

SUPREME COURT OF NIGERIA
FRIDAY 24TH MAY, 2013. SC. 85/2003
CORAM:- M. S. MUNTAKA-COOMASSIE,
N. S. NGWUTA, O. ARIWOOLA, M. D. MUHAMMAD,
C. B. OGUNBIYI, JJSC

PROFESSOR E. A. ABE APPELLANT
AND
UNIVERSITY OF ILORIN & ANOR RESPONDENTS

APPEALS - Grounds - Competence - Slightest infraction of SC Rules O. 8 r. 2(3)(4) - Does not render grounds incompetent - As appellant need only give sufficient notice - And the complaints the grounds convey (H1)

APPEALS - Grounds - Defective particulars - Grounds may stand on their own - And once it represents appellant's complaint against a decision - Such particulars would not render the ground incompetent (H2)

APPEALS - Right of appeal - Grounds 2 & 10 did not reveal any lapse - And appellant being party to the appeal and cross appeal - Can appeal against CA decision in respect of either of the appeal (H3)

APPEALS - Determination - Academic issue - Since appellant has retired with full benefits - He does not stand to gain further in the appeal - As to do so will amount to engaging in fruitless exercise (H4)

FACTS

Following the setting up of a disciplinary committee to investigate the results of 1995/1996 graduating students of the Institute of Education, University of Ilorin, 1st defendant/respondent's acting Registrar informed plaintiff/appellant (a Professor and Director of the Institute) of his suspension from duty to enable the committee carry out an effective assignment. As a result of the suspension, appellant commenced this action at the Federal High Court Ilorin, claiming damages, declaratory and injunctive reliefs all in a bid to lift the sus-

pension order and reinstate him to his position in the Institute.

At the end of hearing, the court nullified the committee set up by respondents and ordered that appellant be reinstated to his position. Respondents were dissatisfied and hence appealed to the Court of Appeal Ilorin Division. Appellant cross appealed. The court in its judgment, allowed respondents' appeal and dismissed appellant's cross appeal. Aggrieved, appellant lodged an appeal in Supreme Court, while respondents raised preliminary objection to the hearing of the appeal on the ground that appellant has since retired from service with full benefits. Respondents therefore contend that the court will be engaging in academic exercise by determining the appeal.

HELD (Unanimously striking out the appeal per
MUHAMMAD JSC)

APPEALS - Grounds - Competence

1. It is instructive to note that respondents' preliminary objection rests largely on order 8 rule 2 (3) and 4 of the rules of this court the effect of non-compliance with which the court restated inter-alia in Iliya Akwai Lagga v. Audu Yusuf Sarhuna (2008) 5-7 SC (Pt 11) 123; By these rules, vague grounds of appeal which respondents herein submit appellant's grounds 1, 4 and 8 are, this Court has repeatedly held, grounds which are imprecise, inaccurate, large, verbose and of inexact meaning. The fact that order 8 Rule 2 (3) and (4) of the rules of this court requires grounds of appeal to be precise and accurate, the court has further held, does not entitle it to adjudge an appellant's slightest infraction in that regard as rendering the particular grounds incompetent. The rules of court, the court insists, only require the appellant to give the respondent and indeed the court sufficient notice and information of the complaints the grounds convey. The rules, therefore, are primarily designed to ensure fairness to both sides in the appeal and never meant to facilitate reliance on them by the court to shut out an intending appellant. Once, therefore, a ground of appeal contains the reasons on the basis of which the appellant wants the appellate court to decide that the judgment appealed

against is wrong, the ground cannot be discountenanced. Such a ground that has isolated and accentuated, for attack, the basis of the reasoning being challenged is competent.

(p. 2011 B)

APPEALS - Grounds - Defective particulars

2. Learned respondent's counsel has urged the discountenance of the other grounds either because same are argumentative or that they do not challenge the judgment being appealed against. The particulars of grounds 3, 5 and 7, learned counsel asserts, are not related to the grounds. Learned counsel must be reminded that grounds of appeal may stand on their own once they represent an appellant's complaint against the decision he is not satisfied with and in respect of which grouse he seeks the appellate court's intervention. Lack of or defective particulars in a ground of appeal would not necessarily render the ground itself incompetent. (p. 2011 H)

APPEALS - Right of appeal

3. I hold also that my examination of grounds 2 and 10 does not reveal the lapses learned respondents' counsel say they manifest. He must be reminded that the decision being appealed against instantly relates both to the appeal of the respondent and the appellant's cross appeal at the court below. Being party to both, the appellant before us has the right to appeal against any aspect of the lower court's decision in respect of either the appeal or cross appeal the court determined. Learned counsel is wrong in his submission that since the appellant herein did not canvass the issue contained in his ground 10 in his cross appeal at the court below the issue is a fresh one and appellant's failure to seek leave before filing the ground renders it incompetent. Ground 10 certainly pertains to the lower court's decision in respect of the substantive appeal it found meritorious. This point in the preliminary objection raised by the respondents must accordingly fail. I so hold. (p. 2015 C)

APPEALS - Determination - Academic issue

4. The final point learned respondents' counsel contended by the preliminary objection is that by the reliefs the appellant seeks of this court, the appeal is hypothetical and academic. It ceases to be relevant. Appellant's quarrel with the judgment of the court below, it is argued, is with the court's finding that the trial court had granted him reliefs he did not ask for. From the record of this appeal, the appellant has since retired on attaining the retirement age. Learned respondents' counsel is right in his submission that events have overtaken the issues the appeal raises and no court wastes its precious time on causes, the determination of which bear no consequence on the dispute between the parties. Acting in vain never forms part of this court's function and practice certainly does not facilitate that. Since the appellant herein has already retired with full benefits, he does not stand to gain further by the determination of his appeal. The court will, therefore, refuse to engage in the fruitless exercise of proceeding to determine the appeal. This explains my sustaining the respondents' preliminary objection and disallowing the appeal. (p. 2015 G)

REPRESENTATION

Chief P. A. O. Olorunnisola SAN with J. S. Bamigboye and Salman Jawondo, for the Appellant
Yusuf O. Ali (SAN) with Prof. Wahals Egbewole, Etukwu Ona, S. E Oke, P. I. Ikpegbu, K. O. Lawal, H. T. Oloyede, K. F. Oso and M. G. Duka, for the Respondents

CASES REFERRED TO

Utuku v. Nigerian Ports Authority (2005) 6 SC (pt. 11) 69
Uwazurike v. A-G Federation (2007) NSCQLR vol. 29 489
Amuda v. Adelodun (1994) 8 NWLR (pt. 350) 23
ASRC Ltd. v. O. O. Biosah Co. Ltd (1997) 11 NWLR (pt. 527) 145
Egbe v. Alhaji (1990) 1 NWLR (pt. 128) 490
Uhunmwangbo v. Okojie (1989) 5 NWLR (pt. 122) 471
Ose v Ede (1995) NWLR (pt. 385) 564
Sken Consult Nig. Ltd. v. Ukey (1981) 1 SC 6
Lana v. University of Ibadan (1987) 4 NWLR (pt. 64) 245

Lagga v. Sarhuna (2008) 5-7 SC (pt. 11) 123

Aderonmu v. Olowu (2000) 4 NWLR (pt. 652) 253

Haube v. Ibueze (2001) 4 NWLR (pt. 703) 372

Oyeneye v. Odugbesan (1972) 4 SC 244

Bakare v. ACB Ltd (1986) 3 NWLR (pt. 26) 47

Fawehinmi v. Akilu (1987) 12 SC 136

B

RULES REFERRED TO

Supreme Court Rules, O. 8 r. 2(3)(4)

LEAD JUDGMENT BY MUHAMMAD JSC

C

This is an appeal against the judgment of the court of Appeal, Ilorin Division, delivered on the 22nd January 2003, allowing the appeal of the respondents and dismissing the cross-appeal of the appellant. The facts of the case that brought about the appeal are summarized below.

The appellant, a professor, was on the 17th August 1994, appointed the Director of the Institute of Education of University of Ilorin, the 1st respondent, for an initial period of three years. The appointment was extended on 5th August 1997 for a further three year term. By Exhibit 3, 1st respondent's acting Registrar notified the appellant partly as follows:-

"Senate at its special meeting of Wednesday, 10th December 1997 decided to set-up a committee to investigate all the results of the 1995/96 graduating students of the institute of Education. In order to give the Committee a free hand to do its work, the Vice Chancellor has directed that you be suspended forthwith as Director of the Institute of Education. You are therefore requested to hand over the activities of the institute to Dean of Education immediately..."

Exhibit 5, a letter also addressed to the appellant by the 1st respondent inter-alia reads:-

"In view of the current re-organisation in the administrative structure of the institute, it has become necessary to relieve you of your appointment as Director of the Institute of Education with effect from 10th December 1997..."

Arising from the content of the two letters, the appellant as plaintiff took out a writ at the Federal High Court holden at Ilorin, hereinafter referred to as the trial court, claiming, apart from the ten

million naira damages for libel, the declaratory and injunctive reliefs against the respondents as defendants thus:-

B *“(i) A declaration that the reasonable and inferable conclusion based on the evidence before the Staff Disciplinary and Appeals Committee (SDAC) is that the plaintiffs conduct does not amount to misconduct as envisaged by the University Act and Regulations warranting a procedure for removal.*

C *(ii) A declaration that the trial of the plaintiff on the allegations made against the plaintiff are criminal in nature and cannot be tried by the defendants as doing so is a usurpation of the functions of the courts and is contrary to the 1979 Constitution of Nigeria.*

(iii) A declaration that the various panels that investigated or tried the plaintiff are incompetent as their composition is not free from bias.

D *(iv) A declaration that vicarious liability have (sic) no place where criminal act is the subject matter, more so when in this case the plaintiff is not the employer of the other staff under him.*

E *(v) A declaration that the decision of the 1st Defendant not having been based on the report and recommendation of the Staff Disciplinary and Appeals Committee (SDAC) is a denial of fair hearing to the plaintiff and therefore unconstitutional, null and void.*

F *(vi) A declaration that the compulsory retirement of the plaintiff as conveyed by the defendants, letter of 9/2/99 Ref: UI/SSE/PF/1838 is predicated upon bias, malice, and hatred to get the plaintiff away at all cost to make way for a favoured candidate.*

G *(vii) A declaration that the trial of the plaintiff without informing him that he was facing a process of removal from office is illegal, wrongful & negates the provisions of the University of Ilorin Act and therefore null & void.*

(viii) A declaration that the trial of the plaintiff and his conviction on allegation which do not disclose the rules and regulations or law breached is illegal, void and unconstitutional.

H *(ix) A declaration that the procedure by which the plaintiff was tried and convicted or found culpable is void as the decision was statute barred.*

(x) An order for the defendants to refund to the plaintiff the sum of N100,550.00 extorted from him.

(xi) An order that the plaintiff is still in the service of the defen-

dants.

(xii) A permanent order of injunction restraining the defendants from stopping the plaintiff, from continuing his work in the University of Ilorin.”

At the end of pleadings and eventual trial including address of counsel, the trial court in its considered judgment delivered on 17th B of May 2001 concluded its findings as follows:-

“... The overall effect of this judgment is that the disciplinary proceedings initiated by the defendants and the decision based on it having been nullified by this court, the plaintiff shall be reinstated in the service of the 1st defendant from the date of his purported compulsory retirement. I proceed to make specific orders as follows:-

1. That the disciplinary procedure adopted by the defendants herein against the plaintiff is declared null & void.

2. That following from No.1, the plaintiff is hereby declared as D being still in the service of the defendants.

3. The defendants and their agents, servants and/or privies are restrained from stopping the plaintiff, or in any way howsoever disturbing the plaintiff from continuing his work in the University of Ilorin until he attains 35 years of service.

These shall stand as the orders of this Court regarding this case.”

Dissatisfied with the judgment of the trial court, the defendants now the appellant appealed to the Ilorin Division of the Court of Appeal, hereinafter referred to as the court below, on an amended F Notice dated 8th July 2002 containing five grounds. The respondent also cross appealed. The court concluded its judgment delivered on 22nd January 2003, by allowing the respondents’ appeal and dismissing the appellant’s Cross-appeal. Aggrieved, the plaintiff at the trial court, respondent at the court below, has appealed to this court G on an amended Notice of appeal containing ten grounds of appeal. In keeping with the rules of this Court, parties have filed and exchanged briefs of argument. The appellant has, in his amended brief distilled seven issues from the grounds in his amended Notice as arising for the determination of his appeal. The issues read:- H

“3.01. Issue No.1 - Whether the Court of Appeal is right in holding that the trial Court granted wider relief than asked for by the Appellant in prayer (vii) of his claim - Grounds 1, 2, 3.

3.02 Issue No.2 - Whether the words ‘as the decision was stat-

ute barred' should make a void procedure legal as stated by the Court of Appeal. Ground 4.

3.03 Issue No.3 - Are Exhibits 6 and 19 valid notice of the University Council - Grounds 5 and 8.

3.04 Issue No.4 - Considering the evidence before the court
B *did the trial court give more than asked for as held by the Court of Appeal - Ground 6*

3.05 Issue No.5 - Whether the Appellant should be held personally responsible for the good or bad performance of the staff under him to the extent of portraying him as 'not being without blemish' Ground 7.
C

3.06 Issue No.6 - Whether the Court of Appeal is correct to hold that the allegations contained in Exhibit 6 are not accusation of criminal Act? - Relates to Ground 9.

3.07 Issue No.7 - Whether the Court of Appeal is right to have refused to order the refund of N100,550 to the Appellant? - Relates to ground 10.
D

The respondents have raised and argued a Notice of preliminary objection at pages 5 - 8 of their brief of argument and ex
E *abundante-cautela*, in the event of this court overruling the objection, identified four issues as being germane for the determination of the appeal. The four issues read:-

"1. Whether the court of appeal was not right to have come to the conclusion that the trial court granted to the appellant reliefs which
F *he did not claim at the trial.*

2. Whether considering the totality of oral and documentary evidence before the trial court the court of appeal was not right to have held there was no infraction of the provisions of section 15 of the University of Ilorin Act by the 1st respondent in retiring the appellant as it did.
G

3. Whether the Court of Appeal was not correct in holding that the allegations against the Appellant were not of commission of crime?

4. Whether the Court of Appeal was not right in law not to have ordered a refund of the sum of N100,550.00 to Appellant?"
H

It is however incumbent to out rightly consider the preliminary objection raised by the respondent and on determining it one way or the other to proceed to either strike out the appeal or consider the

appeal on its merit. See *S.O. Utuks & others (For and on behalf of NPA retrenched Staff, June 1999) v. Nigerian ports Authority* (2005) 6 SC (Pt 11) 69 at 74 and *Ralph Uwazurike & others v. Attorney - General of the Federation* NSCQLR vol.29 (2007) 489.

Learned respondent counsel submits that all the grounds of appeal in appellant's amended Notice be struck out for their being in breach of the rules of court. He contends that grounds 1, 4 and 8 of the grounds of appeal are vague, unarguable or general in terms. The defect the grounds manifest, submits learned counsel, constitute a breach of order 8 rule 2(3) and (4) of the Supreme Court rules. B

Secondly, the particulars in support of grounds 3, 5 and 7 being unrelated to the allegations in the grounds, cannot support the grounds. The error in the said grounds, submits learned counsel makes the ground also incompetent. He relies on the cases: *Amuda v. Adelodun* (1994) 8 NWLR (Pt 350) 23 at 31 and *ASRC Ltd v. O. O. Biosah Company Ltd* (1997) 11 NWLR (pt 527) 145 at 156 to support his contention. Ground 2 of appellant's appeal does not challenge the decision of the court below. Instead, learned counsel contends, being a complaint against the decision of the trial court, this court lacks the jurisdiction of entertaining such a complaint. The appellant, it is insisted, does not have a direct right of appeal to this court from the decision of the trial court. The decision in *Egbe v. Alhaji* (1990) 1 NWLR (Pt 128) 490 at 545 was cited in aid. C

Further objecting to the competence of the appeal, learned counsel submits that appellants 6th ground of appeal violates order 8 Rule 2 (3) of the Supreme Court rules as the ground is argumentative. The ground, learned senior counsel submits, is also incompetent. Regarding the 10th ground of appeal, it argued that the issue the ground raises is a fresh issue and in respect of which neither the leave of the court below nor that of this court was sought and obtained. The ground, learned counsel submits, is premised on the trial court's refusal to award the refund of the sum of N100,550.00 the appellant paid to the respondents following the disciplinary procedure instituted against him which exercise informs appellant's action at the two courts and the instant appeal. Though learned respondent counsel concedes that appellant's 10th ground of appeal was filed following the leave the respondent acquired to file additional grounds, counsel insists that since the ground raises a fresh issue, the appellant D E F G H

requires the leave of court to raise the fresh issue the ground encapsulates. Failure to acquire the leave is fatal and renders the ground incompetent.

B Appellant's 7th issue that is purportedly distilled from the incompetent ground being also incompetent, it is urged, be equally
discountenanced. Learned counsel commends the decisions in
Uhunmwangbo v. Okojie (1989) 5 NWLR (part 122) 471 at 491,
Global Transport Oceanico S. A. v. Free Ent. Nig. Ltd (2001) 5 NWLR
(part 706) 420 at 438, Ibrahim v. Habu (1993) (part 295) 577 at
C 577 and 578 and Ose v Ede (1995) NWLR (part 385) 564 at 577 in
support of his submissions.

Finally, learned counsel contends that the issues the appellant
distilled for the determination of the appeal are hypothetical and academic. This Court, it is argued, has no business considering such
D issues which will in no way resolve the dispute between the parties. In
particular, learned respondent counsel draws attention to appellant's
2nd, 3rd, and 5th issues and submits that same be discountenanced.
On being served with the respondents' brief, the appellant filed and
served his reply to same which in part is a response to the arguments
E advanced in the former's brief in support of the objection as to the
competence of the appeal. The reply brief was adopted and relied
upon by the appellant at the hearing of the appeal.

It is argued in the reply brief that grounds 1, 4 and 8 of the
F Notice of appeal cannot be said to be vague or at large. The grounds
quoted passages from the lower court's judgment which passages
occasioned miscarriage of justice. Except the respondents are saying
the passages complained of are vague or at large, the grounds based
on the two passages cannot seriously be said to be defective. The 8th
G ground, particularly learned counsel argues, complains on the lower
court's wrong decision regarding the onus of proof the trial court
places on the appellant to establish that Exhibits 6 and 19 were not
authorized by the University's council. These grounds of appeal which
seek to exploit the erroneous decision of the lower court, errors held
H to be fatal in so many cases, learned appellant counsel submits, cannot
be said to be at large or vague. Counsel relies on the decisions in
Sken Consult Nig. Ltd. v. Ukey (1981) 1 SC 6 and Lana v. University
of Ibadan (1987) 4 NWLR (part 64) 245 in support of his submission.
Concluding his brief response, learned appellant's counsel sub-

mits that the appeal is not hypothetical since the right of the appellant to be determined is as at the time of the original action and notwithstanding whether his retirement period has passed. The date of his retirement, after all, submits counsel, will have effect on what the appellant is entitled to on his retirement. Learned counsel urges that the objection be overruled and the appeal be considered on its merit. B

It is instructive to note that respondents' preliminary objection rests largely on order 8 rule 2 (3) and 4 of the rules of this court the effect of non-compliance with which the court restated inter-alia in Iliya Akwai Lagga v. Audu Yusuf Sarhuna (2008) 5-7 SC (Pt 11) 123; NSCQLR v. 135 (2008) 82. By these rules, vague grounds of appeal which respondents herein submit appellant's grounds 1, 4 and 8 are, this Court has repeatedly held, grounds which are imprecise, inaccurate, large, verbose and of inexact meaning. The fact that order 8 Rule 2 (3) and (4) of the rules of this court requires grounds of appeal to be precise and accurate, the court has further held, does not entitle it to adjudge an appellant's slightest infraction in that regard as rendering the particular grounds incompetent. The rules of court, the court insists, only require the appellant to give the respondent and indeed the court sufficient notice and information of the complaints the grounds convey. The rules, therefore, see Aderonmu v. Olowu (2000) 4 NWLR (part 652) 253 and Haube v. Ibueze (2001) 4 NWLR (part 703) 372, are primarily designed to ensure fairness to both sides in the appeal and never meant to facilitate reliance on them by the court to shut out an intending appellant. Once, therefore, a ground of appeal contains the reasons on the basis of which the appellant wants the appellate court to decide that the judgment appealed against is wrong, the ground cannot be discountenanced. Such a ground that has isolated and accentuated, for attack, the basis of the reasoning being challenged is competent. See The Minister of Petroleum and Mineral Resources & anor v. Expo-ship-ping Line (Nig) Ltd NSCQLR volume 42 (2010) 1020 and The Military Administrator of Benue State and 7 others v. O. P. Ukegede Esq. & Anor. NSCQLR Volume 8 (2001) 110. C D E F G H

Learned respondent's counsel has urged the discountenance of the other grounds either because same are argumen-

tative or that they do not challenge the judgment being appealed against. The particulars of grounds 3, 5 and 7, learned counsel asserts, are not related to the grounds. Learned counsel must be reminded that grounds of appeal may stand on their own once they represent an appellant's complaint against the decision he is not satisfied with and in respect of which grouse he seeks the appellate court's intervention. Lack of or defective particulars in a ground of appeal would not necessarily render the ground itself incompetent. See Prince (Dr.) B. A. Onafowokan & 2 others v. Wema Bank Plc & 2 others NSCQLR volume 45 (2011) 181 SC and Best (Nigeria) Ltd v. Black Wood Hodge (Nigeria) Ltd & 2 others NSCQLR volume 45 (2011) 849.

Grounds 1, 4 and 8 of the grounds of the instant appeal are hereunder reproduced for ease of reference:-

D *"1. The Court of Appeal erred when it held that:*

"It is my considered view therefore that relief one granted by the Lower Court to wit - " That the disciplinary procedure adopted by the Defendants herein against the plaintiff is declared null and void" is too general and consequently wider than what the Respondents asked for in his relief (vii)". This has caused miscarriage of justice.

"PARTICULARS

(i) *The first step in the impeachment process under section 15(i) is that the Council gives notice of the perceived misconduct to the affected staff. But this was not done.*

F (ii) *Exhibit 6 initiating the first step declares that it was taken by the Vice Chancellor.*

(iii) *The trial court found that, the initial step, (foundation step) was not taken by the Council.*

G (iv) *Issue of presumption can apply only if the letter initiating the step had stated that is was, authorized by council, which is not the case here.*

(v) *Exhibit 19 was also at the instance of the Vice Chancellor*

H *4. The Court of Appeal erred when it stated that the relief granted in relief (ix) would have been covered by the relief granted by the lower court had it not been for the following concluding words "as the decision was statute barred", and this has occasioned miscarriage of justice:*

PARTICULARS

(i) *If the action is bad within time it cannot become good because it is statute barred.*

(ii) *The Court of Appeal restricted the complaint of the Appellant to section 15(4) of the University of Ilorin Act.*

(iii) *The Court of Appeal ignored the argument of the plaintiff that if impeachment was intended then the proceedings is confined to 6 months stipulated under section 15(4) but since it was not done within the time coupled with the fact that no notice was given of intention to impeach the procedure embarked upon by the Defendant was not one contemplated under section 15(1) of the Act.*

8. *The Court of Appeal misdirected itself when it held that the onus of proof lies on the Plaintiff that Exhibits 6 and 19 are not authorized by the University Council.*

PARTICULARS

(i) *The application of presumption of regularity was misapplied by the Court of Appeal to Exhibits 6 and 19.*

(ii) *Exhibits 6 and 19 expressly stated who wrote them and who directed them.*

(iii) *The Exhibits 6 and 19 did not say that the University Council authorized them and therefore presumption of regularity cannot be imported into the issue.*

I remain unconvinced that the respondents have been left in any doubt as to appellants' complaints in the foregoing grounds. The grounds speak for themselves. Again, on the authorities, learned counsel for the respondents cannot be indulged given his arguments in respect of grounds 3, 5 and 7 which grounds are hereunder reproduced for ease of reference.

"3. The Court of Appeal misconceived the provisions of Section 15 of the University of Ilorin Act and this misconception has occasioned miscarriage of justice when the Court of Appeal held:

"In any case, under section 15 of the University of Ilorin Act, what is required of the Appellants is to give the Respondent notice of those reasons for which he is being removed from the office. The section is silent on giving notice of rules or regulations or law breached by the Respondents"

PARTICULARS

(i) *The University of Ilorin Act as well as the conditions of Senior Staff of University of Ilorin creates appointment with statutory*

flavor.

(ii) *A senior staff on pensionable appointment holds a secure appointment and can only lose his job if he commits an act of misconduct.*

B (iii) *Conduct cannot be condemnable to the extent of getting the appointment terminated unless the conduct is against a regulated norm. This is the basic principle of rule of law.*

(iv) *The holding of the Court of Appeal is an admission that the Appellant was not informed of the rules and regulations allegedly breached.*

C 5. *The Court of Appeal erred when it held:*

“For the avoidance of doubt, I am not saying that the judgment of the Lower Court that the purported notice to the Respondent - Exhibit 6 is invalid, is right or wrong. What I am saying is that a declaration as to the validity of the notice purportedly conveyed in Exhibit 6 and 19 is never part of the claim of the Respondent. That being the case, the Lower Court has no business making the declaration”. The error has occasioned miscarriage of justice.

PARTICULARS

E (i) *A complaint about notice of impeachment is the first step in an action under Section 15 of University of Ilorin Act.*

(ii) *Section 15 requires the notice to be given by the University Council.*

F (iii) *A notice not given by the University Council is bad and invalid.*

(iv) *Exhibits 6 and 19 were given by the officers not authorized by the University Council.*

(v) *An invalid notice conveys nothing that has legal effect.*

G (vi) *The Court of Appeal failed to say whether the trial Court was right or wrong when the trial Court held that the purported notice is invalid.*

H 7. *The Court of Appeal misconceived the cross-Appeal before it by holding that the Appellant has to take credit and the blame for the good or the bad performance of the Institute because the staffs of the Institute were under him. This has occasioned great miscarriage of justice.*

PARTICULARS

(i) *The Appellant did take responsibility for the deficient per-*

formance of his subordinate staff, hence his apology at the Senate meeting.

(ii) The Appellant's contention is that the said, apology is being misused by the Respondent's counsel to say that the Appellant admitted wrong doing which the Court of trial wrongly took as admission and regarded as blemish.

(iii) The Appellant was not personally involved in the misdeeds of his subordinates who deliberately flouted instruction of the Appellant.

(iv) The blemish being apportioned to the Appellant is as to his personal conduct, not just that of collective responsibility.

(v) The wrongful conclusion is a tarnish to the image of the Appellant."

I hold also that my examination of grounds 2 and 10 does not reveal the lapses learned respondents' counsel say they manifest. He must be reminded that the decision being appealed against instantly relates both to the appeal of the respondent and the appellant's cross appeal at the court below. Being party to both, the appellant before us has the right to appeal against any aspect of the lower court's decision in respect of either the appeal or cross appeal the court determined. Learned counsel is wrong in his submission that since the appellant herein did not canvass the issue contained in his ground 10 in his cross appeal at the court below the issue is a fresh one and appellant's failure to seek leave before filing the ground renders it incompetent. Ground 10 certainly pertains to the lower court's decision in respect of the substantive appeal it found meritorious. This point in the preliminary objection raised by the respondents must accordingly fail. I so hold.

The final point learned respondents' counsel contended by the preliminary objection is that by the reliefs the appellant seeks of this court, the appeal is hypothetical and academic. It ceases to be relevant. Appellant's quarrel with the judgment of the court below, it is argued, is with the court's finding that the trial court had granted him reliefs he did not ask for. From the record of this appeal, the appellant has since retired on attaining the retirement age. Learned respondents'

counsel is right in his submission that events have overtaken the issues the appeal raises and no court wastes its precious time on causes, the determination of which bear no consequence on the dispute between the parties. Acting in vain never forms part of this court's function and practice certainly does not facilitate that. Since the appellant herein has already retired with full benefits, he does not stand to gain further by the determination of his appeal. The court will, therefore, refuse to engage in the fruitless exercise of proceeding to determine the appeal. This explains my sustaining the respondents' preliminary objection and disallowing the appeal. See *Oyeneye v. Odugbesan* (1972) 4 SC 244, *Bakare v. ACB Ltd* (1986) 3 NWLR (Pt 26) 47 and *Fawehinmi v. Akilu* (1987) 12 SC 136 at 213. Parties are to bear their respective costs.

D _____

MUNTAKA-COOMASSIE JSC

I was privileged to have read in draft the beautiful judgment tendered by my learned brother Musa Dattijo, JSC. I entirely agree with the detailed reasons and conclusion set out in the lead judgment which I hereby adopted. I too feel that the appeal be struck out having sustained the preliminary objection. I agree with the order as to costs as contained in the lead judgment.

F _____

NGWUTA JSC

I read in draft the lead judgment just delivered by my Lord, Muhammad, JSC and I entirely agree with the reasoning and conclusion.

This is one appeal that should not have been filed before this Court. The appellant, having been retired with full benefits, has nothing to gain from this appeal. Based on the reason advanced in the lead judgment, I also strike out the appeal as an academic exercise.

H _____

ARIWOOLA JSC

I was privileged to have read in draft the lead judgment of my learned brother, Dattijo Muhammad, JSC just delivered. I am in agree-

ment with the reasoning therein and the conclusion arrived thereat. Indeed, the appellant having left service with full benefits, his appeal has become hypothetical and mere G academic. It therefore deserves being struck out. Accordingly, same is struck out by me.

I abide by the consequential order in the said lead judgment.

B

OGUNBIYI JSC

I read in draft the lead judgment just delivered by my learned brother, Dattijo Muhammad, JSC and I agree that the purported C appeal should be struck out on the totality of the preliminary objection raised.

“The notice of appeal shall set forth concisely and under distinct heads the grounds upon which the appellant intends to rely at the hearing of the appeal without any arguments or narrative and D shall be numbered consecutively.

No ground which is vague or general in terms which discloses no reasonable ground of appeal shall be permitted, save the general ground that the judgment is against the weight of evidence, and any E ground of appeal or any part thereof which is not permitted under this rule may be struck out by the court of its own motion or on application by the respondent.”

The law is further settled that formulation of issues for determination in an appeal must be consistent and fall within the scope of F the grounds of appeal filed. The issues cannot be formulated to be wider than the grounds of appeal from which it derives its existence. The grounds of appeal against a decision in other words, must relate to the decision and should be a challenge to the validity of the ratio of the said decision. See *Egbe v. Alhaji* (1990) 1 NWLR (Pt. 128) p. G 546.

For an appeal to sustain, at least one of the grounds of appeal must be competent. On a community reading of the grounds of appeal and relating same to the authorities under reference supra, can it be rightly said that the grounds are inflicted by the vices which H would render them as incompetent? I would not, with all respect agree with the contention held by the learned respondent’s counsel. This is because all that the respondent needed to know was for the appellant’s grounds of appeal to give a clear and specified under-

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standing of the complaint sought to lodge. This the appellant has substantially done in accordance with Order 8 rule 2(3) of the rules of this court.

On the merit of the appeal, I align with the reasoning and conclusion arrived thereat by my learned brother's lead judgment
B that the nature being academic, it is hereby also disallowed by me.
Appeal struck out.

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