

SUPREME COURT OF NIGERIA

8TH MAY, 2009, SC. 67/2005

**CORAM:- N. TOBI, G. A. OGUNTADE, M. MOHAMMED,
I. F. OGBUAGU, J. O. OGEBE, JJSC**

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| 1. TUNJI GOMEZ | RESPONDENTS/ |
| 2. SUP. GEN. H. OLA HANNU-MOIET) | APPLICANTS |
| AND | |
| 1. CHERUBIM AND SERAPHIM SOCIETY | |
| 2. BOLA ADEWUJA | APPELLANTS/ |
| 3. TITLOLA OJIKUTU OSHODE | RESPONDENTS |
| 4. TRUSTEES OF THE CHERUBIM
AND SERAPHIM SOCIETY | |
| 5. REMI BECKLEY | |
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ORDERS OF COURT - Nature of - Whether interlocutory or final -
Applicable test - The test varies in accordance with the court that
gave the order - Whether it is court of trial or appellate court (H1)

ORDERS OF COURT - Nature of - Court of Appeal's order for fur-
ther hearing - It is an interlocutory order - As it did not determine the
suit finally (H2)

APPEALS - Competence - Time within which to appeal - Where an
appeal is interlocutory - As is the instant appeal - It ought to be brought
within 14 days - Or it will be incompetent (H3)

FACTS

The plaintiffs/respondents/applicants had sued the defendants/
appellants/respondents before the Federal High Court, Lagos. Appli-
cants were by that suit challenging the enthronement of two persons
who were in succession proposed to be head of the 1st respondent
society. Subsequently, applicants made three applications for inter-
locutory injunction to the same end. While the suit and the applica-
tions were pending, one of the proposed persons was enthroned.
Applicants brought another application to have the enthronement set
aside.

In reaction, respondents brought an application to have the

applicants suit and applications struck out. The court obliged in part by striking out the said pending applications. The applicants appealed to the Court of Appeal against the striking out, which court allowed the appeal on 29/04/2003. But on 11/07/03 the respondents purported to appeal against the said order of the Court of Appeal made on 29/04/03, whereupon the applicants brought the instant application urging that the appeal be struck out for being time barred.

ISSUE FOR DETERMINATION

"Whether the judgment of the court below was final or interlocutory having regard to section 27(2)(a) of the Supreme Court Act, Cap 515, Laws of the Federation, 2004"

HELD (Unanimously granting the application and striking out the appeal per **OGUNTADE JSC**)

ORDERS OF COURT - Nature of - Applicable test

1. It is to be emphasized here that the test to be used in determining whether an order is final or interlocutory varies depending on the order of which court - the court of trial or an appellate court is being considered. (p. 1220 D)

Nature of Court of Appeal's order for further hearing

2. In the light of what has been said above it seems to me that the order as made in this case by the court below is plainly an interlocutory order. The trial court had ordered that the plaintiff/applicants' three applications be struck out. But on appeal the court below in its judgment set aside the order striking out the plaintiffs/applicants' application and granted an interlocutory injunction. With that order, the court below sent the dispute brought before it back to the High Court for further hearing. It did not determine the suit finally. (p. 1223 B)

APPEALS - Competence - Time within which to appeal

3. I must conclude therefore that the appeal before this Court is interlocutory in nature and the defendants/respondents should have brought it within 14 days. Not having done so, the appeal in my view is incompetent. It is accordingly struck out. (p. 1225 D)

NOTABLE POINT OF INTEREST**TOBI JSC**

1. A decision is final if it brings to an end the rights of the parties

A decision is final if it brings to an end the rights of the parties. In other words, a decision is final if it disposes of the subject matter of the litigation or controversy to the extent that there is nothing left after the judgment of the Court. Where a decision is not final, it is interlocutory, as it is given in the process of the litigation which is transient and intermediate. (p. 1227 A)

REPRESENTATION

A. O. Okeaya-Inneh S.A.N. (Mr. Ukuwelah Oghie, with him) for the Respondents/applicants

Dr. O. F. Ayeni (Mr. O. Fadare with him) for the Appellants/respondents.

CASES REFERRED TO

Owoh & Ors v. Chief Kingston U. Asuk & Anor. [2008] 4-5 S.C. (Pt 1) page 155

Akinsanya . v. U.B.A. [1986] 4 NWLR (Pt. 35) 275

Iwueke v. Imo Broadcasting Corporation [2005] 17 NWLR (Part 955) 447 at 468-469

Western Steel Works Ltd. & Anor, V. Iron and Steel Workers of Nigeria [1986] 3 NWLR (Pt.30) 617

Ogunlimehin v. Omotoye [1957] 2 FSC 56

Afuwape v. Shodipe [1957] SCNLR 265

Ude v. Agu [1961] 1 ALL NLR 65,

Ehet v. Kassim [1966] NMLR 123

Omonuwa v. Oshodin [1985] 2 NWLR (Pt. 10) 924

Akimanya v. U.B.A. Ltd. (1986) 4 NWLR (Pt. 35) 273

Ifediora v. Ume [1988] 2 NWLR (Pt. 74) 5

STATUTE REFERRED TO

Supreme Court Act, Cap 515, Laws of the Federation of Nigeria, 2004, s. 27 (2) (a)

LEAD JUDGMENT BY OGUNTADE JSC

The applicants in this application are also the respondents in an appeal brought before this Court by the respondents. Before the Federal High Court Lagos in suit No. FHC/4/CS/651/97. the applicants were the plaintiffs. They had brought their suit to challenge the enthronement of two persons who were in succession proposed to be the head of the Cherubim and Seraphim Society, that is, the 1st respondent in this application. The case was allowed to stagnate, and the present applicants believing that the respondents might do the act which they had sought to restrain by their suit filed in succession three applications praying for interlocutory injunction. These applications were not heard. However on 10-6-2000, at a time when the suit and the applications filed by the applicants were still pending, the respondents ordained and installed the 2nd respondent in this application as the head of the 1st respondent church. In reaction, the applicants brought yet another application on 21-06-2000 praying for an order that the ordination of the 2nd defendant/respondent as the spiritual head of the 1st defendant/respondent be set aside. In reaction the defendants/respondents brought an application that the suit filed by the applicants/plaintiffs be struck out.

The trial court partially acceded to the request of the defendants/respondents.

The applications filed by the plaintiffs/respondents were struck out. The 1st plaintiff/respondent was dissatisfied with the ruling of the trial court. He brought an appeal before the court below. The court below in its judgment allowed the appeal and concluded its judgment in these words:

“When it is realized that the main aim of an application for interim injunction is to protect the plaintiff against injury by violation of his right for which he could not be compensated in damages then an application praying for an order of court to restrain any ordination of a Supreme Head before cannot but be regarded as proper and not an abuse of court process. If regarded otherwise, the substratum of any case, would have been destroyed before trial. It is for this reason that I am of the firm view that issue No. 2 must be answered in the negative and I so answer it. The result is that this appeal is in my view, very meritorious. It is allowed. The ruling of the court below delivered on 7th December, 2000 is hereby set aside. In its place

having reviewed the printed evidence I am clear in my mind that the 2nd defendant/respondent be restrained and he is hereby restrained from parading himself or acting in anyway as the spiritual head of the 1st defendant/respondent until the afore-mentioned motions struck-out which are hereby re-listed are heard. ”

It is worth mentioning here that the plaintiffs/applicants suit wherein they contested the right of the defendants/respondents to choose a spiritual head for the 1st respondent has not been heard. What the court below decided in the appeal before it was the issue whether or not it was proper for the trial court to strike out the applications by the plaintiffs/applicants seeking to restrain the respondents from filling the position of the spiritual head of the 1st respondent while the suit remained to be determined. In the discussion of the issues in this application, it ought therefore to be borne in mind that the cause of the dispute between the parties has not been pronounced upon. The effect of the judgment of the court below was to protect the *Res* in dispute.

The respondents in this application are the appellants in the appeal before this Court, which appeal is for getting a reversal of the judgment of the court below given in an interlocutory appeal to it. The applicants/respondents who were the plaintiffs in the trial court by their present application wish that the said appeal be struck out. The grounds relied upon for bringing the application read:

“(a) Wherein section 27(2)(a) of the Supreme Court Act Cap. 515 Laws of the Federation 2004 provides thus:

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

(a) In an appeal in a civil case, fourteen days in an appeal against an interlocutory decision and three months in an appeal against a final decision.’

(b) This being an appeal against an interlocutory order of the Court of Appeal made on the 29th day of April, 2003, the Notice thereof ought to have been filed within FOURTEEN DAYS of the order.”

Now, the judgment of the court below appealed against before this court was given on 29-04-03. The appeal was filed on 11-07-03. If the appeal of the respondents/appellants was from an interlocutory decision of the court below, it ought to have been brought

within 14 days of the judgment of the court below. But this appeal was brought after 14 days on the basis that the judgment of the court below was a final order.

The simple issue to be decided on this application is whether the judgment of the court below was final or interlocutory having regard to section 27(2)(a) of the Supreme Court Act, Cap 515, Laws of the Federation, 2004.

The applicants' counsel, Mr. A. O. Okeaya-Ineh SAN argued that his objection was premised on the decision of this Court in *Owoh & Ors... v. Chief Kingston U. Asuk & Anor.* [2008] 4-5 S.C. (Pt. 1) page 155. He urged us to strike out the appeal as incompetent

Dr. O. F. Ayeni, of counsel for the respondent referred us to *Akinsanya v. U.B.A.* (1986) 4 NWLR (Pt. 35) 275; *Iwueke v. Imo Broadcasting Corporation* (2005) 17 NWLR (Part 955) 447 at 468-469 and *Western Steel Works Ltd. & Anor, V. Iron and Steel Workers of Nigeria* (1986) 3 NWLR (Pt.30) 617 and urged us to dismiss the application.

The question whether an order appealed against is a final or interlocutory for the purpose of determining the period of time within which an appeal against it is to be brought as provided under Section 27(2)(a) of the Supreme Court Act Cap. 515 Laws of the Federation 2004 is always a difficult one. It has in the process of time attracted conflicting decisions. In *Owoh & Ors. v. Asuk & Anor.* (*supra*) on which the applicant's counsel relied, the facts were these:

The appellants were the plaintiffs in an action they instituted at the High Court of Rivers State. They had sought some declaratory and injunctive reliefs in respect of a Chieftaincy dispute. The appellants in the course of the hearing of the case indicated that they were no longer pursuing their claim as parties had agreed on terms of settlement. Counsel for the parties filed the terms of settlement. The learned trial judge refused to make the terms of settlement the judgment of the court as the same was signed not by the parties themselves but by their counsel. He ended by striking out the suit. The defendants were dissatisfied with the order. They brought an appeal against it before the Court of Appeal. The Court of Appeal allowed the appeal and entered judgment in accordance with the terms of settlement filed by the parties. The plaintiffs were dissatisfied with the decision of the Court of Appeal and they brought an appeal before

this Court. They raised as their first issue the question whether or not the appeal to the Court of Appeal was timely brought since as contended by them, it was an interlocutory appeal and not a final appeal.

This Court in the lead judgment per Mohammed JSC reasoned that since the order of the trial court had not made a final pronouncement on the rights of parties in accordance with the claims brought before the court by the plaintiffs, the order striking out the appeal was interlocutory order and that an appeal against it should have been brought within 14 days. On this basis this Court allowed the appeal and came to the conclusion that the judgment of the Court of Appeal was given without jurisdiction. This Court at pages 167-169 reasoned thus-

‘Therefore, the interpretation given to the words ‘interlocutory’ or final’ in several decisions of this court is that if the order, decision or judgment of a court finally and completely determines the rights of the parties in the case, it is a final decision. However, where the order, decision or judgment of a court does not finally and completely determine the respective rights of the parties submitted for determination by the court in the case, it is an interlocutory decision only. These cases have also generally decided that in order to determine whether the decision is final or interlocutory, the decision must relate to the subject matter in dispute between the parties and not the function of the court making the order or decision. In other words, the determining factor is not whether the court has finally determined an issue but it is whether or not it has finally determined the rights of the parties in the claim before the court. See Ogunlimehin v. Omotoye (1957) 2 FSC 56; Afuwape v. Shodipe [1957] SCNLR 265; Ude v. Agu [1961] 1 ALL NLR 65, Ebet v. Kassim [1966] NMLR G 123; Omonuwa v. Oshodin [1985] 2 NWLR (Pt. 10) 924; Akimanya v. U.B.A. Ltd. (1986) 4 NWLR (Pt. 35) 273; Ifediora v. Ume [1988] 2 NWLR (Pt. 74) 5 and Igunbor v. Afolabi [2001] 5 S.C. (Pt.1) 105; [2001] 11 NWLR (Pt. 723) 148 at 165, where Karibi-Whyte, stated the position of the law in this respect as follows:-

‘A final order or judgment at law is one which brings to an end the rights of the parties in the action. It disposes of the subject matter of the controversy or determines the litigation as to all parties on the merits. On the other hand, an interlocutory order or judgment is one

given in the process of the action or cause, which is only intermediate and does not finally determine the rights of the parties in the action. It is an order which determines some preliminary or subordinate issue or settles some step or question but does not adjudicate the ultimate rights of the parties in the action. However, where the order
 B made finally determines the rights of the parties, as to the particular issues disputed, it is a final order even if arising from an interlocutory application. For instance, an order of committal for contempt arising in the course of proceedings in an action is a final order — see *Toun Adeyemi v. Theophilus Awobokun* (1968) 2 All NLR 318.’

C
 Returning to the present case where the dispute between the parties that was before the trial court for determination involves chieftaincy surrounding the appointment, installation and coronation of the 1st defendant as *Okan-Ama Paramount Ruler of Asarama Community of Andoni in Rivers State* whose appointment was being challenged by the plaintiffs/appellants on the ground that he was not qualified to fill the vacant stool, while the defendants/respondents were asserting that the 1st defendant/respondent was qualified for the appointment, the question of whether the decision of the trial
 E court striking out the case was final or interlocutory needs very close examination of the facts giving rise to that decision. It is not in dispute that pleadings had been duly filed and exchanged between the parties and the plaintiffs/appellants case had been fixed for hearing before the issue of settlement of the matter out of court cropped up.
 F Although the terms of settlement drawn upon and signed by the learned counsel to the parties was duly filed on behalf of the parties for adoption by the trial court as the judgment of the court as agreed by the parties, the learned trial Judge who was not satisfied with the
 G said terms of settlement which was not executed by the parties involved in the dispute but by their learned counsel, rejected the document and proceeded to accede to the earlier application of the learned counsel to the plaintiffs/appellants to withdraw the case as instructed by his clients and accordingly struck-out the action. Relevant part of
 H this ruling has been earlier quoted in full in this judgment. The ruling of the trial court delivered on 3rd April, 1996, refusing to adopt the terms of settlement as judgment of the trial court and merely striking out the action filed by the appellants against the respondents, did not touch anything on the subject matter of controversy in the chief-

taincy dispute between the parties not to talk of any determination of the respective rights of the parties in the action before the trial court finally and on the merit.

Striking out of the plaintiffs/appellants' action certainly does not finally determine the respective rights of the parties in the action, nor does it adjudicate ultimate rights of the parties in the dispute placed before the trial court for determination. In this situation, where the claims or rights of the parties have not been examined or looked into by the trial court and appropriate findings made thereon resulting in a determination, these claims or rights effectively remain pending and can be revived by any of the parties in any other court of concurrent jurisdiction or even the same court that handed down the striking out order for relisting under the appropriate Rules of the trial court on such terms as may be granted on application."

Although the cases referred to by this Court in arriving at its decision included *Akinsanya v. U.B.A. Ltd. (supra)* where the decision in *Omonuwa v. Oshodin (supra)* was fully discussed, the final conclusion of this Court would appear to be slightly in disharmony with the reasoning in *Akinsanya v. U.B.A. (supra)*.

The test laid down in *Bozson v. Altrincham Urban District Council [1903] 1. K. B 547 at 548-549* by Lord Alverstone C.J. is that which was put thus:

"It seems to me that the real test for determining this question ought to be this: Does the judgment or order as made, finally dispose of the rights of the parties? If it does, then I think it ought to be treated as a final Order, but if it does not, it is then, in my opinion, an interlocutory order."

Contrasting with the test above is that laid down by Court of Appeal in England in *Salamans v. Warner [1891] 1 Q.B. 734 & 736* where Fry L.J. said;

"I think that the true definition is this. I conceive that an order is 'final' only where it is made upon an application or other proceeding which must, whether such application or other proceeding fail or succeed, determine the action. Conversely, I think that an order is 'interlocutory' where it cannot be affirmed that in either event, the action will be determined."

In *Ude & Ors. v. Agu & Ors. (1961) 1 All N.L.R. 66*, this Court per Brett F.J. discussing the nature of the difference between the ap-

proaches in *Blay v. Solomon (supra)* and *Salaman v. Warner (supra)* observed:

“The other as stated in *Salaman v. Warner* [1891] 1 Q.B. 734 is that an order is an interlocutory order unless it is made on an application of such a character that whatever order had been made thereon must have finally have disposed of the matter in dispute. Thus one test looks at the nature of the proceedings; the other (which is generally preferred) looks at the order made.”

In *Blay v. Solomon* (1947) 12 W.A.C.A. 175, the West African Court of Appeal followed the test which looks at the order made, and in my view it is clearly the proper test for this Court to adopt particularly having regard to the fact that there is a constitutional right of appeal against a final decision of a High Court sitting at first instance whereas an appeal against an interlocutory decision is now left to be conferred by legislation.....”

(the underlining mine)

It is to be emphasized here that the test to be used in determining whether an order is final or interlocutory varies depending on the order of which court - the court of trial or an appellate court is being considered. Obviously in the High Court, orders made on applications for extension of time to file processes, applications to serve by substitution, applications for account, etc. are interlocutory in nature and I do not think there is room for difficulty as to their true characterization. This is because whatever orders are made on such application, the particular substantive suit still remains pending before the trial court. However, some applications which on a first look appear interlocutory in nature may turn out to be one upon which final orders are pronounced. Under the test applicable in Nigeria i.e. the *Bozson* test, if an application is made that a suit be struck out on the ground that plaintiff has failed to take a procedural step, and if the court grants the application and strikes out the proceedings, the order made is final, notwithstanding that it is made on an interlocutory application. On the other hand if the application is refused, the order as made becomes interlocutory. Under the *Salaman v. Warner* test, the order is to be classified in either case as interlocutory because it was made upon an interlocutory application.

In *Akinsanya v. U.B.A. Ltd. (1986) 4 NWLR (Pt. 35) 273* at

pages 295-296 this Court per Eso JSC brilliantly discussed the applicability of the two tests in these words:

"In the English case (supra) Lord Denning's application of the Salaman test made a difference to the case. If the Bozson test had been applied, the order appealed from, that is, refusing a new trial would have been final and not interlocutory as the Salaman Test, when applied, made it. But that is England. And this is the type of problem that would arise if the two tests are kept aloof in this country. I can appreciate learned counsel Chief Williams' concern therefore for asking the Courts in this country to keep to one test only - and that is the one suggested in Bozson v. Altrincham, for as this court said in Omonuwa v. Oshodin (supra), despite the elusive impression of decided cases, the ideal is to provide a workable test for the determination of the issue when it arises. And a workable test, to my mind, ought to be certain. I think, to leave it fluid, as it is done in England, would provoke decisions like that of Lord Denning M.R. in Salter Rex & Co. v. Ghosh (supra) or Technistudy Ltd. v. Killand (1976) 3 All E.r. 632 when in the latter the Master of the Rolls suggested 'rummaging' through the Practice Books to see what has been done in the past! And I am of the opinion, with respect to the learned Master of the Rolls in England that such attitude would make an already difficult problem only the more compounded. For indeed, this is what it does in England.

In Becker v. Marvin City Corpn. PC (1977) A.C. 271 a Privy Council appeal from Australia, Lord Edmund Davies, delivering the decision of the Board, noted the frequent difficulty given (sic) rise to by the situation of enquiring whether a decision is final or interlocutory. In Hunt v. Allied Bakeries Ltd. (1956) 1 W.L.R. 1326 Lord Evershed M.R. had to adjourn, make enquiries as to the practice of the court and also consult the other divisions of the Court of Appeal before deciding whether an order was final or interlocutory. In re Page (1910) 1 Ch. 489 Buckley L. J, felt some difficulty especially as the order in the case would put an end to the matter and logically, per adventure, that would have been final. He said -

'To my mind, it would be reasonable to say that this is a final order'

But then, he continued -

I am not prepared to differ from the view taken by the other

members of the Court. I yield my judgment to them without saying that I am completely satisfied.....,'

Such is the difficulty. Such is the uncertainty! There is no doubt that I see nothing obnoxious in the *Salaman v. Warner test*, as a test; but I think it is more practicable and more certain to keep to just *one* test - the *Bozson v. Altrincham* test which has been preferred in this country for so long.

Very recently, this court, in *Western Steel Works Ltd. and Anor. V. Iron & Steel Workers Union (1986) 3 NWLR 617 at p. 625* Obaseki, J.S.C., tended to agree with the observation of Lord Denning M.R. as stated above in the two cases, I have referred to, when the learned Master of the Rolls said it was impossible to lay down any principles about what is final and what is interlocutory. Obaseki J.S.C. went on and said -

'Whenever the question of jurisdiction of any court is raised, it is a question that touches the competence of the court that is raised. It does not raise any issue touching the rights of the parties in the subject matter of the litigation or dispute.'

It is to be observed, with all respect, that, once the *nature* of the Order test is accepted, the order is final if, in the words of Brett M.R., in *ex Parte Moore, in re Faithful (supra)*

'the court orders something to be done according to the answer to the enquiries, without any further reference to itself'

In other words, if the court of first instance orders that a matter before it be terminated (struck out) for it has no jurisdiction to determine the issue before it, that is the end of all the issues arising in the cause or matter and there is no longer, any issue between the parties in that cause or matter that remains for determination in that court.

But it would be interlocutory if its order is that it has jurisdiction for there will be reference of the remaining issues in the case to itself.

When a Court of Appeal rules and orders that a court of first instance had no jurisdiction in a cause which has been brought before it that is the end of the matter in so far as that particular litigation goes between the parties in that Court of Appeal. There is no further reference to the Court which has made the order in either case. And that has determined the rights of the parties in both cases before the court making the order. And applying that test to the instant case, if the order made by the majority of the Court of appeal had been made

by the trial court itself that that trial court had no jurisdiction that is final. And according to the nature of that order, there is no further reference to that court of trial. If the order had been by the trial court that it had jurisdiction, that is interlocutory according to the nature of the order made as there are issues still to be determined. The result will not be the same if the nature of the proceedings or application test is followed. “

In the light of what has been said above it seems to me that the order as made in this case by the court below is plainly an interlocutory order. The trial court had ordered that the plaintiff/applicants’ three applications be struck out. But on appeal the court below in its judgment set aside the order striking out the plaintiffs/applicants’ application and granted an interlocutory injunction. With that order, the court below sent the dispute brought before it back to the High Court for further hearing. It did not determine the suit finally. In the same manner, the order made by the trial High Court striking out the plaintiffs/applicants three applications was an interlocutory order because notwithstanding that order, the trial High Court still had before it to decide the plaintiffs/applicants’ substantive suit. See *Omonuwa v. Oshodin* [1985] 2 NWLR (Pt. 10) 924.

The facts in *Omonuwa v. Oshodin* (*supra*) are in some ways similar to those in the present appeal. The appeal in that case to the Court of Appeal was upon an interlocutory order. This Court per Karibi-Whyte J.S.C. at page 938-939 of the judgment said:

“All the cases cited agree on the proposition that a decision between the parties can only be regarded as final when the determination of the Court disposes of the rights of the parties, (and not merely an issue) in the case. Where only an issue is the subject matter of an order or appeal the determination of that Court which is final decision on the issue or issues before it, which does not finally determine the rights of the parties, is in my respectful opinion interlocutory. The issue before the Court of Appeal in this appeal arose from an interlocutory matter and does not lose that character because it is an appeal. The inconvenient and anomaly in the result of the nature of the order test is that an otherwise interlocutory application ends up as a final decision of the Court of Appeal. If this is accepted the anomalous effect of an appeal on such a ‘decision’ is to enlarge the

right of appeal of the appellant from the High Court to the Court of Appeal and to this Court. This is despite the fact that the rights of the parties have still not been finally determined as was in the Automatic Telephone & Electric Co.Ltd. V. F.M.G. (1968) 1 AUNLR. And Adegbenro v. Akintola & Aderemi (1962) 1 All NLR. 442 at p. 474.

- B In the Automatic Telephone & Electric Co. Ltd. case was a reference to the High Court from an arbitration. Though the High Court disposed of the issue on reference before it, it did not finally determine the rights of the parties in the arbitration; Similarly, the questions on the interpretation of the constitution to be answered in the Federal Supreme Court in the Adegbenro case. The view that a judgment of the Court on an interlocutory matter on appeal before it is final as was held is clearly inconsistent with the principles enunciated in all the decided cases cited in the judgment and with common sense and*
- C*
- D experience. As I have said, the test applied in these cases relate to the function of the court in disposing a matter before it, it was not concerned with the determination of the rights of the parties.*

- E Applying the principles enunciated in both tests, i.e. the nature of the application, and the nature of the order, to this appeal, it is inescapable that the judgment of the Court of Appeal, appealed against is an appeal on an interlocutory ruling before the High Court. It is also incontestable that the judgment of the Court of Appeal, which remitted the case for trial in the High Court did not finally determine the issues litigated by the parties in the High Court. See*
- F Isaacs & Sons v. Salbstein & Anor. (1916) 2 KB. 139, 146. In my opinion, an interlocutory order on appeal ranks as an interlocutory appeal. The judgment of the Appeal Court is a judgment on an interlocutory appeal. It can only assume the character of a final judgment*
- G when it finally determines the rights of the parties. To determine finally an issue before the court which does not finally determine the rights of the parties, does not rank as determining the rights of the parties in the case and in my opinion is not a final judgment inter partes. In my opinion, the ideal approach is to consider both the*
- H nature of the application, and the nature of the order made in determining whether an order or judgment is interlocutory or final in respect of the issues before it as between the parties to the litigation. Thus where the nature of the application does not aim at finally determining the claim or claims in dispute between the parties, but only*

deals with an issue, both the application and the order or judgment must be interlocutory. See Isaacs & Sons v. Salbstein & anor. (supra) at p. 146. Alaye of Effon v. Fasan (1958) 3 FSC. 68. However, where an application has the effect by the order therefore of finally determining the claim before the court, the order may properly be regarded as final. -See Afuwape & ors. v. Shodipe (1957) 2 FSC. 62^B at p. 68. This proposition is clearly consistent with the principles as enunciated in the judicial decisions and is logical. It also accords with common sense and the practice of the Courts. The order appealed against in the case before us does not purport and has not finally^C settled the rights of the parties in the claim before the Court, and is therefore an interlocutory order. The determining factor whether an order or judgment is interlocutory or final is not whether court has finally determined an issue before it. It is whether or not it has finally determined the rights of the parties in the claim before the court.”^D

I must conclude therefore that the appeal before this Court is interlocutory in nature and the defendants/respondents should have brought it within 14 days. Not having done so, the appeal in my view is incompetent. It is accordingly struck out. I award N30,000.00 costs in favour of the plaintiffs/^E applicants against the defendants/respondents.

TOBI JSC

I have read in draft the Ruling of my learned brother, Oguntade,^F JSC and I agree with him that the appeal filed on 11th July, 2003 is incompetent and should be struck out.

By a motion filed on 7th January, 2009, the plaintiffs as applicants asked for an “Order striking out the Appellants’ Appeal filed on 11th day of July, 2003 being an interlocutory matter. The motion was based on section 27 (2) (a) of the Supreme Court Act. Cap 515 Laws of the Federation of Nigeria. The subsection provides as follows:

“The periods prescribed for the giving of notice of appeal or notice of application for leave to appeal are: in an appeal in a civil case; fourteen days in an appeal against an interlocutory decision and three months in an appeal against a final decision.”

It is the argument of counsel for the applicants that the order

made by the Court of Appeal on 29th April, 2003 is an interlocutory order in which appeal lies within fourteen days. On the contrary, it is the argument of the counsel for the appellants that the order is a final order and appeal lies within a period of three months.

My learned brother has adequately examined the case law and so I do not intend to repeat the exercise. I also agree with him that “the test to be used in determining whether an order is final or interlocutory varies depending on the order of which court - the court of trial or an appellate court is being considered.”

The two expressions of significance and magnitude here are “final” and “interlocutory.” The word “final” in its ordinary significance means last, that which absolutely ends or concludes a matter. The word “interlocutory” in law means not that which decides the cause, but that which only settles some intervening matter relating to the cause. It also means in the meantime or for now. The word also connotes provisional, interim, temporary, and not final.

Although Justice Hugo Black in the case of FTC v Minneapolis Honeywell Regulator Co. 344 US. 206 215 (1952) exaggerated that “there is no more ambiguous word than “final”, the word has a meaning in law, though at times difficult to identify or fathom; particularly when it is related to the expressions decision or judgment. In that context, it means one which leaves nothing open to further dispute and which sets at rest cause of action between parties. A decision or judgment is final or regarded as final if it determines the rights of the parties in the dispute and disposes of all of the issues involved so that no future action by the court will be necessary in order to settle and determine the entire controversy.

In Onagoruwa v. The State (1993) 7 NWLR (Pt. 303) 49, the Court of Appeal held that the word “final” in section 258 (1) of the 1979 Constitution means “last, decisive. It also means an act of the end of a thing” In Awuse v Odili (2003) 18 NWLR (Pt. 851) 116, the Supreme Court said:

“Etymologically, the word final means last, coming at the end. As an adjective when used to qualify the noun ‘decision’, it means in ordinary general parlance that the decision cannot be changed as the matter is deemed to be completely settled”

See also Hi Flow Farm Int. v Unibadan (1993) 4 NWLR (Pt.290) 719.

A decision is final if it brings to an end the rights of the parties. In other words, a decision is final if it disposes of the subject matter of the litigation or controversy to the extent that there is nothing left after the judgment of the Court. Where a decision is not final, it is interlocutory, as it is given in the process of the litigation which is transient and intermediate. B

Is the decision of the Court of Appeal final or interlocutory? Allowing the appeal, the Court of Appeal said at page 10 of the judgment.

“The result is that this appeal is in my view, very meritorious. It is allowed. The ruling of the court below delivered on 7th December, 2000 is hereby set aside. In its place having reviewed the printed evidence I am clear in my mind that the 2nd defendant/respondent be restrained and he is hereby restrained from parading himself or acting in any way as the spiritual head of the 1st defendant/respondent until the aforementioned motions struck out which are hereby re-listed are heard” C D

The word “until” which means up to the time of or up to the time that, says it all, in terms of a futuristic or further action; which make the decision interim, intermediate or contingent on the future event of hearing the re-listed motions which were struck out. The decision is therefore interlocutory; not final. E

This matter brings out once again clearly into the fore that religious disputes are taken to the courts for settlement. While I agree that aggrieved parties have the constitutional right to do so, I am fairly worried of such actions. As Christians, they ought to follow the admonition in the Bible. And here I refer to 1 Corinthians 6: 1-7 which provides for the settlement of such matters by the Church. I do hope that churches will see the need to follow the Bible. After all, the greatest Judge is the Almighty God. F G

It is for the above reasons and the fuller reasons given by my learned brother, Oguntade, JSC that I too hold that the appeal is incompetent as it was brought after fourteen days. I also award N30,000 costs in favour of the plaintiffs/applicants against the defendants/respondents. H

MOHAMMED JSC

The Appellants were the Respondents at the Court of Appeal Lagos where the Respondents who were the Appellants in that Court were successful in their appeal against the Ruling of the trial Federal High Court Lagos by Abutu J, delivered on 7th December, 2000 in which the learned trial Judge struck out four motions filed by the Respondents in their bid to stop the ordination of the 2nd Appellant as the spiritual head of the 1st Appellant, on the grounds that the motions were res-judicata and abuse of Court processes. In the judgment delivered by the Court of Appeal on 29th April, 2003, the Court allowed the Respondents' appeal by setting aside the Ruling of the trial Court of 7th December, 2000 and replacing the same with an order relisting the Respondents' four motions struck out by the trial Court and remitting them to the trial Court for hearing. Until the hearing of these motions, the Court of Appeal also restrained the 2nd Appellant from parading himself or acting in anyway as the spiritual head of the 1st Appellant. Part of this judgment reads -

"The result is that this appeal is in my view very meritorious. It is allowed. The Ruling of the Court below delivered on 7th December, 2000 is hereby set aside. In its place having reviewed the printed evidence I am clear in my mind that the 2nd Defendant/Respondent be restrained and he is hereby restrained from parading himself or acting in anyway as the spiritual head of the 1st Defendant/Respondent until the afore-mentioned motions struck out which are hereby relisted are heard."

The Appellants who were aggrieved by the judgment of the Court below against them delivered on 29th April, 2003, had appealed against it by filing their notice of appeal on 11th July, 2003, which is more than two months after the judgment. On being served with the notice of appeal, the Respondents have reacted by filing a motion on notice on 7th January, 2009, asking this Court to strike out the Appellants' appeal for having been filed outside the statutory period prescribed by Section 27(2)(a) of the Supreme Court Act CAP 515 Laws of the Federation 2004. This motion is supported by a 6 paragraph affidavit to which the judgment of the Court below delivered on 29th April, 2003 and the Notice and Grounds of Appeal filed by the Appellants at the Court below on 11th July, 2003, were exhibited. Paragraphs 3, 4 and 5 of the affidavit in support of

the application which are relevant, averred as follows -

“3. On the 29th day of April 2003, the Court of Appeal allowed the Appellants appeal against the decision of Abutu J. of the Federal High Court striking out the following applications by the Respondents viz:

(a) Motion dated 11th of May, 2000

B

(b) Motion dated 22nd of May 2000

(c) Motion dated 7th of June, 2000

(d) Motion dated 21st of June, 2000

A Certified True Copy of the judgment is attached herewith and marked Exhibit ORT1.”

C

4. The Respondents now Appellants before this Court being dissatisfied with the 29th April, 2003 judgment, filed a Notice of Appeal on the 11th day of July, 2003 at the Registry (sic) this Honourable Court. A Certified True Copy of the Appellants’ Notice of Appeal is attached herewith and marked Exhibit ‘ORT2.’

D

5. I am informed by one of the lead Counsel to the Respondents/Applicants, Ade Okeaya-Inneh SAN and I verily believe that there is no proper appeal before this Honourable Court.”

The motion was opposed by the Appellants/Respondents who filed a counter affidavit on 13th January, 2009. The most relevant paragraphs of the counter affidavit as far as the Respondents/Applicants’ application to strike out the Appellants’ Notice of Appeal is concerned, are the facts averred in paragraphs 6, 7, 8 and 9.

E

“6. For instance contrary to the deposition in paragraph 3 of the affidavit in support it was the Respondents who appealed against the decision of Abutu J, of the Federal High Court Lagos to the Court below and not the Appellants herein as stated by Mr. Ukuwelah Oghie.

F

7. More importantly, the JUDGMENT of the Court below dated 29th April, 2003 appealed against was a final decision and not an interlocutory decision.

8. The Respondents succeeded in the Court below in their appeal against the ruling of Abutu J. but the Appellants herein were dissatisfied with the judgment of the Court below hence this appeal to the Supreme Court.

H

9. The main complaint of the Appellants against the judgment of the Court below is that after setting aside the ruling of the Federal High Court the learned Justices of Court of Appeal went on suo

motu, outside the issues canvassed before the Court to gratuitously grant an order of interim injunction restraining the 2nd Appellant from parading himself as spiritual head of the 1st Appellant."

In his argument in support of the application, learned Senior Counsel to the Respondents/Applicants pointed out that having regard to the nature of the interlocutory appeal that was heard by the Court below and the judgment of that Court of 29th April, 2003, remitting the four unheard motions to the trial Court for hearing and determination, the decision of the Court of Appeal is an interlocutory decision which by virtue of Section 27(1)(a) of the Supreme Court Act, must be appealed against within only 14 days. That being the case, the Appellants' notice of appeal filed more than 14 days after the date of the judgment being appealed against, is clearly out of time and in the absence of any application for leave and enlargement of time to file the same, the appeal must be struck out concluded the learned Senior Counsel, Ade Okeaya-Inneh who urged this Court to grant the application, relying on the case of *Owoh & Ors. v. Chief Kingston U. Asuk & Anor. (2008) 4-5 S.C. (Pt. 1) 155.*

Dr. Ayeni, learned Counsel to the Appellants who are Respondents to the application insisted that the judgment of the Court below given on 29th April, 2003 allowing the Respondents' /Applicants' appeal, is a final judgment of that Court; that being a final judgment, the time prescribed by Section 27(1)(a) of the Supreme Court Act to appeal against it, is three months; that the Appellants' appeal filed on 11th July, 2003, was clearly filed within the prescribed period, A number of cases including *Steel Works Limited v. Iron & Steel Workers Union of Nigeria (1986) 3 N.W.L.R. (Pt. 30) 617* and *Iwueke v. Imo Broadcasting Corporation (2005) 17 N.W.L.R. (Pt. 955) 447 at 468 - 469*, were referred to and relied upon in support of the submission by the learned Counsel who urged this Court to dismiss the application

It is not at all in doubt that on the face of the judgment of the Court below duly exhibited to the affidavit in support of the motion that the judgment of that Court delivered on 29th April, 2003, is a decision of the Court as defined under Section 318 of the constitution of the Federal Republic of Nigeria, 1999. The right to appeal against that decision of the Court of Appeal to this Court is provided by Section 233 of the Constitution of the Federal Republic of Nigeria

1999, where subsections (2) and (3) of this section state -

“233(1)

(2) *An appeal shall lie from decision of the Court of Appeal to the Supreme Court as of right in the following cases -*

(a) *where the ground of appeal involves question of law alone, decisions in any civil or Criminal proceedings before the Court of Appeal.....*

(b)

(c)

(d)

(e) C

(3) *Subject to the provision of sub-section (2) of this Section, an appeal shall lie from the decision of the Court of Appeal to the Supreme Court With the leave of the Court of Appeal or the Supreme Court.* D

As I have observed earlier in this Ruling, the only issue in contest between the parties in this application is whether or not that judgment of the Court below now on appeal and which is the subject of this application, is a final or an interlocutory decision. This means if it is a final decision, as asserted by the Appellants/Respondents, then the appeal to this Court against it lies as of right within three months from the date of delivery of the judgment. However, if it turns out to be an interlocutory decision as canvassed by the Respondents/Applicants in their application, then the right of appeal depends upon whether the ground or grounds of appeal is or are grounds of law alone or of facts or mixed law and facts. Where the ground of appeal is one of law, Appellants can exercise their right of appeal within 14 days of the delivery of the judgment without any leave of Court. Where however the grounds are grounds of fact or mixed law and facts, leave of the Court below or of this Court is required to appeal against interlocutory decisions within 14 days of the delivery of the decision. See Section 27(1)(a) of the Supreme Court Act CAP 515 Laws of the Federation 2004. The section states -

“27(1) *Where a person desires to appeal to the Supreme Court he shall give notice of appeal or notice of his application for leave to appeal in such manner as may be directed by rules of Court within the period prescribed by sub-section (2) of this section that is applicable to the case.* H

(2) *The periods prescribed for the giving of notice of appeal or notice of application for leave to appeal are -*

(a) *in an appeal in a civil case, fourteen days in an appeal against an interlocutory decision and three months in an appeal against a final decision....”*

B The question of whether a decision of a Court is interlocutory or final, has been one of perpetual difficulty for the Courts. This is because of the absence of certainty in the definition of the words ‘final’ and ‘interlocutory’ or certainty in the decisions of the Courts on the issue. The absence of the definition of the words in our relevant statutes like the Supreme Court Act, the Court of Appeal Act, other statutes guiding the operations and functions of our various other Courts or even in the constitution, is also a contributory factor to the problem on the issue.

D Starting with final judgment or decision, there are a number of cases defining the term. In *Solomon v. Warner* (1891) 1 Q.B. 734 at 736, Lopes J. saw final judgment as -

E *“I think a judgment or order would be final within the meaning of the rules, when, whichever way it went, it would finally determine the rights of the parties.”*

Also in *Blakey v. Latham* (1889) 43 Ch.D. 23 C.A.; Cotton L.J. reflected final judgment in the following words -

F *“No order, judgment or other proceeding can be final which does not at once affect the status of the parties, for whichever side the decision may be given, so that if it is given for the Plaintiff it is conclusive against the Defendant, and if it is given for the Defendant it is conclusive against the Plaintiff.”*

G In *Bozson v. Altrincham Urban District Council* (1903) 1 K.B. 547, Alverstone, C.J. at page 550, was of the view that the real test for determining the question ought to be -

H *“Does the judgment or order as made, finally dispose of the rights of the parties? If it does, then, I think it ought to be treated as final order; but if it does not, it is then, in my opinion an interlocutory order.”*

It is quite clear from the decided cases on the subject that there are two tests that have been adopted by Courts in the determination of whether a decision of Court is final or interlocutory. The first one is the nature of the application or proceedings approach, while the sec-

ond is the nature of the order made by the Court which is the test adopted and applied by our Courts in Nigeria. See Akaniya Oguntimehin v. Omotoye (1956) 2 FSC 56; Blay & Ors. v. Solomon (1947) 12 WACA 175; Afuwape & Ors. V. Shodipe & Ors. (1957) 2 FSC 62 and Alaye of Effon v. Fasam (1958) 3 FSC 68, in which the appeal was against the refusal of the trial Judge to set aside the order striking out the suit for non appearance of Plaintiff/Appellant. The notice of appeal was within time if the decision appealed against was regarded as final, but out of time if the decision were interlocutory. Onyeama Ag. J. in his ruling regarded the decision as interlocutory and dismissed the application. This decision was affirmed on appeal by the Federal Supreme Court. The general principle therefore established in the decided cases is that where the decision does not finally determine the issue or issues between the parties or does not at once affect the status of the parties for whichever side the decision is given, it is interlocutory. In other words a decision between the parties can only be regarded as a final decision when the determination of the Court disposes of rights of the parties in the case. To put it differently, where only an issue is the subject matter of an order or appeal, the determination of that Court which is a final decision on the issue in question or issues before it, which does not finally determine the rights of the parties, is in my view, interlocutory decision.

The case of Omonuwa v. Oshodin & Anor. (1985) 2 N.W.L.R. (Pt. 10) 924, decided by a panel of full Court of this Court, is virtually on all fours with the present case. In his lead ruling concurred by the other six members of the panel of Justices on a preliminary objection similar to the one under consideration in the present case, Karibi-Whyte, JSC applied both tests in the determination of whether or not a decision of Court is final or interlocutory where he said at page 938 as follows -

“Applying the principles enunciated in both tests, i.e. the nature of the application, and the nature of the order, to this appeal, it is inescapable that the judgment of the Court of Appeal appealed against is an appeal on an interlocutory ruling before the High Court. It is also incontestable that the judgment of the Court of Appeal which remitted the case for trial in the High Court did not finally determine the issues litigated by the parties in the High Court xxxx In my opinion, ON interlocutory order on appeal ranks as an interlocutory ap-

peal. The judgment of the Appeal Court is a judgment on interlocutory appeal. It can only assume the character of final judgment when it finally determines the rights of the parties. To determine finally an issue before the Court which does not finally determine the rights of the parties, does not rank as determining the rights of the parties in the case and in my opinion is not a final judgment inter partes.

This decision by the full Court to me, ought to have put to rest the raging controversy or conflicting decisions on what is a final or interlocutory decision of Courts in Nigeria. The determining factor of whether an order, decision or judgment of Court is final, is not whether the Court has finally determined an issue before it. It is whether or not the Court has finally determined the respective rights of the parties in the claim in the Writ of Summons, Originating Summons or other initiating process or appeal before the Court.

In the instant case, it is not at all in dispute that the appeal that came before the Court of Appeal for determination was against the Ruling of the Federal High Court striking out the four applications before it. The appeal therefore was an interlocutory appeal. Its determination after hearing in the judgment of the Court of Appeal, was also interlocutory as only the issue of competence or otherwise of the four applications that was determined. Similarly, the judgment of the Court of Appeal of 29th April, 2003, which allowed the appeal before it and remitted the four applications relisted back to the trial Federal High Court for hearing and determination, not having finally determined the rights of the parties in their dispute over the filling of the vacancy in the Spiritual Head of Cherubim and Seraphim Society, is not a final judgment but and interlocutory decision. This being the position, by virtue of Section 27(1)(a) of the Supreme Court Act earlier quoted in this ruling, the Appellants/Respondents ought to have filed their Notice of Appeal within 14 days of the judgment of the Court of Appeal delivered on 29th April, 2003. Clearly, the Notice of Appeal filed on 11th July, 2003, more than two months after the delivery of judgment, was filed out of the time prescribed by law and therefore incompetent. It is for this reason that I entirely agree with my learned brother Oguntade JSC, in his lead Ruling in this application just delivered.

Accordingly, the application by the Respondents/Applicants succeeds and the same is hereby granted. In the absence of any appli-

cation by the Appellants/Respondents for extension of time to seek leave of appeal, leave to appeal and extension of time to file the notice and grounds of appeal, the appeal is hereby struck out with N30,000.00 costs to the Respondents/Applicants.

B

OGBUAGU JSC

This is an appeal filed by the Appellants/Respondents on 11th July, 2003 against the “Judgment” of the Court of Appeal, Lagos Division (hereinafter called “the court below”) delivered on 29th April, 2003 allowing the appeal of the Respondent/Applicants and making an order of injunction restraining the 2nd Defendant/Appellant from parading himself or acting in any way as the Spiritual head of the 1st Appellant/Respondent. C

Upon the service of the Notice of Appeal on the Applicants, D they later filed a motion on 7th January, 2009, seeking an order of this Court, striking out the Appellants’ said appeal. The grounds for the application, are as follows:

“(a) Whereas *Section 27(2)(a) of the Supreme Court Act Cap 515. Laws of the Federation 2004* provides thus: E

“The periods prescribed for the giving of notice of appeal or notice of application for leave to appeal are:

In an appeal in a civil case, fourteen days in an appeal against an interlocutory decision and three months in an appeal against a final decision”, [the underlining mine] F

(b) This being an Appeal against an interlocutory order of the Court of Appeal made on 29th day of April, 2003 the Notice thereof ought to have been filed within FOURTEEN DAYS of the order”.

When this application came up for hearing on 16th February, G 2009, after hearing from both learned counsel for the parties who cited and relied on some decided authorities, RULING was reserved till to-day. The only issue before this Court in my respectful view, is whether the said Judgment or Order therein, is final or interlocutory. For the avoidance of any doubt, the following appear, inter alia in H the said Judgment.

“..... In the application dated 11th May, 2000, the plaintiffs prayed the court for an order of injunction restraining the defendants from naming, appointing, electing any church officers or mem-

bers as the spiritual head of the 1st Respondent or the 2nd Defendant/Respondent parading himself as the head of the 1st Respondent. In the supporting affidavit the deponent deposed that the application was brought sequel to the information reaching them that a new Spiritual head was to be appointed for the 1st respondent. Suffice it to say that the appointment of the head of the 1st Respondent is the substratum of the Plaintiffs' claim before the court below. If the appointment of the head of the 1st Respondent were to go ahead without the substantive suit proceeding to finality, the Plaintiffs would undoubtedly be faced with *fait accompli*. In the application dated and filed on 22nd May, 2000 the plaintiffs prayed for an order restraining the 1st defendant from ordaining on the 18th of June, 2000 the 2nd defendant or any other person when they got information that ordination was to take place on 18th June, 2000. Again, when the plaintiffs received information that the 3rd (sic) (meaning 2nd) defendant was going to be ordained as the Spiritual Head, a similar application was brought praying in the same direction. In the application dated and filed on 21st June, 2000 a similar application was made to prevent the 2nd defendant from being (sic) so installed. Can it be said that these four applications constitute an abuse of court process going by what I have said *supra* as what the term connotes.,.....".

The court below - per Aderemi, JCA (as he then was), concluded thus:

"..... When it is realised that the main aim of an application for interim injunction is to protect the plaintiff against injury by violation of his right for which he could not be compensated in damages then an application praying for an order of court to restrain any ordination of a Supreme Head before cannot but be regarded as proper and not an abuse of court process. If regarded otherwise, the substratum of any case would have been destroyed before trial. It is for this reason that I am of the firm view that issue No. 2 must be answered in the negative and I so answer it. The result is that this appeal is in my view very meritorious. It is allowed. The ruling of the court below delivered on 7th December, 2000 is hereby set-aside. In its place having reviewed the printed evidence I am clear in my mind that the 2nd Defendant/Respondent be restrained and he is hereby restrained from parading himself or acting in any way as the

Spiritual head of the 1st defendant/respondent until the afore-mentioned motions struck-out which are hereby re-listed are heard.....

[the underlining mine]

The said concluding part of the said Judgment, is very clear and unambiguous and in my respectful but firm view, needs no interpretation as to the nature of the application or appeal before the court below and the nature of the final order of that court. I am aware that there have been many decided authorities as regards the principles or tests to be applied when a court is to decide whether or not, an order is either final or interlocutory. See the cases of Slav & 2 ors. v. Solomon (1947) 12 WACA 175 @ 176; Ude & ors. v. Agu & ors. (1961) All NLR 70; (1961) 1 SCNLR 98; Omonuwa v. Oshodin & anor. (1985) NWLR (Pt.10) 924 @ 931 - 939; Western Steel Works Ltd. & anor. v. Iron & Steel Workers Union of Nigeria & anor. (1986) 3 NWLR (Pt.30) 617 @ 624-626, 627; Akinsanya v. UBA Ltd. (1986) 4 NWLR (Pt.35) 273 @ 289-299; (1986) 7 S.C. 233; (1986) 2 NSCC Vol. 17 pg 68; Igunbor v. Mrs. Afolabi & anor. (2001) 11 NWLR (Pt.723) 148 @ 165; (2001 5 SCNJ. 124 @, 141; (2001) 5 S.C. (Pt.1) 105 and Odutola v. Chief Oderinde & 2 ors. (2004) 5 S.C. (Pt. II) 90', (2004) 12 NWLR (Pt.888) 574; (2004) 5 SCNJ. 285 @ 290 - 291 referred to by me in my concurring/contribution in the case of Iwueke v. Imo Broadcasting Corporation (2005) 17 NWLR (Pt.955) 447, 468-469, 485; (2005) 10 S.C. 19 @ 29 - 31, 60 just to mention but a few.

In determining whether or not an order is final or interlocutory, the test in my respectful view, must depend on the last order of either a trial or an Appellate Court which is being considered. Therefore, applying the principles enunciated in the nature of the application and the nature of the order tests, it seems to me inescapable that the said Judgment of the court below now appealed against, in my respectful view, is an appeal on or in respect of an interlocutory Ruling. I repeat, the said order which is very clear and unambiguous, accords with sheer common sense and logic. The substantive suit, is yet to be finally determined by the trial court which held that the said applications of the Applicants, are an abuse of the process of court. I hold that an interlocutory order (as the one made by the court below and now on appeal), ranks as an interlocutory appeal since the said Judgment, is a judgment on an interlocutory appeal. By no stretch of

imagination, could it be a final judgment inter partes. It is not and cannot be an order which has finally determined the rights of the parties in the substantive suit. I so hold. See the cases of *Alaye of Effon v. Fasan (1958) 3 FSC 68* referred to or cited in the case of *Omonuwa v. Oshodin* and *Igunbor v. Mrs. Afolabi & anor. (supra)*

B both by Karibi-Whyte, JSC.

C That being the case, the said appeal of the Appellants/Respondents, I hold, is an interlocutory appeal and the Defendants/Appellants/Respondents, should have brought it within (14) fourteen days from the date of the said Judgment pursuant to the said Section 27(2)(a) of the said Supreme Court Act (supra). The said motion/application of the Respondents/Applicants, I find as a fact and hold, is meritorious and it succeeds. In the circumstances, the said appeal being incompetent, is hereby and accordingly struck out by me.

D Before concluding this Ruling, let me please make a few comment on the case of *Chief Owoh & 3 ors. v. Chief Kingston U. Asuk & anor. (2008) 4-5 S.C. (Pt.1) 155 @ 169 -170* cited and relied on by A.O. Okeaya-Inneh, Esq. (SAN) - learned leading counsel of the Respondents/Applicants. With the greatest respect, the facts of that case, are not the same or even similar to the facts of the case leading to this appeal and application. It must be borne in mind always that each case, must be decided on the facts and circumstances of the particular case. But even at that, with profound humility and the greatest respect, that final decision at page 170 thereof, to all intents and purposes and having regard to the peculiar facts of that case, appears, to me, to run counter to all the tests and principles enunciated in respect of a determination of whether an order, Judgment, decision or Ruling, is interlocutory or final and which tests or principles, were effectively adumbrated on in the said lead Judgment.

G There was a settlement by the parties out of court and the terms of settlement was signed by the learned counsel for the parties.

H Therefore, the facts of *Owoh's case (supra)*, is certainly not apposite to the instant case leading to this appeal and application although in the end at pages 172 -173, the court held as in the instant case, that the Notice of Appeal to the Court of Appeal was defective and thus incompetent having been filed outside the period prescribed by the Rules of the Court of appeal. It also struck out the appeal thus rendering the validity of the Consent Judgment a non-

issue and irrelevant.

It is from the foregoing and the more detailed and exhaustive lead Ruling of my learned brother, Oguntade, JSC just delivered and which I had the advantage of reading before now, and I agree entirely with the reasoning and conclusion, that I grant the said application of the Respondents/Applicants and make the order as prayed therein. I abide by the consequential order in respect of costs. B

OGEBE JSC

I had a preview of the lead Ruling of my learned brother Oguntade JSC just delivered and agree entirely with his reasoning and conclusion that appeal is incompetent. Accordingly, strike out the appeal with costs of N30,000.00 in favour of the respondents/applicants. D

Since the matter in dispute is of a religious nature, the parties are advised to seek an amicable settlement outside the court.

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