

**SUPREME COURT OF NIGERIA**  
FRIDAY 17TH JANUARY, 2014. SC. 305/2006  
**CORAM:- W. S. N. ONNOGHEN, M. S. MUNTAKA-  
COOMASSIE, S. GALADIMA, N. S. NGWUTA,  
K. M. O. KEKERE-EKUN, JJSC**

1. INOGHA MFA  
2. NDOMA MFA ..... APPELLANTS  
AND  
MFA INONGHA ..... RESPONDENT

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LEGAL PRACTITIONERS - Duty - Scope of - It is not duty of appellants' counsel to champion the cause for respondent - It is respondent's counsel who should complain of denial of opportunity to address court - On behalf of his client (H1)

COURTS - Technicality - Appellants' counsel merely relied on technicality in his contention - That their case was not closed by trial court - As the proceedings showed that appellants' case was deemed closed (H2)

ADJOURNMENTS - Application - Denial of - Court rightly exercised its discretion in interest of justice by rejecting counsel's application - As there was no valid ground to grant the adjournment (H3)

LEGAL PRACTITIONERS - Appearance - Presumption of competence - When counsel announces appearance whether or not as holding brief - He is presumed to have full briefing and authority to do the case (H4)

LEGAL PRACTITIONERS - Non appearance - Contempt of court - Continuous absence of counsel in a case he is handling - Amounts to obstruction of cause of justice - And therefore contempt of court (H5)

FAIR HEARING - Breach - Allegation of - Court is required to create opportunity for party to present his case - But party who fails to utilize same - Cannot accuse court of denying him fair trial (H6)

FAIR HEARING - Entitlement to - Rights of both parties to fair hearing must be balanced - Just as appellants have right to fair hearing - Respondent is also entitled to have his case determined within reasonable time (H7)

APPEALS - Grounds - Issues - Proliferation - Court frowns at proliferation of issues - As it is proliferation to raise more than one issue from one ground - And to raise six grounds each complaining of breach of fair hearing - All culminating in single issue (H8)

### **FACTS**

Before the High Court of Cross River sitting at Ikom, plaintiff/respondent instituted this action against defendants/appellants claiming declaration of title, mandatory order compelling appellants to release all documents of the disputed plot of land and perpetual injunction restraining appellants from interfering with respondent's right on the land. The matter dragged for a long time in the court due to several adjournment sought by appellants. On a date fixed for continuation of defence, appellants refused to go on with their defence. They instead brought application seeking for the transfer of the matter to another trial Judge based on allegation of bias. The court heard the application and dismissed same.

The learned counsel appearing for appellants on the day the matter was dismissed sought for adjournment in order to take the message of dismissal to his principal in the office. As there was no cogent reason for adjournment, the court refused the application and proceeded to read the judgment in the matter. The court therefore gave judgment in favour of respondent. Dissatisfied, appellants appealed to the Court of Appeal Calabar Division, contending that the trial court did not close their case before proceeding to read the judgment. They alleged a denial of their right to fair hearing as a result of the procedure adopted by the trial court. The court heard and dismissed the appeal. Aggrieved further, appellants appealed to Supreme Court raising the same issue of wrong procedure at the trial court before judgment was read.

### **ISSUES FOR DETERMINATION**

*"1. Whether the justices of the Court of Appeal were right in*

*holding that the trial Judge closed the case of the defendants before proceeding to judgment.*

*2. Whether the learned Justices of the Court of Appeal were right in holding that the constitutional rights of the appellants were not breached even when the trial Judge did not formally close the defendants' case and afford them the opportunity of presenting a final address?*

*3. Whether the learned Justices of the Court of Appeal were right in striking out five of the six grounds of appeal for alleged failure to formulate issues from the said grounds?"*

**HELD** (Unanimously dismissing the appeal per

**NGWUTA JSC)**

*LEGAL PRACTITIONERS - Duty - Scope of*

**1. I will deal with the last complaint first. It is not the duty of learned Counsel for the appellants to champion the cause of the respondent, his client's opponent. If need be, it is learned Counsel for the respondent who should complain of denial of opportunity to address the Court on behalf of his client. Learned Counsel for the appellant cast himself in the mode of champion of the just cause, defending the right of his opponent in the hope to enhance his own case. Such posture could be a disservice to his clients.** (p. 169 D)

*COURTS - Technicality*

**2. The second leg of the appellants' complaint is an attempt to sacrifice the essence of law to its shadow, picture and formality. A holistic view of the proceedings in the trial Court leaves no one, including the learned Counsel for the appellants, in doubt that the appellants' case was deemed closed. It is immaterial in the circumstances that the trial Court did not spell it out that the appellants' case was deemed closed for the Court could not have adjourned the matter for judgment if it was still open for the recalcitrant appellants as defendants to continue to dribble the Court and the respondent.**

**In raising the issue, learned Counsel for the appellants**

*was merely paying tribute to technicality at its graveside. The Court is more interested in substance than mere form. Justice can only be done if the substance of the matter is examined for reliance on technicalities to the detriment of substantial justice leads to injustice.*

**B** *With profound respect, learned Counsel for the appellants, as an apostle of “the picture of law and its technical rules” belongs to a group that is fast becoming extinct.*  
(pp. 169 F/170 B)

**C** *ADJOURNMENTS - Application - Denial of*

**3.** *I have perused the above cases and it is my considered view that it would have defeated the noble end of justice to further adjourn the matter that had been in the trial Court for 10 years on the flimsy ground that learned Counsel who appeared for the appellants and who had been appearing for them with his principal having taken the ruling needed to “take this message to my principal”.*

**E** *Justice in this case is for both parties - the plaintiff and the defendants. The Court has a duty to guard against an attempt by any of the parties to make an ass of the law and its rules of procedure. If Counsel’s desire to take a message to his principal is an application for adjournment then the trial Court rightly rejected same and read its judgment, as no cogent reason was advanced.*

**F** *Adjournment is a matter within the discretion of the Court and in this case the discretion was exercised in the overall interest of justice.*

**G** *The exercise of judicial discretion on the facts of the case was in accord with common sense.*

*In my view, the need for Counsel to take the message, whatever the message is, does not constitute application, based on valid grounds, for adjournment.*

**H** *When an application for adjournment is unnecessary or not reasonable, the Court may deny same and proceed with the case.* (pp. 172 F/173 C/D)

*LEGAL PRACTITIONERS - Appearance*

**4. When Counsel announces appearance whether as holding brief for another Counsel or not, he is presumed to have full briefing and authority to do the case and if he is not in a position to do so he should make a proper application for adjournment giving his valid reason(s) for his inability to proceed with the case.** (p. 173 B)

*LEGAL PRACTITIONERS - Non appearance - Contempt of court*

**5. Also continuous absence of Counsel in a case he is handling as shown in the record of the trial Court amounts to obstruction of the cause of justice and therefore contempt of Court.** (p. 173 D)

*FAIR HEARING - Breach - Allegation of*

**6. The right to fair hearing entrenched in S.36 (1) of the Constitution of the Federal Republic of Nigeria, 1999, in its first pillar of justice is the Audi alterem partem which means “hear the other party”. The Court has no business pursuing a recalcitrant party in order to hear him. All the Court is required to do is to create an enabling environment for the party to present his case and be heard. A party who refuses or fails to take advantage of the fair hearing environment created by the Court cannot accuse the Court of denying him fair trial.** (p. 173 E)

*FAIR HEARING - Entitlement to*

**7. The process of fair hearing is a two edged sword and it cuts both ways - appellants have a right to a fair hearing and fair hearing implies also that the respondent as plaintiff is entitled to have his case determined within a reasonable time. The right of the two parties must be balanced; one cannot be sacrificed to the other without perverting justice. On the facts of this case, I hold that the appellants could not substantiate their allegation of denial of fair hearing. Issue 2 is accordingly resolved against the appellants.** (p. 173 H)

*APPEALS - Grounds - Issues - Proliferation*

**8. The question is: if the single issue is drawn from each of the**

**six grounds of appeal, why did learned Counsel not file just one ground of appeal and raise the lone issue therefrom? Why would learned Counsel for the appellants state in six words what he can conveniently state in one word? The Court frowns at proliferation of issues for determination distilled from grounds of appeal. An issue arises from one or more grounds of appeal.**

**It is proliferation of issues to raise more than one issue from a ground of appeal. In the same vein, it is a proliferation of grounds of appeal to raise six grounds of appeal each complaining of a breach of the right to fair hearing and all culminating in a single issue of denial of right to fair hearing. The lower Court was right to have struck off the five grounds of appeal and to have determined the issue as arising from one of the six grounds. In any case, what injury have the appellants suffered?** (p. 174 E)

NOTABLE POINT OF INTEREST

**ONNOGHEN JSC**

**1. Judgment not attacked on merit is deemed correct**

The second point of interest is the fact that none of the three issues raised for determination in the appeal attacks the merit of the judgment delivered by the trial court and confirmed by the lower court.

What the appeal attacks is the procedure leading to the judgment not the content thereof. In such a circumstance, it is settled law, that appellants are deemed to concede that the judgment is correct on the merits as regards the issues joined in the matter, evidence relating thereto and the applicable law.

It is advisable that where Counsel is faced with a similar situation he should not put all his eggs in one basket as was done in this case but should, in addition, attack the judgment on the merits in case the attack on procedure is found not be substantial enough to nullify the proceedings, as in the instant case. (p. 176 E)

**REPRESENTATION**

Matthew Ojua Esq. with C. M. Igele (Miss); Rosemary Echibo and Max Ogar Esq., for the Appellants

B. J. Akomolafe with Kehinde Ijlade and D. A. Oloworuwa, for the Respondent

### **CASES REFERRED TO**

- Alsthom S.A. v. Saraki (2005) NWLR (pt. 911) 208  
 UBA Plc v. Ujor (2001) 10 NWLR (pt. 722) 589 B  
 Otapo v. Sunmonu (1987) 2 NWLR (pt. 58) 587  
 Obodo v. Olomu (1987) 3 NWLR (pt. 59) 111  
 Ihom v. Gaji (1997) 6 NWLR (pt. 509) 526  
 Nig. Arab Bank Ltd v. Comex Ltd. (1999) 6 NWLR (pt. 608) 648 C  
 Duba v. Saleh (1997) 2 NWLR (pt. 488) 502  
 Eagle Construction Ltd v. Ombugadu (1998) 1 NWLR (pt. 533) 231  
 Salami v. Odogwu (1991) 12 NWLR (pt. 173) 291  
 Bakare v. Apena (1986) 4 NWLR (pt. 33) 1  
 Iwoha v. Nipost (2003) 8 NWLR (pt. 822) 803 D  
 A-G Bendel State v. Aideyan (1989) 4 NWLR (pt. 118) 546  
 Gbadamosi v. Dairo (2007) 3 NWLR (pt. 1021) 23-24  
 Governor of Oyo State v. Folayan (1995) 8 NWLR (pt. 413) 292

### **STATUTE & RULES REFERRED TO**

- Constitution of the Federal Republic of Nigeria 1999, ss. 36(1), 294(1)  
 Cross River State High Court Rules, O. 37 r. 22 E

### **LEAD JUDGMENT BY NGWUTA JSC**

In the High Court of Justice of Cross River State, sitting at Ikom, the Respondent, as plaintiff, claimed against the appellants as defendants as follows: F

*“1. A declaration that he is owner and entitled to possession of the plot of land and house thereon and situate along Ikom/Cala- G  
 bar Road.*

*2. A mandatory order compelling the defendants to hand over all relevant documents in relation to plaintiff’s plot.*

*3. A perpetual injunction restraining the defendants, their agents, privies, servants from further interfering with right of the plaintiff H  
 to the aforesaid plot and house.”*

The matter was finally determined in the Calabar Judicial Division of the Cross River State High Court by the learned trial Judge, Edem, J., before whom trial opened in the Ikom Judicial Division. In

his judgment delivered on 5th March, 2002 the learned trial Judge granted the three reliefs claimed by the Respondent as plaintiff. The learned trial Judge made an award of N5,000 in favour of the respondent against the appellants as costs.

B Appellants were aggrieved and on the 25th day of March, 2002 they filed a notice of appeal containing 5 (five) grounds of appeal.

C The Court of Appeal, Calabar Judicial Division, dismissed the appeal on 23rd November, 2004 with N10,000 costs in favour of the Respondent against the Appellants. Being dissatisfied again with the judgment against them, appellants appealed to this Court on 22/2/2005 on six (6) grounds.

In compliance with the rules and practice of this Court, learned Counsel for the parties filed and exchanged briefs of argument.

D From his six (6) grounds of appeal, learned Counsel for the Appellants, in his brief of argument, formulated the following three issues for determination:

E *“1. Whether the justices of the Court of Appeal were right in holding that the trial Judge closed the case of the defendants before proceeding to judgment. (Ground 3).*

F *2. Whether the learned Justices of the Court of Appeal were right in holding that the constitutional rights of the appellants were not breached even when the trial Judge did not formally close the defendants’ case and afford them the opportunity of presenting a final address? (Grounds 4 & 5).*

*3. Whether the learned Justices of the Court of Appeal were right in striking out five of the six grounds of appeal for alleged failure to formulate issues from the said grounds?”*

G In his own brief of argument, learned Counsel for the Respondent adopted the three issues formulated by learned Counsel for the appellants in his brief of argument.

H Arguing issue one in his brief, learned Counsel for the Appellants submitted that the closure of a party’s case in a civil trial is a matter of fact that must be eloquently reflected in the records of the Court. He said that the Court must make a definite pronouncement to the effect that the case is closed especially when a party is in Court and unable to proceed with his case. He relied on *Alsthom S.A. v. Saraki* (2005) NWLR (Pt. 911) 208 at 226-228.



He said that the authority also applies to the case of a defendant especially given the fact that the defendants were also counter claimants which made them plaintiffs. Learned Counsel referred to pages 73 to 74 of the record and said that the appellants as defendants were absent as usual and learned Counsel for the Respondent (then plaintiff) urged the Court to hold that the defendants/appellants had closed their case and to allow him (learned Counsel) to address the Court. He argued that the trial Court ignored the application of learned Counsel for the Respondent and adjourned the matter for judgment without closing the appellants' case and giving the plaintiff's Counsel the opportunity to address the Court. B C

He referred to page 76 of the record to show that his application for leave to call further evidence, close his case and deliver his final address and a motion to stay delivery of the judgment pending the determination of his motion were granted. Learned Counsel stated that on 29/1/2002, the appellants applied that the matter be sent to the State Chief Judge for reassignment to another Judge, charging the learned trial Judge with bias. D

He said that the application was opposed and the learned trial Judge adjourned same to 5/3/2002 for ruling and in the ruling delivered as scheduled, the application was dismissed and the appellants called upon to continue their defence. He said that the appellants' application for adjournment was rejected and the Court went ahead to deliver what the learned trial Judge dubbed "*My Suspended Judgment*". E F

Learned Counsel relied on UBA Plc v. Ujor (2001) 10 NWLR (pt. 722) 589 at 608 and Otapo v. Sunmonu (1987) 2 NWLR (pt. 58) 587 at 506 in support of his argument that the trial Court denied the appellants the right to be heard by proceeding to deliver the judgment without giving the appellants the opportunity to respond to the application for judgment. He argued that when the appellants' Counsel could not continue with the defence when called upon to do so, the trial Court ought to have formally closed the case for the appellants. Counsel emphasised that the failure of the trial Court to make an order formally closing the appellants' case formed the crux of the appellants' case on appeal. G H

He referred to page 173 of the record and submitted that the Court below erred when it held that:

*“The trial Court was right to hold that they had no witness to call and that their case had been thereby closed. He did this by lifting his earlier order of suspension of his judgment. Even though there was no express closure of the appellants’ defence, the lifting of the suspension order by the learned trial judge, in my humble view, amounted to such closure.”*

He referred to page 175 of the record where the Court below stated inter alia: *“... the learned trial Judge was right in entering his judgment without waiting for the said appellant to either close their case or address the Court at the time they wanted”* and argued that the passage in the judgment was an admission that the lifting of what he called *“the so-called suspension order”* cannot amount to the closure of the appellants’ case.

Learned Counsel referred to the two reliefs in the motion paper at page 116 of the record and said that the order for stay of the delivery of the judgment was made *“pending the determination of this application”* and so was discharged when the first relief of leave to call further evidence was granted. He urged the Court to hold that the case of the appellants/counter-claimants was not closed before the trial Court preceded to deliver the judgment and this occasioned a miscarriage of justice.

In issue 2, learned Counsel referred to Sections 36 (1) and 294 (1) of the 1999 Constitution of the Federal Republic of Nigeria and Order 37 Rule 22 of the Cross River State High Court Rules and argued that the trial Court breached the said provisions by its failure to give the appellants opportunity to close their case and address the Court before it delivered its judgment. He relied on *Obodo v. Olomu* (1987) 3 NWLR (Pt. 59) 111- at 121, and *Ihom v. Gaji* (1997) 6 NWLR (Pt. 509) 526 and *UBA Plc v. Ujor* (supra) and argued that the delivery of the judgment without opportunity to call further evidence, close the case and address the Court rendered nugatory the order granted to the appellants to call further evidence, close their case and address the Court and that the procedure adopted by the Court was in breach of fair hearing and that the proceedings were thus rendered null and void.

Learned Counsel practically conceded that the appellants acted in a manner that annoyed the trial Judge but argued that the conduct of the appellants were not enough to justify a breach of

constitutionally guaranteed rights to a fair hearing. He relied on Nigerian Arab Bank Ltd v. Comex Ltd. (1999) 6 NWLR (Pt. 608) 648; Duba v. Saleh (1997) 2 NWLR (Pt.488) 502 at 508; Eagle Construction Ltd v. Ombugadu (1998) 1 NWLR (Pt. 533) 231 at 237; Salami v. Odogwu (1991) 12 NWLR (Pt. 173) 291 at 301, among many others in his characterization of the trial Court as a Kangaroo Court relying on Bakare v. Apena (1986) 4 NWLR (Pt. 33) 1 at 20 in which Aniagolu, JSC (of blessed memory) said:

*“The moment a Court ceases to do justice in accordance with the law and laid down procedure for it, it ceases to be a regular Court to become a Kangaroo Court.”*

In his issue 3, learned Counsel for the Appellants reproduced the grounds of appeal at the Court below and the single issue framed from the six grounds of appeal. He referred to pages 162-163 of the record and argued that contrary to the finding of the lower Court that grounds 1-5 were abandoned as no issue was distilled therefrom, his single issue was distilled from all the six grounds of appeal as the grounds have to do with complaints against the infringement of the appellants’ right to fair hearing as guaranteed by the 1999 Constitution and the rules of natural justice.

Learned Counsel referred to grounds 1-5 in the Notice of Appeal and submitted that each ground complained about a form of breach of the appellants’ constitutional right to a fair hearing and rules of natural justice. He relied on Omega Bank (Nig) Plc v. OBC Ltd (2005) 8 NWLR (Pt. 928) 547 at 580; G. Chitex Industries Ltd v. OBI Ltd (2005) 14 NWLR (Pt. 945) 392 at 407; Iwoha v. Nipost (2003) 8 NWLR (Pt. 822) 803; Agu v. Ikewide (1991) 3 NWLR (Pt. 180) 385; A-G Bendel State v. Aideyan (1989) 4 NWLR (Pt. 118) 546 and said he formulated one issue from the six grounds of appeal in compliance with the advice of this Court against a proliferation of issues.

In view of the above, he urged the Court to allow the appeal, set aside the judgment of the lower court and declare same null and void for the following reasons:

1) The rules of natural justice and right to fair hearing under the 1999 Constitution were breached.

2) In the circumstances of the case the appellants were denied fair hearing and were consequently not accorded the decency of ju-

risprudence.

3) The lone issue distilled is from the six grounds of appeal.

In his brief of argument, learned Counsel for the Respondent argued the three issues together. While conceding that the right to fair hearing as enshrined in the Constitution is a fundamental right that avails everyone, he said the appellants were over indulged by the trial Court, adding that equity aids the vigilant. He said that the trial Court kept adjourning the case to 9th December, 1999, 1st February, 2004, 4th April, 2000, 9th July, 2001, 30th July, 2001 and 12th December, 2001 because the appellant would not continue their defence.

Learned Counsel said that the appellants did not appeal against the findings of fact made by the trial Judge but that their case was predicated on the refusal to transfer the case and not affording the appellants opportunity to close their case and address the Court. Learned Counsel reasoned that since the appellants did not appeal against the findings of fact made by the trial Judge, the judgment is right and it is the mere procedure of arriving at it that the appellants are complaining about. He relied on *Gbadamosi v. Dairo* (2007) 3 NWLR (Pt. 1021) pages 23-24 paras F-G and said that the appellants who alleged miscarriage of justice had a duty to prove what they alleged and that their failure to do so means that the trial Court was right in its judgment.

On the alleged denial of fair hearing, learned Counsel said that the appellants were not sure of what they wanted when on 25th May, 1999 they asked for a date for defence and/or address on no case submission. He said that the appellants were granted their prayer to call further evidence and the matter was adjourned to 29th January and 14th February, 2002 for continuation of defence but rather than continue with their defence, the appellants brought an application for transfer of the case based on allegation of bias against the trial Judge. He said that the motion was opposed and having heard the parties, the Court adjourned the matter for “*ruling and continuation*”.

He argued that when the ruling was delivered dismissing the motion for transfer, learned Counsel for the Appellants refused to go on with the case but said he was taking the message to his principal. Because no cogent reason was given by Counsel for not proceeding

with the case, learned Counsel argued, the learned trial Judge rightly proceeded to read the judgment. Based on the above, learned Counsel submitted that the appellants misconceived the law of fair hearing the essence of what he said is giving them opportunity to present their case before the Court or tribunal.

He referred to Governor of Oyo State v. Folayan (1995) 8 B NWLR (Pt.413) 292 where the Supreme Court, per Wali, JSC, state that:

*“It should be borne in mind that the fact that the question of fair hearing is universally recognised issue does not mean that a person who elected not to be heard after being given opportunity can be forced to do so. It is a right which a party may elect to waive if he so desires.”* C

He relied on Okwule v. Nwadike (2009) 5 NWLR (Pt. 1134) page 360 at 375 para C-H for the need to balance the plaintiff’s right to have his case heard expeditiously and the defendant’s right to be afforded opportunity to present his case. He argued that the appellants who did not take the opportunity offered them to present their case cannot be heard to complain of denial of fair hearing. He relied on Adara Nig Ltd v. UBN Plc (2009) 13 NWLR (Pt. 1158) p.256 at 319 paras A-G and Bill Constructions Co. Ltd v. Imani & Sons Ltd/Shell Trustees (2006) 19 NWLR (Pt. 1013) 1. E

Learned Counsel submitted that in view of the opportunities afforded the appellants on numerous occasions to continue with their defence and the failure of the appellants to utilize the opportunities, the delivery of the judgment by the trial Court was in accord with fair hearing and justice to both parties. He said that the case had been on for ten years due to the tactics adopted by the appellants and as decided in Ajidahun v. Ajidahun (2000) 4 NWLR (Pt. 654) 605 at 614: F

*“...our jurisprudence does not permit indolent or unwilling party to frustrate or deprive a party who has a genuine complaint.”*

He relied on Adebayo v. A-G Ogun State (2008) 2-3 SC (Pt. 11) 50 at 69 where it was held, inter alia, that *“the fair hearing constitutional provision... is not available to them just for the asking.”* H Placing reliance on Eke v. Ogbonda (2007) Vol. 2 MJSC 1 at 95, learned Counsel argued that the trial Court discharged its duty of creating the environment for fair hearing and the appellants who

failed to take advantage of the environment cannot be heard to complain that they were denied fair hearing.

Learned Counsel said that the case of *Obodo v. Olomu* (supra) cited by the appellants is not applicable to the facts of the case at hand in that in the earlier case one of the parties addressed the Court but the other party was denied the right to present his final address. He argued that in the circumstances, the learned trial Judge, in view of the fact that the case had been on for ten years, was justified in delivering his judgment which was suspended at the instance of the appellants who applied to call further evidence and to close their case and address the Court but failed to utilize the opportunity afforded them to do so.

He relied on *Egbo v. Agbara* (1997) 1 NWLR (Pt.481) 293 at 315 where Iguh, JSC, speaking for the apex Court, warned that:

*“Trial Courts are admonished in the strongest possible terms against undue/or inordinate delay in the determination of suits once actual hearing of such suits has commenced.”*

Learned Counsel referred to the cases of *UBA v. Ujor* (supra) and *Bakare v. Apena* (supra) cited by the appellants and argued that the cases are not applicable in that the appellant in each case was not called upon to respond but in the case at hand, Counsel for the appellants was called up to continue the defence but he declined to do so. He urged the Court to dismiss the appeal.

I have carefully scrutinized the record of proceeding as well as the briefs filed by learned counsel for the parties. Based on my appraisal of same, I will resolve the three issues raised by the appellant and adopted by the respondent, seriatim.

#### ISSUE ONE:

*“Whether the Justices of the Court of Appeal were right in holding that the trial Judge closed the case of the defendant before proceeding to judgment.”*

(Ground 3).

In dealing with the issue reproduced above, learned Counsel for the appellant stated that when the matter resumed at Calabar on 9th July, 2001 after 10 months, the appellants and their Counsel were absent and Counsel for the respondent applied for a date to address the Court.

He referred to pages 73 and 74 of the records and said that

the Court adjourned the matter to 30/7/2001 at which date the appellants and their Counsel “*were again inevitably absent from Court.*” What cogent reason made it inevitable for both defendants and their Counsel to be absent from Court was not disclosed by Counsel. It was at this point and in view of the absence of defendants and their Counsel that learned Counsel for the respondent moved the court thus: B

*“OB1: May the court hold that the defendants have closed their case for me to address the Court...”*

The crux of the appellants’ complaint in issue 1 is that the learned trial Judge ignored respondent Counsel’s application and adjourned the matter for judgment “*without closing the defendants’ case and giving the plaintiffs the opportunity to address the Court.*” This is a two pronged attack on the procedure adopted by the learned trial Judge (1) His Lordships did not close the appellants’ case; and (2) this denied the respondent’s Counsel the opportunity to address the Court. C D

***I will deal with the last complaint first. It is not the duty of learned Counsel for the appellants to champion the cause of the respondent, his client’s opponent. If need be, it is learned Counsel for the respondent who should complain of denial of opportunity to address the Court on behalf of his client. Learned Counsel for the appellant cast himself in the mode of champion of the just cause, defending the right of his opponent in the hope to enhance his own case. Such posture could be a disservice to his clients.*** E F

***The second leg of the appellants’ complaint is an attempt to sacrifice the essence of law to its shadow, picture and formality. A holistic view of the proceedings in the trial Court leaves no one, including the learned Counsel for the appellants, in doubt that the appellants’ case was deemed closed. It is immaterial in the circumstances that the trial Court did not spell it out that the appellants’ case was deemed closed for the Court could not have adjourned the matter for judgment if it was still open for the recalcitrant appellants as defendants to continue to dribble the Court and the respondent.*** G H

***In raising the issue, learned Counsel for the appellants was merely paying tribute to technicality at its graveside.***

In the immortal words of my noble Lord, the philosopher Jurist, Oputa, JSC:

B *“The picture of law and its technical rules triumphant and justice prostrate may no doubt have its admirers. But the spirit of justice does not reside in forms, formalities nor in technicalities nor is the triumph of the administration of justice to be found in successfully picking one’s way between pitfalls of technicality. Law and its technical rules ought to be a handmaid of justice...”* (See Aliu Bello v. Oyo State (1986) 5 NWLR (Pt. 45) 826 at 886.

C ***The Court is more interested in substance than mere form. Justice can only be done if the substance of the matter is examined for reliance on technicalities to the detriment of substantial justice leads to injustice.*** (See State v. Gwarto (1983) 1 SCNLR 142 at 160). ***With profound respect, learned Counsel***  
 D ***for the appellants, as an apostle of “the picture of law and its technical rules” belongs to a group that is fast becoming extinct.*** In affirming the judgment of the trial court, the lower court, in effect, complied with the advice of Lord Atkin that:

E *“When these ghosts of the (technicalities) stand in the path of justice, clanking their medieval chains the proper course for the judge is to pass through them undeterred.”* (See United Australia Ltd v. Barclays Bank (1941) AC 1 at 29; see also to the same effect Okonjo v. Odje (1985) 10 SC 267).

F In my considered view, the lower Court commendably side-tracked the *“ghosts of the past”* and held that in the substance of the proceedings before the trial court, the appellants’ case was closed. I therefore resolve issue 1 in favour of the respondent and against the appellants.

G **ISSUE TWO:**

H *“Whether the learned Justices of the Court of Appeal were right in holding that the constitutional rights of the appellants were not breached even when the trial Judge did not formally close the defendants’ case and afford them the opportunity of Presenting a final address.”* (Grounds 4 & 5).

The issue reproduced above is a double strike at the proceedings in the trial court with respect to alleged non-closure of the appellants’ case, and the alleged denial of opportunity for the appellants as defendants, to present a final address.



The first leg of the issue was settled in issue 1. I am left with the second arm on the denial of opportunity to present a final address. Learned Counsel for the appellants cited sections 36 (1) and 294 (1) of the 1999 Constitution to show that the appellants were denied a fair hearing in that they were not given the opportunity to present a final address. B

Respondent countered this by arguing to the effect that appellants were standing in the way of justice in a case that had been pending in the trial Court for 10 years. The respondent closed his case on 25th May 1999 and the appellants were granted adjournment at their instance, to defend *“and/or address on a no case submission”*. C

On 9th December, 1999 appellants were given another date for defence. On 4th April, 2000 appellants again sought for and were granted adjournment. Appellants and Counsel were absent on 9/7/2001. On 30/7/2001 they were absent and their Counsel did not write the Court even though he was served hearing notice. The Court adjourned the matter for judgment. On 3rd December, 2001 when judgment was to be delivered Counsel for the appellants was granted adjournment to 12th and 13th December, 2001 as suggested by Counsel. D E

On 12/12/2001 Counsel was absent and did not write the Court. On 13th December, 2001 learned Counsel appeared and argued his application *“to call further evidence, close our case and deliver address.”* F

The matter was adjourned, at the instance of learned Counsel for the appellants, to 29th January and 14th February, 2002 for continuation of defence. On 29th January, 2002 learned Counsel for the appellants abandoned the continuation of defence for which he was granted adjournment on 13/12/2001. He acknowledged that the matter *“is for continuation of our defence”* but said that he had *“the permission of my client to reassign the matter back to the CJ for re-assignment.”* G

The learned trial Judge, having patiently listened to both learned Counsel on the issue of reassignment of the case, adjourned the matter to 5th March, 2002 for *“ruling and continuation”*. On 4th March, 2002 the learned trial Judge dismissed the oral application for reassignment in the flowery words traditional of His Lordship: H

“... *I draw the curtain and order as follows:*

(a) *The application exuding more sound and fury than senses is refused and dismissed with N1,000.00 cost in favour of the plaintiff.*

(b) *Continuation of defence must proceed by the defence or*

B *I revoke the stay order and read the suspended judgment. My ruling.”*

C When called up to continue the defence, learned Counsel who appeared for the defendants (appellants), Mr. Agabi, told the Court that “*I came for the ruling and I am to take this message to my principal.*”, notwithstanding the fact that the matter was adjourned on 29th January 2002, in the presence of lead Counsel for the appellant, to 5/3/2002 for “*ruling and continuation*”.

D In reaction to learned Counsel’s application, if in fact it was an application, the learned trial Judge said:

“*Considering the age of this case and the un-required antecedent greatly engendered by the defence, I will refuse the application and read my suspended judgment in the light of the following authorities.*”

E His Lordships then cited the following cases to justify his ruling to deliver his judgment: *Ajidahun v. Ajidahun* (2000) 4 NWLR (pt. 654) p.605 at 606; *IRIR v. Errubona* (1991) 2 “LR IIV” 590 at 595 H 19; *Odogwu v. Odogwu* (1992) 7 NWLR (Pt. 253) p.344 at 346 H3.

F ***I have perused the above cases and it is my considered view that it would have defeated the noble end of justice to further adjourn the matter that had been in the trial Court for 10 years on the flimsy ground that learned Counsel who appeared for the appellants and who had been appearing for them with his principal having taken the ruling needed to “take this message to my principal”.***

H ***Justice in this case is for both parties - the plaintiff and the defendants. The Court has a duty to guard against an attempt by any of the parties to make an ass of the law and its rules of procedure. If Counsel’s desire to take a message to his principal is an application for adjournment then the trial Court rightly rejected same and read its judgment, as no cogent reason was advanced.***

**Adjournment is a matter within the discretion of the Court and in this case the discretion was exercised in the overall interest of justice.** See Shonekan v. P. G. Smith (1967) 1 All NLR 329 at 333. **The exercise of judicial discretion on the facts of the case was in accord with common sense.** See Odusote v. Odusote (1971) NMLR 228. **When Counsel announces appearance whether as holding brief for another Counsel or not, he is presumed to have full briefing and authority to do the case and if he is not in a position to do so he should make a proper application for adjournment giving his valid reason(s) for his inability to proceed with the case. In my view, the need for Counsel to take the message, whatever the message is, does not constitute application, based on valid grounds, for adjournment.**

**Also continuous absence of Counsel in a case he is handling as shown in the record of the trial Court amounts to obstruction of the cause of justice and therefore contempt of Court.]** See McKown v. R (1971) 16 DLR 390; Izuora v. R (1953) 13 A WACA 313. **When an application for adjournment is unnecessary or not reasonable, the Court may deny same and proceed with the case.** See ACB Ltd. v. Joseph Agbunyim (1960) 5 JSC 19.

**The right to fair hearing entrenched in S.36 (1) of the Constitution of the Federal Republic of Nigeria, 1999, in its first pillar of justice is the Audi alterem partem which means "hear the other party". The Court has no business pursuing a recalcitrant party in order to hear him. All the Court is required to do is to create an enabling environment for the party to present his case and be heard. A party who refuses or fails to take advantage of the fair hearing environment created by the Court cannot accuse the Court of denying him fair trial.** See Kwara State Ministry of Health v. M. I. Electrical Enterprises (2011) All FWLR (pt. 602) 1757.

**The process of fair hearing is a two edged sword and it cuts both ways - appellants have a right to a fair hearing and fair hearing implies also that the respondent as plaintiff is entitled to have his case determined within a reasonable time. The right of the two parties must be balanced; one cannot be**

**sacrificed to the other without perverting justice. On the facts of this case, I hold that the appellants could not substantiate their allegation of denial of fair hearing. Issue 2 is accordingly resolved against the appellants.**

The third or last issue is:

B *“Whether the learned Justices of the Court of Appeal were right in striking out five of the six grounds of appeal for alleged failure to formulate issues from the said grounds?”*

In his argument on this issue, learned Counsel for the appellants stated that:

C *“The lone issue was distilled from all the grounds of appeal as indeed all the grounds of appeal have to do with complaints against the infringement of the appellants’ right to fair hearing as guaranteed by the 1999 Constitution and the rules of Natural justice from the acts of the trial Judge that culminated in the judgment of the 5th March 2002.”*

Learned Counsel reproduced his grounds of appeal and argued further that the complaints in the grounds *“have to do with breaches of the defendants’ right to fair hearing as enshrined in the Constitution and the hallowed principles of natural justice.”*

**The question is: if the single issue is drawn from each of the six grounds of appeal, why did learned Counsel not file just one ground of appeal and raise the lone issue therefrom? Why would learned Counsel for the appellants state in six words what he can conveniently state in one word? The Court frowns at proliferation of issues for determination distilled from grounds of appeal. An issue arises from one or more grounds of appeal. See Ugo v. Obiekwe (1989) 1 NWLR (Pt. 99) 566. It is proliferation of issues to raise more than one issue from a ground of appeal. In the same vein, it is a proliferation of grounds of appeal to raise six grounds of appeal each complaining of a breach of the right to fair hearing and all culminating in a single issue of denial of right to fair hearing. The lower Court was right to have struck off the five grounds of appeal and to have determined the issue as arising from one of the six grounds. In any case, what injury have the appellants suffered?**

Their lone issue was resolved. It is another case of sacrificing

substance to form.

I resolve the issue against the appellant.

My Lords, this case is a depiction of a total collapse of family value and cohesion. A family as we know it would have settled the dispute amicably without resort to the law. It is an affront to tradition. Learned Counsel in the case did not help matters. There is no shred of evidence that any or both of them made any attempt or even advised the parties, father and sons, to settle the matter at the family or village/community circles. In my view, it is a show of shame for which both sides expended their resources for more than 20 years through the trial Court to the apex Court. Learned Counsel did not, in my humble view, serve the interest of their clients.

Having resolved all the three issues in the appeal against the appellant, I hold that the appeal is devoid of merit and accordingly, I hereby dismiss same and affirm the decision of the lower Court.

Appellants are to pay costs of N100,000.00 jointly and severally to the respondent. Appeal dismissed.

### **ONNOGHEN JSC**

I have had the benefit of reading in draft the lead judgment of my learned brother, NGWUTA, JSC just delivered.

I agree with his reasoning and conclusion that the appeal is without merit and should be dismissed.

The main issue canvassed in this appeal is whether appellants were given fair hearing in the proceedings before the trial court, or put in other words, whether the rights of appellants to fair hearing as enshrined in Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 as amended were infringed upon by the trial court thereby rendering the proceedings and judgment resulting therefrom a nullity.

My learned brother has exhaustively dealt with the issue in the lead judgment. All I want is to emphasis the main principle behind the right to fair hearing as enshrined in Section 36(1) of the said 1999 Constitution, which lies in the duty of the court to create and maintain an enabling environment for parties to ventilate their grievances either in the prosecution or defence of their case. A party cannot be compelled by the court to present or defend his case when he

has no such desire. In the circumstances where a party refuses or neglects or fails to take advantage of the fair hearing environment so created by the court, he (the party in default) cannot be heard to accuse the court of a denial of his right to fair hearing. He has himself to blame. See *Kwara State Ministry of Health v. M.I. Electrical Enterprises* (2011) ALL FWLR (pt. 602) 1757.

From the facts of this case it is very clear that the appellants were given adequate opportunity to present their case by the trial judge but they, for reasons best known to them, failed and or neglected to avail themselves of the opportunity. Rather than utilize the said opportunity they indulged themselves in delay and sometimes contemptuous tactics aimed at preventing the conclusion of the trial by the court to the disadvantage of the plaintiff/respondent.

We must remember always that the principle of the right to fair hearing, just like justice itself, operates for the benefit of the plaintiff(s) and defendant(s). It does not avail only the defendant(s)/appellant(s). Just as the defendant has the right to present his case before the court takes a decision on the matter, the plaintiff(s) also has the right to have his case heard and determined within a reasonable time. In applying the principles of fair hearing therefore, the court is called upon to balance the scale of justice between the competing interests of the parties so as to do justice between them. The principle of fair hearing therefore is not a one way traffic!

The second point of interest is the fact that none of the three issues raised for determination in the appeal attacks the merit of the judgment delivered by the trial court and confirmed by the lower court. What the appeal attacks is the procedure leading to the judgment not the content thereof. In such a circumstance, it is settled law, that appellants are deemed to concede that the judgment is correct on the merits as regards the issues joined in the matter, evidence relating thereto and the applicable law.

It is advisable that where Counsel is faced with a similar situation he should not put all his eggs in one basket as was done in this case but should, in addition, attack the judgment on the merits in case the attack on procedure is found not be substantial enough to nullify the proceedings, as in the instant case.

It is for the above and the more detailed reasons contained in the lead judgment of my learned brother, NGWUTA, JSC that I

too dismiss the appeal for lack of merit.

I abide by the consequential orders made therein including the order as to costs. Appeal dismissed.

### ***GALADIMA JSC***

I have the privilege of reading in draft the lead judgment of my learned brother NGWUTA, JSC, just delivered.

I entirely agree with his reasoning leading the conclusion that the appeal is lacking in merit and should be dismissed.

The main plank of the Appellants, complaint in this appeal is whether they were given fair hearing in the proceedings before the Cross River State High Court, sitting at Ikom. In the lead Judgment the issue has been exhaustively dealt with. Learned counsel for the Appellants relied on ss.36 and 294 (1) of the 1999 Constitution to contend that the Appellants were denied fair hearing in that they were not given the opportunity to present a final address.

From the record, it beats me hollow, to discover that the Appellants have consistently stood in the path of justice in the case that had been pending in the trial High Court for over 10 years. The Respondent closed his case on 25/5/1999. All efforts made by the trial Court to have the Appellants defend and address the Court on “a no case submission” were frustrated by the Appellants. The Respondent, in the circumstance, should be the one to complain of not being given fair opportunity to be heard and his case determined within a reasonable time. If the principle of fair hearing is one way traffic, then the Appellants, in the circumstance of this case, would have his way. But he cannot as they cannot substantiate their allegation of denial of fair hearing.

The remaining two issues have been exhaustively dealt with in the lead Judgment and equally resolved in favour of the Respondent.

It is for the foregoing reason and the more detailed ones in the lead judgment, I too hold that this appeal is devoid of merit and it is dismissed. I abide by order made as to costs.

**KEKERE-EKUN JSC**

I have had the advantage of reading in draft the well considered judgment of my learned brother, NGWUTA JSC, just delivered. I agree that the appeal is entirely lacking in merit and should be dismissed.

B The facts that gave rise to this appeal are that the respondent, who was the father of the appellants, as plaintiff, instituted an action against them, as defendants, before the High Court of Cross River State, Ikom Judicial Division on 8/4/1992 seeking the following

C reliefs:

1. A declaration that he is the owner and entitled to possession of the plot of land and house thereon, built by him lying and situate along Ikom-Calabar Road, Ikom Local Government Area which said plot and building No. 82 Calabar Road is now being illegally and maliciously occupied and/or claimed by the defendants.

D 2. A mandatory order compelling the defendants to hand over all relevant documents in relation to Plaintiff's plot and building aforesaid which were fraudulently obtained by the defendants purportedly acting on behalf of the Plaintiff in addition to rendering accounts of all monies collected as rents on the house, aforesaid by the defendants for the past three years assessed at N36, 000.00 (Thirty-Six thousand naira) or from January 1992 until possession is given up.

E 3. A perpetual injunction restraining the defendants, their agents, privies or servants from further interfering with rights of the Plaintiff to the aforesaid plot and house.

F The plaintiff's case was that sometime in 1974 he wanted to purchase the plot of land in dispute. Being illiterate, he took along his son, the 1st appellant herein to assist in the transaction. It was his case that the 1st appellant took advantage of his illiteracy to have the documents of title prepared in his (1st appellant's name). The 2nd appellant is the 1st appellant's younger brother. It was also part of the plaintiff's case that the 1st appellant was responsible for the purchase of building materials and the general supervision of the construction of the property. The 1st appellant however denied the respondent's claim and maintained that after the end of Nigerian Civil War in 1970 he obtained a loan from his father, the respondent, to boost his business and that he purchased the land in dispute and



built on it with the proceeds from the said business.

Pleadings were duly filed and exchanged between the parties. The case had a chequered history before it was eventually concluded and judgment delivered on 5/3/2002, almost 10 years after the suit commenced. The trial court found in favour of the respondent and granted his reliefs. The appellants were dissatisfied and appealed to the Court of Appeal, Calabar Division (the lower court). The appeal was dismissed on 23/11/2004. Still dissatisfied the appellants have now appealed to this court vide their notice of appeal filed on 22/2/2005. Parties filed and exchanged briefs of argument.

The appellant formulated 3 issues for determination as follows:

1. Whether the Justices of the Court of Appeal were right in holding that the trial Judge closed the case of the defendants before proceeding to judgment?

2. Whether the learned Justices of the Court of Appeal were right in holding that the constitutional rights of the appellants were not breached even when the trial Judge did not formally close the defendants' case and afford them the opportunity of presenting a final address?

3. Whether the learned Justices of the Court of Appeal were right in striking out five of the six grounds of appeal for alleged failure to formulate issues from the said grounds?

The first two issues raise the issue of fair hearing. It has been held that the constitutional right to fair hearing is synonymous with the common law principles of natural justice. See: 7-UP Bottling Co. Ltd. V. Abiola & Sons Ltd. (1995) 3 SCNJ 37; Deduwa V. Okorodudu (1976) 1 NMLR 237 @ 246. It is also well settled that any proceedings conducted in breach of a party's right to fair hearing, no matter how well conducted would be rendered a nullity. See: Tsokwa Motors (Nig.) Ltd. V. U.B.A. Plc. (2008) All FWLR (pt. 403) 1240 @ 1255 A-B; Adigun v. A.G. Oyo State (1987) 1 NWLR (pt. 53) 674; Okafor v. A.G. Anambra State (1991) 3 NWLR (pt.200) 59; Leaders & Co. Ltd. V. Bamaiyi (2010) 18 NWLR (Pt. 1225) 329. It was held in the recent decision of this court in: Abubakar Audu V. FRN (2013) 53 NSCQR 456 @ 469:

*"The law is indeed well settled that fair hearing within the meaning of Section 36 (1) of the Constitution of the Federal Repub-*

*lic of Nigeria, 1999, means a trial or hearing conducted according to all legal rules formulated to ensure that justice is done to the parties. It requires the observation or observance of the twin pillars of the rules of natural justice, namely, audi alteram partem and nemo iudex in causa sua.*

B *These rules, the obligation to hear the other side of a dispute or the right of a party in dispute to be heard, is so basic and fundamental a principle of our adjudicatory system in the determination of disputes that it cannot be compromised on any ground. See Nwokoro V. Oruma (1990) 3 NWLR (Pt.136) 22. The effect of a denial of fair hearing is trite in law. In other words once there is a breach of the right of fair hearing, the whole proceeding in the course of which the breach occurred and the decision arrived at by the court, become a nullity."*

D However, it is equally trite that once a party has been afforded the opportunity to present his case and he fails to take advantage of it, he cannot be heard to complain that his right to fair hearing has been breached. This was made very clear in the case of: Pam & Anor. V. Nasiru Mohammed & Anor. (2008) 16 NWLR (Pt.1112) E 1 @ 48 E - G where the concept of fair hearing was explained by Oguntade, JSC as follows:

*"The question of fair hearing is not just an issue of dogma. Whether or not a party has been denied of his right to fair hearing is to be judged by the nature and circumstances surrounding a particular case. The crucial determinant is the necessity to afford the parties every opportunity to put their case to the court before the court gives its judgment. ... A complaint founded on denial of fair hearing is an invitation to the court hearing the appeal to consider whether or not the court against which a complaint is made has been generally fair on the basis of equality to all parties before it."*

In order to determine whether the hearing has been fair, the test to be applied is the impression of a reasonable man present at the trial and whether from his observation justice was done in the case. See: Effiom V. The State (1995) 1 SCNJ 1; Muhammed V. Kano N. A. (1968) 1 ALL NLR 424; Unibiz (Nig.) Ltd. v. C.B.C.L. Ltd. (2003) 6 NWLR (Pt.816) 402 @ 432 - 433 C - B; (2003) 2 SC 23.

Although the suit was instituted in 1992, trial did not com-

mence until 17/11/1997. It commenced before Edem, J. at Ikom Division of the High Court of Cross River State. The respondent called four witnesses and closed his case on 25/5/1999. The appellants opened their defence on 22/6/1999.

After DW1 was sworn, his counsel sought an adjournment. The case was adjourned till the next day. He concluded his testimony on 28/10/1999. The matter was then adjourned for the evidence of DW2. The appellants were unable to proceed with their next witness, which led to several adjournments at their instance. They were accommodated by the court in order to afford them a further opportunity to continue with their defence despite stiff opposition from the respondent. There was another hiatus in the proceedings while the learned trial Judge was on a national assignment. Upon his return and posting to the Calabar Judicial Division, the case was re-assigned to him for continuation of hearing and conclusion. On 9/7/2001 and 30/7/2001 the defendants were absent despite being served with hearing notices. Learned counsel for the respondent urged the court to deem the appellants' case closed and permit him to address the court. Having failed to attend to court to conclude their defence, the court adjourned the case to 29/10/2001 for judgment. The judgment could not be delivered on that day and was further adjourned to 4/12/2001.

The day before judgment was to be delivered the appellants filed an application for leave to call further evidence and to stay delivery of the judgment pending the determination of the application. The application was granted without opposition on 13/12/2001 and the case was adjourned to 29/1/02 and 14/2/02 for continuation of defence. Rather than proceed with their defence on 29/1/02 the appellants applied that the case be referred to the Chief Judge for reassignment to another Judge on the ground of bias allegedly shown by the learned trial Judge during the proceedings of 3/12/2001 when they applied to stay delivery of the judgment. The court adjourned the case for ruling on the application for reassignment and for continuation of hearing. The ruling refusing the application was delivered on 5/3/02. After the delivery of the ruling, learned counsel for the appellants, when called upon to proceed with the defence sought an adjournment on the ground that he only came to court for the ruling and was to "take the message" (the outcome of the ruling) to

his principal. Having regard to the age of the case and the deliberate acts of the appellants aimed at delaying the conclusion of the trial, the learned trial Judge proceeded to deliver the judgment previously suspended. It was upon being dissatisfied with the entry of judgment without the formal closure of their case that the appellants filed their  
 B notice of appeal before the lower court.

Having carefully examined the entire record of proceedings there is no doubt that the learned trial Judge was extremely patient with the appellants and indeed bent over backwards to accommodate them. This indulgence allowed the case to drag on for almost 10  
 C years. Yet they failed to take advantage of every opportunity given to them to present their case to the court. In similar circumstances, this court in the case of Ndu v. The State (1990) 7 NWLR (164) 550 @ 578 - 579 G - C per Nnaemeka-Agu, JSC had this to say:

D     *"This brings me to the conduct of the learned counsel for the appellant in the High Court. By every stretch, it leaves very much to be desired. He obviously decided to frustrate the proceedings in the trial before the court at every turn. Now he wants to cash in on the fact that the court, after exercising what amounts to the patience of a*  
 E *saint, decided to call off his ill-founded bluff; he must make his refusal to address the court, after full opportunity so to do, an issue enuring to the benefit of the appellant. This should not be. In saying so, I must bear in mind the fact that certain rights conferred by the*  
 F *constitution can be expressly or impliedly waived see Ariori v. Elemo (1983) 1 SCNLR 1, at pp.18-19. The right of a person to address a court is one personal to himself and is not one in the sole control of the court. In the circumstances of this case, it would be a mockery of justice to say that the appeal must be allowed because the learned*  
 G *counsel for the appellant, due to his own fault, refused to address the court when given full opportunity to do so. I must remember that the right to address the court is ordinarily a right exercisable by the appellant through the same counsel who was responsible for the default. ...I am satisfied that the appellant had full opportunity for his*  
 H *counsel to address the court but that he refused to accept it; that his counsel's behaviour throughout the trial and in particular on the date when he refused to address the court was a deliberate attempt to delay the proceedings; and that the learned Judge's conduct of the case was completely without blemish."*

While conceding that the addresses of counsel are an essential part of the trial having regard to the fact that the Constitution made the conclusion of addresses a determining factor of the time limit for delivery of judgments under Section 258 of the 1979 Constitution (Section 294 of the 1999 Constitution), His Lordship stated at page 580 D - F (supra):

*“But it is fundamental in our system that the law will never protect any person against his own deliberate fault or misdeed. Once it is abundantly clear, as was the case here, that the application to adjourn the case in order to enable counsel prepare and deliver his address was made mala fide, or simply in view of so many concessions and indulgences already granted, to deliberately hold the court to ransom, the same party cannot be heard to successfully complain.”* (Emphasis supplied).

In the instant case, learned counsel for the appellants was clearly not prepared to proceed with the case and sought to further delay the proceedings on the flimsy and strange excuse that he wished to “take the message” of the ruling to his principal. He gave no indication that he was prepared to address the court. The learned trial Judge, rightly at that stage, took control of his court and brought the proceedings to an end with the delivery of the judgment, which had been previously suspended to afford the appellants the opportunity to conclude their defence. As observed in *Ndu V. The State* (supra) no court will allow itself to be dribbled by one party at the expense of another. The appellants have failed to show that their right to fair hearing was breached in the circumstances of this case.

It is for these and the more detailed reasons ably advanced in the bad judgment of my learned brother, NGWUTA JSC that I also find no merit in this appeal and dismiss it accordingly. I abide by the consequential orders contained in the lead judgment including the order for costs.