

SUPREME COURT OF NIGERIA
3RD DECEMBER, 2010. SC. 226/2003
CORAM:- A. M. MUKHTAR, W. S. N. ONNOGHEN, F. F.
TABAI, M. S. MUNTAKA-COOMASSIE, B. RHODES-
VIVOUR, JJSC

1. NABOTH OKWUAGBALA
2. REUBEN IFEANYICHUKWU
3. JONATHAN NWETO APPELLANTS
4. PIUS ANEKWE

(For themselves and on behalf of

Oliba Family, Ibolo Oraifite)

AND

1. MARGRET IKWUEME
2. BRIDGET ANAZODO RESPONDENTS
3. REV. JOSIAH ENWENA

APPEALS - Issues - Formulation - Rule against proliferation - Counsel may formulate one issue per one ground of appeal - But he is not allowed to formulate two or more issues - Out of one ground of appeal (H1)

APPEALS - Grounds of mixed law and fact - Raised without leave - Fate - Where such a ground is raised without prior leave - It is incompetent and liable to be struck out (H2)

APPEALS - Notice of objection - Manner of raising - Whether can be raised in the brief - There is nothing wrong in raising it in a party's brief - As the essence of an objection is to give notice to appellant - Before date fixed for hearing (H3)

APPEALS - Grounds - Error of law or misdirection - Manner of raising - Where a ground alleges either an error or a misdirection in law - The relevant passage in the judgment must be quoted - And full particulars given (H4)

FACTS

The plaintiffs/respondents sued defendants/appellants, jointly and severally, before the High Court of Anambra State, holden at

Nnewi in three different suits viz: Suit Nos HN/180/97, HN/181/97 and HN/183/97. Pleadings were filed and exchanged in the respective suits between the parties. Thereafter respondents filed an application for an order consolidating the three suits for trial and determination. In the affidavit in support of the application, it was deposed that the parties to the actions were the same, that they were represented by same counsel in the respective suits and that the three suits were pending before the same division of the High Court. There was no counter-affidavit to the affidavit.

After hearing of the application, the learned trial judge granted the consolidation. Aggrieved, appellants appealed to the Court of Appeal against the ruling of the trial court but their appeal was dismissed. Still dissatisfied, appellants have come on a further and final appeal to the Supreme Court. In reaction, counsel for respondents has, in his brief of argument, raised and argued a preliminary objection challenging the competency of some of the grounds of appeal on the ground that they were of mixed law and fact and as such required prior leave of court which leave was not obtained.

ISSUES FOR DETERMINATION

“1. Whether the subject-matter of three consolidated suits were not the respective plaintiffs where the dispute is whether the respective plaintiffs were unlawfully arrested and detained, if not, was consolidation of the three suits in any event right, in the circumstance?”

2. Whether the mere failure to reply to the issue raised in the respondents’ preliminary objection was fatal to issue No. 2 of the appellants’ Brief of argument in the Court of Appeal.

3. Whether the same defence is available to the appellants in all the suits.

4. Did the plaintiffs/respondents claim the same relief against the appellants?”

HELD (Unanimously dismissing the appeal per **ONNOGHEN JSC) ***Issues - Formulation - Rule against proliferation*****

1. From the issues formulated by learned Counsel for the appellants and earlier reproduced in this judgment, it is clear that a total of four (4) issues were formulated from the three grounds of appeal, a situation frowned upon by the law as it is settled law that though a counsel can formulate an issue out of a ground of appeal, he is not al-

lowed to formulate two or more issues out of a ground of appeal and that where more than an issue is formulated out of a ground of appeal the issues are incompetent. It is known as the rule or principle against proliferation of issues in an appeal.

I have carefully looked at issue 4 as formulated and the grounds of appeal filed in this appeal and it is clear that the said issue cannot be said to have arisen from any of the three grounds. The said issue is therefore without a supporting ground of appeal and therefore incompetent and liable to be struck out. (p. 2961 C)

Grounds of mixed law and fact - Raised without leave - Fate

2. From the reproduced three grounds of appeal, it is very clear that they are either grounds of fact or mixed law and fact for which appellants needed the leave of either the lower court or of this Court before they can be validly raised in this Court. I have confirmed that appellants never obtained the leave of either the lower court or of this Court before filing the three grounds of appeal and that an application for leave to appeal filed in this Court was dismissed by the court on the 23rd day of February, 2005.

The above being the true state of affairs, I agree with the submission of learned Counsel for the respondents that grounds 1 and 3 and issues 1, 3 and 4 are incompetent and liable to be struck out. I hereby order accordingly. (p. 2962 D)

APPEALS - Notice of objection - Manner of raising

3. It is not in doubt that the respondents gave notice of objection to ground 2 of the grounds of appeal in the respondent's brief duly filed in the lower court and that he argued the said objection in the said brief; that this was followed by a notice of preliminary objection duly filed in court long before the date the appeal was heard by the court below.

In the case of *Auto Import Expert vs Adebayo* (2002) 18 NWLR (pt. 799) 554 at 580, this Court held inter alia as follows:-

"I can see nothing wrong in the procedure the respondent adopted in this appeal by raising their preliminary objection to the appeal in their briefs of argument."

and I hold the firm view that that is good law devoid of technicalities particularly as the essence of an objection is to give notice of same to the appellant, before the date fixed for hearing.

Grounds - Error of law or misdirection - Manner of raising

4. From the above, it is clear that the alleged misdirection complained of in the judgment of the trial court was not quoted or reproduced
B neither are the relevant particulars relating to the alleged misdirection given in these particulars. I am not saying that appellant never gave particulars in ground 2 but that the alleged particulars have not been shown to be relevant or relating to the alleged misdirection
C particularly as the passage in the judgment where the alleged misdirection is said to have occurred has not been reproduced in the ground of appeal as required by law, see *Mgbede vs Ede* (1995) 3 NWLR (pt. 385) 564; *Bank of the North Ltd vs Bello* (2000) 7 NWLR (pt. 664) 244 at 253 where this Court clearly stated the law as follows:-
D *"It is settled by a long line of decided cases that when a ground of appeal alleges either an error in law or misdirection in law;*
(i) the passage of the judgment where the error or misdirection occurred must be quoted and
(ii) full and substantial particulars of the alleged error or misdirection must be given."
E

It is obvious that from whatever angle one looks at the issue, it must fail as the lower court was very right in coming to the conclusion it did with regards to the preliminary objection. (p. 2965 A)

F **REPRESENTATION**

Ikenna C. Ejinkonye Esq. for the appellants
T. U. Oguji Esq. for the respondent

G **CASES REFERRED TO**

- Iloabachi v Ebigbo 2000 8 NWLR pt.668 p.197
Oje v. Babalola 1987 4 NWLR part 64 page 208
Modupe v. State 1988 4 NWLR part 87 page 130
Igwe vs Kalu (2002) 5 NWLR (pt. 761) 678 at 711
H Okonjia v. Ikengah 2001 2 NWLR part 697 page 336
Alli vs Alesinloye (2000) 6 NWLR (pt. 669) 177 at 190
North Ltd vs Bello (2000) 7 NWLR (pt. 664) 244 at 253
Odeyegbe vs Odejegba (2004) 2 NWLR (pt. 858) 566 at 580
Bank of the North Ltd vs Bello (2000) 7 NWLR (pt. 664) 244 at 253

African Petroleum Ltd v. Owodunni 1991 NWLR part 210, page 391

RULES REFERRED TO

Court of Appeal Rules, 2002, O. 3 r. 2 (2)

LEAD JUDGMENT BY ONNOGHEN JSC

This is an appeal against the judgment of the Court of Appeal, Holden at ENUGU in appeal No. CA/E/152/2000 delivered on the 28th day of May, 2003 in which the court dismissed the appeal of the present appellants against the ruling of the High Court of Anambra State, Holden at Nnewi in suit Nos. HN/180/97; HN/181/97 and HN/183/97 delivered on the 16th day of July, 1999 in which the court consolidated the said suits for trial and determination.

The facts of this case include the following:-

The respondents in this Court instituted suit NOS. HN/180/97; HN/181/97 and HN/183/97 as plaintiffs against the appellants as defendants claiming damages jointly and severally, arising from an alleged violation of their rights. Pleadings were filed and exchanged between the parties after which the respondents, as plaintiffs, filed an application for an order consolidating the three suits for trial and determination. The parties to the actions are the same and are represented by same counsel. The three suits still pends before the Nnewi Division of the High Court of Anambra State. There was no counter affidavit to the affidavit in support of the motion for consolidation of the suits.

After conclusion of argument by both counsel, the learned trial judge granted the prayers in its said ruling which ruling was affirmed by the lower court in the judgment on appeal which is the subject of the instant further appeal.

Learned Counsel for the appellants, CHIEF H.B. ONYEKWELU, in the appellants' brief of argument filed on 9th April, 2004 and adopted in argument of the appeal on the 28th day of September, 2010, has identified the following issues for determination:-

*"1. Whether the subject-matter of three consolidated suits were not the respective plaintiffs where the dispute is whether the respective plaintiffs were unlawfully arrested and detained, if not, was consolidation of the three suits in any event right, in the circumstance?
2. Whether the mere failure to reply to the issue raised in the respondents' preliminary objection was fatal to issue No. 2 of the appellants' Brief of*

argument in the Court of Appeal.

3. *Whether the same defence is available to the appellants in all the suits.*

4. *Did the plaintiffs/respondents claim the same relief against the appellants?"*

B It should be noted at this stage that the appellants did not file any counter affidavit to challenge the facts deposed to in support of the application for consolidation which facts were found proven by the trial court in its ruling on the matter. Secondly, the lower court affirmed the findings and holdings of the trial court in its judgment now on appeal. This means that in respect of the facts relevant to the consideration of an application for consolidation, there is concurrent findings by the lower courts.

D The learned counsel for the respondents T. U. OGUJI ESQ. in the respondents brief of argument deemed filed and served on 27/9/2006 has raised a preliminary objection against grounds 1 and 3 of the grounds of appeal and issues 1, 3 and 4 formulated by learned counsel for the appellants. The objection has been argued in the respondents brief. Learned counsel for the appellants has however not filed a reply brief in this appeal.

F It is the submission of learned counsel for the respondents that though grounds 1 and 3 of the grounds of appeal have been christened "Error in Law" they are in fact grounds of facts only or at best, of mixed law and fact and as such they require the leave of either the lower court or this Court to be competent grounds of appeal; that appellants failed to obtain the requisite leave of court as a result of which the said grounds are incompetent and liable to be struck out, relying on *Igwe vs Kalu* (2002) 5 NWLR (pt. 761) 678 at 711; that the application of the appellants for leave filed on 19th April, 2004 was dismissed by this Court on the 23rd day of February, 2005; that issues 1 and 3 were formulated from the said incompetent grounds 1 and 3 and consequently liable to be struck out.

H It is the further submission of learned Counsel for the respondents that issue 4 is equally incompetent the same having been formulated from an invalid ground of appeal, particularly as there are only three grounds of appeal herein as can be verified at page 124 of the record and that the said issue 4 is not formulated from any of the said three grounds of appeal; that the issue is consequently

incompetent and liable to be struck out, relying on *Alli vs Alesinloye* (2000) 6 NWLR (pt. 669) 177 at 190.

As stated earlier in this judgment, the learned Counsel for the appellants, in his wisdom, failed/neglected to file a reply brief to the respondents brief in which he would have answered or reacted to the points raised in argument on the preliminary objection by virtue of which this Court would have benefited from his argument. B

I have gone through pages 124 to 126 of the record of appeal and have confirmed that learned Counsel for the appellants filed only three grounds of appeal in the notice of appeal copied at these pages of the record. C

From the issues formulated by learned Counsel for the appellants and earlier reproduced in this judgment, it is clear that a total of four (4) issues were formulated from the three grounds of appeal, a situation frowned upon by the law as it is settled law that though a counsel can formulate an issue out of a ground of appeal, he is not allowed to formulate two or more issues out of a ground of appeal and that where more than an issue is formulated out of a ground of appeal the issues are incompetent. It is known as the rule or principle against proliferation of issues in an appeal. D E

I have carefully looked at issue 4 as formulated and the grounds of appeal filed in this appeal and it is clear that the said issue cannot be said to have arisen from any of the three grounds. The said issue is therefore without a supporting ground of appeal and therefore incompetent and liable to be struck out. F

On the first leg of the preliminary objection which deals with the competence of grounds 1 and 3 of the grounds of appeal, it is necessary to reproduce the said grounds. The grounds read as follows:

"3. GROUNDS OF APPEAL: G

(1) Error in law: The learned Justices of the Court of Appeal erred in law by holding that the subject-matters of the disputes were not the separate three plaintiffs in the respective suits.

Particulars: (i) The complainant/plaintiff in each of the suits (HN/180/97; HN/181/97; HN/183/97) is the subject-matter of the dispute in his or her own case. H

(ii) The dispute is the alleged unlawful detention, which is the cause of action

(2) Error in law: The Learned Justices erred in law when they

held that failure to reply to the point raised in the respondents' preliminary objection implied a concession to the point raised and negative issue no. 2 of the appellants' Brief, and thereby made that issue incompetent.

Particulars: (i) It is not the law, as assumed by the Court of Appeal, that failure to reply a point of law, automatically vests correctness to the point taken against the silent party.

(ii) A court is bound, nevertheless, to see if the legal point is well taken

(iii) It is not true that neither of the two issues advanced by the appellants is formulated from any of the two grounds of appeal

(3) Error-in-law: The Learned Court of Appeal erred when it held that the defences of the defendants are not different.

Particulars: The only common question of law in the three separate suits aforesaid, was unlawful arrest and detention arising from a disputed land, coupled with the question in law as to who directed the arrest."

From the reproduced three grounds of appeal, it is very clear that they are either grounds of fact or mixed law and fact for which appellants needed the leave of either the lower court or of this Court before they can be validly raised in this Court. I have confirmed that appellants never obtained the leave of either the lower court or of this Court before filing the three grounds of appeal and that an application for leave to appeal filed in this Court was dismissed by the court on the 23rd day of February, 2005.

The above being the true state of affairs, I agree with the submission of learned Counsel for the respondents that grounds 1 and 3 and issues 1, 3 and 4 are incompetent and liable to be struck out. I hereby order accordingly. This now leaves us with appellants' issue No. 2 for consideration.

The surviving issue 2 is hereunder reproduced again:-

"Whether mere failure to reply to the issue raised in the respondents' preliminary objection was fatal to issue No. 2 of the appellants' Brief of argument in the Court of Appeal."

In arguing the above issue, learned Counsel for the appellants submitted that the lower court was in error in holding that failure of Counsel for the appellants to file a reply brief or offer oral argument in reply to the preliminary objection as to the competence of ground 2 of the grounds of appeal amounted to a concession of

the points raised in the objection particularly as the particulars of error or misdirection given in ground 2 of the notice of appeal in question at pages 65 to 66 of the record satisfy the requirement of Order 3 Rules 2(2) of the Court of Appeal Rules 2002 and therefore competent

It is the further submission of learned Counsel that it is not always that a failure to reply to a preliminary objection would sustain the objection as it is the duty of the court to go into and determine the merit of the objection; that the respondents filed the respondents' brief with the argument on objection therein before filing the notice of preliminary objection and that contrary to the decision of this Court in *Oforkire vs Maduiké* (2003) 5 NWLR (pt. 812) 166 at 178 - 179; *Odeyegbe vs Odejegba* (2004) 2 NWLR (pt. 858) 566 at 580, the respondent needed to seek the leave of the court to move the notice of objection before the oral hearing of the appeal and that since the respondents did not move the objection, the objection is deemed abandoned and ought to have been ignored.

On his part, learned Counsel for the respondents submitted that the lower court was right in holding that the failure of the appellants to join issues on the preliminary objection amounted to a concession of the objection to the respondents; that the respondents filed a notice of preliminary objection and argued same in the brief of argument and did draw the attention of the lower court to the above during oral argument of the appeal on 31/3/2003, all in the presence of learned Counsel for the appellants who never objected.

It is the further contention of learned Counsel that ground 2 complained of a misdirection in law without quoting the passage in the judgment where the alleged misdirection occurred nor giving full particulars of same as required by law, relying on *Bank of the North Ltd vs Bello* (2000) 7 NWLR (pt. 664) 244 at 253; that in the alternative, none of the two issues formulated for determination was formulated from the said ground 2 which means the ground was abandoned relying on *Aro vs Aro* (2000) 3 NWLR (pt. 649) 443 at 448.

It is not in doubt that the respondents gave notice of objection to ground 2 of the grounds of appeal in the respondent's brief duly filed in the lower court and that he argued the said objection in the said brief; that this was followed by a notice of preliminary objection duly filed in court long before the date the appeal was heard by the court below. I hold the considered

view that the essence of giving the notice of the objection either in the respondent brief or way of notice of preliminary objection is to notify the appellant of the existence of that objection and the grounds on which it is based so as not to take the appellant by surprise. **In the case of Auto Import Expert vs Adebayo (2002) 18 NWLR (pt. 799) 554 at 580, this Court held inter alia as follows:-**

“I can see nothing wrong in the procedure the respondent adopted in this appeal by raising their preliminary objection to the appeal in their briefs of argument.”

And I hold the firm view that that is good law devoid of technicalities particularly as the essence of an objection is to give notice of same to the appellant, before the date fixed for hearing.

From the record of appeal particularly the record of 31/3/2003 at page 106 of the record, it is very clear that the attention of the lower court was drawn to the existence of the preliminary objection during the hearing of the appeal. The respondent’s brief together with arguments on the preliminary objection were adopted in argument on that day.

On the sub-issue as to whether ground 2 of the grounds of appeal before the lower court complied with the law relevant to raising a complaint on error of law or misdirection, I hereby reproduce the said ground:

“2. MISDIRECTION:

The Learned Trial Judge misdirected himself in law as to when suits could be consolidated.”

PARTICULARS

(i) An appellate court will not generally interfere with the exercise of discretion by a trial court except in exceptional circumstances;

(ii) The judge was wrong in not adequately considering the embarrassment the consolidation will place on the defendants, before making the order.

(iii) The evidence to be given by one plaintiff as to the assault on him or her by the appellants, in no way concerns the other plaintiff, although the cause of action in all the cases is unlawful imprisonment/ detention at different dates and time on the respective plaintiffs.

(iv) The judge had no regard to every-thing that is relevant to the order and therefore the exercise of his discretion in favour of consolidation was wrong.

(v) There was no common question of law or fact bearing suffi-

cient importance in proportion to the rest of the subject-matter of the actions.”

From the above, it is clear that the alleged misdirection complained of in the judgment of the trial court was not quoted or reproduced neither are the relevant particulars relating to the alleged misdirection given in these particulars. I am not saying that appellant never gave particulars in ground 2 but that the alleged particulars have not been shown to be relevant or relating to the alleged misdirection particularly as the passage in the judgment where the alleged misdirection is said to have occurred has not been reproduced in the ground of appeal as required by law, see Mgbede vs Ede (1995) 3 NWLR (pt. 385) 564; Bank of the North Ltd vs Bello (2000) 7 NWLR (pt. 664) 244 at 253 where this Court clearly stated the law as follows:-

“It is settled by a long line of decided cases that when a ground of appeal alleges either an error in law or misdirection in law;

(i) the passage of the judgment where the error or misdirection occurred must be quoted and

(ii) full and substantial particulars of the alleged error or misdirection must be given.”

It is obvious that from whatever angle one looks at the issue, it must fail as the lower court was very right in coming to the conclusion it did with regards to the preliminary objection. It is also noteworthy that learned Counsel for the appellants, in what may be termed his characteristic way failed or neglected to file a reply brief in the instant appeal to contest the argument of Counsel for the respondents in relation to the preliminary objections against some of the grounds of appeal in the instant appeal neither did he offer oral arguments to counter same during the hearing of the appeal.

In conclusion, I resolve the surviving issue against the appellant and consequently come to the irresistible conclusion that the appeal is grossly without merit and is therefore dismissed by me with N50,000.00 costs to the respondents.
Appeal dismissed.

MUKHTAR JSC

I have read in advance the lead judgment delivered by my learned brother Onnoghen JSC, and I am in full agreement with the

reasoning and conclusion reached therein. I will however, by way of emphasis make some additions. It is on record that the respondents in this appeal filed a notice of preliminary objection, which contained the grounds of objection as follows:-

- B “(a) *Grounds 1 and 3, which are alleged to be errors in law are grounds of facts or at best grounds of mixed law and facts.*
- (b) *The said grounds 1 and 3 border on concurrent findings of fact by the 2 lower courts.*
- (c) *Leave of the court below or that of this court was not obtained before filing them.*
- C (d) *Consequently issues 1 and 3 formulated from the said grounds are incompetent.*
- (e) *Issue 4 was formulated from an invalid ground of appeal.”*

In their brief of argument the learned counsel preferred argument D to cover the objections. It has been argued that grounds (1) and (3) of the grounds of appeal though coined ‘error in law’ are grounds of facts only or at best, grounds of mixed law and fact, which requires the leave of court. Failure to obtain leave renders both grounds as well as issues (1) and (3) incompetent and liable to be struck out. Learned counsel E placed reliance on the case of *Igwe v. Kalu* 2002 5 NWLR part 761 page 678. It is also argued that issue (4) in the appellants’ brief of argument is equally incompetent having been formulated from an invalid ground of appeal. According to learned counsel there are only three grounds of F appeal, as contained in the notice of appeal. What was meant to be an additional ground to which issues (4) would have been married didn’t see the light of day as the application to file and argue it was refused in chambers on 23/2/2005. Indeed the application was refused and so only the three original grounds of appeal exists in this appeal.

G The learned counsel for the appellants did not deem it fit to file an appellants’ reply brief of argument in which to respond to the above argument as is customarily done. This being the case, I will deal with only the respondents’ argument in treating the preliminary objection, and in doing so, I will start by reproducing the grounds of appeal attacked H here below. They are:-

“1) Error in law: *The learned Justices of the Court of Appeal erred in law by holding that the subject-matters of the disputes were not the separate three plaintiffs in the respective suits.*

Particulars (i) *The complainant/plaintiff in each of the suits (HN/180/*

97; HN/181/97; HN/183/97) is the subject-matter of the dispute in his or her own case.

(ii) The dispute is the alleged unlawful detention, which is the cause of action.

(2) Error in Law: The learned Court of Appeal erred when it held that the defences of the defendants are not different. B

Particulars: The only common question of law in the three separate suits aforesaid, was unlawful arrest and detention arising from a disputed land, coupled with the question in law as to who directed the arrest.” C

Looking carefully at the above grounds of appeal one would see that the grounds are not grounds of law simpliciter. They are grounds of mixed law and fact, as the particulars provided thereunder are based on facts. The fact that they were christened error in law and by extension grounds of law does not make them ground of law. See Nwadike & Ors D v. Ibekwe & Ors 1087 2 N.S.C.C. page 1219, and I take solace from the case of P. N. Udoh Trading Co. Ltd v. Abere 2901 1 NWLR part 723, page 111 where Kalgo JSC posited thus:-

“This court has in many decided cases classified the category of grounds of law or fact and although the line of distinction between law E simpliciter and mixed law and fact is very thin, an appellate court cannot convert a ground of mixed law and fact unto one of law by ‘christening it as such.....,.,.,. In determining whether a ground of appeal alleges an error of law or fact it is always relevant and crucial to con- F struct the ground of appeal together with the particulars of error alleged. See Metal Construction (W.A.) Ltd. v. Migiliore 1990 1 NWLR part 126 page 299; NNSC v Established Sima of Vaduz 1990 7 NWLR part 164 page 526.”

It is on record that the appellants did not seek and obtain leave to G argue the grounds as required by law. The law is trite that grounds of law that are of facts or mixed law of facts requires the leave of either the Court of Appeal or this court before it can be argued in this court.

In the absence of such leave, the grounds are incompetent and must be struck out. See Oje v. Babalola 1987 4 NWLR part 64 page H 208. It is in this wise, that I will strike out grounds (1) and (3) of appeal, and they are so struck out. Likewise the issues distilled from the grounds are also struck out, for they must derive their source from valid and competent grounds of appeal. See Okonjia v. Ikengh

2001 2 NWLR part 697 page 336, African Petroleum Ltd v. Owodunni 1991 NWLR part 210, page 391. Modupe v. State 1988 4 NWLR part 87 page 130.

Issues (1) and (3) are hereby struck out. In this vein, issue (4) sought to be struck out is also struck out, for it has no ground of appeal to hinge it on. The only surviving issue for determination raised in the appellants' brief of argument has been thoroughly dealt with in the lead judgment. I will therefore not go into the argument and its merit.

I also dismiss the appeal, and abide by the consequential orders made in the lead judgment.

MUNTAKA-COOMASSIE JSC

I have had the golden opportunity of reading in a draft form this all-embracing judgment just rendered by my Noble Lord, Walter Onnoghen JSC. I have no cause to hold otherwise. This is because his Lordship has dealt decisively with the live and surviving issues presented to us for our consideration. I agree with his reasoning and conclusion which I adopt, with respect, as mine. Appeal clearly is devoid of any merit same is hereby dismissed by me. I endorse the order as to costs.

RHODES-VIVOUR JSC

I had the advantage of a preview of the judgment just read by my learned brother, Onnoghen, JSC. I entirely agree with the reasoning and his conclusions both on matters of Law and fact. I also would dismiss this appeal with costs of N50,000 to the respondents.

The respondents as plaintiffs filed suits Nos:HN/180/97, HN/181/97 and HN/183/97 on the 18th day of November 1997. The suits would be pending in court for thirteen years on the 18th day of November, 2010. The Learned trial judge ordered the suits consolidated on the 16th day of July 1999. The appellants as defendants were dissatisfied with the order of consolidation and appealed. The Court of Appeal in a considered judgment delivered on the 28th day of May, 2003 affirmed the decision of the trial Court and dismissed the appeal. This is a further appeal to this Court on a simple issue as consolidation, which is granted or refused entirely at the discretion of

a judge.

Consolidation of suits is granted if a trial judge is satisfied that the issues in the suits can be resolved in one joint proceeding rather than in separate proceedings. This decision is arrived at if the learned trial judge is satisfied that:

a) Some common questions of Law or fact arise in both or all the causes or matters; or B

b) The rights to relief are claimed in respect of or arise out of the same transaction or series of transactions, or

c) For some other reason it is desirable to make an order under the rule. C

See - *Iloabachi v Ebigbo* 2000 8 NWLR pt. 668 p. 197

An appeal against an interlocutory Ruling that questions the exercise of a Judge of his discretion ordering consolidation, to my mind is a luxury that needs urgent review. Since a grant or refusal of an application for consolidation will not finally determine the real questions in controversy in the cases, such an issue could be raised on appeal against the final decision. It is unfortunate that such an unnecessary appeal is allowed to delay the determination of the real issue in dispute in the trial Court. E

The respondents/plaintiffs sued the appellants/defendants for their unlawful arrest and detention by the Police caused by the defendants who jointly wrote a petition containing allegations against the plaintiffs. Learned Counsel for the appellants owe themselves and the courts a duty to defend the action so that the claims of the respondents are quickly resolved and Litigation brought to an end. F

The main issue in the appeal, whether the order for consolidation of the suits is correct was not considered by this Court. The reason being that learned counsel for the appellant failed to obtain leave for his grounds of appeal before they could be argued, consequently issues formulated were incompetent, and the surviving issue which sustains the appeal, had no bearing whatsoever on the issue of consolidation of suits. The issue of consolidation of suits still remains unresolved. G

I think it is time to stop these interlocutory appeals that do not determine the suit, but only serve to prolong proceedings entailing huge costs to clients and a waste of judicial time with nothing to show for it. H