

SUPREME COURT OF NIGERIA
10TH DECEMBER, 2010 SC. 181/2004
CORAM:- D. MUSDAPHER, M. MOHAMMED, J. A.
FABIYI, O. O. ADEKEYE, S. GALADIMA, JJSC

COTECNA INTERNATIONAL LIMITED APPELLANT
AND
1. CHURCHGATE NIGERIA LIMITED
2. NIGERIA CUSTOMS SERVICE RESPONDENTS

CONTRACTS - Statutes - Agency - Parties status - Federal Government agency - Where the terms of contract of service - Require service provider to exercise independent professional mandate - It makes it an independent contractor (H1)

WORDS & PHRASES - Interpretation - Inspection agent - Federal Government Department or agency - The fact of calling appellant inspection agent - Does not make it agent of federal government - Terms used in documents should be given their ordinary meaning - To ascertain the intention of parties (H2)

AGENCY - Contracts - Agent's liability to third party - When to arise - One occasion for such liability of an agent - Is where he had exceeded the limit of his authority - And thereby injured a third party (H3)

STATUTES - Pre-shipment Inspection of Imports Act - Limitation of action - Applicability - Such limitation of action is not shown in the Act - But is contained in the Customs Act - Where words of a statute are clear - Court is duty bound to give its literal meaning (H4)

COURTS - Access - Restrictive statutes - How construed - Any law which seeks to deprive a citizen of his right of access to court - Or any other constitutional right - Must be construed strictly by the courts (H5)

STATUTES - Taxation laws - Limitation of action - Applicability - Such Limitation of liability in respect of disputed tax - Must be provided

for expressly and with certainty - Not by mere inference (H6)

STATUTES - Conflict of laws - Where claims of damages exist in a statute - And the other statute does not incorporate provisions of the former statute - Each statute is independent on its tenor (H7)

JUDGMENTS - Time of delivery - Where delivered earlier than fixed - And without notice to appellant - Miscarriage of justice must be shown - For the said judgment to be nullified (H8)

FACTS

The 1st respondent as plaintiff, sued the appellant and the 2nd respondent as 1st and 2nd defendants respectively, before the Federal High Court, Lagos. Plaintiff's claim was for sundry reliefs by which it sought to recover the sum of N9,840,012.54 (nine million, eight hundred and forty thousand, twelve naira, fifty four kobo) being money paid in excess of the amount due and payable as customs duties and charges on consignments of rice imported into Nigeria by the plaintiff. The claim was anchored on appellant's alleged negligence in preparation of the Import Duty Report on the basis of which 2nd respondent charged and collected the excess sum from the plaintiff. After the institution of the suit and before pleadings were fully settled, the appellant filed a motion on notice praying the trial court to have its name struck out on the ground that, at all times material to the subject matter of the suit, it was an agent of a disclosed principal, i.e. the Federal Government, and as such could not be proceeded against by a third party. Further, that the action was statute barred. Plaintiff filed a counter-affidavit to the motion on notice.

After hearing the motion of the appellant, the trial court ruled that appellant was not an agent of the Federal Government for purposes of the transaction as it claimed but was an independent contractor. Accordingly, trial court refused to strike out the name of appellant. It also held that the action was not statute-barred under the Pre-shipment Inspection of Imports Act, 1996, which it held to be applicable to the suit as opposed to the Customs and Excise Management Act relied on by appellant. Aggrieved, appellant appealed to Court of Appeal against the ruling but the appeal was dismissed. Still dissatisfied, appellant has come on a further and final appeal to the

Supreme Court.

ISSUES FOR DETERMINATION

1. *“Whether the Court of Appeal was wrong when it decided that the provisions of section 3(1) and (2) of the Pre-shipment inspection of Imports Act 1996 are applicable to the 1st Respondent’s claim at the Federal High Court and decided that the provisions of section 136(1) of the Customs and Excise Management Act did not apply to the claims.*

2. *Whether the Court of Appeal was wrong when it decided that the Appellant was not at all times material to the subject matter of the 1st Respondent’s claim in the Federal High Court, a disclosed agent of the Federal Government of Nigeria, a disclosed principal.*

3. *Whether the Judgment delivered by the Court of Appeal is valid having been wrongly delivered on 17th March, 2004 in the presence of the 1st Respondent without notice to the Appellant.”*

HELD (Unanimously dismissing the appeal per **GALADIMA JSC**)
Agency - Parties status - Federal Government agency

1. On the first issue, the appellant in its brief admits that it was brought into being by series of statutes, namely Pre-shipment Inspection of Imports Acts, particularly section 4(1) of the Pre-shipment Inspection of Imports Act No. 11, 1996. Pursuant to this provision, the Appellant was appointed by the Federal Government as shown in Exhibits “JA1” and “JA2”, which documents merely refer to the Appellant as “the company” which by page 3 of clause 6 was mandated to undertake verification of Tariff codes and rates designated by the importers or their agents on mandatory import duty assessment forms submitted by Banks to ensure that the correct import duty is assessed and paid to the 2nd Respondent. Clause 2 states that the company is required to exercise an independent professional mandate (underlining mine for emphasis).

The cumulative effect these provisions and clauses 2 and 6 of the Agreements, (Exhibits JA1 and JA2) have is that the Appellant is an independent contractor of the Federal Government. In its brief of argument at paragraph 63, the Appellant stated thus:

“It was never the case of the Appellant in the Federal High Court or the Court of Appeal that it was an “agency” or “department”, of the Federal Government of Nigeria.....”

Indeed, the appellant is neither an “agency” nor a department of the Federal Government. This is the concurrent findings of the two courts below. The Appellant was engaged to inspect imported goods, verify their quality, quantity and price, issue a clean Report Of Findings. It is to compute and assess customs duties payable in line
B with the guidelines given by the Federal Government of Nigeria.

In performing these duties the Appellant acts as an independent entity and its staff are not under any control by the Federal Government. They are not paid salaries from the special or any
C consolidated fund. (p. 2885 G)

Inspection agent - Federal Government Agency

2. I do not see the relevance of the case of UNIVERSITY OF ABUJA v. PROF. K. OLOGE (1996)4 NWLR (pt. 445) cited and relied on by
D the Appellant in its brief, since the appellant has conceded that it is neither an “agency” nor “department” of the Federal Government. However, the cases of FEDERAL MORTGAGE BANK OF NIGERIA v. OLLOH (2002)9 NWLR (pt. 773) and TRENDX TRADING CORPORATION LTD. v. CENTRAL BANK OF NIGERIA (1977)1. A. E. R.
E 881 applied by the Court below are relevant. In the first case UWAIFO JSC, at page 487 has this to say.

*“There is nothing whatever in the Federal Mortgage Bank Act to suggest that the appellant is an Agency of the Federal Government. It is no doubt that the said Bank was created by an Act of the
F National Assembly and therefore at best considered the property of the Federal Government with the sole aim of providing financial assistance in the form of long-term facilities to Nigerian individuals desiring to acquire houses of their own and the granting of long-term
G credit facilities to mortgage institutions with a view to enabling those institutions to grant comparable facilities to Nigerian individuals as per the preamble of the Act. The Bank is no more than a business establishment given functions to perform, but neither of those functions nor the Bank itself has any connection with the affairs or the
H running of the Federal Government.”*

These two authorities were relied on by the Court of Appeal to buttress the point that the fact that the Appellant is referred to and called an “Inspection Agent” does not make it an agent of the Federal Government referred to as “Principal”. These terms used in Exhibit

“JA1” ought to be given their ordinary meaning or day to day usage so as to ascertain manifest intention of the parties. (p. 2886 G)

Agent's liability to third party - When to arise

3. It is not in all situations that an agent will not be liable for the acts of a principal. An agent who has exceeded the limit or bounds of its authority as is alleged in this case, such agent will be liable. B

I have viewed this matter from a very broad perspective, as urged by the learned counsel for the 1st Respondent. It is crystal clear for all intent and purposes that the overall responsibility of undertaking the verification of Customs Tariff Codes and Rates designated by the importers of goods on mandatory import duty assessment forms submitted by the Banks /Authorised dealers to ensure that the correct import duty is assessed and paid to the 2nd Respondent, is on the Appellant. If these onerous responsibilities devolve on the Appellant entirely, then the resolution of any dispute arising therefrom would make the Appellant necessary and proper party in an action such as this. (p. 2887 F/2888 B) C D

Pre-shipment Inspection of Imports Act - Limitation of action E

4. My careful study of the provisions of section 3(1) and (2) of the Pre-shipment Inspection of Imports Act. No. 11 of 1996 has shown that there is nothing which restricts accessibility to Court by way of imposition of a limitation period within which an action could be brought to Court. The fundamental rule of interpretation of a statute is that every statute is to be expounded to its manifest and expressed intention. Where the words of a statute are clearly expressed the court is duty bound to give the words their literal meaning. F
The provision of Customs and Excise Management Act (supra) came into force on the 1st of April, 1959. G

It is clear, it makes room for limitation of time within which an “importer”, “exporter” or “proprietor” can bring an action in Court.

The provisions of Customs and Excise Management Act reproduced above, as I have noted, places limitation of six months within which to bring an action after the payment of customs duty or excise. The Pre-shipment law which came into force in 1996, meant to regulate the payment of dutiable goods, does not contain such limitation clause. (pp. 2890 C/G/2891 C) H

COURTS - Access - Restrictive statutes - How construed

5. The Constitution guarantees citizen's right to vent their grievances in Court. Any law which seeks to deprive a citizen of any of his constitutional right must be construed strictly by the Courts.

B In dealing with this issue, the learned trial Chief Judge had expressed his view at page 79 of the records that section 136(1) of Customs and Excise Management Act has been eroded by the various enactments relating to Pre-shipment Inspection of imported dutiable goods. I agree with him that the duties and traditional functions of the Customs Officers have been completely taken over and any protection given to them cannot be given to any other body in the absence of specific provision of the law. (p. 2891 D/G)

D ***Taxation laws - Limitation of action - Applicability***

6. Chargeable customs duty on imported goods and excise on manufactured goods are matters of tax. Limitation of liability of disputed tax and whom to challenge on such liability must be expressed in law explicitly and with certainty and not by mere inference or conjecture.

E If the legislature had intended to limit the period within which an aggrieved importer could institute action against the pre-shipment "Agents", it would have done so expressly. It has been settled that the Appellant is an independent contractor. It is not under the day-to-day control of the Nigerian Customs Service. It would appear S.136 F (1) Customs and Excise Management Act gave undue protection to the "Officers of Customs and Excise" in the discharge of their statutory duty of collecting customs duties. This protection cannot by any stretch of imagination be extended to the Appellant, without a clear G statutory provision. (p. 2892 A)

STATUTES - Conflict of laws

7. 1st Respondent's claim flows and emanates from the Clean Report of Findings and Import Duty Reports prepared and endorsed by the H Appellants. These documents are nowhere mentioned in the Customs and Excise Management Act. It would appear at page 68 of the Records that the 1st Respondent has filed an Amended Particulars Of Claim, claiming damages in the alternative, that the Appellant was negligent in the preparation of Import Duty Reports. Neither the 1979

nor, 1996 Pre-shipment Inspection of Import Act incorporates provision of its application to Customs and Excise Management Act. Looking at their historical perspective the statutes are independent of each other. As stated earlier if the legislator intended to incorporate the limitation period in section 136 (1) of Customs and Excise Management Act, such intention would have been expressly stated. In the absence of such intention to incorporate Customs and Excise Management Act into the Pre-shipment Inspection of Imports Act, the proper interpretation is that each statute is independent on its own tenor. B

From the foregoing, I hold that the limitation period of action as contained in Customs and Excise Management Act does not and cannot apply to the Pre-shipment Inspection of Imports Act and cannot be read into it. I therefore, resolve this issue in favour of the 1st Respondent. (p. 2892 F) C D

JUDGMENTS - Where delivered earlier than fixed

8. Order 5 rule 1 of the Court of Appeal Rules 2002 (then applicable) enjoins the delivery of the Judgment of the Court in the open court and for the Registrar to give notice of the date the Judgment will be delivered. The Court of Appeal rules did not prescribe the effect of non-service of notice. However section 294 (1) of the 1999 constitution provides that a written judgment of every court established under the Constitution shall be delivered not later than ninety days after the conclusion of evidence and final address. By virtue of subsection 5 of section 294 of the Constitution this court is enjoined not to set aside the judgment of the trial court solely on the ground that it was delivered outside the ninety days period after final address unless the party complaining has suffered a miscarriage of justice. It would appear to me and I am of the view that the delivery of judgment earlier than scheduled date without notice to the Appellant will not nullify the judgment unless the Appellant can show that it has resulted in a miscarriage of justice. The Appellant has not shown that any miscarriage of justice has occasioned because its counsel was not present when the Judgment was read. It is not shown that if the Appellant's Counsel had listened to the Judgment which was delivered in the open court, the decision could have been otherwise. The Appellant is not complaining that it was not heard when it ought to E F G H

have been heard during the proceedings leading to Judgment.

I hold that since the earlier and timely delivery of judgment by the Court of Appeal has not occasioned any miscarriage of justice to the Appellant, in any way whatsoever, so as to nullify the said judgment, accordingly, I resolve this issue against the Appellant.

B (p. 2894 A/G)

REPRESENTATION

1. Uzoma Azikiwe, Esq. with Bassey Eite, Esq. for the appellant.

C 2. J. A. Badejo, SAN with P. E. C. Ekwueme, Esq. for the 1st Respondent.

3. 2nd Respondent absent not represented.

CASES REFERRED TO

D GREEN v. GREEN (1987)3 NWLR (pt. 61) 480

Nkuma v. Odili (2006) 7 NWLR (pt. 978) pg. 39

AYORINDE v. ONI (2000)3 NWLR (pt. 649) 348

OBODO v. OLOMU (1987) 3 NWLR (pt. 59) 111

Ikene v. Anakwe (2000) 8 NWLR (pt. 669) pg. 484

E Williams v. Akintunde (1995) 3 NWLR (pt. 381) pg. 101

EGBE- V - ADEFARASIN (1987)1 NWLR (pt. 47) page 1

ESEIGBE v. AGHOLOR & ANOR. (1990) 7 NWLR (pt. 161) 234

Ekundayo v. University of Ibadan (2000) 12 NWLR (pt. 681) pg. 220

F UNIVERSITY OF ABUJA v. PROF .K. OLOGE (1996)4 NWLR (pt. 445)

Adeleke v. Oyo State House of Assembly (2006) 10 NWLR (pt. 987) at pg. 50

G JEREMIAH AKOH & 2 Ors. v. AMEH ABUH (1988)3 NWLR (pt. 85) 696 at 712

Best Vision Centre Limited v. U. A. C. NPDC Plc. (2003) 13 NWLR (pt. 838) pg. 594

VERITAS INS. CO. LTD. v. CITI TRUST INVESTMENT LTD (1993)3

H NWLR (Pt. 281) 349 at 370

CHIEF ITA AND 4 others - V - CHIEF ARCHIBONG AND OTHERS (1995) 4 NWLR (pt. 387) 83 at 87

STATUTE & RULES REFERRED TO

Customs and Excise Management Act, s. 136

Pre-shipment Inspection of Imports Act, 1996, s. 3

Federal High Court (Civil Procedure) Rules, 1976, O. 1 r. 4

Federal High Court (Civil Procedure) Rules, 2009, O. 9, rr. 5 & 8

B

LEAD JUDGMENT BY GALADIMA JSC

This is a further appeal against the judgment of the Court of Appeal, Lagos Division, in Appeal No. CA/L/79/2001, delivered on the 17th of March, 2004 dismissing the appeal of the Appellant herein. At the Federal High Court, Lagos in suit No. FHC/L/CS/63/98 the 1st Respondent as plaintiff had in a Writ of Summons issued out on 26th January, 1998 claimed against the appellant and 2nd Respondent the following reliefs:

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1. *“A declaration that the customs duties and charges payable in respect of the 160,000 bags of That parboiled rice imported into Nigeria by the 1st Respondent via the vessel M. V. “IL YA LALIK” and covered by Bills of Lading Nos. LH-1, LH-2, LH-3, LH-4, LH-5 and LH-6 is N65, 026, 721. 70.*

2. *An order directing the 2nd Respondent to credit the Plaintiff with the sum of N9, 840,012.54 already paid in excess of the amount due and payable and set off the said amount from the customs duties and charges payable on other consignments of rice to be imported into Nigeria by the Plaintiff henceforth until full credit shall be given accordingly.*

F

3. *Such further other orders as may meet the justice of the case.”*

On 6th March, 1998, the Plaintiff followed up with an application, praying the trial court to dispense with the filing of pleadings and determine the matter on issues formulated. On 29th June, 1998, the Plaintiff filed an Amended Particulars of claim and sought on alternative relief in paragraph (b); claiming N9,840,012.54 being damages for negligence in the preparation of Import Duty Report.

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While the application to decide the matter on issues formulated by the Plaintiff and the application for leave to amend and to deem Particulars Of Claim as properly filed was still pending at the trial court, the Appellant filed a motion on 19th March, 1998. It prayed to Court to have its name struck out on the grounds that it, at all

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times material to the subject matter of the suit, was an agent of the Federal Government of Nigeria, a disclosed principal, and that the trial court lacked jurisdiction to entertain the suit against the Appellant. 1st Respondent filed a counter affidavit in reaction to this application and the Appellant also filed a reply to the counter affidavit including the exhibits annexed thereto.

On 7th May, 1998 and 19th October 1998, Learned Chief Judge, M. B. Belgore, of blessed memory, took arguments of counsel on both sides on the said application and in his considered Ruling dismissed the application. He reasoned inter alia, thus:

“The sub-sections (sic) of the various enactments creating and affecting the Pre-shipment Inspection Body indirectly by process of elimination showed the Pre-shipment Inspection Body cannot be agent or agency of the Federal Government. This was clearly shown in the contractual agreement dated 19th April, 1991 between the relevant Inspection Body, that is Cotecna International Limited in this case and the Federal Government in Exhibit. FA 1... that the relationships of the two parties are one of an independent contractor to an employer.....”

Being dissatisfied with the said Ruling, the Appellant filed a Notice of Appeal to the Court of Appeal. At the Court of Appeal both the Appellant and the 1st Respondent filed and exchanged Briefs of Argument. The parties adopted their respective Briefs of Argument on 12th February, 2004. The Records show at page 163 that the Appeal was reserved for Judgment on 26th April, 2004.

On 17th March, 2004, the 1st Respondent’s Counsel was incidentally at the Court of Appeal for another matter and discovered the Appeal on the Weekly Cause List for Judgment. The Judgment was eventually delivered that day in the presence of the 1st Respondent’s counsel and the Appellant’s Appeal was dismissed. The Appellant was again dissatisfied with the said Judgment of the Court of Appeal, hence it further appealed to this Court. The Notice of Appeal contained six grounds of Appeal.

The issues which the Appellant formulated for determination in this appeal are as follows:

1. *“Whether the Court of Appeal was wrong when it decided that the provisions of section 3(1) and (2) of the Pre-shipment inspection of Imports Act, 1996 are applicable to the 1st Respondent’s*

claim at the Federal High Court and decided that the provisions of section 136(1) of the Customs and Excise Management Act did not apply to the claims. (This issue is covered by Grounds of Appeal Nos. 1, 2, and 3).

2. Whether the Court of Appeal was wrong when it decided that the Appellant was not at all times material to the subject matter of the 1st Respondent's claim in the Federal High Court, a disclosed agent of the Federal Government of Nigeria, a disclosed principal (This issue is covered by grounds of Appeal Nos. 4 and 5).

3. Whether the Judgment delivered by the Court of Appeal is valid having been wrongly delivered on 17th March, 2004 in the presence of the 1st Respondent without notice to the Appellant."

The 1st Respondent on its part has identified also three issues for determination as follows:

(i) "Whether at all times material to this action the appellant was an agent of the Federal Government of Nigeria in such a way that it could not be sued or made liable for its acts under pre-shipment inspection of imports act no, 11,1996.

(ii) Whether the Appellant can rely on and take advantage of section 136(1) of Customs and Excise Management Act Cap. 84, Laws of the Federation, 1990 when it is created under a subsequent statute with no explicit provisions or statutory limitation,

(iii) Whether the delivery of judgment by the court of appeal on 17th march 2004, earlier than 26th April 2004 which was the day reserved for judgment on the records resulted in miscarriage of justice."

The 2nd Respondent although served with all the processes in this Appeal, did not file any brief of argument. It did not also appear at the hearing of the appeal.

On the 20th September 2010, this appeal came up for hearing. On behalf of the Appellant Learned Counsel, Uzoma Azikiwe Esq. adopted and relied on the Appellant's brief of argument dated 29th November 2006 but filed on the 23rd November, 2006 without further amplification on the issues formulated in the brief which he considered comprehensive, adopted same and urged the Court to allow the Appeal.

Mr. J. A. BADEJO, Senior Counsel for the 1st Respondent adopted the 1st Respondent's brief of argument dated 12 May, 2010

filed that day but deemed filed on 20th September, 2010. He amplified on the 1st and 2nd issues. He submitted that Customs and Excise Management Act is a creation of Colonial Administration which empowered the officers of customs to assess and determine the correct duty payable. Customs and Excise Management Act which was intended to protect the customs officers stands distinct from subsequent legislation on customs matter. It is accordingly urged that the appeal be dismissed.

I have carefully gone through the issues formulated by the respective learned counsel for the parties. I am of the respectful view that issue No. 1 of the Appellant's brief and issue 2, of the Respondent's brief are similar. I shall therefore consider them serially. Issue No. 3 identified by the Appellant is similar to issue No. 3 identified by the 1st Respondent in its brief of argument. I shall also treat them together.

ISSUE NO. 1: The learned Counsel has submitted that the learned Chief Judge of the Federal High Court and the Court of Appeal erred in law when the former expressly applied and the latter assumed applicable, the provisions of section 3(1) and (2) of the Pre-shipment of Imports Act, 1996. That the relevant facts of this case show that the provisions of section 136(1) Customs and Excise Management Act are applicable to the claim of the 1st Respondent in the Federal High Court, which claim, is by virtue of that section is statute - barred, and the Federal High Court no longer has the jurisdiction to adjudicate on the claim: Reliance was placed on the cases of CHIEF ITA AND 4 others - V - CHIEF ARCHIBONG AND OTHERS (1995) 4 NWLR (pt. 387) 83 at 87 and EGBE- V - ADEFARASIN (1987) 1 NWLR (pt. 47) page 1.

Examining more critically the provisions of the Pre-shipment Inspection of Imports Acts vis-a-vis the provisions of the Customs and Excise Management Act, especially section 136(1), learned counsel has submitted that both provisions are complimentary and can co-exist and should be given the following interpretation that:

(i) The duty of the inspecting agents (the appellant) is to assist the Federal Government in cross-checking and confirming the information about the quality, quantity and value of the goods to be imported as provided by overseas suppliers/sellers, in order to prevent the Government from being defrauded of revenue including

custom duties.

(ii) By the provision of Section 37 of the Customs and Excise Management Act, the importer is under obligation to pay the proper officer, the customs duty assessed at the appropriate rate in force at the delivery of Bill of Entry. That there is no provision under the Pre-shipment of Import Act that empowers the Inspecting agents to collect customs duties as to justify the conclusion that the functions of Customs officers have been completely taken over. B

(iii) Where the importer or exporter or proprietor of the goods disputes the custom duty assessed on the goods, the provisions of section 136(1) of the Customs and Excise Management Act, would become applicable. C

It is accordingly urged that this Court should hold that the provisions of section 3(1) and (2) of the Pre-shipment Inspection of Imports Act 1995 are not applicable to the 1st Respondent's claim at the Federal High Court for the purpose of determining whether or not the claim is statute barred; but that the provisions of 5.136(1) of Custom and Excise Act are applicable to the 1st Respondents claim and that the suit is statute barred, and the Federal High Court had ipso facto, been deprived of the jurisdiction to adjudicate on the subject matter of the suit. D E

Replying the 1st Respondent's learned counsel went into historical perspective of the Customs and Excise Management Act, which he said came into force on 1st April, 1959. He contended that by section 4(1) of the said Act, the Board of Customs and Excise was saddled with the sole responsibility of assessing, computing and calculating import duties. That these onerous responsibilities have come a long way from what they were in 1959 because bodies or companies like the instant Appellant have come into limelight. Firstly there was the Pre-shipment Inspection of Imports Act, of 1979 and that of 1996. (Decree II of 1996) which placed the burden of assessing the quality, quantity and comparative price of goods and also computing, assessing and calculating import duties on the Appellant. It is contented that these responsibilities shifted to the Inspecting Agents, such as the Appellant and the duties of the Board of Customs was whittled down and stratified. It is submitted that the Inspecting Agent, by the provision of Section 2(1) of the said Pre-shipment Inspection of Imports Act, was charged with the responsibility of Inspecting goods F G H

Imported and issuing clean Report of Findings, Non Negotiable Report of Findings and Import Duty Report. Learned Senior Counsel, however submitted that, contrary to the contention of the Appellant's counsel that both section 136 (1) Customs and Excise Management Act and Section 3(1) and (2) of Pre-shipment Act are meant to co-exist harmoniously, the Lower Court rightly held that they do not so co-exist harmoniously for the reason that the legislators did not intend and it cannot be possible for the legislators to promulgate an enactment in a manner that it will repeal a future legislation on the same matter.

Right on the onset I have set out background facts that gave rise to this appeal under consideration. The Appellant did not wait for the pleadings to be ordered at the trial Court before filing its motion on Notice dated the 19th March, 1998 praying for an order striking out its name from the suit on the two main grounds namely: Firstly, that at all times material to the subject matter of this suit, the Appellant was to the knowledge of the 1st Respondent (plaintiff), the agent of the Federal Government of Nigeria a disclosed principal and Secondly, that the Court lacks jurisdiction to entertain the said suit as constituted against the Appellant. Hence this created a quagmire over which the Appellant now quibbles. It is left to be fathomed what exactly the facts and basis of the 1st Respondent's cause of action against the Appellant was or rather is. Curious enough but perhaps this explains why the Appellant had to place reliance, copiously, on the affidavit in support of the Respondent's application dated 6th March, 1998 at pages 8 to 35 of the Records. The Appellant's application brought prematurely before the trial Court stalled the filling of pleadings and hearing of the application for leave to amend the particulars of claim. If the pleadings had been settled, the Appellant would have had the opportunity to have a clearer picture of the plaintiff's case and the basis of its claim against the Appellant. The Appellant in response would have filed a defence to the Plaintiff's of claim. In doing this, the Appellant may admit some of the facts alleged in the statement of claim, if it considers them incontrovertible, or it may deny those it finds unacceptable. Further, it may admit some allegations but go on to plead new facts from the one intended by the 1st Respondent. It could as well then raise an objection in law urging the trial Court to strike out the Plaintiff/1st Respondent's action on the

grounds of that objection.

If this was done, all the time and efforts dissipated in 12 years on this appeal would have been saved. It has become obvious that this premature and hasty step embarked upon by the Appellant has weakened its position taken in the 1st and 2nd issues formulated for determination. B

I have said for the umpteenth time, that the Plaintiff's (1st Respondent) claim against the Appellant was that in the performance of its duties under the Pre-shipment Inspection of Imports Decree No. 11 of 1996, the Appellant as alleged by the 1st Respondent wrongfully and negligently inflated the customs duties payable. It is clear from page 68 of the Records apart from claiming on declaration on the actual customs duty payable, the Plaintiff/1st Respondent claims in the "Particulars of Claim" not only a refund of the excess duty paid to the 2nd Respondent but also in the alternative, the sum of N9, 840,012.52 being damages against the 1st Appellant for negligence in the preparation of Import Duty Reports Nos. CN 1213000023/001 to CN1213000023/06 covering and relating to Bills of Lading Nos. LH-1 to LH. 6. As I have observed, the application for leave to amend the particulars of claims and to deem same as properly filed could not be entertained in view of the Appellant's application. If all the pleadings expressed in the claims of the plaintiff had been allowed to be placed before the trial court, it would have been then made clear that the claims of the plaintiff was not only for a refund of customs duties paid but the damages against the Appellant for negligence in the performance of its contractual duties under the agreement. C D E F

The three issues formulated for determination by parties shall be taken serially. ***On the first issue, the appellant in its brief admits that it was brought into being by series of statutes, namely Pre-shipment Inspection of Imports Acts, particularly section 4(1) of the Pre-shipment Inspection of Imports Act No. 11, 1996. Pursuant to this provision, the Appellant was appointed by the Federal Government as shown in Exhibits "JA1" and "JA2", which documents merely refer to the Appellant as "the company" which by page 3 of clause 6 was mandated to undertake verification of Tariff codes and rates designated by the importers or their agents on mandatory import duty as*** G H

assessment forms submitted by Banks to ensure that the correct import duty is assessed and paid to the 2nd Respondent. Clause 2 states that the company is required to exercise an independent professional mandate (underlining mine for emphasis).

The cumulative effect these provisions and clauses 2 and 6 of the Agreements, (Exhibits JA1 and JA2) have is that the Appellant is an independent contractor of the Federal Government. In its brief of argument at paragraph 63, the Appellant stated thus:

“It was never the case of the Appellant in the Federal High Court or the Court of Appeal that it was an “agency” or “department”, of the Federal Government of Nigeria.....”

Indeed, the appellant is neither an “agency” nor a department of the Federal Government. This is the concurrent findings of the two courts below. The Appellant was engaged to inspect imported goods, verify their quality, quantity and price, issue a clean Report Of Findings. It is to compute and assess customs duties payable in line with the guidelines given by the Federal Government of Nigeria.

In performing these duties the Appellant acts as an independent entity and its staff are not under any control by the Federal Government. They are not paid salaries from the special or any consolidated fund. To buttress this fact, Exhibit “JA1” at page 47 of the records, the Pre-shipment Inspection Agreement, was made on the 19th day of April, 1993 between the Honourable Secretary of Finance for and “on behalf of the Federal Military Government of the Federal Republic of Nigeria of the one part and COTECNA INTERNATIONAL LIMITED (the Appellant) of the other part”. It is evident from clause vii of Exhibit “JA1” that the Appellant as an independent entity, performs its duties and earns a fee of 0.98% of the F. O. B. value of the imported goods inspected and assessed by it. ***I do not see the relevance of the case of UNIVERSITY OF ABUJA v. PROF .K. OLOGE (1996)4 NWLR (pt. 445) cited and relied on by the Appellant in its brief, since the appellant has conceded that it is neither an “agency” nor “department” of the Federal Government. However, the cases of FEDERAL MORTGAGE BANK OF NIGERIA v. OLLOH (2002)9 NWLR (pt. 773) and TRENDX TRAD-***

ING CORPORATION LTD v. CENTRAL BANK OF NIGERIA (1977) 1. A. E. R. 881 applied by the Court below are relevant. In the first case UWAIFO J. S. C, at page 487 has this to say.

"There is nothing whatever in the Federal Mortgage Bank Act to suggest that the appellant is an Agency of the Federal Government. It is no doubt that the said Bank was created by an Act of the National Assembly and therefore at best considered the property of the Federal Government with the sole aim of providing financial assistance in the form of long-term facilities to Nigerian individuals desiring to acquire houses of their own and the granting of long-term credit facilities to mortgage institutions with a view to enabling those institutions to grant comparable facilities to Nigerian individuals as per the preamble of the Act. The Bank is no more than a business establishment given functions to perform, but neither of those functions nor the Bank itself has any connection with the affairs or the running of the Federal Government."

These two authorities were relied on by the Court of Appeal to buttress the point that the fact that the Appellant is referred to and called an "Inspection Agent" does not make it an agent of the Federal Government referred to as "Principal". These terms used in Exhibit "JA1" ought to be given their ordinary meaning or day to day usage so as to ascertain manifest intention of the parties.

It is not in all situations that an agent will not be liable for the acts of a principal. An agent who has exceeded the limit or bounds of its authority as is alleged in this case, such agent will be liable. See Order IV Rule 4 of the Federal High Court (Civil Procedural) Rules 1976 which applies to this case and order 9 Rules 5 and 8 of the new Federal High Court (Civil Procedure) Rules, 2009 which has liberalised the joinder of parties. Rules 5 and 8 of Order 9 provide:

"5. Any person may be joined as defendant against whom the right to any relief is alleged to exist whether jointly, severally, or in the alternative. Judgment may be given against one or more of the defendants as may be found to be liable according to their respective liabilities, without any amendment."

"8. Where a plaintiff is in doubt as to the person from whom

he is entitled to redress, he may, in such manner as hereinafter mentioned or as may be prescribed by any special order join two or more defendants with intent that the questions as to which, If any, of the defendants is liable, and to what extent may be determined as between all parties."

B I have viewed this matter from a very broad perspective, as urged by the learned counsel for the 1st Respondent. It is crystal clear for all intent and purposes that the overall responsibility of undertaking the verification of Customs Tariff Codes and Rates designated by the importers of goods on mandatory import duty assessment forms submitted by the Banks /Authorised dealers to ensure that the correct import duty is assessed and paid to the 2nd Respondent, is on the Appellant. If these onerous responsibilities devolve on the Appellant entirely, then the resolution of any dispute arising therefrom would make the Appellant necessary and proper party in an action such as this. See further; GREEN v. GREEN (1987)3 NWLR (pt. 61) 480; AYORINDE v. ONI (2000)3 NWLR (pt. 649) 348, and SOCIETE GENERAL de SURVEILLANCE S. A. vs. RASTICO NIGERIA LIMITED (1992)6 NWLR (pt. 245)93.

It is in the light of my foregoing consideration of the Appellant issue 1 (One) and the 1st Respondent issue 2 (Two) that I answer them in the negative but in favour of the 1st Respondent.

F The Appellant's Issue 2 (Two) is formulated on similar terms with 1st Respondent's issue 1 (one). On this issue, the Appellant has submitted in its brief that the claim of the 1st Respondent is wholly in respect of a dispute as to the amount of customs duty payable on 160,000 bags of Thai parboiled Rice the 1st Respondent imported into Nigeria. Therefore that the 1st Respondent's claim at the Federal High Court is simply that, it disputes the duties assessed on its imported rice. It is submitted that there is no feature or element of the claim of the 1st Respondent in that Court that relates to or requires the application of the provisions of the Pre-shipment Inspection of Imports Acts of 1979 -1996. It was contended that it was the learned trial Chief Judge of the Federal High Court, who in the course of determining whether or not the claim of the 1st Respondent was caught by the limitation provision of Section 136(1) of the Customs and Excise Management Act who introduced the provisions of Pre-ship-

ment Inspection of Import Act, where an assessment is disputed. That this is not the subject matter of Section 3(1) and (2) of the Pre-shipment Inspection Import Act 1996 which provisions merely prescribes the method of payment of fees and duties assessed. That those provisions do not prescribe for determination of disputes as to duties payable. It is further submitted that the “applicable guidelines” mentioned in sub section 2 of section 3 refer to guidelines for payment and not guidelines for determination of disputes to duties payable. It is argued that the lawmakers have not demonstrated that sections 136 (1) of Customs and Excise Management Act and SS. 3 (1) and (2) of the Pre-shipment Inspection Import Act, 1996 are on the same subject matter and cannot therefore exist simultaneously. Therefore the Federal High Court and the Court of Appeal had no legal basis for deciding that subsections (1) and (2) of Section 3 of the Pre-shipment Inspection Import Act are relevant to the determination of whether the Plaintiff/Respondent’s action is statute-barred by virtue of section 136(1) of Customs and Excise Management Act. It is finally urged that this Court should hold that the provisions of Section 3(1) and (2) of the Pre-shipment Inspection Import Act 1996 are not applicable to the 1st Respondent’s claim at the Federal High Court for the purposes of determining whether or not the claim is statute barred, It is further urged that the provisions of S.136 (1) of Customs and Excise Management Act are applicable to the Respondent’s claim and that the said claim is statute-barred.

The 1st Respondent for its part argues that its claim flows from clean Report of Findings and Import Duty Report issued by the Appellant which documents are never referred to in Customs and Exercise Management Act. It is submitted that neither the 1979 nor the 1996 Pre-shipment Inspection of Import Acts incorporate or annex the application of S.136 (1) of Customs and Excise Management Act. It is contented that the two Acts are independent of each other and if the legislature had wanted the incorporation of the limitation provision, it would have so stated expressly, and that in the absence of such clear intention to incorporate both Customs and Excise Management Act and the Pre-shipment of Inspection Act, the proper course of justice is to interpret each independent statute on its own tenor. Reliance was placed on the decision in *OSITA NWOSU v IMO STATE ENVIRONMENTAL SANITATION AUTHORITY* and 4 OTH-

ERS (1990) 2 NWLR (pt. 135) page 688 at 724. Continuing the argument the 1st Respondent submitted that section 136(1) of Customs and Excise Management Act and all its references to “proper Officer” “demand” etc. apply strictly to customs officer and not to Pre-shipment Agents such as the Appellant, citing in reliance
 B EKUNDAYO v UNIVERSITY OF IBADAN (2000) 12 NWLR (pt. 681) 220, ONYEANUSI V MISCELLANEOUS OFFENCES TRIBUNAL EASTERN ZONE, OWERRI (1995) 8 NWLR (pt. 415) 628 at 638 and ACB PLC v LOSADA (Nig) LTD. AND ANOTHER (1995) 7 NWLR
 C (pt. 405) 26. It was finally submitted on this issue and from all the foregoing argument that the limitation period contained in Customs and Excise Management Act does not apply to the Pre-shipment Inspection of Imports Act and cannot be so read into it.

***My careful study of the provisions of section 3(1) and
 D (2) of the Pre-shipment Inspection of Imports Act. No. 11 of 1996 has shown that there is nothing which restricts accessibility to Court by way of imposition of a limitation period within which an action could be brought to Court. The fundamental rule of interpretation of a statute is that every statute is to be
 E expounded to its manifest and expressed intention. Where the words of a statute are clearly expressed the court is duty bound to give the words their literal meaning.*** Section 136(1) of the Customs and Excise Management Act, cap. 45, 2004 provides:

*“if any dispute arises as to whether or what duty of customs
 F or excise is payable on any goods the Importer, exporter or proprietor of the goods shall pay the sum demanded by the proper officer the duty payable in respect of the goods, and thereupon the sum so
 G paid shall be deemed to be the proper duty payable in respect of the goods, unless the contrary is determined by the Court upon application by the importer, exporter or proprietor which application shall be made within six months after the date of payment.”*

The provision of Customs and Excise Management Act (supra) came into force on the 1st of April, 1959.

It is clear, it makes room for limitation of time within which an “importer”, “exporter” or “proprietor” can bring an action in Court. Section 3(1) and (2) of the Pre-shipment Inspection Act Decree No. 11 of 1996 provides:

“3. (1) All importers shall pay into a special account operated

for that purpose in the Central Bank, fees calculated as percent advalorem of the FOB, value of all imports assessed by the inspecting agents or such per centum of the FOB value of goods imported as may be prescribed by the Federal Government of Nigeria from time to time based on the exchange rate prevailing the previous week of inspection as determined by the Central Bank. B

3. (2) All duties assessed as payable by the importers in respect of goods inspected by the inspecting agent shall be payable by the importers in accordance with procedures contained in the applicable guidelines as may be used by the Federal Government of Nigeria as required and shall be based on the average autonomous rate of exchange of the previous week as determined by the Central Bank.” C

The provisions of Customs and Excise Management Act reproduced above, as I have noted, places limitation of six months within which to bring an action after the payment of customs duty or excise. The Pre-shipment law which came into force in 1996, meant to regulate the payment of dutiable goods, does not contain such limitation clause. The Constitution guarantees citizen’s right to vent their grievances in Court. Any law which seeks to deprive a citizen of any of his constitutional right must be construed strictly by the Courts. D
I agree with His Lordship, Aderemi JCA (as he then was) in this matter when he said at page 173 of the Records thus:

“Under normal circumstances, it may be rightly presumed that the intention of the law makers in promulgating a new law where one on the same subject matter, is still existing, is to correct any mischief or societal ill which was not taken care of my (sic) by the already existing one..... A Court of law which is also of Justice must give both legislations a truly harmonious interpretation, see AKUNEZIRI v. OKENWA & ORS (2000) 15 NWLR (pt. 691)526. I have no doubt in my mind that Section 3(1) and (2) of Pre-shipment Inspection Act of 1996 cannot co-exist harmoniously.” F G

In dealing with this issue, the learned trial Chief Judge had expressed his view at page 79 of the records that section 136(1) of Customs and Excise Management Act has been eroded by the various enactments relating to Pre-shipment Inspection of imported dutiable goods. I agree with him that the duties and traditional functions of the Customs Officers H

have been completely taken over and any protection given to them cannot be given to any other body in the absence of specific provision of the law.

Chargeable customs duty on imported goods and excise on manufactured goods are matters of tax. Limitation of liability of disputed tax and whom to challenge on such liability must be expressed in law explicitly and with certainty and not by mere inference or conjecture.

If the legislature had intended to limit the period within which an aggrieved importer could institute action against the pre-shipment “Agents”, it would have done so expressly. It has been settled that the Appellant is an independent contractor. It is not under the day-to-day control of the Nigerian Customs Service. It would appear S.136 (1) Customs and Excise Management Act gave undue protection to the “Officers of Customs and Excise” in the discharge of their statutory duty of collecting customs duties. This protection cannot by any stretch of imagination be extended to the Appellant, without a clear statutory provision. The 1st Respondent’s, claim is against the Appellant and 2nd Respondent. This is provided for in Section 9(2) of the Pre-shipment Act, 1996; which allows importer recourse to court and seek redress whenever there is a dispute in assessment of customs duties without any period or time of limitation. The section provides:

“Every proceeding under this Act shall subject to the applicable procedure, to be commenced in the Federal High Court and reference in this Act to “Courts” shall be construed accordingly.”

1st Respondent’s claim flows and emanates from the Clean Report of Findings and Import Duty Reports prepared and endorsed by the Appellants. These documents are nowhere mentioned in the Customs and Excise Management Act. It would appear at page 68 of the Records that the 1st Respondent has filed an Amended Particulars Of Claim, claiming damages in the alternative, that the Appellant was negligent in the preparation of Import Duty Reports. Neither the 1979 nor, 1996 Pre-shipment Inspection of Import Act incorporates provision of its application to Customs and Excise Management Act. Looking at their historical perspective the stat-

utes are independent of each other. As stated earlier if the legislator intended to incorporate the limitation period in section 136 (1) of Customs and Excise Management Act, such intention would have been expressly stated. In the absence of such intention to incorporate Customs and Excise Management Act into the Pre-shipment Inspection of Imports Act, the proper interpretation is that each statute is independent on its own tenor. See OSITA NWOSU v. IMO STATE ENVIRONMENTAL SANITATION AUTHORITY & 4 ORS (supra).

From the foregoing, I hold that the limitation period of action as contained in Customs and Excise Management Act does not and cannot apply to the Pre-shipment Inspection of Imports Act and cannot be read into it. I therefore, resolve this issue in favour of the 1st Respondent.

The third issue raised by the Appellant for determination is from ground 6 of the Appellant's Notice of Appeal. Its complaint is that the delivery of judgment earlier than the scheduled date without notice to the Appellant occasioned a miscarriage of justice. The Court of Appeal heard the substantive appeal on the 12th February, 2004 and adjourned to 26th April, 2004 for judgment. Relying on Order 5 Rule 9 (1) of the Court of Appeal Rules 2002, learned counsel for the Appellant has submitted that the procedure in delivering the judgment in the presence of one of the parties on a day other than the scheduled date, without notice to the Appellant, rendered the judgment a nullity for non-compliance with the provisions of the said order (supra) and violation of S.136 (1) of the Constitution of the Federal Republic of Nigeria 1999, which guarantees the Appellant the right to "fair hearing." Reliance was placed on the following authorities: JEREMIAH AKOH & 2 ors v. AMEHABUH (1988)3 NWLR (pt. 85) 696 at 712 and NIGERIA -ARAB BANK LIMITED v. BARI ENGINEERING (NIG.) LTD (1995)8 NWLR (pt.413) 257 of 290. It is submitted that the Appellant needs not to show that there was a miscarriage of justice.

On his part the 1st Respondent, in its brief, has submitted that the delivery of judgment by the Court of Appeal earlier than the date scheduled on the records has not occasioned any injustice to the Appellant and therefore, the judgment is not a nullity, in the circumstance.

Order 5 rule 1 of the Court of Appeal Rules 2002 (then applicable) enjoins the delivery of the Judgment of the Court in the open court and for the Registrar to give notice of the date the Judgment will be delivered. The Court of Appeal rules did not prescribe the effect of non-service of notice. However

B **section 294 (1) of the 1999 constitution provides that a written judgment of every court established under the Constitution shall be delivered not later than ninety days after the conclusion of evidence and final address. By virtue of subsection**

C **5 of section 294 of the Constitution this court is enjoined not to set aside the judgment of the trial court solely on the ground that it was delivered outside the ninety days period after final address unless the party complaining has suffered a miscarriage of justice. It would appear to me and I am of the view**

D **that the delivery of judgment earlier than scheduled date without notice to the Appellant will not nullify the judgment unless the Appellant can show that it has resulted in a miscarriage of justice. The Appellant has not shown that any miscarriage of justice has occasioned because its counsel was not present**

E **when the Judgment was read. It is not shown that if the Appellant's Counsel had listened to the Judgment which was delivered in the open court, the decision could have been otherwise. The Appellant is not complaining that it was not heard when it ought to have been heard during the proceedings leading to Judgment** see VERITAS INS. CO. LTD v. CITI TRUST INVESTMENT LTD (1993)3 NWLR (Pt. 281) 349 at 370; OBODO v. OLOMU (1987) 3 NWLR (pt. 59) 111 and ESEIGBE v. AGHOLOR & ANOR (1990) 7 NWLR (pt. 161) 234.

G **I hold that since the earlier and timely delivery of judgment by the Court of Appeal has not occasioned any miscarriage of justice to the Appellant, in any way whatsoever, so as to nullify the said judgment, accordingly, I resolve this issue against the Appellant.**

H In the final analysis, I dismiss this appeal for lacking in merit and a sheer waste of time of the Courts. The matter is remitted to the trial Court to be determined on the merits. I award to the 1st Respondents costs assessed at N50,000.00 against the Appellant.

MUSDAPHER JSC

I have read before now the judgment of my Lord Galadima, JSC just delivered in this matter, the conclusion of which I entirely agree. There is no doubt whatever that the relevant and applicable law in the dispute between the parties is the Pre-shipment Inspection of Imports Act 1966. The provisions of section 136(1) of the Customs and Excise Management Act cap 84 Laws of the Federation 1990 does not apply to enable the appellant to invoke the limitation period to estop the 1st respondent from going to the court to complain on undue assessment of custom duties payable on the imported rice.

On the issue of the earlier delivery of the judgment the appellant has failed to show that he suffered any miscarriage of justice. I accordingly dismiss the appeal as it is entirely devoid of any merits. I remit the matter to the Federal High Court for the hearing on the merits. The 1st respondent is entitled to costs assessed at N50,000.00.

MOHAMMED JSC

The Appellant in this appeal was one of the Companies appointed by the Federal Government of Nigeria as an inspecting agent to carry out Pre-shipment Inspection required by or pursuant to the Pre-shipment Inspection of Imports Act, 1996 (hereafter referred to as the Act). The appointment was made pursuant to Section 4 of the Act. The 1st Respondent on the other hand was involved in the importation of 160,000 bags of Thai parboiled rice into Nigeria and blamed the Appellant for wrong assessment of Customs duties and charges payable on the imported rice resulting in alleged over payment of Customs duties and charges to the tune of N9,840,012.54 over and above the actual Customs duties and charges payable on the imported rice. The 1st Respondent therefore as Plaintiff went to Federal High Court Lagos and took out a Writ of Summons on 26th January, 1998 and claimed against the Appellant as 1st Defendant and the 2nd Respondent as 2nd Defendant the following reliefs.

“(a) A declaration that the Customs duties and charges payable in respect of the 160,000 bags of Thai parboiled rice imported into Nigeria by the Plaintiff, via the vessel M.V ‘ILYA KHALIK’ and

covered by *Bills of Lading* Nos. LH1, LH2, LH3, LH4, LH5 and LH6 is N65,026,721.70.

(b) An order directing the 2nd Defendant to credit the Plaintiff with the sum of N9,840,012.54 already paid in excess of the amount due and payable and set off the said amount from the Customs duties and charges payable on the consignments of rice to be imported into Nigeria by the Plaintiff henceforth until full Credit shall be given accordingly.”

However, the 1st Respondent as Plaintiff also file application to amend particulars in relief (b) above to read -

“N9,840,012.54 being damages against the 1st Defendant for negligence in the preparation of *Import Duty Reports* Nos. CN1213000023/001 to CN1213000023/006 covering and relating to *Bills of Lading* Nos. LH-1 to LH-6.”

Without filing its statement of Claim, the 1st Respondent as the Plaintiff brought applications supported by affidavits seeking to determine its claims without pleadings duly filed and exchanged between the parties. Although the Appellant as 1st Defendant/Respondent reacted by filing a counter-affidavit, it also proceeded to file a motion asking the trial Court to strike-out its name from the action on the ground that it merely acted in the transaction giving rise to the 1st Respondent/Plaintiff’s claim as agent of the Federal Government of Nigeria which was a disclosed principal. This motion was heard by the trial Court which in a ruling delivered on 2nd November, 1998, dismissed the Appellant’s application.

The Appellant which was not happy with the ruling of the trial Court refusing to strike out its name from the action of the 1st Respondent/Plaintiff appealed against the decision to the Court of Appeal Lagos Division which after hearing the appeal on 12th February, 2004 and reserved its judgment for delivery on 26th April, 2004, without giving a hearing notice of the change of date for delivering the judgment, proceeded and delivered the judgment on 17th March, 2004 dismissing the appeal earlier than the date it was reserved for delivery. The present and final appeal by the Appellant to this Court is against the judgment of the Court of Appeal given on 17th March, 2004. The 3 issues identified by the Appellant from the 6 grounds of appeal for the determination of the appeal are -

“1. *Whether the Court of Appeal was wrong when it decided*

that the provisions of Sections 3(1) and (2) of the Pre-shipment Inspection of Imports Act 1996 are applicable to the 1st Respondent's claim at the Federal High Court and decided that the provisions of Section 136(1) of the Customs and Excise Management Act did not apply to the claim. (This issue is covered by Grounds of Appeal Nos. 1, 2 and 3). B

2. Whether the Court of Appeal was wrong when it decided that the Appellant was not at all times material to the subject matter of the 1st Respondent's claim in the Federal High Court, a disclosed agent of the Federal Government of Nigeria, a disclosed principal. (This issue is covered by Grounds of Appeal Nos. 4 and 5). C

3. Whether the judgment delivered by the Court of Appeal is invalid having been wrongly delivered on 17th March, 2004 in the presence of the 1st Respondent without notice to the Appellant."

In the 1st Respondent's brief of argument also, the same 3 D issues as identified in the Appellant's brief though differently worded, were framed. All these issues were closely examined and resolved by my learned brother Galadima, JSC in his leading judgment just delivered and which I have had the privilege of reading before today. I fully endorse his final conclusion that there is no merit in this appeal which deserves to be dismissed. Indeed learned Counsel to the Appellant and the 1st Respondent must share the blame for allowing this matter to drag so long from 1998 to 2010 on flimsy interlocutory issues leaving the substantive action at the trial Federal High Court E Lagos still awaiting determination on the merit. This calamity was brought about by the action of the learned Counsel to the 1st Respondent/Plaintiff at the trial Federal High Court in trying to find a short cut in proving the Plaintiff's case involving questions of fact without even filing a statement of claim. The situation was further F compounded by the conduct of the learned Counsel for the Appellant/1st Defendant at the trial Court in trying hurriedly to absolve the Appellant from any liability in the claim of the 1st Respondent. It is not surprising therefore that the 2nd Respondent in the Court of Appeal and in this Court, which was also the 2nd Defendant at the trial Court decided to fold its arms and watch the Appellant and the 1st Respondent in their do or die battle in dealing with the case. It is indeed unfortunate. H

In any case, from the facts of this case, it is not at all in dispute

that the Appellant found itself in the present case at the result of its appointment by the Federal Government of Nigeria under Section 4 of the Pre-shipment Inspection of Import Act 1996 as one of the inspecting agents to carry out pre-shipment inspection of imports into Nigeria under the Act. The main issue in this appeal is therefore whether or not the Appellant which was appointed to carry out its assignment under the statute that came into force in 1996 can turn round to seek protection under a 1959 statute namely - the Customs and Excise Management Act? This question was answered in the negative by the trial Federal High Court and the Court of Appeal in their respective Ruling and Judgment, now on appeal. I am of the view that the two Courts below are right. Section 136(1) of the Customs and Excise Management Act under which the Appellant is trying to find refuge in saying that the 1st Respondent's action at the Federal High Court was statute barred reads -

"136(1) If any dispute arises as to whether or what duty of Customs and Excise is payable on any goods, the importer, exporter or proprietor of the goods shall pay the sum demanded by the proper officer as the duty payable in respect of the goods and thereupon the sum so paid shall be deemed to be the proper duty payable in respect of the goods, unless the contrary is determined by the Court upon application by the importer, exporter or proprietor which application shall be made within 6 months after the date of payment."

From the above provisions of the Act, the Section applies where "the proper officer" is involved in the assessment and demand of the Customs duties and charges payable on goods imported by an importer. The word "officer" has been defined under Section 2 of the Act to mean -

"any person employed in the Department of Customs and Excise, or for the time being performing duties in relation to Customs or Excise."

The Appellant therefore not being a person employed in the Department of Customs and Excise under the Act cannot take refuge under the provisions of the Act most especially when the Appellant's appointment was made under the Pre-shipment Inspection of Import Act, 1996.

For the foregoing reasons and fuller reasons given in the leading judgment of my learned brother Galadima, JSC with which I

entirely agree, I also dismiss this appeal and abide by the order on costs made in that judgment.

FABIYI JSC

I have had a preview of the judgment just delivered by my learned brother - Galadima, JSC. I agree with the reasons therein advanced to arrive at the conclusion that the appeal is devoid of merit and deserves to be dismissed. B

I wish to chip in a few words of my own. The plaintiff's (1st Respondent's) claim was that the appellant in the performance of its duties under the Pre-shipment Inspection of Imports Decree No. 11 of 1996, wrongfully and negligently inflated the Customs duties payable. As extant on page 68 of the Records, the 1st Respondent claims in the 'Particulars of Claim' not only a refund of the excess duty paid to the 2nd Respondent but also in the alternative, the sum of N9,840,012.52 being damages against the Appellant for negligence in the preparation of Import Duty Report Nos. CN. 1213000023/001 to CN. 1213000023/06 covering and relating to Bills of Lading Nos. LH.1. to LH. 6. The application to amend the particulars of claims could not be taken and entertained because of the appellant's precipitate application taken to wriggle its self out of the matter in an abrupt fashion. C D E

Exhibit JAI, the Pre-shipment Inspection Agreement can be seen on pages 47-63 of the Records of Appeal. At page 47, the appellant is referred to as 'the Company'. Vide clause 2 at page 52, 'the Company' is required to exercise an independent professional mandate. To my mind, this suggests that the appellant is an Independent Contractor of the Federal Government. It has the responsibility of undertaking the verification of customs Tariff Codes and Rates. It's conduct in the performance of its duty is being impugned on ground of negligence. I cannot surmise how it can peremptorily wash its hand from the matter. It is no doubt a necessary party to the action. F G

In order to decide the effect of non-joinder or misjoinder of a party, this court per Oputa, JSC in *Chief Abusi David Green v. Dr. E. T. Dublin Green* (1987) 3 NWLR (Pt. 60) 480 maintained that the court should ask itself the following questions:- H

(a) Is the cause or matter liable to be defeated for non-join-

der?

(b) Is it possible to adjudicate on the cause or matter unless the 3rd party is added as a defendant?

(c) Is the 3rd party a person who should have been joined in the first instance

B (d) Is the 3rd party a person whose presence before the court as a defendant will be necessary in order to enable the court to effectually and completely adjudicate or settle all the questions involved in the cause or matter?

C It goes without saying that a judgment given with an order against a person who ought to be a party but was not duly joined is to no avail. It cannot be allowed to stand. *See: Uku v. Okumagba (1974) 1 ALL NLR 475.*

D It is glaring to me that the appellant is a necessary and even a desirable party who should be joined in order to enable the court to effectually and completely adjudicate or settle all questions in the cause more especially the one touching on the issue of negligence being heaped at its door steps. *See: Ayorinde v. Oni (2000) 3 NWLR (Pt. 649) 348.*

E For the above reasons and those well set out in the lead judgment, I, too, feel that the appeal should be dismissed. I order accordingly and abide by all consequential orders contained in the lead judgment that relating to costs inclusive.

F _____

ADEKEYE JSC

I had a preview of the judgment just delivered by my learned brother, Suleiman Galadima, JSC. My learned brother exhaustively gave a resume of the facts of this case in the leading judgment. I only intend to consider the salient issues raised in this appeal for reasons of emphasis. By way of quick reference to what transpired at the two lower courts, the first respondent in this appeal, Churchgate Nigeria Limited, which was the plaintiff before the Federal High Court, on the 26th of January 1998 filed particulars of claim against the appellant, Cotecna International Ltd. as follows -

“(a) Declaration that the Customs Duties and Charges payable in respect of the 160,000 bags of their parboiled rice imported into Nigeria by the plaintiff via Vessel M.V. ‘ILYA Vulik’ and covered

by Bills of Lading Nos. LH-1, LH-2, LH-3, LH-4, LH-5 and LH-6 is N65,026,721.30k.

(b) An order directing the 2nd defendant to credit the plaintiff with the sum of N9,840,012.54 already paid in excess of the amount due and payable and set-off the said amount from the Custom Duties and charges payable on other consignments of rice to be imported into Nigeria by the plaintiff henceforth until full credit shall be given accordingly.” B

The plaintiff/1st respondent on the 6th of March 1998 filed an application praying the court to dispense with pleadings and to resolve the material questions in controversy on issues formulated, affidavit evidence and documents, particularly Exhibits 1, 2 and 3. C

On the 29th of June 1998, the 1st respondent filed another application, an amended particulars of claim in which it sought an alternative to relief (b) in the original particulars of claim -which reads: D

“N9,840,012.54 being damages against the 1st defendant for negligence in the preparation of Import Duty Reports Nos. CN 1213000023/001 to CN 12130000/006 covering and relating to Bills of Lading Nos. LH-1 to LH-6”.

Both these applications filed on the 6th of March 1998 and the 29th of June 1998 respectively are still pending at the Federal High Court. The appellant, then 1st defendant filed a Motion on Notice on the 19th of March 1998 praying the court for an Order striking out its name from the suit on the ground that - E

(a) At all times material to the subject-matter of the suit, the 1st defendant/applicant was to the knowledge of the plaintiff/respondent the agent of the Federal Government of Nigeria as disclosed principal. F

(b) This honourable court lacks jurisdiction to entertain this G suit as presently constituted against the 1st defendant.

The Federal High Court heard and dismissed the application of the 1st defendant/appellant. Being aggrieved by the Ruling of the trial court, the appellant lodged an appeal against it. The Court of Appeal, Lagos Division dismissed the appeal. The appellant filed a further appeal in this court. H

The unique aspect of this appeal is that gleaned through the Record of Appeal - the matter started as a preliminary issue at the Federal High Court. The trial in the substantive claim of the plaintiff/

1st respondent is yet to be commenced in that court.

The gravamen of the argument of the appellant is that the company was improperly joined as a party to be sued by the plaintiff/1st respondent before the Federal High Court, in that at that material time, the appellant acted as a disclosed agent on behalf of the Federal Government. While the Federal High Court lacked the jurisdiction to adjudicate on the subject-matter of the suit in that it is statute barred by virtue of the provisions of Section 136 (1) of the Customs and Excise Management Act 1959.

The 1st respondent classified the appellant under the transaction as an independent contractor and a statutory body and consequently cannot qualify as an agent. Furthermore, the 1st respondent held that Section 136 (1) of the Customs and Excise Management Act does not apply to the appellant, having been created by virtue of the provisions of the Pre-shipment Inspection of Import Act Cap 363 Laws of the Federation, 1990 and Pre-shipment Inspection of Imports Decree No. 11 of 1996.

The issues for determination formulated by the appellant in the instant appeal are as follows: -

(1) Whether the Court of Appeal was wrong when it decided that the provisions of Section 3 (1) and (2) of the Pre-shipment Inspection of Imports Act 1996 are applicable to the 1st respondent's claim at the Federal High Court and decided that the provisions of Section 136 (1) of the Customs and Excise Act did not apply to the claim.

(2) Whether the Court of Appeal was wrong when it decided that the appellant was not at times material to the subject-matter of the 1st respondent's claim in the Federal High Court, a disclosed agent of the Federal Government of Nigeria - a disclosed principal.

(3) Whether the judgment delivered by the Court of Appeal is valid having been wrongly delivered on 17th of March 2004 in the presence of the 1st respondent without notice to the appellant.

The respondent distilled the under mentioned issues for determination as follows: -

(1) Whether at all material times to this action, the appellant was an agent of the Federal Government of Nigeria in such a way that it could not be sued or made liable for its acts under the Pre-shipment Inspection of Imports Decree No. 11 of 1996.

(2) Whether the appellant can rely on and take advantage of Section 136 (1) of the Customs and Excise Management Act Cap 84 Laws of the Federation 1990, when it is created under a subsequent statute with no explicit provisions for statutory limitation.

(3) Whether the delivery of judgment by the Court of Appeal on 17th March 2004, earlier than 26th April 2004 which was the day reserved for judgment on the Records resulted in any miscarriage of justice. B

The issues involved in this appeal are simple, straightforward and within narrow limits. The substance of the case of the appellant as gathered from the Particulars of the claim filed by the plaintiff/1st respondent on the 6th of March 1998 and the affidavit sworn to on the same date where the 1st respondent claimed that in 1996, it imported several consignments of rice totaling 160,000 bags and that the appellant issued Import Duty Reports in which the appellant increased the customs Duty payable from N65,024,721.70 to N74,866,734.25. The 1st respondent paid the latter amount on the 12th June 1996. As a result, the 1st respondent claimed the relief specified in the particulars of claim. C D

The claim of the appellant is that the 1st respondent cannot claim against it as a disclosed agent of the Federal Government. The parties in the suit are the 1st respondent as plaintiff, the appellant and the Nigerian Customs Service as first and second defendants and further that the trial court lacked jurisdiction to entertain the suit as constituted against the 1st defendant/appellant. It is trite law that for a court to be competent and have jurisdiction over a matter, proper parties must be identified. Before an action can succeed, the parties to it must be shown to be the proper parties to whom rights and obligations arising from the cause of action attach. The question of proper parties is a very important issue which would affect the jurisdiction of the court as it goes to the foundation of the suit in limine. Where the proper parties are not before the court then the court lacks jurisdiction to hear the suit. E F G

Best Vision Centre Limited v. U. A. C. NPDC Plc. (2003) 13 H NWLR (pt. 838) pg. 594.

Ikene v. Anakwe (2000) 8 NWLR (pt. 669) pg. 484.

Peenok Ltd. V. Hotel Presidential (1983) 4 NCLR 122.

Ehdimhen v. Musa (2000) 8 NWLR (pt. 669) pg. 540.

Furthermore, where a court purports to exercise jurisdiction which it does not have the proceedings before it and its judgment will amount to a nullity no matter how well decided.

Araka v. Ejeagwu (2000) 12 SC (pt. 1) pg. 99

Madukolu v. Nkemdilim (1962) 2 SCNLR pg. 341 (1962) 1

B All NLR 587 SC.

Sode v. A-G Federation (1986) 6 NWLR (pt. 662) pg. 573.

Umanah v. Attah (2006) 17 NWLR (pt. 1009) pg. 503SC.

Skenconsult v. Ukey (1831) 1 SC 6.

C Benin Rubber Producers Ltd. v. Ojo (1997) 9 NWLR (pt. 521) pg. 388 SC.

Mogaji v. Matari (2000) 5 SC 46.

Alao v. African Continental Bank Ltd. (2000) 6 SC (pt.1) pg.

27.

D Galadima v. Tambai (2000) 6 SC (pt.1) pg.196.

It is worthy of note that the appellant brought the application at a stage when parties have not filed and exchanged pleadings. Further, the plaintiff/respondent had pending before the Federal High Court applications firstly to decide the matter on issues formulated and also for leave to amend and deem the amended Particulars of claim as properly filed. (Vide pgs. 7 and 68 of the Record).

E In the amended particulars of claim, the 1st respondent sought an alternative relief to relief (b) in the original particulars of claim where it claimed damages against the appellant for negligence in the preparation of Import Duty Reports relating to Bills of Lading for the importation of 160,000 bags of rice.

F In considering whether a court has jurisdiction to entertain a matter, the court is guided by critically looking at the writ of summons and the statement of claim.

G Gafar v. Govt. Kwara State (2007) 4 NWLR (pt.102) pg. 375.

Onuorah v. K. R. P. C. (2005) 6 NWLR (pt. 921) pg. 393.

Tukur v. Govt of Gongola State (1989) 4 NWLR (pt. 117)

H pg. 517.

Onyenucheya v. 82) pg. 4

Nkuma v. Odili (2006) 7 NWLR (pt. 978) pg.39.

Lufthansa Airlines v. Odiese (2006) 7 NWLR (pt. 978) pg.39.

The Federal High Court in considering the application relied on affi-

davit evidence in the affidavit and counter-affidavit filed by the parties and particularly Exhibits JA1 and JA2 documents which specified the status of the appellant (vide pages 47-63 of the Record).

The pre-shipment Inspection agreement between the parties on page 52 Clause 11 read:-

“COVENANTS OF THE PRINCIPAL

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Under this agreement the company is required to exercise an independent professional mandate for the purpose of preventing or forestalling abuses.”

The preamble of the agreement at page 47 of the record describes the appellant as

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“A company incorporated under the Laws of Jersey and having its registered office at Langtry House, 40, Motte Street, St. Helier, Jersey Channel Islands.”

The appellant came into existence pursuant to Section 4 (1) of the Pre-shipment Inspection of Imports Decree of 1996. Its duties are as embodied in Sections 2 and 3 of the Pre-shipment Inspection of Imports Act 1995 which include inspection of imported goods, verify their quality and price, issue a clean report of Findings with respect to its inspection, issue Non-Negotiable Report of Findings where there is discrepancy and where there is none to compute and assess customs duties payable in line with the guidelines given by the Federal Government of Nigeria and issue Import Duty Reports accordingly. These duties are to be carried out by the appellant as an independent entity and its staff are not subject to the control of the Federal Government.

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Whereupon the Federal High Court relied on these facts to conclude and rightly so, that the appellant under the agreement, is an Independent contractor as opposed to an agent of a disclosed principal. The applicable law to the transaction is the Pre-shipment Inspection of Imports Act, Decree Nos. 10 and 11 of 1996. The appellant cannot hide under the canopy of the Customs and Excise Management Act 1990, which has nothing to do with pre-inspection of goods but with management and collection of duties of Customs and Excise. Under the Customs and Excise Act, Custom duties are collected by Customs Officers and not by inspecting agents.

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The two lower courts frantically examined the provisions of Section 136 (1) of the Customs and Excise Act which first came into

existence on the 1st of April 1959 and Sections 3 (1) and (2) of the Pre-shipment Inspection of Imports Act 1996.

Section 136 (1) of Customs and Excise Management Act reads

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“If any dispute arises as to whether or what duty of customs
B or excise is payable on any goods, the importer, the exporter or proprietor of the goods shall pay the sum demanded by the proper officer as the duty payable in respect of the goods and thereupon the sum so paid shall be deemed to be the proper duty payable in respect of the goods, unless the contrary is determined by the court
C upon application by the importer, exporter or proprietor which application shall be made within six months after the date of payment.”

The foregoing provision obviously allows for limitation of time to bring an action in court. It requires that an action shall be brought within a
D period of six months.

By the time the Customs and Excise Management Act was promulgated in 1959, by virtue of Section 4 (1) of the Act, the Board of Customs and Excise was then solely responsible for assessing, computing and calculating import duties. Thereafter, companies like the
E appellant were engaged to take over the duties of the Board of Customs. By the Pre-shipment Inspection of Import Acts, 1979 and Pre-shipment Inspection of Imports Acts 1995 and 1996 - inspecting agents - were charged with the responsibility of inspecting goods and issuing documents like “Clean Report of Findings”, “Non Negotiable Report
F of Findings” and “Import Duty Report.”

Section 9 (2) of the Pre-shipment Inspection of Imports Act 1996 allows an importer to approach the court and seek justice whenever there is a dispute in the assessment of Customs duties without
G any limitation period. Section 9 (2) provides that -

“Every proceeding under the Act shall subject to the applicable procedure, to be commenced in the Federal High Court and reference in this Act to COURTS, shall be construed accordingly.”

The two lower courts have rightly came to the conclusion
H that the Customs and Excise Management Act (CEMA) and Pre-shipment Inspection of Imports Act are separate statutes, which operate independently of each other. The limitation provision of CEMA, an earlier legislation which by its nature deprives a litigant accessibility to court, can never be intended by the legislators to be incorporated

into the Pre-shipment Act which came into force later. Uninhibited accessibility to the court of law by the citizens of this country that operates under the rule of law to vent their grievances is the hallmark of civilization. Hence any statutory provisions which tend to regulate or restrict the constitutional right of access of citizens to court must be viewed strictly, while the courts in the course of interpretation must give them strict construction. Under any law, operation of limitation law is one of strict liability. B

Katto v. CBN (1991) 1 NWLR (pt. 214) pg. 126.

Williams v. Akintunde (1995) 3 NWLR (pt.381) pg. 101. C

Ekundayo v. University of Ibadan (2000) 12 NWLR (pt. 681) pg. 220.

Wilson v. A-G Bendel State (1985) 1 NWLR (pt. 4) pg. 572.

Ojokololo v. Alamu (1987) 3 NWLR (pt.61) pg. 377.

Section 136 (1) of the Customs and Excise Act cannot be invoked in the circumstance of this case as a limitation Act to remove the right of the appellant to enforce its cause of action by claiming that the six months which is the period of time laid down by the Act for bringing such an action had elapsed. The Pre-Shipment Inspection of Imports Decree has no provision for bringing an action within a prescribed period . I have to repeat here for sake of emphasis that the 1st respondent has no properly defined Statement of claim before the court - but only that which was subject to amendment at the time the appellant accessed the Federal High Court praying that its name be struck off the suit as a party. D E F

On the issue of the claim of the appellant as an agent of a disclosed principal - the Federal Government, I shall briefly look into the definition of the word - agent. Strouds Judicial Dictionary of Words and Phrases Seventh Edition 2008 in defining an agent remarked that "No word is more commonly and constantly abused." It means different things at different times. It is a term of art. Kennedy v. De Trafford (1987) AC 180. G

The definition cited examples of agents and revealed that an Independent Contractor has for the purpose of the Limitation Act 1939 (c 21) 526 been held to be an agent. On the other hand, Blacks Law Dictionary 8th Edition, defined agency and an agent - as a fiduciary relationship created by express or implied contract or by law, in which one party (the agent) may act on behalf of another H

party (the principal) and bind that party by words or action. An agent is one who is authorized to act for or in place of another - a representative. The term “agent” therefore includes any person who acts for another in the capacity of deputy, steward, rent collector or trustee. Readily coming to mind are instances of Mercantile agent, delcredere, sole agent, a broker, a commissioned agent, banker, receiver, agent provocateur etc. There are decided cases to support the fact that the status of a party under an agency contract depends on the intention of the parties.

It is often difficult to distinguish an independent contractor and an agent. The distinction can be made from decided cases, whereas each case depends on its own peculiar facts. In the instant case, the court must interpret the Pre-shipment Inspection Agreement Exh. JA1 and the relevant pre-shipment Inspection of Imports Statutes in addition to the facts before the court in respect of the claim. The appellant hurried to court at an extremely early stage of the proceedings before the Federal High Court when no pleadings have been filed in support of the case of the parties. In essence, determination of the claim of the appellant as an agent of a disclosed principal is a question of fact which has to be reserved for consideration in the substantive action.

Finally, Order 9 Rules 5 of the Federal High Court Rules 2009 stipulates that -

“Any person may be joined as defendant against whom the right to any relief is alleged to exist whether jointly or severally or in the alternative.”

In the affidavit in support of the application filed on the 6th of March 1998, the plaintiff/1st respondent deposed that -

Paragraph 7

“Copies of six clean Reports of Finding prepared by the 1st defendant accepting the C.I.F. values of each of the consignment as stated above are attached herewith and marked Exhibit 2 collectively.”

Paragraph 9

“All customs duties and charges payable by the plaintiff on the six consignments totalled N165,026,721.70.”

Paragraph 10

“Surprisingly and contrary to its earlier clear Report of Findings, the 1st defendant in issuing the Import Duty Report (IDRS) on each of the consignments added various sums to the value of the consignment with the effect that the amount payable on computation in line with the IDRS was greatly inflated. Total computation following IDRS was N74,866,734.25.

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From the foregoing, it is apparent that the appellant is a necessary party to this suit and was rightly joined.

ACB v. Apugo (1995) 6 NWLR (pt. 399) pg. 65.

Adeleke v. Oyo State House of Assembly (2006) 10 NWLR (pt. 987) at pg. 50.

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Isuama v. Government of Ebonyi State (2006) 6 NWLR (pt. 975) pg. 184.

Jimoh v. Oyinloye (2006) 15 NWLR (pt. 1002) pg. 392.

Ujam v. Nnamani (1999) 3 NWLR (pt. 594) pg. 238.

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Jidda v. Kachallah (1999) 4 NWLR (pt. 599) pg. 426.

Green v. Green (1987) 3 NWLR (pt. 61) pg. 480.

PDP v. APP (1999) 3 NWLR (pt. 594) pg. 238.

It was the contention of the appellant that the procedure adopted in delivering the judgment on a date other than the scheduled date in the presence of the 1st respondent but without Notice to the appellant rendered the judgment a nullity.

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It is trite that a court cannot nullify a judgment at the request of a party without ample evidence before the court to substantiate the miscarriage of justice suffered by that party by delivering a judgment in its absence. This, the appellant had failed to establish in the instant appeal. In compliance with Section 294 (1) of the Constitution of the Federal Republic of Nigeria, the appellant was furnished with duly authenticated copies of the judgment on which it predicated this appeal.

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Before I end this judgment, I cannot but condone the observation of my learned brother in the leading judgment that this application filed by the appellant at the Federal High Court was frivolous and seriously untimely.

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I also condemn the deplorable length of time wasted in pursuing the suit from the High Court to the apex court from the 26th of January 1998 to the 10th of December 2010, in my opinion an unnecessary interlocutory matter. The only achievement of this case is

that it can now join the bandwagon of authorities to be cited in support of abuse of legal process, for being a waste of precious litigation time and that the appellant invoked hasty justice which is equally justice denied to the plaintiff/1st respondent in this appeal.

For the fuller reasons given by my learned brother, Galadima
B JSC in the leading judgment, I also dismiss the appeal and abide by the consequential orders particularly that parties must go back to the Federal High Court to commence trial in the substantive suit without any further delay and on costs.

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