

SUPREME COURT OF NIGERIA
5TH MARCH, 2010. SC. 94/2001
CORAM:- G. A. OGUNTADE, F.F. TABAI,
I. T. MUHAMMAD, J. A. FABIYI, O. O. ADEKEYE, JJSC

VICTINO FIXED ODDS LIMITED APPELLANT
AND
1. JOSEPH OJO
2. BOARD OF INTERNAL REVENUE
EDO STATE OF NIGERIA
3. THE ARBITRATION PANEL OF RESPONDENTS
BOARD OF INTERNAL REVENUE,
EDO STATE OF NIGERIA

FAIR HEARING - Breach - Correctness of decision - Effect - Once the right to fair hearing is violated - It is irrelevant whether the decision subsequently reached is correct (H1)

COURTS - Appeals - Breach of fair hearing - Effect - Appellate court need not go into the reasons for the breach - It has no alternative but to allow the appeal - And treat it as though there had been no hearing at all (H2)

FACTS

The applicant/appellant had filed an application at the High Court in Benin seeking for an order of certiorari to quash the ruling of 3rd respondent given in favour of 1st respondent by which appellant was ordered to pay the sum of N116,200.00 to 1st respondent. It was not in dispute that 3rd respondent was set up in accordance with the provisions of the Pools Belting (Control and Taxation) Edict of Edo State, 1986. In exercise of its jurisdiction under the said Edict, 3rd respondent had arbitrated over a dispute between appellant and 1st respondent and handed down the aforementioned award. Appellant had seemingly accepted the award through its counsel vide a document headed 'Receipt' and dated 13/8/97.

However, appellant later refused to perform its obligation under the award. Instead, it filed application leading to the instant appeal. After hearing the application, the learned trial judge held that

there existed on the face of the record of the 3rd respondent serious error of law in that it was not properly constituted during the arbitration. The issue of improper constitution of 3rd respondent was not raised by the parties but by the trial judge suo motu. Moreover he was not addressed by counsel on the point. Nevertheless, he eventually made an order quashing the ruling of 3rd respondent on the ground of improper composition. Aggrieved, respondents appealed to Court of Appeal which court allowed the appeal as it held that the procedure adopted by trial judge breached respondents right to fair hearing. Dissatisfied, appellant has brought this appeal against the judgment of Court of Appeal.

ISSUE FOR DETERMINATION

"(ii) Were the learned justices of the Court of Appeal right in affirming the findings and ruling of the Arbitration Panel solely on the issue raised suo motu by the learned trial judge of the High Court when there was another ground why the High Court set aside the said ruling and findings of the Arbitration Panel and thus granted application for certiorari."

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

FAIR HEARING - Breach - Correctness of decision - Effect

1. In its real essence, fair hearing lies in the procedure followed in the determination of the case, not in the correctness of the decision. It is only when the party aggrieved has been heard that the trial judge would be seen as discharging the duty of an unbiased umpire. Learned counsel for the appellant feels that his surmised absence of miscarriage of justice ameliorates an infringement of a provision of fundamental human right. Such is not correct. The violation of the rule of *audi alteram partem, per se*, lies in the breach of the fundamental human right. Once right is violated, it is irrelevant whether a decision made subsequent thereto is correct. (p. 1014 H)

Appeals - Breach of fair hearing - Effect

2. It should be further stated that on a breach of the right of fair hearing, an appellate court does not go to the reasons for its breach or the consequences of same. It has no alternative but to allow the appeal against the decision and treat it as though there has been no hearing at all. An appellate court is bound to follow this course in the

hearing of the appeal.

A denial of the right to be heard is a breach of constitutional right, natural justice and rules of court. Such cannot and ought not to be condoned in any respect.

It is a basic and fundamental principle of the administration of justice that no decision can be regarded as valid unless the trial judge or court has heard both sides in the conflict. (p. 1015 C)

NOTABLE POINTS OF INTEREST

FABIYI JSC

1. Audi alteram partem is incorporated in the Constitution

It is certain that fair hearing by a court or other judicial tribunal under section 36 (1) of the 1999 Constitution - the grundnorm, incorporates the *audi alteram partem* rule. It is that a man can never have a verdict entered against him on a matter relating to his civil rights or obligation before such a court or tribunal without being given an opportunity of being heard. The rule is one of the essential cornerstones of our judicial process. (p. 1014 F)

2. Trial judge descended into the arena by his treatment of the case

There is no doubt about it that the trial judge descended into the arena when he *suo motu*, in his judgment, raised the issue of the composition of the Arbitration Panel and designation of its members and resolved them in favour of the appellant without affording the respondents' counsel the opportunity to address him on the point. The trial judge had no duty to bridge the yawning gap in the case of a party to the proceedings. (p. 1015 H)

REPRESENTATION

J. E. Legbedion with him, S. Ebesunun for the appellant

H. S. T. Tumba with him, E Nyokoyo for 1st and 2nd respondents

Chief O. O. Obono-Obla for the 3rd respondent with him, J. O. Obono-Obla (Mrs.)

CASES REFERRED TO

Ajuwon v. Akanni (1993) 9 NWLR (Pt. 316) 182

Otapo v. Sunmonu (1987) 2 NWLR (Pt. 58) 587

- Egbe v. Alhaji (1990) NWLR (Pt. 128) 546 at 590
Awoyale v. Ogunbiyi (1985) 2 NWLR pt. 10 pg. 861
Ojo-Osagie v. Adonri (1994) 6 NWLR (Pt. 349) 13
Ude v. Nwara (1993) 2 NWLR (Pt. 278) 638 at 649
Oshatoba v. Olujitan (2000) 5 NWLR pt. 655 pg. 159
B Adegoke v. Adibi (1992) 5 NWLR (Pt. 242) 410 at 420
Hamble V. Hueze (2001) 4 NWLR Cpt. 703) 372 at 388
State v. Onagoruwa (1992) 2 NWLR (Pt. 221) 33 at 56
Salubi v. Nwariaku (1997) 5 NWLR (Pt. 505) 442 at 476
C Adesanya v. Otuewu (1993) 1 NWLR (Pt. 270) 413 at 425
Adigun & Ors. v. A.G. of Oyo State & Ors. (1987) 2 NWLR (Pt. 56) 197

STATUTE REFERRED TO

- D Constitution of the Federal Republic of Nigeria, 1999, ss. 36 & 233

LEAD JUDGMENT BY FABIYI JSC

- This is an appeal against the decision of the Court of Appeal, Benin Division delivered on 12th April, 2000 which upheld the appeal of the
E respondents herein.

- The 3rd respondent which was set up in accordance with the provisions of the Pools Betting (Control and Taxation) Edict of Edo State, 1986 unanimously gave judgment in favour of the 1st respondent. It ordered the appellant herein to pay the 1st respondent the sum of
F N116,200.00. After the decision of the Arbitration Panel, the appellant, through its counsel appears to have agreed to pay the stated sum vide a document headed 'RECEIPT' dated 13/8/97 as contained on page 43 of the record of appeal.

- G The appellant later refused to comply with the decision of the 3rd respondent. Instead, it filed an application at the High Court of Justice, Benin City to seek an order of certiorari to quash, the ruling, of the 3rd respondent. The trial judge heard the application and in his judgment handed out on 12/3/98, he held 'that there exists on
H the face of the record said to be quashed serious error of law'. He thereafter quashed the decision of the 3rd respondent which was delivered on 7/8/97; having found that the 3rd respondent was not properly constituted according to law. This issue was not raised by the parties, but by the trial judge suo motu. As well, he was not ad-

ressed by the learned counsel for the respondents on the salient point.

The respondents felt unhappy with the stance posed by the trial judge and appealed to the Court of Appeal (court below) for short. The court below, without any form of difficulty, upheld the respondents' appeal. The appellant has appealed to this court to try B its chance; as it were.

On 17th December, 2009, when the appeal was heard, learned counsel for the appellant adopted and relied on the appellant's amended brief of argument which was filed on 22nd November, 2007 C and the Reply to the 1st respondent's Notice of Preliminary Objection filed on 20th May, 2008.

I note that on page 3 of the stated appellant's brief of argument, it is indicated that it (the appellant) shall, at the hearing of the appeal, seek the leave of this court to file and argue an additional D ground of appeal to wit: ground 5. Nothing was urged in this respect when the appeal was heard. And like a child's play, the appellant's counsel formulated what he called issue (iii) without any leave granted by this court. With due regard to the learned counsel, the improper steps taken were to no avail. Issue (iii) is accordingly discountenanced. E

On behalf of the 1st respondent, learned counsel adopted and relied on the brief or argument filed on 25th March, 2008 and urged that the appeal be dismissed. As well, learned counsel for the 2nd and 3rd respondents adopted their joint brief of argument filed on 6th Oc- F tober, 2006 and also urged that the appeal be dismissed.

The 1st respondent raised objection to ground 2 of the grounds of appeal. He contended that it does not arise from the judgment of the court below. He felt that the ground is incompetent and should be struck out. He placed reliance on the decisions in *Egbe v. Alhaji* G (1990) NWLR (Pt. 128) 546 at 590 and *Owei v. Ighiwi* (2005) 5 NWLR (Pt. 917) 184 at 217.

Learned counsel for the appellant felt that the said ground 2 of grounds of appeal arose from the decision of the court below in that it summarily said that the composition and designation of the 3rd H respondent which the trial court raised *suo motu* without hearing the parties and decided the case on it was wrong for he went on a voyage of discovery in the area where the parties have not joined issue.

It is trite that a ground of appeal against a decision must

relate to and challenge the validity of the ratio of the decision. No valid issue can be formulated from an invalid ground of appeal which does not relate to the judgment being challenged. See *Owei v. Ighiwi (supra)*.

B The decision of the court below, put briefly, is that it was wrong
for the trial judge to make out a case on his own different from that
made by the parties and proceed to resolve same without affording
the parties opportunity to address him on the point raised *suo motu*
by him. The court below found that no issue was joined on the com-
C position of the 3rd respondent at the trial court. The appellant is try-
ing to surreptitiously force it in before this court. What a comedy of
errors on the part of the appellant? Ground 2 of the grounds of
appeal is hereby struck out. As well, issue 1 distilled therefrom is
discountenanced.

D Issue (ii) couched on page 4 of the appellant's brief of argu-
ment is partly relevant. It reads as follows:-

"(ii) *Were the learned justices of the Court of Appeal right in
affirming the findings and ruling of the Arbitration Panel solely on the
issue raised suo motu by the learned trial judge of the High Court
E when there was another ground why the High Court set aside the
said ruling and findings of the Arbitration Panel and thus granted
application for certiorari.*"

On behalf of the 1st respondent, the only issue distilled for
determination of the appeal is:-

F "*Whether the Court of Appeal was right in setting aside the
decision of the High Court because the High Court made out a case
on its own different from the one made by the parties.*"

On behalf of the 1st and 2nd respondents, two issues were de-
G coded for determination. They read as follows:-

"1. *Whether the learned justices of the Court of Appeal were
right when they held that the composition and designation of the
Arbitration Panel which is the major pillar upon which the trial judge
set aside the decision of the Arbitration Panel was an issue of fact in
H which the parties did not join issue and thereby wrong for the learned
trial judge to make out a case outside the issue before him.*

2. *Whether the learned justices of the Court of Appeal were
right in setting aside the judgment of the learned trial judge and af-
firming the decision of the Arbitration Panel.*"

The relevant submission made by the learned counsel for the appellant in respect of issue (ii) which was partly saved is that there was no miscarriage of justice although the issue of the composition and designation of the Arbitration Panel was raised by the learned trial judge *suo motu* without hearing the parties. Learned counsel felt that the issue of composition and designation of the Arbitration Panelists is an issue of law which the trial judge could consider. He cited *Finnih v. Imade* (1992) 1 NWLR (pt. 219) 511 at 518-519; *Adesanya v. Otuewu* (1993) 1 NWLR (Pt. 270) 413 at 425. B

Learned counsel strenuously tried to bring to the fore the fact that the transaction is binding in honour only. He variously referred to the transaction as 'a gentlemen's agreement' in which none of the parties is strictly bound. C

In respect of the issue formulated on behalf of the 1st respondent, learned counsel submitted that by virtue of section 233 of the 1999 Constitution, this court is empowered to entertain appeal only from a decision of the Court of Appeal and not from a decision of the High Court. He referred to *Attorney-General, Anambra State v. Attorney-General of the Federation* (2005) 9 NWLR 572 at 608, 612. D

Learned counsel observed that the court below set aside the decision of the High Court principally on the fact that the composition and designation of the Arbitration Panel was raised by the trial judge *suo motu* and without hearing the parties. He submitted that there was a breach of fair hearing guaranteed by section 36 of the 1999 Constitution. He cited the cases of *State v. Onagoruwa* (1992) 2 NWLR (Pt. 221) 33 at 56, *Tukur v. Government of Gongola State* (1989) 9 SCNJ 1, *Adigun & Ors. v. A. G. Oyo State & Ors.* (1987) 2 NWLR (Pt. 58) and *Deduwa v. Okorodudu* (1976) 9-10 SC, 329. E F

Learned counsel observed that once it was established that G there was breach of fundamental right to fair hearing, the entire decision is a nullity regardless of the correctness of the decision whether on point of law or fact. Learned counsel further submitted that arguments 'smuggled' into the appeal in respect of 'contract binding in honour' goes to no issue as same was not determined by the court H below because the appellant herein did not cross-appeal thereat. He further stressed that the issue of contract 'binding in honour only' was never canvassed before the Arbitration Panel and that the appellant should not be allowed to blow hot and cold. He cited *Mbadinuju*

v. Ezuka (1994) 22 LRCN 8; Ude v. Nwara (1993) 2 NWLR (Pt. 278) 638 at 649. He urged that the issue be resolved against the appellant.

On behalf of the 2nd and 3rd respondents, learned counsel submitted that the trial judge went on a voyage of discovery outside the issues joined by the parties to make a case for the appellant. He contended that such was wrong. He cited the cases of *Olorunfemi v. Asho (1991) 1 NWLR (Pt. 585) 1; Salubi v. Nwariaku (1997) 5 NWLR (Pt. 505) 442 at 476; Balsale v. Abdulkadir (1993) 11 LRCN 369 at 381.*

Learned counsel stressed the point that the justices of the court below were right in setting aside the decision of the trial judge. He cited *Kuti v. Balogun (1978) 1 All NLR (Pt. 1) 170; Adegoke v. Adibi (1992) 5 NWLR (Pt. 242) 410 at 420, Odiase v. Agho (1972) 1 All NLR 170.*

Learned counsel urged that the issues formulated on behalf of the 2nd and 3rd respondents be resolved against the appellant and in their favour.

Let me say it right away that the right to fair hearing is a cardinal principle that is provided in section 36(1) of the 1999 Constitution of the Federal Republic of Nigeria; It provides as follows:-

“36(1) *In the determination of his civil rights and obligations including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.*”

It is certain that fair hearing by a court or other judicial tribunal under section 36 (1) of the 1999 Constitution - the grundnorm, incorporates the *audi alteram partem* rule. It is that a man can never have a verdict entered against him on a matter relating to his civil rights or obligation before such a court or tribunal without being given an opportunity of being heard. The rule is one of the essential cornerstones of our judicial process. See: *Amadi v. Thomas Aplin Co. Ltd. (1972) 4 SC 228; Kano N. A. v. Obiora (1959) SCNLR 577.*

In its real essence, fair hearing lies in the procedure followed in the determination of the case, not in the correctness of the decision. It is only when the party aggrieved has been

heard that the trial judge would be seen as discharging the duty of an unbiased umpire. Learned counsel for the appellant feels that his surmised absence of miscarriage of justice ameliorates an infringement of a provision of fundamental human right. Such is not correct. The violation of the rule of *audi alteram partem*, per se, lies in the breach of the fundamental human right. Once right is violated, it is irrelevant whether a decision made subsequent thereto is correct. See: *Tukur v. Government of Gongola State* (1989) 9 SCNJ 1; (1989) 4 NWLR (Pt. 117) 517.

It should be further stated that on a breach of the right of fair hearing, an appellate court does not go to the reasons for its breach or the consequences of same. It has no alternative but to allow the appeal against the decision and treat it as though there has been no hearing at all. An appellate court is bound to follow this course in the hearing of the appeal. See: *Adigun & Ors. v. A.G. of Oyo State & Ors.* (1987) 2 NWLR (Pt. 56) 197.

A denial of the right to be heard is a breach of constitutional right, natural justice and rules of court. Such cannot and ought not to be condoned in any respect. See: *Otapo v. Sunmonu* (1987) 2 NWLR (Pt. 58) 587.

It is a basic and fundamental principle of the administration of justice that no decision can be regarded as valid unless the trial judge or court has heard both sides in the conflict. See: *Deduwa v. Okorodudu* (1976) 9-10 S.C. 329.

It is agreed that the trial judge, *suo motu*, raised the issue of the composition and designation of the Arbitration Panel and without hearing the parties, determined the case against the respondents. This much was conceded by the appellant at page 10 lines 15-19 of it's brief of argument. This being the case, the court below was right in setting aside the decision of the trial court on that score alone. The right to fair hearing was not afforded the respondents. Same has been established. This court will not explore the reason for its breach or its consequence. All the glib talks touching on 'contract binding in honour' and 'gentleman's agreement' unnecessarily imported into this appeal were to no avail in the prevailing circumstance.

There is no doubt about it that the trial judge descended into

the arena when he suo motu, in his judgment, raised the issue of the composition of the Arbitration Panel and designation of its members and resolved them in favour of the appellant without affording the respondents' counsel the opportunity to address him on the point. The trial judge had no duty to bridge the yawning gap in the case of a party to the proceedings. See: *Ajuwon v. Akanni* (1993) 9 NWLR (Pt. 316) 182; *Salubi v. Nwariaku* (1997) 5 NWLR (Pt. 505) 442.

Even then, it is manifest from the record that the issue taken suo motu by the trial judge was not part of the grounds upon which the order for certiorari was sought to quash the decision of the Arbitration Panel. There was therefore a fundamental misdirection by the trial judge who made out a case in favour of the appellant without hearing the respondents on the issue. It was not his business to do so. See; *Olorunfemi v. Asho & 2 Ors.* (1999) 1 NWLR 1 at 9.

It is trite that a court should not set up for the parties, a case which is different from the one set up by the parties themselves in their pleadings and/or their evidence. See: *Oniah v. Onyiah* (1989) 1 NWLR (pt. 99) 514; *Ojo-Osagie v. Adonri* (1994) 6 NWLR (Pt. 349) 131.

It is certain to me that the trial judge crossed the line in jumping into the arena by raking up the vital point discussed above suo motu without hearing the respondents. The court below was perfectly right in setting aside the null decision of the trial court. I resolve the issue against the appellant and in favour of respondents.

In short, the appeal is devoid of merit. It is hereby dismissed. The judgment of the court below is hereby affirmed. The appellant shall pay N50,000.00 costs to each set of respondent(s).

G

OGUNTADE JSC

I have had the advantage of reading in draft a copy of the lead judgment by my learned brother Fabiyi J.S.C. He has clearly demonstrated the impropriety involved in the learned trial judge jumping as it were into the arena by raising suo motu issues not canvassed by any of the parties, and proceeding to decide the case on the issue so raised. In *Hamble V. Hueze* (2001) 4 NWLR Cpt. 703) 372 at 388, this court observed:

Generally, an appellate Court cannot suo motu raise issues at

the judgment stage which the parties did not raise without the risk of stepping into the arena of conflict. Nevertheless, the appellate Court, in its discretion, in special circumstance involving issues of fundamental nature, may raise issues on its own part. In such circumstances, the court cannot found its decision on such new issues without first affording both parties or their counsel opportunity to address the court on the new issues. Therefore, an appellate court must be wrong to raise issues not raised and fully contested by the parties in the trial otherwise it may fall into the error of making a case that the parties themselves neither contemplated nor contested. In the instant case, the procedure adopted by the Court of Appeal in raising an issue and disposing of same in its judgment without affording the appellants the opportunity of reacting to that issue smacked of lack of fair hearing. It runs foul of the principle of audi alteram partem.

It is wrong for a Court to give a decision on a point of which opportunity was not afforded counsel to argue at the hearing and particularly a point which throughout the hearing was not raised.

I agree with my learned brother as he states in the lead judgment that the Court below was right to allow the appeal against the judgment of the trial court, would also dismiss this appeal. I subscribe to the order on costs made in the lead judgment.

TABAI JSC

I have had a preview of the Lead judgment prepared by my learned brother FABIYI JSC and I agree entirely with his reasoning and Conclusion, that the appeal lacks merit.

The application at the trial High Court dated and filed on the 22nd of August 1997 was for an order of *Certiorari* to quash the decision and award of the 3rd Respondent, THE ARBITRATION PANEL OF THE BOARD OF INTERNAL REVENUE EDO STATE BENIN CITY. There are four grounds upon which the reliefs were sought. These are contained at pages 5-6 of the record. The composition and designation of the Board was not one of the grounds.

However in the concluding paragraphs of his judgment, at page 68 of the record, the learned trial judge J.O. Sadah J. reasoned thus:-

“Exhibit M 1-7 which is the decision of the 3^d Respondent sought to be quashed did not indicate who the Chairman of the

Panel is and the designation of the two members. The Chairman of the panel should be the Director of Internal Revenue. This in my view should be stated on the face of the record. One of the members should be the representative of the Ministry of Justice, this should be so stated on the face of the record and the second member should
 B *be the representative of the Ministry of Finance in the Board. There is also no such indication on the record. This composition does not agree with the requirements of Section 22 of Regulations to the Edict No. 22 of 1986. In this regard I hold that the Panel is not properly*
 C *constituted according to law, such body is in law not in existence and cannot determine disputes between parties. See the case of Madukolu & Ors v Nkemdilim 1 ALL N. L. R 587 at 592.*

In the light of all I have said above, I hold that there exists on the face of the record said to be quashed serious error of law. Accordingly the decision of the arbitration panel delivered on 7/8/97 is
 D *hereby quashed."*

The Respondents were aggrieved by the above decision and thus proceeded on appeal to the Court below and which appeal was allowed. The Court, per Ibiyeye JCA disagreed with the approach of the learned
 E trial Judge in very strong terms and at page 161 of the record stated in part thus: -

"What the learned trial judge did in this case was to make out an entirely new case on the composition of the 3rd appellant for the 1st
 F *appellant and the respondent outside the issues before him without giving them the opportunity of being heard. This approach no doubt negates the much cherished attributes of impartiality of umpires in the temple of justice and a violation of the well settled principle that a court should not make out a case for a party which he does not make for himself..."*

G The foregoing reasoning of the Court below cannot be faulted in any way and I accordingly adopt same in its entirety. The settled principle of law is that the Court has a duty to limit itself to the issues raised by the parties and which alone qualify as issues before the court. It is by confining itself to the issues before it that the Court
 H maintains its impartiality. See AKINTOLA v SOLANO (1986) 2 NWLR (Part 24) 598; OGIDI v. OLIHA (1986) 1 NWLR (Part 19) 786; ADEDIRAN v. INTERNAL TRANSPORT LTD (1991) 5 NWLR (Part 192) 438 and BAMGBOSE v. OLAREWAJU (1991) 4 NWLR (Part 184) 132.

In the instant case, the trial Court not only raised the issues *suo motu*, it proceeded to resolve and acted upon them without giving the parties the opportunity of being heard. The procedure was palpably wrong.

For the foregoing considerations and the fuller reasons contained in the lead judgment of my learned brother FABIYI JSC I also dismiss the appeal for lacking in merit. I abide by the order on costs contained in the lead judgment. B

MUHAMMAD JSC

I was permitted by my learned brother, Fabiyi, JSC, to have a preview of his judgment just delivered. I agree with him that the appeal is devoid of any merit. I too, dismiss the appeal. I abide by the orders made by my learned brother including order as to costs. C D

ADEKEYE JSC

I was privileged to read in draft the judgment just delivered by my learned brother J. A. Fabiyi, JSC. I agree with the reasoning and conclusion of my brother in his leading judgment. E

I wish to add a few words by way of emphasis to the judicial role of the judge of the High Court at the hearing of the application to quash the order of the Arbitration panel by an order of certiorari. F In the judgment of the High Court, the judge *suo motu* raised the issue of the composition of the Arbitration panel as to the designation of the panel members. The learned judge on that premises resolved the application in favour of the respondent. The steps taken by the learned judge obviously suffered two fundamental vices namely:- G

- 1) Raising an issue *suo motu* without hearing the parties on it.
- 2) The learned judge made out a case for the parties.

A trial court has the right to raise an issue *suo motu*. However it is imperative that parties must be given the opportunity to address it thereon in order not to breach the rule of fair hearing. The right to fair hearing is a fundamental constitutional right guaranteed by the 1999 Constitution of the Federal Republic of Nigeria - and a breach of it particularly in trials vitiates such proceedings, thereby rendering same null and void. A hearing cannot be said to be fair if any of the H

parties is refused a hearing or denied the opportunity to be heard, present his case or call witnesses.

When a judge raises an issue suo motu, it raises an issue not in contemplation of the parties, and not before the court in the circumstance. Procedural fairness entails that judges must afford parties before them the right to be heard before deciding a matter.

In the case in hand - the learned judge raised an issue suo motu in the process of writing his judgment when he should be clothed with the toga of impartiality.

- C Olusanya v. Olusanya (1983) 1 SCNLR 134
- Kuti v. Jibowu (1972) 1 ANWLR (pt. 11) 180
- Ajao v. Ashiru (1973) 1 ANWLR (pt. 11) 51
- Awoyale v. Ogunbiyi (1985) 2 NWLR pt. 10 pg. 861
- Kuti v. Balogun (1978) 1 SC 53
- D Iriri v. Erhuvhobara (1991) 2 NWLR pt. 173 pg. 252
- Ogiamen v. Ogiamen (1967) NMLR 246
- Adeniyi v. Adeniyi (1972) 4 FS 10

A judge is only at liberty to raise suo motu matters it could take judicial notice of under the provisions of the Evidence Act. In the process of adjudication a court is always duty bound to confine its decision to the issue raised by the parties. A court has no power to formulate cases for the parties otherwise it may unwittingly descend into the arena.

- F Ebba v. Ogodo (1984) 1 SCWLR 372
- Oshatoba v. Olujitan (2000) 5 NWLR pt. 655 pg. 159
- Jeric (Nig) Ltd v. UBN Plc (2000) 15 NWLR pt. 691 pg. 447
- Afrotech Services (Nig) Ltd. V. M. I. A. & Sons Ltd. (2000) 15 NWLR pt. 692 pg. 730
- G Ekpenyong v. Nyong (1975) 2 SC 71
- Liman v. Mohammed (1999) 9 NWLR pt. 617 pg. 116

With fuller reasons given by my brother in his leading judgment, I agree that the appeal be dismissed. I adopt the all consequential orders made in the leading judgment as mine.

H