

IN THE SUPREME COURT OF NIGERIA

4TH JUNE 2010, SC. 231/2003

**CORAM:- N. TOBI, W. S. N. ONNOGHEN, I. F. OGBUAGU,
J. A. FABIYI, O. O. ADEKEYE, JJSC**

OLU OGUNSOIA APPELLANT
AND
NATIONAL INSURANCE RESPONDENT
CORPORATION OF
NIGERIA (NICON)

APPEALS - Processes - Power to amend - Limits - Though a court ordinarily has power - To grant leave to amend processes - That power does not extend to occasions - Where the right of parties to amend - Is curtailed by a higher court's order (H1)

APPEALS - Processes - Right of parties to amend - Curtailment - How done - In the absence of an express permission - Incorporated in a rehearing order - Parties cannot amend their processes at such rehearing (H2)

APPEALS - Leave to amend processes - S. 16 of Court of Appeal Act - Limitation by Supreme Court - Basis - Based on the hierarchy of courts - And the doctrine of judicial precedent - Supreme Court may limit application of the section (H3)

FACTS

The appellant had appealed against the decision of the High Court of Oyo State to the Court of Appeal. After hearing the appeal, the Court of Appeal dismissed same by its judgment delivered on 18th February, 1991. In delivering its judgment however, the Court of Appeal had erroneously relied on grounds of appeal which were not in fact filed by the appellant and such were not before the Court. Aggrieved, appellant had successfully appealed against that judgment of Court of Appeal to the Supreme Court. That court had allowed the appeal and remitted the matter back to Court of Appeal for rehearing and determination "on the grounds of appeal filed thereat by the appellant and the issues raised by the parties in their respec-

tive briefs of argument."

Notwithstanding the terms of the Supreme Court rehearing order, appellant filed a fresh motion on notice in the Court of Appeal praying for leave to file additional grounds of appeal and to amend his brief of argument. The motion was said to be brought pursuant to S.16 of the Court of Appeal Act .The Court heard and refused the application as it held that in view of the terms of the order for rehearing made by Supreme Court, the rights of the parties to amend their processes had been curtailed. Dissatisfied, appellant has brought this appeal against that ruling of Court of Appeal.

ISSUE FOR DETERMINATION

Whether Section 16 of the Court of Appeal Act and Order 3 Rule 16 of its Rules give that court discretion to allow an amendment of the Notice of Appeal and Briefs in every proceedings thereat.

HELD (Unanimously dismissing the appeal per **OGBUAGU JSC**)
APPEALS - Processes - Power to amend - Limits

1. The court below - per Adamu, JCA who read the lead Ruling concurred with by Mukhtar, JCA (as he then was now JSC) Presiding and Okunola, JCA (of blessed memory), in my respectful view, was right in its said Ruling. At pages 33 to 36, it stated inter alia, as follows:

Although ordinarily this Court has an inherent and unfettered discretion to grant leave to file and argue additional grounds of appeal or to amend the briefs of the parties at any time before the hearing of the appeal (as provided for under Section 16 of the Court of Appeal Act, 1976 and Order 3 Rule 16 of the Court of Appeal Rules (1981) it is to be noted however that by the Supreme Court's remittance of this appeal for re-hearing by this Court with specific order or directive as to how the re-hearing is to be conducted, the case (or appeal) has thereby been taken or excluded from the ordinary and has become a special or abnormal one in which the rights of the parties to change their original grounds of appeal or amend their briefs has been curtailed.

(the underlining mine)

I agree as I am unable to fault the above (p. 2089 B/C/H)

Appeals - Processes - Right of parties to amend - Curtailment

2. At page 34, thereof, it (Court of Appeal) continued, inter alia, thus:

“.....It is therefore my view that if the Supreme Court in the present case wanted the parties to be at liberty to amend their grounds of appeal or briefs it would have expressly said so as it did in the above cited cases.....”

It noted or observed that the present case, is before an Appellate Court as opposed to a trial court. That in the trial court, the grounds of appeal and the briefs, can or could, take the place of and equivalent to pleadings. It referred to the case of Ugo v. Obiekwe & anor. (1989) 1 NWLR (Pt. 99) 566 @ 586 (it is also reported in (1989) 2 SCNJ. 95) where this Court, ordered a re-hearing or retrial de novo and directed that “parties are at liberty to amend their pleadings” The above is supported and is firmly settled in a line of decided authorities of this Court. What is more, the provisions of Section 22 of the Supreme Court Act, is not in doubt as regards civil appeals and when it remits to the court below, any matter for re-hearing and it may give such other directives as to the manner in which the court below shall deal with the case. (pp. 2089 H/2090 E/2091 G)

S.16 of Court of Appeal Act - Limitation by Supreme Court

3. It is clear to me and it could be seen and acknowledged, that the court below, was very aware and appreciated, the provisions of Section 16 of the Act and Order 3 Rule 16 of the Court of Appeal Rules. But notwithstanding, it could not ignore with impunity, the hierarchy and judicial precedent of the courts.

It was in this or under this circumstance, that it made the final pronouncement thus:

“In view of my above consideration, I am of the humble view that the application for leave to file and argue additional grounds and to amend the appellant’s brief of argument was not brought in good faith as it is an attempt to have a second bite at the cherry and is contrary to the express directive or order of the Supreme Court. It should therefore be refused and dismissed. I hereby uphold the respondent’s objection against the said application which I hereby refuse and dismiss.....”
[the underlining mine]

I agree completely. (p.2090 H)

CASES REFERRED TO

YUSUF VS DADA (1990) 7 SCNJ 68 at 83

Okonji v. Dr. Mudiaga & ors. (1985) 10 S.C. 267 @ 268

B AFRICAN NEWSPAPERS VS NIGERIA (1985) 2 NWLR 137

Ugo v. Obiekwe & anor. (1989) 1 NWLR (Pt. 99) 566 @ 586

AKILU VS. FAWEHINMI (1989) 3 NWLR (Pt. 112) 685 at page 701

Mohammed & anor. v. Olawunmi & 9 ors. (1993) 5 SCNJ. 94 @ 112- 113

C

REPRESENTATION

Ayo M. Obe (Mrs) with her, Messrs. Sina Oke and Wasiu Ajiboye for the appellants.

D No appearance for the respondent though Hearing Notice was sent on 29th July, 2009.

STATUTES & RULES REFERRED TO

Court of Appeal Act, s. 16

E Court of Appeal Rules, 1981, O. 3 r. 16

Supreme Court Act, s. 22

LEAD JUDGMENT BY OGBUAGU JSC

F This case from the Records, appears to me to have a long history starting in 1991 when the Court of Appeal, Ibadan Division, dismissed the Appeal by the Appellant against the decision of the High Court of Oyo State.

G Dissatisfied with the said dismissal, the Appellant appealed to this Court and on 9th January, 1996, this Court allowed the appeal, set aside the Judgment of the Court of Appeal and remitted the matter back to the said Court of Appeal (hereinafter called “the court below”) for re-hearing. It made the following order:

H “3. That the case is hereby remitted to the Court of Appeal to be determined on the grounds of appeal filed thereat by the appellant and the issues raised by the parties in their respective briefs of argument.

4. That the lower court shall also determine what to do with the interlocutory appeal filed by the respondent if it is still pending

before it and". (the underlining mine)

The above order in my respectful view, is clear and unambiguous. It needs no interpretation or embellishment whatsoever.

The Appellant, in spite of this clear and unambiguous order, filed a fresh motion on notice in the court below praying for leave to file additional grounds of appeal and to file another supporting Brief of Argument. i.e. to amend the Appellant's Brief of Argument. The court below in its considered Ruling delivered on 25th June, 1998, refused the said application, hence the instant appeal.

When this appeal came up for hearing on 8th March, 2010, Obe (Mrs.) -the leading learned counsel for the Appellant, on her attention being drawn by the court to the fact that although there are three (3) grounds of appeal, they are four (4) issues for determination, he/she amended their said issues to the effect that issues (a) and (b), will be one issue (a) while issue (c) becomes issue (b) while issue (d) becomes issue (c). The Court noted that the Respondent and the Counsel, were absent although Hearing Notice was sent to them on 29th July, 2009. The Appellant's leading learned counsel, urged the Court to allow the Appeal and remit back to the court below, to hear the appeal on their said Amended Brief of Argument. Pursuant to Order 6 Rule 8 (6) of the Rules of this Court, the appeal was deemed argued by the Respondent since the Briefs had been filed and exchanged. Judgment was therefore, reserved till to-day.

I agree with the Respondent in its paragraph 3.01 of its Brief Argument of that issues (a) and (b) (now issue (a) simpliciter as amended, is germane in this appeal and that issues (c) and (d), would be the necessary consequence if the court below, was right in refusing the Appellant's Application. This will be covered by grounds 1 and 2 of the grounds of appeal.

However, in the course of writing this Judgment, the Court observed or noted that while the Appellant in his "Introduction" paragraph 1.01 of his brief stated as follows:

"On the 18th of February 1991, the court of Appeal at Ibadan dismissed an appeal by the Appellant against a decision of the High Court of Oyo State. In delivering its judgment however, the Court of Appeal relied on grounds of appeal which were not filed by the Appellant and were not before it". (the underlining mine)

In paragraph 1.03 thereof the following appear;

“On the 23^d at October 1997, the new Counsel briefed to handle the appeal brought an application to file additional ground of appeal for the purpose of the fresh hearing of the appeal before the Court of Appeal.

1.04 Objection was raised by the Respondent’s Counsel on the ground that in remitting the matter back to the Court of Appeal for re-hearing, this Honourable Court had specified that the appeal should be heard on the grounds filed by the Appellant in the Court of Appeal, and the issues raised by the parties in their respective Briefs of Argument.

See Court of Appeal proceedings of 28th October 1997 at page 25a of the Record. The Order of the Supreme Court is not reproduced in the Record of Proceedings, but forms part of the original case file”. [the under lining mine]

In view of the above, the Court invited the learned counsel for the parties on the 2nd June, 2010 to further address it and to show to the Court the proceedings where this Court specifically stated that the reason for remitting the appeal back to the court below for re-hearing, was because that court relied on the grounds of appeal which were not filed by the Appellant and were therefore, not before it in dismissing the appeal of the Appellant on 18th February, 1991. On 2nd June, 2010, Mrs. Ayo Obe appeared for the Appellant with Sina Oke, Esq. and Wasiu Ajiboye, Esq. The Respondent and their Counsel, were absent although there was evidence of service of the Hearing Notice on them on 13th May, 2010. On the attention of Mrs. Obe being drawn to the fact that the records of the Court does not have the Records of the Supreme Court containing their above said assertion, she honourably admitted that the said proceedings, are not part of the said Records in this Court as compiled by the Court of Appeal. Thereafter, judgment was still reserved till to-day.

My reading of the proceedings at page 259 of the Records, shows that the stance of the Respondents as appears in their Brief in this Court as to the clear specification of this Court as to the re-hearing of the appeal, is the same at that page. That means to me that this very issue as to the interpretation of the said Order of this Court as reproduced even by the court below at page 32 of the Records, was canvassed by the learned counsel for the parties before the determination of the appeal by the court below. Yet, the Appellant and his

Counsel, did not consider it necessary or prudent, to produce or exhibit any record or proceeding by this Court confirming or supporting the Appellant's said assertion even though the law is that who ever asserts must prove and it is the Appellant that asserts in this appeal by him. In effect, the same issue as to what this Court ordered in respect of the hearing also, was canvassed before the court below. B

The court below - per Adamu, JCA who read the lead Ruling concurred with by Mukhtar, JCA (as he then was now JSC) Presiding and Okunola, JCA (of blessed memory), in my respectful view, was right in its said Ruling. At pages 33 to 36, it stated inter alia, as follows: C

"As regards the present application and the objection raised by the respondent's counsel thereto, I am of the humble view that although ordinarily this Court has an inherent and unfettered discretion to grant leave to file and argue additional grounds of appeal or to amend the briefs of the parties at any time before the hearing of the appeal (as provided for under Section 16 of the Court of Appeal Act, 1976 and Order 3 Rule 16 of the Court of Appeal Rules 1981) it is to be noted however that by the Supreme Court's remittance of this appeal for re-hearing by this Court with specific order or directive as to how the re-hearing is to be conducted, the case (or appeal) has thereby been taken or excluded from the ordinary and has become a special or abnormal one in which the rights of the parties to change their original grounds of appeal or amend their briefs has been curtailed. Thus it is specifically directed or ordered by the Supreme Court that the appeal herein as remitted should be heard or determined "on the grounds of appeal filed by the appellant and the issues raised by the parties in their respective briefs of argument". Usually when a case is remitted by an appellate court to the trial or lower court for a retrial or re-hearing, the said appellate court normally gives a directive order as to how the retrial or re-hearing is to be conducted....." D E F G

(the underlining mine) H

I agree as I am unable to fault the above. At page 34, thereof, it (Court of Appeal) continued, inter alia, thus:

".....It is therefore my view that if the Supreme Court in the present case wanted the parties to be at liberty to amend

their grounds of appeal or briefs it would have expressly said so as it did in the above cited cases.....”.

It noted or observed that the present case, is before an Appellate Court as opposed to a trial court. That in the trial court, the grounds of appeal and the briefs, can or could, take the place of and equivalent to pleadings. It referred to the case of Ugo v. Obiekwe & anor. (1989) 1 NWLR (Pt. 99) 566 @ 586 (it is also reported in (1989) 2 SCNJ. 95) where this Court, ordered a re-hearing or retrial de novo and directed that “parties are at liberty to amend their pleadings”. It then stated inter alia, thus:

“In any case, this Court as the Court of Appeal is subject to and must always abide by the decisions of the Supreme Court notwithstanding that such decisions are inconvenient or unreasonable to it or whether they have deprived or fettered the right of any litigant as asserted by the learned counsel for the applicant in the present application. See AKILU VS. FAWEHINMI (1989) 3 NWLR (Pt. 112) 685 at page 701; YUSUF VS DADA (1990) 7 SCNJ 68 at 83 and AFRICAN NEWSPAPERS VS NIGERIA (1985) 2 NWLR 137.....”.
[the underlining mine]

It referred to the English case of Mire House vs. Rennel (1833) 1 CC & F 537 at p.546 which it partly reproduced in support of “notwithstanding that such decisions are unreasonable and inconvenient”. The above is supported and is firmly settled in a line of decided authorities of this Court.

At page 35 thereof, it stated inter alia, as follows:

“Consequently, applying the above rule or principle of judicial precedent to the present application, it is my firm view that we in this Court are subject to and bound by the directive given or made by the Supreme Court in its order of retrial when remitting the case here at that the appeal should be heard on the grounds of appeal already filed by the appellant and the issues raised by the parties in their respective briefs. There is nothing we can do to change it to mean what the learned counsel for the applicant suggested even if the order (or directive) is regarded as a fetter on our exercise of discretion under S.16 or Order 3 rule 16 or that it will affect or curtail the applicant’s right to fair hearing”. [the underlining mine]

It is clear to me and it could be seen and acknowledged,

that the court below, was very aware and appreciated, the provisions of Section 16 of the Act and Order 3 Rule 16 of the Court of Appeal Rules. But notwithstanding, it could not ignore with impunity, the hierarchy and judicial precedent of the courts.

It was in this or under this circumstance, that it made the final pronouncement thus:

“In view of my above consideration, I am of the humble view that the application for leave to file and argue additional grounds and to amend the appellant’s brief of argument was not brought in good faith as it is an attempt to have a second bite at the cherry and is contrary to the express directive or order of the Supreme Court. It should therefore be refused and dismissed. I hereby uphold the respondent’s objection against the said application which I hereby refuse and dismiss.....”

[the underlining mine]

I agree completely. The cases of Yusuf v. Dada (Mrs.) & 3 ors. (supra) also reported in (1990) 4 NWLR (Pt. 146) 657 and African Newspaper of Nigeria Ltd. & 2 ors. V. The federal Republic of Nigeria (supra), are in support of the stand of the court below. In the case of Okonji v. Dr. Mudiaga & ors. (1985) 10 S.C. 267 @ 268 - 269, Eso, JSC had this to say or state inter alia, as follows:

“In the hierarchy of the court in this Country, as in all other free common law countries, one thing is clear, however learned a lower court considers itself to be and however contemptuous of the higher court that lower court is still bound by the decisions of a higher court”.

(I will add the order or orders or directive of this Court).

What is more, the provisions of Section 22 of the Supreme Court Act, is not in doubt as regards civil appeals and when it remits to the court below, any matter for re-hearing and it may give such other directives as to the manner in which the court below shall deal with the case. In the case of Alhaji Mohammed & anor. v. Olawunmi & 9 ors. (1993) 5 SCNJ. 94 @ 112- 113; Olatawura, JSC (of blessed memory), stated that the attitude of disregarding the process of this Court, borders on judicial impertinence and an affront. Therefore, the misplaced and unfounded

belief that the said Section 16 of the Court of Appeal Act and the said Order 3 Rule 16, give that court, the discretion to allow an amendment of the Notice of Appeal and Briefs, should have been very undesirable and distasteful. The Appellant, should have either deliberately or in bad faith or unwittingly, pushed the court below, to
B disregard the said clear order or directive of this Court for his selfish desire. The court below, rightly in my view, refused to be so coaxed by the Appellant to take or succumb, to a wrong decision. For purposes of emphasis, the order, or directive of this Court, must be
C obeyed strictly whether it is unreasonable, inconvenient or fetters the inherent powers or discretion of a lower court such as the court of Appeal. Period! Surely, if there is no specific order or directive by or from this Court, the Court of Appeal, is free and on a solid ground or terrain, to invoke its powers under Section 16 of the Act and Order 3
D Rule 16 of the Rules. I so hold.

My answer therefore, to the said issue, is rendered in the Affirmative. This accounts for the specific and clear order or directive of this Court to the court below which fettered the said discretion of that court in no unmistakable words.

E In the final result, I hereby and accordingly affirm the said decision or Ruling of the court below. It is sound and in accordance with the settled principles or law. This appeal is not only an abuse of the process of this Court, but it is with respect, frivolous. It fails and I
F dismiss it with cost of N50,000.00 (fifty thousand naira) in favour of the Respondent.

TOBI JSC

G I have read in draft the judgment just delivered by my learned brother, Ogbuagu, JSC and I agree that the appeal should be dismissed. I so dismiss the appeal and award N50,000.00 costs in favour of the respondent.

H

ONNOGHEN JSC

I have had the benefit of reading in draft, the lead judgment of my learned brother OGBUAGU, JSC just delivered.

I agree with his reasoning and conclusion that the appeal is

without merit and should be dismissed.

I accordingly dismiss same and abide by the consequential orders made in the lead judgment including the order as to costs.

Appeal dismissed.

B

FABIYI JSC

I have read before now the judgment just delivered by my learned brother, Ogbuagu, JSC. I agree with the reasons therein advanced to arrive at the conclusion that the appeal is devoid of merit and should be dismissed. C

I wish to chip in just a few words of my own. The Court of Appeal, Ibadan Division dismissed the appellant's appeal against the decision of the High Court of Oyo State. The appellant appealed to this court. On 9th January, 1996, the appeal was allowed. The judgment of the court below was set aside and the matter was remitted to the said court for rehearing with the specific order inter alia:- D

“3 That the case is hereby remitted to the Court of Appeal to be determined on the grounds of appeal filed thereat by the appellant and the issues raised by the parties in their respective briefs of argument.” E

At the court below, the appellant sought leave to file further grounds of appeal and also amend his brief of argument. The court below, in its considered ruling handed out on 25th June, 1998, refused to dance to the tune of the appellant. It felt that it was duty bound to comply with the clear directives of this court and dismissed the appellant's application. F

The appellant felt unhappy with the stance of the court below and appealed to this court. He opined that the stated order did not operate as a fetter on the discretion of the court below under Section 16 of the Court of Appeal Act and Order 3 Rule 16 of the Court of Appeal Rules, 1981. He asserted that since this court did not follow up its order by saying that 'the parties shall not be at liberty to amend the grounds of appeal or briefs of argument' he was at liberty to seek to amend the papers upon which the Court of Appeal was to determine the appeal. G H

The directive of this court as to how the re-hearing should be carried out is very clear. I completely agree that no particular expres-

sion or format is required in directing the court below as to how the ordered-rehearing should be carried out. It is only where no condition is attached that the court below enjoys a free hand to act under Section 16 of the Court of Appeal Act and Order 3 Rule 16 of the Court of Appeal Rules, 1981 applicable in this matter. See: Samuel B Fadiora Alade In Re. Samuel v. Festus Gbadebo & Anr (1978) All NLR 42.

C It is my considered view that the court below commendably withstood the untoward prompting by the appellant to disobey the directives of this court. It would have been an affront if the court below had flouted the clear and unambiguous directives given it by this court. In short, the court below was on a firm ground in its ruling in which it refused the appellant's application and dismissed it. I endorse same.

D For the above reasons and those well set out in the judgment of my learned brother, I also come to the conclusion that the appeal lacks merit and should be dismissed. I order accordingly and abide by the order on costs as contained in the lead judgment.

E

ADEKEYE JSC

F I was privileged to read in draft the judgment just delivered by my learned brother, I.F. Ogbuagu, JSC. An appeal came to this court on the 9th of January 1996. This court allowed the appeal, set aside the judgment of the Court of Appeal with clear directive that the matter be remitted back to the Court of Appeal for re-hearing. The Supreme Court in unmistakable terms gave the following order –

G *“That the case is hereby remitted to the Court of Appeal to be determined on the grounds of appeal filed thereat by the appellant and the issues raised by the parties in their respective briefs of argument.”*

The lower court shall also determine what to do with the interlocutory appeal filed by the respondent if it is still pending before it.

H Regardless of the foregoing order as observed by my learned brother, Ogbuagu JSC in his leading judgment the order of court about the re-hearing and the determination of the appeal is clear and unambiguous and does not admit of any further interpretation.

The Supreme Court at the time it gave the order was guided

by the briefs filed by the parties. The issues raised exposed that the appeal was heard on the grounds of appeal raised by the respondent. That was the reason why the Supreme Court specifically directed that the matter be determined on the grounds of appeal raised by the appellant.

At the re-hearing of the appeal, the appellant sought for an amendment to the process in that the matter was being handled by a new counsel. The issue before the court is simple, straight forward and within narrow limits. It is not a matter for any of the parties to open a new dimension in the case by filing additional grounds of appeal or file another supporting Brief of argument - or to amend the appellant's Brief of argument. The Supreme Court spotted the procedural error made by the parties in the previous appeal. The issues for determination must be distilled from the appellant's grounds of appeal and not that of the respondent. The traditional role of the respondent is to support the judgment the subject-matter of appeal and not otherwise unless it decides to file a cross-appeal. A new counsel who did not take part in the previous appeal on which the order of the Supreme Court is based is disqualified from asking for any amendment which may bring the parties outside the specific order of the Supreme Court in the re-hearing of the appeal remitted to the Court of Appeal.

I agree with my learned brother that the Court of Appeal was right in its Ruling when it held inter alia at pages 33 - 36 that -

"As regards the present application and the objection raised by the respondent's counsel thereto, I am of the humble view that although ordinarily this court has an inherent and unfettered discretion to grant leave to file and argue additional grounds of appeal or to amend the briefs of the parties at any time before the hearing of the appeal as provided for under section 16 of the Court of Appeal Act 1976 and Order 3 Rule 16 of the Court of Appeal Rules 1981, it is to be noted however that by the Supreme Court's remittance of this paper for re-hearing by this court with specific order or directive as to how the re-hearing is to be conducted, the case or appeal has thereby been taken or excluded from the ordinary and has become a special or abnormal one in which the rights of the parties to change their original grounds of appeal or amend their briefs has been curtailed. Thus it was specifically directed or ordered by the Supreme

Court that the appeal herein as remitted should be heard or determined, on the grounds of appeal filed by the appellant and the issues raised by the parties in their respective briefs of argument. Usually when a case is remitted by an appellate court to the trial or lower court for a re-trial or re-hearing, the said appellate court normally
B *gives a directive order as to how the re-trial or re-hearing is to be conducted.”*

I agree with the reasoning and conclusion of my learned brother and the Court of Appeal that if the Supreme Court in the
C present case wanted the parties to be at liberty to amend their grounds of appeal or briefs, it would have expressly said so. The lower court thereby invoked the principle of judicial precedent to the application and refused to adhere to what the learned counsel for the applicant suggested that the order or directive of the Supreme Court becomes
D a fetter on the exercise of discretion of the Court of Appeal under Section 16 of the Court of Appeal Act or Order 3 Rule 16 of the Court of Appeal Rules 1981 or that it will affect or curtail the applicant’s right to fair hearing.

The Court of Appeal refused the application of the appellant
E for leave to file and argue additional grounds of appeal and amend the appellant’s brief of argument as not being brought in good faith as it is an attempt to have a second bite at the cherry and is contrary to the express directive or order of the Supreme Court.

With fuller reasons given by my learned brother in the lead-
F ing judgment, I agree with the foregoing conclusion of the Court of Appeal. I agree that it is unethical to breach the principle of judicial precedent by taking steps contrary to the order of the Supreme Court in re-hearing the appeal by the Court of Appeal.

G The appeal is dismissed with N50,000.00 costs in favour of the respondent.

H