

SUPREME COURT OF NIGERIA
3RD DECEMBER, 2010. SC. 299/2006
CORAM:- A. M. MUKHTAR, W. S. N. ONNOGHEN,
F. F. TABAI, M. S. MUNTAKA-COOMASSIE,
RHODES-VIVOUR, JJSC

UDOJI NWADIOGBU & 6 ORS. APPELLANTS
AND

1. ANAMBRA IMO RIVER BASIN
DEVELOPMENT AUTHORITY RESPONDENTS
2. ENGR. NATH NWAKPUDA

PRACTICE & PROCEDURE - Adjournments - Application for - Where case is for hearing - Duty on applicant - He must show sufficient reason why the case must be adjourned - Otherwise court must ensure hearing (H1)

ADJOURNMENTS - Application for - Refusal by trial court - Propriety - In view of the evidence on record the refusal was proper - As applicants had already been given adequate opportunity to file their reply - But failed to do so (H2)

COURTS - Issues - Competence - Where an issue is neither raised before a court - Nor canvassed before it - Any comment it may make on such issue is an obiter dictum (H3)

FACTS

The applicants/appellants, by motion ex-parte, obtained leave of the Federal High Court holden at Enugu, to apply for the enforcement of their fundamental rights to personal liberty and freedom of movement against the respondents. Subsequently, appellants filed a motion on notice claiming sundry reliefs among which were an order for their release from detention and an order for the payment of the sum of N500,000.00 (five hundred thousand naira) to each of the appellants by the respondents jointly and severally. Upon service of the motion on them, 1st and 2nd respondents filed a counter-affidavit dated 2/9/2002. Appellants then filed a further-

affidavit dated 20/9/2002. On 26/9/2002, when the matter came up next, trial court directed that the counter-affidavit and the further-affidavit be served on the 3rd to 5th respondents and thereafter adjourned to 27/11/2002 for hearing.

On 27/11/2002, it was shown that the 3rd and 4th respondents had been served as directed but the 5th respondent was yet to be served. The court further adjourned to 3/2/2003 for hearing, to enable the remaining service to be effected. On 3/2/2003, upon the court being satisfied that all the respondents had been served, appellants' counsel moved the motion on notice. In the course of moving the motion, counsel referred to the averments in the further-affidavit as uncontroverted on the basis that none of the respondents filed a reply thereto. Based on this submission, trial judge asked respondents' counsel to comment. But counsel said, the law as he understood, was that he was not bound to reply to every averment in further-affidavit except it raised anything new which was not the case with the further-affidavit. Appellants' counsel then concluded his submissions and trial judge invited respondents' counsel to reply, but counsel asked for adjournment instead, "to enable him fully amend." The court refused the application for adjournment and insisted that counsel must go ahead and reply. Upon counsel's refusal to go on, the court ruled on the substantive motion, giving judgment to appellants as prayed. Aggrieved, respondents appealed to Court of Appeal which court allowed the appeal. Dissatisfied, appellants have brought this appeal against the judgment of Court of Appeal.

ISSUES FOR DETERMINATION

"(a) Whether the Court of Appeal was right in holding that the refusal of the trial court to grant the respondents' application for adjournment to file further counter-affidavit amounted to denial of fair hearing.

(b) Whether the Court of Appeal was right to hold that the affidavit evidence of the parties showed a lot of conflicts which ought to be resolved by calling on the parties to give oral evidence".

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

Adjournments - Application for - Where case is for hearing

1. With tremendous respect, in view of the above findings, can it be

rightly said that the respondents were denied the right to fair hearing by the refusal of the trial court to grant the respondents' application for adjournment? The question of adjournment is within the discretion of the court, in exercising such discretion the court must consider all the circumstances of the case in ensuring that the discretion is exercised judicially and judiciously.

When a case has been fixed for hearing the trial court must ensure the hearing of the case except if a party applying for adjournment showed sufficient reason why the case must be adjourned, that is, by placing sufficient materials before the court upon which it can exercise its discretion, otherwise, an adjournment of a case fixed for hearing would mean further delay to the other litigants who might otherwise have had their cases heard. (pp. 2670 H/2671 C)

Adjournments - Application for - Refusal by court - Propriety

2. Applying these principles to this case at hand, and in particular, in view of my findings above, it is my candid view that the trial court exercised its discretion judicially and judiciously in refusing the respondents' application for an adjournment. Apart from the fact that the respondents had a grace of not less than 3 months to file its reply to the further affidavit before the date fixed for hearing, on the date fixed for hearing. That court also gave the opportunity to the respondents, if they wished to file a reply, but the counsel arrogantly refused it.

The findings of the lower court that the trial Judge was in a haste to determine the case on his first day of sitting cannot be supported with the evidence in the record. The trial court is bound to look at the records, and having gone through the records and seeing the opportunities already given to the respondents, he rightly rejected the application for adjournment. (p. 2671 G)

Issues - Competence

3. The issue of conflicts in affidavits was never raised in the appellants Notice of appeal before the trial court, and neither was it canvassed before it. It was an obiter dictum having not been linked or related to any of the issues canvassed before it. I have no hesitation in holding that the issue is incompetent.

All said and done, I hold that this appeal has tremendous merit

and is accordingly allowed. The judgment of the lower court is set aside. The beautiful and painstaking judgment of the trial court is reinstated and affirmed. (p. 2672 B)

REPRESENTATION

- B Mr. A. C. Anaenugwu for the Appellant with V. I. P. Ozumba ESQ.,
Mr. N. A. Nnawuchi for the Respondent

CASES REFERRED TO

- C Solanke v. Ajibola (1968) 1 All NLR 46 at 54
Okeke v. Oruh (1999) 6 NWLR (pt. 606) 175
Oyeyipo v. Oyinloye (1987) 1 NWLR (pt 50) 356
Okeke vs. Oruh (1999) 6 NWLR (pt. 606) 175
A-G of Rivers State vs. Ude (2006) 17 NWLR (Pt. 1008) 436
D Attorney general Anambra State v. Okeke (2002) 12 NWLR (pt. 782) 575

LEAD JUDGMENT BY MUNTAKA-COOMASSIE JSC

- E On the 20/8/2002, the Appellants herein by a motion Ex parte
obtained the leave of the Federal High Court, holden at Enugu to
apply for the enforcement of their Fundamental rights to personal
liberty and freedom of movement pursuant to the leave granted.
The Appellants filed a motion on Notice in which they claimed against
the Respondents as follows:-

- F “a *A DECLARATION that the arrest and the continued de-*
tention of the appellants by the Respondents and their servants, agents
and privies at the Zone 9 the Headquarters cell Umuahia of the Nige-
ria Police Force since 5. pm of Wednesday 24th July, 2002 till now is
G *illegal, unlawful and unconstitutional, oppressive, intimidatory, per-*
secutory, null and void and a gross violation of the Appellants Funda-
mental Rights to personal liberty and freedom of movement.

- b. *A DECLARATION that the Respondents’ refusal to grant*
the Applicants bail over the trumped charge of conduct likely to cause
H *the breach of peace is illegal, unlawful, intimidatory, unconstitutional*
and violation of Appellants’ fundamental Rights to personal liberty
and freedom of movement.

c. *A DECLARATION that the respondent’s threat to continue*
detaining the Appellants in the crowded and dehumanising police

cells at zone 9 Police Headquarters, Umuahia until they withdraw the Suit No. FHC/EN/CS/28/02 against the 1st and 2nd respondents pending at the Federal High Court Enugu is unlawful, illegal, unconstitutional, intimidatory, contemptuous of the court, abuse of power and a gross violation of the applicants' fundamental Rights to personal liberty and freedom of movement. B

d. A DECLARATION that the appellants have not done any acts that amount to conduct likely to cause a breach of peace warranting their arrest and detention by the Respondents.

e. AN ORDER releasing the Applicants forth with from the unlawful detention. C

f. AN ORDER restraining the Respondents by themselves, servants, agents and privies from further arrest and detention of the Applicants or in any way whatsoever interfering with the applicants' Fundamental rights as enshrined in the Constitution of Federal Republic of Nigeria. D

g. AN ORDER compelling the Respondents jointly and severally to pay to each of the applicants the sum of N500,000.00 (Five Hundred Thousand Naira) only general and exemplary damages for the violation of the applicants' fundamental rights to personal liberty and freedom of movement". E

The Respondents were served with this motion on Notice, the 1st and 2nd Respondents filed a Counter-Affidavit dated 2/9/2002. The Applicants filed a further Affidavit in support of the motion dated 20/9/2002. F

On the 26/9/2002, the trial court ruled that this Applicants' further Affidavit and counter-Affidavit of the 1st and 2nd Respondents be served on 3rd, 4th and 5th Respondents, and adjourned the case to 27/11/2002 for hearing. On the 27/11/2002, it was shown that the further Affidavit had been served on all the respondents, and has also been served on the 3rd - 4th respondents, except the 5th respondent. The court then adjourned the matter to 3/2/2003 for hearing. G

On the 3/2/2003, the Appellants/Applicants' counsel moved the motion on Notice. In the course of moving the said motion, the trial court stopped the learned counsel to the Applicants to confirm the service of the processes on all the respondents. All the Respondents were confirmed to have been served with all the Court's processes. While the 1st and 2nd respondents filed counter-Affidavit to the H

motion on Notice, they did not file any reply to the further affidavit. But the 3rd, 4th and 5th Respondents did not respond to any of the processes and neither have they been represented in all the court's proceedings. The court then allowed the appellants Applicants' counsel to proceed with his submissions. He then referred to the averments in the further Affidavit as uncontroverted. At this point the learned trial Judge asked the counsel to the 1st and 2nd respondents to comment on the submission of the learned counsel to the Appellants/Applicants on the further Affidavit. This is what the learned counsel to the respondents said: -

Amene: *"It is our understanding of the law that we are not bound to reply to every averments in the further affidavit which only seeks to controvert what was in our counter-Affidavit. I did not see anything new in the further affidavit filed by the applicants. Based on this comment the learned trial Judge asked the learned counsel to the appellants/Applicants to proceed with his submission. The said counsel, concluded his submissions and urged the trial court to grant his prayers. The court then called on the respondents' counsel to reply, and this is what happened in the proceedings: -*

Amene- *I pray for a short adjournment to enable me fully amend.*
Court- *Did you have notice of today hearing and the purpose for which we are here.*

Amene- *My learned friend has raised several issues that I need to work upon. Court - Are these issues of fact or law.*

Amene- *They are both issues of facts and law that the applicants have raised which I need to address.*

Court - *Now what are the issues of law raised.*

Amene- *I want to convince the court that while evidence is going on in a matter that either side has a right to seek leave of court to adduce further evidence.*

Court- *Are you suggesting a respondent having not filed a further counter-Affidavit to controvert an affidavit can after argument on a motion moved by an applicant properly seek leave of the court to then file a counter-Affidavit to controvert an affidavit in support of a motion already present (sic) or heard.*

Court - *Any other reason.*

Amene - *My further reason is to enable me reach the 3rd and 4th respondents".*

The court in its ruling, held as follows: -

Court:

"I find that there are no new issues of law that the respondents were not appraised of on the motion papers filed by the applicants that were raised in the cause (sic) of the applicants' arguments and presentation. We have also dealt with the matter of opportunity for fair hearing on the part of the 3rd, 4th and 5th respondents. Adjourment sought by counsel for 1st and 2nd respondent denied".

Thereafter the ruling the counsel to the 1st and 2nd respondents refused to go on with the matter. In conclusion, the trial court gave judgment in favour of the applicants' as he claimed in the Motion paper.

Dissatisfied with the judgment of the trial court, the 1st and 2nd respondents successfully appealed to the Court of Appeal, Enugu Division, herein referred as court below. In a unanimous decision the court below held at page 238 of the Record:-

"In my own view with the reasons placed before the trial court, it should have acceded to the request for adjournment if only upon terms, but it looked as if the trial Judge was in a haste to compute the case on his first day of sitting in that court without giving the other party the opportunity to file necessary papers and be heard. The action of the learned trial Judge has caused a mis-carriage of Justice. The trial court failed to take all the Circumstances of the case into consideration. In the circumstance, the refusal of the trial court to grant the appellants' application for adjournment to enable him file further counter affidavit and also get in touch with the 3rd and 4th defendants/respondents amounted to denial of fair hearing...

In the final analysis, this appeal has merit and it is allowed. The decision of the trial court delivered on 3/2/03 which granted the applicants, the reliefs sought in (c), (f) and (g) of their statement to the extent that only the 1st and 2nd respondents are liable to pay the sum of Five Hundred Thousand Naira (N500,000.00) in general and exemplary damages is hereby set aside,.....".

The learned Justices of the court below remitted the case back to the Federal High court Enugu for re-assignment and hearing *de novo*.

Dissatisfied with the above judgment the appellants appealed to this court. In compliance with rules of the court both parties have filed

and exchanged their respective briefs of argument.

The appellants in their brief of argument dated 2/2/07, and filed on 5/2/2007, distilled two issues for determination from the three grounds of appeal, thus:-

B *“(a) Whether the Court of Appeal was right in holding that the refusal of the trial court to grant the respondents’ application for adjournment to file further counter-affidavit amounted to denial of fair hearing.*

C *“(b) Whether the Court of Appeal was right to hold that the affidavit evidence of the parties showed a lot of conflicts which ought to be resolved by calling on the parties to give oral evidence”.*

The Respondents in their amended Brief of argument adopted the issues for determination as distilled by the appellants. At the hearing of this appeal, the learned counsel to the Appellant adopted his brief of D argument and urged this court to allow the appeal. In his brief, the learned counsel submitted on the issue that by a long line of decided cases, the grant or refusal of adjournment in a matter is entirely at the discretion of the trial Judge and the exercise must depend on the facts and circumstances of the case. The cases of:- Okeke v. Oruh E (1999) 6 NWLR (pt. 606) 175, Odusote v. Odusote Ltd. (1991) 1 NMLR 228, Seekaye Traders Ltd. v. General Motors Co. Ltd. (2002) 2 NWLR (pt. 222) 132. were cited.

F Learned counsel further submitted that there must be sufficient materials placed before the court to enable it give a ruling one way or the other but which must be both judicial and judicious. In the instant case, they failed to provide the trial court with any material. The record shows clearly that the respondents were duly served with the applicants’ further affidavit long before the suit was first fixed G for hearing on the 26/2/2002 and particularly on the 3/2/2003 while the respondents said at the hearing that there is nothing new in the Applicants’ further affidavit to warrant him filing a reply. It was the learned counsel’s submission that the Court of Appeal was in error in interfering with the exercise of discretion of the trial Judge, thus, the H appellate court must be slow in interfering with the discretion of the trial court, see Okeke V. Oruh (supra) at 188. Learned counsel submits that when a matter is fixed for hearing, a trial court has no other business than to proceed with the hearing of same, learned counsel cited in support the case of:-

Jonason Trianales Ltd. v. Charles Moh and partners Ltd. (2002) 15 NWLR (pt 789) 176. It was also the learned counsel's submission that the respondents could not complain of breach of fair hearing as they were given all the opportunity to file reply to the further affidavit but have chosen not to present its case when given opportunity to do so cannot be heard to complain of a denial of fair hearing. See the case of Oyeyipo v. Oyinloye (1987) 1 NWLR (pt 50) 356. B

On the 2nd issue, learned counsel submits that the respondents having failed to file a reply to the further affidavit are deemed to have admitted the correctness contained therein, hence the issue of conflict in the affidavit that may warrant the calling of oral evidence does not arise. C
Counsel referred to the cases of:-

(a) Attorney general Anambra State v. Okeke (2002) 12 NWLR (pt. 782) 575.

(b) Egbuna v. Egbuna (1989) 2 NWLR (pt. 106) 773. D

Learned counsel to the respondents adopted his amended brief of argument at the hearing of the appeal and urged this court to dismiss the appeal.

On the issue No. 1, learned counsel agreed with the appellants/ applicants that the question of grant or refusal of an application for adjournment is discretionary, however, an appeal court may interfere with the exercise of discretion if it is shown that there has been a wrong exercise of the judicial discretion. Learned counsel cited the cases of:- University of Lagos v. Aigoro (1985) 1 NSCC (pt 1) 88, and Enehebe v. Enehebe (1964) All NLR 95 at 100. In the instant case, learned counsel pointed out that this matter came up for the first time before the trial Judge on 3/2/2003. It was his submission that there were material facts placed before the court which would have warrant the court granting the application for adjournment i.e. to enable him amend, to controvert the affidavit in support by filing further counter/ affidavit and to enable him reach the 3rd and 4th respondents. Learned counsel submitted that the trial High Court did not exercise its discretion judicially and judiciously in refusing the application for adjournment. E
F
G
H

On the 2nd issue, learned counsel submitted that the issues between the parties were whether the applicants were unlawfully arrested and detained by the police at the behest of the respondents, and these issues were contradicted in the counter-affidavit.

The affidavits are in conflict on material facts. When affidavits are in conflict on material facts court is duty bound to resolve the conflicts by calling oral evidence. He cited the case of:

L.S.D.P.C v. Adold Stamm International Nig. Ltd. (2005) 2 NWLR (pt) 603 at 617.

B My Lords, I have carefully gone through the record of proceedings and I respectfully found as follows:

(1) The Appellants processes were served on the respondents and on 2/9/2002, the 1st and 2nd respondents filed the counter-affidavit.

C (2) The appellants filed a further affidavit in support of the motion on 20/9/2002 and the 1st and 2nd Respondents were duly served.

(3) On the 26/9/2002, the Trial Court Ordered that the appellants' further affidavit shall be served on the 1st and 2nd respondents. He also ordered that the Appellants further Affidavit shall be served on the 3rd, 4th D and 5th respondents and adjourned the case to 27/11/2002 for hearing.

(4) On the adjourned date i.e. 27/11/2002, the Trial Court found that the appellants further affidavit has in fact been served on all the respondents, while the 1st and 2nd respondents counter-affidavit had also been served on the parties, except the 5th respondent. E The court further adjourned the case to 3/2/2003 for hearing.

(5) Between the 27/11/2002 and 3/2/2003, the 1st and 2nd respondents had at least three (3) motions an opportunity to file a reply to the appellants further affidavit if they so wish.

F (6) I also found as a fact that the 3rd to 5th respondents did not file any process in defence of the Appellants case in spite of the fact that they were duly served with all the court's processes.

(7) The Trial Court, on the date of hearing i.e. 3/2/2003, gave the opportunity to the 1st and 2nd respondents to file a reply to the further affidavit if they so wish, in view of the averments contained therein, counsel to the respondents answered thus: - G

H *"It is our understanding of the law that we are not bound to reply to every averment in the further affidavit which seeks to controvert what was in our counter-affidavit. I did not see anything new in the further affidavit filed by the applicants".*

With tremendous respect, in view of the above findings, can it be rightly said that the respondents were denied the right to fair hearing by the refusal of the trial court to grant the respondents' application for adjournment? The question of adjournment is within

the discretion of the court, in exercising such discretion the court must consider all the circumstances of the case in ensuring that the discretion is exercised judicially and judiciously. In exercising its discretion no case can be authority for the other, because that in effect would be an end to the discretion. Each case has its peculiar facts which cannot be the same with the others although they may be similar. Hence, in exercising its discretion the court has to consider the totality of the cases. The fact that the appellate court would have exercised its discretion differently from that of the trial court is not a sufficient reason to interfere with the exercise of discretion by the trial court. See Okeke v. Oroh (1999) 6 NWLR (pt 606), Odusote V. Odusote (1971) 1 NWLR 228.

When a case has been fixed for hearing the trial court must ensure the hearing of the case except if a party applying for adjournment showed sufficient reason why the case must be adjourned, that is, by placing sufficient materials before the court upon which it can exercise its discretion, otherwise, an adjournment of a case fixed for hearing would mean further delay to the other litigants who might otherwise have had their cases heard. (See Solanke v. Ajibola (1968) 1 All NLR 46 at 54; NorWest Heavy Duty Industrial Plastic Ltd. v. Folarin (2002) 2 NWLR (pt. 239) 54/66; and Jonason Triangzed Ltd. v. Charles Moh and Partners (supra) at 176.

However, an appellate court may interfere with the exercise of judicial discretion if it is shown that there has been a wrong exercise of the judicial discretion such as where the court acts under a mis-conception of law or under mis-apprehension of fact by considering irrelevant matter. See University of Lagos and Anor. v. Aigoro (supra) 88; Enekebe v. Enekebe (1964) All NLR 95.

Applying these principles to this case at hand, and in particular, in view of my findings above, it is my candid view that the trial court exercised its discretion judicially and judiciously in refusing the respondents' application for an adjournment. Apart from the fact that the respondents had a grace of not less than 3 months to file its reply to the further affidavit before the date fixed for hearing, on the date fixed for hearing. That court also gave the opportunity to the respondents, if they wished to file a reply, but the counsel arrogantly refused

it.

The findings of the lower court that the trial Judge was in a haste to determine the case on his first day of sitting cannot be supported with the evidence in the record. The trial court is bound to look at the records, and having gone through the records and seeing the opportunities already given to the respondents, he rightly rejected the application for adjournment.

My Lords, the issue of conflicts in affidavits was never raised in the appellants Notice of appeal before the trial court, and neither was it canvassed before it. It was an obiter dictum having not been linked or related to any of the issues canvassed before it. I have no hesitation in holding that the issue is incompetent.

All said and done, I hold that this appeal has tremendous merit and is accordingly allowed. The judgment of the lower court is set aside. The beautiful and painstaking judgment of the trial court is reinstated and affirmed. Fifty thousand Naira (N50,000) costs is awarded to the Appellants.

Appeal is allowed.

MUKHTAR JSC

The issues distilled from the appellants' grounds of appeal in their brief of argument are:-

(i) Whether the Court of Appeal was right in holding that the refusal of the trial court to grant the respondents' application for adjournment to file further counter affidavit amounted to denial of fair hearing.

(ii) Whether the Court of Appeal was right to hold that the affidavit evidence of the parties showed a lot of conflicts which ought to be resolved by calling on the parties to give oral evidence.

It is on record that the respondents were served with all the processes filed in court, in respect of the applicants/appellants' application for enforcement of the applicants' fundamental rights, to wit supporting affidavit, counter affidavit and further affidavit. At the hearing of the application the following transpired in court:-

"Court:....."

There is no objection from counsel to the further Affidavit filed by the counsel to the 1st Applicant dated 20th September, 2002 and we shall

deem it properly filed and served on the Respondents as recorded above.

Anaenugwu:.....

Submit with respect that the averments herein have not been in any be (sic) controverted. None of the Respondents have filed a counter or further affidavit in response to issues raised in the further affidavit..... B

Amene: It is our understanding of the law that we are not bound to reply to every averment in the further affidavit which only seeks to controvert what was in our earlier counter affidavit. I did not see anything new in the further affidavit filed by the Applicants.” C

After the learned counsel for the applicants/appellants had finished moving their motion, Mr. Amene of Counsel for the respondents prayed for an adjournment. The following then transpired:-

Court: Did you have notice of today (sic) hearing and the purpose for which we are here? D

Amene: My learned friend has raised several issues that I need to work upon.

Court: Are those issues of fact or law?

Amene: They are both issues of facts and law that the Applicants have raised which I need to address. E

Court: Now what are the new issues of law raised?

Amene: I want to convince the court that while evidence is going in a matter, that either side has a right to seek the leave of counsel (sic) to adduce further evidence. F

Court: Are you suggesting that a Respondent having not filed a further counter affidavit to controvert an Affidavit can after argument or (sic) a motion made by an applicant properly seek leave of the court to then file a counter Affidavit to controvert an affidavit in support of a motion already present or heard. G

Amene: Yes

Court: Any other reason?

Amene: My further reason is to enable me reach the 3rd and 4th Respondents. H

Court: We have dealt with that before any further reason for adjournment.

Amene: These are my two basic reasons.

Court: Mr. Anaenugwu, your comments.

Anaenugwu: We are opposed to grant any request for an adjournment. I readily concede that it is within the discretion of the court to grant any leave for adjournment but such discretion is to be applied judiciously. The Respondent has not placed any material whatsoever to enable this court exercise the discretion sought in their
 B favour. Mr. Amene conceded that this date was fixed for hearing of this application and came fully prepared. We have not cited any authorities to cause him to seek time to make references. We are asking you to refuse the Application for adjournment.

C Court: I Find that there are no new issues of law that Respondents were not apprised in the motion papers filed by the Applicant that were raised in the cause of the Applicants' arguments and presentation. We have also dealt with the matter of opportunity for fair hearing on the part of the 3rd, 4th and 5th Respondents. Adjourn-
 D ment sought by counsel for 1st and 2nd Respondents denied.

Amene: All I can say is that I cannot go on.

Court: It appears the counsel for 1st and 2nd Respondents is at a loss now to proceed.

Amene: Yes Sir."

E It is clear from the above proceedings that the respondents were served with the further affidavit and had ample opportunity to reply to it if they wanted to, and as a matter of fact the learned counsel specifically said he did not see anything in the further affidavit to
 F warrant a reply. If he didn't and there was no need to raise a point of law after the learned counsel for the respondent had moved their motion, what then was the purpose of seeking an adjournment other than to waste the court's time. This practice should not be allowed, and the court should definitely frown on it. A court should never
 G encourage the act of holding it to ransom on flimsy excuses. We must always avoid the situation whereby the courts are perpetually blamed for delays in proceedings. The issue of adjournment of a case is at discretion of a judge, and where a judge sees no justifiable reason to adjourn the case, he can refuse such adjournment, and in so doing
 H he would be exercising his discretion judicially and judiciously. See Mobil Co. Ltd. v. Nabsons Ltd. 1995 NWLR part 407 page 254; Ceekay Traders Ltd. v. General Motors Co. Ltd 1992 2 NWLR pan 222 page 132, and Attorney-General of Federation v. Ajayi 2000 12 NWLR part 682 page 509.

I am satisfied that the learned trial judge was perfectly right when he refused the application for adjournment in this case. The lower court was wrong in disturbing the decision of the learned trial judge. I have read in advance the lead judgment delivered by my learned brother Muntaka-Coomasie JSC, and I am in full agreement that the appeal deserves to be allowed. I allow the appeal and abide by the consequential orders made in the lead judgment. B

ONNOGHEN JSC

I have had the benefit of reading in draft the lead judgment of my learned brother, MUNTAKA-COOMASSIE, JSC just delivered. C

I agree with his reasoning and conclusion that the appeal has merit and should be allowed.

It is settled law that the question of adjournment of any matter D before a competent court is strictly a matter of the exercise of the discretion of the particular court concerned in the hearing and determination of the matter before it and that the exercise of that discretion must depend on the facts and circumstances of each case as no one case is an authority for another on the exercise of discretion. It is also settled law that the court cannot be bound by a previous decision to exercise its discretion in a particular way; see Ceekay Travers Ltd. vs. General Motors Co. Ltd. (2002) 2 NWLR (Pt. 222) 132; Odusole vs Odusole (1971) 1 NWLR 288; Okeke vs Oruh (1999) 6 NWLR (pt. 606) 175; A-G of Rivers State vs. Ude (2006) 17 NWLR (Pt. 1008) 436. E F

The respondent failed completely to offer any reason for asking for the adjournment to “fully amend” and file further counter affidavit, which learned counsel for the respondent, had earlier told the court he did not need to file; the respondent was served with the relevant processes long before the date of hearing. Learned counsel for the respondent was even offered an adjournment on a plater of gold by the learned trial judge at page 193 of the record which he rejected in the following tone. G

“It is our understanding of the law that we are not bound to reply H to every averment in the further affidavit which only seeks to controvert what was in our earlier counter affidavit. I do not see anything new in the further affidavit filed by the applicants”.

The time the application for adjournment was made is very impor-

tant. It was after learned counsel for the appellants had completed his argument on the application and counsel for the respondent was called upon by the court to make his reply, if any. It was at that stage that learned counsel for the respondent applied for the adjournment to file a further counter affidavit, which he had earlier told the court
 B he did not want to file!! If counsel were to be allowed and he introduced new facts into the controversy it would lead to further delay and may result in injustice to the appellant who had already concluded his arguments on the matter.

C There must be an end to litigation and the need to put the other party on notice is simply to avoid taking that party by surprise and also avoid an ambush being laid for the opponent.

It is settled law that an appellate court is usually very slow to interfere with the exercise of discretion by the lower court and would
 D only do so if the appellant shows or satisfies the court that the lower court acted entirely on wrong principle or failed to take all the circumstances of the case into consideration and that it is manifest that the order would work injustice to the appellant. In the instant case, there is nothing on record to show that the lower court preferred any valid reason for
 E interfering with the exercise of discretion to refuse the adjournment sought by the trial court.

The appeal is consequently allowed by me and I abide by the consequential orders made in the lead judgment including the order as to
 F costs.

Appeal allowed.

RHODES-VIVOUR JSC

G I have had the advantage of reading in draft the leading judgement prepared by Muntaka-Coomassie, JSC. I agree so entirely with his Lordships reasoning and conclusions. I propose to say a thing or two on the exercise of discretion by a judge and the role of the Police. During the hearing of the application by the trial judge on the 3rd of February
 H 2003, MR. ANAENUGWU, learned counsel for the applicants/appellants informed the court that depositions in his affidavit are uncontroverted. The learned trial judge, then asked MR. AMENE, learned counsel for the 1st and 2nd respondents for his comments'. MR. AMENE'S arrogant response runs thus:

"It is our understanding of the Law that we are not bound to reply to every averment in the further affidavit which only seeks to controvert what was in our earlier counter affidavit. I did not see anything new in the further affidavit filed by the applicants....."

MR. ANAENUGWU proceeded with his closing speech, and at the end he prayed the court to grant all the reliefs. The learned trial judge then turned to MR. AMENE who said:

"I pray for a short adjournment to enable me fully amend"

Before refusing to accede to an adjournment the learned trial judge said inter alia:

"I find that there are no new issues of Law that the respondents were not apprised of in the motion paper filed by the applicants that were raised in the cause of the applicants arguments and presentation. We have also dealt with the matter of opportunity for fair hearing on the part of the 3^d, 4th and 5th respondents....."

On appeal the judgment of the trial court was set aside on the ground that the learned trial judge was wrong to refuse adjournment. The Court of Appeal said:

"In my view with the reasons placed before the trial court, it should have acceded to the request for adjournment if only on terms, but it looked as if the trial judge was in haste to complete the case on his first day of sitting in that court without giving the other party the opportunity to file necessary papers and be heard. The action of the learned trial judge has caused a miscarriage of Justice. The trial court failed to take all the circumstances of the case into consideration."

The above observations by the Court of Appeal is not correct. Leave was granted the applicants/appellants on 20/8/2002 and the return date fixed for 3/9/2002. The matter was further adjourned to 26/9/2002 and 27/11/2002 to enable all the affidavits to be served before the hearing on 3/2/2003. It is wrong to say the judge was in haste to complete the case on his first day (3/2/2003) of sitting. The Record of Appeal reveals that all parties were given ample opportunity to file necessary papers and be heard.

Adjournments are granted entirely at the discretion of the trial judge and an appeal court is always loath to interfere except in exceptional circumstances or where the discretion was wrongly exercised, or tainted with some irregularity, or it is in the interest of justice to do so. See *University of Lagos v. Aigoro* 1985 1 NWLR pt. 1 p.

2678 Nwadiogbu v. Anambra/Imo R.B.D.A. (2010) 7-12 KLR R-Vivour JSC
143, Ceekay Traders Ltd v. Gen. Motors Ltd 1992 2 NWLR pt. 122
p. 132.

In *University of Lagos v. Aigoro* (Supra)

This Court said that:

B “The court must balance its discretionary power to grant or refuse
an adjournment with its duty to endeavour to give an appellant the opportunity of obtaining substantial justice in the sense of his appeal being granted a fair hearing on its merits provided always that no injustice is thereby caused to the other party and where the court erred in its “balancing exercise an appeal court is at Liberty to Interfere.

C Counsel, who decided in his own wisdom not to file a counter affidavit after being given every opportunity to do so by the learned trial judge, would not be allowed after hearing submissions from the adverse party to change his stance and say he wants to do what he ought to have
D done before the hearing. In our accusatorial system of jurisprudence counsel has wide powers to handle a case in the way he finds convenient. He can even compromise the case. Where counsel denies his client a fair hearing by the unusual approach he chooses to take he cannot be
E heard to complain that he was denied a fair hearing. The court is for very serious business and the judge must at all times ensure that it is kept so. If this application for adjournment was granted by the learned trial judge, the courts would never consistently refuse frivolous and unnecessary applications for adjournment.

F I agree with the leading judgment that the refusal of the trial judge to grant adjournment was correct. It was set aside by the Court of Appeal on the wrong basis. Finally an affidavit filed after the commencement of an application should be disallowed and discountenanced. See *Majaroh v. Fasassi* 1986 5 NWLR pt. 40 p. 39 *Ramon v. Jinadu* 1986 5
G NWLR pt. 39 p. 100.

This explains why the learned trial judge was correct to refuse an adjournment after learned counsel for the applicants/appellants concluded his submissions. Time is of the essence, especially where the liberty of anyone is in issue, and so, strict adherence to procedural formalities
H ought to be put aside when hearing matters on human rights. The Court should rise up and be seen to restore the rights of anyone unjustly detained. Decisions should be delivered if possible immediately or a few days after hearing arguments. I now turn to the role played by the Police.

This suit was instituted by the applicants/appellants because the respondents (Agents of the Federal Government) used their connections with the Police to arrest and lock up the appellants for over two weeks. This brings into focus the strong man prevailing over weak institutions. The role played by the Police using their powers of arrest and detention was totally unnecessary. It underscores the urgent need for building and nurturing strong institutions. It is a must especially where the strong, influential man is still very much around. Such a man should no longer be relevant. B

Once again I agree with the reasonings and conclusions in the leading judgment. C

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