

SUPREME COURT OF NIGERIA
5TH MARCH, 2010, SC. 78/2001
CORAM:- N. TOBI, A. M. MUKHTAR, I. F. OGBUAGU,
J. O. OGBE, J. A. FABIYI, JJSC

MR. AMOS OKETADE APPELLANT
AND

1. MRS. OLAYINKA ADEWUNMI
(NEE OYEDE)

2. MRS. OMOLARA KUPONIYI

3. DR. BOLA OYEDE

4. DAPO OYEDE

5. MRS. CHRISTIANA OLABISI RESPONDENTS
OGUNLANA

(All suing as administratrix
Administrators and beneficiaries
Of Mrs. Juliana O. Oyede)

LEGAL PRACTITIONERS - Names - Legal identity - Differences -
While Olujimi and Akeredolu - Is a firm with corporate existence -
Name of Legal Practitioner - Has no corporate connotation (H1)

LEGAL PRACTITIONERS - Names - Status - Olujimi and Akeredolu
- Is not a name in the roll of legal practitioners in Nigeria - Thus use
of same violates S. 2 (1) & 24 Legal Practitioners Act - And affects
Legal processes in this case (H2)

APPEALS - Court processes - Competency - Where processes for
bringing an appeal are incompetent - The appeal itself is incompe-
tent (H3)

LANDLORD & TENANT - Tenancy - Right to terminate - A landlord
has unfettered legal right - To terminate a tenancy - Upon giving an
adequate notice (H4)

LANDLORD & TENANT - Tenancy - Quit notice - Adequacy - What
constitutes adequate notice to quit - Is spelt out in the lease or ten-
ancy agreement - Between landlord and tenant (H5)

LANDLORD & TENANT - Tenancy - Quit notice - Refusal - Effect - Where a tenant refuses to quit - A court of law can on action by landlord - Force him out of the premises (H6)

FACTS

Plaintiffs/respondents sued defendant/appellant at Magistrates Court Ibadan, for recovery of a small apartment situate at No. 2 Irawo Lane, Agbowo, Ibadan, Oyo State. The learned Chief Magistrate in his judgment on 31st may, 1994 directed appellant to give up possession to respondents within three weeks. Appellant never complied with the said order but instead filed an application in the Magistrates Court for stay of execution which was refused. He made similar application to the High Court which was not granted. Dissatisfied with the ruling of the High Court, appellant filed an appeal and a motion for stay of execution in the Court of Appeal.

On 22nd January, 2001, the Court of Appeal ordered appellant to pack out of the premises, the Subject matter of the appeal. Appellant rather filed another application against the order of that court and a motion for stay of execution. On 8th March, 2001, the Court of Appeal took all pending applications including the substantive application filed by respondents. Court of Appeal granted the prayers of respondents. Appellant still refused to deliver up possession for good 15 years from date of judgment of the Chief Magistrate. He has now come on a further and final appeal to the Supreme Court arguing that it was wrong in Law for a court to reach final decision in an interlocutory matter and award cost without hearing from the parties.

ISSUES FOR DETERMINATION

“(i) Whether the lower Court had jurisdiction to make Interlocutory Order which are (sic) similar and akin to final Order and determination of the Substantive Appeal yet to be heard before them.

(ii) Whether an award of cost can be made without hearing the parties on Issues of cost.”

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

Names - Legal identity - Differences

1. There is a big legal difference between the name of a firm of Legal

Practitioner and the name of a Legal Practitioner simpliciter. While the name of Olujimi and Akeredolu is a firm with some corporate existence, the name of a Legal Practitioner is a name qua Solicitor and Advocate of the Supreme Court of Nigeria which has no corporate connotation. As both carry different legal entities in our jurisprudence of parties, one cannot be a substitute for the other because they are not synonyms. (p. 3242 E)

LEGAL PRACTITIONERS - Names - Status

2. It is clear that Olujimi and Akeredolu is not a name of Legal Practitioner in Nigeria. I say this because there is no such name in the roll of Legal Practitioners, and that violates Section 2(1) and 24 of the Legal Practitioners Act. By Section 2(1) of the Act, the only person in the profession wearing his professional name to practice law in Nigeria is a Legal Practitioner and the definition of the Legal Practitioner in section 24 of the Act does not include Olujimi and Akeredolu. This, to me, is not a mere technicality that can be brushed aside. It is fundamental to the judicial process as it directly affects the legal processes that brought this case on Appeal. (p. 3242 G)

APPEALS - Court processes - Competency

3. I am in entire agreement with counsel for the Respondent that as the processes which brought the appeals are incompetent, the appeal itself is incompetent. He has correctly invoked the cases of *Macfoy v. UAC* (1962) AC 150 and *NNB Plc. v. Denclag Ltd.* (2002) 9-10 S.C. 167; (2003) 4 NWLR (Pt. 916) 549 at 573.

In the light of the above, the appeal has no props to stand and I do not have any option than to dismiss the appeal and I dismiss it. (p. 3243 A)

LANDLORD & TENANT - Tenancy - Right to terminate

4. A landlord has an unfettered legal right to terminate a tenancy upon giving an adequate notice. After all, the property is his and he can at any time retrieve it subject to the conditions in the tenancy agreement. Once he abides by the provisions of the tenancy agreement, the tenant has no choice than to vacate possession. The position of the law is as straight and as simple as that. It is almost like the day and the night changing places. (p. 3243 C)

Tenancy - Quit notice - Adequacy

5. What usually brings problems between a landlord and a tenant is the giving of adequate notice. What constitutes adequate notice is spelt out in the lease or tenancy agreement. In other words, the landlord must give the tenant the quit notice as provided in the tenancy agreement. (p. 3243 E)

Tenancy - Quit notice - Refusal - Effect

6. If the tenant refuses to quit, a court of law can, on an action by the landlord, force him out of the premises. That, I think, was what the Magistrates Court did but the Appellant will not take the decision of the Magistrate for an answer and that has taken this matter Inordinately for fourteen years plus. (p. 3243 F)

NOTABLE POINTS OF INTEREST

TOBI JSC

1. Tenancy - Appellant has used the law as an ass

Appellant has moved to three more courts in his dogged effort to remain permanently glued to the property, if I may use that expression unguardedly. And so he pushed all sorts of processes to the court to ensure that he remains there, perhaps in perpetuity. Why? Is he the owner of the property? Can the Appellant really deny the allodial rights of the owner on the property? I do not think so.

The Appellant has done so much to deny the Respondent his right to the property. After the Judgment of the High Court, he obtained a stay of execution of the judgment. Dissatisfied, the Respondent went to the Court of Appeal challenging the order of the High Court to stay the execution of the judgment of the Magistrates' Court. The Court of Appeal ordered the Appellant to pack out of the premises. The Appellant is not deterred. Rather, he is determined and his determination to keep the property in perpetuity perhaps has made him come to us. Why and why, I ask? Is he the owner of the property? Why is he so adamant? The Appellant's bluff and use of the court process must stop, whether he likes it or not. And it must stop today because I cannot see how a tenant will struggle for supremacy or hegemony over a property that he did not build and perhaps did not know when and how the property was built. I do not

blame the Appellant, but I blame the law that has given the Appellant such a latitude and effrontery to use the processes of the court to stay on a property he does not own for a period of fourteen years. This looks to me as a typical example of the aphorism or cliché that the law is at times an ass. I must quickly remove the ass content in the law and face the reality of the law. So be it. (p. 3243 G) B

OGBUAGU JSC

2. Objection on law may decide the whole litigation

It is now firmly established that a point of law including that on jurisdiction, can be raised on a preliminary objection, if the point, will be decisive of the whole litigation. (p. 3245 E) C

3. Appeal without leave - Is incompetent.

In addition, since the decision/ruling of the court below, is Interlocutory, an Appeal such as the instant one, is not as of right and it is without the prior leave of either the court below or this court, it is therefore, incompetent having regard to section 233 (3) of the Constitution of the Federal Republic of Nigeria, 1999. (p. 3247 A) D

4. Award of cost is discretionary if not provided by Rules of Court

In respect of Issue (b), my quick answer, is Yes -i.e. in the positive/affirmative. The grant or award of costs, is discretionary if not provided in any rules of court and this court hardly interferes. Worse still, there is no leave sought or applied for by the Appellant or granted by the court below or this court. The consequence, is now firmly settled. (3247 E) F

5. Court of Appeal can award discretionary cost

I note even that Section 12 of the Court of Appeal Act, cap. 75 Laws of the Federation, 1990 on award of costs, provides as follows: G

“The Court of Appeal shall have power to award costs in all civil proceedings in the Court of Appeal and subject to the provisions of any other law and to rules of court it shall be in the discretion of the Court of Appeal to determine by whom and to what extent the costs shall be paid. (p. 3247 G) H

REPRESENTATION

Appellant not represented by Counsel.

I. L. Alabi, (with him, Akingbemi Aremu and Abdulsalam Belgore),
for the Respondents.

B

CASES REFERRED TO

NBA v. Chukwumeife (2001) 8 NWLR (Pt. 1035) 221

SPDC (Nig.) Plc. v. Din (2007) 2 NWLR (Pt. 1019) 438 at 462

C Okafor v. Nweke (2007) 3 SC (Pt. II) 55; (2007) 10 NWLR (Pt. 1043) 521

Chief A. O. Nwosu & Anor. v. Offor (1997) 2 NWLR (Pt. 487) 274
(1997) 1 SCNJ 193 at 200

D Unifam Industries Ltd. v. Oceanic Bank International (Nig.) Ltd. (2005)
3 NWLR (Pt. 911) 83 at 102

Asims (Nig) Ltd. v. Lower Benue River Basin Development Authority
(2002) 8 NWLR (Pt. 769) 349

STATUTES REFERRED TO

E Constitution of Federal Republic of Nigeria 1999. S. 233 (3)
Court of Appeal Act, cap 75, Laws of Federation of Nigeria, 1990 s.
12

Evidence Act, cap. 112, Laws of Federation of Nigeria, 1990 s. 74
(1)

F Legal Practitioners Act. ss. 2 (1) & 24

LEAD JUDGMENT BY TOBI JSC

G This case has moved full circle. It started in the Magistrate's
Court and it is ending in the Supreme Court, thus passing through
four courts - Magistrates' Court, High Court, Court of Appeal and
the Supreme Court. The litigation is on an apparently little matter. It
involves landlord and tenant. It is tenancy of a small apartment situ-
ate at No. 2 Irawo Lane, Agbowo, Ibadan.

H The learned Chief Magistrate, in his Judgment, directed the
Appellant to give up possession to the Plaintiffs/Respondents within
three weeks. The judgment was delivered on May 31st, 1994, some
fourteen years ago.

The Appellant filed an Application in the Magistrate's Court

for stay of execution, which was refused. A similar Application to the High Court was not granted. Dissatisfied with the ruling of the High Court, the Appellant filed an Appeal and a motion for stay of execution in the Court of Appeal. On 22nd January, 2001, the Court of Appeal ordered the Appellant to pack out of the premises, the subject matter of the Appeal and the application before that court. The Appellant filed an application against the order of the Court of Appeal and a motion for stay of execution. On 24th January, 2001, the Court of Appeal adjourned all the pending applications to 8th March, 2001. The court took all the pending applications including the substantive application for stay of execution filed by the Respondent. The Court of Appeal granted the prayers of the Respondents. This appeal is on that ruling.

Briefs were filed and duly exchanged. The Appellant has formulated the following two Issues for determination:

“(i) Whether the lower court had jurisdiction to make interlocutory order which are (sic) similar and akin to final order and determination of the substantive appeal yet to be heard before them.

“(ii) Whether an award of cost can be made without hearing the parties on issues of cost.”

The Respondent has also formulated the following two issues for determination:

“(i) Whether the lower court had power or jurisdiction to make the orders of 8th March, 2001.

“(ii) Was the award of N5,000 (Five thousand naira) cost properly made by the lower court?”

Learned counsel for the Appellant, Mr. Olujimi Akeredolu submitted on Issue 1 that it was wrong in law for a court of law to reach final decision in an interlocutory matter. He submitted on issue 2 that the court was wrong in awarding costs without hearing from the parties.

Learned counsel for the Respondent, Mr. Idowu Alabi, raised a preliminary objection that the appeal is incompetent. Taking the merits of the appeal, learned counsel submitted that the court did not decide the substantive appeal at the interlocutory stage. He also submitted that the award of N5,000.00 costs against the Appellant was not punitive.

Let me take the preliminary objection first. It is the objection

that the entire application is incompetent in that both the notice of Appeal and the Appellant's brief of argument were not issued by a Legal Practitioner known to law. Learned counsel for the Respondent relied on Section 74 (1) of the Evidence Act, the cases of SPDC (Nig.) Plc. v. Din (2007) 2 NWLR (Pt. 1019) 438 at 462; NBA v. Chukwumeife (2001) 8 NWLR (Pt. 1035) 221; Fawehinmi v. President. F. R. N (2007) 14 NWLR (Pt. 1058) and Okafor v. Nweke (2007) 3 S.C. (Pt. II) 55; (2007) 10 NWLR (Pt. 1043) 521.

Learned counsel called the attention of the court to Olujimi and Akeredolu and submitted that it being a name of a firm and not a name of Legal Practitioner, offends Sections 2(1) and 24 of the Legal Practitioners Act. The sections provide as follows:

"2(1) Subject to the provisions of this Act, a person shall be entitled to practice as a Barrister and Solicitor if, and only if, his name is on the roll."

24 'Legal Practitioner' means a person entitled in accordance with the provisions of this Act to practice as a Barrister or as a Barrister and Solicitor, either generally or for the purposes of any particular office or proceedings."

It does not appear that counsel for the Appellant has an answer for the objection. ***There is a big legal difference between the name of a firm of Legal Practitioner and the name of a Legal Practitioner simpliciter. While the name of Olujimi and Akeredolu is a firm with some corporate existence, the name of a Legal Practitioner is a name qua Solicitor and Advocate of the Supreme Court of Nigeria which has no corporate connotation. As both carry different legal entities in our jurisprudence of parties, one cannot be a substitute for the other because they are not synonyms. It is clear that Olujimi and Akeredolu is not a name of Legal Practitioner in Nigeria. I say this because there is no such name in the roll of Legal Practitioners, and that violates Section 2 (1) and 24 of the Legal Practitioners Act. By Section 2 (1) of the Act, the only person in the profession wearing his professional name to practice law in Nigeria is a Legal Practitioner and the definition of the Legal Practitioner in Section 24 of the Act does not include Olujimi and Akeredolu. This, to me, is not a mere technicality that can be brushed aside. It is fundamental to the judicial pro-***

cess as it directly affects the legal processes that brought this case on appeal.

I am in entire agreement with counsel for the Respondent that as the processes which brought the appeals are incompetent, the appeal itself is incompetent. He has correctly invoked the cases of Macfoy v. UAC (1962) AC 150 and NNB Plc v. Denclag Ltd. (2002) 9-10 S.C. 167; (2003) 4 NWLR (Pt. 916) 549 at 573.

In the light of the above, the Appeal has no props to stand and I do not have any option than to dismiss the appeal and I dismiss it.

In the most unlikely event that I am wrong, I go further to take the merits of the Appeal, for whatever that exercise is worth. What is the real quarrel in this Appeal? ***A landlord has an unfettered legal right to terminate a tenancy upon giving an adequate notice. After all, the property is his and he can at any time retrieve it subject to the conditions in the tenancy agreement. Once he abides by the provisions of the tenancy agreement, the tenant has no choice than to vacate possession. The position of the law is as straight and as simple as that. It is almost like the day and the night changing places. What usually brings problems between a landlord and a tenant is the giving of adequate notice. What constitutes adequate notice is spelt out in the lease or tenancy agreement. In other words, the landlord must give the tenant the quit notice as provided in the tenancy agreement. If the tenant refuses to quit, a court of law can, on an action by the landlord, force him out of the premises. That, I think, was what the Magistrates Court did but the Appellant will not take the decision of the Magistrate for an answer and that has taken this matter inordinately for fourteen years plus.***

Appellant has moved to three more Courts in his dogged effort to remain permanently glued to the property, if I may use that expression unguardedly. And so he pushed all sorts of processes to the court to ensure that he remains there, perhaps in perpetuity. Why? Is he the owner of the property? Can the Appellant really deny the allodial rights of the owner on the property? I do not think so.

The Appellant has done so much to deny the Respondent

his right to the property. After the Judgment of the High Court, he obtained a stay of execution of the judgment. Dissatisfied, the Respondent went to the Court of Appeal challenging the order of the High Court to stay the execution of the judgment of the Magistrates' Court. The Court of Appeal ordered the Appellant to pack out of the premises. The Appellant is not deterred. Rather, he is determined and his determination to keep the property in perpetuity perhaps has made him come to us. Why and why, I ask? Is he the owner of the property? Why is he so adamant? The Appellant's bluff and use of the court process must stop, whether he likes it or not. And it must stop today because I cannot see how a tenant will struggle for supremacy or hegemony over a property that he did not build and perhaps did not know when and how the property was built. I do not blame the Appellant, but I blame the law that has given the Appellant such a latitude and effrontery to use the processes of the court to stay on a property he does not own for a period of fourteen years. This looks to me as a typical example of the aphorism or cliché that the law is at times an ass. I must quickly remove the ass content in the law and face the reality of the law. So be it.

In sum, I order that the Appellant must vacate possession within three months from the date of this judgment. I order consequentially that he pays all the rents due up to the date of his vacating possession to the Respondents. I award N50,000.00 costs in favour of the Respondents.

MUKHTAR JSC

I have read in advance the leading judgment delivered by my learned Niki Tobi, JSC. I entirely agree with the reasoning and conclusion reached that the appeal lacks merit and should be dismissed. I also dismiss the appeal and abide by the consequential orders made in the lead judgment.

OGBUAGU JSC

This is yet another interlocutory appeal against the decision of the Court of Appeal, Ibadan Division (hereinafter called "the Court below") delivered on 8th March, 2001. Dissatisfied with the said de-

cision, the Appellant appealed to this court. In his Brief of Argument, two (2) issues are formulated for determination, namely;

“i) Whether the lower court had jurisdiction to make interlocutory order which are similar and akin to final order and or determination of the substantive appeal yet to be heard before them (sic).

ii) Whether an award of cost (sic) can be made without hearing the parties on issues of cost (sic). ” B

I note that it is stated therein, that Issue one covers grounds 1 and 2 of the notice of appeal and that the second Issue, covers ground 3 of the notice of appeal.

I note that the Respondents filed a notice of preliminary objection as to the competence of the appeal itself and urging the court, to “dismiss” the appeal on this ground - i.e.

“that the appeal is incompetent in that both the notice of appeal and the Appellant’s brief of argument were not issued by a Legal Practitioner known to law.” D

Without prejudice to the above objection however, the Respondents have also formulated two (2) issues for determination, namely,

“i) Whether the lower court had power or jurisdiction to make the orders of 8th March, 2001. Grounds 1 and 2.

ii) Was the award of N5,000.00 (Five Thousand Naira) cost (sic) properly made by the lowercourt? ground 3.”

It is now firmly established that a point of law including that on jurisdiction, can be raised on a preliminary objection, if the point, will be decisive of the whole litigation. See the cases of Everett v. Ribbands (1952) 2 GB 198 at 206; Obatoyinbo v. Oshatoba 1(1996) 5 SCNJ 1; Comptroller Nigerian Prisons Services Ikoyi, Lagos & Ors. v. Dr. Femi Adekanye & Ors. (2002) 7 S.C. (Pt. II) 182, 188, 212; (2002) 7 SCNJ 299 and Messrs NV Scheep & Anor. v. The MV ‘Saraz’ & Anor. (2000) 12 SC (Pt. I) 164; (2000) 12 SCNJ 24 at 55 - per Karibi-Whyte, JSC., referring to some other cases therein. I will deal with the objection at once, notwithstanding that this is a most frivolous and worthless Appeal in a case where the Appellant as succinctly noted by the court below and as borne out by the records, has employed and exploited the instrumentality of appeal to the maximum and has succeeded in remaining in the residential premises belonging to the Respondents, since 31st May, 1994 when the Magistrate’s H

Court, Ibadan, Ordered him to deliver possession of same and up till now - a period of about fifteen (15) years.

The facts that are not in dispute as stated in the Respondents' brief, are that

"i) the Appellant is a tenant of the Respondents.

B *ii) that as far back as 31st May, 1994, the Chief Magistrate's Court, Ibadan delivered its judgment whereby it ordered the Appellant to deliver to the Respondents possession of the apartment being occupied by the Appellant situated at No. 2 Irawo Lane, Agbowo, Ibadan.*

C *iii) that the Appellant never complied with the said order but instead filed one application after the order (sic) including numerous appeals.*

iv) that at the Court of Appeal, Ibadan Division, the Appellant Appealed against virtually all the rulings made by that court and never prosecuted them except the one subject of the present appeal.

v) that the Appellant has remained on the premises till date."

E Now, I note as rightly submitted by the Respondents, that both the notice of appeal and the Appellant's brief, were signed by "Olujinmi & Akeredolu." There is no Legal Practitioner bearing or with such a name on the Roll. A Legal Practitioner is defined in section 24 of the Legal Practitioners' Act thus:

F *"means a person entitled in accordance with the provisions of this Act to practice as a Barrister or as a Barrister and Solicitor, either generally or for the purposes of any particular office or proceedings."*

See also section 2(1) of the said Act. I believe that "Olujinmi & Akeredolu," is a law firm and there is no evidence that it is registered as a business name. The consequence is that both the said notice of appeal and the Appellant's brief, are incompetent, invalid and therefore, null and void as rightly submitted in the Respondents' brief. The courts, including this court, have pronounced on such document or documents signed as So-So & Co. See the cases of *The Registered Trustees of Apostolic Church Lagos Archdiocese v. Rahman Akindele* (1967) NMLR 263 at 265. The unreported cases of *Suit CA/J/162/2000 - First Bank of Nigeria Plc & anor. v. Alhaji Selmanu Maidawa* dated 27th March, 2002 - per Mangaji, JCA., (of blessed memory) at pages 13 & 14; My unreported judgment *Suit CA/J/234/2000*

dated 7th December, 2004- Major-General Bamiyi (Rtd) v. Danladi A. B. Galla. See recently, the case of Okafor & 2 Ors. v. Nweke & 4 Ors. (2007) 3 S.C. (Pt. 11) 55; (2007) 10 NWLR (Pt. 1043) 521; (2007) 3 SCNJ 185; (2007) All FWLR (Pt. 368) 1016.

In addition, since the decision/ruling of the court below, is interlocutory, an appeal such as the instant one, is not as of right and it is without the prior leave of either the court below or this court, it is therefore, incompetent having regard to section 233(3) of the Constitution of the Federal Republic of Nigeria, 1999. See the case of Chief A. O. Nwosu & Anor. v. Offor (1997) 2 NWLR (Pt. 487) 274 (1997) 1 SCNJ 193 at 200 - per Ogwuegbu, JSC., citing the cases of Blay v. Solomon 12 WACA 175 at 176 Bozen v. Altrinham Urban District Council (1903) 1 KB. 547 and Akinsanya v. UBA Ltd. (1986) 4 NWLR (Pt. 35) 273. It is accordingly struck out.

On the merits of the appeal, if any, if I may answer the two Issues of the Appellant, my question to the Appellant and his learned counsel is, is it fair, equitable and in good conscience for fifteen (15) years, a landlord(s) is/are denied possession or recovery of possession of his/their premises at No. 2 Irawo Lane Agbowo, Ibadan? My answer is definitely in the Negative.

In respect of Issue (b), my quick answer, is yes -i.e. in the positive/affirmative. The grant or award of costs, is discretionary if not provided in any rules of court and this court hardly interferes. Worse still, there is no leave sought or applied for by the Appellant or granted by the court below or this court. The consequence, is now firmly settled. See also the cases of Asims (Nig.) Ltd. v. Lower Benue River Basin Development Authority (2002) 8 NWLR (Pt. 769) 349 CA and Unifam Industries Ltd. v. Oceanic Bank International (Nig.) Ltd. (2005) 3 NWLR (Pt. 911) 83 at 102 CA. - per Aderemi, JCA (as he then was).

I note even that section 12 of the Court of Appeal Act, cap. 75 Laws of the Federation, 1990 on award of costs, provides as follows:

“The Court of Appeal shall have power to award costs in all civil proceedings in the Court of Appeal and subject to the provisions of any other law and to rules of court it shall be in the discretion of the Court of Appeal to determine by whom and to what extent the costs shall be paid. “

The Appellant has stubbornly or recklessly, or both, refused

to obey an order of the Magistrates Court - a court of competent jurisdiction which gave him three (3) weeks which has now “graduated” to fifteen years.

In conclusion, it is from the foregoing and the fuller reasoning and conclusion in the lead Judgment of my learned brother, Niki B Tobì, JSC just read and which I had the privilege of reading before now, and I agree with, that I too, find no merit whatsoever in this appeal.

I award costs of N50,000.00 (Fifty Thousand Naira) in favour of the Respondents. (Not 30,000.00) as mistakenly, awarded in the lead judgment. See the rules of this court in respect of costs. Speaking for myself, the Appellant whose notice of appeal was filed since 23rd January, 2001, does not deserve any more time to vacate the premises as even noted in the said lead Judgment that the stance of D the Appellant must stop today. One (1) week in my opinion, is enough having regard to all the circumstances of this case as borne out by the records.

E ***OGEBE JSC***

I read before now the leading judgment of my learned brother, Niki Tobì JSC., just delivered and I agree entirely with his reasoning and conclusion and I adopt the judgment as mine.

F ***FABIYI JSC***

I have read before now the judgment just delivered by my learned brother, Tobì, JSC. I agree with the reasons therein contained and the conclusion that the appeal is devoid of merit and should be dismissed.

The facts leading to this appeal are quite revealing. The Appellant is a tenant of the Respondents at an apartment situate at No. 2 Irawo Lane, Agbowo, Ibadan. Judgment was delivered on 31st May, H 1994 that the Appellant should vacate the premises within three weeks by the Chief Magistrate. The Appellant appealed to the High Court of Justice, Ibadan where he obtained a stay order. The Respondents filed application at the Court of Appeal to set aside the stay order granted by the High Court. In respect of the application the Court of

Appeal on 8/3/2001 at page 82 of the record found as follows:

"It is clear from the affidavit evidence placed before us that since 1994 when the order was made the Respondent had not taken sufficient steps at ensuring that his appeal to the High Court was prosecuted diligently. Similarly, it has been shown that he has been in constant breach of the condition is attached to the stay granted him." B

The Court of Appeal then went ahead to grant the motion of the Respondents. The stay order made by the High Court in respect of the judgment of the Chief Magistrate was rescinded. Costs of N5,000.00 was awarded in favour of the Respondents.

The Appellant decided to appeal to this court. The notice of appeal at pages 84-86 of the record of appeal was filed by Olujinmi and Akeredolu on 20-3-2001. C

Briefs of argument were filed and exchanged by the parties. The issues distilled on both sides of the divide have been set out in the lead judgment. D

The Respondents filed a preliminary objection to the competence of the appeal on the ground that both the notice of appeal and the Appellant's brief were not issued by a Legal Practitioner known to law. They were both signed by 'Olujinmi and Akeredolu' - A law firm of Barristers and Solicitors; which is not a person entitled to practice as a Barrister and Solicitor whose name is on the roll of Legal Practitioners as dictated by Sections 2(1) and 24 of the Legal Practitioners Act. E

The Appellant did not proffer any answer to the objection. It seems that the point is conceded. The objection, to my mind, is well taken. The said processes are therefore pronounced as null and void for want of competence. Sequentially, no valid appeal can hang on them. One cannot put something on nothing and expect it to stay there. It will collapse. See: *Macfoy v. U. A. C Ltd.* (1962) AC 150 at page 160. The Appeal should be dismissed on this score. F

The Appellant complained against the award of costs of N5,000.00 against him by the court below. He did not seek leave of the lower court or that of this court in respect of award of costs made by the lower court. It is trite that appeal does not lie as of right against an award of costs by a court. The cases of *Unifam Industries Ltd., v. Oceanic Bank International (Nig.) Ltd.* (2005) 3 NWLR (Pt. 911) 83 at 102 and *Asims (Nig) Ltd. v. Lower Benue River Basin Develop-* H

ment Authority (2002) 8 NWLR (Pt. 769) 349 cited by the Learned counsel for the Respondents are in point. I endorse the views ably expressed in both cases.

The issue is resolved against the Appellant who, again, had nothing concrete to offer on the same.

B The Appellant was ordered to vacate the said premises on 31st May, 1994. He has employed the processes of the court to stay on in the premises up till today for no just cause. That is not good enough. The, law may, sometimes, appear to be an ass but most of
C those who operate it are imbued with adequate gumption. The Appellant's bluff has been finally called off. I wish to remind him that the 'golden rule' still continues to control the waves. It is 'do to others what you want others to do to you'. It is as simple as that. For the
D above reasons and the fuller ones contained in the lead judgment, I form the firm view that the appeal is devoid of any iota of merit. It is hereby dismissed. I endorse all the consequential orders in the lead judgment; that relating to costs inclusive.

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