

SUPREME COURT OF NIGERIA
FRIDAY 14TH JUNE, 2013. SC. 34/2005(R)
**CORAM:- W. S. N. ONNOGHEN, M. S. MUNTAKA-
COOMASSIE, N. S. NGWUTA, M. U. PETER-ODILI,
O. ARIWOOLA, JJSC**

1. SAIDU H. AHMED
2. LEADING LEATHER
PRODUCTS LTD. APPELLANTS
3. SAIDTALL SHOES LTD.
AND
CENTRAL BANK OF NIGERIA RESPONDENT

AFFIDAVITS - Paragraphs - Validity - Evidence Act s. 115 - Paragraphs which lack evidential value or has infractions - Court does not waste time on such - But to strike out or attach no weight to them (H1)

SUPREME COURT - Judgment - Quorum - Validity - As the quorum of 5 Justices was complete at hearing and delivery of the judgment - The absence of the two concurring judgments - Does not vitiate the judgment (H2)

SUPREME COURT - Judgment - Date - Apart from the date at top of the judgment - There is nothing like signing with date by the Justice - Hence CTC of the contributing judgments - Whether signed or unsigned cannot affect validity of the judgment (H3)

FACTS

Applicants/appellants brought this application before the Supreme Court pursuant to s. 22 of Supreme Court Act 2004, O. 2, rr. 28(1) - 29(1) & (2), 2, O. 10 r. 1(1) of Supreme Court Rules 1999, ss. 1, 36(1), 17(1), (2)(a)(e) and 294(5) of the Constitution of the Federal Republic of Nigeria 1999, Art 3 and 7 of the African Charter on Human and Peoples' Rights (Ratification Enforcement Act) 1990 and the inherent jurisdiction of the Court. Applicants are praying for an order nullifying the judgment delivered on 6th July 2012 and an order directing that Appeal No. SC. 34/2005 be recon-

sidered by a different panel of Justices of the Court. The application was supported by a 28 paragraph affidavit deposed to by 1st applicant. Applicants contend that their learned counsel had approached the relevant registry of the court to obtain the judgment that was delivered in open court.

They further stated that only three judgments were furnished by the registry and the judgments of the presiding Justice F. F. Tabai and O. Ariwoola, JJSC were unavailable. Applicants also stated that despite their spirited efforts, they were not able to secure the two judgments, which led them to assume that the judgments were not written. They argued that since three months had already lapsed after the delivery of the judgment, the judgment has been caught by s. 294(1)(2)(5) of the 1999 Constitution for being short of a valid judgment. Applicants further contended that the judgment of Ariwoola JSC was unsigned and undated and came a month after delivery of the judgment. Respondent did not file counter affidavit but rather relied on the supporting affidavit of applicants in urging the court to disregard the conjectures and speculations therein.

ISSUE FOR DETERMINATION

Whether the judgment of this court of 6th July, 2012 was vitiated on account that the contributing or concurring judgments of F. F. Tabai and Olukayode Ariwoola, JJSC were not made available to the applicants or counsel on their behalf until a month after the judgment was delivered and by which time F. F. Tabai JSC had retired and the certified True Copy of contribution of Olukayode Ariwoola JSC was unsigned and undated.

HELD (Unanimously dismissing the application per **PETER-ODILI JSC**)

AFFIDAVITS - Paragraphs - Validity

1. I would like to refer to the dicta of this court on a valid affidavit within the ambit of Section 115 Evidence Act *impairi materia* to Sections 86-89 of the Evidence Act before amendment.

This court has held time without number that paragraphs of the affidavit which lack evidential value or had in-

fractions such as I had mentioned above, the court has no time to waste with but to strike those paragraphs out or attach no weight to them.

Specifically, paragraphs 10, 11, 13, 14, 15, 16, 22, 23 of the supporting affidavit made very grave allegations indictable in the main of the retired justice Tabai JSC and Ariwoola JSC without substantiation or even how the information from which the indictments or allegations were obtained and from whom as required by section 115 of the Evidence Act 2011.

The situation is such that even the Supreme Court itself came under this violent attack; albeit without reason or substance to such an extent that Annexure F, a Certified True Copy of the concurring judgment of Ariwoola JSC apart from being referred to in the affidavit as pieces of paper, the averments were even conclusive offending section 115 of the Evidence act, 2011. It is an onerous task to sift a valid averment from the invalid depositions as contained in the various paragraphs. The only sensible thing I see in sight is an affidavit that is clearly invalid. (p. 2633 A)

SUPREME COURT - Judgment - Quorum - Validity

2. The grouse of the applicant is that on the day the judgment was delivered being the 6th day of July, 2012, only the three judgments including the lead and two concurring judgments were available, those being those of O. O. Adekeye, Bode Rhodes-Vivour and John Afolabi Fabiyi, JSC. That the absence of the copies of the two other concurring judgments, those of Tabai, JSC and Ariwoola JSC created constitution infraction on quorum and so vitiated the judgment.

That position of the applicant is not representative of the Constitutional provisions of Sections 294 and 234 aforementioned. This is because on the day the judgment was delivered, all the concurring judgments were delivered after the lead. The fact that the copies of the other two were not made available on that 6th day of July, 2012 did not affect in anyway the validity of the judgment. The quorum of five, both at the hearing of the appeal and at the delivery of the lead judgment was complete. These evidenced by the titling and the date at

the top of the lead judgment which is really the “JUDGMENT” of the court being that of either the entire justices who heard the appeal or the majority. The contributing judgments which are either concurring or dissenting are what they are called supporting documents. Since nothing stops all the judges participating in the judgment merely ‘agreeing’ and saying no more. Once the judgment of the court or the lead judgment is delivered and it is announced that the other panelists or majority of them agreed, then the judgment stands immutable and nothing including these flowering arguments would change anything. (p. 2624 H)

SUPREME COURT - Judgment - Date

3. Furthermore, apart from the date at the top of the judgment, there is nothing like signing with date by the justice as canvassed by applicants’ Senior Advocate. The contributing judgments certified true copies thereof whether signed or unsigned cannot affect the validity of the judgment of the court. (p. 2625 F)

REPRESENTATION

R. Clarke SAN, A. A. Odunsi, J. Aburime (Miss), M. Lawrence - Dokpesi (Mrs.), J. Okoh, T. O. Ochonogor, for the Appellants
Adetunji Oyeyipo SAN, Mabruk Kunmy Olayiwola, Rilawan Mahmoud, for the Respondent

CASES REFERRED TO

Ajayi v. State (1978) 1 LRN 260
Okorowa v. State (1975) 5 SC
Unakanamba v. COP (1958) FSC 7
Ogbunyinya v. Okudo (1979) 9 SC 32
Ajayi v. State (1978) 1 LRN 260
Isalibawa v. Habiba (1991) 2 NWLR (pt. 174) 461
Ifezue v. Mbadugha (1984) 1 SCNLR 427
Osafire v. Odi (1990) 3 NWLR (pt. 137)
Maja v. Samouris (2002) 7 NWLR (pt. 765) 78
Idise v. Williams Int’l LTD. (1995) 1 NWLR (pt. 370) 142
Okoye v. Centrepont Merchant Bank Ltd. (2008) 15 NWLR (pt.

1110) 335

Ogboru v. Uduaghan (2012) 11 NWLR (pt. 1131) 357

STATUTES & RULES REFERRED TO

Supreme Court Act 2004, s. 22

Constitution of the Federal Republic of Nigeria 1999, ss.1, 36(1), 17(1), (2)(a)(e) and 294(5) B

African Charter on Human & Peoples' Rights (Ratification Enforcement Act) 1990, Art 3 & 7

Evidence Act 2011, s. 115(1) - (3)

Supreme Court Rules 1999, O. 2 rr. 28(1) - 29(1) & (2), 2, O. 10 r. 1(1) C

LEAD JUDGMENT BY PETER-ODILI JSC

This is an application brought pursuant to Section 22 of the Supreme Court Act, 2004, Order 2, Rules 28(1) - 29(1) & (2), 2, Order 10 Rule 1(1) Supreme Court Rules, 1999, S.1, S.36(1), S.17(1), (2)(a) and (e) and S.294(5) of the Constitution of the Federal Republic of Nigeria, Art 3 and 7 of the African Charter on Human and Peoples' Rights (ACHPR); (Ratification Enforcement Act) 1990 and the inherent jurisdiction of this court. D

The prayers sought are as follows:

"1. An Order formally nullifying or setting aside the judgment and "Orders" "given" on July 6, 2012

2. An Order directing that Appeal No SC.34/2005 be reconsidered by a different panel of Justices of this honourable court. F

3. Such further or other Orders as this honourable court may deem fit to make in the circumstances.

The Grounds upon which the application was brought are thus: G

1. The learned justices prevented counsel to the appellants to argue the appellant's appeal contrary to the Supreme Court Act and Rules, the constitution, the African Charter on people & Human Rights and numerous extant decisions of the Supreme Court. H

2. At the hearing of SC.34/2005 and as manifested in the lead 'Judgment', the court completely disregarded the Notice of Appeal, as it prevented arguments, which will have enabled it to truly resolve all the issues which arose in the appeal for decision in accor-

dance with correct legal principles to enable it end up with an ultimate verdict that should flow logically.

3. *It is not the whole panel that heard the appeal that provided their judgments as strictly stipulated by the constitution, but instead three justices delivered and furnished their judgment while the justice that presided, who had even retired, purportedly delivered and furnished an undated judgment over a month after it was supposed to be delivered and furnished; as bad, the fifth panelist is yet to furnish his judgment five months after he is supposed to so do, and*

4. *In the interest of justice.*

The application was supported by a 28 paragraph affidavit even though the applicant abandoned some of the paragraphs specifically, 3, 4, 5, 6, 7, 8, 13, 16, 22, and 23. Also abandoned by the learned counsel for the applicant were grounds 1 and 2 of the application with Ground 3 left upon which he based his arguments. The abandoned or withdrawn paragraphs of the affidavit and Grounds of the application were struck out."

The relevant remainder of the supporting affidavit deposed to by Saidu H. Ahmed, the first applicant, Chief promoter and Director of the 2nd and 3rd applicants. The paragraphs are captured here-under thus:

"1. *That we were in court when judgment was supposed to be delivered by this honourable court on July 6, 2012.*

2. *After we heard the pronouncement of the judgment in court, our counsel proceeded to the registry to obtain Certified True copies (CTC's) of the judgments, Only three judgments were delivered and furnished as two other judgments were not written and hence were not furnished as stipulated by the constitution.*

3. *That we were informed by our counsel and we verily believe him that on the 23rd of July 2012 he made an application to the relevant office of the Supreme Court of Nigeria for the CTC'S of the judgments that were said to be delivered on the 6th of July 2012 to be furnished to him as stipulated by the constitution. Counsel informed us, and showed us the letter he wrote, that only the three judgments earlier furnished were available as at the close of work on the 24th of July 2012. Annexed to this affidavit is the letter from our counsel to the Supreme Court marked 'ANNEXURE B'*

4. That on the following day, July 25 2012, our counsel drew our attention to the retirement of the Presiding Justice that heard our appeal, F. F. Tabai JSC, which he read on the pages of newspapers. I personally also bought newspapers and saw the news of the retirement of the learned justice together with many advertisements congratulating him for many years of meritorious service in transparency and integrity as well as his landmark achievements. The judgments that were furnished by the Supreme Court the previous day and the endorsement on counsel's letter showed that F. F. Tabai's judgment was not furnished as it was not produced. B

5. While I saw clearly that the Presiding Justice that heard our appeal had retired, counsel showed us as manifested in his letter to the Supreme Court, that another justice that was supposedly on the panel that dismissed my appeal, O. Ariwoola JSC did not furnish his judgment as he had not produced it. I became confounded and asked our lawyer whether he is sure of what he said, even though I saw his correspondence to the Supreme Court and the acknowledgment coupled with the endorsement of his letter of the justices whose judgments were furnished. C D

6. Our counsel then made his last attempt by piling pressure to obtain all the CTC's of the judgment on the 25th of July 2012. In his letter to the Supreme Court, our counsel was even specific as to which judgments had been furnished and the outstanding judgments that were yet to be furnished. The relevant offices at the Supreme Court made strenuous efforts to ensure that all the judgments that were said to be delivered in appeal No.SC.34/2005 were furnished to our counsel. Having failed to so do, the relevant registry was still only able to furnish the three available judgments delivered in SC.34/2005, viz, those of J. A. Fabiyi JSC, O. O. Adekeye JSC, and B. G Rhodes-Vivour JSC. Those of F. F. Tabai JSC and O. Ariwoola JSC were non-existent and could therefore not be furnished as counsel was told that the justices had not written them. Annexed to this affidavit is the said letter of 26th July 2012 from our counsel to the Supreme Court marked "ANNEXURE C" E F G H

7. That our counsel wrote and forwarded a petition and an application to the Chief Justice of Nigeria on the 8th of August 2012.

8. In the petition, our counsel expatiated on the things he felt went wrong during the hearing of SC.34/2005 and subsequent acts

that concomitantly nullified the hearing and decision Appeal No.34/2005.

9. In the petition, our counsel formally applied to the Chief Justice of Nigeria for reconsideration of Appeal No. 34/2005, giving copious reasons why the appeal should be reconsidered.

B 10. By a letter dated August 10 2012, attached as “ANNEXURE D” the Deputy Chief Registrar, under directives, responded to our counsel’s petition and stated inter alia that the written concurring judgments, are now available, and are herewith enclosed and forwarded to you”

C 11. I have been reliably informed by counsel that the statement in the letter; “are now available” is an admission that they were not available before then thereby breaching the constitution.

D 12. I was also shown some pieces of paper that were forwarded as concurring judgment by Ariwoola JSC. The papers shown to me were unsigned and undated which we were properly informed totally fails to accord with what is a judgment. The said pieces of paper are hereby attached and marked “ANNEXURE F”

E 13. To buttress the averments in paragraphs 10 to 23, the judgment in SC.34/2005 has been published electronically to the world by the electronic law website, Law pavilion without the “judgments of the justice that presided over the “hearing” of the said appeal, Tabai JSC and Ariwoola JSC. We also saw what was said to be the judgment in SC.34/2005. This we were informed is unprecedented. Attached herewith is the said judgment as published electronically for the whole world by law pavilion and printed at 16.22 hours, 4.22 P.M. on December 10, 2012, attached herewith and marked “ANNEXURE G”. I have been reliably informed by our counsel and we have reason to believe that it has never happened anywhere in the Common law world for a judgment to be published without judgments furnished by the justices that heard the case reported; and that this was simply because that was all that was available to and from the reporters of the case as at the date and time
F
G
H “ANNEXURE G” was printed.

14. That we verily believe that the interest of justice will be best served if the Venerable Supreme Court in exercise of its powers as shown and anchored by our application grant our request to reconsider the appeal in SC.34/2005 as there were fundamental ir-

regularities, grave procedural errors, miscarriage of justice as well as inconclusive judgment flowing from fundamental breaches of the Constitution of the Federal Republic of Nigeria, judicial authorities as well as the Supreme Court Rules.”

Chief Robert Clarke SAN, learned counsel for the applicants stated that the judgment in question was delivered in open court on the 6th of July, 2012 and counsel for the appellants/applicants approached the relevant office and registrars at the Supreme Court to obtain the judgment that was delivered in open court together with what were said to be concurring judgments. That only three judgments were furnished by the relevant registry and all efforts to be provided with all the judgments of the 23rd July 2012 again only yielded result of three available judgments furnished, namely; those of Adekeye JSC, Fabiyi JSC and Bode Rhodes-Vivour JSC. That those of the Presiding Justice F. F. Tabai JSC and O. Ariwoola JSC were yet to be delivered and made available. He stated on that, pressure was piled as efforts were made by counsel to be furnished with all the judgments on the 26th of July 2012 which yielded results of the same three judgments earlier furnished which led to the assumption that the judgments were not even written, talk less of being furnished to the parties. This was three weeks after judgment was supposedly delivered on the 6th July 2012 thereby caught by Section 294(1), (2) and (5) of the Constitution of Nigeria, 1999. Chief Clarke pointed out that the presiding justice in SC. 34/2005, F. F. Tabai JSC retired with effect from July 24th, 2012 and so had left the court when he wrote the concurring judgment. He referred to *Ajayi v. The State* (1978) 1 LRN 260, *Okorowa v. The State* (1975) 5 SC and *Sylvanus Unakanamba v. COP* (1958) FSC 7.

Learned counsel for the applicants submitted that what comes out clear is that the appeal No.SC.34/2005 was heard by five justices in open court but only three justices decided the matter instead of five, since there is nothing to show that the matter was decided by a panel of five as mandatorily stipulated by the constitution. He cited Section 234 of the 1999 Constitution; *Ogbunyinya v. Okudo* (1979) 9 SC. 32.

Further submitted for the appellant is that the situation was all the more compounded with what would have been the fifth judgment precisely that of Ariwoola JSC being unsigned and undated

though certified coming a month after the delivery of the judgment. He referred to *Ajayi v The State* (1978) 1 LRN 260; *Raheem Aleshinloye* (1998) 9 NWLR (Pt.564) 71; *Isalibawa v Habiba* (1991) 2 NWLR (Pt.174) 461; *Ifezue v Mbadugha* (1984) 1 SCNLR 427; S.258 (1) Constitution 1979; *Osafire v. Odi* (1990) 3 NWLR (Pt.137).

B Chief Clarke SAN referred to what happens in other international arena like United Kingdom, Australia, United States etc, along with judicial authorities from those territories on when the Supreme Court needs to set aside a judgment that fails to meet the required standard of what a judgment should be.

C Responding through a respondent's written brief, filed on 15th March 2013, settled by Adetunji Oyeyipo SAN, learned counsel said they had not filed a counter affidavit but would rather rely on the supporting affidavit averments of the applicants. That he is so
D relying because the court will evaluate the depositions with or without a counter and in so doing would find that the facts alleged in the supporting affidavit were really conjectures and speculations which would not enhance their bad case.

Mr. Oyeyipo of counsel submitted that the supporting affidavit
E had paragraphs that fell short of what a deposition should be as the circumstances in which the information was given to the counsel was not stated and the deponent did not state how he became seised of the information. He referred to paragraphs 16, 22, 23 in the context of Section 115 of the Evidence Act, 2011, *impari materia* to
F Sections 86, 87, 88 and 89 of the Evidence Act before 2011; *Josein Holdings Ltd. & Ors. v Lorenamead Ltd & Anor.* (1995) 1 NWLR (pt.371) 254 at 264; *Dr. Oladipo Maja v. Mr. Costa Samouris* (2002) 7 NWLR (pt.765) 78 at 105.

G Senior counsel for the respondent said the allegation of the applicant that the judgment of O. Ariwoola, JSC was not signed and dated by the judge was an allegation that can be substantiated when seen from the fact that the judgment was duly certified by a Senior Registrar. That such an instrument cannot be described as some pieces
H of paper. That it is the lead judgment that is the judgment of the court and the other contributing judgments may either be concurring or dissenting and represent the individual opinion of each of those justices. He referred to *Idise & Ors v Williams International Ltd* (1995) 1 NWLR (Pt.370) 142.

It was submitted for the respondent that there is no evidence led by the applicants that the quorum for the hearing of the appeal and delivery of judgment being five justices was not met. That the applicants have not shown the miscarriage of justice meted out to them. He cited Section 294(1) & (5) of the 1999 Constitution; Ifezue v Mbadugha (1984) 1 SC. NLR 427; Osafire v Odi (1990) 3 NWLR B (pt.137) 130.

Learned counsel for the respondent urged the court to dismiss the application for lacking in merit.

The issue in contest between the parties in this application is whether the judgment of this court of 6th July, 2012 was vitiated on account that the contributing or concurring judgments of F. F. Tabai and Olukayode Ariwoola, JJSC were not made available to the applicants or counsel on their behalf until a month after the judgment was delivered and by which time F. F. Tabai JSC had retired and the certified True Copy of contribution of Olukayode Ariwoola JSC was unsigned and undated. C D

The applicants' copious supporting affidavit which had been quoted verbatim earlier was not countered by the respondent by affidavit holding, the view which I agree with that whether or not there was a counter affidavit this court is still duty bound to evaluate the contents of the only deposition available as in the case at hand. This responsibility is to ascertain the veracity or authenticity of the facts alleged therein. The other aspect being whether the depositions are in compliance with Sections 115(1) - (3) of the Evidence Act 2011. The reason for this is the fact that if the depositions do not meet with the conditions stipulated in that relevant Evidence Act provision, then the paragraphs containing those offending averments go to no issue since they would be incurably defective and unusable. I shall quote some of these relevant sections of the Evidence Act which are thus: E F G

"115 (1) Every affidavit used in the court shall contain only a statement of fact and circumstances to which the witness deposes either of his own personal knowledge or from information which he believes to be true." H

"2 An affidavit shall not contain extraneous matter, by way of objection, prayer or legal argument or conclusion"

"3. When a person deposes to his belief in any matter of fact,

and his belief is derived from any source other than his own personal knowledge, he shall set forth explicitly the facts and circumstances forming the ground of his belief.”

B *“4. when such belief is derived from information received from another person, the name of his informant shall be stated and reasonable particulars shall be given respecting the informant and the time, place and circumstances of the information.”*

These provisions above are *impari materia* with Sections 86, 87, 88, and 89 of the revised edition of the Evidence Act.

C It is difficult to resist the stance of the respondent on the averments of the supporting affidavit as the paragraphs are in the main speculations emerging from a very fertile imagination not to talk of the denigrating comments on the Justices of this Apex Court. The deponent went even further to describe the concurring judgment of D Ariwoola JSC as pieces of papers which were unsigned and undated.

Also outside of what an affidavit should contain were stated in paragraphs 22 and 23 of the affidavit thus:

E *“22. I found out credibly that Tabai JSC (retired) specifically flew into Abuja from Port Harcourt after he had retired days before the letter dated August 10, 2012, so as to furnish his concurring judgment when indeed he had ceased to have an office in the Supreme Court of Nigeria; and it is simply conjectural where he furnished his judgment from as it could be from anywhere but not the Supreme Court.*

F *23. That the ‘judgment’ ‘furnished’ from anywhere but the sacred chambers of the Supreme Court by the retired Tabai JSC were not even dated to show the date it was made’ Attached is the ‘judgment’ ‘furnished’ by retired Tabai JSC marked as ‘ANNEXURE E’”*

H As represented by these two paragraphs above, the affidavit fell short of an affidavit as known. The deponent did not bother to state how he came by his information and if they came from any other, who those informants are and in what circumstances. The averments descended into the realm of rumour mongering or plain gossiping and infringed what the Evidence Act provided should not be found if an affidavit is not to be put at risk. There is even nothing on which the court can make a favourable ascertainment of the veracity or authenticity of the facts alleged therein. This is because the court

cannot utilize a careless talk or gossip without information of how it was derived to make any evaluation. In fact there is nothing on which an evaluation can be based. See *Okoye & Anor v. Centrepont Merchant Bank Ltd.* (2008) 15 NWLR (Pt. 1110) 335 at 362.

I would like to refer to the dicta of this court on a valid affidavit within the ambit of Section 115 Evidence Act impari materia to Sections 86-89 of the Evidence Act before amendment. ^B

This court has held time without number that paragraphs of the affidavit which lack evidential value or had infractions such as I had mentioned above, the court has no time to waste with but to strike those paragraphs out or attach no weight to them. This was what this court per Kutigi JSC (as he then was) emphasized in *Josien Holdings Ltd & Ors v Lornamead Ltd & Anor* (1995) 1 NWLR (Pt.371) 254 at 264; *Dr. Oladipo Maja v Mr. Costa Samouris* (2002) 7 NWLR (Pt.765) 78 at 102. ^C

Specifically, paragraphs 10, 11, 13, 14, 15, 16, 22, 23 of the supporting affidavit made very grave allegations indictable in the main of the retired justice Tabai JSC and Ariwoola JSC without substantiation or even how the information from which the indictments or allegations were obtained and from whom as required by section 115 of the Evidence Act 2011. ^E

The situation is such that even the Supreme Court itself came under this violent attack; albeit without reason or substance to such an extent that Annexure F, a Certified True Copy of the concurring judgment of Ariwoola JSC apart from being referred to in the affidavit as pieces of paper, the averments were even conclusive offending section 115 of the Evidence act, 2011. It is an onerous task to sift a valid averment from the invalid depositions as contained in the various paragraphs. The only sensible thing I see in sight is an affidavit that is clearly invalid. ^F ^G

Now coming to the matter of whether the quorum was not met at the time the appeal was heard and at the time the judgment was delivered. This is an area well covered by the provisions of Section 294 of the Constitution which would need to be quoted verbatim hereunder for clarity and it is thus: ^H

“294(1): Every court established under the Constitution shall deliver its decision in writing not later than ninety days after the conclusion of evidence and final addresses and furnish all parties to the case or matter determined with duly authenticated copies of the decision within seven days of the delivery thereof;

B *2. Each Justice of the Supreme Court or of the Court of Appeal shall express and deliver his opinion in writing or may state in writing that he adopts the opinion of any other justice who delivers a written opinion;*

C *Provided that it shall not be necessary for all the justices who heard a case or matter to be present when judgment is to be delivered and the opinion of a justice may be pronounced or read by any other justice whether or not he was present at the hearing;*

D *3. A decision of a court consisting of more than one judge shall be determined by the opinion of the majority of its members;*

4. For the purpose of delivering its decision under this section, the Supreme Court or the Court of Appeal shall be deemed to be duly constituted if at least one member of that court sits for that purpose;

E *5. The decision of a court shall not be set aside or treated as a nullity solely on the ground of non-compliance with the provisions of subsection (1) of this section unless the court exercising jurisdiction by way of appeal or review of that decision is satisfied that the party complaining has suffered a miscarriage of justice by reason thereof;*

F *6. As soon as possible after hearing and deciding any case in which it has been determined or observed that there was non-compliance with the provisions of subsection (1) of this section, the person presiding at the sitting of the court shall send a report on the case to the Chairman of the National Judicial Council who shall keep the Council informed of such action as the Council may deem it.”*

I need to restate the provisions of Section 234 of the 1999 Constitution which is germane to the discourse on ground. It provides thus:

H *“For the purpose of exercising any jurisdiction conferred upon it by this Constitution or any law, the Supreme Court shall be duly constituted if it consists of not less than five Justices of the Supreme Court”.*

The grouse of the applicant is that on the day the judg-

ment was delivered being the 6th day of July, 2012, only the three judgments including the lead and two concurring judgments were available, those being those of O. O. Adekeye, Bode Rhodes-Vivour and John Afolabi Fabiyi, JSC. That the absence of the copies of the two other concurring judgments, those of Tabai, JSC and Ariwoola JSC created constitution B

infracton on quorum and so vitiated the judgment.

That position of the applicant is not representative of the Constitutional provisions of Sections 294 and 234 aforementioned. This is because on the day the judgment was delivered, all the concurring judgments were delivered after the lead. The fact that the copies of the other two were not made available on that 6th day of July, 2012 did not affect in anyway the validity of the judgment. The quorum of five, both at the hearing of the appeal and at the delivery of the lead judgment D

was complete. These evidenced by the titling and the date at the top of the lead judgment which is really the “JUDGMENT” of the court being that of either the entire justices who heard the appeal or the majority. The contributing judgments which are either concurring or dissenting are what they are called E

supporting documents. Since nothing stops all the judges participating in the judgment merely ‘agreeing’ and saying no more. Once the judgment of the court or the lead judgment is delivered and it is announced that the other panelists or majority of them agreed, then the judgment stands immutable F

and nothing including these flowering arguments would change anything.

Furthermore, apart from the date at the top of the judgment, there is nothing like signing with date by the justice as canvassed by applicants’ Senior Advocate. The contributing judgments certified true copies thereof whether signed or unsigned cannot affect the validity of the judgment of the court. G

Therefore, the judicial authorities cited by the applicants such as Ifezue v Mbadugha (1984) 1 SC NLR 427; Osafie v. Odi (1990) 3 NWLR H (Pt.137) 130; Ogboru v. Uduaghan (2012) 11 NWLR (Pt.1131) 357 are not relevant since the matter clearly is not an oral judgment nor an invalid one made without the appropriate quorum or lack of jurisdiction.

What I see the entire process has been is that the applicants have set this court on a wild goose chase or journey into the academic world with hypothetical materials to grapple with. I need say for emphasis that this application lacks merit in the extreme and such ventures should be discouraged.

B From the foregoing, this application is dismissed. I award costs of N100,000 against the applicants to be paid to the Respondent.

ONNOGHEN JSC

C By a motion filed on 24/12/2012, the applicants prayed the court for the following orders:

“1. An order formally nullifying or setting aside the ‘Judgment and ‘Orders’ ‘given on July 6, 2012.

D *2. An Order directing that Appeal No.SC.34/2005 be RE-CONSIDERED by a different panel of Justices of this Honourable Court.”*

The surviving grounds on which the prayers are sought are stated as follows:-

E *“3. It is not the whole panel that heard the appeal that provided their judgments as strictly stipulated by the Constitution, but instead three Justices delivered and furnished their judgments while the Justice that presided, who had even retired, purposely delivered and furnished an undated judgment over a month after it was supposed to be delivered and furnished; as bad, the fifth panelist is still yet to furnish his judgment five months after he is supposed to do so; and*

4. In the interest of justice.”

G The application is supported by a 28 paragraphed affidavit out of which ten (10) paragraphs were abandoned at the hearing of application on the 19th day of March, 2013 thereby leaving 18 paragraphs to support the application.

H I have carefully gone through the facts of the case as deposed to in the surviving paragraphs of the affidavit, the argument of Counsel for both parties and the cases/authorities cited in support of their contending positions and I am in agreement with the reasoning and conclusion of my learned brother, PETER-ODILI, JSC that the application lacks merit and should be dismissed.

I have to say from the onset that this application is in very bad taste to put it mildly. It is designed to smear the court. To begin with, applicants admit that the judgment of the court in the appeal was delivered in open court on the 6th day of July, 2012 but that Counsel for the applicants could not obtain a certified copy of all the judgments except three of them leaving out those of Justices TABAI, JSC^B and ARIWOOLA, JSC. It is their contention that exhibit “F”, the certified true copy of the judgment of Justice Ariwoola, JSC, was not signed nor was it dated by His Lordship thereby rendering same void. This is unfortunate as exhibit “F” is nothing but a certified true copy^C of the original judgment of His Lordship which was delivered on the 6th July, 2012. His Lordship is not expected to sign a certified true copy of his judgment - in fact, the practice is not for a certified true copy of a document to be signed the same way as the original. It is not to be signed at all.^D

It is the certification by the appropriate officer that makes the document authentic. If applicants seriously contend that the judgment of His Lordship was not signed, the proper thing to do to establish that fact is to exhibit the original copy of the judgment, not a certified true copy.^E

There is also the contention that the said judgment is not dated. That is very much untrue. It is settled law that a document speaks for itself. Fortunately applicant exhibited exhibit (annexure) “F” to their supporting affidavit which document clearly contained^F the date the judgment was delivered, which is the relevant date in the circumstances. The date, which forms part of the heading of the document is boldly written as follows:-

“ON FRIDAY, THE 6TH JULY, 2012”.

The above date was the date the judgment was delivered. It is^G very clear therefore that the judgment was actually dated. What other date do the applicants want, if one may ask.

In any event, applicants admit that on the 6th day of July, 2012 when the judgment was delivered they were given three of the judgments including the lead judgment in the appeal, leaving out^H two concurring judgments. The above constitute a complete judgment of the court, granted that the other two did not agree or write their judgments which are in any event, a complete conjecture.

In any event, if the complaint of the applicants that they were

not served with all the copies of the judgment delivered on 6th July, 2012 in violation of Section 294 of the 1999 Constitution is to be taken seriously, applicants have the duty to prove that the said failure has resulted in a miscarriage of justice - see Section 294(5) of the 1999 Constitution. The applicants have failed to establish any miscarriage of justice which the delay in getting the other two concurring judgments of the Justices has caused the applicants. This Court is the final Court and the applicants have no right of further appeal against the judgment of this Court so the delay in the receipt of the two judgments cannot be said to have affected the exercise of their right of appeal within the time allotted.

In short, the application has succeeded in wasting the time of this Court and is consequently dismissed for want of merit.

I abide by the consequential orders made in the lead ruling including the order as to costs. Application dismissed.

MUNTAKA-COOMASSIE JSC

None of the constitutional provisions cited by the Appellants' counsel was violated. There was no need even to consider Section 22 of the Supreme Court Act, 2004.

I have read in advance this thought provoking ruling rendered by my learned brother, Mary Peter-Odili, JSC. I entirely agree with the reasons and conclusions reached thereat. I adopt same as mine.

It goes without saying that this court is extremely busy. Counsel should therefore advisedly be cautious in bringing this type of time wasting suits.

I therefore entirely agree with my Lord Mary Peter-Odili JSC that this application lacks merit. I too dismiss same as it is devoid of any merit. I endorse the order as to costs made in the lead ruling. Application dismissed.

H

NGWUTA JSC

I have had the opportunity of reading in draft the lead ruling just delivered by My Lord, Peter-Odili, JSC and I am in agreement with the views expressed therein. I desire to add only a few brief

remarks. In the main, the application is brought pursuant to Section 22 of the Supreme Court Act, 2004 which is headed: “General power of the Supreme Court”. It provides:

“S.22 The Supreme Court may, from time to time, make any order necessary for determining the real question in controversy in the appeal, and may amend any defect or error in the record of appeal and may direct the Court below to inquire into and certify its findings on any question which the Supreme Court thinks fit to determine before final judgment in the appeal and may make an interim order or grant any injunction which the Court below is authorised to make or grant and may direct any necessary inquiries or account to be made or taken and generally shall have full jurisdiction over the whole proceedings as if the proceedings had been instituted and prosecuted in the Supreme Court as a Court of first instance and may rehear the case in whole or in part or may remit it to the Court below for the purpose of such re-hearing or may give such other directions as to the manner in which the Court below shall deal with the case in accordance with the powers of that Court.”

The prolix provision leaves no one in doubt that the power so conferred in the Supreme Court is exercisable only in relation to a pending appeal. The Court cannot exercise its jurisdiction under Section 22 of the Act when there is no appeal pending.

Judgment in Appeal No. SC.34/2005 was delivered by this Court on 6th July, 2012. Also Section 294 (1) of the Constitution of the Federation, 1999 (as altered) provides:

“S.294 (1) Every Court established under this Constitution shall deliver its judgment in writing not later than ninety days after the conclusion of evidence and final addresses and furnish all parties to the cause or matter determined with duly authenticated copies of the decision within seven days of the delivery thereof.”

The Section refers to “decision” and not ‘decisions’. There can be only one decision or judgment in a particular case and this is the judgment of the Court. It is not the applicants’ case that they were not furnished with the judgment of this Court in Appeal No. SC.34/2005. This is accepted in the rather not very temperate language in the application.

Also subsection 5 relied on by the applicant states:

“5.294 (5) The decision of a Court shall not be set aside or

treated as a nullity solely on the ground of non-compliance with the provisions of Subsection (7) of this Section unless the Court exercising jurisdiction by way of appeal or review of that decision is satisfied that the party complaining has suffered in miscarriage of justice by reason thereof."

B This Court is not exercising jurisdiction by way of appeal or review of its decision in SC.34/2005. It has become functus officio. In any case, applicants have not shown that they suffered a miscarriage of justice by reason of their perceived infraction of the law and rules.

C It is for the above observations and the more comprehensive reasons in the lead ruling that I also dismiss the application for want of substance. I abide by order for costs.

D **ARIWOOLA JSC**

I was privileged to read in draft the lead ruling of my learned brother, Peter Odili, JSC just delivered. I agree entirely with the reasoning therein and conclusion arrived thereat. I have nothing more to add. The application is frivolous and lacking in merit.

E Accordingly, it is dismissed by me. I abide by the order on cost in the lead ruling.

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