

SUPREME COURT OF NIGERIA
29TH MAY, 2009. SC. 268/2002
CORAM:- A. I. KATSINA-ALU, A. M. MUKHTAR,
W. S. N. ONNOGHEN, F. F. TABAI,
C. M. CHUKWUMA-ENEH, JJSC

AGRO ALLIED DEVELOPMENT

ENT. LTD.

..... APPELLANT

AND

1. MV NORTHERN REEFER

2. CAPTAIN KARE J. LYGAS

..... RESPONDENTS

3. NORTHERN REEFER A/S

STATUTES - Construction - Primary concern - Is the ascertainment of intention of legislature - So where the language is clear & explicit - The words of a statute must not be overruled by judges (H1)

COMPANY LAW - Company in liquidation - Capacity to sue - S. 417 of CAMA - The party to seek & obtain leave before instituting an action - Is not the company - But the party commencing action against the company (H2)

COMPANY LAW - Company in liquidation - Pre-action leave - Applicable Court - In view of definition of court in s. 650 of CAMA - The applicable court is Federal High Court and none other (H3)

COMPANY LAW - Foreign companies - Provisions of CAMA - Applicability - In view of the definition of company in s. 264 thereof - The provisions of CAMA do not regulate the affairs of foreign companies (H4)

COMPANY LAW - Foreign companies - Capacity to sue & be sued - By the provisions of s. 60 (b) of CAMA a foreign company can sue & be sued - In its own name (H5)

FACTS

The plaintiff/appellant sued the defendants/respondents claiming the sum of US \$2,500,000.00 (two million, five hundred thou-

sand Dollars) as special and general damages arising from contract of carriage of goods and for negligence. Though the claim is stated to be against the respondents jointly and severally, it is in rem against the 2nd and 3rd respondents. On being served with the processes, respondents brought an application praying for either an order dismissing the action or discharging the order of arrest of the 1st respondent.

The application was dismissed whereupon the respondents appealed to the Court of Appeal. Subsequently, respondents brought another application praying for sundry orders meant, *inter alia*, to enable them to compile the Record of Appeal for the purpose of the said appeal. Appellant objected to this application on the ground that the 1st respondent, being a company under liquidation needed to have sought and obtained leave of court before it could bring the application unders. 417 of the CAMA. The Court of Appeal overruled the objection and granted the application. Dissatisfied, appellant has brought this appeal against the ruling of the Court of Appeal.

ISSUE FOR DETERMINATION

“Whether the third defendant requires leave of court to appeal pursuant to section 417 Companies and Allied Matters Act Cap 59, LFN 1990, as a condition for its appeal to the Court of Appeal.”

HELD (Unanimously dismissing the appeal per **ONNOGHEN JSC**)
STATUTES - Construction - Primary concern

1. It is now settled that:-

“In the area of construction, the primary concern of the courts is the ascertainment of the intention of the legislature or law makers. From this function, the court may not reside however ambiguous or difficult of application the words of the law or Act may be, the court is bound to place some meaning upon them. If the language is clear and explicit, the court must give effect to it, for in that case, the words of the statute speak the intention of the legislature. Its function is jus dicere not jus dare. The words of a statute must not be overruled by the judges” per OBASEKI, JSC, in Ojokolobo vs Alamu (1987) 3 NWLR (Pt.61) 317 at 402. (p.1175 B)

Company in liquidation - Capacity to sue

2. The prohibition contained in section 417 of CAMA is rather against the plaintiff/appellant and for the benefit of the defendant mentioned therein.

It is very clear from the above provision that the party to seek and obtain the leave of the court before proceeding with or commencing an action against a company for which a provisional liquidator has been appointed or a winding-up order made, is the party who intends to proceed with or commence the action, not the other way round. (p. 1175 G)

Company in liquidation - Pre-action leave

3. It is however, very clear from the decision of this court in the case of FMBN vs NDIC (1999) 2 NWLR (Pt.591) 333 at 365 and the provisions of section 650 of CAMA which defines the word “Court” as used in section 417 of CAMA that the “Court” whose leave is required before proceeding with or commencing any action against a company in liquidation or under a winding-up order is the Federal High Court, not any other court like say the Court of Appeal or Supreme Court. In the instant case, the application, and the appeal on which it was made, were before the Court of Appeal, not the Federal High Court. It is therefore clear again that the provision of section 417 of CAMA is inapplicable to the facts of this case. (p. 1177 C)

Foreign companies - Provisions of CAMA - Applicability

4. It is very clear therefore that the 3rd defendant/respondent not being a Nigerian company or company falling within the definition of section 264 (1) of CAMA, its affairs are not regulated by the provisions of CAMA. The definition of “Company” in section 650 of CAMA puts the matter beyond doubt. It defines “Company” or “Existing” companies”. To mean “....a company formed and registered under this Act or, as the case may be formed and registered in Nigeria before and in existence on the commencement of this Act”. (p. 1178 B)

Foreign companies - Capacity to sue & be sued

5. The 3rd defendant being a foreign company, as it is not a Nigerian company as defined in section 650 of CAMA, the provisions of sec-

tion 417 of CAMA do not regulate its affairs and that by the provisions of section 60 (b) of CAMA, the 3rd defendant/respondent can sue and be sued in its own name and can maintain such an action or proceeding. (p. 1178 D)

B **NOTABLE POINT OF INTEREST**
ONNOGHEN JSC

S. 417 of CAMA is akin to constitutional immunity

1. The provision is very much like the constitutional immunity granted the President/Vice President Governor and Deputy Governor against suits and prosecution during their tenure of office which does not prevent or incapacitate the President/Vice President or Governor and Deputy Governor from instituting action against anybody for any wrong or claim of right during their said tenure of office. (p. 1176 E)

D **CASES REFERRED TO**

CO-OPERATIVES AND COMMERCE BANK (NIG.) LTD. VS ALEX O. ONWUCHEKWA (Pt.647) (2000) 3 NWLR 65

N.D.I.C vs FMB (Pt.490) (1997) 2 NWLR 735 at 757-758

E Abekhe vs NDIC (Pt.406) (1995) 7 NWLR 228

Ojokolobo vs Alamu (1987) 3 NWLR (Pt.61) 317 at 402

Onwuchekwa vs. NDIC (2002) 5 NWLR (Pt.760) 371 at 391

Tinubu vs IMB Securities Plc (2001) 16 NWLR (Pt.740) 670 at 721-722

F FMBN vs NDIC (1999) 2 NWLR (Pt.591) 333 at 365

EKEOGU v ALIRI (1991) 3 NWLR (Part 179) 258

UDOH v O.H.M.B. (1993) 7 NWLR (Part 304) 139

G **REPRESENTATION**

No appearance for the appellant

Oluseye Opasanya Esq., for the respondent

LEAD JUDGMENT BY ONNOGHEN JSC

H This is an appeal against the ruling of the lower court delivered on the 7th day of May, 2001 in appeal NO. OA/L/102/2000 in which the court granted the application of the present respondents who were the appellants/applicants before that court, in the following terms:-

“(1) leave is hereby granted to the applicants to amend their Notice of Appeal dated 29th July, 1999;

(2) time to apply for leave to appeal on grounds of mixed law and fact is extended till today;

(3) leave is hereby granted to appeal on grounds of mixed law and fact; B

(4) the Amended Notice of appeal shall be filed within 14 days from today;

(5) the appeal shall be heard on the bundle of documents marked “Record Of Appeal” filed in this court’s registry on 7th March, 2000 and such other documents the respondent may be advised to file within 21 days from today; C

(6) the said Record of Appeal filed on 7th March, 2000 are hereby deemed to be properly filed”.

The appellant, who was the respondent at the lower court is D dissatisfied with the above ruling and has consequently appealed to this court.

The facts of the case include the following:-

The plaintiff, who is the present appellant and respondent in the lower court instituted an action against the present respondents at the trial court claiming the sum of \$2,500,000.00 as special and general damages arising from the breach of contract of carriage of goods and for negligence relating to a cargo of frozen fish evidence by seven bills of lading issued by or on behalf of the present respondents, then defendants. Though the claim is stated to be against the defendants/respondents jointly and severally, as against the 1st defendant/respondent i.e. MV Northern Reefer, it is in rem and in personam as against the 2nd and 3rd defendants/respondents. F

Following the service of the processes on the defendants, the G defendants/respondents filed an application in the trial court praying for the following reliefs:-

(a) An order dismissing or in the alternative striking out this action or alternatively,

(b) An order discharging the order of arrest of the 1st defendant H

The application was dismissed by the trial court resulting in an appeal to the lower court, by the present respondents.

In the course of the proceedings in the lower court in respect

of the said appeal, the present respondents, who are the appellants before that court, brought an application praying the court for the following orders:-

- i. *An order granting leave to the appellants to amend their Notice of Appeal dated 29th July, 1999.*
- B ii. *An order for extension of time to apply for leave to appeal on grounds of mixed law and fact.*
- iii. *An order for leave to appeal on grounds of mixed law and fact.*
- C iv. *An order for extension of time within which to appeal*
- v. *An order directing a departure from the Rules of this honourable court to enable the appellants compile the Records of Appeal may be heard.*
- D vi. *An order deeming as properly filed and served the said Records of Appeal filed on 7th March, 2000.*
- vii. *An order of accelerated hearing of the appeal herein and abridging of time within which parties may file their briefs of argument in this appeal”.*

E The present appellant opposed the application on the ground that the application is incompetent as the applicant is said to be under liquidation necessitating the obtaining of the leave of the court under the provisions of section 417 of the Companies and Allied Matters Act (C.A.M.A).

F The ruling of the lower court, the terms of which had earlier been reproduced in this judgment is the reaction of the lower court to the application of the respondents.

G By the appellant brief of argument filed on the 12th day of November, 2002, the learned senior counsel for the appellant Jimi Oduba Esq., SAN, identified four issues for the determination of the appeal. There are as follows:-

- "i. Does liquidation of a company rob it of a right to bring an Appeal/Application without leave with regard to section 417 of the Companies and Allied Matters Act?
- H ii. *Should the Court of Appeal have granted the prayers of the respondent herein before it without considering whether the 3rd applicant before it had sought leave to continue the Appeal/Application?*
- iii. *Did the Court of Appeal in its Ruling give effect to the prin-*

ciple of law enunciated in CO-OPERATIVES AND COMMERCE BANK (NIG.) LTD. VS ALEX O. ONWUCHEKWA (Pt.647) (2000) 3 NWLR 65.

iv. Was the Court of Appeal right in stating that only the vessel was a necessary party to the Appeal”.

On the other hand, Oluseye Opasanya, Esq., counsel for the respondents, submitted a single issue for determination in the respondents’ brief filed on the 27th day of March, 2003. The issue is as follows:-

“Whether the third defendant requires leave of court to appeal pursuant to section 417 Companies and Allied Matters Act Cap 59, LFN 1990, as a condition for its appeal to the Court of Appeal”.

I hold the considered view that having regards to the facts of this case relevant to the appeal and the decision of the lower court on appeal to this court, the single issue formulated by learned counsel for the respondents is the real issue in controversy between the parties. Every other issue or sub-issue begs the question; it is clear that it is a realization of the above that made the learned senior counsel for the appellant, in arguing the issues, to treat or argue his purported four issues together.

In arguing the issue under consideration, learned senior counsel for the appellant stated that the fact that the 3rd defendant, Northern Reefer A/S, the owner of the vessel MV Northern Reefer, the 1st defendant went into bankruptcy in the course of the proceedings is not in dispute but submitted that as a result of the said bankruptcy of the 3rd defendant, no action or proceedings *“shall be proceeded with or commenced against the company except by leave of court given on such terms as the court may impose”* relying on the Court of Appeal decision in the case of The C.C.B Nig Ltd. vs Onwuchekwa (Pt.647) (2000) 3 NWLR 65 at 74 being that court’s interpretation of the provisions of section 417 of the Companies and Allied Matters Act Capt. 59, laws of the Federation of Nigeria, 1990 (CAMA); that the leave so required is a pre-condition to the continuance of any action by the company that has been wound up; that since the respondents did not obtain the leave of the court before presenting the application to amend the notice of appeal, the resulting proceeding thereon is a nullity, relying on the case of N.D.I.C vs FMB (Pt.490) (1997) 2 NWLR 735 at 757-758 and Abekhe vs NDIC (Pt.406)

1174 Agro Allied Ltd v. MV N. Reefer (2009) 5 KLR Onnoghen JSC (1995) 7 NWLR 228. I must observe that the way learned senior counsel for the appellant cites cases is rather strange and unorthodox. The normal way we cite cases is to cite the name of the case (parties), the year it was reported, the particular volume of the report and the part of the report (book) where the case is reported; and the
B page on which it is reported. For instance: Abekhe vs NDIC (1995) 7 NWLR (Pt.406) 228 not Abekhe vs NDIC (Pt.406] (1995) 7 NWLR 228!!

The learned senior counsel then proceeded to discuss the principles that the court would consider in deciding whether to grant
C leave or not under section 417 of CAMA and concluded that the failure of the 3rd defendant/appellant before the Court of Appeal to obtain leave rendered the continuation of the appeal before that court incompetent and urged the court to resolved the issue in favour
D of the appellant and allow the appeal.

On his part, learned counsel for the respondents submitted that the provisions of the Companies and Allied Matters Act, CAMA, are not applicable to this case because:

*(a) the 3rd defendant/respondent being a foreign company its
E affairs are not regulated by the provisions of CAMA, relying on sections 264(1), and 650 of CAMA;*

*(b) that the provisions of section 417 of CAMA do not require
F a company in liquidation to obtain leave of court before it can proceed with an action but that it requires leave in order for an action to be proceeded with or commenced against the 3rd defendant/respondent; that since the 3rd defendant was one of those that were the appellants in the lower court the situation contemplated by section 417 of CAMA does not arise. Learned counsel then cited and relied
G on the decision of this court in Onwuchekwa vs NDIC (2002) 5 NWLR (Pt. 760) , 371 at 393 and submitted that there is nothing in the said section 417 preventing the company in question from proceeding with action or proceeding against another person.*

Learned counsel finally urged the court to hold that the lower
H court was right in its ruling and resolve the issue against the appellant and dismiss the appeal.

Section 417 of CAMA, the interpretation of which is the bone of contention between the parties provides as follows:-

“If a winding-up order is made or a provisional liquidator is

appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court given on such terms as the court may impose.”

It is settled law that the duty of the courts is simply to interpret the law or constitution as made by the legislature or the framers of the constitution. It must therefore, be borne in mind always that the courts cannot amend the constitution or statute neither can they change the words used in drafting same.

From the reproduced section 417 of CAMA supra, it is considered view that the provision is very clear and Unambiguous. **It is now settled that:-**

“In the area of construction, the primary concern of the courts is the ascertainment of the intention of the legislature or law makers. From this function, the court may not reside however ambiguous or difficult of application the words of the law of Act may be, the court is bound to place some meaning upon them. If the language is clear and explicit, the court must give effect to it, for in that case, the words of the statute speak the intention of the legislature. Its function is jus dicere not jus dare. The words of a statute must not be overruled by the judges” per OBASEKI, JSC, in Ojokolobo vs Alamu (1987) 3 NWLR (Pt.61) 317 at 402.

Bearing the above words of wisdom in mind particularly as the words used in section 417 of CAMA are very clear and unambiguous; I hold the view that they ought to be given their plain and simple meaning as the said words speak for themselves particularly as they clearly demonstrate the intention of the framers of the statute which is clearly not to place any disability on the company mentioned under section 417 of CAMA from instituting or continuing any civil action against any person or persons during their bankruptcy or liquidation. ***The prohibition contained in section 417 of CAMA is rather against the plaintiff/appellant and for the benefit of the defendant mentioned therein.***

It is very clear from the above provision that the party to seek and obtain the leave of the court before proceeding with or commencing an action against a company for which a provisional liquidator has been appointed or a winding-up order made, is the party who intends to proceed with or com-

mence the action, not the other way round. In the instant case, it is the appellant who is the plaintiff at the trial court that ought to seek and obtain leave of the court before proceeding further with the action at the trial court following the initiation of the process of liquidation of the 3rd defendant. The appellant is, however, not looking
B at the competence of his action against the 3rd defendant in the circumstances of this case but the competence of the appeal/application by the 3rd defendant.

However, the law on the point has been settled by this court in the case of Onwuchekwa vs. NDIC (2002) 5 NWLR (Pt.760) 371
C at 391 per AYOOLA, JSC where he stated thus:

*“There is nothing in section 417 which prohibits such company as is described in the section from proceeding with action or proceedings against another person. What that section prohibited
D subject to leave of the court is proceeding with action or proceeding against the company”.*

In other words, the company as in this case, the 3rd defendant, does not need leave of court to proceed with action or proceeding against another company or person in this case, the appellant by way of the appeal. The provision is very much like the constitutional immunity granted the President/Vice President Governor and Deputy Governor against suits and prosecution during their tenure of office which does not prevent or incapacitate the President/Vice President or Governor and Deputy Governor from instituting action
F against anybody for any wrong or claim of right during their said tenure of office:- see section 308 of the 1999 Constitution and Tinubu vs IMB Securities Plc (2001) 16 NWLR (Pt.740) 670 at 721- 722 where AYOOLA, JSC, expressed the following view:-

*“Thirdly, I am unable to construe a provision of the Constitution that granted an immunity such as section 308(1) as also constituting a disability on the person granted immunity when there is not provision to that effect, either expressly or by necessary implication in the enactment If makers of the Constitution had wanted to prohibit a person holding the offices stated in section 308 from instituting of continuing action instituted against any other person during his period of office, nothing would have been easier to provide expressly that:-
H*

‘no civil or criminal proceeding shall be instituted against any

person by a person to whom this section applies during his period of office and no civil or criminal proceedings shall be instituted or continued against such a person during his period in office'

Or in like terms. The makers of the Constitution in their wisdom did not so provide".

It should also be noted that section 417 of CAMA talks of leave of the court. The question is which court? The learned counsel for the respondents has submitted that the relevant court is the Federal High Court not the Court of Appeal or any other court. On the other hand, the learned senior counsel for the appellant has filed no reply brief in relation to the respondents' position, thus denying this court the benefit of his reaction to the submission.

It is however, very clear from the decision of this court in the case of FMBN vs NDIC (1999) 2 NWLR (Pt.591) 333 at 365 and the provisions of section 650 of CAMA which defines the word "Court" as used in section 417 of CAMA that the "Court" whose leave is required before proceeding with or commencing any action against a company in liquidation or under a winding-up order is the Federal High Court, not any other court like say the Court of Appeal or Supreme Court. In the instant case the application and the appeal on which it was made was before the Court of Appeal, not the Federal High Court. It is therefore clear again that the provision of section 417 of CAMA is inapplicable to the facts of this case.

Thirdly, it is the contention of learned counsel for the respondents that the 3rd defendant/respondent being a foreign company is not bound or affected by the provisions of section 417 of CAMA. As stated earlier in this judgment, the appellant filed no reply brief to counter the submission of counsel for the respondents on the issue. That notwithstanding, the issue is very much relevant and is worthy of consideration.

There is no doubt and which parties are agreed, that the 3rd defendant/respondent is a foreign company; it is not a Nigerian company. The question is whether being a foreign company its affairs are regulated by the provisions of CAMA.

Section 624(1) of CAMA provides as follows:-

"(i) Except as otherwise provided this Part A of this Act shall apply to:

- (a) all companies formed and registered under this Act;
- (b) all existing companies;
- (c) all companies incorporated formed or registered under other enactments; and
- (d) unregistered companies”.

B The question that follows is:-

“*What is Part A of CAMA*”. The answer is simply the provisions of the Act - CAMA - falling within sections 1-651 which clearly includes section 417 - supra. ***It is very clear therefore that the 3rd defendant/respondent not being a Nigerian company or company falling within the definition of section 264 (1) of CAMA, its affairs are not regulated by the provisions of CAMA. The definition of “Company” in section 650 of CAMA puts the matter beyond doubt. It defines “Company” or “Existing” companies”. To mean “.....a company formed and registered under this Act or, as the case may be formed and registered in Nigeria before and in existence on the commencement of this Act”.***

It is my considered view that ***the 3rd defendant being a foreign company, as it is not a Nigerian company as defined in section 650 of CAMA, the provisions of section 417 of CAMA do not regulate its affairs and that by the provisions of section 60 (b) of CAMA, the 3rd defendant/respondent can sue and be sued in its own name and can maintain such an action or proceeding.***

F In whatever angle one looks at the issue under consideration, it is clear that the issue fails and is consequently resolved against the appellant.

G In conclusion, I hold the considered view that the appeal is without merit and is consequently dismissed with N50,000.00 (fifty thousand naira) costs in favour of the respondents.

Appeal dismissed.

H **KATSINA-ALU JSC**

I have read before now the judgment delivered by my learned brother Onnoghen JSC. in this appeal. I entirely agree with it. And for the reasons which he has given, which I adopt as mine, I also dismiss the appeal with N50,000.00 costs in favour of the respon-

dents.

MUKHTAR JSC

I have read in advance the lead judgment delivered by my learned brother Onnoghen JSC. I am in full agreement with the reasoning and conclusion reached in the judgment that the appeal has no merit and should be dismissed. I also dismiss the appeal in its entirety and abide by the consequential orders made in the lead judgment.

TABAI JSC

I read, in draft, the lead judgment of my learned brother Onnoghen JSC and I agree entirely with his reasoning and conclusion that the appeal lacks merit. By way of emphasis, I wish to comment briefly on the single issue proposed by the Respondent and which issue, in my view, effectually determines the appeal. And the issue is:

“Whether the third defendant requires leave of court to Appeal pursuant to Section 43.7 of the Companies and Allied Matters Act, Cap 59 Laws of the Federation of Nigeria as a condition for its appeal to the Court of Appeal.”

It is significant to note that the action culminating in the appeal was initiated at the Federal High Court Lagos on or about the 28/5/99 with the Appellant herein as the Plaintiff and the Respondents herein as the Defendants. The claim against the Defendants/Respondent was for *“the sum of US\$2,500,000.00 being special and general damages arising out of the breach of contract of carriage and or negligence relating to a cargo of frozen fish evidenced by seven bills of lading issued by or on behalf of the defendants and of which the Plaintiff is endorsee.”*

Following an ex parte motion dated the 27th of May 1999 but filed on the 28th of May 1999 ordered the arrest of the 1st respondent Vessel "MV NORTHERN REEFER. By the motion dated 2nd of June 1999, the Defendant/Respondent prayed the court for an order dismissing or in the alternative striking out the action; or in the further alternative an order discharging the order of arrest of the 1st Defendant/Respondent. This application was dismissed in the courts ruling on the 16th of July 1999.

The Defendants/Respondents were dissatisfied and filed a Notice of Appeal on the 29th of July 1999. By a motion filed on the 11th of May 2000 they prayed for seven reliefs amongst which were for an order for leave to amend the Notice of Appeal filed on the 29th of July 1999, extension of time to seek leave to appeal on grounds
 B of mixed law and facts, leave to appeal and extension of time within which to appeal. The Plaintiff who was the Respondent at the Court below opposed the application and filed a 12 paragraph counter-affidavit. The ground for the opposition was that the applicant was
 C under liquidation and was by reason thereof disentitled from making the application in view of the provisions of Section 417 of the Companies and Allied Matters Act In its ruling on the 7th of May 2001 the lower Court overruled the objection and granted practically all the reliefs sought.

D This appeal is against that ruling. I have earlier above reproduced the single issue for determination. The contention of Chief Jimi Oduba SAN for the Appellant is that by virtue of the provisions of section 1417 of the Companies and Allied Matters Act Cap 59
 E Laws of the Federation of Nigeria 1990, the Respondents could not make the application without the leave of court first sought and obtained. In the Respondents' Brief Mr. Oluseye Opasanya submitted that under Section 417 of the Act It is the party which intends to proceed with or commence action against a company for which
 F provisional liquidator has been appointed or a winding up order made that is required to obtain the leave of court.

I am with respect persuaded by the argument of learned counsel for the Respondents. Section 417 of the CAMA says:

G *"If a winding-up order is made or a provisional liquidator is appointed no action or proceeding shall be proceeded with or commenced against the company except by leave of the Court given on such terms as the court may impose."*

H This provision is clear to me and should be accorded its ordinary grammatical meaning. See EKEOGU v ALIRI (1991) 3 NWLR (Part 179) 258; UDOH v O.H.M.B. (1993) 7 NWLR (Part 304) 139. A careful reading of the provision clearly shows that the obligation to seek leave is not on the company in respect of which a winding-up order is made or a provisional liquidator is appointed but on the person who intends to commence action or proceedings against the

company. In the instant case therefore the obligation to seek leave was on the Plaintiff/Appellant if the Defendants/Respondents were in liquidation at the time the suit was filed on or about the 28th of May 1999.

For the foregoing reasons and the fuller reasons expressed in the lead judgment of my learned brother Onnoghen JSC, I also dismiss the appeal for lack of merit. I also abide by the order on costs contained in the lead judgment.

CHUKWUMA-ENEH JSC

I have had the advantage of reading in advance the lead judgment of my learned brother Onnoghen JSC, affirming the decision of the lower court in this matter.

I agree with him that there is no merit in the appeal against that decision hence it should be dismissed. I too dismiss it and abide by the orders contained in the said lead judgment.

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