

**SUPREME COURT OF NIGERIA**

3<sup>RD</sup> JULY, 2009. SC. 292/2002

**CORAM:- G. A. OGUNTADE, F. F. TABAI,  
I. T. MUHAMMAD, M. S. MUNTAKA-COOMASSIE,  
O. O. ADEKEYE, JJSC**

1. STAR PAPER MILL LTD ..... DEFENDANTS/APPELLANTS

2. MR. ECHEME KALU

AND

1. BASHIRU ADETUNJI

2. BILIAMINU ADETUNJI

3. GANIYATU FASASI ..... PLAINTIFFS/RESPONDENTS

4. SILIFATU FASASI

(For themselves and on behalf  
of Imoru Family, Iganmu, Lagos)

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**PARTIES** - Disputes - Amicable resolution - Attitude of court - It is one of the cardinal principles of our judicial system - To allow parties to amicably resolve disputes between them (H1)

**JUDGMENTS** - Consent judgment - Meaning - It is a contract between parties - Whereby rights are created between them - In substitution for order of consideration - Of abandonment of the claims in court (H2)

**COURTS** - Terms of settlement - Adoption - Whether automatic - Courts have discretion as to whether or not - To adopt terms of settlement as their judgments - Particularly where such terms are vague (H3)

**COURTS** - Terms of settlement - Rejection by court - Propriety - Court of Appeal was right in not accepting to enter it as its judgment - As it did not state clearly the rights created or abandoned - In respect of the subject matter (H4)

***FACTS***

The plaintiffs/respondents sued defendants/appellants claiming, inter alia, a declaration that the lease granted in favour of one appellants' predecessor-in-title by respondents' predecessor-in-title

in respect of the land in dispute has been determined by reason of forfeiture. Pleadings were filed and exchanged and the matter went to trial. After trial, learned trial judge gave judgment to respondents as prayed.

Aggrieved, appellants appealed to Court of Appeal. After appellants had filed their brief of argument and apparently served same, respondents, without bothering to file their own brief of argument agreed with appellants to resolve the matter amicably. Eventually, a terms of settlement was filed before Court of Appeal supposedly setting out the terms as agreed by the parties. Appellants sought to move the court to adopt same as its judgment in the matter, as agreed by the parties. The court refused the application and instead made an order striking out the appeal. Dissatisfied, appellants have brought this appeal against the order of Court of Appeal striking out their appeal.

### **ISSUE FOR DETERMINATION**

Whether the court of appeal, hereinafter called the lower court, was right in striking out an appeal, when the parties have amicably resolved the dispute between them and filed terms of settlement before the court.

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

### ***Disputes - Amicable resolution - Attitude of court***

1. It must be pointed out that it is one of the cardinal principles of our judicial system to allow parties to amicably resolve the disputes between them. By doing so, the otherwise hostile relationship between the parties would be amicably resolved and cemented. It is this amicable resolution of disputes by the parties that is called settlement. When the terms of such settlements are reduced into writing, it is now called 'terms of settlement', when the terms of settlement are filed they are called and made the judgment of the court. It is then crystalised into 'consent judgment'. (p. 2178 G)

### ***Consent judgment- Meaning***

2. When consent judgment is given, none of the parties has the right of appeal, except with the leave of court. Hence, consent judgment is a contract between the parties whereby rights are created between

them in substitution for order of consideration of the abandonment of the claim or claims pending before the court. This is intended to put a stop to litigation between the parties just as such as a judgment which results from the decision of the court. (p. 2179 A)

***Terms of settlement - Adoption - Whether automatic***

3. I wish to add that terms of settlement does not on its own crystallise into consent judgment until the court enters it as its judgment. To my mind, the court has a discretion to enter terms of settlements as its judgment or not, particularly where terms of settlement are not ascertainable or the rights acquired or abandoned not clearly spelt out. This is particularly important in view of the fact that a term of settlement entered as a consent judgment has the force or sanction of a final judgment of the court. In the instant case, the terms of settlement are so vague, ambiguous and un-ascertainable to warrant a court to enter such terms as its judgment. (p. 2180 B)

***Terms of settlement - Rejection by court - Propriety***

4. The purported terms of settlement did not state out clearly the rights created or abandoned as it affects the subject matter. In fact no reference is made at all to the respondent which is the subject of dispute before the court. It is therefore my view that the terms of settlement in the case at hand are vague, nebulous, ambiguous and not capable of enforcement as it is a final judgment of a court; therefore the lower court was right in not accepting to enter it as its judgment. (p. 2180 E)

***NOTABLE POINT OF INTEREST***

***OGUNTADE JSC***

***1. An appeal cannot be allowed or dismissed unheard***

Where there is an appeal against the judgment of the High Court, it is open to the Court of Appeal after hearing the arguments on the appeal to allow or dismiss the appeal. It is not open to the Court of Appeal to allow or dismiss an appeal without first hearing it.

The parties before the court below had asked that the judgment of the High Court be set aside on the ground that the appeal against it was meritorious. In other words, the parties had assumed a jurisdiction which under the Constitution of Nigeria is vested in the

Court of Appeal to reach the conclusion mutually that the judgment of the trial court was wrong. I think that this was presumptuous and unacceptable. (p. 2181 H)

**REPRESENTATION**

- B Alaba Okupe for the Appellants.  
Respondents absent and not represented.

**CASES REFERRED TO**

- C Madukolu v. Nkemdilim (1962) SC pg 172  
Amori v. Iyanda (2008) 3 NWLR pt 1074 pg 250  
Woluchen vs. Wokoma (1974) 3 SC. P 153 at 163  
U.B.N. Plc. V. Edamkwu (2005) 7 NWLR pt 925 pg 520  
Arubo v. Aiyeleru (1993) 24 NSCC pt 1 pages 255, pg 265  
D Lagos State v. Dosunmu (1989) 3 NWLR pt 111 page 552 at 2  
FBN Plc. V. Tsokwa (2000) 13 NWLR pt 685 pp. 521, 524 & 527  
Otunba Ojora vs Agip Oil Plc & Anor. (2005) 4 NWLR (Pt. 916) p 515  
Ogbuniyi & ors. V. Okudo & ors. (1979) NSCC vol. 12 page 77 at  
E pg 86  
National Bank of Nig. Ltd, V, P. B. Olatunde & Co. Nig. Ltd. (1994) 4 SCNJ pt 1 65 at pg 67

**LEAD JUDGMENT BY MUNTAKA-COOMASSIE JSC**

- F This appeal involves the determination of whether the court of appeal, hereinafter called the lower court, was right in striking out an appeal, when the parties have amicably resolved the dispute between them and filed terms of settlement before the court.
- G The plaintiffs who are the respondents before this court claimed before the High Court of Justice, Lagos among others, declaration that the lease granted in favour of Late Chief Ole Kanu Oko by Alhaji Bisiriyu Lawal dated 14/8/1995 and registered as No 73 at page 73 in volume 1576 of the and Registry, Lagos over a parcel of land
- H situate, lying and being at 210 Ogungbesan Street Coker Village Iganmu and measuring one acre has been determined by reason of forfeiture.

Both parties filed and exchanged pleadings and called witnesses in support of their case. The trial Judge, after listening to both parties

delivered his judgment in favour of the plaintiffs, and granted all the claims. The trial High Court held thus:-

*"In the totality of evidence adduced by the plaintiffs and Defendants, this court finds as a fact that it has to declare that the lease granted in favour of Late Chief Ole Kalu Oko, by Alhaji Bisiriyu Lawal in respect of the said land had been determined by reason of forfeiture for failure to pay rent which law require no statutory Notice before taking action for forfeiture in accordance with conveyance Act 1881 which is still applicable in Nigeria. Consequently, all the rights, interest and title in the said property has accordingly reverted back to the plaintiffs family who are entitled to possession of the same.*

*With respect to counter-claim filed by the Defendants, there is no iota of evidence adduced to sustain the averments on the counter-claim, there is clear evidence of breach of the lease Agreement dated 14<sup>th</sup> of August, 1976 and of which forfeiture of the lease was firmly supported by this court. Copies of statutory notices were served on the Defendant, even though not necessary, but they failed to find remedy to the breach within the period of 30 days given by the plaintiffs.*

*A declaration that the purported sublease in favour of the 1<sup>st</sup> defendant company is null and void as there was no document tendered to show any sublease to Defendants by anybody, whereas interest on land in law has to be in writing, if there is any at all, this could have been tendered, it is therefore presumed, if the document showing interest of the Defendants were tendered, this would be against the Defendants. Section ,149 Evidence law refers.*

*As there was no document tendered by the Defendants for their holding of the said land in dispute, the Defendants could be rightly adjudged a trespassers ab initio.*

*The Defendants are in fact adjudged as trespassers on the land in dispute.*

*Therefore, it would be justified to order a perpetual injunction against the Defendants jointly and severally, their servants, agents and or privies from committing any further acts of trespass on the said land.*

*The counter-claimed filed by the Defendants is frivolous, and it is therefore dismissed".*

See pp 126 - 127 of the Record.

Being dissatisfied with trial court's judgment, as stated above, the Defendants, appealed to the lower court. At the lower court the appellants filed their brief of argument. Before the respondents could file the respondents brief of argument, the parties have agreed to resolve the matter amicably, as a result of which a terms of settlement was filed before the lower court. The terms of settlement are reproduced hereunder:

### TERMS OF SETTLEMENT

"The parties herein have mutually agreed to settle the dispute herein as follows:-

"That the appellants appeal herein be allowed as being meritorious. That parties shall bear their respective costs. That these terms of settlement be made the judgment of this Honourable Court. Dated at Lagos the 17<sup>th</sup> day of July, 2001".

At the hearing of the appeal on the 6/5/2002, the following happened: -

"Okupe — makes settled terms filed on 3/10/01, wants them to be made the judgment of this court. Court of Appeal struck out".

It Is against the Order of Striking Out the appeal simpliciter that the appellants have appealed to this Court.

The appellants filed their brief of argument while the respondents failed to file any brief. Since there is proof that the respondents were duly served with the hearing Notices the appeal was deemed ripe for hearing ex parte, under Order 2 Rule 11 (3) of the SCR 1999.

The learned counsel to the appellants submitted in his brief that every Superior Court of record has the inherent power to enter consent judgment. He referred to the case of Woluchen vs. Wokoma (1974) 3 SC. P 153 at 163; and Idakwo and Anor vs. Iloka (1998) 3 NWLR cited section 16 of the Court of Appeal Act Cap 75 LFN 1990 and submitted that the lower court has the jurisdiction to make the terms of judgment the judgment of the Court.

***It must be pointed out that it is one of the cardinal principles of our judicial system to allow parties to amicably resolve the disputes between them. By doing so, the otherwise hostile relationship between the parties would be amicably resolved and cemented. It is this amicable resolution of disputes by the parties that is called settlement. When the terms***

**of such settlements are reduced into writing, it is now called 'terms of settlement', when the terms of settlement are filed they are called and made the judgment of the court. It is then crystalised into 'consent judgment. When consent judgment is given, none of the parties has the right of appeal, except with the leave of court. Hence, consent judgment is a contract between the parties whereby rights are created between them in substitution for order of consideration of the abandonment of the claim or claims pending before the court. This is intended to put a stop to litigation between the parties just as such as a judgment which results from the decision of the court.**

In the recent decision of this court in Race Auto Supply Company Limited & Ors vs Akibu (2006) 6 SCNJ 98, or (2006) 6 S.C p. 1, His Lordship Ogbuagu, JSC, at p. 17, defined what a consent judgment is as follows:-

*"It is a judgment entered pursuant to an agreement between the parties. See Woluchen vs Wokoma (1974) 3 SC 153 at 166. A consent thus by its nature, is first and foremost, a contractual agreement between the parties. Thus, a consent judgment constitutes a final judgment of the court and it is only appealable with the leave of the court. See Otunba Ojora vs Agip Oil Plc & Anor. (2005) 4 NWLR (Pt. 916) p 515.*

*Mohammed, JSC, in Race Supply Company Ltd vs Akibu (supra) stated the position beyond any doubt thus: -*

*"In line with this definition, where the parties before a court have agreed on how their dispute should be determined and ask the court to enter judgment by consent and in accordance with their terms of settlement and the court orders with their consent that a judgment be entered, the product is a consent judgment. In this regard it is necessary to point out that a consent judgment or order is as effective in law in respect of all the matters which are herein settled as any other judgment or order arrived at after the matters are fully fought out, to the end in a full trial. As Lord Herschel L. C. explained in the case of IN RE SOUTH AMERICA AND MEXICAN COMPANY EX-PARTE BANK OF ENGLAND (1885) 1 CH. 37 at 50.*

*"The truth is a judgment by consent is intended to put a stop to litigation between the parties just as much as is judgment which*

*result from the decision of the court after the matter has been fought out to the end. And I think it would be very mischievous if one were not to give a fair and reasonable interpretation to such judgment and were to allow question that were really involved to the action to be fought over again in a subsequent action”.*

- B With due respect, **I wish to add that terms of settlement does not on its own crystalise into consent judgment until the court enters it as its judgment. To my mind, the court has a discretion to enter terms of settlements as its judgment or not, particularly where terms of settlement are not ascertainable or the rights acquired or abandoned not clearly spelt out. This is particularly important in view of the fact that a term of settlement entered as a consent judgment has the force or sanction of a final judgment of the court. In the instant case, the terms of settlement are so vague, ambiguous and un-ascertainable to warrant a court to enter such terms as its judgment.** For example, the first term - “*that the appellants appeal herein be allowed as being meritorious*” is not only vague but a violent challenge of the jurisdiction of the lower court. Parties cannot agree to hold that an appeal is meritorious or not, it is within the exclusive jurisdiction of the Court of Appeal. See Section 240 of the 1999 Constitution of the Federal Republic of Nigeria. **The purported terms of settlement did not state out clearly the rights created or abandoned as it affects the subject matter. In fact no reference is made at all to the respondent which is the subject of dispute before the court. It is therefore my view that the terms of settlement in the case at hand are vague, nebulous, ambiguous and not capable of enforcement as it is a final judgment of a court; therefore the lower court was right in not accepting to enter it as its judgment.**

- H However, since parties have shown their intention to resolve this matter amicably and in order to put an end to litigation I hereby order that this matter be sent back to the Court of Appeal, Lagos Division (court below) for hearing, and the parties shall put before that court terms of settlement that are capable of being enforced, with the acquired and abandoned rights clearly set out. Consequently, I set aside the court below order which struck out the appeal before it and in its place order that the appeal be retried before another



panel of the lower court. Costs shall be in the cause.

### **OGUNTADE JSC.**

The respondents in the appeal had filed a claim before the Lagos State High Court contending that the land granted by them to the appellants under a customary tenancy was liable to forfeiture. The trial High Court granted the claim of the respondent.

Dissatisfied, the appellant brought an appeal against the judgment of the trial High Court. At the court below, the appellants filed their brief of argument. It would appear that parties agreed to what they labeled “*Term of Settlement*” before the respondents filed their brief of argument. The said “*Term of Settlement*” read thus:

#### **“TERMS OF SETTLEMENT**

*The parties herein have mutually agreed to settle the dispute herein as follows:-*

*That the appellants appeal herein be allowed as meritorious.*

*That parties shall bear their respective costs.*

*That these terms of settlement be made the judgment of this Honourable court.*

*Dated at Lagos the 17<sup>th</sup> day of July, 2001.*

On 6/5/2002, the parties appeared before the court below. The record of court for the day read:

*“Okupe - makes settled terms filed on 3/10/01 wants them to be made the judgment of this court.*

*Court of Appeal struck out.”*

The appellant was dissatisfied with the order of the court below striking out the appeal. Counsel has argued before us that the court below was in error not to have made the terms of settlement filed by parties the judgment of the court.

I do not think that the argument of the learned counsel for the appellant is well-founded. The jurisdiction of the Court of Appeal is mainly to hear appeals from the High Court. A High Court in the hearing of cases before it could go wrong in its judgment. Where there is an appeal against the judgment of the High Court, it is open to the Court of Appeal after hearing the arguments on the appeal to allow or dismiss the appeal. It is not open to the Court of Appeal to allow or dismiss an appeal without first hearing it.

The parties before the court below had asked that the judgment of the High Court be set aside on the ground that the appeal against it was meritorious. In other words, the parties had assumed a jurisdiction which under the Constitution of Nigeria is vested in the Court of Appeal to reach the conclusion mutually that the judgment of the trial court was wrong. I think that this was presumptuous and unacceptable. The parties should simply have argued the appeal and left the court below with the duty to determine the merit of the appeal. If it was the inclination of the respondents before the court below not to resist the appeal, they should have filed appropriate processes so indicating. It could turn out that an appeal not opposed at the hearing may still be dismissed by the Court of Appeal. A judgment of court often settles the issues in dispute between parties and makes a pronouncement on the rights and entitlements of the parties. There is nothing stopping parties after the judgment of a court from changing their positions from what it was in court in order to compromise the terms of the judgment of the High Court. This is however not the same thing as praying the Court of Appeal to allow an appeal which has not been heard on the ground that parties had themselves come to the conclusion that the solemn judgment of the trial court was wrong.

What I have said above is not a justification for the order made by the court below striking out the appeal. The court below should simply have proceeded to ask the respondents before it to file their respondents' brief or proceed to hear the appeal in lieu of such brief. The order made by the court below striking out the appeal is unjustifiable in the circumstances as it only validates the extant judgment of the High Court which both parties accepted to be wrong.

It is for the above and the more elaborate reasons in the lead judgment of my learned brother Muntaka-Coomassie JSC that I would allow this appeal and make an order that the appeal be heard by another panel of the court below. I abide by the order on costs made in the lead judgment.

### **TABAI JSC**

I was privileged to read the lead judgment of my learned brother Coomassie, JSC and I also agree that the appeal be allowed. The

Court was clearly in error to strike out the appeal. The judgment of the Court below strike out the appeal is hereby set aside. In its place, the case be and is hereby remitted back to the Court of Appeal to be heard by another panel of that Court. I adopt the order as to costs in the lead judgment.

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**MUHAMMAD JSC**

I have read before now the judgment of my learned brother, Coomassie, JSC. I agree with him that the appeal lacks merit. I, too, dismiss the appeal. I abide by all the consequential orders made therein.

C

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**ADEKEYE JSC**

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I had read before now the Judgment just delivered by my learned brother, M.S. Muntaka Coomassie JSC, The Respondents in this appeal, who were plaintiffs before the High Court of Lagos State, sued the appellants claiming in their writ of summons as follow:-

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1) A DECLARATION that the lease dated 14<sup>th</sup> day of August 1976 and registered as No 73 at pg 73 in volume 1576 of the land registry Lagos purportedly executed by Alhaji Bisiriyu Lawal in respect of that piece and parcel of land situate, lying and being at 2/10 Ogungbesan Street, Coker Village, Iganmu and measuring one acre in favour of late Chief Ole Kanu Oko is null and void and of no effect as the grantor as attorney has no authority to grant the lease upon the condition contained therein OR IN THE ALTERNATIVE

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2) A DECLARATION that the lease granted in favour of the said Alhaji Bisiriyu Lawal in respect of the said land has been determined by reason of forfeiture and that all the rights, interests and title in these said property have accordingly reverted back to the plaintiffs family who are entitled to possession of same.

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3) A DECLARATION that the purported sublease in favour of the 1<sup>st</sup> defendants company in respect of the said land is null and void.

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4) A PERPETUAL INJUNCTION against the defendants jointly and severally their servants, agents and/or privy from committing

any further acts of trespass on the said land.

Parties exchanged pleadings. The suit was heard on the plaintiffs Amended statement of claim and the defendant's amended statement of defence and counter claim. The learned trial Chief Judge, Adagun (as he then was) in his considered Judgment dated 21/5/99 but delivered on Saturday 22/5/99 at 9pm, found in favour of the plaintiffs. Vide pages 102 - 127 of the records.

The Respondents being aggrieved by the Judgment filed an appeal at the Court of Appeal Lagos. The defendants/appellants filed and served their joint brief on the Respondents. The fulcrum of the appeal was that Adagun, Chief Judge of Lagos State (as he then was) had attained the age 65 years on 22/5/99, and had ceased to be a judge of the High Court of Lagos state, when he delivered the judgment now on appeal on 22/5/99 at 9 pm. He delivered the judgment without the statutory competence and jurisdiction of a judge of the High Court of Lagos State. Furthermore the learned Chief Judge proceeded thereafter to tamper with and re-write his handwritten judgment without lawful excuse, justification and jurisdiction. The Respondents failed to file their Respondents brief but reacted to the Appellants brief by entering into Terms of Settlement with the appellants. At the hearing of the appeal on 6/5/02, the parties urged the court to make the Terms of settlement already filed as the judgment of court. The court of Appeal declined the request of the parties and struck out the appeal (Vide page 286 of the Record).

The appellant at the lower court being dissatisfied with the order of court made on 6/5/02 further appealed to this court. The appellant adopted and relied on the appellants brief filed on 30/10/02. The Respondents did not file any brief. These appeals were heard on 6/4/09 solely on the appellant's brief.

The sole issue raised in the appeal before this court read as follows:

*"Whether the learned justices of the court of Appeal were correct in law in striking out the appellants appeal instead of exercising their constitutionally inherent jurisdiction by entering judgment as per the Terms of Settlement dated 12/7/01 filed on 3/10/01".*

The appellants canvassed that the judgment in this court must be in favour of the appellants in view of the unchallenged and un-

controverted evidence before the lower court, to the effect that:-

*“(1) the learned trial Chief Judge (as he then was) had ceased to be a judge of the High Court of Lagos state as at 9 pm on 22/5/99 and thereby lacked the statutory competence/jurisdiction of a High court of Lagos State Judge.*

*(2) As the learned Trial chief Judge (as he then was) proceeded subsequently thereafter to re-write and/or tamper with his handwritten judgment he also did so without lawful excuse, justification and/or jurisdiction.*

*(3) The judgment then on appeal to the court of appeal was and is Null and Void and of no effect whatsoever.*

*(4) The Respondents upon being served with the Appellant’s Brief of argument chose not to file a Respondent BRIEF OF ARGUMENT and in lieu therefore the parties reached Terms of Settlement dated 12/7/01 and filed on 3/10/01 inter alia conceding the appellants contentions in their Appellant’s Brief of Argument.*

*(5) The lower court has a duty to encourage settlement of civil cases before it in an effort to decongest the court and cut down on costs to parties and bring an end to litigation.*

*(6) It was appropriate for the lower court to exercise its constitutionally inherent jurisdiction and judicial power to enter judgment as per the said Terms of Settlement.*

*The appellants cited authorities in support of the argument and submission.*

*FBN Plc. V. Tsokwa (2000) 13 NWLR pt 685 pages 521,524 and 527 Arubo v. Aiyeleru (1993)24 NSCC pt 1 pages 255, pg 265 lines 1-6 Nneji & ors v. Chukwu & ors (1988) Vol. 19 pt 1 NSCC PGS 1115, 1117 & 1118 Woluchem v. Wokoma (1974) 3 SC pages 153 Re: South America & Mexican company Ex-parte Bank of England (1895) 1 ch page 37 Idakwo & Anor v. Ilona (1998) 3 NWLR pt 541 pg 315 Ogbunyiya & ors. V. Okudo & ors. (1979) NSCC vol. 12 page 77 at pg 86,1-2 A-g Lagos State v. Dosunmu (1989)3 NWLR pt 111 page 552 at 2 A-g*

*The crux of the argument of the appellants is that this court must be persuaded by the foregoing reasons put forward by them and consequently regard the Terms of Settlement of the parties filed in court on 3/10/01 as the judgment of court in respect of Appeal No.CA/L/174/2001.*

*It is pertinent at this juncture to state and examine the TERMS OF SETTLEMENT which is reflected at page 285 of the Record as follows:-*

**TERMS OF SETTLEMENT**

B “The parties herein have mutually agreed to settle disputes herein as follows:-

(1) That the appellants appeal herein be allowed as being meritorious.

(2) That parties shall bear their respective costs.

C (3) That these terms of settlement be made the judgment of this honourable court.

*Dated at Lagos this 12<sup>th</sup> day of July 2001.”*

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Sgn

D On a microscopic examination of the Terms of Settlement I can identify the undergoing faults:-

(1) Terms of Settlement are the fruit of an amicable settlement by parties out of court without going into the merits of a matter or an appeal. A court can only declare an appeal meritorious after such an appeal has been properly heard and determined.

E (2) An appeal is a continuation of the proceedings and judgment of the lower court. The major complaint of the appellant is that the judgment of the lower court is technically invalid and constitutionally a nullity.

F (3) The terms of settlement does not take cognisance of the subject matter of dispute.

(4) The lower court cannot ascertain how the terms of settlement has satisfied the aspiration of the parties vis-a-vis their rights and vital issues in the subject matter of dispute.

G (5) The cord between the subject matter of dispute and the interests of the parties is completely severed.

H (6) The Terms of Settlement are embodied in any opinion at large and vague hence the lower court had rightly though hastily, without inviting the learned counsel for the parties for comments on them, struck them out.

It is the role of a judex in adjudication to encourage amicable settlement in a suit where it can adequately meet and satisfy the end of the justice. The court has a discretionary jurisdiction to examine the entire circumstances of a case in order to determine whether the

alleged Terms of Settlement, which to all intents and purposes are Compromise Agreement, entered into by the parties to a suit, should be scrutinized and made an order of court. When Terms of Settlement or in other words Compromise Agreement become an order of court on the application of the parties it in legal parlance becomes a CONSENT JUDGMENT. B

According to Black's Law Dictionary 8th Edition a Consent Judgment can also be referred to as AGREED JUDGMENT which means:-

*"A settlement that becomes a court judgment when the judge sanctions it. In effect an agreed judgment is thereby a contract acknowledged in open court and ordered to be recorded, but it binds the parties as fully as other judgment".* C

Under our procedural laws actions may be settled by consent during trial, order to be legally binding on the parties it is imperative that it should be sanctioned by court. A compromise settlement between parties to a dispute may be described as a contract whereby new rights are created between them in substitution for and in consideration of the abandonment of the claim or claims pending before the court. A Consent Judgment or order by nature is as effective in law in respect of all the matters which are settled as any other judgment or order arrived at after hearing a matter on merit. The essence is to put a stop to litigation between the parties just as much as is a judgment which results in the normal proceedings of a court in a matter heard on its merit. D E

The requirements of valid consent judgments are:- F

(a) Parties must reach a complete and final agreement on the vital issues in their Terms of Settlement.

(b) They must be ad idem in the terms of their compromise agreement. G

(c) Their consent must be free and voluntary.

The lower court could not possibly on the application of the parties have entered a consent judgment when there was no indication of any compromise agreement reached being the bedrock of such application in the circumstance of this case. H

Vulcan Gases Ltd. v. G.F. Ind. A.G (2001), 9 NWLR pt 719 pg 610 Woluchem v. Wokoma (1974) 3 SC 153

U.B.N. Plc. V. Edamkwu (2005) 7 NWLR pt 925 pg 520

Amori v, lyanda (2008) 3 NWLR pt 1074 pg 250 Ojora v, Agip (Nig.)

Plc. 2005 4 NWLR pt 916 pg 515

I am one with the order for retrial made by my lord in the leading judgment. An appellate court will exercise its discretion to order a retrial among other reasons

where:-

B (a) There has been a fundamental irregularity in the trial.

The facts of the appellant's case disclosed that judgement the trial court was null and void having been affected by constitutional and jurisdictional defect.

C National Bank of Nig. Ltd, V, P. B. Olatunde & Co. Nig. Ltd. (1994) 4 SCNJ pt 1 65 at pg 67 Madukolu v. Nkemdilim (1962) SC pg 172

With fuller reasons given by my learned brother in the leading judgement I also make an order for retrial.

I adopt all the consequential orders made as mine.

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