

SUPREME COURT OF NIGERIA
17TH JULY, 2009. SC. 243/2003
CORAM:- A. I. KATSINA-ALU, M. MOHAMMED,
W. S. N. ONNOGHEN, C. M. CHUKWUMA-ENEH,
M. S. MUNTAKA-COOMASSIE, JJSC

CORPORAL EMMANUEL AMODU APPELLANT
AND

1. THE COMMANDANT,

POLICE COLLEGE MAIDUGURI

2. INSPECTOR GENERAL OF POLICE RESPONDENTS

APPEALS - Issues - Number of - They should not out number the grounds of appeal filed by the appellant - As they are supposed to be distilled therefrom - Else they may be bad in law (H1)

PLEADINGS - Evidence - Containing facts not pleaded - Propriety - Though only facts need be pleaded - Every evidence must have some semblance to pleaded facts - And not contain facts not pleaded - Else it is liable to be expunged (H2)

FACTS

The plaintiff/appellant sued the defendants/respondents contesting his dismissal from the service of the Nigeria Police Force following an orderly room trial conducted by the respondents in respect of an allegation of theft/discreditable conduct against the appellant. Appellant's case was that in the course of investigating a case of stolen property, the suspect, in their custody, had bolted out/fled, whereupon he, and another police officer, were arrested and charged to orderly room trial for discreditable conduct. They were ultimately found guilty and consequently dismissed from the Force. Respondents' case was that the police officers had deliberately allowed the suspect to escape so that they could sell the stolen clippers.

After hearing, the learned trial judge found for the appellant and accordingly granted the reliefs prayed for. The court held that the dismissal of the appellant could only lawfully follow, upon his being prosecuted and convicted in a regular court for whatever offence he is alleged to have committed. Though DW2 testified at trial

that appellant was charged to court for theft, that fact was not in the pleadings. Moreover, it was not in issue that the basis of appellant's dismissal was the finding of the orderly room trial on a charge of an offence against discipline, and no more. Aggrieved, respondents appealed to the Court of Appeal, which allowed their appeal, rejecting the evidence of DW2. Appellant has brought this appeal against the judgment of Court of Appeal.

ISSUE FOR DETERMINATION

"Whether it was proper for the Court of Appeal to have rejected the evidence of DW2 who testified in favour of the Appellant, on the ground that the piece of evidence was neither pleaded by the Appellant nor the respondents?"

.HELD (Unanimously dismissing the appeal per **MUNTAKA-COOMASSIE JSC**)

APPEALS - Issues - Number of

1. In the case of Orji vs. The State (2008) 4 SCNJ 85, this court per Mukhtar JSC held as follows p 94: -

"Issues for determination are supposed to be distilled from the grounds of appeal filed by an appellant, and not raised capriciously. They must not out-number the grounds of appeal, for where they so out-number them there is the danger that some of the issues do not derive their source from the grounds of appeal, and therefore are not related to one another. It is trite that an issue that does not so relate will not be tolerated".

In the case at hand, the appellant has Formulated three issues out of one ground of appeal, and applying these fine principles of law adumbrated in the above cited cases, it is my view that the issues are bad in law. (p. 1798 G)

Evidence - Containing facts not pleaded - Propriety

2. The lower court in this respect held as follows:-

".... It is on record that DW2 in his evidence testified that the respondent was charged to court. It is a fact that this piece of evidence was not pleaded, and did not in any way form part of the plaintiff's claim nor the Respondent's defence. Although the position of the law is that only facts need be pleaded, and not evidence, the piece of evidence that is adduced must have some semblance to the

facts of the case or the defence put forward; and not contain a new fact that has not been raised. This piece of evidence to my mind has no connection with the facts pleaded, nor does it arise from them. The argument that the said evidence supported the case of the Respondents does not hold water, because it does not. The said evidence should in fact have been expunged by the learned trial Chief Judge, and he should not have placed reliance on it for the purpose of making a finding.

With due respect, I completely agree with the learned Justice of the Court of Appeal and I have nothing more to add. Except that I shall make an order expunging the said evidence from the record and it is hereby expunged. (p. 1800 F)

REPRESENTATION

Mr. D. M. Mando Esq. for the Appellant with C. M. Akume, Esq.
Mr. Bulus Adamu Assistant Director Civil Litigation, Ministry of Justice Maiduguri for the Respondent

CASES REFERRED TO

Orji vs. The State (2008) 4 SCNJ 85
Nwekeson V. Onigbo (1991) 3 NWLR (pt. 178) page 125
Shogo V. Adebayo (2000) 14 NWLR (pt. 686) page 121
Adebambo vs. Olowosago (1985) 3 NWLR (Part 11) at 207
Akinola & ANOR vs. Oluwo & Ors (1962) All NLR pt. 1 at 225
Ogunsina vs Matanmi (2001) 9 NWLR (pt 718) p 286 at 294 and 294
Yadis Nigeria Ltd vs. Great Nigeria Insurance Company Ltd (2007) 5 SCNJ 86
Oversea Construction (Nig) Limited vs. Creek Enterprise (Nig) Limited (1985) 3 NWLR (pt 13) 407 at 414.
Shuwa V Chad Basin Development Authority (1991) 7 NWLR (pt. 205) page 550

STATUTE & RULES REFERRED TO

Police Act, s. 371
Police Regulations 355 of 1968, First Schedule

LEAD JUDGMENT BY MUNTAKA - COOMASSIE JSC

This is an appeal against the decision of the Court of Appeal Jos Division. The Appellant before this court was the plaintiff in the High Court of Borno State, herein called the Trial Court. The plaintiff, now Appellant, claimed in his statement of claim which goes without
B saying, supersedes the writ of summons See Lahan & Ors vs. Lajoyetan (1972) 6 S.C. P 190.

The plaintiff claimed the following reliefs: -

C “(1) *An order that the orderly room trial conducted by the Defendants in respect of an allegation of theft or discreditable conduct against the plaintiff, the result of which was used to ground the dismissal of the plaintiff from the Nigeria Police Force was illegal, irregular, incompetent, wrongful, unconstitutional, null and void.*

D “(2) *An order declaring as null and void the dismissal of the plaintiff from the service of the Nigeria Police Force by the Defendants, being illegal, wrongful and unconstitutional.*

E “(3) *An order directing the defendants to reinstate the Plaintiff into the Nigeria Police Force with his former status of a Corporal and payment of all arrears of his salaries and allowances effective 5th May, 1998 until the disposal of the matter. Or alternatively the payment of the sum of N224,420:00 (two hundred and twenty four thousand, four hundred and twenty Naira) that he would have served the Nigeria Police Force before he would be qualified to either retire voluntarily or be retired by the Police authorities.*

F “(4) *The cost of prosecuting this suit”,*

The Defendants, now Respondents denied almost all the claims of the Appellant. The appellant herein was the Respondent in the Court of Appeal hereinafter called court below.

G Before I go further it may not be out of place if I narrate brief facts of this appeal as put by both parties. The case for the Appellant, who was the plaintiff in the trial court, was that he joined the Nigeria Police Force in 1993, and rose to the rank of a corporal. In March, 1998, the Appellant and one Police Officer, Corporal Philip, arrested
H one Abba Tijjani, who was in possession of clippers suspected to be stolen property at the instance of one Alhaji Audu. In the course of investigation, the suspect had bolted out/fled and the Police Officers were arrested and charged to Orderly Room Trial for "Discreditable Conduct" contrary to and punishable under paragraph (iii) of First

Schedule of Police Regulation 355 of 1988. Both Respondents were said to make efforts to re-arrest the said suspect, who confessed that he stole the barbing clippers and ultimately he was charged to court. For the meantime, the Respondents (the Appellant and Cpl. Philip Audi) were still in custody when the Orderly Room Trial was concluded and they were found guilty and dismissed from the Nigeria Police Force. B

Apart from denying all the Appellant (in the court of Appeal) allegation the Respondents asserted that when the Appellant arrested the suspect he did not take him - Abba Tijjani - to the Police Station, but deliberately allowed him to escape so that they could sell the clippers. The Appellant changed to MUFTI and proceeded to a Saloon around the Post Office to sell the clippers. It was in the process of selling the two clippers that the owner of the Saloon identified them as the stolen clippers of Mr. Godwin. Hence the Appellant was found guilty and dismissed from the Nigeria Police Force. C D

Both sides adduced evidence that was evaluated by the learned trial Chief Judge, who found the Appellant claim proved and found in their favour. The Judgment of the trial court could be found on pp 23 - 32 of the Record of Proceedings: E

"The guilt of the plaintiff in respect of the offence of being dishonestly in possession of stolen property to wit: two barbing clippers was not established or was yet to be established and yet the employers went ahead and had him dismissed. That was wrong in law and I so declare the dismissal of plaintiff by the Commandant of the Police College Maiduguri who is at the same time a Commissioner of Police null and void and of no effect whatsoever. I so enter judgment for the plaintiff and consequently order that he be re-instated forthwith and his rank and salary be restored and arrears of his salary be paid. I award a cost of N500:00 to the plaintiff." F G

The suit filed by the plaintiff is a competent one as the two defendants, in my view, are competent persons to sue and to be sued. They are therefore free to pursue the criminal trial which is pending against the plaintiff to its logical conclusion. They can and they are free to dismiss the plaintiff after securing the conviction of the plaintiff for the given offence or any other offence. In the meantime judgment is for the plaintiff with N500:00 costs" H

For the avoidance of any doubt, the plaintiff, Cpl. Emmanuel

Amodu, now Appellant was charged for acting in a manner prejudicial to discipline unbecoming of members of the force. "You were caught with two barbing clippers valued at N3,000:00 which were illegally possessed by you property of one Godwin Okhamhensin 'M' of Umarari Ward, Maiduguri, when trying to dispose of them at Monday Market, Maiduguri. Thereby committed an offence against discipline". (Underlines mine)

The above is Exhibit "Z" which contains the orderly room proceeding as a result of which the plaintiff now Appellant was dismissed from the Police Force. The alleged person who stole the two clippers was not brought to testify at the orderly room. Even though, Abba Tijjani, the person who was alleged to have stolen the two clippers, was re-arrested and arraigned on F. I. R. for the theft of those two clippers. He was later released on bail and jumped bail. Since he could not be traced the learned Magistrate on 16/9/93 struck out the case.

The plaintiff now appellant was never charged and tried at orderly room for theft of the said two clippers but was only charged for the offence of discreditable conduct contrary to paragraph 'E' of the First Schedule of Police Regulations. 355 of 1968.

It was clear, and the trial Chief Judge found that the orderly room proceedings were fairly and nearly accurately conducted. There is no doubt that the plaintiff was given an opportunity to testify and did testify. There are enough facts and adequate evidence warranting the delegated officer to pronounce the guilt of the plaintiff as charged. It is, therefore, my view, that the failure to invite Abba Tijjani who was at large did not and could not vitiate the orderly room proceedings. The dismissal and institution of criminal proceedings against the plaintiff are clearly harsh punishments, learned trial Chief Judge concluded. He then declared the dismissal of the plaintiff by the Defendants, now respondents, null and void and of no effect whatsoever. That Court also ordered a reinstatement of the plaintiff forthwith and his rank and salary be restored and arrears of his salaries be paid.

The defendants successfully appealed against the above decision of the trial court to the Court of Appeal Jos Judicial Division. The Court of Appeal per Mukhtar JCA, as She then was held thus: -

"I agree with learned counsel since the 2nd Defendant/Appel-

lant is still a party, even if the name of the 1st Defendant/Appellant is struck out on the strength of the likely success of the related ground of appeal, so it will not affect the actual fortune of the appeal. In this regard I fail to see any purpose that will be achieved by a further flogging of the issue.

The end result is that the appeal succeeds. The judgment of the lower court is hereby set aside. I make no order as to costs in this court and order that the sum of N500 made in the lower court be set aside". See pp 70-71 of the Record.

The Appellant appealed to this Court and filed a Notice of appeal containing one ground of appeal.

In this Court the respondent's application for extension of time to file their Briefs out of time was granted on 23/04/09 and the Respondents' Brief was deemed properly filed. Both parties then filed and exchanged their respective Briefs of argument. The Appellants Amended Brief was filed on the 9/10/07. In the Appellant's amended Brief three Issues were filed for the determination of the appeal. They are reproduced thus: -

One

"Whether it was proper for the Court of Appeal to have rejected the evidence of DW2 who testified in favour of the Appellant, on the ground that the piece of evidence was neither pleaded by the Appellant of the respondents? (sic) (Distilled from grounds 1 original and 1 additional).

Two

Whether the learned Justice of the Court of Appeal were correct when they rejected the findings of the trial Chief Judge who saw and heard the witnesses (Distilled from grounds 2 additional).

Three

Whether It was proper for the Court of Appeal to have Suo-motu raised issues neither in the grounds of appeal nor canvassed by the parties in determining the appeal? (Distilled from ground 3 additional) "

In the Respondents' Brief, one single issue was formulated for our consideration of this appeal as follows: -

"Whether having regard to the pleadings filed and exchanged by the parties in suit No. M/84/93 the lower Court was right to have held that the evidence of DW2 was not pleaded.

We humbly submit further that the issue for determination is predicated on the lone ground of appeal filed”.

Before I proceed further, it will be necessary to point out that the Appellant herein, in his Notice of appeal dated 15/7/03 contained only one ground of appeal, in which he questioned the judgment of the lower court as follows :-

“The Learned Justices of the Court of Appeal erred in law when they found that the evidence of DW2 could not be correctly applied to sustain appellant’s case, since the piece of evidence in question was not pleaded either by the plaintiff/appellant nor the defendant/respondent and this has occasioned a mis-carriage of justice”.

It is in respect of this ground of appeal that the appellant has distilled three (3) issues for determination. This, in my view, amounts to proliferation of issues for determination. This court on several occasions has frowned at the proliferation of issues for determination which is in excess of the numbers of grounds of appeal filed. In the case of Yadis Nigeria Ltd vs. Great Nigeria Insurance Company Ltd (2007) 5 SCNJ 86, where similar situation in this case occurred this court held as follows: - See p 109 2nd to the last paragraph when Onnoghen JSC, stated thus: -

“I have to observe that there is only one ground of cross-appeal as is contained in the Notice of cross-appeal filed on 5/10/06. It is settled law that a party is not allowed to formulate more than one issue for determination out of a ground of appeal even though he can combine two or more grounds of appeal in formulating an issue for determination. This is the principle against proliferation of issues for determination. In the instant case learned counsel has submitted two issues out of the single ground of appeal for determination thereby rendering the issues in competent”.

In the case of Orji vs. The State (2008) 4 SCNJ 85, this court per Mukhtar JSC held as follows p 94: -

“Issues for determination are supposed to be distilled from the grounds of appeal filed by an appellant, and not raised capriciously. They must not out-number the grounds of appeal, for where they so out-number them there is the danger that some of the issues do not derive their source from the grounds of appeal, and therefore are not related to one another. It is trite that an issue that does not so relate will not be

tolerated ”.

In the case at hand, the appellant has Formulated three issues out of one ground of appeal, and applying these fine principles of law adumbrated in the above cited cases, it is my view that the issues are bad in law. Nonetheless I will only decide this appeal based on the only one issue that is related to the sole ground of appeal filed. B

I hold the view that in a very near future the proliferation of issues would attract a little bit harsher treatment, namely the offence of proliferation of issues will meet with zero tolerance. All the affected issues will then be struck out and expunged from the record on the ground of general contamination and no such issue or issues in excess will be saved. Enough is enough. C

The gist of the appellant's argument in his brief is that the lower court was wrong in allowing the appeal on the basis that the evidence of DW2 was not pleaded. That piece of evidence relates to the prosecution of the appellant in the Chief Magistrate's Court for being in possession of the clippers suspected to have been stolen. He therefore submitted that the Orderly Room Trial and the Criminal Proceedings were the basis of the appellant's dismissal from the Nigeria Police Force. D E

In the next breath, the appellant's submitted that the fact that Respondents did not plead the said facts does not in any way mean that DW2's evidence could not be admitted. Thus, the appellant must succeed on the strength of his case but where a witness called by the defendant testifies, supporting the plaintiff's case the court shall rely on such evidence to find for the plaintiff, the cases of Adebambo vs. Olowosago (1985) 3 NWLR (Part 11) at 207. And Akinola & ANOR vs. Oluwo & Ors (1962) All NLR pt. 1 at 225, were cited. The appellant therefore submitted that it was wrong for the Court of Appeal to have dismissed the appellant before the Orderly Room Trial was completed when the allegation against him has not been established. The learned counsel then finally submitted that the failure to tender the letter of dismissal is irrelevant. F G H

Learned counsel for the Respondents submitted in his Brief of argument that the fact of institution of criminal proceedings against the appellant was not pleaded so the evidence of DW 2 who opined that the respondents were charged to court was piece of evidence

that was not pleaded and did not in any way form part of the appellant's case and the evidence ought to have been expunged from the record. The following cases were cited: -

(i) *Ogunsina vs Matanmi* (2001) 9 NWLR (pt 718) p 286 at 294 and

B (ii) *Oversea Construction (Nig) Limited vs. Creek Enterprise (Nig) Limited* (1985) 3 NWLR (pt 13) 407 at 414.

Now, the DW2 evidence in question is right now contained at page 17 of the Record which was rendered by the PW2 under cross-examination thus: -

C *"Sometimes the plaintiff was taken to court in 1994. The plaintiff told me how he came about the clippers. It is true that the plaintiff was not the one who stole the clippers but someone else. The person who stole the clippers was arraigned before a Magistrate Court. The*
D *plaintiff was taken to court for being in possession of the clippers suspected to have been stolen. The clippers were found in possession of the plaintiff."*

Was the fact relating to this evidence pleaded? The appellants counsel submitted that this evidence was pleaded in paragraphs 13,
E 14 and 15 of the statement of claim, while the Respondents counsel contended that it was not pleaded. I have carefully perused the pleadings of both the appellant and the respondents and I could not lay my hand at where the facts relating to this evidence was pleaded. It
F was neither pleaded by the appellant nor the respondents and in my view; it does not form part of any of the parties case. ***The lower court in this respect held as follows:-***

".... It is on record that DW2 in his evidence testified that the respondent was charged to court. It is a fact that this
G ***piece of evidence was not pleaded, and did not in any way form part of the plaintiff's claim nor the Respondent's defence. Although the position of the law is that only facts need be pleaded, and not evidence, the piece of evidence that is adduced must have some semblance to the facts of the case or***
H ***the defence put forward; and not contain a new fact that has not been raised. This piece of evidence to my mind has no connection with the facts pleaded, nor does it arise from them. The argument that the said evidence supported the case of the Respondents does not hold water, because it does not.***

The said evidence should in fact have been expunged by the learned trial Chief Judge, and he should not have placed reliance on it for the purpose of making a finding. See the cases of Shuwa V Chad Basin Development Authority (1991) 7 NWLR (pt. 205) page 550 and Nwekeson V. Onigbo (1991) 3 NWLR (pt. 178) page 125, relied upon by learned counsel for the Appellant. See also Shogo V. Adebayo (2000) 14 NWLR (pt. 686) page 121". P 67 of the Record of proceedings per Mukhtar JCA as she then was.

With due respect, I completely agree with the learned Justice of the Court of Appeal and I have nothing more to add. Except that I shall make an order expunging the said evidence from the record and it is hereby expunged.

I think another ancillary issue is that of dismissal of the Appellant herein. The appellant claimed, amongst others:-

"AN ORDER declaring as null and void the dismissal of the D plaintiff from the services of the Nigeria Police Force by the defendants, same being illegal, wrongful and unconstitutional".

KATSINA-ALU JSC

I have read in draft the judgment delivered by my learned brother Muntaka-Coomassie, JSC in this appeal. I agree with it and for the reasons he gives, I too dismiss the appeal. I also make no order as to costs.

MOHAMMED JSC

The Appellant in this appeal, a Police Corporal in the Nigeria Police Force along with another Police Constable were found in possession of Clippers stolen from a barbers shop in Maiduguri. They were tried in the Police Orderly Room and found guilty of conduct unbecoming of a Police Officer and dismissed from the Force under Section 371 of the Police Act. Not satisfied with the action taken against him, the Appellant challenged his dismissal at the High Court of Justice of Borno State at Maiduguri, where after hearing the parties, the learned trial Chief Judge found that the Orderly Room trial and the finding of the Appellant guilty as charged under Section 371 of the Police Act, was indeed supported by evidence. Rather than dismiss-

ing the action of the Appellant after this glaring finding on the evidence, the learned trial Chief Judge turned round to rely on the evidence of DW2 which was not part of the case of the Appellant/Plaintiff on his statement of claim, to find in his favour in granting the reliefs sought by him in the action. Indeed this was a great error of law as rightly found by the Court below in its judgment setting aside the decision of the trial Court and replacing the same with an order of dismissal of the Appellants/Plaintiffs' action.

In this respect, I completely endorse the judgment of my learned brother Coomassie JSC that this appeal has no merit. Accordingly, I also dismiss it with no order on costs.

ONNOGHEN JSC

I have had the advantage of reading in draft the lead judgment of my learned brother *MUNTAKA-COOMASSIE, JSC*; just read and I agree with his reasoning and conclusion that the appeal is without merit and ought to be dismissed.

There is no doubt at all that the evidence of DW2 which was relied upon by the trial court in coming to its decision in favour of the appellant was on facts not pleaded by either party to the action.

The lower court was therefore right in allowing the appeal of the present respondents against the judgment of the trial court as it is settled law that evidence on facts not pleaded ground to no issue.

I therefore dismiss the appeal and abide by the consequential orders including the order as to costs contained in the said lead judgment.

Appeal dismissed.

CHUKWUMA-ENEH JSC

I have had the advantage of reading in advance the judgment prepared by my learned brother Muntaka-Coomassie, JSC and I agree with him that the appeal lacks merit and should be dismissed. I also dismiss it and endorse the order as to costs in the said judgment.