

**SUPREME COURT OF NIGERIA**

8TH JULY, 2011. SC. 292/2003

**CORAM:- A. M. MUKHTAR, W. S. N. ONNOGHEN, F. F. TABAI, I. T. MUHAMMAD, B. RHODES-VIVOUR, JJSC**

1. CONTRACT RESOURCE

NIGERIA LTD

..... APPELLANTS

2. MODE NIGERIA LTD.

AND

UNITED BANK FOR AFRICA PLC

..... RESPONDENT

---

OBJECTIONS - Filing - Supreme Court Rules O.2 r.9 - Preliminary objection must be filed and served on appellant three days before hearing of the appeal - In order to give appellant enough time to respond (H1)

OBJECTIONS - Intent - Preliminary objection is to contend that the appeal is incompetent - And if it is sustained - The appeal would no longer be heard (H2)

OBJECTIONS - Basis - Preliminary objections are usually on law - Hence filing of affidavit is unnecessary - Save where there is need to rely on facts (H3)

APPEALS - Meaning - It is a review of lower court's decision by a higher court - The purpose is to see if lower court properly considered facts and arrived at a correct decision (H4)

APPEALS - Judgments - Right of appeal - 1999 Constitution s. 243(a) - It is a party in a suit that can appeal - Interested party must seek and obtain leave of court in order to appeal (H5)

WORDS & PHRASES - "Shall" - Meaning - It does not always mean "must" - It could be interpreted where the context so admits as "may" - And "May" is also not always "may" - It may sometimes be equivalent to "shall" (H6)

APPEALS - Courts - Right of audience - It is a counsel that has the right - Except if a party being a natural person insists on handling its case personally - But with respect to a corporation - Right is restricted to counsel (H7)

### **FACTS**

This action was commenced before High court of Enugu State, Enugu. 1<sup>st</sup> appellant as plaintiff in Suit No. E428/99 claimed the sum of N46,000,000.00 (Forty Six Million Naira) from 2<sup>nd</sup> appellant as defendant. The sum was debt due to 1<sup>st</sup> appellant which became payable from a contract agreement dated 15<sup>th</sup> June 1998. 1<sup>st</sup> appellant also claimed 25% compound interest on the sum from 20<sup>th</sup> December 1998 till judgment and post judgment interest of 10%. 2<sup>nd</sup> appellant admitted liability but claimed that its default in paying its debt was due to the negligence of its bankers i.e. United Bank for Africa (UBA) Plc. On 4<sup>th</sup> April, 2000 the court entered judgment for 1<sup>st</sup> appellant for the sum of N46,000,000.00 (Forty Six Million Naira) plus interest.

Meanwhile, 2<sup>nd</sup> appellant had taken out 3<sup>rd</sup> party claim against UBA Plc. Hearing of the claim was fixed for 9<sup>th</sup> May, 2000. However, the hearing took place on 7<sup>th</sup> April, 2000 in the absence of UBA Plc and judgment was entered against the bank for N46,000,000.00 (Forty Six Million Naira). Dissatisfied, UBA Plc quickly filed an appeal at Court of Appeal, Enugu. The appeal was allowed and the 3<sup>rd</sup> party claim remitted for rehearing before another judge. Aggrieved, this appeal was filed before the Supreme Court. 1<sup>st</sup> appellant who was not a party to the 3<sup>rd</sup> party claim and not party at Court of Appeal interestingly is the 1<sup>st</sup> appellant in the present appeal. Consequently, respondent filed a preliminary objection to the hearing of this appeal.

**HELD** (Unanimously upholding the preliminary objection and striking out the appeal per **RHODES-VIVOUR JSC**)

### **OBJECTIONS - Filing**

1. Order 2 Rule 9 of the Supreme Court Rules provides for the filing of preliminary objections. The fundamental requirement is that the preliminary objection must be filed and served on the appellant three days before the hearing of the appeal thereby removing the element

of surprise and giving the appellant enough time to respond.  
(p. 2136 H)

### ***OBJECTIONS - Intent***

2. The purpose of a Preliminary objection is to contend that the appeal is defective or incompetent. If sustained the appeal would no longer be heard. A successful preliminary objection terminates the hearing of an appeal. (p. 2137 B)

### ***OBJECTIONS - Basis***

3. Preliminary objections are usually on Law consequently no affidavit is necessary, but where the need to produce or rely on facts becomes necessary, an affidavit ought to be filed. In this case the respondent filed a Notice of Preliminary objection supported by a 14 paragraph affidavit. In the circumstances an affidavit is necessary because there is reliance on facts, and facts have no views. They are sacred. (p. 2137 C)

### ***APPEALS - Meaning***

4. An appeal is a review of the decision of the court below by a higher court. The purpose being to see if the court below considered the facts properly and arrived at the correct decision. (p. 2139 A)

### ***Judgments - Right of appeal - 1999 Constitution s. 243(a)***

5. By the provisions of Section 243(a) of the Constitution it is a party in a suit or an interested party that can appeal against a judgment of the court.

Where a party who was not a party in the court below seeks to appeal to this court, he can only do so if he seeks and obtains leave from this court, and he would obtain leave if and only if he is able to satisfy this court that he is an interested party.

An appellant is a person appealing from a decision or applying for leave to appeal.

Section 243(a) of the Constitution makes leave a mandatory pre-condition that must be sought and obtained before an interested party can appeal. An applicant filing an appeal without satisfying or fulfilling that pre-condition is merely wasting his time. Contract Resources Nig. Ltd was not a party in the third party claim, neither was

it a party in the court below. It never applied for leave (permission) to appeal against the judgment of the Court of Appeal. In the absence of leave, Contract Resources Nig Ltd is a meddlesome interloper with no real stake in the appeal. In the circumstances the preliminary objection is upheld on ground one. (p. 2139 A)

B

### ***“Shall” - Meaning***

6. It is now well settled by this court that the word “shall” does not always mean “must” a matter of compulsion. It could be interpreted, where the context so admits as “may” whereas “may” is also not always “may”. It may sometimes be equivalent to “shall” (p. 2140 B)

C

### ***APPEALS - Courts - Right of audience***

D 7. “May” in Order 6 Rule 5(1)(b) accommodates a Litigant who is a natural person, a party, handling the appeal by himself. An artificial entity cannot argue an appeal personally. The right of audience for such an entity is limited to counsel instructed on the corporation’s behalf. “May” is equivalent to shall when an artificial entity is a party E in an appeal. Its brief shall be prepared and the appeal argued on its behalf by a legal practitioner. Indeed in Halsbury’s Laws of England, paragraphs 754 and 756, the right of audience before the House or an appellate committee is restricted to counsel instructed on behalf of a party or, where the party is a single person, the party himself.

F

Section 15(1) of the Supreme Court Act supports all that I have been saying. It states that:

“Subject to the provisions of any other enactment, in all proceedings before the Supreme Court the parties may appear in person or be G represented by a legal practitioner entitled by or under enactment or rules of court to practice in that court.”

In Civil Appeals the Notice of Appeal and Briefs of argument shall be prepared and signed by counsel. The only exception is where the party is a natural person, and insists on handling his appeal him- H self. Right of audience is open to counsel and/or the party in the appeal. In the case of a Corporation, the Notice of Appeal and Brief of argument shall be prepared and signed by counsel and the right of audience before this court is restricted to counsel. This is so as a corporation being an unnatural person, needs someone learned in the

Law to handle its appeal, and that person can only be a Legal Practitioner. (p. 2140 C/2141 A/E)

### **NOTABLE POINT OF INTEREST**

#### **RHODES-VIVOUR JSC**

*1. Legal practitioners not laymen are to prepare and argue briefs* B

In this appeal, the Notice of Appeal and the appellants' brief were both signed by MR. I. Okonkwo, a Company Director and a layman. The signature of Mr. I. Okonkwo on both documents implies that the documents were prepared by him. I must remind Mr. J.O.N. Ikeyi C who appeared for the appellants that court business is very serious business. It is unheard of for counsel to argue a brief prepared by a layman. If this is allowed, cranks, professional litigants and those with only a nodding acquaintance with the law will prepare briefs for argument before this court. Counsel appearing before this court and D indeed any court properly constituted should be alive to their responsibilities to assist the courts. The highest Court in the land must be given quality professional assistance that would ensure sound dispensation of justice. (p. 2141 B)

E

#### **REPRESENTATION**

J.O.N. Ikeyi; for the Appellants

Dr. A.J.C. Mogbana with B.E. Ukaegbu; F. Mbadugha and J. Udensi; for the Respondent

F

#### **CASES REFERRED TO**

NEPA v. Ango (2001) 15 NWLR (pt. 737) 627

Ndigwe v. Nwude (1999) 11 NWLR (pt.626) 314

Re: Arowolo (1993) 2 NWLR (pt.275) 1

Ogunbiyi v. Mustapha (1996) 4 NWLR (pt. 442) 337

Ifezue v. Mbadugha (1984) 1 SCNLR 427

RE: London CC and London Tramways Co. (1897) 13 TLR 254

Scriven v. Jescott (Leeds) Nig. (1908) 53 Sol. J. 101

Akande v. General Electric Ltd. (1979) 3 - 4 SC. 115

Ikweki v. Ebele (2005) 11 NWLR (pt. 936) 396

G

H

#### **STATUTES & RULES REFERRED TO**

Constitution of Federal Republic of Nigeria 1999, s. 243(a)

Supreme Court Act, s. 15(1)

Supreme Court Rules, O.2 r.9, O.6 r.5(1)(b)

**BOOK REFERRED TO**

Halsbury's Laws of England, para. 754 and 756

B

**LEAD JUDGMENT BY RHODES-VIVOUR JSC**

This is an appeal from the judgment of the Court of Appeal delivered on the 12th day of June, 2003, wherein that court allowed the appeal and ordered a rehearing of the third party claim before another judge of the Enugu State High Court other than the learned trial Chief Judge, the 1st appellant as plaintiff in Suit No, E428/99, sued the 2nd appellant as defendant. Trial was in the Enugu High Court, Enugu State. Ugwu CJ (as he then was) presided. The plaintiff claimed the sum of N46m from the defendant. The sum was debt due to the plaintiff which became payable from a contract agreement dated the 15th of June, 1998. The plaintiff further claimed 25% compound interest on the sum from 20th day of December 1998 till judgment and post judgment interest of 10%. The defendant admitted liability but claimed that its default in paying its debt was due to the negligence of its bankers, UBA PLC.

On 20/3/2000, the plaintiff filed Motion for judgment against the defendant, and on 4/4/2000 the learned trial Chief Judge entered judgment for the plaintiff for the sum of N46m plus interest. Meanwhile the defendant had taken out third party claim against UBA PLC. The learned Chief Judge fixed hearing for the 9th of May 2000, but in unexplained circumstances the third party claim was heard on the 7th of April, 2000 in the absence of UBA PLC, and judgment entered against UBA PLC for N46m UBA PLC quickly lodged an appeal. The Court of Appeal, Enugu Division allowed the appeal, and remitted the third party claim for hearing all over again before a judge of the Enugu State High Court other than the learned Chief Judge of Enugu State.

This appeal is against that judgment, but interestingly the 1st appellant who was not a party in the third party claim and not a party in the court below is the 1st appellant before this court. The respondent, UBA PLC filed a Preliminary objection on the 14th of July 2004 to the hearing of this appeal. **Order 2 Rule 9 of the**

**Supreme Court Rules provides for the filing of preliminary objections. The fundamental requirement is that the preliminary objection must be filed and served on the appellant three days before the hearing of the appeal thereby removing the element of surprise and giving the appellant enough time to respond. The purpose of a Preliminary objection is to contend that the appeal is defective or incompetent. If sustained the appeal would no longer be heard. A successful preliminary objection terminates the hearing of an appeal.** See NEPA v. Ango 2001 15 NWLR pt. 737 pg.627, Ndigwe v. Nwude 1999 11 NWLR pt.626 pg. 314.

**Preliminary objections are usually on Law consequently no affidavit is necessary, but where the need to produce or rely on facts becomes necessary an affidavit ought to be filed. In this case the respondent filed a Notice of Preliminary objection supported by a 14 paragraph affidavit. In the circumstances an affidavit is necessary because there is reliance on facts, and facts have no views. They are sacred.**

The grounds of the Preliminary objection are:

1. Contract Resource Nigeria Limited has no locus standi in this appeal since it was not a party in the lower court and has neither applied for nor obtained leave to appeal as an interested party;

2. The appeal is incompetent because the notice of appeal was signed by a person who is not a legal practitioner, the proper appellant (Mode Nigeria Ltd) being an artificial person; and

3. The appellants' brief of argument is incompetent, not having been signed by a legal practitioner on behalf of the true appellant, an artificial person.

Relevant extracts from the affidavit in support read thus:

2. This appeal originated from suit No.E/428/99 instituted in the Enugu State High Court sitting at Enugu with Contract Resource Nigeria Limited, as plaintiff, Mode Nigeria Limited, as defendant, and United Bank for Africa PLC as third party.

3. On 4/4/2000 the court gave judgment in favour of the plaintiff and the third party claim between Mode Nigeria Ltd and UBA PLC was adjourned to 9/5/2000.

4. In its absence and without hearing notice having been issued and served on UBA PLC, the court entered judgment prema-

turely against UBA PLC on 12/4/2000 sequel to an *ex parte* motion filed by Mode Nigeria Ltd.

5. On 11/7/2000 UBA PLC filed a notice of appeal CA/E/158/2000 to have the judgment of 12/4/2000 set aside by the Court of Appeal as a nullity on grounds of serious violation of UBA's right to fair hearing.

6. The applicants' counsel, DR. A.J.C. Mogbana, has advised the third party and it believes that the said appeal was between the third party (UBA PLC) as appellant and the defendant (Mode Nig Ltd) as respondent.

7. The Court of Appeal, Enugu Division, on 12/6/2003 allowed the appeal, declared the judgment in the third party claim as a nullity and set it aside.

8. The defendant/respondent in the Court of Appeal appealed to this court against the judgment of the lower court in favour of the third party.

9. The said applicant's counsel has informed the applicant and it believes that Contract Resource Nig Ltd was not a party in the lower court, and not having obtained leave to appeal as an interested party, has no right to appeal to the Supreme Court against the decision of the lower court.

11. The notice of appeal and appellants' brief in this appeal has been signed by Ifeanyichukwu Okonkwo.

12. Ifeanyichukwu Okonkwo is not a legal practitioner empowered by Law to sign such processes.

At the hearing of the appeal on the 11th day of April, 2011 learned counsel for the respondent, DR. A.J.C. Mogbana observed that the 1st appellant has no *locus standi*, as it was not a party in the court below, and it was not granted leave to appeal as an interested party. He further observed that the appellants' brief was settled by someone who is not a legal practitioner. Concluding he submitted that the appellants brief and the Notice of Appeal are incompetent, and the appeal ought to be struck out. Urging the court to dismiss the Preliminary objection, learned counsel for the appellants argued that by the provisions of Order 6 Rule 5(b) of the Rules of this court, the brief and Notice of Appeal may be settled by counsel, contending that the provision *supra* accommodates a situation where the appellant can prepare both documents.



***An appeal is a review of the decision of the court below by a higher court. The purpose being to see if the court below considered the facts properly and arrived at the correct decision. By the provisions of Section 243(a) of the Constitution it is a party in a suit or an interested party that can appeal against a judgment of the court.*** See In Re: Arowolo 1993 2 NWLR B pt.275 pg.1, Ogunbiyi v. Mustapha 1996 4 NWLR pt. 442 pg. 337.

***Where a party who was not a party in the court below seeks to appeal to this court, he can only do so if he seeks and obtains leave from this court, and he would obtain leave if and only if he is able to satisfy this court that he is an interested party.*** C

***An appellant is a person appealing from a decision or applying for leave to appeal.***

***Section 243(a) of the Constitution makes leave a mandatory pre-condition that must be sought and obtained before an interested party can appeal. An applicant filing an appeal without satisfying or fulfilling that pre-condition is merely wasting his time. Contract Resources Nig Ltd was not a party in the third party claim, neither was it a party in the court below. It never applied for leave (permission) to appeal against the judgment of the Court of Appeal. In the absence of leave, Contract Resources Nig Ltd is a meddlesome interloper with no real stake in the appeal. In the circumstances the preliminary objection is upheld on ground one.*** D E F

I now turn to the 2nd appellant, Mode Nigeria Limited. The Notice of Appeal, Appellants' brief were signed on behalf of a corporate body by a person who is not a legal practitioner, a layman, one Ifeanyichukwu Okonkwo, who described himself as Company Director of No.14 Ishielu Avenue Independence Layout, Enugu, Enugu State. G

The Issue is Whether a layman, a company Director is allowed to file court processes on behalf of a corporate body.

The Notice of Appeal and the appellants brief were signed by H Ifeanyichukwu Okonkwo, a layman, Company Director. The appeal was argued by MR. J.O.N. Ikeyi, a legal practitioner. That is to say a legal practitioner argued an appeal in which the appellants' brief was prepared by a layman.

Order 6 Rule 5(1)(b) of the Supreme Court Rules States that:

“The brief which may be settled by counsel shall contain what are, in the appellants’ view the issues arising in the appeal, If the appellant is abandoning any point taken in the court below, this shall be so stated in the brief. Equally, if the appellant intends to apply in  
B the course of the hearing for leave to introduce a new point not taken in the court below, this shall be indicated in the brief. “

***It is now well settled by this court that the word “shall” does not always mean “must” a matter of compulsion. It could be interpreted, where the context so admits as “may” whereas  
C “may” is also not always “may”. It may sometimes be equivalent to “shall”. See Ifezue v. Mbadugha 1984 1 SCNLR pg.427***

***“May” in Order 6 Rule 5(1)(b) accommodates a Litigant who is a natural person, a party, handling the appeal by him-  
D self. An artificial entity cannot argue an appeal personally. The right of audience for such an entity is limited to counsel instructed on the corporation’s behalf. “May” is equivalent to shall when an artificial entity is a party in an appeal. Its brief shall be prepared and the appeal argued on its behalf by a  
E legal practitioner. Indeed in Halsbury’s Laws of England, paragraphs 754 and 756, the right of audience before the House or an appellate committee is restricted to counsel instructed on behalf of a party or, where the party is a single person, the party himself. In Tritonia Ltd & Ors v. Equity and Law Life Assur-  
F ance Society 1943 2 All England Report pg. 401. The house of Lords (now Supreme Court of England) held inter alia that:***

***“when an appeal is argued before the House of Lords, no one has any right of audience except counsel instructed on behalf of a  
G party or (when the litigant is a natural person) the party himself. In the case of a corporation, in as much as the artificial entity cannot attend and argue personally, the right of audience is necessarily limited to counsel instructed on the corporations behalf.”***

***Also in RE London CC and London Tramways Co. 1897 13  
H TLR Pg. 254. A litigant was allowed to appear in person, but a company must appear by counsel who could instruct counsel on their behalf. See also Scriven v. Jescott (Leeds) Nig. 1908 53 Sol. J. Pg. 101 where it was stated that a company could only be represented by attorney and it was not in the same position as a litigant in person.***

**Section 15(1) of the Supreme Court Act supports all that I have been saying. It states that:**

**“Subject to the provisions of any other enactment, in all proceedings before the Supreme Court the parties may appear in person or be represented by a legal practitioner entitled by or under enactment or rules of court to practice in that court.”** B

In this appeal, the Notice of Appeal and the appellants’ brief were both signed by MR. I. Okonkwo, a Company Director and a layman. The signature of Mr. I. Okonkwo on both documents implies that the documents were prepared by him. I must remind Mr. J.O.N. Ikeyi who appeared for the appellants that court business is very serious business. It is unheard of for counsel to argue a brief prepared by a layman. If this is allowed, cranks, professional litigants and those with only a nodding acquaintance with the law will prepare briefs for argument before this court. Counsel appearing before this court and indeed any court properly constituted should be alive to their responsibilities to assist the courts. The highest Court in the land must be given quality professional assistance that would ensure sound dispensation of justice. C D

**In Civil Appeals the Notice of Appeal and Briefs of argument shall be prepared and signed by counsel. The only exception is where the party is a natural person, and insists on handling his appeal himself. Right of audience is open to counsel and/or the party in the appeal. In the case of a Corporation, the Notice of Appeal and Brief of argument shall be prepared and signed by counsel and the right of audience before this court is restricted to counsel. This is so as a corporation being an unnatural person, needs someone learned in the Law to handle its appeal, and that person can only be a Legal Practitioner.** E F G

The Notice of Appeal and the appellants’ brief of argument are incompetent having been signed by a layman. The Preliminary Objection is again upheld and the appeal is hereby struck out with costs of N50,000.00 to the respondent. H

---

**MUKHTAR JSC**

I have had the opportunity of reading in advance the lead

judgment delivered by my learned brother Rhodes-Vivours JSC, and I agree with the reasoning contained therein.

The preliminary objection filed by the learned counsel for the respondent has as appellants/respondents, Ifeanyichukwu Okonkwo and Mode Nigeria Ltd. In the body of the process, the grounds of the  
B objection are stated as follows:-

(a) *Ifeanyichukwu Okonkwo has no locus standi in this appeal since he was not a party in the lower court and has neither applied for nor obtained leave to appeal as an interested party;*

C (b) *The Appeal is incompetent because the notice of appeal was signed by a person who is not a legal practitioner, the proper appellant (Mode Nigeria Ltd.) being an artificial person;*

(c) *The appellant's brief of argument is incompetent, not having been signed by a legal practitioner on behalf, of the true appellant, an artificial person."*  
D

The pertinent deposition of the affidavit in support of the preliminary objection reads as follows:-

*"9. The said applicant's counsel has informed the applicant's and it believes that Contract Resource was not a party in the lower  
E court, and not having obtained leave to appeal as an interested party has no right to appeal to the Supreme Court against the decision of the lower court."*

Indeed Contract Resource Nigeria Ltd was not a party in the lower courts. The law requires that a party who was not a party in the  
F lower courts and seeks to appeal against a decision of which he did not take part in the proceedings, to seek and obtain leave to be a party in an appellate court. In the instant case, Contract Resource Nigeria Ltd did not obtain such leave, and so he lacks locus to be an  
G appellant in this court. In the circumstance that leave was not obtained the appeal becomes incompetent. See *Akande v. General Electric Ltd.* 1979 3 - 4 SC. 115, and *Ikweki v. Ebele* 2005 11 NWLR part 936 page 396.

For this and also the fuller treatment of the other grounds of  
H objection in the lead judgment I also uphold the preliminary objection raised and strike out the appeal. I abide by the consequential order made in the lead judgment.

### ONNOGHEN JSC

The facts of this case have been stated in the lead judgment of my learned brother RHODES-VIVOUR, JSC just delivered and I do not intend to repeat them here except as may be needed to emphasise the point being made.

This appeal is against the judgment of the lower court, holden at Enugu which allowed the appeal of the present respondent/third party against the judgment of the trial court in third party proceeding delivered on 12th April, 2000 in the absence of and without notice to the third party/respondent in this appeal.

The lower court, at page 271 of the record specifically held thus:

*“For the foregoing reasons, I am of the firm view that the third party appellant in this appeal is entitled ex debito justitiae to have the judgment in suit No. E/428/99 delivered on 12th April, 2000 set aside for being a nullity.*

*Accordingly this appeal is hereby allowed. The judgment of the trial court delivered on 12th April, 2000 against the appellant is hereby set aside for being a nullity, The claim of the defendant/respondent against the third party/appellant in the Third Party Proceedings is hereby remitted to the trial court for hearing by another Judge of the Enugu State High Court other than the learned trial chief judge...”*

The Third Party Proceedings resulting in the judgment in the appeal before the lower court as well as the said appeal was between Mode Nigeria Limited as defendant/respondent vs United Bank for Africa Plc as Third Party/appellant.

The judgment of the trial court in the said proceedings can be seen at page 38 of the record is in the following terms:-

*“Court. Judgment is hereby entered in favour of the defendant/applicant against the third party as follows:-*

*1) The third party to pay the sum of N46,600,000.00 (forty-six million, six hundred thousand naira) to the defendant/applicant being debt owed to the defendant/applicant.*

*2) The third party to pay 25% interest from 29th December, 1998 to 4th April, 2000 when the judgment was delivered.*

*3) The third party to pay 5% interest on the judgment to the defendant/applicant until the whole amount is fully liquidated....”*

It was the above judgment that was set aside by the lower

court and it is very clear from both judgments that CONTRACT RESOURCE NIGERIA LTD, the plaintiff in the suit was not a party in the Third Party Proceeding neither was it a party to the appeal arising therefrom. The decision of the lower courts did not adversely affect the rights or interest of the said company and cannot therefore be described as a party/person aggrieved by the said decisions so as to confer any right of appeal on the said company neither can it, legally be granted any leave to appeal as an interested party against the said decisions if it had applied for such leave. In the circumstance there is nothing to ground the notice of appeal on behalf of the said company. Contract Resource Nigeria Ltd is clearly a busy body in this appeal.

Secondly the notice of appeal and appellant's brief of argument were signed on behalf of the 2nd appellant Mode Nigeria Ltd. an incorporated legal personality, by one Ifeanyi Chukwu Okonkwo who described himself as Company Director, a layman while the appeal was argued before us by J.O.N Ikeyi Esq, a legal practitioner. It is settled law that whereas a party/litigant who is a natural person can file and argue an appeal before the courts, an incorporated party/litigant, being an artificial entity cannot file, attend and argue an appeal before the courts in person/personally but can do so only through legal practitioner(s) on its instructions, See also section 15(1) of the Supreme Court Act which provides as follows:-

"Subject to the provisions of any other enactment, in all proceedings before the Supreme Court the parties may appear in person or be represented by a legal practitioner entitled by or under enactment or rules of court to practice in that court".

In the instant appeal the person who signed the offensive vital documents on behalf of the 2nd appellant, a corporation is a layman.

It is for the above reasons and the more detailed ones contained in the lead judgment of my learned brother that I too find the Notice of Appeal and appellant's brief of argument in the instant appeal grossly incompetent and consequently liable to be struck out.

I order accordingly and abide by the consequential orders made in the said lead judgment including the order as to costs.

Preliminary objection of the respondent is hereby sustained and the appeal struck out.

**MUHAMMAD JSC**

I have had the opportunity of reading the judgment just delivered by my learned brother, Rhodes-Vivour, JSC. I agree with his reasoning and conclusion.

On the preliminary objection alone, which I sustain, this appeal must be, and is hereby struck out by me. B

I abide by all consequential orders made therein including order on costs.

C

D

E

F

G

H