erred in upholding the decision of the Tribunal.

In any event, I have very carefully examined the record and have discovered that the Tribunal in the course of delivering its ruling inadvertently referred to the parties which it ordered to be struck out of the proceedings as the 3rd - 15th respondents.

When its attention was drawn to the inadvertence the Tribunal there and then corrected the error. It is a settled law that there is an inherent jurisdiction vested in courts or tribunals to amend their rulings or decisions to take care of accidental slips or omissions. The exercise of this power should not however, be used to review or rehear the case nor to alter the rights and obligations of the parties under the ruling or order made. See UMMUNA Vs. OKWURIWE [1978] 11 NSCC 319 at 324: Obaseki JSC stated :-

“We cannot doubt that under the original powers of the Courts, quite independent of any order that is made under the governing statute, every court has power to correct accidental slips and omissions properly brought to its notice.”

In this connection see also OGUNSOLA Vs. NICON [1996] 1 NWLR (Pt. 423) 126, ASIYANBI Vs. ADENIJI [1967] ALL NLR 88, ADIGUN Vs. A.G. OF OYO STATE (NO.2) [1987] 2 NWLR (Pt 56) 197. MINISTER OF LAGOS AFFAIRS, MINES AND POWER & ANOR. Vs. AKIN OLUGBADE [1974] 1 ALL NLR 226.

The mere fact that there was no formal application in writing did not render the decision wrong. Breach of a rule of practice and procedure does not render the proceedings a nullity but merely an irregularity see SAUDE Vs. ABDULLAHI [1989] 4 NWLR (Pt. 116) 388. By this correction the appellant has not shown that his rights have been affected or that he has suffered any miscarriage of justice. His case against the BPE still subsists and

indeed all the allegations of breach of statutory provisions were made against the BPE the principal of all the respondents herein is still a live issue at the Tribunal. I also resolve the third issue against the appellant.

In the result this appeal fails and is dismissed by me. I award to each set of the respondents N50,000.00 costs.

B

OGUNTADE JSC

I have had the advantage of reading in draft a copy of the lead judgment by my learned brother Musdapher JSC. I agree with his reasoning and conclusion that this appeal has no merit. I would also dismiss the appeal with costs as assessed in the lead judgment.

C

OGBUAGU JSC

This is another Interlocutory appeal in a suit filed since nearly five years ago by an Originating Application dated the 10th day of November, 2003, and filed at the Investments and Securities Tribunal, (hereinafter called “*the Tribunal*”). The Appellant sought against the Respondents and the Bureau of Public Enterprises, (BPE) as the 1st Respondent, the following reliefs:

E

“ 1. *Issuance of an order directing the respondents to suspend the share acquisition Scheme as presently structured until the 1st Respondent (BPE) complies with the relevant provisions of the Investment and Securities Act and the rules /regulations promulgated thereunder;*

2. *In the alternative, an order directing the Respondents to immediately comply with the provisions of the ISA and the underlying rules and regulations with respect to the PSPLS by ensuring that the relevant registration statement/ prospectuses are duly filed with and effectuated by the SEC;*

3. *Judgment against the Respondents in an amount to be determined at trial as punitive damages;*

H

4. *Reasonable Counsel fees;*

5. *Costs and expenses of this proceeding; and*

6. *Such other and further relief as the Court deems appropriate.*

ate”

The Appellant filed also a statement of evidence. Each of the Respondents filed a Notice of Preliminary Objection to the effect that the Suit be dismissed. After hearing arguments, the Tribunal, in a considered Ruling delivered on 12th February, 2004, held that it had the jurisdiction to entertain and determine the case. However, it further held that the 2nd - 15th Respondents, are not necessary parties to/in the suit since they were agents of a disclosed principal. It therefore, accordingly, struck out the names of the 2nd - 15th Respondents.

As a result of the said Ruling, the learned counsel to the 1st Respondent, immediately thereafter, drew the attention of the Tribunal to the fact that in their Objection, he had stated that all the Respondents including his client - the 1st Respondent, were agents of the BPE. He therefore, urged the Tribunal to also strike out the name of the 1st Respondent from the suit. The learned counsel for the Appellant not surprisingly, opposed the said application. The Tribunal upheld the application and accordingly, also struck out the name of the 1st Respondent from the suit.

Dissatisfied with the entire Ruling of the Tribunal, the Appellant, appealed to the Court of Appeal, Abuja Division (hereinafter called “*the court below*”) which in its unanimous decision, also dismissed the appeal as lacking in merits hence the instant appeal. I note that in the court below, two issues for determination, were formulated by the Appellant. In respect of the first issue, the court below - per Adekeye, JCA who wrote the lead Judgment, at page 393 of the Records, stated inter alia, as follows:

“The 2nd-15th Respondents cannot by any stretch of imagination be classified as necessary parties in the circumstances of this case.

The Investment and Securities Tribunal took the right step to timeously strike out their names as necessary parties to the proceedings”

In respect of the second issue, the following inter alia, appear at page 395 of the Records:

“..... It is my stand that the Tribunal administered the right procedural steps and was therefore right to have granted the applica-

tion to rectify the omission in its order.....”.

In spite of this simple and straight forward matter, the Appellant, filed seven (7) Grounds of Appeal from which he has formulated three (3) issues for determination. They read as follows:

1. Whether the lower court was right in upholding the decision of the Honourable Tribunal which struck out the Respondents from the proceedings on the ground that as Agents of a disclosed principal they are not necessary parties in the proceedings (Grounds 1,2 & 7).

2. Whether the lower court was right in holding that the Appellant failed to draw attention to the provisions of the Investment and Securities Act which excludes the applicability of the general principle of law of principal and agent to the facts and circumstances of this case, or any part of the Investment and Securities Act making the Respondents directly liable as agents.
(Ground 3).

3. Whether the lower court was right in upholding the Honourable Tribunal’s decision which granted the 1st Respondent’s oral application to review the Tribunal’s previous Ruling by further striking out the 1st Respondent from the proceedings. (Grounds 4, 5,& 6)”.

I note that the 1st - 3rd, 5th - 8th and 10th - 14th Respondents in their Brief, adopted the above issues with few variations in couching the said issues. The 4th Respondent at paragraph 4.02 of its Brief, stated that it is not affected by the 3rd issue of the Appellant and that the only issues relevant to its case, is the 1st and 2nd issues. The 9th Respondent in its Brief, adopts only the 1st Issue of the Appellant although differently couched. It did not formulate any other issue.

For purposes of emphasis and in respect of Issue 1 of the Appellant, I or one may ask, who is an Agent? At page 64 of Black’s Law Dictionary, 7th Edition, an Agent is defined as,

“One who is authorised to act for or in place of another, a representative “.

The word “agent” or “agency”, it is stated therein, denotes one who acts, a doer, etc. that accomplishes a thing or things. The agent normally, binds his principal and certainly not himself by the contract

he makes.

Indeed, this Court, in the case of Dr. Tunde Bamgboye v. University of Ilorin & anor. (1999) 10 NWLR (Pt.622) 290 @ 329 also cited in the 1st-3rd, 5th -8th and 10th-14th Respondents' Brief (it is also reported in (1999) 6 SCNJ. 295) - per Onu, JSC, the definition of an agent in the said Black's Law Dictionary (Edition not stated), was stated thus:

"A person authorized by another to act for him, one entrusted with another's business... " One authorised to transact all business of principal (sic), all of principal business of some particular kind, or all business of some particular place, etc. "...

His Lordship, then stated inter alia, as follows:

"An agent, in my view, means more or less the same thing as a delegate".

In the case of Niger Progress Ltd, v. North East Line Corporation (1989) 3 NWLR (Pt.107) 68 @ 92. - per Nnamani, JSC, (of blessed memory) also cited in the Briefs of the 1st - 3rd, 4th, 5th - 8th and 10th - 14th Respondents (it is also reported in (1989) 4 SCNJ. 232), it was stated that a relationship of Agency is generally said to exist whenever one person called the "*agent*" has authority to act on behalf of another called "*the Principal*" and consents to the act. There are too many other decided authorities in this regard. See also generally, Halsbury's Laws of England, 4th Edition paragraph 701. This is why it is settled that whether that relationship exists in any situation, depends, not on the precise terminology employed by the parties to describe their relationship, but on the nature of the agreement, or the exact circumstances of the relationship between the alleged principal and agent. See the above case citing the English cases of Samson v. Arctchison (1912) A.C. 844 P.C. and Atlantic Mutual Insurance Co. v. King (1919) 1 KB. 307.

This is why it is now firmly established that a defendant acting on behalf of a known and disclosed principal, incurs no liability even where the disclosed principal, is a foreigner. See the cases of Khonam v. John (1939) 15 NLR 72; Niger Progress Ltd, v. N.E.L. Corpu (supra) and Carlen (Nig.) Ltd v. University of Jos (1994) 1 NWLR (Pt 323) 631 @ 636 C.A. where it was held that as a general rule, a contract made by an agent acting within the scope of his authority for

a disclosed principal, is in law, the contract of the principal and as such, the principal and not the agent, is the proper person to sue or be sued upon the contract.

From the Records, I agree with the submission in paragraph 4.19 of the Brief of the 1st - 3rd, 5th - 8th and 10th -14th Respondents, that the Respondents, acted at all material times in relation to the 1st Respondent, for and on behalf of the BPE and in accordance with its directives. B

In fact, I note that the Appellant, in his said Originating Application, in paragraph 3 of his “*Claim and Reasons for Claiming*” at page 1 of the Records, acknowledged this fact. It reads as follows: C
“*The 3rd to 15th Respondents (hereinafter called Registration agents) are duly incorporated and licensed Nigerian financial Intermediaries engaged in the PSPLS as registration agents to provide relevant information to the public and register participants for share applications”.* D

[the underlining mine]

Incidentally and significantly, “the 3 through 15 Respondents, are sued for themselves and as representatives of all financial intermediaries *engaged in the PSPLS Scheme as registration agents*.” E

[the underlining mine]

On this averment or admission and the capacity the Respondents are sued, I rest this appeal and hold that this appeal, is unmeritorious and fails. My answer to the 1st Issue, is rendered in the Affirmative. F

In conclusion, I note that there are concurrent findings of fact or decisions by the two lower courts and the attitude of this Court not to disturb or interfere with the same, is now trite. There are too many decided authorities in this regard. See the cases of *Godwin Uzoechi v. Elias Onyewe (1999) 1 SCNj. 34 @ 39* and *Anwonyi & ors. v. Shodeke & ors. (2006) 13 NWLR (Pt.696) 34 @ 54*, G

It is from the foregoing and the more detailed lead Judgment of my learned brother, Musdapher, JSC, just delivered and which I had the advantage of reading in advance before now, that I too, H
dismiss the appeal. I abide by the consequential order in respect of costs.

ADEREMI JSC

I have been privileged with a preview of the judgment of my learned brother, Dahiru Musdapher JSC. I agree with his reasoning and conclusion. I hereunder wish to add my own few words to the said judgment.

This is an appeal against the decision of the Court of Appeal, Abuja Division delivered on the 19th of April, 2006 by which the appellant's appeal against the ruling of the INVESTMENT AND SECURITIES TRIBUNAL delivered on the 4th of February, 2004 by which that Tribunal struck out the names of all the respondents herein from the proceedings before the Tribunal on the grounds, inter alia, that the respondents were merely agents of a disclosed principal.

The facts leading to this appeal are briefly thus: by an originating application dated 10th November 2003 which was supported by a 5 - paragraph process captioned "Applicant's Statement of Claim filed by the appellant in a class action for himself and as representative of those who have registered to purchase shares in public companies under the Privatization Shares Purchase Loan (PSPLS) Scheme against the respondents herein who have been sued for themselves and as representatives of all the financial intermediaries engaged in the PSPLS Scheme. The reliefs claimed are as follows:

"1. Issuance of an order directing the respondents to suspend the share acquisition scheme as presently structured until the 1st Respondent (BPE) complies with the relevant provisions of the Investment and Securities Act and the rules/regulations promulgated thereunder.

2. In the alternative, an order directing the Respondents to immediately comply with the provisions of the ISA and the underlying rules and regulations with respect to the PSPLS by ensuring that the relevant registration statement/prospectuses are duly filed with and effectuated by SEC.

3. Judgment against Respondents in an amount to be determined at trial as punitive damages.

4. Reasonable Counsel Fees

5. Costs and expenses of this proceeding and

6. Such other and further relief as the court deems appropriate.

ate.”

It was further contended by the appellant that he and other members of the class he represented suffered some damages because the BPE and the respondents sold shares to him and members of that class in breach of the provisions of ISA and the rules and regulations issued by Securities Exchange Commission (SEC) pursuant to ISA specifically by reason of the act that the appropriate statements were not filed with Security Exchange Commission (SEC) The respondents were also alleged to have made false representation of material facts which misled the appellant and the members of his class.

The respondents filed Notices of Preliminary Objection individually, challenging the competence of the suit against them. In its ruling delivered on the 12th of February, 2004 upholding the preliminary objection, the Tribunal said inter alia:

“the 2nd - 15th respondents are not necessary parties to the proceedings, they are agents of disclosed principal and do not fall within the exception to the general rules, accordingly, their names are hereby struck out.”

Immediately after the delivery of the said ruling, the learned counsel for the 1st respondent herein (PSPLS MANAGEMENT CONSORTIUM LTD) informed the Tribunal that the first respondent was in the category of the 2nd - 15th respondents and was also an agent of a disclosed principal, the BPE. The Tribunal immediately after listening to the said learned counsel and the reply of the learned counsel for appellants, proceeded to strike out the name of the 1st respondent adding that the omission in not striking out the name initially, was a typographical error. Aggrieved by the decision, the appellant appealed to the court below (the Court of Appeal). Having considered all the issues formulated before it for determination, the court below (the Court of Appeal) in affirming the decision of the Tribunal and dismissing the appeal, reasoned thus:

“The applicant/appellant has failed to draw attention to the provision of the Investment and securities Act and the Public Enterprises (Privatization and Commercialization) Act 1999 to exclude the applicability of the general principle of law of principal and agent to the facts and circumstances of this case, or any part of the Investment

and Securities Act making the 2nd - 15th respondents directly liable as agents. Moreover the applicant/appellant has not disclosed any reasonable cause of action against the 2nd - 15th respondents personally for which he is entitled to a relief which therefore makes them a necessary party to this action. ”

B The court below further held in its judgment that the Tribunal under Rule 74 Orders (1) and (2) of the Investment and Securities Procedure Rules 2002, had the power to review, set aside and vary its decision; consequently that the Tribunal was right, in law, to correct the error of omission made by it in the final order which did not
C cover the 1st respondent herein.

D Dissatisfied with the decision of the court below, the appellant, again, has appealed to this court. His Notice of Appeal carries seven grounds of appeal. Distilled therefrom are three issues which as contained in his brief of argument filed on 18th October 2006, are in the following terms:

*“(1) Whether the lower court was right in upholding the decision of the Honourable Tribunal which struck out the respondents from the proceedings on the ground that as agents of a disclosed
E principal, they are not necessary parties in the proceedings.*

*(2) Whether the lower court was right in holding that the appellant failed to draw attention to the provisions of the Investment and Securities Act which excludes the applicability of the general principle of law of principal facts and circumstances of the case or any
F part of the Investment and Securities Act making the respondents directly liable as agents.*

*(3) Whether the lower court was right in upholding the Honourable Tribunal’s decision which granted the 1st respondent’s
G oral application to review the Tribunal’s previous ruling by further striking out the 1st respondent from the proceedings. “*

H The 1st - 3rd, 5th - 8th and 10 - 14th respondents while declaring that they were adopting the issues raised in the brief of the appellant proceeded, however to modify same, the modified issues as set out on page 11 of their brief are as follows:

“(1) Whether the Court of Appeal was right to have upheld the decision of the Tribunal by which it struck out the Respondents from the proceedings on the ground that as agents of a disclosed

principal, they were not necessary parties in the proceedings.

(2) Whether the Court of Appeal was right to have held that the Appellant failed to draw attention to the relevant provisions of the Investments and Securities Act which (i) exclude the application of the general principle of law relating to principal and agent to the facts of the present case or (ii) which make the Respondents directly liable as agents. ^B

(3) Whether the Court of Appeal was right to have upheld the Tribunal's decision which granted the 1st Respondent's application to correct the Tribunal's ruling by striking out the name of the 1st Respondent in addition to that of the others from the proceedings." ^C

For its part, the 4th respondent adopts as its own issues Nos. 1 and 2 formulated by the appellant in his belief while contending that it is not affected by issue No 3 so formulated by the appellant.

The 9th respondent, in its brief had contended that issue No 1 ^D which the appellant raised is the only one relevant for the determination of this appeal, but it proceeded to amend it. The amended issue set out in the brief of the said 9th respondent is as follows:

"Whether the Court of Appeal was right to have confirmed the decision of the tribunal which struck out the 9th respondent and others from the proceedings on the ground that as agents of a disclosed principal they are not necessary parties in the proceedings." ^E

When this appeal came before us for argument on the 27th of October 2008, Mr. Tony Anyanwu, learned counsel for the appellant referred to, adopted and relied on his client's brief filed on the 18th ^F of October 2006 and the reply brief filed on 22nd January 2008 and urged that the appeal be allowed.

Mrs. Akeredolu learned counsel for the 1st, 2nd, 3rd, 5th - 8th and 10th - 14th respondents and urged that the appeal be dismissed. ^G Mrs. Dorothy Ufot of counsel for the 4th respondent relied on the brief of her client filed on the 7th of January 2008 and urged us to dismiss the appeal while Mr. Eramah of counsel for the 9th respondent also relied on and adopted the brief of his client filed on the 15th of January 2008 and urged us to dismiss this appeal and affirm ^H the decisions of the two courts below.

I have had a careful look at all the issues placed before us for determination; there is no material difference in the substance of what

the parties are canvassing safe for the arguments proffered by the appellant on one side and the respondents on the other side. I have read the arguments in the respective brief. The substance of the argument of the appellant is that the common law rule that an agent's liability is vitiated where the principal is revealed cannot apply in statutory provision such as in the instant case; reliance was placed on the decision in ASAFA VS ALRAINE (2002) 12 NWLR (PT.781) 353 and MOFAS SHIPPING LINE (NIG.) LTD VS. NATIONAL MARITIME AUTHORITY (2000) 9 NWLR (PT.672) 391. The respondent in their respective brief argued to the contrary and relied on a number of authorities the likes of (1) CARLEN (NIG) LTD VS. UNIVERSITY OF JOS (1994) 1 NWLR (PT.323) 631, (2) OKAFOR VS. EZENWA (2002) 13 NWLR (PT.784) 319 and (3) IRON BAR VS. CRBRDA (2004) NWLR (PT.857) 411. ,

The entire appeal is dependent on the resolution of this crucial issue -whether the composition of the parties as reflected in the processes filed is one that has the blessing and support of the law. I shall start the discussion by saying that the sole purpose of making someone a party to a suit or action is to make him to be bound by the decision of the court after a due consideration of the suit. However, not everybody who performed direct or indirect act in the matter leading to the suit is recognized, by the law, as a proper party to the eventual suit filed in the court of law in respect of the matter. A good example of this discourse is the master/servant relationship. But there is a world of difference as to the liability of the servant between a situation where the principal is undisclosed and where that principal is disclosed. I have always understood the law on master/servant relationship as to where the principal remains undisclosed to say that a man, though an agent, may very well intend to bind himself and in fact binds himself if he contracts without restrictive words to show that he does not do so personally or where he makes a contract in his own name, without disclosing either the name or the existence of a principal, he (the agent) is personally liable on the contract to the other contracting party, even though, he may in fact be acting on a principal's behalf. Once a person puts himself forward as a contracting party whether as an agent or a principal, he will continue to be liable even after the discovery of the agency by the other party. The

only thing that stops his liability is the clear and unequivocal election by the other contracting party to look to the principal alone. But, what is the situation in the present case? The facts are incontrovertible that the principal in this master/servant relationship is well disclosed - the BUREAU OF PUBLIC ENTERPRISES (BPE). The law as to liability is very clear in the instant case. It is this; where a person, in making a contract discloses both the existence and the name of a principal on whose behalf he purports to make it, he is not, as a matter of general principal, liable on the contract to the other contracting party. Indeed, a defendant acting on behalf of a known and disclosed principal incurs no liability see NIGER PROGRESS LTD VS. NORTH EAST LINE CORPORATION (1989) 3 NWLR (Pt.107) 68. In the case of OKAFOR VS. EZENWA (2002) 13 NWLR (PT.784) 319, the facts as to the disclosure of the principal, in any agency relationship, which are similar to the facts of this case in that respect, this court at P. 340 said:

“But as the pleadings and evidence can be seen to have revealed, the money was received by the appellant on behalf of Pace Dry Cleaning and Laundry Services Ltd to the knowledge of the respondent The appellant cannot be personally sued in the circumstance. He was an agent and acted as such. The principal was at all material time disclosed. The law is that an agent of a disclosed principal is not ordinarily personally liable in a contract he enters on behalf of the said principal.”

In the case of CARLEN (NIG.) LTD VS. UNIVERSITY OF JOS (1994) 1 NWLR (PT.323) 631 cited by the 4th respondent in its brief of argument, the court said and I quote:

“The general law is that a contract made by an agent acting within the scope of his authority, for a disclosed principal is, in law, the contract of the principal, and the principal and not the agent is the proper person to sue and be sued upon such contract.”

Applying the principles of law which I have enunciated supra to the facts of this case, I am clear in my mind that Issues Nos. 1 and 2 must be answered in the affirmative and I so do.

The third issue relates to the correction of mistakes made by the judex in the course of writing his judgment and when his attention is drawn to that mistake either by way of oral or written applica-

tion, in the open court, he then proceeds to effect the correction. The exercise of that power of correction by the judex is often said to be under ‘THE SLIP RULE.’ Let it be said that the power of amendment or correction of its records inherent in the jurisdiction of the court is undoubtedly wide and of course subject to the limitation that it must only be exercised whenever the purposes of justice demand same. But it is imperative that a judgment or order which correctly represents what the judex decided will stand until perhaps varied by the appellate court. No exercise of the power of amendment under the “SLIP” RULE will be allowed to vary the operative and substantive part of its judgment so as to substitute a different form. Issues relating to facts and law must never be subjected to an amendment by the judex once he has delivered the judgment. See MINISTER OF LAGOS AFFAIRS MINES & POWER & AN. VS CHIEF AKIN OLUGBADE & ORS (1974) 11 SC 11 and. BERLIET NIGERIA LTD VS. ALHAJI KACHALLA (1995) 9 NWLR (PT.420) 478. In the instant case, all that happened was that the attention of the trial judge was drawn to the omission of the 1st respondent in the judgment just delivered as properly coming within the category of those respondents whose names were to be struck out following the tenor of the judgment. In acceding to the request to strike out the name, the trial judge, in my view had rightly in law exercised his power under ‘THE SLIP RULE.’ Issue No.3, is consequently, answered in the affirmative.

In conclusion, for the little I have said above but most especially for the exhaustive reasoning and conclusion of my learned brother Musdapher JSC, I hereby say that this appeal is unmeritorious, it must be dismissed and I hereby dismiss it in toto. I abide by all the consequential orders made in the leading judgment including the order as to costs.

MUNTAKA-COOMASSIE JSC

I have read the lead judgment of my learned brother Dahiru Musdapher JSC just delivered. I found that in his characteristic manner, his lordship has meticulously considered and rightly resolved all the issues submitted for our consideration in this appeal.

His reasoning and conclusions, with respect accord with my understanding of the law on the matter, I adopt same as mine. I am therefore in agreement with him in dismissing the appeal.

Fortunately my lord Musdapher JSC did not leave any stone un-turned. The decision of the trial Tribunal is restored and affirmed. I endorse the orders as to costs.

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