

**SUPREME COURT OF NIGERIA**  
27TH FEBRUARY, 2009. SC. 161/2002  
**CORAM:- G. A. OGUNTADE, W. S. N. ONNOGHEN,**  
**F. F. TABAI, I T. MUHAMMAD, J. O. OGEBE, JJSC**

SAVANNAH BANK OF (NIG.) LTD. .... APPELLANT  
AND  
STARITE INDUSTRIES OVERSEAS ..... RESPONDENT  
CORPORATION

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JUDGMENTS - Validity - Time of delivery - Non-Compliance with the time limit of 3 months after final addresses - Will not invalidate judgment - Unless it occasions a miscarriage of justice (H1)

JUDGMENTS - Delivery - 3 months Limitation - From final addresses - Computation - Time begins to run from the date of last address of counsel - In this case from 1st of December 1992 - Not 22nd of May 1992 (H2)

**FACTS**

The plaintiff / respondent sued the appellant, as 3rd defendant, together with other defendants, before the High Court of Lagos State. The claim of the respondent was for a sum of money being the amount due and owed to the respondent by the defendants. The appellant had acted as a collector for the respondent but failed to remit the money to the respondent.

After hearing, the trial court gave judgment to the respondent against the appellant. Aggrieved, the appellant appealed to the Court of Appeal which dismissed the appeal. Appellant has brought this further appeal to the Supreme Court. He is attacking the judgment of the trial court for allegedly being delivered more than three months after final addresses.

**ISSUE FOR DETERMINATION**

*"Whether or not there is evidence in the record to show that the High Court delivered its judgment outside the 3 months periods stipulated in the 1979 constitution and caused a miscarriage of justice to the appellant as a result."*

**HELD** (Unanimously dismissing the appeal per **OGEBE JSC**)

***JUDGMENTS - Validity - Time of delivery***

1. The current position of the law is that judgment given outside the 3 months stipulated can be saved by the court exercising jurisdiction by way of appeal or review if it is satisfied that the party complaining of such non-compliance has not suffered any miscarriage of justice as a result. It is clear therefore that for a party to impugn a judgment delivered after 3 months of final addresses he must show that he has suffered a miscarriage of justice as a result.

In the present appeal the appellant has not made any attempt to show that it suffered any miscarriage of justice as a result of the alleged delay in the delivery of judgment. (p. 528 A)

***JUDGMENTS - Delivery - 3 months Limitation***

2. From the record, it is clear that the conclusion of evidence and final addresses on the 22nd of May 1992 was a false one because a motion to amend the claim which was filed on the 28th January 1992 was yet to be taken. This inadvertence was brought to the attention of the trial court which then took that motion and the motion to arrest the judgment on the 1st of December 1992 and reserved judgment to the 28th of January 1993.

I therefore, agree with the decision of the Court of Appeal that the case before the High Court was not concluded on the 22nd of May 1992 but was finally concluded on the 1st of December 1992 in readiness for judgment. In other words, the 3 months period started counting from the 1st of December 1992 and the judgment delivered on the 28th January 1993 was not in breach of section 258 (1) of the 1979 constitution. (p. 528 C/F)

***NOTABLE POINTS OF INTEREST***

***OGEBE JSC***

*1. Appellant's counsel admitted that judgment was not due*

The learned counsel for the appellant Agbamuche Esq. was in court and objected to the grant of the two applications. He urged the court to dismiss them and give a date for judgment (see page 167 of the printed record). This was an admission on the part of the learned counsel that the judgment was not due until the pending applications were taken. (p. 528 E)

### **MUHAMMAD JSC**

#### *2. Pending application can interrupt the three months period*

I find support again in the case of *MUSTAPHA V. GOVERNOR of LAGOS STATE* (1987) 2 NWLR (pt 58) 39, where OBASEKI, JSC, emphasized the point:

*“On the issue of the High Court delivering its judgment outside the period prescribed by S. 258(1) of the 1979 constitution, I found that the judgment of the High Court was delivered within the three months limit from the date of conclusion of the final address and as such there was no breach. The application by the respondent for amendment of their pleadings interrupted the period and made the period of three months to start running from the date of the amendment. The Court of Appeal erred in holding that there was non-compliance with the section”.*

What is to be noted is that a pending application can interrupt the statutory period of three months within which to deliver judgment after conclusion of evidence and address. (p. 539 C)

### **REPRESENTATION**

M. A. Agbamuche, SAN, for the appellant, with him: Mrs. E. Osoka.  
Respondent not in court, not represented.

### **CASES REFERRED TO**

*UTIH V. Onyivwe* (1991) NSCC Vol. 22 Pt. 1, 42

*Obadiaro V. UYIGUE* (1986) NSCC Vol. 17 Pt. 1, 439

*Ojokobolo & Others V. Alamu & Another* (1987) 2 NSCC Vol. 18, Pt. 2 at p.991

*IDOCO and OTHERS VS. ENAROFIA and OTHERS* (1980) N.S.C.C. vol. 12, 159 at 201

*Adekeye V. Akin Olugbade* (1987) 1 NSCC 865

*Ifezue vs Mbadugha* (1984) ANLR 256; *Odi vs Osafile* (1985) ANLR 26

### **STATUTES REFERRED TO**

Constitution of the Federal Republic of Nigeria, 1979, s. 258

Constitution of the Federal Republic of Nigeria, 1999, s. 294

**LEAD JUDGEMENT BY OGEBE JSC**

This is an appeal brought by the Savannah Bank Nigeria Limited which was the appellant in the Court of Appeal Lagos Division which dismissed its appeal on the 29th of June 2000.

B The claim before the High Court of Lagos State Ikeja was for the sum of N884,609.25, the equivalent of 172, 921.85 Dollars being the amount due and owed to the plaintiff from the defendants. The 3rd defendant now appellant acted as a collector of the plaintiff but failed to remit the dollar equivalent to the plaintiff. The trial court on the 28th of January 1993 gave Judgment against the 3rd defendant now appellant in the sum of One Million seven hundred thousand eight hundred and eighty-one Naira five Kobo (N1,700,881.05).

C Before this Court the learned counsel for the appellant raised two issues for determination as follows:

D “(1) *Whether there was a breach of S.285 (1) of the Constitution of the Federal Republic 1979 and if so what are the consequences.*

E “(2) *Whether the miscarriage of justice referred to in the amendment to S.258 (1) of the Constitution 1979 known as S.258 (4) is determined by the peculiar circumstances of each case and must invariably be the result of the delay in delivering judgment.*”

F These questions are hypothetical in nature and do not seriously address the real issue in this appeal which is whether or not there is evidence in the record to show that the High Court delivered its judgment outside the 3 months periods stipulated in the 1979 constitution and caused a miscarriage of justice to the appellant as a result.

The learned counsel for the respondent also filed a brief of argument and formulated three issues for determination as follows:

G “(i) *Did the judgment of Hon. Justice S.O. Ilori (as he then was) delivered on 28th day of January, 1993 after the close of counsels address on 1st December 1992 a period of 2 months less 3 days or 59 days not comply with the provisions of section 258 (1) of the 1979 Constitution and the modification Amendment Decree No. 17 of 1985.*

H “(ii) *Is the ground of appeal based on facts as to period between the time of addresses and judgment not one for which an order of the Supreme Court is needed and is a ground of law and misdirection competent?*

(iii) *Would the Supreme Court not grant an amendment to meet the Justice of a case in the Supreme Court in accordance with the principle in Adekeye V. Akin Olugbade (1987) 1 NSCC 865.*"

Only the first issue is relevant for the determination of this appeal. The 2nd and 3rd issues are not in any way related to the grounds of appeal. The main argument of the learned counsel for the appellant is that the trial court completed the hearing of evidence and final addresses on the 22nd of May 1992 and gave its judgment on the 28th January, 1993, contrary to Section 258 (1) of the 1979 Constitution. He submitted that the Court of Appeal was wrong in its view that addresses were concluded on the 1st December 1992 and not on the 22nd of May 1992.

The learned counsel for the respondents on the other hand submitted that the trial court inadvertently omitted to take a motion for amendment of the plaintiff's claim which was in the court's file since January 1992 when it concluded the hearing on the 22nd of May 1992 and reserved the case for judgment. Subsequently a motion to arrest the judgment was brought before the trial court so that the motion for amendment of the claim would be taken before judgment would be delivered. These two motions were taken on the 1st of December 1992 and judgment was reserved and delivered on the 28th of January 1993.

Section 258 (1) of the 1979 Constitution stipulates that every court established by the constitution shall deliver its decision in writing not more than three months after the conclusion of evidence and final addresses. This meant that any judgment delivered outside three months of the conclusion of evidence and final address was automatically a nullity. See *UTIH V. Onyivwe* (1991) NSCC Vol. 22 Pt. 1, 42. *Obadiaro V. UYIGUE* (1986) NSCC Vol. 17 Pt. 1, 439.

However, with the amendment of the constitution by the Constitution (Suspension and Modification) Amendment Decree 1985 a new subsection 4 was added as follows:-

*"258 (4) the decision of a court shall not be set aside or treated as a nullity solely on the ground of non-compliance with the provision of this section unless the court exercising jurisdiction by way of appeal or review of that decision is satisfied that the party complaining of such non-compliance has suffered a miscarriage of justice by reason thereof."*

With this amendment ***the current position of the law is that judgment given outside the 3 months stipulated can be saved by the court exercising jurisdiction by way of appeal or review if it is satisfied that the party complaining of such non-compliance has not suffered any miscarriage of justice as a result.*** See the classical case of Ojokobolo & Others V. Alamu & Another (1987) 2 NSCC Vol. 18, Pt. 2 at p.991 ***It is clear therefore that for a party to impugn a judgment delivered after 3 months of final addresses he must show that he has suffered a miscarriage of justice as a result.***

***In the present appeal the appellant has not made any attempt to show that it suffered any miscarriage of justice as a result of the alleged delay in the delivery of judgment. From the record, it is clear that the conclusion of evidence and final addresses on the 22nd of May 1992 was a false one because a motion to amend the claim which was filed on the 28th January 1992 was yet to be taken. This inadvertence was brought to the attention of the trial court which then took that motion and the motion to arrest the judgment on the 1st of December 1992 and reserved judgment to the 28th of January 1993.***

The learned counsel for the appellant Agbamuche Esq. was in court and objected to the grant of the two applications. He urged the court to dismiss them and give a date for judgment (see page 167 of the printed record). This was an admission on the part of the learned counsel that the judgment was not due until the pending applications were taken. ***I therefore, agree with the decision of the Court of Appeal that the case before the High Court was not concluded on the 22nd of May 1992 but was finally concluded on the 1st of December 1992 in readiness for judgment. In other words, the 3 months period started counting from the 1st of December 1992 and the judgment delivered on the 28th January 1993 was not in breach of section 258 (1) of the 1979 constitution.***

I see no merit in this appeal and I hereby dismiss it and affirm the judgment of the court below with costs of N50,000.00 in favour of the respondent.

**OGUNTADE JSC**

I have read in draft a copy of the lead judgment by my learned brother Ogebe JSC. I agree entirely with the lead judgment. I would also dismiss this appeal with costs as ordered in the lead judgment.

B

**ONNOGHEN JSC**

This is an appeal against the judgment of the Court of Appeal, holden, at Lagos in appeal NO.CAL/301/96 delivered on the 29th day of June, 2000 dismissing the appeal of the appellant resulting in the instant further appeal.

C

The primary issue for consideration in this appeal is whether the holding by the lower court that the judgment of the trial court delivered on the 28th day of January, 1993 was in compliance with section 258(1) and (4) of the 1979 Constitution is correct.

D

It is the case of the appellant that the judgment of the trial court delivered on the 28th day of January, 1993 was in violation of section 258 (1) of the 1979 Constitution as the same was delivered many months after the final addresses of counsel for the parties, and consequently null and void.

E

On the other hand, the respondent contends that the judgment was delivered within time and even if it was not so delivered, the appellant has failed to establish any miscarriage of justice it suffered following the non-delivery of the judgment within the stipulated time as required by section 258 (4) of the 1979 Constitution. The lower court, after reviewing the facts, submissions and law relating to the issue, resolved the issue against the appellant. The question is whether the lower court was right in so holding.

F

Section 258(1) of the 1979 Constitution provides as follows:-

*“(1) Every court established under this constitution shall deliver its decision in writing not later than three (3) months after the conclusion of evidence and final addressee, and furnish all parties to the cause or matter determined with duly authenticated copies of the decision on the date of the delivery thereof.”*

G

This court has held in many cases that the above provision is mandatory and that non-compliance therewith renders the judgment so delivered null and void — see *UTIH vs Onoyivwe (1991) NSCC*

H

530 Savannah v. Starite Corp. (2009) 2 KLR Onnoghen JSC  
Vol. 22 (Pt.1) 42: Obadiaru vs Uyigue (1986) NSCC Vol. 17 (Pt. 1)  
439: Ifezue vs Mbadugha (1984) ANLR 256; Odi vs Osafire (1985)  
ANLR 26.

However, the constitution (Suspension and Modification (Amendment). Decree NO. 17 of 1985 introduced subsection 4 to  
B section 258 of the 1979 Constitution. Hitherto, section 258 ended in subsection 3.

The said subsection 4 provides as follows:-

*“(4) the decision of the court shall not be set aside or treated as  
C a nullity solely on the ground of non-compliance with the provision of this section unless the court exercising jurisdiction by way of appeal from or review of that decision is satisfied that the party complaining has suffered a miscarriage of justice by reason thereof”.*

It is clear from the above provision a judgment given without  
D compliance with the provisions of section 258 (1) of the 1979 Constitution remains valid except the appellate court seized with the matter on appeal or for review is satisfied that the party complaining has suffered a miscarriage of justice by virtue of the non-compliance. In other words, the appellant, whose only issue against the decision of  
E the lower court, as in the instant case, is non-compliance with the provisions of section 258(1) supra must go further to establish the fact that the non-compliance occasioned a miscarriage of justice to him, otherwise the appellate court should not disturb the judgment of the lower court.

F In the instant case the issue for determination is non-compliances with section 258(1). The appellant is not attacking the judgment of the lower courts on any other ground. In short the appellant accepts the determination of the lower courts as regards the facts of  
G the case and the liability of the appellant in the suit. It follows therefore that for the appellant to succeed, if it is found that there was non-compliance with section 258(1) supra, it must satisfy the court that the non-compliance occasioned a miscarriage of justice to it. Does the record show any miscarriage of justice? The lower court held that  
H the appellant did not establish the existence of any miscarriage of justice and I hold the firm view that the court is right in so holding.

The record shows that addresses were delivered by both counsel on the 22nd day of May, 1992 and the case reserved for judgment on the 10th day of September, 1992. However, before the addresses,



and precisely on the 31st day of January, 1992, the respondent filed a motion to be moved on 7th day of February, 1992 for an order amending the writ of summons and statement of claim in the action. The motion was never heard on the 7/2/92, it remained pending even when the matter was adjourned for judgment. The motion is at page 136 of the record. The application was opposed. B

On the 29th day of September, 1992 when the matter came up, the court record stated as follows:-

*“ Court. I had been indisposed for some time. Judgment is further reserved till 14th day of October, 1992.”* C

On the 14th day of October, 1992, the judgment was again adjourned to 29th October, 1992. However, on the 29th day of October, 1992, the respondent brought a motion praying the court for an order arresting the judgment fixed for same day and for amending the writ of summons and statement of claim as per the motion D filed on 31st January, 1992. The motions were argued on 1st December, 1992 and ruling reserved to be delivered in the judgment also reserved till the 28th day of January, 1993 which was eventually done on that date.

The question is whether having regards to the facts and circumstance of this case, the final addresses of counsel in the case was that of the 22nd May, 1992 or 1st December, 1992. The lower court held that it was the 1st December, 1992 when the arguments on amendment was taken that the matter became ripe for judgment E particularly as the motion for amendment had remained pending F since January, 1992. The appellant on the other hand maintains that the final addresses were delivered on 22nd May, 1992 and that by 28th January, 1993 when judgment was delivered, it was done contrary to the provisions of section 258(1) of the 1979 Constitution G and consequently null and void.

It is clear that by 22nd May, 1992 when the matter was adjourned for judgment for the first time, the motion for amendment was still pending in the court's file. I hold the view that as at that stage in the proceedings the matter had not been concluded, it was inchoate and the trial court still had the jurisdiction to hear and determine the said motion which it finally did on the 1st December, 1992. That being the case, I agree with the lower court that the final addresses were delivered in the case on the 1st day of December, 1992 and H

that when the judgment was delivered on the 29<sup>th</sup> day of January, 1993, it was delivered within the time stipulated in section 258(1) of the 1979 Constitution and consequently valid.

Granted that the final addresses was delivered on 22nd May, 1992 by the operation of section 258(4) supra, it is the duty of the  
 B appellant to satisfy this court that the non-compliance resulted in a miscarriage of justice against the appellant which he has failed to do in the instant case. On the contrary, it is obvious that the failure of the appellant to remit the foreign exchange as instructed continues till  
 C this day to work a lot of injustice on the respondent. As stated earlier, the appeal is not challenging the findings of fact by the lower courts which is deemed admitted. An order of hearing *de novo* will only continue to aggravate the sufferings of the respondent in the circumstance.

D In the circumstances, I agree with the reasoning and conclusion of my learned brother *OGEBE, JSC* that the appeal is without merit and should be dismissed. I order accordingly and abide by the consequential orders contained in the said lead judgment including the order as to costs. Appeal dismissed.

E

### ***TABAI JSC***

I read in advance the lead judgment prepared by my learned  
 F brother Ogebe, JSC and I agree with the reasoning and conclusion therein that the appeal lacks merit. I also dismiss the appeal and adopt the costs as assessed in the lead judgment.

### ***MUHAMMAD JSC***

G My learned brother, Ogebe, JSC, afforded me an opportunity of reading in draft form, the leading judgment just delivered. The whole appeal centers on the interpretation and application of section 258 of the Constitution of the Federation, 1979, but now section  
 H 294 of the constitution of the Federal Republic of Nigeria, 1999. The section stipulates as follows:

*“258(1) Every court established under the constitution shall deliver its decision in writing not later than 3 months after the conclusion of evidence and final addresses and furnish all parties to the*

*cause or matter determined with duly authenticated copies of the decision on the date of the delivery thereof.*

*(Underlining supplied for emphasis.)*

As a requirement of the constitution, it is mandatory (“*shall deliver*”) for any court established under the constitution to deliver its decision in a period of not more than three months (or ninety days) after the conclusion of evidence and final addresses by the parties. Where a court of law fails, neglects or refuses to deliver its decision (which includes judgments and rulings) after the adoption of final addresses by learned counsel for the respective parties, which comes after the close of evidence by the parties, that court is acting without jurisdiction and that decision will be declared a nullity by a higher court on appeal. That was the position of the law under the constitution of the Federation, 1979. The leading test case immediately after the commencement of the 1979 constitution is that of *Taylor V. Trustees of Trinity Methodist Church* (1986) 1 NSCC 449. The brief facts of that case are that addresses were delivered in the High Court of Lagos State on the 22nd August, 1979, Thereafter, the court adjourned the case to 31st October, 1979 for judgment. On the 1st of October, 1979, the constitution came into force and S. 258(1) of the constitution makes it mandatory for any court established under the constitution to deliver its judgment not later than 3 months after final addresses. Thus, the trial judge had 3 months from 1st October, 1979 within which to deliver his judgment in the case; but instead, he delivered it on 28th March, 1980 ( a period of almost 6 months from the 1st day of October, 1979), which was a clear breach of section 258(1) of the 1979 constitution. The last date for the trial judge to have delivered his judgment was the 1st day of January, 1980 (a period of 3 months that is from 31/10/79 - 1/1/80). There was an appeal to the Court of Appeal and judgment was delivered by the Court of Appeal on 24th of April, 1984, affirming the trial court’s judgment. The Supreme Court held:

*“This court has held that a judgment delivered in contravention of section 258(1) is a nullity. See: IFEZUE V. MADUGHA (1984) 5 SC 79 and PAUL ODI V. OSAFILE (1985) 1 NWLR 17. The judgment delivered by Ademola J., March, 1980 was therefore a nullity. Being a nullity, the appeal from the judgment to the Court of Appeal together with the judgment of the Court of Appeal on it dated 24th*

*April, 1984 are also all nullities. The judgment of the Court of Appeal dated 24th April, 1984 and the judgment of the High Court dated 28th March, 1980, are hereby set aside."*

I think what the provision of section 258(1) of the 1979 constitution sought to prevent was the occurring of miscarriage of justice to any of the parties where the writing and delivery of judgment took an unnecessary longer period which could have adverse effect on the mind and intellect of the judge. In *LAWAL V. DAWDU* (1972) 8-9 SC; this court observed as follows:

*"Learned counsel appearing for the parties concluded addresses before the learned trial judge on 4th June, 1969 on which date the judge announced and recorded that judgment was reserved sine die. Judgment was not given in the case until the 17th of April, 1970. One of the grounds of appeal filed against the judgment complains of the inability of the learned trial judge after such a long period of delay to appreciate in their proper FOCI the issues raised or to remember clearly his own impressions of the witnesses and/or their evidence. This is not the first occasion where we have to express the disapproval of this court of such inexcusable delay in writing judgment but it is well worth consideration by all courts that human recollections may lose their strength with the passage of time and that justice delayed is as bad as justice denied and may even, under certain circumstances, be worse."*

See further: *IFEZUE V. MADUGHA* (1984) All NLR, 256; *OJOKOLOBO V. ALAMU* (1987) 75c (pt 11) 124; *DIBIAMAKA V. OSAKWE* 20 NSCC (vol. 111) p.253. The amendment brought about by Decree 17 of 1985, Constitution (suspension and Modification) (Amendment) Decree, reduced the rigour and stiffness of section 258(1) of the 1979 Constitution by adding subsection 4 to that section which requires that a person who wants a court to set aside a judgment because of non-delivery within the 3 months period after conclusion of addresses by the parties must convince the court that he has suffered some miscarriage of justice. Thus, the rationale behind many of the cases decided before the amendment introduced by Decree 17 of 1985 has now shifted from inordinate delay per se to whether the delay amounted to a miscarriage of justice. The new subsection, now contained in section 294(5) of the 1999 Constitution provides as follows:

*“The decision of a court shall not be set aside or treated as a nullity solely on the ground of non-compliance with the provisions of subsection (1) of this section unless the court exercising jurisdiction by way of appeal or review of that decision is satisfied that the party complaining has suffered a miscarriage of justice by reason thereof.”*

In the case of OJOKOLOBA & ORS (Supra), this court, per B  
Obaseki, JSC, observed:

*“The amendments conferred jurisdiction which the courts exercising appellate jurisdiction did not have previously and took away jurisdiction it had previously. It altered the substantive law by giving C  
validity to judgments which would have been declared null and void. It did validate judgments that are already null and void”*

Was there any miscarriage of justice in the present case? It is the submission of learned counsel for the appellant that judgment was not given within the statutory period of 3 months from the date D  
of conclusion of evidence and final addresses. Final addresses were concluded on 22nd of May, 1992 and not on 1st of December, 1992 as the court below held. He contended further that the so called final addresses received outside the mandatory 3 months period for giving judgment could not be accepted as final addresses thus, circum- E  
venting the mandatory constitutional requirement and securing an illegal extension of the period. Learned counsel cited several cases in support among which are: UTIH V. ONOYIVWE (1991) 22 NSCC (pt.1) page 42; OBADIARU V. UYIGUE & ANOR (1986) 17 NSCC F  
(pt.1) page 439 and IFEZUE V. MBADUGHA (Supra). Learned counsel stated that it was the unanimous view of the Supreme Court in the latter case that any re-opening of a case after it had been set down for judgment can only be validly done before the 3 months time limit is up. G

The scenario in this case as borne out by the printed record of appeal is as follows: Hearing on the substantive suit commenced on the 3rd day of December, 1991. PW1 started his evidence on that date. He was cross-examined by the defendants on the 5th day of December, 1991. Mr. Ogunseitan, learned counsel for the plaintiff H  
had no re-examination for the PW1 and said that he closed the plaintiff’s case. Mr. Etuk, learned counsel for the 1st and 2nd defendants, said that he did not intend to call any witness. He rested his case and wanted a date for address. Chief Agbamuche SAN, coun-

sel for the 3rd defendant rested his case. He would not call any witness and that his address would be short. The case was adjourned to 17th January, 1992 for address. Written addresses were filed by learned counsel for the plaintiff, learned counsel for the 1st and 2nd defendants. Each adopted his written address on the 17th day of January, 1992. Learned counsel for the 1st and 2nd defendants offered additional oral argument in respect of the address filed. One Mr. Osayawe who stood in for Mr. Ogunseitan informed the trial court that his principal in chambers suddenly took ill and had been rushed to the hospital. He asked for a short date for their reply. This was confirmed by Chief Agbamuche, SAN. The case was adjourned to 7th February, 1992 for further address. On the 20th of February, 1992, the learned trial judge informed the learned counsel for the respective parties who were in court as follows:

D *“Court: I have a number of judgments in the pipeline. In view of the provisions of section 258(1) of the constitution as amended, it will not be prudent to take this address now. Adjourned 22nd May, 1992 for further address.”*

E On the 22nd May, Mr. Ogunseitan delivered his address. At the end of the address, the trial judge adjourned the case to 10th of September, 1992, for judgment. There is no record of what transpired on the 10th day of September, 1992. However, on the 29th day of September, 1992, the learned trial judge informed learned counsel for the respective parties in court, that:

F *“Court: I had been indisposed for sometime. Judgment is further reserved till 14th October, 1992.”*

G Judgment was finally reserved to 28th day of January, 1993 when it was delivered. Meanwhile, on the 28th day of January, 1992, the plaintiff filed an application on notice under the summons for directions praying that:

H *“the plaintiff be allowed to amend its writ of summons and statement of claim in the terms of Exhibits ‘A’ and ‘B’ attached to the affidavit.”*

The defendants filed counter-affidavits in opposition to the application and the proposed amendments. As at the time the application was filed, the plaintiff had closed its case. The defendants had indicated that they would not call any evidence. In effect, hearing of evidence had closed. The application was fixed for hearing on 7th of

February, 1992. The court's record does not show any proceeding or sitting on 7th February, 1992. In all other subsequent proceedings, this application was not taken including the 22nd of May, 1992, when learned counsel for the plaintiff proceeded with his oral address without recourse to his pending application to amend. When judgment was about to be delivered, Chief Ogunseitan filed another application praying for the following reliefs: B

*"1. Arrest of the judgment of this honourable court to be delivered on 29th October, 1992;*

*'2. To move the application on Notice under summons dated 28th January, 1992 and filed on 31st January, 1992, for amendment claiming the said sum of \$172,921.85 with interest at 12% from 1st August, 1983 until the total amount is paid."* C

The learned trial judge heard the two motions together (that is the motion dated 28th of October, 1992 seeking leave to move the earlier motion dated 28th January, 1992; and the earlier motion itself). He indicated that he would deliver his rulings on the applications along with the judgment in the substantive suit, in his ruling on the latter motion, the learned trial judge found as follows: D

*"From these submissions, it is apparent that all the parties concede that an application for amendment can be made at any stage of a trial, and before judgment. It is no more in doubt that parties are entitled to apply to amend their pleadings at anytime before judgment....."* E

*I am of the view that an application filed in court reading pending until it is disposed off either upon the court's decision thereon after the contest or upon its withdrawal or discontinuance by the Applicant. A court's decision may be either dismissed or striking out of the application. Where the application is dismissed, that puts an end to it. The applicant cannot resuscitate (sic) it. Where the application is struck out. The applicant can present to the court a fresh application on the same matter. In (sic) application cannot be said to be abandoned unless the applicant fails to attend the court to move it at its due date or the applicant specifically in force the court that he no longer intends to pursue it. In either case, the court ought to formally strike it out These matters are so elementary that I do not intend to waste time on them.* F

*It is trite law that a litigant should not be punished for the neg-* H

*ligence of his counsel. This principle of law in (sic) concisely stated in IDOCO and OTHERS VS. ENAROFIA and OTHERS (1980) N.S.C.C. vol. 12, 159 at 201 per ANIACOLO (sic), JSC.*

*I am myself, of the view that legal practitioners as human beings are susceptible to human errors in the performance of their duties. They are not like computers working perpetually without fall In accordance with a preact pattern. The principle enunciated (sic) by the Supreme Court in IBODO's case took into account this simple fact The plaintiffs learned counsel deposed to the fact that his failure to move his earlier motion was due to his inadvertance (sic). I applaud his candour and I accept his explanation. Following IDODO's case, I do hereby exercise my discretion in favour of granting the application dated 28th October, 1992. On the first issue, I rule that the application dated 28th January, 1992 was not abandoned and I hereby grant the leave required to move it."*

On the earlier motion seeking for leave to amend, the learned trial judge held, Inter alia:

*"I am of the view that granting the amendment prayed for in the plaintiff's application dated 28th January, 1992, will neither overreach the defendants nor result in any injustice to them, I accordingly grant the prayer and it is hereby ordered as prayed in that application."*

Thus, on the 22nd day of May, 1992, when Mr. Ogunseitan delivered his final address, there was a pending motion which was filed by him, The motion was not withdrawn or abandoned. It has not been moved as at then as well. It thus, remained pending in the records of the trial court. So, whether by default or design that the learned counsel who filed the motion refused, neglected or failed to move the motion and the trial court did not make any order on the motion in one way or the other, the motion must be deemed to be pending. As the motions were moved on the 1st day of December, 1992, and the motions and the substantive suit were adjourned to 28th of January, 1993 for rulings and judgment respectively. That, in my view must be taken to be the day when final addresses and other processes were closed and the 3 months period within which to deliver judgment on the substantive suit must be reckoned from that date. The delivery of the trial court's judgment on the 28th of January, 1993 was thus, done within the statutory time limit given by the



constitution. At any rate, the appellant has not shown that any miscarriage was caused to him by the delay. The duty to show that there was miscarriage of justice squarely rests on him. In the case of IGWE V. KALU (2002) 2 SCNJ 132, this court, per Uthman Mohammed, JSC, stated:

*“In any event where the statute says after the conclusion of evidence and the conclusion of addresses it does not inhibit a party from making any application which the procedure permits. Once such application is made and considered by the court the three months period would start from the date the court adjourns for judgment.”* <sup>B</sup>

I find support again in the case of MUSTAPHA V. GOVERNOR of LAGOS STATE (1987) 2 NWLR (pt 58) 39, where OBASEKI, JSC, emphasized the point: <sup>C</sup>

*“On the issue of the High Court delivering its judgment outside the period prescribed by S. 258(1) of the 1979 constitution, I found that the judgment of the High Court was delivered within the three months limit from the date of conclusion of the final address and as such there was no breach. The application by the respondent for amendment of their pleadings interrupted the period and made the period of three months to start running from the date of the amendment. The Court of Appeal erred in holding that there was non-compliance with the section”. (Underlining supplied for emphasis).* <sup>E</sup>

What is to be noted is that a pending application can interrupt the statutory period of three months within which to deliver judgment after conclusion of evidence and address. Where a party alleges miscarriage of justice then it rests on that party to establish the miscarriage. Where there is failure to so establish, as in this appeal, the appellate/reviewing court will find it difficult to declare that judgment a nullity. Thus, exactly, is the situation I find myself in this appeal. The appeal as found by my learned brother, Ogebe, JSC, lacks merit. I, too, dismiss it. I abide by the orders made in the leading judgment including order as to costs. <sup>F</sup>