

SUPREME COURT OF NIGERIA
FRIDAY 19TH APRIL, 2013. SC. 267/2005
CORAM:- I. T. MUHAMMAD, C. M. CHUKWUMA-ENEH,
S. GALADIMA, N. S. NGWUTA, S. S. ALAGOA, JJSC

ALHAJI RASAKI ABIOLA
EKUNOLA

.....APPELLANT

AND

1. CENTRAL BANK OF NIGERIA

2. ALHAJI SAIDU MOHAMMED RESPONDENTS
(Director of Personnel, CBN)

APPEALS - Ground of mixed law & facts - Leave - By 1999 Constitution s. 233(3) - Appeal on such ground shall lie from CA to SC not as of right - But with leave of court (H1)

APPEALS - Ground of law - Sufficiency of - Appeal can be sustained by one competent ground of law - Contained in the notice of appeal (H2)

APPEALS - Preliminary objection - Determination - Appellate court will take such objection as threshold issue - Provided it will be decisive of question of competence of the appeal (H3)

ACTIONS - Consistency of - Appellant portrayed a confused state of affairs - As he shunts his case from pillar to post - Contrary to the holden in Okolo's case that litigation is not open ended (H4)

APPEALS - Ground of law - Sufficiency of - Single ground of law is sufficient - To sustain a notice of appeal (H5)

APPEALS - Grounds - Nature of - Ground is of law where it raises complaint on an issue of law based on admitted facts - But it is of mixed law & facts where the complaint is on disputed facts (H6)

COURTS - Appeals - Issues - Formulation of - Courts have power to formulate issues in the interest of justice - But parties must be heard on such issues - Before judgment is delivered (H7)

MASTER & SERVANT - Dismissal - Fair hearing - Appellant was not denied fair hearing by his dismissal - As he was given opportunity to exculpate himself - From the allegations of fraud (H8)

MASTER & SERVANT - Dismissal - Notice of - Where dismissal is based on allegation of gross misconduct - Appellant is not entitled to notice or salary in lieu of notice (H9)

MASTER & SERVANT - Dismissal - Validity - Appellant stands effectively dismissed - Since there was compliance with Exhibit D - As Exhibit G was served on appellant (H10)

FACTS

Plaintiff/appellant was employed by 1st defendant/respondent as a Technician. He later rose to become Assistant Director, Building Engineering Services Department by the time of his dismissal. As a result of his dismissal from service, appellant filed this action at the Federal High Court Lagos claiming as per his amended statement of claim, a number of declaratory and injunctive reliefs. At the trial, appellant testified in person and tendered Exhibits A to L1.

Respondents called two witnesses and tendered Exhibits M to M3. Whereas appellant maintained that he was not given fair hearing in the whole exercise of his dismissal from work, respondents contended that Exhibit E i.e. query letter was served on appellant and he responded in Exhibit F. Again, that Exhibit D was complied with in the dismissal of appellant. In its judgment, the court dismissed appellant's claim. Dissatisfied, he appealed to the Court of Appeal Lagos Division. The court dismissed the appeal. Still dissatisfied, appellant filed appeal in Supreme Court.

ISSUE FOR DETERMINATION

“Whether the learned Justices of the court below were right on the facts of the case when they held that ‘the complaint of lack of fair hearing by the trial Judge has not been made out and/or that the learned trial judge did not breach the principle of fair hearing in not calling upon counsel to address him on the two issues formulated suo motu.’”

HELD

 (Unanimously dismissing the appeal per

CHUKWUMA-ENEH JSC)

APPEALS - Ground of mixed law & facts - Leave

1. The provisions of section 233(3) of the 1999 Constitution require that every ground of appeal not involving questions of pure law shall lie from the decision of the Court of Appeal to this Court not as of right but with leave of court (of either the court below or this court) where the ground of appeal involves questions of mixed law and facts or facts simplicita.

(p. 1631 C)

APPEALS - Ground of law - Sufficiency of

2. The respondents however have before now given a notice of preliminary objection wherefore they have contended that sixteen grounds of appeal out of the seventeen grounds of appeal raised in this appeal (i.e. but ground 7) are incompetent being at best grounds of appeal on mixed law and facts or facts simplicita for which no leave of court has been firstly sought and obtained as prescribed by section 233(3) of the 1999 Constitution as amended. In that vein, simply put, that this court has no jurisdiction to entertain all the grounds of appeal raised in this appeal but ground 7 as contained in the amended Notice of Appeal. In the premises, it is trite law that an appeal will be sustained by one competent ground of law contained in the Notice of Appeal. (p. 1631 E)

APPEALS - Preliminary objection - Determination

3. I must observe that based on a plethora of authorities, an appellate court will take a point of law raised by way of preliminary objection as a threshold question provided it will be decisive of the question of competency of the appeal.

(p. 1632 A)

ACTIONS - Consistency of

4. In so many respects these shortcomings have been the bane of the appellant's case at the trial court and in the appeals

and so much so as portraying a confused state of affairs of what his case has been as pleaded and as found by the lower courts as per the pleadings on which issues have been joined as the appellant shunts his case from pillar to post, thus making nonsense of the principle of pleadings and accepted evidence which are the means of crystallizing the issues in a matter between the parties in civil matters. See: Okolo v. Union Bank (2004) 1 SC (pt. 1) 1 which case has made the point that litigation must follow some restrictive order and not open-ended to save the time of the court as well as the litigants themselves. It is in this respect that I approve and adopt the crucial finding of the court below as expressed poignantly to the effect that appellant has totally misconceived his case.
(p. 1643 G)

D APPEALS - Ground of law - Sufficiency of
5. The instant objection as canvassed by the parties herein (in their respective briefs of argument and oral submissions before this court) strikes at the heart of this appeal. It simply means that where the objection is sustained it will leave only ground 7 in the Amended Notice of Appeal as the only competent ground in law to sustain the appeal as the rest of the grounds as urged by the respondents being ex facie bad and incompetent in law have to be struck out as well as the issues for determination erected thereupon. Although it is trite that a single ground of law is sufficient to sustain a Notice of Appeal in an appeal. (p. 1645 C)

G APPEALS - Grounds - Nature of
6. In this regard the court is not to place undue reliance or emphasis on the form or in the manner the ground is couched as the gravamen or form of a ground of appeal for purposes of determining whether a ground is a ground of law or mixed law and facts or facts alone goes beyond the mere words used in couching or preferring the ground to the more serious question of identifying the real issue or the core of the complaint as encompassed in the ground. Clearly it is the real issue or complaint centrally encompassed in a ground on the back-

drop of its particulars that decides whether the ground is one of law or not. Where, in short, the ground raises a complaint on an issue of law based upon accepted or admitted facts it is a ground of law requiring no leave of court but where the complaint or real issue is founded on disputed or unascertained facts then it is a ground of mixed law and fact requiring leave of court. B

The process of determining the substantive complaint of a ground as in this appeal has been accentuated by the fact, as can be seen from established authorities that the distinction between a ground of law and mixed law and fact may at times be so blurred or thin and so, difficult to ascertain with relative application of the established guiding principles as per settled authorities on the question. It is a matter that goes beyond a ground of appeal being simply labeled without more as a ground of law by the appellant. A hard scrutiny of the case as per *Ehinlanwo v. Oke & Ors.* (2008) 6-7 SC (Pt.1) 123 has established that a ground of law arises where the court has misunderstood the law or has misapplied the law to the proved and admitted facts. (p. 1645 G) C D E

COURTS - Appeals - Issues - Formulation of

7. It is my view that the power of courts to formulate issues for determination at whatever level in the hierarchy of the courts although particularly so in appellate courts (where brief writing is a matter of the Rules of the court) inheres in the court in the interest of justice to enable courts to perform their adjudicative functions in our jurisprudence. Hence there are no rules of court prohibiting courts from doing so. I think that this discretion imbued with the interest of justice as its focus and premise has to be guided by the facts of each case and this has been the case with regard to the cases cited above. F G

Courts should not make it a point of practice to formulate issues for the parties suo motu and deciding them without calling on both parties to address it in the process as it negates one of the cardinal principles of hearing the parties and providing a level playing ground in a trial of their matter before condemning either of them. Formulating issues by H

courts should be subjected to the rider of calling upon the parties to address it in such instances before judgment. By this process a modicum of opportunity as it were, is afforded the parties on the question; this accords with a reasonable man's sense of having justice seen to be done. This is because
B courts should not be seen to jump pre-emptorily into the arena of contest however tempting the cause as courts have to avoid being muddled in the process of adjudication of cases before them and thus lose their centrality of impartiality as neutral
C umpires in our adjudicative system. To hold otherwise will undoubtedly unduly shackle the discretion of courts in the adjudicative process as this will not be grounded on any relevant rules of court or substantive law as such. I can find nothing offensive in such exercises. I uphold the intervention in
D this instant case upon its peculiar facts in the interest of justice. And it is my view that no denial of fair hearing amounting to a miscarriage of justice has thus been occasioned to the appellant. (p. 1651 B)

E MASTER & SERVANT - Dismissal - Fair hearing
8. One basic principle of master and servant relationship is that an employer can summarily dismiss/terminate the employment of his servant for gross misconduct. In the instant matter the 1st respondent reserves that power vis-a-vis the appellant as provided as per clause 6(4) and (5) of Exhibit 'D'. Following the query Exhibit 'E' issued to the appellant on an allegation of fraud which has arisen from failing to maintain proper account records of the distribution of diesel to other
F locations of the 1st respondents' points of business activities and has resulted in a heavy financial loss by which the 1st respondent has incurred huge financial deficits. The appellant has answered the query as per Exhibit 'F'. He has in consequence of his answers appeared before the Central Disciplinary
G Committee by which it has been established in effect of the appellant having been given an opportunity to exculpate himself from the allegations of fraud. The appellant as I have
H also found has not been denied a fair hearing in the process of his dismissal upon the charge of gross misconduct leveled

against him. (p. 1653 H)

MASTER & SERVANT - Dismissal - Notice of

9. Where his dismissal is founded on the allegation of gross misconduct the appellant is not entitled to any notice or salary in lieu of notice as clearly provided in Exhibits 'A' and 'D'.^B And it would be wrong in law to make any awards to him in these regards. (p. 1654 G)

MASTER & SERVANT - Dismissal - Validity

10. It is trite that an employer as the 1st respondent here is obliged to follow the right procedure in summarily dismissing his employee, in this case the appellant. The question then is whether his employment on a charge of gross misconduct has been determined as provided in exhibits 'A' and 'D' in this matter, which have laid down the procedure to be followed in doing so. By giving the appellant a query as per Exhibit 'E' and followed by the appellant's answer exhibit 'F' and the convening of various Disciplinary committees to look into the answer as per exhibit 'F' vis-a-vis the allegation of fraud, speak for themselves of having abided with the procedure laid down by exhibit 'D' for dismissing an employee. The appellant cannot be heard to complain as he has gotten all he is entitled to under a master/servant relationship at common law.

Once exhibit 'G' has been served on the appellant dismissing the appellant on grounds of gross misconduct he stands effectively dismissed as per the said exhibit and whether or not the dismissal is wrongful to entitle him to damages is the question for this court to resolve in this matter as reinstating him is out of the question. The position is that the two lower courts have not been persuaded that the dismissal of the appellant is wrongful and they are right. There is therefore a concurrent finding on the question. (p. 1654 H)

REPRESENTATION

Johnson O. Esezobo Esq., for the Appellant

Prince Aderemi Adekile Esq., for the Respondents

CASES REFERRED TO

- Foko v. Foko (1968) NMLR 441
Ogbechie v. Onochie (1986) 2 NWLR (pt. 23) 48
Bakare v. L.S.C.S.C. (1992) 8 NWLR (pt. 262) 64
Udengwu v. Uzuegbu (2003) 110 L.R.C.N. 1702
B Board of Customs & Excise v. Ibrahim Barau (1982) 10 SC 48
Uka v. Irolo (2002) 7 SC (pt. 11) 77
Ibenye v. Agwu (1998) 11 NWLR (pt. 574) 372
Garba v. Unimaid (1986) 2 SC 128
C Ojo v. Kamalu (2005) 12 SC (pt. 11) 132
Niger Construction Ltd. v. Okugbeni (1987) 4 NWLR (pt. 67) 787
Okolo v. Union Bank (2004) 1 SC (pt. 1) 1
Ehinlanwo v. Oke (2008) 6-7 SC (pt. 1) 123
Nwadike v. Ibekwe (1987) 11 - 12 SCNJ 72
D Arowolo v. Ademula (1991) 8 NWLR (pt. 212) 753
Nonye v. Anyichie (2000) NWLR (pt. 39) 66

STATUTES REFERRED TO

- Constitution of Federal Republic of Nigeria 1999 (as amended), ss.
E 36(1), 233(3)
Federal High Court Civil Procedure Rules 2000, O. 12 r. 3, O. 6 r. 2(1)
Evidence Act, s. 137

F

LEAD JUDGMENT BY CHUKWUMA-ENEH JSC

- The plaintiff (appellant) has been employed by the 1st defendant/respondent in 1965 as a Technician and has risen to become Assistant Director, Building Engineering Services Department by the
G time of his dismissal in February 2000. He has filed this action against the defendants/respondents in the Federal High Court, Lagos claiming as per the amended statement of claim a number of declaratory and injunctive reliefs. Pleadings have been filed and exchanged between the parties. At the conclusion of evidence at the trial the plaintiff
H alone has testified in person and has tendered Exhibits 'A' to L1' and the defendants have called two witnesses and have tendered Exhibits 'M - M3'. The crucial documentary exhibits in this matter inter alia include:

‘(1) Exhibit ‘A’ - Letter of appointment dated 25/5/1965;

Exhibit C - Letter of appointment to the post of Assistant Director dated 29/1/99; Exhibit D - Staff manual for Central Bank of Nigeria; Exhibit E - Query letter dated 19/3/99; Exhibit F - Response to the Query dated 23/8/99; Exhibit C - Letter of suspension dated 14/11/99; Exhibit K - Letter of Dismissal from the Bank's Services dated 1/2/2000.

B

Exhibit M1 - Main report of the Central disciplinary committee held between 8th and 21st September 1999. Exhibits M-M3 report on Special Investigation for the period of October, 1998 - February 1999. Exhibit M3 - Report of the central Disciplinary Committee dated 14/9/1999.

C

The parties have made written submissions as directed by the court. The trial court in its considered judgment has dismissed the plaintiff's claim in its entirety; in doing so it has struck out the 2nd defendant/respondent in the matter. Dissatisfied with the judgment the plaintiff has appealed the case to the Court of Appeal Lagos which in its judgment also has dismissed the appeal. Wherefore the instant appeal to this court as per the Amended Notice of Appeal filed on 28/10/2001 of 17 (seventeen) grounds of appeal. The plaintiff and the defendants are in this appeal the appellant and respondents respectively.

E

In accordance with the Rules of this court the parties have filed and exchanged their respective briefs of argument. The appellant has distilled 11 (eleven) issues for determination by this court as follows: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11. They read as follows:

F

"1. Whether the entire judgment is not perverse in law. This issue relates to ground one.

2. Whether the learned justices of the Court of Appeal were right when they affirmed the findings of the trial court and also held that the appellant was given a fair hearing by the 1st respondent who was alleged not to be involved in the disciplinary process. This issue relates to ground two.

G

3. Whether the learned justices of the Court below were right when they held that the evidence of DW2 debunked appellant's case and that there was no truth in the appellant's allegation that 2nd defendant usurped the powers of the 1st Respondent. This issue is relative to ground three.

H

4. Whether the learned Justices of the court below were right

when they held that the 2nd Respondent was properly struck out from the suit. This issue relates to ground four of the Ground of Appeal.

B 5. *Whether the learned Justices of the court below were right when they held that the 2nd respondent did not usurp the powers of the 1st respondent and that the appellant was given a fair hearing. This relates to ground five.*

C 6. *Whether the learned Justices of the court below properly appreciated the appellant's case before affirming the findings of the trial court. This issue relates to ground six of the Ground of Appeal.*

D 7. *Whether the learned Justices of the Court below were right on the facts of the case when they held that "The complaint of lack of fair hearing by the trial judge has not been made out" and/or that the learned trial judge did not breach the "principle of fair hearing in not calling upon counsel to address him on the two issues formulated" suo motu. This issue relates to ground seven of the Grounds of Appeal.*

E 8. *Whether the learned Justices of the Court below were right when they held that the appellant's complaint of composition of the Central Disciplinary committee is of no consequence and that the quorum was complete, Constitution of the committee can not be impugned and finally that the composition of the CDC and actions taken by the Director of Personnel are in accordance with Exhibit 'D'*

F 9. *Whether the learned Justices of the Court below were right when they concluded on the basis of Exhibit 'F' alone that appellant knew that Exhibit E, G, L1 and J as well as the summoning of the appellant to the IDC emanated from 1st Respondent. This relates to ground ten.*

G 10. *Whether the conclusion of the learned Justices of the Court below are supported by the facts and evidence on record. This relates to ground eleven of the Grounds of Appeal.*

H 11. *Whether the learned Justices of the Court below were right when they held that the appellant was given every opportunity to exculpate himself from blame but he could not offer any tangible defence. Furthermore, the plaintiff never alleged lack of fair hearing against the Central Disciplinary Committee or/Inter-Departmental Committee set up by the Management of the 1st Defence..." This relates to ground 12 of the Grounds of Appeal.*

I do not think that in the event of the far reaching consequences of upholding the respondents' preliminary objection to the instant sixteen grounds of appeal but ground 7 that it serves any useful purpose to set out the immediate sixteen grounds of appeal in extenso so challenged by the respondents by way of preliminary objection here vis-a-vis the issues raised for determination in the appeal itself; unless and until firstly their respective fate as competent grounds of appeal have been decidedly settled one way or the other as most of them speaking pre-emptorily are bound to fall by the way side upon the backdrops of the frontal objection taken by the respondents for their non-compliance with Section 233(3) of the 1999 Constitution as amended. ***The provisions of section 233(3) of the 1999 Constitution require that every ground of appeal not involving questions of pure law shall lie from the decision of the Court of Appeal to this Court not as of right but with leave of court (of either the court below or this court) where the ground of appeal involves questions of mixed law and facts or facts simplicita.*** See: *Ehinlanwo v. Oke* & 2 Ors. 6-7 SC (Pt.11) 123. In reply to the preliminary objection the appellant has filed a reply brief which has been deemed so filed and served on 21/1/2013.

The respondents however have before now given a notice of preliminary objection wherefore they have contended that sixteen grounds of appeal out of the seventeen grounds of appeal raised in this appeal (i.e. but ground 7) are incompetent being at best grounds of appeal on mixed law and facts or facts simplicita for which no leave of court has been firstly sought and obtained as prescribed by section 233(3) of the 1999 Constitution as amended. In that vein, simply put, that this court has no jurisdiction to entertain all the grounds of appeal raised in this appeal but ground 7 as contained in the amended Notice of Appeal. In the premises, it is trite law that an appeal will be sustained by one competent ground of law contained in the Notice of Appeal.

The respondents have incorporated their preliminary objection against the said sixteen grounds and the arguments thereon in their respondents' brief of argument adopted at the oral hearing of the appeal. The appellant has responded to the preliminary objec-

tion in the appellant's reply brief of argument deemed so filed and served on 21/1/2013 and I will grapple with this question anon.

I must observe that based on a plethora of authorities, an appellate court will take a point of law raised by way of preliminary objection as a threshold question provided it will be decisive of the question of competency of the appeal. See: Foko v. Foko (1968) NMLR 441. And the court will rightly strike out any grounds of appeal that is ex facie bad or incompetent. See: Ogbonnaya Wosu v. Reuben Ugwuzor 7 ENLR 47.

That said, I now proceed to examine the case for and against the preliminary objection raised in this matter. The respondents' case on the preliminary objection is contained in their amended respondents' brief of argument deemed so properly filed and served on 2/5/2012 and is succinct and it is to the effect that all the grounds of appeal from one to seventeen excepting ground seven are grounds of mixed law and facts or facts, simpliciter. They contend that the said grounds have complained in the major of failure of the lower court to properly appraise, or evaluate or assess the evidence on the record leading to the only conclusion in dismissing of the plaintiff's claim the lower court having failed to do so. Relying on Ogbechie & Anor. v. Onochie & ors. (1986) 2 NWLR (Pt.23) 48 they have proffered that these grounds of appeal having raised questions of mixed law and facts or facts simpliciter for which no leave of court has been firstly sought and obtained as prescribed by Section 233(3) supra are incompetent and consequently, that this court has been robbed of the power to entertain any of them. They have singled out ground 8 of the pack to specifically argue that the alleged denial of fair hearing before the Disciplinary Committee of the Central Bank of Nigeria coupled with the failure of the court below to evaluate the evidence on the record, which in that regard the appellant has construed as amounting to a denial of fair hearing have stemmed from a total misconception of the purport and import of the principles of fair hearing as contemplated in Section 36(1) of the 1999 Constitution as amended albeit as interpreted as per the decision in the case of Bakare v. L.S.C.S.C. (1992) 8 NWLR (Pt.262) 64 and that these surmises will only properly arise where such denial of fair hearing has occurred before a court or tribunal established by law and not before an ordinary, Standing Disciplinary Committee of the central Bank of Nigeria

indeed for being an ad hoc committee in every respect, not being a court or tribunal established by law. They have conceded that only ground 7 is a competent ground of law complaining of denial of fair hearing by the trial court as affirmed by the lower court.

In the alternative, that is to say, without any prejudice to the foregoing argument, the respondents have raised two issues for determination in the appeal itself in the event of being overruled on the preliminary objection as follows:

Issue No.1

“Whether the Justices of the Court of Appeal were right that the appellant was not denied fair hearing by the approach of the learned trial Judge in formulating issues for determination without calling Counsel to address it.”

Issue No.2

“Whether the lower court was right in all the circumstances in dismissing the appeal filed by the appellant.”

The appellant on his part with regard to the preliminary objection has contended that each of the sixteen grounds of appeal has raised a different distinct and indeed a specific complaint predicated upon the lower court’s decision as against the respondents alleging that all the grounds speaking generally represent a failure to properly appraise or evaluate or assess the evidence on the record whether oral or documentary before the lower courts. He has opined that whether a ground is one of law or mixed law and facts or facts simpliciter is determined by the principle as laid down in *O. D. Briggs v. The Chief Lands Officer of Rivers State of Nigeria & 3 Ors.* (2005) AFWL (Pt.268) 1626 at 1641 D-F. - that is it is relevant to construe the substantive ground with its particulars of error as alleged. Applying the said principle to the instant grounds the appellant having categorized the instant grounds of appeal under three subheads has argued that ground one has complained of the judgment of the lower court as perverse being *“patently erroneous, against the weight of evidence and unsupportable by the submissions”* and has relied on *Udengwu v. Uzuegbu & Ors.* (2003) 110 L.R.C.N. 1702 for so submitting. And that the particulars in respect of ground one have done no more than describe, emphasise or amplify the nature of the sole complaint raised in the said ground one. He has strangely enough in a moment of truth opined that this is the gist of the appellant’s complaints in all

the other grounds being questioned in the appeal.

On grounds 2, 3, 5 and 9 the appellant has argued that the trial court has *“failed to apply the facts correctly to the circumstances of the case”* which have led the court to place wrongly the burden of proof on the appellant, and again, which definitely have otherwise misguided the court to a finding that the appellant has not proved his case that is to say as regards the burden of proof and the standard of proof the law have placed on him; he refers to Board of Customs & Excise v. Ibrahim Barau (1982) 10 SC 48 at 137, and Ogbechie & Anor. v. Onochie (supra). The appellant has charged the trial court as affirmed by the lower court of failing in its primary duty for not scrutinizing the consequences of these grounds as regards the contentious question of whether the 2nd respondent, a co-employee has properly acted in this case on behalf of the 1st respondent as its alter ego or as a busybody operating under a selfish agenda to oust the appellant from his lawful employment; in support references have been made to Ebe Uka v. Chief Kalu Irolo (2002) 7 SC (Pt.11) 77 at 103 and Ibenye v. Agwu (1998) 11 NWLR (Pt.574) 372 at 392.

On grounds 4, 6, 7, 11, 12, 13, 14, 15 and 17, it is argued that grounds 4, 6, 11 and 12 particularly have complained that the court below has failed to apply the law to the facts as averred in the pleadings and on the evidence and again on the trial court having failed to do so; and thus has failed to advert to the requirement in this regard as per the provisions of order 12 Rule 3 - Federal High court Civil Procedure Rules 2000 and Section 137 of the Evidence Act. It is alleged that there is no credible evidence that the 2nd respondent, a co-employee, has been clothed with the necessary authority to carry out all the actions complained herein against him as encompassed in grounds 6, 9, 11, 12, 13, 14 and 15; in the result that the appellant has charged the court below of having abandoned the real issues as complained in these grounds to engage as alleged in ground 6 on extraneous matters as regards questions of Master/Servant relationship between the appellant and the 1st respondent. On this submission, one wonders whether the appellant has a firm grip of his case as per his pleadings and evidence before the trial court. He has complained of a failure of duty to appreciate a fact or resolve a point or of shying away from the case as a complaint of law in that the 2nd respondent has no power to query him, to constituting of

disciplinary committee, as well as his arraignment, suspension to dismissal which postulations he has submitted have been regrettably misconceived by the respondents in challenging these grounds by the instant preliminary objection. And that on the backdrops of the core complaints clearly registered in grounds 4, 6, 7, 11, 12, 13, 14, 15 and 17 that they are all grounds of law and sustainable of the amended Notice of Appeal. B

On ground 5, 9 and 10: It is argued that within the meaning of Section 36(1) of the 1999 Constitution that the Standing Committee of the Central Bank of Nigeria before which organ, the appellant ought to have rightfully been arraigned that is to say, in an appropriate case is a Tribunal established by law; and has relied for so contending on *Garba v. Unimaid* (1986) 2 SC 128 at 186 and to the effect that the proposition has been settled by the finding therein and I quote that: C

“When the Vice chancellor assumed the disciplinary powers under S.17 of the Act, he became not a court but a tribunal established by law acting in a quasi-judicial capacity...” D

“But he was not independent and not impartial. When he delegated his disciplinary powers to the Disciplinary Board, the Disciplinary Board become a tribunal bound to observe all the Rules of natural justice. But the Board was not independent and some of the members not impartial...” E

Having reflected on the foregoing dicta the appellant has surmised that if he had been arraigned before the appropriate Standing Committee of the Central Bank and by the Bank itself for that matter as against the make believe committees as set out by the subterfuge of the 2nd respondent that his complaints as to their composition etc would have amounted to a straight case of alleging of denial of a fair hearing. Meaning that his complaints of denial of fair hearing in the circumstances before the instant Disciplinary committees put in place by the 2nd respondent in the disciplinary processes before which he has in fact been arraigned in this matter have arisen by default. He has charged the trial court of having missed this crucial aspect of his case to the effect that the 2nd respondent has at all times at the trial not accounted for himself of the authority for his actions in this matter in other words that he has not discharged the burden of proof put on him by section 137 of the Evidence Act arising from the pleadings F G H

and evidence on the record. I will come to deal with the question raised by this thrust of his case anon as it hinges on whether the 2nd respondent is a necessary party when he has acted for the 1st respondent under a false colour of office as alleged by the appellant in the process of dismissing the appellant in this matter. However, I must
 B vouch here that this misconception of the 2nd respondent's acting in place of the 1st respondent, a corporate entity, has pervaded the appellant's case in this appeal; thus he has so engrossed himself in pursuing this line of argument that he has glossed over the pertinent
 C law that the 1st respondent has to perform through its accredited officers as the 2nd respondent as one of the Directors in its services.

I now come to the said grounds of appeal in the storm's eye in the appeal - the bone of contention in this case. Before then I must observe that I will omit grounds 12 to 17 as they appear to have
 D been abandoned as no issues have been raised from each one of them and they serve no purpose in this appeal. Each of them should therefore be struck out. See: *Ojo v. Kamalu* (2005) 12 SC (Pt.11) 132, *Niger Construction Ltd. v. Okugbeni* (1987) 4 NWLR (Pt.67) 787. The said relevant grounds of appeal are set out in extenso as
 E follows:

“GROUND ONE:

*The entire judgment is perverse and erroneous in law in that the court below misunderstood and misapplied the law to the facts
 F admitted or not disputed.*

PARTICULARS OF PERVERSENESS

*i. The learned justices of the court below of the case in the pleadings and evidence as well as presumed other facts thereby erroneously placing a higher burden of proof on the appellant than is
 G required by the law.*

ii. The lower court erroneously presumed delegation of the disciplinary power of the 1st respondent to the 2nd against the hard facts on record thereby causing a miscarriage of justice.

*iii. The learned Justices of the court below assumed the role
 H of a trial court by purporting to evaluate the evidence and came to the following conclusions not born out by evidence on record namely:-*

i. “There is no grain of truth in the appellant's allegation that the Director of Personnel usurped the powers of the 1st respondent to issue the query to him and proceeded without lawful authority to

institute a special audit investigation panel”.

ii. *“The composition of the central Disciplinary Committee and the actions taken by the Director of personnel are in accordance with Exhibit “D” and every thing was properly done as prescribed in Exhibit “D”-*

GROUND TWO:

B

The learned Justices of the Court below erred in law by affirming all the findings of the trial court that the appellant failed to prove his case or discharge the burden placed on him to entitle him to judgment as well as that the appellant was given a fair hearing by 1st respondent.

PARTICULARS OF ERROR

i. *The learned Justice of the court below “agreed entirely with the summation of the entire case by the learned trial Judge and (held) that the judgment cannot be faulted” without proper consideration of the pleadings and evidence record.*

ii. *Affirmed the trial court’s finding that conditions laid down in the staff manual Exhibit “D” when the pleadings and evidence on record were that 1st respondent was not involved in the disciplinary process did not authorize the actions complained of.*

E

iii. *Over sighted the appellant’s evidence on record and drew wrong conclusions from respondents’ challenged exhibits.*

iv. *The findings of the court below undermine or failed to follow the law in Katto v. CBN (1991) 9 NWLR (Pt.214) as well as Haruna University of Agriculture Makurdi (2005) 3 NWLR (Pt.912) 233 on procedure for ensuring a fair hearing in administrative Tribunal proceedings.*

F

GROUND THREE:

The learned justices of the Court below erred in law by failing to hold that by the unchallenged oral and documentary evidence on record, the appellant proved his case but rather relied on the oral evidence of DW2 who was not called as witness for the 1st respondent and held variously thus:- “The evidence of DW.2 debunked the claim of the plaintiff that the 2nd defendant...” and “There is no grain of truth in the appellant’s allegation that the Director of personnel usurped the powers of the 1st respondent to issue the query to him and proceeded without lawful authority to institute a Special Audit Investigation Panel”.

H

PARTICULARS OF ERROR

1. *The learned Justices of the court below assumed the role of a trial judge whose primary duty it is to assess or evaluate evidence of parties and ascribe probative value.*

ii. *The lower court aptly noted that “The appellant accused the 2nd respondent of usurping the powers of the 1st respondent...” but simply affirmed the finding of the trial judge thus: The 1st defendant is a statutory body. That being so, it must necessarily function through its officers who are human beings” when there was no evidence on record to the effect.*

iii. *The appellant’s evidence on record that 2nd respondent usurped the powers of the 1st respondent and acted without due authorization was ignored by the lower court.*

iv. *The Lower Court also uncritically (sic) affirmed the conclusion of the trial court that “the acts of the 2nd defendant in the present case can therefore be attributed to the 1st defendant and that there is no evidence before me that all that the 2nd defendant did in these present case were done in his private capacity” when there was evidence on record that there was no delegation of power by the 1st respondent to the 2nd respondent.*

v. *The findings fail to show an appreciation of the pleadings as well as the appellant’s complaint in EXHIBIT “F”.*

GROUND FOUR:

The learned Justices of the Court of Appeal erred in law when they held that the 2nd defendant was properly struck out from the suit as an unnecessary party.

PARTICULARS OF ERROR

The learned Justices of the Court of Appeal unjustifiably failed to:-

(a) *Look at the pleadings and evidence before the court which overwhelmingly challenged the vires of the 2nd respondent in the whole disciplinary action challenged.*

(b) *Consider the matter on the rules of court on joinder of parties under Order 12 Rule 3 Federal High Court Rules 2000.*

(c) *Properly consider S.137 of the Evidence Act relating to burden and standard of proof.*

GROUND FIVE:

The learned Justices of the Court of Appeal erred in law by

holding that the 2nd respondent did not usurp the powers of the 1st respondent and that the plaintiff/appellant was given a fair hearing by the 1st respondent thereby affirming the trial court's decision on the point.

PARTICULARS OF ERROR

1. Against the evidence on record, the learned Justices of the Court of Appeal:

(a) Held that the appellant was given opportunity to exculpate himself but he failed to do so.

(b) Failed to appreciate the plaintiff/appellant's pleadings and evidence that the 2nd defendant who was his co-employee usurped the Powers of the first respondent and without lawful authorization disciplined him

(c) Wrongly held that the 2nd respondent acted on behalf of the 1st respondent when there was no evidence of authorization by D delegation of powers to him as well as approval of his actions including the recommendations in exhibits M, M1, M2 & M1-3 by the 1st respondent.

ii. The learned Justices of the Court of Appeal unjustifiably refused to consider the case of Katto v. CBN (1991) 9 NWLR (Pt.214) E submitted by Counsel on the manner of proof of authorization or delegation of powers by way of minutes of meetings and decisions of the 1st respondent.

iii. The learned Justices of the Court of Appeal placed undue construction on and drew wrong conclusions from the plaintiff/ F appellant's Exhibits 'M', 'M1', 'M2' and 'M-M3'.

iv. The learned Justices of the Court of Appeal unjustifiably failed to consider the authority of Haruna v. University of Agriculture, Makurdi (2005) 2 NWLR (Pt.912) 235 cited by counsel in oral elabo- G ration with respect to the issue of composition of the Disciplinary Panel vis-a-vis fair hearing.

GROUND SIX:

The learned Justices of the court below erred in law by failing to appreciate the appellant's case as in his pleadings first before af- H firming the judgment of the trial court that appellant failed to prove his case and that he was given a fair hearing by the 1st respondent.

PARTICULARS OF ERROR

i. The court confessed that it "cannot comprehend what the

plaintiff is complaining about apart from his allegation that the 2nd defendant has no power to query him after the Audit Investigation Panel indicted him” thereby undermining the pleadings before the court.

ii. The court below failed to appreciate the facts and hold that on the state of the law in S.137 of the Evidence Act, the appellant proved his case.

GROUND SEVEN:

The learned Justices of the Court of Appeal erred in law when they held that “the complaint of lack of fair hearing by the learned trial judge has not been made out” and that they “cannot see how the learned trial judge breached the principle of fair hearing by not calling upon counsel to address him on the two issues formulated” suo motu.

PARTICULARS OF ERROR

1. “The learned Justices of the Court below aptly observed:-

(a) That “the trial judge can formulate pertinent issues for determination provided they are related to the pleadings and evidence canvassed before the court” but failed to hold that the two issues formulated by the trial judge were not related to the pleadings and evidence before him.

ii. The conclusion of the court below failed to follow the dictum in Agbeje v. Ajibola (2002) 2 NWLR (Pt. 750) 127 that where issues formulated suo motu “raise any issue which the parties did not advert their minds to, then the court must invite the parties to address on such issues raised suo motu before reaching a decision”.

iii. The learned Justices of the court below failed to hold that the issue of whether the plaintiff discharged the burden of proof raised suo motu by the trial judge became the kernel of the case and as such must be guided by the law in Irom v. Okimba (1998) 56/57 LRCN 3077 that a court must invite the parties to address him when the issue raised suo motu becomes the kernel of the case.

GRUNDEIGHT:

The learned Justices of the Court of Appeal erred in law in finding that:-

“The complaint of the appellant on the composition of the Central Disciplinary Committee of any consequence”, and that “Although the Deputy Governor General Administration is the chair-

man of the central Disciplinary Committee, he has power to delegate his authority to the Director of Personnel to preside over meetings...

PARTICULAR OF ERROR

1. *The finding failed to advert to and consider the:-*

(a) *The demands of S.36(1) of the constitution as to incidence of independence and impartiality in deciding fair hearing of the Appellant.*

(b) *Decision in Haruna v. University of Agriculture, Makurdi (2005) 2 NWLR (Pt.912) 235 which was cited during oral expatiations on the brief in court.*

(c) *The uncontroverted oral evidence of the appellant that he appeared before selected committees of 2nd defendant against the detail of Exhibit "D" on disciplinary procedure of 1st respondent.*

II. *There was no pleading or evidence on record on why the Central Disciplinary Committee that tried Appellant was not the Standing Committee but one Selected by the 2nd Defendant.*

III. *The learned Justices of the Court of Appeal speculated and conjectured on why the Deputy Governor (General Administration) as Chairman was not on the panel and whether his power was delegated to the 2nd Defendant.*

IV. *There was no evidence on record of actual delegation of the 1st Respondent's power to the 2nd Defendant.*

GROUND NINE:

The learned Justices of the Court of Appeal erred in law when they held severally that:-

(a) *"It is clear that it was the central Disciplinary Committee that investigated the allegations made against the Appellant and the number required to form a quorum was complete".*

(b) *The constitution of that committee cannot be impugned in anyway because their composition was in accordance with chapter 6 Clause 10 of Exhibit "D".*

(c) *The composition of the Central Disciplinary committee and the actions taken by the Director of Personnel are in accordance with Exhibit D and everything was properly done as prescribed by Exhibit "D".*

PARTICULARS OF ERROR

1. *The learned justices of the Court of Appeal failed to:-*

(a) *advert to the pleadings and consider the Appellant's evi-*

dence on record that he “appeared before a selected Disciplinary committee not the Standing Disciplinary committee”.

(b) relate chapter 6 clause 10 of Exhibit “D” to the facts and evidence on record.

(c) Consider the submissions and judicial authorities advanced on the point of quorum and approval of actions of a delegate vis-a-vis fair hearing of the Appellant.

GROUND TEN

The learned justices of the court below erred in law when they held that “by the tone of Exhibit “F” the Appellant had no iota of doubt that the query (Exhibit “E”) which was issued to him had the stamp and authority of the 1st Defendant. Similarly the letter of suspension (Exhibit “G”) the invitation to appear before the Central Disciplinary Committee (Exhibit “L1”) the one summoning him to appear before the inter-Departmental Committee (Exhibit “J”) emanated from the 1st Defendant/Respondent”.

PARTICULARS OF ERROR

i. The pleadings and evidence on record (oral and documentary) before the court particularly the evidence of DW1 is that “Exhibit “E” was issued from the personnel Department which office has the responsibility of handling staff matters.

ii. The finding failed to look at the manner Exhibit “E”, “G”, “L1”, “L” and “J” were signed and follow the judicial authorities on the point.

iii. The learned trial judge took evidence did not make the finding but merely stated that “the acts of the 2nd Defendant can be attributed to the 1st Defendant” which finding the learned justices affirmed.

iv. The learned justices of the Court of Appeal:

(a) failed to hold that the 2nd Defendant has no power in the disciplinary process save only to communicate disciplinary measures taken by the 1st Defendant against staff.

(b) Noted that the Appellant “described the actions taken by the 2nd Defendant as unauthorized and done without lawful authority” but failed to decide the point on the evidence on record.

GROUND ELEVEN:

The learned Justices of the Court of Appeal erred in law by holding that “it was therefore an after thought for the Appellant to

allege in paragraph 15 of the Amended statement of claim that the 2nd Defendant has removed or caused to be removed all available documents he would have used for his defence. "The Appellant turned tacitum to accuse the 2nd Defendant of removing the document". "A clear case of grave misconduct was established against the appellant and instead of bracing up against the situation, he turned round to accuse the 2nd Defendant as the architect of his misfortune".

PARTICULARS OF ERROR

i. The findings did not arise from the pleadings neither from the findings of the trial court.

ii. The court below failed to evaluate the evidence but read exhibit 'F' in isolation and drew wrong conclusions about the LPOs.

iii. It is clear that it was the Central Disciplinary Committee that investigated the allegations made against the Appellant and the number required to form a quorum was complete.

iv. The constitution of that committees cannot be impugned in anyway because their composition was in accordance with chapter 6 clause 10 of Exhibit "D".

v. Since he denied that the signatures on the LPOs were his own, he had a duty to produce the originals.

vi. Failed to consider the totality of the Exhibit 'F' and the oral evidence of the Appellant on his general complaint."

If I may come again, I have deliberately set out the eleven grounds of appeal raised against the judgment of the Court of Appeal in the appeal for what they are worth particularly in a case of this nature based on the objection taken against each one of them. They each of them, speak for themselves. No doubt they are prolix and proliferated and one cannot help raising the question of tautology against the manner of couching them.

In so many respects these shortcomings have been the bane of the appellant's case at the trial court and in the appeals and so much so as portraying a confused state of affairs of what his case has been as pleaded and as found by the lower courts as per the pleadings on which issues have been joined as the appellant shunts his case from pillar to post, thus making nonsense of the principle of pleadings and accepted evidence which are the means of crystallizing the issues in a matter between the parties in civil matters. See: Okolo v. Union

Bank (2004) 1 SC (pt. 1) 1 which case has made the point that litigation must follow some restrictive order and not opened to save the time of the court as well as the litigants themselves. It is in this respect that I approve and adopt the crucial finding of the court below as expressed poignantly to the effect that appellant has totally misconceived his case.

The appellant has complained of not having been arraigned before appropriate Standing Committees of the Central Bank of Nigeria by the bank i.e. 1st respondent but before ad hoc committees that have been constituted by a bizarre procedure contrived by the 2nd respondent against which the appellant has complained as a clear usurpation and abuse of power of the 1st respondent and should never have been held as “proper” by the two lower courts. The appellant has put the respondents to the burden of failing to identify one by one how the said sixteen grounds attacked in these respects are of mixed law and facts or facts simpliciter and that in consequence of failing to do so as the onus is by law placed on the respondents, would without more, he has urged, result in overruling the preliminary objection and upholding the said grounds as competent grounds in law. See: *Briggs v. Chief Land Officer* (supra) & *Ogbechie v. Onochie* (supra).

The foregoing submission if I may interject here has showed a fundamental flaw of misconception of the appellant’s case in this appeal. The onus is clearly on him to show that the said grounds are of law in order to ignite the jurisdiction of this court. See Section 233(3) (supra).

Finally, the court is urged to dismiss the objection with costs as lacking in merit and to hear the appeal on the merits. The appellant by a strange twist in his submission has urged in the alternative that the court should stay proceedings and give directives as will best meet the justice of the case where it is found that all or any of these grounds are of fact or mixed law and fact and has to that effect urged the court to seriously consider following the approach in *Lawson Jackson v. Shell Petroleum Development Co. Ltd.* (2002) 7 SC (Pt.11) 112 at 120 - 121 as supported by Order 10 Rule 1(1) of the Rules of the Court. And that this has to be so in view of the fact that an appeal with leave is a matter that comes within order 6 Rule 2(1) of the Rules of Court.

From the forgoing temporary aberrations, there can be doubt that the appellant with respect having departed from concentrating on the nature of his case and the applicable law has gone too casual over the serious discussion of the competency of his grounds of appeal vis-a-vis the provisions of Section 233(3) (supra) and has totally derailed in submitting that the law governing leave to appeal is a matter under Order 6 Rule 2(1). I think that the appellant in the exercise of rambling about in presenting his case in the appeal has thus committed unpardonable error in law in so submitting. I can find no connection between the purport of the provisions of order 6 Rule 2nd of the Rules of this court and questions raised as to the competency of the said sixteen grounds under Section 233(3) (supra).

The instant objection as canvassed by the parties herein (in their respective briefs of argument and oral submissions before this court) strikes at the heart of this appeal. It simply means that where the objection is sustained it will leave only ground 7 in the Amended Notice of Appeal as the only competent ground in law to sustain the appeal as the rest of the grounds as urged by the respondents being ex facie bad and incompetent in law have to be struck out as well as the issues for determination erected thereupon. Although it is trite that a single ground of law is sufficient to sustain a Notice of Appeal in an appeal. Also, see: Niger Construction Ltd. v. Okugbeni (1987) 2 NSCC (vol.18) 1258 per Nnaemeka Agu JSC.

I think that in the sense of the instant preliminary objection it is vital and appropriate in this regard to set out the seventeen grounds of appeal as I have done above with their prolix particulars of errors in law, even then for ease of reference and more so as the substantive ground of every ground of appeal has to be read and considered conjointly with their respective particulars of error to ascertain the real issue or complaint as encompassed in the said ground.

In this regard the court is not to place undue reliance or emphasis on the form or in the manner the ground is couched as the gravamen or form of a ground of appeal for purposes of determining whether a ground is a ground of law or mixed law and facts or facts alone goes beyond the mere words used in couching or preferring the ground to the more serious ques-

tion of identifying the real issue or the core of the complaint as encompassed in the ground. Clearly it is the real issue or complaint centrally encompassed in a ground on the backdrop of its particulars that decides whether the ground is one of law or not. Where, in short, the ground raises a complaint on an issue of law based upon accepted or admitted facts it is a ground of law requiring no leave of court but where the complaint or real issue is founded on disputed or unascertained facts then it is a ground of mixed law and fact requiring leave of court. See Section 233(3) (*supra*), and *N.N.S. Co. Ltd. vs. Establishment Sima of Vaduz* (1990) 7 NWLR (Pt.164) 526.

The process of determining the substantive complaint of a ground as in this appeal has been accentuated by the fact, as can be seen from established authorities that the distinction between a ground of law and mixed law and fact may at times be so blurred or thin and so, difficult to ascertain with relative application of the established guiding principles as per settled authorities on the question. It is a matter that goes beyond a ground of appeal being simply labeled without more as a ground of law by the appellant. A hard scrutiny of the case as per *Ehinlanwo v. Oke & Ors. (2008) 6-7 SC (Pt.1) 123* has established that a ground of law arises where the court has misunderstood the law or has misapplied the law to the proved and admitted facts.

Against the backdrop of the foregoing guidelines, I now go on to examine the outstanding eleven grounds of appeal in this matter and in that regard I adopt the three categorization of these grounds of appeal as in the manner the appellant has attempted to tackle them in his brief of argument that is to say as I have adumbrated above:

(A) Ground 1. The complaint in this regard is that the judgment of the court below amongst other reasons is being perverse necessarily will involve examining facts and evidence ignored by the court or that the court has taken into account irrelevant matters and has based its decision thereon or has misconceived the thrust of the case of the appellant and as borne out by the particulars of the ground. In the instant ground the particulars have clearly raised the question of improper appraisal or evaluation or assessment of the facts in the

pleadings and evidence. See: *Udengwu v. Uzuegbu & Ors.* (2003) 110 L.R.C.N. 1702. Having thus raised an issue of mixed law and fact it is therefore incompetent for not having firstly sought and obtained leave of court. See section 233(3) of the 1999 Constitution as amended, and *Nwadike & ors. v. Ibekwe & Ors.* (1987) 11 - 12 SCNJ 72 at 98 - 99; (1987) 4 NWLR 718. B

(B) As regards Grounds 4, 6, 11, 12, 13, 14, 15 and 17 lumped together and argued by appellant to which with respect I add grounds 5 and 16 apparently for no reason left out of this class. There is a thread of complaint traversing all these grounds as alleged C by the appellant and they, each of them, have again showed on the aggregate a failure to apply the law to the unproved and unascertained facts in the pleadings and evidence on the record vis-a-vis order 12 Rule 3 of the Federal High Court Civil Procedure Rules 2000 and section 137 of the Evidence Act. These grounds have un- D equivocally raised questions of appraisal or evaluation of the facts and evidence before the trial court as affirmed by the court below. There can be no doubt therefore, that the single complaint running through these grounds has raised a question of mixed law and fact and so these grounds have required leave of court to be competent. E In other words, these grounds are incompetent for want of leave of court as prescribed by section 233(3) (supra). See: *Arowolo v. Ademula* (1991) 8 NWLR (Pt.212) 753 at 764 and *Nwadike v. Ibekwe & Ors.* (supra). F

(C) Grounds 8, 9 and 10: simply put the appellant has raised F these grounds alleging that by not having been arraigned before the appropriate central Disciplinary Committees of the Bank by the Bank itself (i.e. the respondent) but before illegal Committees (not the appropriate Standing Disciplinary committees) of any consequence set G up by the machinations of the 2nd respondent in his pursuit to force out the appellant from his employment, the appellant has been denied a fair hearing by default and that the court below has even gone ahead to make the case for the 2nd respondent to justify the same and so that Exhibits E, F, G, L, L1, & J not having come from proper H authority the case built thereupon on the facts both oral and documentary has not been decided on the proper evidence before the court. The court is urged to scrutinise the facts and evidence all over again.

He relies on *Garba v. Unimaid* (supra) a case he has misconstrued, with respect, as applying to the facts of this case. It is my view that he has thus raised questions of facts requiring appraisal and evaluation on the record before the court below to find out whether there has been in fact such a denial and so, the grounds do not contravene Section 36(1) of the 1999 Constitution in relation to the appellant; consequently making it incumbent on the appellant to seek leave of court under Section 233(3) (supra). Besides Section 36(1) (supra) arises where the denial of fair hearing has been charged against a court or tribunal established by law and not before domestic or standing/ad hoc tribunals raised departmentally by the parties as the 1st respondent here. See: *Bakare v. LSCSC* (1992) 8 NWLR (Pt.262) 641 per Nnaemeka Agu JSC. The question here therefore cannot be whether the said section has been contravened with regard to the appellant as there is no basis for so conjuring and so, as there is no basis for raising the same as the grounds cannot be raised as of right being of mixed law and fact requiring leave of court under section 233(3) (supra). In sum these grounds have deviated from the issues on the pleadings and evidence on the record and cannot therefore be allowed to stand as grounds of law appealable as of right.

Having struck out all the grounds of appeal but ground 7, it is trite law that the issues for determination ten of them excepting issue No.7 raised in the instant appeal are for not having any legal basis on which to stand incompetent and are hereby struck out. In that regard, specifically issues 1, 2, 3, 4, 5, 6, 8, 9, 10 and 11 raised in the appellant's brief of argument having become otiose are hereby struck out and so also all the arguments proffered as based on these issues, they also are hereby struck out being incompetent. See: *Nonye v. Anyichie* (2000) NWLR (Pt.39) 66 at 75, *Attorney General Bendel State v. Aideyan* (1989) 4 NWLR (Pt.118) 646, *Adelaja v. Fanoiki* (1998) 2 NWLR (Pt.131) 137, *Ugo v. Obiekwe & Anor.* (1989) 1 NWLR (Pt.99) 36.

I am now left with issue seven to examine in this appeal. Before then let me observe that in fact the appellant has raised no issues for determination from grounds twelve to seventeen inclusive and the consequence in law is settled. He has acted completely by inadvertence in regard to them. They are therefore, in the circumstances, deemed to have been abandoned and for the avoidance of

doubt each of them is hereby struck out. See: Niger Construction Ltd. v. Okugbeni (supra).

The remaining ground is Ground 7 and the issue raised therefrom is as follows:

“Whether the learned Justices of the court below were right on the facts of the case when they held that ‘the complaint of lack of fair hearing by the trial Judge has not been made out and/or that the learned trial judge did not breach the principle of fair hearing in not calling upon counsel to address him on the two issues formulated suo motu’. This issue relates to ground 7 of the ground of appeal.”

The appellant in his brief has in regard to this issue challenged the propriety of the trial court in formulating this issue suo motu and deciding it without inviting addresses from the parties to this appeal particularly the appellant and it has been strenuously contended that the appellant’s right to a fair hearing has been seriously compromised/violated thus vitiating the entire trial.

In the main, the appellant’s case in this respect has made a heavy weather of the fact that not having been invited by the trial court as affirmed by the court below in formulating of the two issues raised suo motu by it and decided them has denied him of the opportunity of expatiating on any areas of his case with respect to the burden of proof and the standard of proof as alleged have been placed on him on the pleadings and by section 136 of the Evidence Act. The appellant is particularly irked that having placed sufficient materials to show who has power to discipline him and who actually has wrongfully disciplined him in the circumstances both on the pleadings and evidence, oral as well as documentary on this question that yet the trial court as affirmed by the court below has wrongly found that he has not discharged the burden of proof arising from the state of the pleadings nor has his case attained the standard of proof on the overall evidence before the court to sustain the same. The court is urged to uphold the appellant’s contention and nullify the trial.

The respondents have relied on Ebo v. NTA (1996) 4 NWLR (Pt.442) 314 to urge that any court can formulate issues suo motu where the issue formulated by the parties would not advance the interest of justice and that it must be consistent with the grounds of appeal filed since the essence of formulating issue is to bring out the substance of the complaint in a ground of appeal. See: Otuo v.

Nteoguilu (1996) 4 NWLR (Pt.440) 56, Incar (Nigeria) Plc. v. Bolex Enterprises Ltd. (1996) 6 NWLR (Pt.454) 318.

B Further, the respondents have submitted that there is no breach of fair hearing in not calling on the appellant to address it on the two issues so formulated as in that regard the trial court has simply condensed/summarized the issues formulated by both parties to two substantive issues which to all appearances are consistent with the grounds of appeal raised by the appellant. And that as no new issue has been raised the circumstances have made it unnecessary to invite the parties to address the court on the process and it is contended that the exercise does not amount to a denial of fair hearing as what the trial court has done amounts if I may repeat to simply summarizing the issues raised by the parties based on the pleadings and the evidence before it. The court is urged to discountenance the D complaint as per ground 7 as frivolous.

E There can be no doubt from the foregoing resume that “fair hearing” has become the whipping principle for counsel trying to catch at a straw to sustain a modicum of standing in a hopeless case where the case is already dead as a dodo. This approach of counsel in general is deprecated. Fair hearing should for what it is and represents in our adjudicative process before the courts be invoked with every sense of seriousness and in appropriate settings. It is not the case in the instant appeal.

F It is noteworthy that this issue as encapsulated herein has been satisfactorily exhausted by the lower court in its decision on the same question, which I uphold in toto. To raise the same issue predicated on a much weaker and stale arguments in this court is highly deprecated particularly as the finding in this respect by the court below is not perverse but founded on accepted and admitted facts and evidence on the record. The judgment cannot be faulted. Judicial opinions on the question of formulation of issues for determination by courts have been revealed in a plethora of decisions of this court wherefore some have approved the practice as against a group that H has disproved the practice, which include such cases as Nwokoro & Ors. v. Onuma & Anor. (1990) 3 NWLR (Pt.136) 22; Adeniran & Anor. v. Interland v. Transport Ltd. (1991) 9 NWLR (Pt.214); Anie & Ors. v. Chief Uzorka & Ors. (1993) 8 NWLR (pt.309) 1; Onwo v. Oko & Ors. (1996) 6 NWLR (Pt.456) 584; Ogundayin v. Adeyemi

(2001) 13 NWLR (Pt.730) 403 and Agbaje v. Ajibola (2002) 2 NWLR (Pt.750) 127. On the other side of the cleavage of judicial opinions in approval of the practice are such cases as Labiyi v. Anretiola (1992) 8 NWLR (Pt.258) 139, Ogunbiyi v. Ishola (1996) 6 NWLR (Pt.452) 12, Erhahon v. Erhahon (1997) 6 NWLR (pt.510) 667 and NEPA v. Isieveore (1997) 7 NWLR (Pt.511) 135. B

It is my view that the power of courts to formulate issues for determination at whatever level in the hierarchy of the courts although particularly so in appellate courts (where brief writing is a matter of the Rules of the court) inheres in the court in the interest of justice to enable courts to perform their adjudicative functions in our jurisprudence. Hence there are no rules of court prohibiting courts from doing so. I think that this discretion imbued with the interest of justice as its focus and premise has to be guided by the facts of each case and this has been the case with regard to the cases cited above. C D

Courts should not make it a point of practice to formulate issues for the parties suo motu and deciding them without calling on both parties to address it in the process as it negates one of the cardinal principles of hearing the parties and providing a level playing ground in a trial of their matter before condemning either of them. Formulating issues by courts should be subjected to the rider of calling upon the parties to address it in such instances before judgment. By this process a modicum of opportunity as it were, is afforded the parties on the question; this accords with a reasonable man's sense of having justice seen to be done. This is because courts should not be seen to jump pre-emptorily into the arena of contest however tempting the cause as courts have to avoid being muddled in the process of adjudication of cases before them and thus lose their centrality of impartiality as neutral umpires in our adjudicative system. To hold otherwise will undoubtedly unduly shackle the discretion of courts in the adjudicative process as this will not be grounded on any relevant rules of court or substantive law as such. I can find nothing offensive in such exercises. I uphold the intervention in this instant case upon its peculiar facts in the interest of justice. And it is my view that no denial of fair hearing amounting E F G H

to a miscarriage of justice has thus been occasioned to the appellant.

In the instant case the trial court as rightly found by the court below has merely condensed/summarised the issues as formulated by the parties to the two issues raised suo motu and has proceeded
 B to decide them. One notable point as regards the said issues so formulated is that they are consistent with the grounds of appeal filed by the appellant in the appeal. These issues have unquestionably arisen from the said grounds and have clearly crystallized the substance of
 C the complaint as contemplated in the grounds, the pleadings and evidence before the trial court and on the record before the lower court and have been necessitated in the interest of justice. In short, the trial court has simply condensed/summarized the issues raised by the parties in their cases.

D Therefore, I do not see any leg on which to stand to upturn the lower court's decision on this point particularly so, if I may repeat when it has not occasioned a miscarriage of justice. I have made these points to support the opinion that courts have the power to
 E formulate issues for the parties in appropriate cases when the justice of the cases as in this case so demands. It is a power to be sparingly exercised with extreme caution.

In *Labiya v. Anretiola* (supra) this court has held per Karibi-Whyte JSC that:

F *"The court below was free either to adopt the issues so formulated by learned counsel or to formulate such issues that are consistent with the grounds of appeal filed by the Appellant. It is in the observance of this principle in pursuit of the proper administration of justice that the court below considered an appropriate formulation of*
 G *the issues consistent with the grounds of appeal filed when it was observed that although the grounds of appeal were inelegantly drafted, the complaints therein were clear and not misleading".*

I am in unison with the reasoning in the above abstract in the judgment of my noble Lord and rely on it to hold in support of my
 H reasoning herein that the appellant on the whole in the instant appeal has failed to nail the denial of fair hearing on the head in regard to his contention of the negation of his rights to a fair hearing in this matter leading to denying him justice in the matter and thus render the trial a nullity.

Finally on this question I agree with the court below that notwithstanding having formulated the two issues suo motu and deciding them that the appellant's claim all the same, has not been dismissed after striking out the 2nd respondent from the suit as the trial court has gone on to consider whether or not the appellant has discharged the burden of proof to entitle him to his claim and thereby nullify his dismissal on the ground that the 2nd defendant has not been clothed with the power to act on behalf of the 1st respondent (as its alter ego) in the processes taken in his dismissal and so to arrive at the inevitable conclusion that his dismissal from the employ of the 1st respondent is otherwise wrongful. I resolve this issue against the appellant.

And being the only issue in the appeal I would have at this stage dismissed the appeal but there is other considerations in the matter. In the result the findings of the lower court as contained in its judgment are approved and the judgment is hereby affirmed by this court.

The truth of this matter as between the appellant and the 1st respondent is that their employment relationship has subsisted at all material times as a relationship of master/servant created as per by Exhibit 'A' i.e. the contract of employment into which has been incorporated the provisions of exhibit 'D' - again, that is the staff manual of the Central Bank of Nigeria which contains the collective agreements as incorporated into the individual contracts of employment of the 1st respondent's employees. This is so based on the facts and evidence before the court. Both documents constitute the basis for determining the contractual relationship and the conditions of the appellant's employment with the 1st respondent here. It is common ground and as rightly found by the two lower courts that the nature of the appellant's employment does not savour of statutory flavour. In other words, it is entirely founded on Common Law. The necessary implication arising from the parties' contractual relationship in this matter if I may emphasise is one founded on the common Law and like all general contracts is determinable by either side as provided in the documents exhibits 'A' and 'D' for breaches of any fundamental conditions as stipulated therein.

One basic principle of master and servant relationship is that an employer can summarily dismiss/terminate the em-

ployment of his servant for gross misconduct. In the instant matter the 1st respondent reserves that power vis-a-vis the appellant as provided as per clause 6(4) and (5) of Exhibit 'D'. Following the query Exhibit 'E' issued to the appellant on an allegation of fraud which has arisen from failing to maintain proper account records of the distribution of diesel to other locations of the 1st respondents' points of business activities and has resulted in a heavy financial loss by which the 1st respondent has incurred huge financial deficits. The appellant has answered the query as per Exhibit 'F'. He has in consequence of his answers appeared before the Central Disciplinary Committee by which it has been established in effect of the appellant having been given an opportunity to exculpate himself from the allegations of fraud. The appellant as I have also found has not been denied a fair hearing in the process of his dismissal upon the charge of gross misconduct leveled against him.

I must observe that having dismissed all the grounds of appeal herein the court is obliged to reach these conclusions based on the findings and conclusions of the two lower courts which now stand before this court unchallenged. In other words, he has rightly been dismissed as per Exhibit 'G'. The appellant's case of wrongful dismissal has no leg on which to stand to contest it. Having in this judgment discountenanced the denial of fair hearing in all its concomitants as raised by the appellant herein. Thus this matter falls to be considered on whether as per the Exhibits and evidence on the record as accepted by the lower courts the appellant has been properly dismissed from his employment upon his gross misconduct. My answer is in the affirmative.

Where his dismissal is founded on the allegation of gross misconduct the appellant is not entitled to any notice or salary in lieu of notice as clearly provided in Exhibits 'A' and 'D'. And it would be wrong in law to make any awards to him in these regards.

It is trite that an employer as the 1st respondent here is obliged to follow the right procedure in summarily dismissing his employee, in this case the appellant. The question then is whether his employment on a charge of gross misconduct

has been determined as provided in exhibits 'A' and 'D' in this matter, which have laid down the procedure to be followed in doing so. By giving the appellant a query as per Exhibit 'E' and followed by the appellant's answer exhibit 'F' and the convening of various Disciplinary committees to look into the answer as per exhibit 'F' vis-a-vis the allegation of fraud, speak for themselves of having abided with the procedure laid down by exhibit 'D' for dismissing an employee. The appellant cannot be heard to complain as he has gotten all he is entitled to under a master/servant relationship at common law.

Once exhibit 'G' has been served on the appellant dismissing the appellant on grounds of gross misconduct he stands effectively dismissed as per the said exhibit and whether or not the dismissal is wrongful to entitle him to damages is the question for this court to resolve in this matter as reinstating him is out of the question. The position is that the two lower courts have not been persuaded that the dismissal of the appellant is wrongful and they are right. There is therefore a concurrent finding on the question.

The appellant has challenged the dismissal as being wrongful; this cannot be so on the peculiar facts of this case; it is clearly found that the appellant has grossly misconducted himself and has gotten what his gross misconduct deserves that is a summary dismissal. His dismissal even though without notice or any payment of salary in lieu of notice is not wrongful and cannot therefore in the circumstances constitute a breach of the conditions of his contract of employment.

In this respect, I agree and uphold the decisions of the two lower courts that there is no merit in the appellant's claim and that it should be dismissed. I hereby dismiss this appeal as most unmeritorious. Having taken into account all the surrounding circumstances in this matter I make no order as to costs. Parties to bear their respective costs. Appeal dismissed.

H

MUHAMMAD JSC

I have read before now, the judgment of my learned brother Chukwuma-Eneh, JSC. I am in agreement with his reasoning and

conclusion which I adopt as mine. The Preliminary objection succeeds. The appeal is hereby struck out. I abide by all consequential orders made in the lead judgment.

B

GALADIMA JSC

I have been obliged with a copy of the draft Judgment of my learned brother CHUKWUMA-ENEH, J.S.C. just delivered. He is thorough in exposing the relevant facts of this case. He has equally dealt with the main issue leading to his reasoning and conclusion dismissing the appeal for being unmeritorious. I concur.

However I have a word or two on the preliminary objection raised by the Respondents as to the competence of the Appeal. This being a threshold issue it ought to be dealt with first. On 21/12/2011, the Respondents filed Notice of Preliminary Objection to the hearing of this appeal praying the court to strike out grounds Nos. 1, 2, 3, 4, 5, 6, 8, 9, 10, and 11 as well as issues formulated thereon, as being incompetent. It is contended that these grounds are of mixed law and facts or facts simpliciter for which no leave has been obtained, as required by S. 233(3) of the Constitution of the Federal Republic of Nigeria, 1999, (as amended). Before now I have noted that no grounds have been distilled from 12 to 17 of the grounds of Appeal. They serve no purpose in this appeal and are accordingly struck out. In the lead Judgment, my learned brother in this appeal has set out Grounds 1 - 11 of the Appellant's Grounds of Appeal with their particulars. I have carefully read through them. With exception of Ground 7 all other grounds without any doubt are grounds of mixed law and facts or facts simplicity. These grounds all complain essentially about failure of all the Justices of the Court of Appeal to properly appraise or evaluate or assess the evidence on the record leading them to arrive at the wrong conclusion.

On the authority of *OGBECHIE & ANOR. v. ONOCHIE & ORS* (1986) 2 NWLR (Pt.23) 484, where the grounds of appeal are of mixed law and facts or facts simpliciter, for which no leave of either the Court of Appeal or the Supreme Court has been obtained, are incompetent and the Supreme Court has no jurisdiction to entertain same. The Appellant has contended that Ground 8 comes within S. 233(2) of the said Constitution, that is, this being ground complain-

ing that there was error of law. The complaint in the said Ground of Appeal is not about the denial of fair hearing by the trial court but about the denial of fair hearing before the Disciplinary Committee of the 1st Respondent (Central Bank of Nigeria) and the failure of the court to properly evaluate the evidence on the record to find as a fact that there was such a denial. It is thus a complaint about a decision touching on the contravention of S. 36(1) of the 1999 Constitution (supra). B

Ground 8 has not arisen from a decision of the court below as to whether any of the provisions of Cap. (iv) of the Constitution has been breached or contravened, same cannot be brought as of right. Ground 8 being of mixed law and facts or facts simpliciter does not fall under Cap. (iv) of the Constitution. At best it is mixed law and fact for which leave is required. C

Parties are ad-idem that Ground 7 of the ground of appeal which complains about the decision of the Court of appeal in respect of the complaint of a denial of fair hearing is a ground of law. Even on this, there is a concurrent finding of fact of the two lower courts to the effect that Appellant's claim is devoid of merit. D

This Court, as a practice will refuse to interfere with such concurrent findings of the two courts, unless, the Appellant shows that the findings are perverse. Since the Appellant did not demonstrate that the findings of the two lower courts are perverse, he cannot succeed. E

For this little contribution and for detailed and fuller reasoning in the lead Judgment, I too, have to strike out all the grounds of appeal and the issues formulated from them. Appeal on ground 7 is lacking in merit, it is dismissed. F

G

NGWUTA JSC

I had the privilege of reading in draft the lead judgment just delivered by My Lord, Chukwuma-Eneh, JSC.

I agree that Grounds 1, 2, 3, 4, 5, 6, 8, 9, 10 and 11 of the appellant's grounds of appeal are grounds of either mixed law and facts or facts. Section 233 of the Constitution of the Federation 1999 (as amended) provides: H

"Section 233 (2)

An appeal shall lie from decisions of the Court of Appeal to the Supreme Court as of right in the following cases:

(a) Where the ground of appeal involves question of law alone, decisions in any civil or criminal proceedings before the Court of Appeal;

B *(b) decisions in any civil or criminal proceedings on questions as to the interpretation or application of this Constitution;*

(c)... (d)... (e)... and (f)..."

Section 233 (3) provides:

C *"Subject to the provisions of subsection (2) of this Section, an appeal shall lie from the decisions of the Court of Appeal to the Supreme Court with the leave of the Court of Appeal or the Supreme Court."*

D None of the appellant's grounds of appeal on grounds other than law alone falls within the intendment of Section 233 (2) (a)-(f) of the Constitution. The said grounds filed without leave of the Court of Appeal or the Supreme Court first sought and obtained are invalid and the Court has no jurisdiction to hear and determine the appeal on the said grounds. See *Nwaolisha v. Nwabufor* (2011) All FWLR
E (pt.591) 1438.

F It is immaterial that Section 233 (3) of the Constitution does not provide a sanction for its violation. A ground of appeal which is incompetent for any reason is liable to be struck out. A right of appeal or any other right granted by law cannot be exercised without compliance with the law granting the right, or any other law or rule regulating the exercise of the right. Appellant's eleven grounds of appeal (with the exception of ground 7) and the issues distilled from them are incompetent and are hereby struck out. Among the diverse
G curious submissions made by the learned Counsel for the appellant, this one stands out:

"... the Court, through its Registry, could adopt an administrative procedure of notifying on appellant that he requires the leave of Court for his appeal to lie..."

H With due respect, learned Counsel's reformation agenda, backed by over 30 years at the Bar, should be directed to the appropriate authority. Be that as it may, the appellant in this case did not settle the processes filed in the appeal. They were settled by his counsel who is deemed to know that the court is a creation of Statute and

in exercise of jurisdiction conferred by law it has to comply with its rules of procedure. The court does not have to spoon-feed learned counsel on the law and rules.

On the issue derived from the surviving ground of appeal, ground 7, there is a concurrent finding of fact of the two courts below to the effect that appellant's claim is bereft of merit. This court has no duty, and will decline, to interfere with the concurrent findings of the High Court and the court of Appeal unless the appellant shows that the findings are perverse. See *Okafor v. Idigo* (1994) 1 SCNLR 481; *Kpomiglo v. Kodadja* (1933) 2 WACA 24. Appellant did not show that the findings are perverse and his appeal is bound to fail.

For the above and the more exhaustive reasoning in the lead judgment, I also strike out all the grounds of appeal except ground 7 and the issues distilled therefrom. I dismiss the appeal on ground 7 as bereft of merit. Parties are to bear their respective costs.

ALAGOA JSC

I read before now in draft the judgment just delivered by my learned brother C. M. Chukwuma-Eneh, JSC. He has quite comprehensively dealt with the matter.

I have nothing useful to add. I also dismiss the appeal as lacking in merit while I make no order as to costs.

F

G

H