

SUPREME COURT OF NIGERIA

10TH JUNE, 2011. SC. 297/2005

**CORAM:- M. MOHAMMED, C. M. CHUKWUMA-ENEH,
M. S. MUNTAKA-COOMASSIE, O. O. ADEKEYE,
S. GALADIMA, JJSC**

1. OGED OVUNWO
2. GODFREY OVUNWO APPELLANTS
(For themselves and on behalf
of Ovunwo Family of Rumuaghaolu
Village in Obio-Akpor Local Govt.
Area of Rivers State)

AND

1. IHEANYICHUKWU WOKO
2. NNAMDI WOKO
3. OSONDU WOKO RESPONDENTS
(For themselves and on behalf
of Woko Family of Rumuaghaolu
Village in Obio-Akpor Local Govt.
Area of Rivers State)

COURTS - Interlocutory applications - Determination of - It is not for court to determine at interlocutory stage - Any questions that have arisen in the pleadings - Or that would arise for resolution in the substantive suit (H1)

APPEALS - Evidence - Rehearing - Invocation of s. 22 Supreme Court Act - Where the issue borders on credibility of witnesses - Trial court is better equipped to rehear the matter - More so where Court of Appeal expressed no opinion on that issue (H2)

JUDGMENTS - Style - Resolution of issues - Procedure - Court must pronounce on all issues properly placed before it - Before arriving at a decision - Failure to do so will lead to a miscarriage of justice (H3)

FAIR HEARING - Breach - Effect on judgment - Such judgment will be discountenanced on appeal - As right to fair hearing is entrenched in the Constitution (H4)

ORDERS OF COURT - Appeals - Rehearing - Propriety - It is ordered where evidence has not been properly evaluated - As the trial Court has neither seen nor heard the witnesses in that matter (H5)

FACTS

Plaintiffs/appellants claimed, inter alia, against defendants/respondents at the Customary Court, Rumuogba Obio in Rivers State as follows: Declaration of title to a piece and parcel of land known as and called 'Okporo Ovunwo' situate at the right hand of the road leading from Rumuokoro to Rumuagbaolu village. Defendants also claimed ownership of the same parcel of land which they called "Okporo Woko". The Court ordered the partitioning of the land in dispute between the parties herein. Aggrieved by the decision of the Court, appellants appealed to High Court of Rivers State.

Appellants raised three issues for determination including the third issue which is now the bone of contention to wit: "Whether the weight of evidence in the case was properly weighed and balanced in accordance with the requirements of the law." The Court failed to consider and pronounce on the said Issue three as stated above. Dissatisfied further, appellants appealed to Court of Appeal, Port-Harcourt Division. Appellants raised two issues. "1 - Whether the lower court was justified in holding that appellants relied on traditional evidence or history in proof of their claim as opposed to numerous and positive acts of ownership. 2 - Whether the refusal by the lower court to consider and determine appellants' omnibus ground of appeal was right and did the same not constitute a denial of appellants' right to fair hearing." The Court resolved issue one against appellants but with regard to issue two, it gave an order for a retrial by appellate high court. Aggrieved further, appellants finally appealed to Supreme Court.

ISSUE FOR DETERMINATION

Whether the Court of Appeal was right when it first determined and pronounced upon issue No. 1 before it prior to ordering a re-hearing of the appeal before the appellate High Court.

HELD (Unanimously dismissing the appeal per **CHUKWUMA-ENEH JSC**)

Interlocutory applications - Determination of

1. By having ordered the matter to be heard de novo for breaching the principle of fair hearing all the issues in the matter have been put into melting pot to be heard anew. However, I must observe that our case law is replete with comparative instances expounding this underlying principle that is of court guarding against pre-empting as well as pre-determining of such issues as here at interlocutory stages as exemplified in the case of *Ojukwu v. Govt. of Lagos State* (1986) 3 NWLR (Pt.26) 39 wherein this court has severally pronounced on the area of injunctions to the effect that it is not open for a court as a duty at the stage of considering an interim application for injunction to determine any questions or points that have arisen in the pleadings or that would arise for resolution in the substantive suit.

Lastly, I must emphasize the view that once the lower court has ordered a rehearing as in this matter it is precluded from dealing with, indeed wading into the matter to resolve any points/issues to be resolved at the rehearing. And I so hold. (p. 1834 F/1841 C)

Rehearing - Invocation of s. 22 Supreme Court Act

2. Fourthly, I have further opted to deal with issue 2 (two) first as I am not satisfied of the propriety of invoking in the circumstances the powers of this court under section 22 of the Supreme Court Act to hear the appeal as urged by the parties. In this regard, it appears to me that among the question to be resolved at the rehearing of the appeal have involved the credibility of witnesses and ascription of probative values to their evidence and the trial court is better qualified to deal with such questions. My stance in dealing with issue 2 in this matter is also strengthened by the decision in *Oriawe v. Okene* (2002) 14 NWLR (Pt.786) 156 at 182 - 183 where as in this case the relevant question to be asked is whether the non-resolution of an issue as herein is sufficient to vitiate the judgment of the court below. Besides, this court has said it times without number that it stands to benefit from the lower court's opinions in appeal from it and no less so on the instant issues that have arisen in this appeal. (p. 1835 B)

JUDGMENTS - Style - Resolution of issues

3. I must however, respectfully observe at this stage vis-a-vis the lower court's manner of couching its judgment in this appeal that every judge reserves the right as to his own style of writing judgments whether sitting at the trial or appellate level of the courts. All the same, what must be recognized as settled law is the duty to pronounce judgment on all issues placed before the judge for resolution. Without over simplifying this duty every judgment has to state the fact of the case, state the points at issue requiring the court to pronounce on them, then the court's decision with the reasons for the same.

Without mincing words, respectfully, the lower court's record of the instant order as per its judgment made pursuant to allowing issue 1(one) of this appeal and ordering a rehearing of the appeal on issue two though stated in strict legal terms have been clearly exhaustive and precise as every judgment ought to be. In this case, as regards the resolution of the points at (sic) issue in the judgment of the lower court and this is as instanced by allowing the appeal in part and in the same breath in the same proceedings ordering a rehearing of the appeal. The two orders with respect, in regard to this appeal are mutually exclusive, that is to say, contradictory in terms as the said order of rehearing without more has appeared to encompass the order of the lower court allowing the appeal on issue one. That is to say that at the stage of ordering a rehearing of the appeal the order on issue 1(one) is still extant and subsisting not having been vacated. It must be vacated for the rehearing to proceed on an even keel. I shall come to it later on.

I therefore, stand on the above premises to restate the principle that it is a court's duty to pronounce on every issue properly placed before it for consideration and determination before arriving at a decision and where it has failed to do so, it leads to a miscarriage of justice apart from, as in the instant case, breaching the right of the appellants to fair hearing. (p. 1837 A)

FAIR HEARING - Breach - Effect on judgment

4. Having carefully examined the complaints of the appellants in this matter, it is not in doubt, the issue 3 (three) raised for determination before the appellate High Court amounts to an attack of the failure of the trial court to evaluate all the evidence adduced by the parties

and their witnesses at the trial and weighing the same in the imaginary scale to see which outweighs the other. By failing to consider the same at all naturally leads to a miscarriage of justice apart from constituting a breach of the appellants' right to fair hearing. Thus, it begs the question in the circumstances whether the failure to so resolve the said issue 3 is sufficient to vitiate the instant judgment of the appellate High Court and by the same token the decision of the lower court on the issue. I have no hesitation in my mind in answering the poser in the affirmative. More importantly, the point must be made that a breach of fair hearing once substantive in a decision afflicts and clearly vitiates the whole decision and not just as to a part of it thereof. Once it is showed as it has been showed here that the decision of the appellate High Court has been vitiated for breaching the appellants' right to fair hearing it follows naturally without more that the lower court's resolution of issue 1(one) cannot stand and so the whole decision collapses with it as it has no leg on which to stand. This is so as fair hearing is a fundamental constitutional right as entrenched in the 1999 Constitution as amended. And the breach of fair hearing in any proceedings without more vitiates such proceedings in their entirety; it renders the entire proceedings null and void. (p. 1838 G)

ORDERS OF COURT - Appeals - Rehearing - Propriety

5. I must particularly advert to the dicta in the case of Oriawe v. Okene (2002) 14 NWLR (Pt.786) 156 at 182 - 183 with which I am in unison i.e. where Ogundare JSC, has opined that the proper steps for an appellate court as this court to take where the lower court has failed to resolve a vital issue raised before it include and I quote that *"if the issue was vital to the resolution of the dispute between the parties, they would be expected to either order a retrial or resolve the issue themselves upon the evidence available if the question of credibility of witnesses would not arise."*

I therefore, uphold the order of rehearing of the appeal as ordered by the lower court on the grounds that the questions raised by the said issue 3 are vital for resolving this appeal and furthermore for the reasons that have been copiously dealt with herein. There can be no doubt that the main thrust of this appeal has to stand or fall on resolving the said issue 3 (three).

It is settled law that a rehearing of a matter should inter alia be

ordered where the evidence has not been properly evaluated as the advantage of having seen and heard the witnesses and watched their demeanors have not been taken as on this occasion by the instant trial court in this matter. Meaning in effect in the circumstance of this matter that the non-resolution of the said issue 3 (three) eminently warrants remitting the instant appeal to the appellate High Court for a rehearing. And I so affirm the order.

I must however in the interest of providing a level playing ground for both parties and for the avoidance of any doubt hereby set aside the resolution of issue 1(one) against the appellants in favour of the respondents as pronounced by the lower court as having been made in error. And I so order as it is crucially important in order to clear the way for a rehearing of the appeal as has been ordered by the lower court (as affirmed by this court) to be complied with by the appellate High Court. (p. 1840 C)

NOTABLE POINT OF INTEREST **CHUKWUMA-ENEH JSC**

1. Rehearing - Court not to pronounce on issues yet to be resolved

I take the view that where as here an appellate court as this court has ordered a rehearing of a matter as the instant one for resolution by a lower court as an appellate High Court as here that is, to hear and resolve the matter de novo, it should not be seen to interfere or to deal with any substantive questions or points that have to be resolved at the rehearing of the matter. In this way, such an appellate court ought to maintain a level playing ground for the parties pending and during the rehearing of the appeal as here. And one of the ways of doing so is not to have pronounced on any questions to be resolved at the rehearing. This underscores the charge levelled against the lower court in this matter by the appellants that by resolving issue 1 (one) herein against the appellants in favour of the respondents prior to ordering a rehearing of the appeal before the appellate High Court has served to undermine their case at the rehearing; and also that it is highly prejudicial to their case. (p. 1834 C)

REPRESENTATION

Chief Ogwu J. Onoja with M. A. Ebute & E. O. Agada, for Appellants
Alex Igwe, for Respondents

CASES REFERRED TO

- Bellow v. Eweka (1981) S.C. 101
Olobue v. Nnabia (1972) 6 SC. 27
Mogaji v. Odojin (1978) 4 S.C. 91 at p.93
Adisa v. Ladokun (1973) 1 All NLR (Pt.2) 18
Oyedirau v. Anise (1970) 1 ANLR 313 at 317 B
Owoade v. Omitola (1988) 2 NWLR (Pt.77) 413
Aromire v. Awoyemi (1972) 1 All NLR (Pt.1) 101
Atanda v. Ajani (1989) 3 NWLR (Pt.111) 511 at 539
Katto v. C.B.N. (1991) 9 NWLR (Pt.214) 126 at 149 C
C.G.G. (Nigeria) Ltd. v. Ogu (2005) 2 SCNJ 227 at 238
A.C.B. Ltd. v. Awogboro (1996) 3 NWLR (Pt.437) at 383
Igbodin & Ors. Obianke & Ors. (1976) 10 NSCC 467 at 474
Oriawe v. Okene (2002) 14 NWLR (Pt.786) 156 at 182 - 183
Okonji v. Njakanma (1991) 7 NWLR (Pt.202) 131 at 150 - 152 D
Dawodu v. National Population Comm. (2000) 6 WRN 116 at 118

STATUTE REFERRED TO

Supreme Court Act Cap.15 LFN 2004, s.22

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LEAD JUDGMENT BY CHUKWUMA-ENEH JSC

This appeal is against the decision of the Court of Appeal, Port Harcourt Division (i.e lower court herein) given on 4th July 2005 - in which the lower court has dismissed the plaintiffs'/appellants' ground one of the ground of appeal seeking a declaration that the appellants are entitled to a Customary Right of Occupancy of the land in dispute otherwise known as and called "Okporo Ovunwo"; in other words as condensed under issue one for determination in this appeal. Thus, more or less, it has allowed the appeal albeit in part. On the question of the appellate High Court having failed to consider and pronounce on issue 3 (three) for determination otherwise dealing with the omnibus ground of appeal properly raised before it as issue 2(two) the lower court rightly in my view has ordered as follows: "...a fresh trial of the appeal before another judge of the court below" i.e. the appellate High Court. F G H

Further facts of this matter for purposes of resolving the questions raised in the appeal have encompassed the plaintiffs'/appellants' claim at the Customary Court Rumuogba Obio in Rivers State

and it states as follows:

“1. Declaration of title to a piece and parcel of land known as and called ‘Okporo Ovunwo’ situate at the right hand of the road leading from Rumuokoro to Rumuagbaolu village which land is in peaceful possession of the plaintiffs and which the defendants have pinned cement pillars thereon for the purpose of sale which the defendants without leave or license of the plaintiffs entered and cut down for sawing three sticks therein.

2. Perpetual injunction restraining the defendants, their agents, heirs and privies from further acts of trespass into the said ‘Okporo Ovunwo’ land until the case is finally determined by the court.

In the beginning the trial customary court in its judgment of 11th January, 1993 has ordered the partitioning of the land in dispute between the parties herein. The plaintiffs/appellants being aggrieved by the trial court’s decision have appealed to the appellate High Court. Before it, have been raised three issues for determination including the third issue now in the eye of the storm in this appeal to wit:

Whether the weight of evidence in the case was properly weighed and balanced in accordance with the requirements of the law.”

For no obvious reason, the appellate High Court has failed/neglected to consider and pronounce on the said Issue 3(three) as stated above. It is in regard to this failure, that the appellants in their appeal to the lower court have raised two issues before it (the lower court) against the decision of the appellate High Court as follows:-

“Issue No.1

Whether the lower court was justified in holding that the appellants relied on traditional evidence or history in proof of their claim as opposed to numerous and positive acts of ownership.

Issue No.2

Whether the refusal by the lower court to consider and determine the appellants’ omnibus ground of appeal was right and did the same not constitute a denial of the appellants’ right to fair hearing.”

On its part the lower court in its decision has resolved the above mentioned issue 1 (one against the appellants in favour of the respondents but with regard to issue 2(two) it respectfully has fumbled by concluding as follows:

"Honestly, I cannot surmise why the learned judge of the court below, with the crudity depicted in his judgment, declined to pronounce generally on the complaint in the omnibus ground of appeal. It is a complaint that the judgment is against the weight of evidence. He merely needed to balance the evidence adduced on both sides on an imaginary scale and see where the scale tilts. He needs to bear in mind the decisions of the Supreme Court in Mogaji v. Odofin (1978) 4 S.C. 91 at p.93; Bellow v. Eweka (1981) S.C. 101; Aromire v. Awoyemi (1972) 1 All NLR (Pt.1) 101; Owoade v. Omitola (1988) 2 NWLR (Pt. 77) 413; Adisa v. Ladokun (1973) 1 All NLR (Pt.2) 18. Refer to section 132 of the Evidence Act. Cap. 112.

Parties have agreed that there is a clear breach of fair hearing since the court below failed to determine the issue touching on the omnibus ground of appeal. And since there is a clear breach of fair hearing, the mandatory order that is warranted is one ordering a fresh trial of the appeal by another judge of the court below. And, I order accordingly."

I have as per the foregoing account in a nutshell set out the points at which the parties are at issue and which may require their consideration in this appeal.

The plaintiffs/appellants being aggrieved by the lower court's decision have filed a notice of appeal on 23/9/2005 to this court containing 5 (five) grounds of appeal from which the appellants in their brief of argument also filed in this matter have distilled 2(two) substantive issues for determination as follows:

"Issue 1:

Whether the Court of Appeal was right in its decision that the appellants were not entitled to a declaration of title to the land in dispute (Grounds 1, 2, 3, and 5).

Issue 2:

Whether the Court of Appeal was right when it first determined and pronounced upon issue No. 1 before it prior to ordering a re-hearing of the appeal before the appellate High Court (Ground 4)." The respondents in their filed brief of argument in this matter have adopted the above issues as formulated by the appellants.

On an overview of the particular facts of this matter and even then against the obvious questions that have arisen for resolution thereof as per the parties' briefs of argument and oral submissions before us

in the appeal vis-a-vis issue 2 (two) above, I think it is proper that I should confine my discussion of this matter firstly, exclusively to determining the questions arising from issue 2 (two) only for a number of reasons including firstly, in that by resolving the said issue will dispose of the appeal. Secondly, the lower court has allowed the appeal
 B in part i.e. by resolving issue 1 (one) above against the appellants in favour of the respondents vis-a-vis the order in the same proceedings remitting the appeal to the appellate High Court for a rehearing even as the two orders contradict each other. And so the gist of this
 C appeal depends upon answering the poser as per the instant issue 2 in the negative, otherwise issue 2 becomes completely otiose.

Thirdly, I take the view that where as here an appellate court as this court has ordered a rehearing of a matter as the instant one for resolution by a lower court as an appellate High Court as here
 D that is, to hear and resolve the matter de novo it should not be seen to interfere or to deal with any substantive questions or points that have to be resolved at the rehearing of the matter. In this way, such an appellate court ought to maintain a level playing ground for the parties pending and during the rehearing of the appeal as here. And
 E one of the ways of doing so is not to have pronounced on any questions to be resolved at the rehearing. This underscores the charge levelled against the lower court in this matter by the appellants that by resolving issue 1 (one) herein against the appellants in favour of
 F the respondents prior to ordering a rehearing of the appeal before the appellate High Court has served to undermine their case at the rehearing; and also that it is highly prejudicial to their case.

***By having ordered the matter to be heard de novo for breaching the principle of fair hearing all the issues in the
 G matter have been put into melting pot to be heard anew. However, I must observe that our case law is replete with comparative instances expounding this underlying principle that is of court guarding against pre-empting as well as pre-determining of such issues as here at interlocutory stages as exemplified in the case of*** Egbe v. Onogun (1972) 1 ANLR 95, Kotoye v. C.B.N. (1989) 1 NWLR (Pt.98) 419, Obeya Memorial Hospital v. Attorney-General of the Federation (1987) 3 NWLR (Pt.60) 325,
 H ***Ojukwu v. Govt. of Lagos State (1986) 3 NWLR (Pt.26) 39 wherein this court has severally pronounced on the area of***

injunctions to the effect that it is not open for a court as a duty at the stage of considering an interim application for injunction to determine any questions or points that have arisen in the pleadings or that would arise for resolution in the substantive suit. See Akapo v. Hakeem Habeeb (1922) 6 NWLR (Pt.247) 266 and A.C.B. Ltd. v. Awogboro (1996) 3 NWLR (Pt.437) at 383. ***Fourthly, I have further opted to deal with issue 2 (two) first as I am not satisfied of the propriety of invoking in the circumstances the powers of this court under section 22 of the Supreme Court Act to hear the appeal as urged by the parties.*** ***In this regard, it appears to me that among the question to be resolved at the rehearing of the appeal have involved the credibility of witnesses and ascription of probative values to their evidence and the trial court is better qualified to deal with such questions. My stance in dealing with issue 2 in this matter is also strengthened by the decision in Oriawe v. Okene (2002) 14 NWLR (Pt.786) 156 at 182 - 183 where as in this case the relevant question to be asked is whether the non-resolution of an issue as herein is sufficient to vitiate the judgment of the court below.*** See also Igbodin & Ors. Obianke & Ors. (1976) 10 NSCC 467 at 474. ***Besides, this court has said it times without number that it stands to benefit from the lower court's opinions in appeal from it and no less so on the instant issues that have arisen in this appeal.*** See Ojosipe v. Ikabale & Ors. (1972) 1 ANLR (Pt.1) 128. It is against the foregoing background that I proceed to deal with the parties' cases as per their respective briefs of argument on issue 2(two) only, as discussing issue 1 (one) is predicated on answering the power on issue 2 (two) in the negative.

The appellants' case on issue 2 is that the order remitting this matter to the appellate High Court to be heard de novo has been reached notwithstanding that the lower court has before then resolved issue 1(one) against the appellants in favour of the respondents. And as surmised by the appellants, the lower court should have gone ahead in that wise in the interest of justice to consider the appeal by invoking its powers pursuant to Section 16 of the Court of Appeal Act. That is to say on the self same issues that have arisen to be revisited at the rehearing as has been ordered by the lower court. In this respect they have decried the pronouncement of issue 1 (one)

and rightly so if I may interject here; and have referred to *Brawal Shipping (Nig.) Ltd. v. Omuadike Co. Ltd. & Anors.* (2000) 6 SCNJ 508 at 512, *Cookey v. Fombo* (2005) 5 SC (Pt.11) 102 at 111 per Edozie JSC to contend again rightly that it tantamount to allowing the appeal in part. It is however posited that owing to the obvious
 B delay that is bound to arise in rehearing the appeal, this court has been urged to invoke its powers under 22 of the Supreme Court Act to hear the appeal on the printed record before it even so on the authority of *Ifeanyi Chukwu (Osondu) Co. Ltd. v. Soleh Boneh (Nig.) Ltd.* (2000) 3 SC. 11 and *C.G.G. (Nigeria) Ltd. v. Ogu* (2005) 2
 C SCNJ 227 at 238. It is also pointed out that this is even more so as the instant complaint is against an omnibus ground of appeal and not a specific or particular piece of evidence adduced at the trial. See: *Osolu v. Osolu* (2005) 11 NWLR (Pt.832) 608 at 645 - 646. They
 D urge this court to resolve issue 1(one) before it in the appellants' favour by allowing the appeal and thus to set aside the decisions of the Customary Court and the appellate High Court dismissing the appellants' claims; furthermore, to exercise its powers pursuant to Section 22 of the Supreme Court to grant the reliefs sought in the
 E appellants' claim at the trial court.

The respondents have in their brief of argument submitted that the lower court as settled law rightly has considered and pronounced on the question as properly placed before it and as postulated in the case of *Afro-Continental Nig. v. Cooperative Association of Professionals Inc.* (2003) 1 SCNJ. 530 at 537. Nonetheless, they
 F have before us at the oral hearing of the appeal conceded that the issue 3 (three) before the appellate High Court has not been considered and determined amounting as it were, to a denial of fair hearing. They have, all the same, urged this court to invoke its powers
 G pursuant to Section 22 of the Supreme Court Act to finally determine the appeal here as all the enabling materials so to do are as per the printed record before this court. The court is also urged to affirm the decision of the lower court by dismissing the appellants' case on
 H issue 1 (one). And curiously enough as if on a reverse gear they have urged that the trial court has properly evaluated the evidence and that its findings have been borne out of the record and that the judgment reached by the trial court has been based on preponderance of evidence and so to dismiss the appeal as lacking in merit.

I have tried as per the above foregoing cases as urged by the parties based on their respective briefs of argument to narrow the same to resolving issue 2 for determination only. I have given my reasons for so doing above. ***I must however, respectfully observe at this stage vis-a-vis the lower court's manner of couching its judgment in this appeal that every judge reserves the right as to his own style of writing judgments whether sitting at the trial or appellate level of the courts. All the same, what must be recognized as settled law is the duty to pronounce judgment on all issues placed before the judge for resolution. Without over simplifying this duty every judgment has to state the fact of the case, state the points at issue requiring the court to pronounce on them, then the court's decision with the reasons for the same.***

Without mincing words, respectfully, the lower court's record of the instant order as per its judgment made pursuant to allowing issue 1 (one) of this appeal and ordering a rehearing of the appeal on issue two though stated in strict legal terms have been clearly exhaustive and precise as every judgment ought to be; in this case, as regards the resolution of the points at issue in the judgment of the lower court and this is as instanced by allowing the appeal in part and in the same breath in the same proceedings ordering a rehearing of the appeal. The two orders with respect, in regard to this appeal are mutually exclusive, that is to say, contradictory in terms as the said order of rehearing without more has appeared to encompass the order of the lower court allowing the appeal on issue one. That is to say that at the stage of ordering a rehearing of the appeal the order on issue 1 (one) is still extant and subsisting not having been vacated. It must be vacated for the rehearing to proceed on an even keel. I shall come to it later on.

I therefore, stand on the above premises to restate the principle that it is a court's duty to pronounce on every issue properly placed before it for consideration and determination before arriving at a decision and where it has failed to do so, it leads to a miscarriage of justice apart from as in the instant case breaching the right of the appellants to fair hearing. See:

Dawodu v. National Population Commission (2000) 6 WRN 116 at 118. This point of a court's duty to pronounce on every issue raised before it is fundamental to resolving the instant questions raised in this appeal and is sustainable as per this court's decision in *Brawal Shipping (Nig.) Ltd. v. Omuadike Co. Ltd. & Anors.* (supra), wherein B Uwaifo JSC held as follows: "It is no longer in doubt that this court demands of, and admonishes, the lower courts to pronounce; as a general rule, on all issues properly placed before them for determination in order, apart from the issue of fair hearing, not to risk the possibility that the only issue or issues decided by them could be C faulted on appeal. See: *Oyedirau v. Anise* (1970) 1 ANLR 313 at 317, *Olobue v. Nnabia* (1972) 6 SC. 27, *Atanda v. Ajani* (1989) 3 NWLR (Pt.111) 511 at 539, *Okonji v. Njakanma* (1991) 7 NWLR (Pt.202) 131 at 150 - 152 and *Katto v. C.B.N.* (1991) 9 NWLR D (Pt.214) 126 at 149. A deliberate failure to do so has been characterized as amounting to a failure to perform its statutory duty.

However, what the appellants seem to be complaining about here is that the lower court has improperly pronounced on issue 1 (one) for determination prior to ordering a rehearing of the appeal E before the appellate High Court. In other words, that having made up its mind on the matter it should have proceeded straight on to order a rehearing, without more; and should not have allowed the appeal in part prior to making an order of rehearing of the matter. F The respondents have conceded the point. I am satisfied that the lower court, with respect, has partly allowed the appeal when it has resolved issue 1(one) before it against the appellants in favour of the respondents. And that by so having pronounced on issue 1(one) it has unarguably interfered with, albeit dealt with a vital question which G otherwise is properly for resolution at the rehearing of the appeal and this has erred in pre-empting that issue tantamount to not having provided a level playing ground for the parties at the hearing before the appellate High Court.

Having carefully examined the complaints of the appellants in this matter, it is not in doubt, the issue 3 (three) raised for determination before the appellate High Court amounts to an attack of the failure of the trial court to evaluate all the evidence adduced by the parties and their witnesses at the trial and weighing the same in the imaginary scale to see which H

outweighs the other. By failing to consider the same at all, naturally leads to a miscarriage of justice apart from constituting a breach of the appellants' right to fair hearing. Thus, it begs the question in the circumstances whether the failure to so resolve the said issue 3 is sufficient to vitiate the instant judgment of the appellate High Court and by the same token the decision of the lower court on the issue. I have no hesitation in my mind in answering the poser in the affirmative. More importantly, the point must be made that a breach of fair hearing once substantive in a decision afflicts and clearly vitiates the whole decision and not just as to a part of it thereof. Once it is showed as it has been showed here that the decision of the appellate High Court has been vitiated for breaching the appellants' right to fair hearing it follows naturally without more that the lower court's resolution of issue 1 (one) cannot stand and so the whole decision collapses with it as it has no leg on which to stand. This is so as fair hearing is a fundamental constitutional right as entrenched in the 1999 Constitution as amended. And the breach of fair hearing in any proceedings without more vitiates such proceedings in their entirety; it renders the entire proceedings null and void.] See: Military Governor, Imo State v. Nwauwa (1997) 2 NWLR (Pt.496) 675 at 708 per Iguh JSC.

In the instant case it does not matter that it relates only to the failure to resolve issue 3 (three) above out of the 3 (three) issues raised before the appellate High Court that has breached the appellants' right to fair hearing. There can be therefore no valid ground for surmising that by failing to consider the said issue 3 (three) the appellate High Court has not really heard the case of the appellants on the principle enunciated in the case of *Sheldon v. Broomfield Justice* (1964) 2 Q. B. 57 at 578 that is to say, to the effect of the court hearing both sides to a matter before reaching a decision. This is so in this matter where the third issue formulated for determination before the appellate High Court has not been considered and pronounced upon at all. And so it cannot stand the test of objectivity as to contend that equal treatment and opportunity and consideration of the respective cases on both sides to the matter have been considered and pronounced upon as postulated in the case of *Adigun v.*

Attorney-General of Oyo State (1987) 1 NWLR (pt.53) 678. Nor can it rightly also be contended in this matter that the principle that justice must not only be done but must also be seen to be done be said to have manifested itself in the proceedings before the instant appellate High Court. See: R. v. Sussex Justices Ex parte McCarthy B (1924) 1 KB 256 at 259. In this country, this principle has been expatiated and expounded upon in the case of Deduwa v. Okorodudu (1976) 4 SC. 329. It is therefore against the backdrop of the foregoing findings vis-a-vis particularly on the issue of denial of fair hearing C as a fundamental right that that error of the appellate High Court in failing to consider and pronounce on the said issue 3 has to be resolved and so also as constituting the circumstance warranting the order of a rehearing as ordered by the lower court.

I must particularly advert to the dicta in the case of D Oriawe v. Okene (2002) 14 NWLR (Pt.786) 156 at 182 - 183 with which I am in unison i.e. where Ogundare JSC, has opined that the proper steps for an appellate court as this court to take where the lower court has failed to resolve a vital issue raised before it include and I quote that “if the issue was vital E to the resolution of the dispute between the parties, they would be expected to either order a retrial or resolve the issue themselves upon the evidence available if the question of credibility of witnesses would not arise.”

I therefore, uphold the order of rehearing of the appeal F as ordered by the lower court on the grounds that the questions raised by the said issue 3 are vital for resolving this appeal and furthermore for the reasons that have been copiously dealt with herein. There can be no doubt that the main thrust G of this appeal has to stand or fall on resolving the said issue 3 (three).

It is settled law that a rehearing of a matter should inter alia be ordered where the evidence has not been properly evaluated as the advantage of having seen and heard the witnesses H and watched their demeanors have not been taken as on this occasion by the instant trial court in this matter. See: Okpri v. Jonah (1961) ANLR 1 & 2.

Meaning in effect in the circumstance of this matter that the non-resolution of the said issue 3 (three) eminently war-

rants remitting the instant appeal to the appellate High Court for a rehearing. And I so affirm the order.

I must however in the interest of providing a level playing ground for both parties and for the avoidance of any doubt hereby set aside the resolution of issue 1(one) against the appellants in favour of the respondents as pronounced by the lower court as having been made in error. And I so order as it is crucially important in order to clear the way for a rehearing of the appeal as has been ordered by the lower court (as affirmed by this court) to be complied with by the appellate High Court.

Lastly, I must emphasize the view that once the lower court has ordered a rehearing as in this matter it is precluded from dealing with, indeed wading into the matter to resolve any points/issues to be resolved at the rehearing. And I so hold.

For the avoidance of doubt I hereby set aside the lower court's resolution of issue 1(one) having been made in error. The entire case is hereby remitted to the Customary Court of Appeal which has since replaced the appellate High Court for a rehearing. And I so order.

In the result there is no merit whatsoever in the appeal and I hereby dismiss it in part. I make no order as to costs.

ADEKEYE JSC

I was privileged to read before now the Judgment just delivered by my learned brother, C. M. Chukwuma-Eneh JSC. My Lord had exhaustively considered all the issues raised for determination in this appeal. I agree without reservation with this reasoning and conclusion. I however intend to add a few words to his judgment for reasons of emphasis. The plaintiffs now appellants claimed before the customary Court for the following reliefs-

a. Declaration of title to a piece and parcel of the land known as and called Okporo Ovunwo" situate at the right hand of the road leading from Rumuokoro to Rumuaghaolu village which land is in peaceful possession of the plaintiffs and which the defendants have erected cement pillars thereon for the purposes of sale.

b. Perpetual injunction restraining the defendants, their agents, heirs, privies from further acts of trespass into the said “Okporo Ovunwo” land until the case is finally determined by this court.

The salient facts of this case are that both appellants and respondents hailed from the family known as Rumuworlu in Rumuagholu village in Obio/Akpor Local Government Area of Rivers State. Rumuworlu family has three branches - Rumuwechelle, Rumuworgu and Rumuwoko. Each branch of family has its own separate compound and distinct lands. The larger family had already shared the land among the respective branches of the family. The appellants are member of the Ovunwo Wechelle family and the respondents belong to the Woko family.

The land in dispute is known as “Okporo Ovunwo” land. The appellants claimed ownership of the land through their ancestor, Ovunwo Wechelle. The respondents also claimed ownership of the same parcel of land which they called “Okporo Woko” . The Customary Court which first heard the matter between the parties, dismissed the plaintiffs’/appellants’ case but went ahead to partition the disputed land into two between the parties. None of the parties requested of the partition of the disputed land. The appellants appealed to the appellate Division of the High Court of Rivers State. The High Court acting in its appellate jurisdiction dismissed the appeal but reversed the customary court’s order for partitioning the land in dispute. The appellants appealed to the Court of Appeal, Port Harcourt.

The Court of Appeal affirmed the decision of the High Court in dismissing the appellants’ claim but ordered a re-hearing of the case as the High Court failed to make a pronouncement on the omnibus ground that the judgment was against the weight of evidence. The appellant made a further appeal to this court.

Two cases were distilled for the determination of this court by the appellant. They read as follows-

1. Whether the court of appeal was right in its decision that the appellants were not entitled to a declaration of title to the land in dispute.

2. Whether the court of appeal was right when it first determined and pronounced upon issue No.1 before it prior to ordering a re-hearing of the appeal before the appellate High Court.

The respondent formulated similar issues.

Before the lower court issue No 2 argued in the appeal reads:-

Whether the refusal by the lower court to consider and determine the appellants' omnibus ground of appeal was right and did the same not constitute a denial of the appellants' right to fair hearing?

The court of appeal concluded in its judgment that:-

"Parties have agreed that there is a clear breach of fair hearing since the court below failed to determine the issue touching on the omnibus ground of appeal. And since there is a clear breach of fair hearing the mandatory order that is warranted is one ordering a fresh trial of the appeal by another judge of the court below."

And I, order accordingly.

In conclusion the appeal therein is allowed. I order a fresh hearing of the appeal before another judge of the court below."

There is iota of doubt that the lower court was right in coming to this conclusion in view of the element of breach of fair hearing by the High Court in its appellate jurisdiction raised before the Court of Appeal. The right to fair hearing is an issue of jurisdiction. The right to fair hearing is a constitutional right enshrined in section 36 of the 1999 Constitution. This right cannot be waived or statutorily taken away. It entails that in the determination of his civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

The basic attributes of fair hearing include-

a. That the court shall hear both sides not only in the case but also on all material issues in the case before reaching a decision which may be prejudicial to any party in the case.

b. That the court or tribunal gives equal treatment, opportunity and consideration to all concerned.

c. That all concerned shall be informed of and have access to such place of public hearing.

d. That having regard to all the circumstances in every material decision in the case, justice must not only be done but must manifestly and undoubtedly be seen to have been done. *Usani v. Duke* (2004) 7 NWLR (pt.871) 116, *Fagbunle v. Rodrigues* (2002) 7 NWLR (Pt.765) pg.188, *Bamgboye v. University of Ilorin* (1999) 10 NWLR (pt.622) pg.290, *Awoniyi v. The Registered Trustees of the Rosicrucian*

Order, *Amorc (Nigeria)* (2000) 6 SC pg.1 pg.103, *Okafor v. A-G Anambra State* (1991) 3 NWLR (pt.200) pg.59, *Araka v. Ejeagwu* (2001) 5 WRN 1 SC.

The right to fair hearing is a very essential right for a person to secure justice. A fair hearing connotes or involves a fair trial and a fair trial of a case consists of the whole hearing, *R. v. Cambridge University* (1723) 1 St 557.

Where the person alleging breach of fair heading has established it, it follows that a breach of fair hearing in trials vitiates such proceedings rendering same null and void.

It is apparent that the High Court in its appellate jurisdiction did not avail itself of the opportunity to evaluate the findings of fact of the customary trial court by way of re-hearing, through its omission to consider the omnibus ground in the appeal before it. The omission amounts to a miscarriage of justice. This is not a situation in which this court can invoke its power under Section 22 of the Supreme Court Act Caps 15 Laws of the Federation of Nigeria 2004, as constitutionally an appeal does not lie directly from the High Court to the Supreme Court.

With the foregoing and fuller reasons given by my Lord Chukwuma-Eneh, JSC in the lead judgment, I agree that the entire case be remitted to the customary court of Appeal which replaced the High court in its appellate jurisdiction for a re-hearing on a the issues. I make no order as to costs.

GALADIMA JSC

This appeal is against the decision of the Court of Appeal Port Harcourt Division, given on 4/7/2005, in which it dismissed the Plaintiffs'/Appellants' Ground 1 of the Ground of Appeal seeking a declaration that the Appellants are entitled to a Customary Right of Occupancy of the land in dispute known as "OKPORO OVUNWO". That Ground is condensed under issue 1 for determination in this appeal. On the question of the appellate High Court having failed to consider and pronounce on issue 3, dealing with the omnibus ground of appeal properly raised before it as issue 2, I agree with my learned brother Chukwuma-Eneh J.S.C, that the Court of Appeal (the court below herein) rightly made the order for fresh trial of the appeal

before another Judge of the appellate High Court.

For purposes of resolving the other questions raised in the appeal I shall set out paragraphs 1 and 2 of the Plaintiffs' Claim in the trial Customary Court Rumuogba Port Harcourt, stated as follows:-

"7. Declaration of title to a piece and parcel of land known as and called "Okporo Ovunwo" situated at the right hand of the road, leading from Rumuokoro to Rumuoghaolu Village which land is in peaceful possession of the Plaintiffs and which the Defendants have pinned cement pillars thereon for the purposes of sale, which the Defendants without leave or licence of the Plaintiffs entered and cut down for sawing three sticks therein.

2. Perpetual injunction restraining the Defendants, their agents, heirs and privies from further acts of trespass into the said "Okporo Ovunwo" land until the case is finally by the Court."

I shall however, recapitulate, the facts at the trial customary court leading to the subsequent appeal at the High court. The trial customary Court in its judgment on 11/1/1993 ordered the partitioning of the land in dispute between the parties. Appellants were aggrieved by the decision, and appealed to the appellate High Court. Three issues have been raised before it. The third issue, for no obvious reason was not considered. This issue reads:

"Whether the weight of evidence in the case was properly weighed and balanced in accordance with the requirements of the law."

It is in regard to this failure that the Appellants in their appeal to the court below raised two issues before it as follows:

"ISSUE NO. 1

Whether the lower court was justified in holding that the Appellants relied on traditional evidence or history in proof of their claim as opposed to numerous and positive acts of ownership.

ISSUE NO. 2

Whether the refusal by the lower court to consider and determine the Appellants' omnibus grounds of appeal was right and did the same not constitute a denial of the Appellants' right to fair hearing"

In its decision, the court below has resolved issue one against the Appellants. It did not see any reason why the appellate High Court declined to pronounce on the complaint in the omnibus ground

of appeal. It observed that since their complaint is against the weight of evidence the learned judge merely needed to balance the evidence adduced by both sides *“on an imaginary scale and see where the scale tilts.”*

Appellants still aggrieved by this decision filed further appeal to this

B Court raising 2 (two) issues for determination as follows:-

“ISSUE 1

Whether the Court of Appeal was right in its decision that the Appellants were not entitled to a declaration of title to the land in dispute (Grounds 1, 2, 3 and 5).

C ISSUE 2

Whether the Court of Appeal was right when it first determined and pronounced upon Issue No. 7 before it prior to ordering a rehearing of the appeal before the appellate High Court (Ground 4)”

D I am in agreement with the reasoning of my learned brother in his reasoning in this lead judgment that Issue 2 ought to be considered first. Where, as in this case, an appellate court has ordered a rehearing of a matter for resolution by a lower court, that is to hear and resolve the matter de novo, it should not have been seen to
E interfere or to deal with any substantive questions or points that have to be resolved at the rehearing of the matter. The Appellants have rightly complained that this procedure is highly prejudicial to their case.

F It is against the foregoing background, that issue 2 was dealt with in great detail in the lead judgment. The Appellants’ have contended on this issue that the order remitting this matter to the appellate High Court to be heard de novo has been reached notwithstanding that the lower court has prior to this resolved issue 1 against
G the Appellants but in favour of the Respondents. That the lower court should have proceeded, in the interest of justice, to consider the appeal by invoking its powers pursuant to Section 16 of the Court of Appeal Act; that is by revisiting the same issues that have been ordered for rehearing at appellate High Court. It is however urged on
H this Court, due to obvious delay that is bound to arise in rehearing the appeal, this Court should invoke its powers under Section 22 of the Supreme Court Act to hear the appeal on the printed record. It is also pointed that this is even more so as the instant complaint is against an omnibus ground of appeal and not specific or particular pieces of

evidence adduced at the trial. The Respondents on their part, in their brief of argument, submitted that the lower court, rightly considered and pronounced on the questions placed before it. Nonetheless, they have before this Court, at the oral hearing of the appeal, conceded that issue 3 before the appellate High Court has not been considered and determined and this amounts to a denial of fair hearing. They have all the same urged us to invoke its powers pursuant to Section 22 of the Supreme Court Act to determine the appeal, as all the materials needed, are before this Court as per printed record, but curiously, they at the same time, urged us to hold that the trial court has properly evaluated the evidence and that its findings have been borne out of the record and still that the judgment at the trial Court has been based on preponderance of evidence and to dismiss the appeal as lacking in merit.

I have observed that the decision of the court below is not quite clear and precise. It is ambiguous and wrong to allow the appeal in part and in the same breath, in the same proceeding, order a rehearing of the appeal. These two orders are contradictory in terms. Thus the lower court has failed to consider and determine on the issue placed before it. By dealing with this vital issue which otherwise is for resolution at the rehearing of the appeal is pre-empting the issue, tantamount to not having provided a level playing field for the respective parties at the hearing before the appellate High Court. Thus having failed to consider the vital issue 3 before it, this Court shall set aside the resolution of issue 1 against the Appellants in favour of the Respondents. This having been made in error, this Court will allow rehearing of the appeal as has been ordered by the lower court, as affirmed by this Court, to be complied with by the Appellate High Court which has been replaced by the Customary Court of Appeal of Rivers State.

It is in view of the foregoing and detailed reasoning of my brother Chukwuma-Eneh JSC, that I too will set aside the lower court's resolution of issue 1 having been made in error. The order remitting the appeal to the Customary Court of Appeal for rehearing is reaffirmed. Consequently the appeal is dismissed for lacking in merit. No order is made as to costs.

MOHAMMED JSC

The appeal is against the judgment of the Court of Appeal Port-Harcourt Division delivered on 4th July, 2005. In that judgment, even though the court allowed the appeal from the decision of the trial high court of Rivers State which heard the case on appeal, upon holding that there had been a breach of the right of fair hearing and therefore sent the case back to the high court for re-hearing the appeal by another judge, the Court of Appeal again proceeded in its judgment and determined the same appeal on the merit. Obviously, by proceeding to resolve the issue on the merit of the case between the parties, the Court of Appeal had completely lost the sight of the fact that the same issue on the merit of the case contained in the issue of the omnibus ground of appeal was still pending before the high court of justice for consideration and resolution by another judge of that court following the Court of Appeal's order of re-hearing. This order was made by the court below in its judgment at Pages 188-189 of the record where the court said in leading judgment as follows -

"Parties have agreed that there is a clear breach of fair hearing since the court below failed to determine the issue touching on the omnibus ground of appeal. And since there is a clear breach of fair hearing, the mandatory order that is warranted is one ordering a fresh trial of the appeal by another judge of the court below. And I order accordingly."

The law on the effect of the act of breach of the rule of natural justice or denial of fair hearing by any court is as correctly stated above by the court below having regard to a number of authorities including the cases of Prince Yahaya Adigun & Ors. v. The Attorney General Oyo State & Ors. (1987) 1 NWLR (Pt. 53) 678; Alhaji Yekini Otapo v. Chief R.O. Sunmonu & Ors. (1987) 2 NWLR (Pt. 58) 587 and Rasaki A. Salu v. Taiwo Egeibon (1994) 6 NWLR (Pt. 348) 23.

Having regard to the clear state of law therefore, the court below was in error when in the same judgment ordering the re-hearing of the appeal afresh to resolve the omnibus ground of appeal between the parties by the high court, it proceeded again to determine the merit of the dispute, which in my view, must be set aside by this court in order to give the parties and the high court count level playing ground to face the re-hearing of the appeal de novo. It is for

the above reasons and fuller reasons given by my learned brother, Chukwuma-Eneh, JSC in his leading judgment with which I completely agree, that I also dismiss the appeal in part and abide by the orders made in the leading judgment, including the order on costs.

B

MUNTAKA-COOMASSIE JSC

I read before now the leading judgment of my lord, Chukwuma-Eneh JSC just delivered. I agree with the reasoning and conclusions reached in dismissing the appeal. In fact, I adopt as mine both the reasoning and conclusions. I only wish, with respect, to add some points in support of the leading judgment. C

The Appellants commenced this action at the Customary Court of Rumuogba in Rivers State wherein they claim as follows-

1. A declaration of title to a piece and parcel of land known as D and called 'Okporo Ovunwo' situate at the right hand of the road, leading from Rumuokoro to Rumuaghaolu Village which land is in peaceful possession of the Plaintiffs and which the Defendants have pinned cement pillars thereon for the purposes of sale, which the Defendants without leave or licence of the Plaintiffs entered and cut E down for sawing three sticks therein.

2. Perpetual injunction restraining the Defendants, their agents, heirs and privies from further acts of trespass into the said 'Okporo Ovunwo' land until the case is finally determined by the court." F
The trial customary judge after hearing the parties and their witnesses dismissed the Plaintiffs' case.

The Plaintiffs were dissatisfied with this judgment and as a result appealed to the high court of justice in its appellate jurisdiction. The high court on appeal, dismissed the Appellants' appeal to it, affirmed the judgment of the trial court but set aside the order to partition the land. G

The Appellants were again dissatisfied with the above judgment and further appealed to the Court of Appeal, Port Harcourt Division hereinafter called the lower court. The lower court in the leading judgment delivered by John Fabiyi JCA as he then was, resolved the issue of title against the Appellants and in favour of the Respondents. H

However, on the 2nd issue which deals with non-considera-

tion of the Omnibus ground of appeal, his lordship -John Fabiyi, JCA as he then was held that the, non-consideration of the Omnibus ground amounted to a breach of fair hearing and consequently ordered a retrial.

The Appellants were again dissatisfied with the judgment of the lower court and as a result appealed to this honourable court. In accordance with the rules of our court, both parties, through their respective counsel, filed and exchanged their respective briefs of argument. The Appellants' brief was dated 12/1/2006 and filed on 14/1/2006, whilst the Respondents' brief was dated 16/3/2006 and filed on the same date. The Appellants' counsel formulated two issues in his brief of argument as follows-

a. Whether the Court of Appeal was right in its decision that the Appellants were not entitled to a declaration of title to the land in dispute.

b. Whether the Court of Appeal was right when it first determined and pronounced upon Issue 1 before it, prior to ordering a rehearing of the appeal before the appellate high court.

These issues were adopted by the Respondents' counsel in his brief of argument.

It is on the basis of the evidence of the parties and their witnesses coupled with the findings at the visit to the locus - in -quo that the trial court dismissed the Appellants' case, which was affirmed by both the high court of justice and the Court of Appeal.

The Appellants' counsel at the hearing of the appeal before us adopted his brief of argument and urged us to allow the appeal.

On the Issue No.2, it was the contention of the learned counsel to the Respondents that the lower court ought to have determined Issue No.2 which dealt with the issue of denial of fair hearing before considering whether the Appellants have proved their title to the land in dispute or not. It is therefore, submitted that it is an error on the part of the lower court to have proceeded, as it did, to determine in advance that which it had in its wisdom remitted to the high court to determine.

Learned counsel cited in support the case of *Cookey v. Fombo* (2005) 5 S.C. (Pt.11) 102 at 111. Counsel then urged this court to exercise its powers under the provisions of Section 22 of the Supreme Court Act, Cap. 424 to determine the issue or refer the whole

case for retrial. Learned counsel relied heavily on the case of Ifeanyi Chukwu Co. Ltd. v. Soleh Boneh Limited (2000) 3 S.C. 42 at 60.

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

On Issue No.2, learned counsel agreed with the counsel to the Appellants who urged the court to exercise its powers under the provisions of Section 22 of Supreme Court Act (supra) to determine this issue.

On the Issue No.2, both parties have urged this court to determine the issue of the effect of the failure of the high court of justice to consider the Omnibus ground of appeal filed before it under the provisions of Section 22 of the Supreme Court Act (supra). Even though the parties' counsel both requested to determine the issue, none of them proffered any argument on it in their respective brief of argument.

Having considered the statement of my lord, Hon. Justice Chukwuma-Eneh, JSC in the leading judgment, I hold that the only relevant decision to take, with respect is that the appeal is partially dismissed. I accepted the decisions of the lower court in ordering a retrial before the high court as an appellate court in this matter.

I therefore affirmed the retrial order made by the lower court. It is uncalled for this court to embark on invocation of Section 22 of the Supreme Court Act.

It is for the foregoing, in addition to the detailed reasons given in the leading judgment of my learned brother, Chukwuma-Eneh JSC that I also dismiss the appeal in part and abide by the orders in the leading judgment including the order on costs.

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