

# **COMPREHENSIVE INDEX TO**

## **ALL SUPREME COURT 2014**

### **DECISIONS**

JANUARY PT. 339

ABACHA

STATUTES - Interpretation - Principle - Where provisions of statute are clear and unambiguous - Court is to give the provisions their ordinary interpretation without more (H1)

COURTS - Statutes - Inte

STATUTES - Forfeiture - Decree No. 53 of 1999 - Appellant whose properties were confiscated pursuant to the decree has no action to take - As to be indemnified in respect of dealings with the properties forfeited (H2)

PROPERTY LAW - Forf

STATUTES - Decree No. 53 of 1999 - Person aggrieved - By instituting the criminal proceedings - Respondent cannot be described as person aggrieved under the decree - As its legal right was not invaded by the forfeiture order (H3)

CRIMINAL PROCEDURE - Statutes - Decr

CRIMINAL PROCEDURE - Commencement - Validity - Decree No. 53 of 1999 neither absolved appellant from prosecution - Nor amounted to Executive promise not to prosecute - Persons listed in the schedule to the decree (H4)

STATUTES - Criminal procedure - Comm

CRIMINAL PROCEDURE - Institution - Powers of AG Federation - Charges filed against appellant were in compliance with AG's powers under the Constitution s. 174(3) - To carry out public prosecution in the interest of justice (H5)

CHARGES - Institution - Powe

JUSTICE - Criminal procedure - Inst

ADMINISTRATIVE LAW - Crim

CRIMINAL PROCEDURE - Jurisdiction - Allegations contained in the 123 counts charge against appellant - Cannot be determined by CA or SC - But by the trial court before which proof of evidence had been filed (H6)

JURISDICTION - Criminal procedure - Alle

APPEALS - Juri

SUPREME COURT - Juri

EVIDENCE - Juri

CRIMINAL PROCEDURE - Nolle prosequi - Respondent can by this means give legal notice that lawsuit or prosecution has been abandoned - But this is neither acquittal nor equivalent to pardon (H7)

WORDS & PHRASES - Crime - Noll

CRIMINAL PROCEDURE - Institution of - Immunity - Limit - Immunity enjoyed by appellant's father while in office is not available to him - Hence appellant is liable to face his trial at trial court (H8)

GOVERNMENT - Criminal procedure - Inst

BAKARE

ACTIONS - Locus standi - Meaning of - Is the legal capacity of plaintiff to institute action in court - In exercise of plaintiff's constitutional right (H1)

COURTS - Actions - Locu

WORDS & PHRASES - Acti

ACTIONS - Locus standi - Basis - If statement of claim discloses no personal sufficient interest in subject matter of case - Plaintiff will have no locus to institute action - And court will have no jurisdiction to entertain same (H2)

PLEADINGS - Actions - Locu

COURTS - Acti

JURISDICTION - Acti

LOCUS STANDI - Acti

ACTIONS - Locus standi - Determination - To determine whether or not plaintiff has locus standi - Court should consider his statement of claim (H3)

LOCUS STANDI - Actions - Dete

PLEADINGS - Actions - Locu

COURTS - Acti

ACTIONS - Locus standi - Absence of - Objection - On lack of required locus standi - Ought to have been raised in statement of defence - And may then be taken by court when properly moved to do so (H4)

LOCUS STANDI - Actions - Abse

OBJECTIONS - Actions - Locu

COURTS - Actions - Locu

PLEADINGS - Acti

ACTIONS - Locus standi - Affidavit evidence - Determination - Trial court rightly considered the evidence with annexures - Along with statement of claim - To be satisfied that no sufficient interest was disclosed by plaintiffs to entitle them to locus standi (H5)

LOCUS STANDI - Actions - Affi

COURTS - Actions - Locu

EVIDENCE - Acti

AFFIDAVITS - Acti

ACTIONS - Locus standi - Objection - Application - Proper way by which plaintiff ought to have objected - To defendants' application on lack of locus - Was that it was being brought by way of demurrer - Not having filed statement of defence and raised the point in it (H6)

LOCUS STANDI - Actions - Obje

OBJECTIONS - Actions - Locu

PRACTICE & PROCEDURE - Demurrer - Locu

ACTIONS - Aggrieved party - Meaning - Is one whose personal rights have been adversely affected by another person's action - Or by court's decree or judgment (H7)

PARTIES - Actions - Aggr

JUDGMENTS - Acti

WORDS & PHRASES - Acti

ACTIONS - Cause of action - Proper parties - Jurisdiction - Cause of action endorsed on writ of summons determines proper parties - And it is only when such parties are before court - That it becomes competent to adjudicate on the suit (H8)

PARTIES - Actions - Caus

JURISDICTION - Acti

COURTS - Acti

WRIT OF SUMMONS - Acti

EGBIRIKA

APPEALS - Grounds - Particulars of - Where particulars of a ground are inconsistent with main complaint in the ground - The particulars must be discountenanced (H1)

APPEALS - Issues - Proliferation of - Is frowned upon by appellate courts - As an issue may be distilled from more than one ground - But it is improper to formulate more than one issue from a ground (H2)

COURTS - Appeals - Issu

MANSLAUGHTER - Proof - Shosimbo v. State - It is not necessary to prove any intent to kill or do grievous bodily harm - Provided there is proof that unlawful act of accused - Caused some harm to deceased - Which harm caused his death (H3)

EVIDENCE - Manslaughter - Proo

JUDICIAL PRECEDENTS - Mans

CRIMINAL PROCEDURE - Mans

CRIMINAL PROCEDURE - Tainted witness - Meaning - Is a witness who may or may not be an accomplice - But who by evidence he gives - May be regarded as having some purpose of his own to serve (H4)

EVIDENCE - Tainted witness - Mean

EVIDENCE - Prosecution witness - Testimony of - Admissibility - The courts rightly relied on testimony of PW 1 - Which was unshaken under cross exam - As there is no sufficient ground to allege that he is tainted witness (H5)

CRIMINAL PROCEDURE - Prosecution witness - Test

COURTS - Pros

CROSS EXAMINATION - Pros

CRIMINAL PROCEDURE - Proof - Burden of - Under EA s. 135(1) onus is on prosecution to establish his case beyond reasonable doubt - And if he discharges the onus - Burden of proving reasonable doubt shifts to accused by virtue of EA s. 135(3) (H6)

EVIDENCE - Proof - Burd

CRIMINAL PROCEDURE - Proof - Evidential burden - Onus may be placed on either prosecution or defence - But where burden placed on a party in respect of an issue is not discharged - The issue would be resolved against the party (H7)

EVIDENCE - Proof - Evid

PARTIES - Proo

MANSLAUGHTER - Proof - Direct evidence - Testimony of PW1 as to what he saw and heard during the incident - And appellant's extra judicial statement - Point to the fact that deceased died as a result of gunshot wound inflicted by appellant (H8)

EVIDENCE - Manslaughter - Proo

CRIMINAL PROCEDURE - Mans

MFA

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)

FAIR HEARING - Legal practitioners - Duty

COURTS - Lega

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)

TECHNICALITIES - Courts - Appe

LEGAL PRACTITIONERS - Courts - Tech

PRACTICE & PROCEDURE - Cour

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)

COURTS - Adjournments - Appl

LEGAL PRACTITIONERS - Adjo

JUSTICE - Adjo

PRACTICE & PROCEDURE - Adjo

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)

COURTS - Legal practitioners - Appe

ACTIONS - Lega

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)

JUSTICE - Legal practitioners - Non

COURTS - Lega

ACTIONS - Lega

CONTEMPT OF COURT - Lega

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)

COURTS - Fair hearing - Brea

PARTIES - Fair

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)

PARTIES - Fair hearing - Enti

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)

COURTS - Appeals - Grou

OMOSAYE

CRIMINAL PROCEDURE - Murder - Right to counsel - Failure to assign legal practitioner to appellant - Constitutes fundamental breach of CPA s. 352 - Which requires the provision of counsel where appellant could not afford one (H1)

MURDER - Right to counsel - Fail

LEGAL PRACTITIONERS - Murder - Righ

FAIR HEARING - Murd

APPEALS - Crime - Retrial - Court of Appeal - Powers of - The court being a creature of statute - Is empowered by s. 19(2) of its Act - To order acquittal or retrial of appellant - If it allows appeal against conviction (H2)

COURTS - Appeals - Retr

CONVICTION - Appe

APPEALS - Crime - Retrial - Validity of - By the justice of this cases - Lower Court rightly ordered a retrial - Notwithstanding that appellant's trial had been declared a nullity (H3)

COURTS - Appeals - Retr

CONVICTION - Appe

ORDERS OF COURT - Appe

**OREDOLA**

**COMPANY LAW** - Company - Winding up - Involves the liquidation of company - So that assets are distributed to those entitled to receive them (H1)

**BANKING** - Liquidation & Dissolution - Difference - The former may precede or follow the latter - Which is the end of legal existence of a corporation - Thus mere revocation of banking licence - Cannot end juristic life of the bank (H2)

**COMPANIES** - Life of - Bank - Liqu

**COMPANY LAW** - Company - Winding up - Mode of - Three modes of winding up are by court - Voluntarily - Or subject to the supervision of the court (H3)

**COURTS** - Company - Wind

**DOCUMENTS** - Public document - Proof - By Evidence Act s. 112 - Certified copies of such documents may be produced in proof of its contents - Or parts of the documents which they purport to be copies (H4)

**EVIDENCE** - Public documents - Proo

**AFFIDAVITS** - Averment - Not challenged - Averment in affidavit which has not been categorically denied - Is deemed to be admitted by the opponent (H5)

**EVIDENCE** - Affidavits - Aver

**COMPANY LAW** - Liquidator - Action - Locus standi - By CAMA s. 425 - Liquidator in a winding up by court can bring and defend action - Subject to sanction of the court or committee of inspection (H6)

**ACTIONS** - Company law - Liquidator - Locu

**COURTS** - Company law - Liqu

**LOCUS STANDI** - Company law - Liquidator - By



BANKING - Legal entity - Dissolution - Proof - Applicant ought to aver in his affidavits that AIB has been dissolved - And producing document that has terminated the legal existence of the bank (H7)

EVIDENCE - Bank - Lega

COMPANIES - Legal entity - Bank - Diss

AFFIDAVITS - Bank - Lega

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AMINU

PLEADINGS - Purpose of - Is to give notice to the other party of the case he is to meet - And each party is to clearly present his case - In order to prevent any party from being taken by surprise (H1)

PARTIES - Pleadings - Purp

PRACTICE & PROCEDURE - Plea

ACTIONS - Plea

PLEADINGS - Binding nature of - Issues are settled on pleadings - And evidence in respect of facts not pleaded must not be allowed - But where inadvertently received - Court must discountenance it (H2)

EVIDENCE - Pleadings - Bind

COURTS - Plea

EVIDENCE - Admissibility - Previous evidence - Alade v. Aborishade - Evidence given in previous case can never be accepted by court trying a later case - Where Evidence Ordinance s. 34(1) applies (H3)

JUDICIAL PRECEDENTS - Evidence - Admi

COURTS - Evid

JUDGMENTS - Previous judgment - Use - Judgment in earlier case is used in a later case on a plea of res judicata - Provided incidents necessary to support such plea are fully observed (H4)

RES JUDICATA - Judgments - Prev

ACTIONS - Judg

LAND LAW - Evidence - Estoppel - Application - Exhibit E is inadmissible and cannot bind respondents as estoppel - As they were not

## **4654 INDEX OF SUBJECT MATTER ALL SC 2013 DECISIONS**

party to it (H5)

EVIDENCE - Land law - Esto

ESTOPPEL - Land .....

RES JUDICATA - Principle of - It states that final judgment of court on merits is conclusive - As to rights of parties and their privies - And constitutes bar to a subsequent action involving same claim or cause of action (H6)

ESTOPPEL - Res judicata - Prin

JUDGMENTS - Res

COURTS - Res

PARTIES - Res

ACTIONS - Res

LAND LAW - Proof - Possession - Appellants by failing to prove that respondents are their customary tenants - Have raised presumption of ownership in favour of respondents - As provided by Evidence Act s. 146 (H7)

EVIDENCE - Presumption - Land law - Proof

COURTS - Counter claim - Validity of - Where loosely framed by counsel to detriment of appellants - CA rightly held that same is unknown to law - And that order made in respect of the claim should be set aside (H8)

LEGAL PRACTITIONERS - Courts - Coun

PRACTICE & PROCEDURE - Counter

ACTIONS - Counter

APPEALS - Counter

GBILEVE

APPEALS - Evidence - Evaluation - Where trial court unquestionably evaluates evidence - CA cannot interfere once there is sufficient evidence on record - From which trial court arrived at its findings of facts (H1)

EVIDENCE - Appeals - Eval

COURTS - Appeals - Evid

JURISDICTION - Federal HC - 1999 Constitution s. 251(1)(r) - Relief 5 directly affects INEC - And the section vests exclusive jurisdiction on FHC - To entertain actions affecting validity of executive acts of such Federal Govt. agencies (H2)

CONSTITUTIONAL LAW - Jurisdiction - Fede

ELECTIONS - Pre-election matter - Jurisdiction - By Electoral Act s. 87(9) - Benue State HC did not have jurisdiction to determine all issues on the primaries - Including granting injunction to restrain INEC - From recognizing 1<sup>st</sup> appellant as successful candidate (H3)

JURISDICTION - Elections - Pre election matter - By Ele

COURTS - Elections - Pre

POLITICS - Election - Political party - Substitution of candidate - Properly nominated candidate should not be whimsically substituted - Otherwise he has right to go to court - And if court is unable to rule before actual election takes place - He can be declared winner (H4)

ELECTIONS - Politics - Poli

COURTS - Politics - Elec

## INTEGRATION

STAY OF EXECUTION - Grant - Condition - Party seeking for stay of execution against successful adversary - Must show substantial reasons to justify denial of the latter - Of the fruit of his judgment (H1)

PARTIES - Stay of execution - Gran

JUDGMENTS - Stay

APPEALS - Court - Discretion - Exercise of - Supreme Court rarely interferes with discretion exercised by lower courts - Save where such exercise was based on extraneous issues - Or was not bona fide (H2)

COURTS - Appeals - Disc

SUPREME COURT - Appeals - Cour

FAIR HEARING - Breach - Allegation of - Appellant's allegation of not having fair hearing at CA cannot be sustained - Since he had the opportunity in SC - To redress any anomaly done in the lower court

(H3)

COURTS - Fair hearing - Brea

SUPREME COURT - Fair

MBANEFO

LAND LAW - Customary sale - Evidence of - Exhibit A is memorandum of customary sale of the land - Which transferred to appellant - All 2<sup>nd</sup> respondent's customary interests (H1)

EVIDENCE - Land law - Customary sale - Exhi

DOCUMENTS - Land law - Cust

CUSTOMARY LAW - Land

LAND LAW - Appeals - Fresh issue - Raised without leave - Appellant not having sought and obtained leave - Cannot be allowed to raise in SC issue of absence of witnesses - Since the same was not raised in the lower courts (H2)

APPEALS - Land law - Fres

SUPREME COURT - Land law - Appe

COURTS - Land law - Appe

EVIDENCE - Land

LAND LAW - Customary transfer - Incidence of - Appellant cannot be heard to challenge his being put in possession - As this is evident by the slaughtering of goat on the land - Which symbolizes transfer of possession in customary law (H3)

CUSTOMARY LAW - Land law - Cust

EVIDENCE - Land

LAND LAW - Possession - Proof - Exhibit A as document is the best evidence of its contents - And provides criterion for assessing any oral evidence - With regard to evidence of having put appellant in possession (H4)

EVIDENCE - Land law - Poss

DOCUMENTS - Land

LAND LAW - Customary sale - Governor's consent - 2<sup>nd</sup> respondent's

customary interest does not conflict with L.U.A. s. 22 - And Exhibit A having transferred the interest to appellant - Does not require Governor's consent for its execution (H5)

LAND USE ACT - Cust

LAND LAW - Customary title - Certificate of Occupancy - It is for holder of such title to land in urban area to apply to the Governor under L.U.A. ss. 5(1) & 9(1) - To have issued to him a C of O of the land (H6)

LAND USE ACT - Cust

LAND LAW - Title - Assignment - L.U.A. s. 22 - Application of - Governor's consent is required under the section - When C of O has been granted and the holder desires to transfer the land - That is subject of the certificate (H7)

LAND USE ACT - Titl

LAND LAW - Trespass - Right of action - Appellant being in exclusive possession can maintain action in trespass - Against any trespasser who cannot claim possession by mere entry (H8)

TRESPASS - Land law - Righ

ACTIONS - Land law - Tres

LAND LAW - Legal practitioner - Duty - Proof - Appellant failed to discharge the onus of showing - That 1<sup>st</sup> respondent has not acted as solicitor to 2<sup>nd</sup> respondent in the land deal (H9)

LEGAL PRACTITIONERS - Land law - Duty

EVIDENCE - Land law - Lega

## OKOROCHA

APPEALS - Preliminary objection - Determination - The objection must first be considered and resolved once raised - As it could either end proceeding - Or streamline it down by excluding factors which may not be legitimately accommodated (H1)

OBJECTIONS - Appeals - Prel

PRACTICE & PROCEDURE - Appe

APPEALS - Right of appeal - Grounds of law - Appeal from final or interlocutory decision of CA to SC is as of right - Where the ground involves question of law alone (H2)

COURTS - Appeals - Righ

SUPREME COURT - Appe

APPEALS - Grounds - Objection - The preliminary objection is mis-conceived - As the grounds having raised the issue of jurisdiction of court - Is purely of law and competent (H3)

OBJECTIONS - Appeals - Grou

JURISDICTION - Appe

COURTS - Appe

APPEALS - Preliminary objection - Filing - By SC Rules O. 2 r. 9(1) respondent relying on the objection - Shall give appellant three clear days notice - Setting out the grounds of objection - And shall file such notice together with ten copies thereof (H4)

OBJECTIONS - Appeals - Prel

APPEALS - Courts - Facts - Consideration - Court has duty to holistically consider all relevant facts presented before it - As revealed on the records of appeal (H5)

COURTS - Appeals - Fact

EVIDENCE - Appe

APPEALS - Objection - Unchallenged - Facts on which objections were based in CA were not controverted - Being unchallenged evidence - They constitute sufficient proof (H6)

OBJECTIONS - Appeals - Unch

EVIDENCE - Appeals - Obje

APPEALS - Election petitions - Gubernatorial - Final court - By 1999 Constitution s. 235 - Decision of SC is final in such election matters - And CA is duty bound by s. 287 to give effect to judgments of SC (H7)

ELECTION PETITIONS - Appeals - Gube

COURTS - Appeals - Elec

CONSTITUTIONAL LAW - Appeals - Elec

SUPREME COURT - Appe

SUPREME COURT - Judgment - Supremacy of - By 1999 Constitution s. 287(1) - All subordinate courts in Nigeria are enjoined to enforce all decisions of SC - Otherwise it will amount to constitutional breach (H8)

JUDGMENTS - Supreme Court - Suprema

COURTS - Supreme Court - Judg

CONSTITUTIONAL LAW - Supreme Court - Judg

APPEALS - Right of appeal - Election petitions - Estoppel - The appeal is caught by lapse of time under 1999 Constitution s. 285(7) - As 1<sup>st</sup> respondent who had challenged the election up to SC - Can no longer re-litigate his case as pre-election matter at CA (H9)

ELECTION PETITIONS - Appeals - Right of appeal - Esto

ESTOPPEL - Appeals - Right of appeal - Election petition - The

CONSTITUTIONAL LAW - Appeals - Righ

SUPREME COURT - Appe

COURTS - Appe

APPEALS - Election petitions - Court of Appeal - Jurisdiction - By the nature of relief (b) on Exhibit E - CA ought to be put on guard that the subject matter of the appeal - Was not within its jurisdiction (H10)

ELECTION PETITIONS - Appeals - Cour

COURTS - Appeals - Elec

JURISDICTION - Appe

JURISDICTION - Fundamentality of - Absence of jurisdiction robs court of power to adjudicate on a case - And exercise arising from such will be in futility (H11)

COURTS - Jurisdiction - Fund

ACTIONS - Juri

APPEALS - Court - Abuse of process - Leave granted 1<sup>st</sup> respondent to appeal against decision of FHC - On subject matter that has been

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dismissed by SC - Is gross abuse of process (H12)

COURTS - Appeals - Abus

ACTIONS - Appe

COURTS - Abuse of process - Prevention - To ensure the authority and dignity of court - Court is imbued with power and duty to prevent action - Which constitutes abuse of its process (H13)

COURT PROCESSES - Abuse - Prev

ACTIONS - Courts - Abus

ELECTION PETITIONS - Party - Joinder of - Interested party may be joined very early or midstream in suit - But 1<sup>st</sup> respondent who knew of the concluded petition by SC - Is estopped from initiating fresh appeal in respect of the supplementary governorship election (H14)

PARTIES - Election petitions - Joinder of party - Inte

ESTOPPEL - Election petitions - Part

APPEALS - Elec

PRACTICE & PROCEDURE - Elec

APPEALS - Court - Discretion - Interference - For appellate court to interfere with exercise of discretion - It must be shown that the discretion was based on wrong principles of law - Or that miscarriage of justice resulted (H15)

COURTS - Appeals - Disc

JUSTICE - Appeals - Cour

EVIDENCE - Appeals - Cour

**UKACHUKWU**

FAIR HEARING - Breach - Effect - Proceedings conducted in breach of a party's right to fair hearing - Would be rendered a nullity - No matter how well conducted (H1)

PARTIES - Fair hearing - Brea

PRACTICE & PROCEDURE - Fair



FAIR HEARING - Breach - Allegation of - The circumstances in the case show that appellant's right to fair hearing was not breached - As the court ensured that justice was done to both sides (H2)

COURTS - Fair hearing - Brea

JUSTICE - Fair

STATUTES - Interpretation - Principle - Where words used in statutes are clear and unambiguous - They must be given their natural and grammatical meaning - Unless it would lead to absurdity (H3)

ELECTIONS - Political party - Nomination - Right of - Membership or sponsorship of candidate at election is internal affairs of the party - And therefore not justiciable (H4)

POLITICS - Elections - Poli

COURTS - Elec

ELECTIONS - Political party - Substitution of candidate - Electoral Act s. 34 - INEC must be informed in writing not later than 60 days to election - And the party must give cogent and verifiable reasons for the change - Except in the case of death or withdrawal (H5)

POLITICS - Elections - Poli

ELECTIONS - Pre-election matter - Justiciability - Electoral Act s. 87(9) - For the complaint to be justiciable - Complainant must be an aspirant who participated in the primary - That produced the sponsored candidate (H6)

APPEALS - Judgment - Unchallenged - As appellant did not challenge the crucial findings on the merit of the appeal - The Orders made by Court of Appeal subsist (H7)

JUDGMENTS - Appeals - Unch

ORDERS OF COURT - Appeals - Judg

POLITICS - Appeals - Judg

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AZUBUIKE

ACTIONS - Party - Necessary party - Is one who being closely connected to law suit - Should be included in the case if feasible - But whose absence will not require dismissal of proceedings (H1)

PARTIES - Actions - Nece

PRACTICE & PROCEDURE - Actions - Part

COURTS - Action - Party - Joinder of - It is duty of courts to ensure that parties that are likely to be affected by result of action - Are joined accordingly (H2)

ACTIONS - Courts - Part

PARTIES - Courts - Action - Join

PARTIES - Necessary party - Joinder of - Necessity - Such party should not be shut out - As judgment made with an order against person who was not party to a suit - Is to no avail and cannot stand (H3)

JUDGMENTS - Parties - Nece

ACTIONS - Part

COURTS - Discretion - Joinder of party - Grant or refusal of application for joinder is at discretion of court - Which must be exercised judicially and judiciously - And not to be interfered with on appeal - Unless it was made upon wrong principles (H4)

PARTIES - Courts - Disc

APPEALS - Cour

APPEALS - Court - Joinder of party - CA rightly interfered with discretion of trial court that refused application for joinder of 1<sup>st</sup> respondent - As 1<sup>st</sup> respondent disclosed sufficient interest in its application (H5)

COURTS - Appeals - Join

PARTIES - Appeals - Cour

MOTIONS - Appe

CORPORATE

PLEADINGS - Illegality - Where raised by defendant - He should specifically plead facts of the illegality - Otherwise he cannot raise or canvass same at the trial (H1)

COURTS - Pleadings - Ille

SUPREME COURT - Fresh issue - Leave - A party will not be allowed on appeal - To raise question which was not raised or tried at trial court - Without leave (H2)

APPEALS - Supreme Court - Fres

PARTIES - Supr

COURTS - Supr

SUPREME COURT - Fresh issue - Ground of law - A party will be granted leave to raise new issue not canvassed at trial court - Where the same involves substantial points of law - Which need to be allowed to prevent miscarriage of justice (H3)

APPEALS - Supreme Court - Fres

PARTIES - Supr

COURTS - Supr

JUSTICE - Supr

COURTS - Contracts - Illegal contract - Where contract is ex facie illegal - Court will refuse to enforce such transaction - Even where illegality has not been pleaded (H4)

CONTRACTS - Courts - Ille

PLEADINGS - Courts - Cont

CONTRACTS - Illegal contract - Meaning of - Any transaction which is expressly or impliedly prohibited by statute is illegal and unenforceable - And no party can take benefit from it (H5)

PARTIES - Contracts - Ille

CONTRACTS - Insurance - Validity - By Insurance Act s. 50(1) - There shall not be any valid contract of insurance - Unless premium is paid in advance (H6)

INSURANCE - Contracts - Vali

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STATUTES - Contracts - Insu

STATUTES - Interpretation - Principle - Where words of statute are clear and unambiguous - Courts are to give them their plain and ordinary meaning (H7)

COURTS - Statutes - Inte

STATUTES - Interpretation - Shall - Meaning - When used in a provision - The word connotes that it is imperative for the provision to be obeyed (H8)

WORDS & PHRASES - Statutes - Inte

STATUTES - Performance of duty - Adherence - Where statute provides for act to be done in a particular way - Failure to adhere as provided - Will be interpreted as not complying with statutory provision (H9)

ADMINISTRATIVE LAW - Statutes - Perf

CONTRACTS - Insurance - Government properties - Responsibility of insuring the properties is vested on NICON - But such property may with approval in writing of Head of State - Be insured with any insurer (H10)

INSURANCE - Contracts - Gove

GOVERNMENTS - Contracts - Insu

INSURANCE - Government properties - Consent of Head of State - Proof - Burden of proving existence of the consent - Lies on party against whom judgment would be given - If no evidence were adduced (H11)

CONTRACTS - Insurance - Gove

PARTIES - Insu

JUDGMENTS - Insu

EVIDENCE - Insu

GOVERNMENTS - Insurance - Gove

**DONG**

**CHIEFTAINCY MATTERS** - District heads - Mode of appointment - By Adamawa District Creation Law s. 7 - Two methods of selecting such heads are by traditional or customary method - And by Electoral College of village head (H1)

**ELECTIONS** - Chieftaincy matters - Dist

**CHIEFTAINCY MATTERS** - District head - Appointment - Proof - Appellants were required to prove that selection of 3<sup>rd</sup> respondent - Was not done in accordance with tradition and custom of the area constituting Dong District (H2)

**EVIDENCE** - Chieftaincy matters - Dist

**CUSTOMARY LAW** - Chie

**MBANEFO**

**ACTIONS** - Town union - Influence - Appellant being not in good standing with his general Onitsha Community - Cannot restrict his suit to Agbalanze - And is not welcomed to associate with the group - Which is part of Onitsha community (H1)

**CUSTOMARY LAW** - Ostracism - Town

**TOWN UNION** - Influence - Actions - Appe

**ACTIONS** - Freedom of association - Native society - By voluntarily becoming member of Agbalanze society - Appellant chose to adhere to its regulations - He cannot pick which aspect suits him - And which he is at liberty to do away with (H2)

**CONSTITUTIONAL LAW** - Free

**CUSTOMARY LAW** - Ostracism - Free

**ACTIONS** - Commencement - Necessary party - Action on ostracism proceeded without joining Obi in Council or Onitsha community is of no moment - As the parties are the instrument of making known to appellant - That he could not relate with Agbalanze (H3)

**PARTIES** - Actions - Comm

**CUSTOMARY LAW** - Ostracism - Acti

ACTIONS - Commencement - Necessary party - Court will not compel plaintiff to proceed against a party he has no desire to prosecute - Save where inter alia justice cannot be done and case properly determined (H4)

PARTIES - Actions - Comm

COURTS - Acti

JUSTICE - Acti

PRACTICE & PROCEDURE - Acti

ACTIONS - Commencement - Representative capacity - Failure to obtain leave to sue in that capacity does not vitiate the action - Since 1<sup>st</sup> respondent as the head - Acted as mouth piece of the Agbalanze - (H5)

PRACTICE & PROCEDURE - Actions - Comm

JUDGMENTS - Error - Effect - It is not every error that vitiates judgment - Since if what court had done met the minimum standard of a good judgment - And there is no proof of miscarriage of justice - The judgment will stand irrespective of style utilized by Judge (H6)

COURTS - Judgments - Erro

EVIDENCE - Judg

JUSTICE - Judg

ACTIONS - Pleadings - Purpose of - Pleadings give each party opportunity to prepare for his evidence and arguments on issues raised - And this prevents either side from being taken by surprise (H7)

PLEADINGS - Actions - Purp

PARTIES - Actions - Plea

PRACTICE & PROCEDURE - Plea

EVIDENCE - Plea

PLEADINGS - Binding nature - Parties are bound by their pleadings - And evidence which is at variance with averments in pleadings - Goes to no issue and should be disregarded by court (H8)

PARTIES - Pleadings - Bind

EVIDENCE - Plea

COURTS - Plea

FAIR HEARING - Test - In trial court fairness is tested by impression of a reasonable person present - While in Court of Appeal the test is whether having regard to rules of court and the law - Justice has been done to parties (H9)

COURTS - Fair hearing - Test

JUSTICE - Fair

PRACTICE & PROCEDURE - Fair

FAIR HEARING - Principles - Hearing is taken to be fair when all parties to dispute are given hearing - Since if one of the parties is refused hearing - The same cannot qualify as fair hearing (H10)

PARTIES - Fair hearing - Prin

PRACTICE & PROCEDURE - Fair

REGISTERED

ACTIONS - Commencement - Originating summons - Amendment - Duly made takes effect from date of the original document - And it applies to every successive amendment (H1)

ORIGINATING SUMMONS - Actions - Comm

DOCUMENTS - Acti

PRACTICE & PROCEDURE - Acti

COURTS - Actions - Justice - Need for - Courts have duty to do substantial justice - And allow formal amendment as are necessary - For the ultimate achievement of justice and end of litigation (H2)

ACTIONS - Courts - Just

JUSTICE - Courts - Acti

PRACTICE & PROCEDURE - Cour

ACTIONS - Commencement - Legal capacity - Non existing person cannot institute action in court - Nor will action be allowed to be maintained against defendant - Who is not a legal person (H3)

COURTS - Actions - Comm

PARTIES - Acti

ACTIONS - Commencement - Legal personality - Source - Juristic personality is donated by enabling law - And where it is provided that a party must sue or be sued in a name - He cannot be sued in any other name (H4)

PARTIES - Actions - Comm

APPEALS - Jurisdiction - Actions - Commencement - Wrong name - Where parties are not in doubt as to parties to appeal - Wrongful heading of the appeal does not affect competency of court - To hear same on merit (H5)

JURISDICTION - Appeals - Acti

ACTIONS - Appeals - Jurisdiction - Comm

PARTIES - Appeals - Juri

COURTS - Appe

TECHNICALITIES - Appe

ACTIONS - Commencement - Misnomer - Occurs when mistake is made as to name of a person who sued or was sued - Or when action is brought by or against the wrong name of a person (H6)

WORDS & PHRASES - Actions - Comm

ACTIONS - Commencement - Misnomer - Effect - Misnomer that will vitiate proceedings would be such - That will cause reasonable doubt - As to identity of person intending to sue or be sued (H7)

PARTIES - Actions - Comm

APPEALS - Hearing - Preliminary objection - Filing - Condition - Respondent with such objection to appeal - Shall give appellant three days prior notice - Setting out grounds of the objection (H8)

OBJECTIONS - Appeals - Hear

APPEALS - Hearing - Preliminary objection - Non compliance - Where respondent fails to comply with the rule - Court may either refuse to entertain the objection - Or adjourn hearing at the cost of respondent (H9)



OBJECTIONS - Appeals - Hear  
COURTS - Appe

APPEALS - Objections - Incorporated in brief - Notice of objection can be given in respondent's brief - And respondent need not there-after give a separate notice (H10)  
OBJECTIONS - Appeals - Inco

APPEALS - Objection - Leave - Magit's case - Respondent who incorporated objection in his brief - Needs leave of court to move the objection before the hearing of substantive appeal (H11)  
OBJECTIONS - Appeals - Leav  
JUDICIAL PRECEDENTS - Appeals - Obje  
COURTS - Appe  
PRACTICE & PROCEDURE - Appe

SUPREME COURT - Judgment - Binding nature - Counsel who knows the decision of the court on an issue and yet does otherwise - Has himself to blame because the court thrives in even handed justice (H12)  
JUDGMENTS - Supreme Court - Bind  
LEGAL PRACTITIONERS - Supreme Court - Judg  
JUSTICE - Supr

APPEALS - Party - Consistency - Appellant having contended at trial court that the services - Were part of what they paid for under Ticket Sales Charge - Cannot set up a new case other than that which it presented at trial court (H13)  
PARTIES - Appeals - Cons  
COURTS - Appeals - Part  
AVIATION - Appeals - Part

STATUTES - Interpretation - Principle - Where words used in statute are clear and unambiguous - Court should give them their ordinary natural and literal meaning - In order to establish intention of law maker (H14)  
COURTS - Statutes - Inte

**4670** INDEX OF SUBJECT MATTER ALL SC 2013 DECISIONS

AVIATION - Revenue drive - Power - By NAMA Act s. 11 - Respondent has power not only to charge for 30% air ticket sales - But also to charge en route local facility services (H15)

ACTIONS - Aviation - Reve

STATUTES - Avia

**SOCIETY**

APPEALS - Grounds of appeal - Issues - Proliferation - Number of grounds should not be less than issues - And framing two issues from one ground is wrong (H1)

PRACTICE & PROCEDURE - Appeals - Grou

APPEALS - Issues - Formulation - Outside grounds - Fate - Issue not related or based on grounds of appeal is incompetent and completely valueless - And must be ignored by appellate court (H2)

COURTS - Appeals - Issu

PRACTICE & PROCEDURE - Appe

ACTIONS - Cause of action - Meaning of - It denotes every fact which it would be necessary for plaintiff to prove - If traversed - To support his right to judgment of the court (H3)

EVIDENCE - Actions - Caus

JUDGMENTS - Acti

COURTS - Acti

PRACTICE & PROCEDURE - Actions - Caus

PLEADINGS - Acti

WORDS & PHRASES - Acti

JURISDICTION - Definition of - It is the limits imposed upon the power of a validly constituted court - To hear and determine issues with reference to subject matter - Parties and the relief sought (H4)

COURTS - Jurisdiction - Defi

PARTIES - Juri

WORDS & PHRASES - Juri

JURISDICTION - Determination of - Basis - It is determined by claim

endorsed on writ or stated in statement of claim - And not by facts averred in statement of claim or affidavit evidence to be relied on by plaintiff (H5)

PRACTICE & PROCEDURE - Jurisdiction - Dete

PLEADINGS - Juri

EVIDENCE - Juri

AFFIDAVITS - Juri

JURISDICTION - Expounding of - While a Judge can expound his jurisdiction - He cannot expand same beyond the limit imposed by law - As he does not hunger after jurisdiction (H6)

COURTS - Jurisdiction - Expo

APPEALS - Court - Judgment - Criticism - Where trial Judge makes a mistake in his judgment - It is enough for counsel to demonstrate the error for appellate court to correct - Without putting to question the impartiality and integrity of the Judge (H7)

COURTS - Appeals - Judg

JUDGMENTS - Appeals - Court - Crit

LEGAL PRACTITIONERS - Appe

UWAH

APPEALS - Concurrent findings - Supreme Court does not interfere with findings of lower court - Save where appellant shows that the same is perverse (H1)

SUPREME COURT - Appeals - Conc

JUDGMENTS - Perverse decision - Meaning - Decision is said to be perverse where it is speculative and not based on any evidence - Court took into account matters which it ought not to - And has also ignored the obvious (H2)

WORDS & PHRASES - Judgments - Perv

EVIDENCE - Judg

COURTS - Judg

ACTIONS - Proof - Standard of - Civil suits are decided on balance

## **4672** INDEX OF SUBJECT MATTER ALL SC 2013 DECISIONS

of probabilities - Whereby the totality of evidence of both sides is taken into account and appraised - In determining each side's quantum (H3)

EVIDENCE - Actions - Proo

PRACTICE & PROCEDURE - Acti

PARTIES - Acti

AGREEMENTS - Terms - Binding nature - Whenever parties enter into agreement in writing - They are bound by its terms - And neither the parties nor court is legally allowed - To read into the agreement terms not agreed upon (H4)

PARTIES - Agreements - Term

COURTS - Agre

CONTRACTS - Agency - Disclosed principal - Liability of - Contract made by agent acting within scope of his authority - Is contract of the principal - And it is principal and not agent that sues or is to be sued upon the contract (H5)

AGENCY - Contracts - Disc

### **YAKUBU**

CRIMINAL PROCEDURE - Conspiracy - Proof - Prosecution must inter alia prove agreement between two or more persons to do illegal act - And specifically that each of accused persons individually participated in the conspiracy (H1)

EVIDENCE - Conspiracy - Proo

CONVICTION - Circumstantial evidence - Weight - For such evidence to lead to conviction - It must be cogent and unequivocal as to point to no other direction - But the guilt of accused (H2)

CRIMINAL PROCEDURE - Conviction - Circ

EVIDENCE - Conv

CRIMINAL PROCEDURE - Proof - Facts within accused knowledge - Although prosecution is to prove beyond reasonable doubt - And accused has no duty to prove innocence - But accused must adduce

evidence in support of facts strictly within his knowledge (H3)

EVIDENCE - Proof - Fact

CRIMINAL PROCEDURE - Defence - Fair hearing - Appellant was not denied fair hearing as he was represented by counsel throughout trial - And there was sufficient compliance with the law in the case (H4)

FAIR HEARING - Criminal procedure - Defence - Appe

LEGAL PRACTITIONERS - Criminal procedure - Defence - Fair

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ANYAFULU

APPEALS - Evidence - Evaluation - Where assessment of credibility of witnesses is not involved - Appellate court can make evaluations which are of law - And on the basis of pleadings of parties and evidence (H1)

EVIDENCE - Appeals - Eval

COURTS - Appeals - Evid

PLEADINGS - Appe

PARTIES - Appe

LAND LAW - Title - Traditional history - Proof - Where evidence of tradition is relied upon - Plaintiff must plead and establish founder of the land - How he founded it - And particulars of intervening owners through whom he claims (H2)

EVIDENCE - Land law - Titl

PLEADINGS - Land

LAND LAW - Communal land - Alienation - Where such land belongs to every member of the community - The management of same is vested in family head - Who acts as trustee and is required to consult other family members - Before alienation of the land (H3)

LAND LAW - Title - Traditional history - Failure to proof - Effect -

Appellant's case is dismissed as they have failed to discharge burden on them - To establish link with Abua and the disputed land (H4)  
EVIDENCE - Land law - Title

LAND LAW - Title - Possession - Proof - Where a party pleads traditional title and acts of possession - He can rely on the latter where evidence of traditional history is inconclusive (H5)  
EVIDENCE - Land law - Title  
PARTIES - Land  
PLEADINGS - Land

EVIDENCE - Evaluation - Fair hearing - Evidence adduced by PW1 was demolished under cross exam and nothing was left to evaluate - Hence there was no lack of fair hearing - When appellants' case was dismissed based on insufficiency of pleadings (H6)  
FAIR HEARING - Evidence - Evaluation - Evidence  
PLEADINGS - Evidence - Evaluation - Fair

#### ANYANWU

JURISDICTION - Fundamentality of - Jurisdiction can be raised at any time and in any manner even for the first time on appeal - Because if court lacks jurisdiction - Its proceedings are nullity (H1)  
APPEALS - Jurisdiction - Fund  
COURTS - Jurisdiction  
PRACTICE & PROCEDURE - Jurisdiction

COURTS - Jurisdiction - Absence of - Where court lacks jurisdiction - Parties cannot confer it on court by consent or acquiescence (H2)  
JURISDICTION - Courts - Absence  
PARTIES - Court

APPEALS - Judgment - Not challenged - Decision on any point of law or fact not appealed against - Is deemed to have been conceded by party against whom it was decided - And it remains valid and binding on all parties (H3)  
JUDGMENTS - Appeals - Not

PARTIES - Concession - Appeals - Judg

POLITICS - Political party - Membership of - Question as to who is candidate of political party for election - Is within the domestic jurisdiction of the party concerned - And consequently not justiciable (H4)

ELECTIONS - Politics - Poli

COURTS - Politics - Poli

ELECTIONS - Pre election - Jurisdiction - Under Electoral Act s. 87(9) - For complainant to ignite jurisdiction of court - He must be an aspirant who participated in the primary - And his complaint must relate to non compliance with the Act (H5)

JURISDICTION - Elections - Pre

COURTS - Elec

ELECTIONS - Pre election - Jurisdiction - Electoral Act s. 138 - Application - Plaintiff's case at trial court was pre election matter - And as such could not be accommodated under the section (H6)

JURISDICTION - Elections - Pre

COURTS - Elec

APGA

JURISDICTION - Fundamentality of - Jurisdiction is so fundamental that absence of it renders proceedings a nullity - Hence it must be resolved first once it is challenged - And the issue can be raised at any time and at any stage of proceedings (H1)

COURTS - Jurisdiction - Fund

PRACTICE & PROCEDURE - Juri

COURTS - Jurisdiction - Absence of - Where court lacks jurisdiction - Parties cannot confer it on court by consent or acquiescence (H2)

JURISDICTION - Courts - Abse

JURISDICTION - Issue of - Determination - Processes to be considered in determining jurisdiction of court over a matter - Are the origi-

## **4676 INDEX OF SUBJECT MATTER ALL SC 2013 DECISIONS**

nating summons and its supporting affidavit - Filed by plaintiffs in present case (H3)

COURTS - Jurisdiction - Issu

COURT PROCESSES - Judi

APPEALS - Judgment - Not challenged - Decision on any point of law or fact not appealed against - Is deemed to have been conceded by party against whom it was decided - And it remains valid and binding on all parties (H4)

JUDGMENTS - Appeals - Not

PARTIES - Appeals - Judg

POLITICS - Political party - Membership of - Question as to who is candidate of political party for election - Is within the domestic jurisdiction of the party concerned - And consequently not justiciable (H5)

ELECTIONS - Politics - Poli

COURTS - Politics - Poli

ELECTIONS - Pre election - Jurisdiction - Under Electoral Act s. 87(9) - For complainant to ignite jurisdiction of court - He must be an aspirant who participated in the primary - And his complaint must relate to non compliance with the Act (H6)

JURISDICTION - Elections - Pre

COURTS - Elec

ELECTIONS - Pre election - Jurisdiction - Electoral Act s. 138 - Plaintiff's case at trial court was pre election matter - And as such could not be accommodated under the section (H7)

JURISDICTION - Elections - Pre

COURTS - Elec

### **CHUKWU**

APPEALS - Filing - Time - Notice of appeal shall be given within 3 months of date of final decision - And an application for leave must be within 3 months - And if out of time appellant needs to apply for



extension of time within which to apply for leave (H1)

MOTIONS - Appeals - Fili

JUDGMENTS - Appe

APPEALS - Filing - Interested party - Leave - Where application is made outside time prescribed for appealing - The person must first apply for leave to appeal as one having interest in the case - Before he makes the trinity prayers (H2)

PARTIES - Appeals - Fili

MOTIONS - Appe

APPEALS - Filing - Leave - Interested person - Condition - Only person whose interest has been directly and not obliquely affected by decision - That can validly seek leave to appeal as interested party against the decision (H3)

JUDGMENTS - Appeals - Fili

PARTIES - Appe

APPEALS - Court - Perverse finding - Meaning - Finding is perverse where it runs counter to evidence on record - Or where court considered matters it ought not to have considered - And SC does not hesitate to set aside such finding (H4)

COURTS - Appeals - Perv

EVIDENCE - Appeals - Cour

SUPREME COURT - Appeals - Cour

WORDS & PHRASES - Appe

APPEALS - Issue - Determination - Issue involved in the matter is not jurisdictional - As the main question is whether 4<sup>th</sup> respondent should be given leave - To appeal against judgment he derived benefit from (H5)

JUDGMENTS - Appeals - Issu

CITEC

SUPREME COURT - Judgment - Finality of - By 1999 Constitution s. 235 - SC cannot sit on appeal over its judgment - Although it has

## **4678 INDEX OF SUBJECT MATTER ALL SC 2013 DECISIONS**

inherent powers to set aside same in appropriate cases - But such cannot be converted into appellate jurisdiction (H1)

JUDGMENTS - Supreme Court - Fina

CONSTITUTIONAL LAW - Supreme Court - Judg

APPEALS - Supr

SUPREME COURT - Judgment - Setting aside - Applicant seeking to set aside judgment of the court - Must show evidence of non-compliance with the rules - Or for other irregularities arising from rules of practice and procedure (H2)

JUDGMENTS - Supreme Court - Sett

EVIDENCE - Supreme Court - Judg

PRACTICE & PROCEDURE - Supr

APPEALS - Enlargement of time - Application for - Fair hearing - In considering the application - Court must also consider any counter affidavit of respondent before arriving at a decision - As failure to so do is clear denial of fair hearing to respondent (H3)

FAIR HEARING - Appeals - Enla

COURTS - Appe

AFFIDAVITS - Appe

MOTIONS - Appe

SUPREME COURT - Judgment - Setting aside - Validity - Justice demands that the order made on 28/9/11 be set aside - Since panel of the Justices were not aware of counter affidavit of respondent (H4)

JUDGMENTS - Supreme Court - Sett

AFFIDAVITS - Supreme Court - Judg

JUSTICE - Supreme Court - Judg

SUPREME COURT - Judgment - Setting aside - Conditions - The court can set aside its decision made without jurisdiction - If such decision is a nullity - Or that the court was misled into making same (H5)

JUDGMENTS - Supreme Court - Sett

JURISDICTION - Supreme Court - Judg

IWUNZE

APPEALS - Jurisdiction - Conferment - Constitution and Rules of the court confer on CA jurisdiction to entertain appeals - Hence CA lacks jurisdiction where there is non compliance with the statutes - Or defect in notice of appeal (H1)

JURISDICTION - Appeals - Conf

CONSTITUTIONAL LAW - Appeals - Juri

STATUTES - Appe

RULES OF COURT - Appe

APPEALS - Rules - Applicable one - Rules governing practice and procedure is the one in force at the time of trial - Or when application is taken - Which in this case is CA Rules 2007 (H2)

CRIMINAL PROCEDURE - Appeals - Rule

RULES OF COURT - Appe

APPEALS - Notice of appeal - Signing - By CA Rules O. 16 r. 4(1)(5)(6) - Every notice of appeal in criminal appeal must be signed by appellant - Except if appellant is insane or is a company (H3)

RULES OF COURT - Appeals - Noti

INSANITY - Criminal appeal - Notice of appeal - Signing - By CA Rules O. 16 r. 4(1)(5)(6) - Every notice of appeal

COMPANY LAW - Crim

SIGNATURE - Crim

APPEALS - Notice of appeal - Signing - Court's discretion - Where court is satisfied that it was impossible for appellant to sign in criminal appeal - Discretion would be exercised in favour of appellant - And appropriate orders made for him to proceed (H4)

COURTS - Appeals - Noti

ORDERS OF COURT - Appe

CRIMINAL PROCEDURE - Appe

SIGNATURE - Criminal appeal - Notice of appeal - Signing - Court's discretion - Where court is satisfied that it was impossible for appellant to sign - Disc

NGUMA

EVIDENCE - Evaluation - It is within the powers of trial court to assess credibility of witnesses - And where its evaluation is borne out from evidence on record - Appellate court cannot interfere - Even if it concludes that trial court should have acted differently (H1)

COURTS - Evidence - Eval

APPEALS - Evid

APPEALS - Evidence - Re evaluation - Where trial court failed to properly evaluate evidence - Appellate court is competent to re evaluate - In order to obviate miscarriage of justice (H2)

EVIDENCE - Appeals - Re eva

COURTS - Appeals - Evid

CRIMINAL PROCEDURE - Conviction - Confession - Validity - Once it is satisfied about truth therein - Court can safely and without corroboration - Convict on voluntary confession which is direct and positive (H3)

CONVICTION - Confession - Vali

COURTS - Conviction - Conf

COURTS - Obiter dictum - Definition - It is by the side remark made by Judge in his decision upon a case - Which remark is incidental and not directly upon the question before the court (H4)

JUDGMENTS - Courts - Obit

APPEALS - Court - Erroneous finding - CA finding that appellant's ground of appeal and issues therefrom - Which query trial court's non consideration of appellant's defence of marriage are incompetent - Is an error to appellant (H5)

COURTS - Appeals - Erro

CRIMINAL PROCEDURE - Defence - Consideration of - Court has duty to fairly consider defence raised by accused - However stupid or conflicting the defence is (H6)

COURTS - Defence - Cons

APPEALS - Judgment - Errors in - Effect - Not all errors result in setting aside judgment - As it is only those errors that caused miscarriage of justice - That entitle appellant to success in the appeal (H7)  
JUDGMENTS - Appeals - Erro

OPIA

ACTIONS - Cause of action - Determination - Cause of action is determined by reference to statement of claim - As court should look at the writ of summons - And averments in statement of claim (H1)

COURTS - Actions - Caus

PLEADINGS - Caus

WRIT OF SUMMONS - Caus

ELECTIONS - Cancellation - Effect - In view of the fact that the election was cancelled by INEC - Appellant cannot be said to be a lawful candidate - Who has won election under the Act (H2)

POLITICS - Elections - Canc

ELECTION PETITIONS - Elections - Jurisdiction - It is Election Petition Tribunal that is vested with jurisdiction - To determine issues relating to conduct of election - Return of candidates - Nullification of election (H3)

JURISDICTION - Election petitions - Elec

COURTS - Elec

COURTS - Federal HC - Jurisdiction - Limit - Declaration or injunction sought from the court - Must be in respect of the major items enumerated under 1999 Constitution s. 251 (H4)

JURISDICTION - Courts - Federal HC - Limi

CONSTITUTIONAL LAW - Courts - Federal HC - Juri

INJUNCTIONS - Cour

MARCH PT. 343

AMAREMOR

CRIMINAL LAW - Accident - Defence - Inconsistencies in - Appellant's 3 separate statements reveal inconsistencies which ruled out event of accident - Hence they were rightly rejected by trial court and CA (H1)

APPEALS - Criminal law - Acci

COURTS - Crim

ACCIDENTS - Criminal law - Defe

MURDER - Ingredients - Proof - Prosecution must establish that deceased died - As a result of act of accused - Which act was intentional - With knowledge that death or grievous bodily harm was probable (H2)

CRIMINAL PROCEDURE - Murder - Ingr

EVIDENCE - Murd

CRIMINAL PROCEDURE - Proof - Number of witnesses - Prosecution has no duty to call all known material witnesses - Provided it calls those necessary to prove its case beyond reasonable doubt (H3)

EVIDENCE - Crime - Proo

MURDER - Evidence - Testimony of relation - Weight - Blood relation of deceased is not precluded from testifying for prosecution - As court considers the truthfulness of the witnesses - Touching on his credibility (H4)

EVIDENCE - Murder - Test

CRIMINAL PROCEDURE - Murder - Test

COURTS - Murd

APPEALS - Concurrent findings - Charge - Proof - Trial court and CA having by overwhelming evidence - Found the charge proved beyond reasonable doubt - Supreme Court will not interfere (H5)

CHARGES - Appeals - Concurrent findings - Tria

CRIMINAL PROCEDURE - Appeals - Conc

SUPREME COURT - Appe

EVIDENCE - Appe

FRN

CHARGES - Guilty plea - Interpreter - Record of - Where accused pleads guilty his plea shall be recorded - As nearly as possible in words used by him - But where there is interpreter - Court records what is interpreted (H1)

CRIMINAL PROCEDURE - Charges - Guil

COURTS - Char

CHARGES - Plea - Record of - CPA s. 218 specifically provides that plea shall be recorded as nearly as possible - Hence there is no legal requirement that exact words used by accused must be recorded (H2)

COURTS - Charges - Plea

CRIMINAL PROCEDURE - Char

CHARGES - Interpreter - Absence of record - Does not amount to proof that there was none - Or denial of accused right to fair hearing - As there is presumption of regularity under EA s. 150(1) (H3)

CRIMINAL PROCEDURE - Charges - Inte

FAIR HEARING - Char

EVIDENCE - Char

CHARGES - Plea - Proceedings - Validity - From responses given by respondent - It was evident that he understood the charge against him - And was able to follow the proceedings (H4)

CRIMINAL PROCEDURE - Charges - Plea

CRIMINAL PROCEDURE - Conviction - Guilty plea - CPA s. 285(2) - Once accused understands charge and intends to admit offence - In the absence of any cause to the contrary - Court can convict and sentence him (H5)

CHARGES - Conviction - Guil

CONVICTION - Guilty plea - CPA

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COURTS - Conviction - Guil

CRIMINAL PROCEDURE - Capital offence - Guilty plea - Where accused pleads guilty to charge in capital offence - Court would enter plea of not guilty - Whereupon full trial would be conducted (H6)

CHARGES - Capital offence - Guil

COURTS - Capi

CRIMINAL PROCEDURE - Narcotic drug - Possession - The offence lies in unlawful possession of the substance - And not ownership thereof (H7)

DRUGS - Crime - Narc

APPEALS - Grounds - Basis - Must arise from decision appealed against - As complaint must be against ratio of the decision - And issues must arise from and be limited to the grounds (H8)

PRACTICE & PROCEDURE - Appeals - Grou

JUDGMENTS - Appe

APPEALS - Issues - Binding nature - Court is bound to confine itself to case and issues presented by parties - And it has no business considering issue not properly brought before it (H9)

COURTS - Appeals - Issu

PARTIES - Appeals - Cour

APPEALS - Parties - Issues - Binding nature - Parties are bound by case they made out in their pleadings - Or on the grounds of appeal (H10)

PARTIES - Appeals - Plea

**GBEMISOLA**

ACTIONS - Judgment - Estoppel - Plea of - Party may be precluded from contending the contrary of any precise point - That had been distinctively put in issue - And determined with certainty against him (H1)



ESTOPPEL - Actions - Judgment - Part

PARTIES - Actions - Judg

JUDGMENTS - Actions - Esto

ACTIONS - Pleadings - Estoppel - Defence of - Where pleadings are necessary - Estoppel should be set up with sufficient particulars - To show plaintiff the basis on which he is estopped from re-litigating (H2)

PLEADINGS - Actions - Esto

ESTOPPEL - Actions - Plea

LAND LAW - Title - Proof - Respondents are entitled to the declaration they seek from trial court - Since they have beside the traditional history - Plead two other modes to prove title to land (H3)

EVIDENCE - Land law - Titl

PLEADINGS - Land

COURTS - Land

APPEALS - Concurrent findings - Supreme Court is slow in setting aside such findings - As it allows appeals on the findings on the basis that the same are perverse (H4)

SUPREME COURT - Appeals - Conc

LAND LAW - Title - Traditional history - Test - Kojo II v. Bonsie - Best way to test such history is by reference to facts in recent years - As established by evidence in relation to land in dispute (H5)

JUDICIAL PRECEDENTS - Land law - Titl

EVIDENCE - Land

LAND LAW - Trespass - Damages - Plaintiff is entitled to nominal damages for trespass - Even if no loss is caused - And if loss is caused - Same is recovered according to general principle (H6)

TRESPASS - Land law - Dama

DAMAGES - Land law - Trespass - Plai

JIMOH

CRIMINAL PROCEDURE - Trial within trial - Conduct of - Such trial is conducted to ascertain voluntariness of confession - When accused denies making the statement voluntarily (H1)

EVIDENCE - Trial

COURTS - Trial

CRIMINAL PROCEDURE - Confession - Retraction - Where accused objects to statement - Because it was not made by him and signature thereto is not his own - There will be no need for trial within trial (H2)

OBJECTIONS - Confession - Retr

SIGNATURES - Conf

EVIDENCE - Conf

CRIMINAL PROCEDURE - Charges - Conspiracy & substantive - Determination - Proper approach is to first deal with the latter - And then proceed to see how far conspiracy charge has been made out (H3)

CHARGES - Conspiracy & substantive - Dete

MURDER - Composition - Murder is committed when a person unlawfully terminates another's life if he intends to cause death - To do some grievous harm - And if death occurs by act done in prosecution of unlawful purpose (H4)

CRIMINAL LAW - Murder - Comp

MURDER - Proof - Prosecution must establish that deceased died - That the death was caused by accused - And that he intended to either kill deceased or cause grievous harm on him (H5)

CRIMINAL PROCEDURE - Murder - Proo

EVIDENCE - Murd

CRIMINAL PROCEDURE - Confession - Meaning - It is admission made at anytime by person charged with a crime - Stating or suggesting the inference that he committed the crime (H6)

EVIDENCE - Confession - Mean

WORDS & PHRASES - Conf

CRIMINAL PROCEDURE - Confession - Co accused - Where more persons are jointly charged - Court shall not consider statement made by one in the presence of another - As affecting that other person - Unless the other adopts the statement by words or conduct (H7)

EVIDENCE - Confession - Co acc

COURTS - Conf

MURDER - Proof - Circumstantial evidence - It is not imperative that there must be eye witness before murder is proved - As prosecution can establish same by circumstantial evidence - That creates no room for doubt (H8)

EVIDENCE - Murder - Proo

CRIMINAL PROCEDURE - Murd

CRIMINAL PROCEDURE - Conviction - Confession - Before confession is used to convict accused - The same must be voluntary and consistent with other facts as proved (H9)

CONVICTION - Confession - Befo

EVIDENCE - Conviction - Conf

EVIDENCE - Confession - Weight - Once accused makes statement under caution - Admitting the charge or creating impression that he committed the offence - The statement becomes confessional (H10)

CRIMINAL PROCEDURE - Confession - Weig

CRIMINAL PROCEDURE - Conspiracy - Proof - Once conspiracy is proved to exist - Evidence admissible against one conspirator is admissible against the others (H11)

EVIDENCE - Conspiracy - Proo

OBIDIKE

EVIDENCE - Evaluation - Ascription of probative value to evidence is duty of trial court - Which watched demeanor of witnesses - Appellate court should not interfere - Except where finding was perverse

(H1)

APPEALS - Evidence - Eval

COURTS - Evid

LEGAL PRACTITIONERS - Address - Nature of - It should be in line with evidence on record - As no amount of brilliance therein - Can make up for lack of evidence in prove of an issue (H2)

EVIDENCE - Legal practitioners - Addr

CRIMINAL PROCEDURE - Proof - Prosecution witness - Appellant's complaint that prosecution failed to call witness from his side has no basis - Since he cannot dictate witnesses to be called by prosecution (H3)

EVIDENCE - Proof - Pros

EVIDENCE - Proof - Oath practice - As there was no denial by appellant in his evidence of Iyi Ani customary oath practice - It is not relevant whether witnesses should be called to establish it (H4)

CUSTOMARY LAW - Evidence - Proo

EVIDENCE - Murder - Testimony of deceased' relation - Weight - Such evidence can be accepted if cogent enough to rule out bias - As what court considers is truthfulness of the witness (H5)

MURDER - Evidence - Test

COURTS - Evidence - Murd

CRIMINAL PROCEDURE - Evidence - Murd

MURDER - Proof - Witness - Evidence of single witness if believed by court - Can sustain a charge even in murder case (H6)

CRIMINAL PROCEDURE - Murder - Proo

EVIDENCE - Murd

COURTS - Murd

CHARGES - Murd

CRIMINAL PROCEDURE - Co accused - Discharge & acquittal of - Nkebisi v. State - Freedom given to 7<sup>th</sup> accused upon his alibi cannot avail appellant - As both had no common base for their defence

(H7)

JUDICIAL PRECEDENTS - Co accused - Disc

ALIBI - Co accu

SUPREME COURT - Alibi - Fresh issue of - No ground covers the issue of alibi - And being raised for first time in the court without leave - It is incompetent and should be discountenanced (H8)

ALIBI - Supreme Court - Fres

APPEALS - Supr

OKOH

CRIMINAL PROCEDURE - Proof - Burden of - Prosecution has burden to prove its case beyond reasonable doubt - Accused has no burden to prove his innocence - Except where for instance he raises defence of insanity (H1)

EVIDENCE - Proof - Burd

INSANITY - Proof - Burd

CRIMINAL PROCEDURE - Conviction - Confession - Validity - Free and voluntary confession alone is sufficient to sustain conviction - Provided court is satisfied that it is unequivocal and positively proved (H2)

CONVICTION - Confession - Vali

COURTS - Conviction - Vali

ARMED ROBBERY - Ingredients - Proof - Prosecution must prove that there was robbery - Which was an armed robbery - And that accused took part in the armed robbery (H3)

CRIMINAL PROCEDURE - Armed robbery - Ingr

EVIDENCE - Arme

CRIMINAL PROCEDURE - Conspiracy - Ingredients - It lies in agreement to do unlawful thing - Whether or not it is criminal - Or whether accused know of its unlawfulness (H4)

EVIDENCE - Conspiracy - Ingr

ARMED ROBBERY - Conspiracy - Proof - Prosecution must prove that there was agreement to commit offence - That accused took part in the robbery in furtherance of the agreement - And that the robbery was armed robbery (H5)

CRIMINAL PROCEDURE - Armed robbery - Cons

EVIDENCE - Arme

CRIMINAL PROCEDURE - Confession - Retraction - Where there is retraction in court - Corroboration however slight must be brought - But mere retraction does not render statement inadmissible - As it only affects weight to be attached (H6)

COURTS - Confession - Retr

CORROBORATION - Conf

## PEOPLE

CRIMINAL PROCEDURE - Proof - Burden of - Is on prosecution to prove guilt of accused beyond reasonable doubt - Failure to do so leads to discharge of accused - As the burden does not shift (H1)

EVIDENCE - Proof - Burd

ARMED ROBBERY - Ingredients - Proof - Prosecution must prove that there was robbery - Which was armed robbery - And that accused took part in the armed robbery (H2)

CRIMINAL PROCEDURE - Armed robbery - Ingr

EVIDENCE - Arme

ARMED ROBBERY - Ingredients - Proof - Means of - Proof can be done through documentary or oral evidence - Or even through circumstantial evidence (H3)

CRIMINAL PROCEDURE - Armed robbery - Ingr

EVIDENCE - Arme

CRIMINAL PROCEDURE - Conviction - Confession - Tendering accused statement is fundamental in grounding conviction - Otherwise the conviction is defective and can be quashed - (H4)

CONVICTION - Confession - Not

EVIDENCE - Conviction - Conf

ARMED ROBBERY - Proof - Recent possession - Prosecution must establish identity of stolen goods - Which must be in possession of accused - And possession must be recent (H5)

CRIMINAL PROCEDURE - Armed robbery - Proo

EVIDENCE - Arme

ARMED ROBBERY - Proof - Identity of stolen sandal - Where unreliable - It is unsafe to base any conviction on such evidence (H6)

CRIMINAL PROCEDURE - Armed robbery - Proo

EVIDENCE - Arme

CONVICTION - Arme

EVIDENCE - Withholding of - It is presumed under EA s. 149(d) - That evidence of PW1, respondent and other corroborating evidence - Are unfavourable to prosecution who withheld them (H7)

CRIMINAL PROCEDURE - Evidence - With









ACCIDENTS - Damages - Award - Chattel loss - Value - Restitutio integrum - Cross appellant should recover such sum - As will place him so far as can be done monetarily - In the same position as if the loss had not occurred (H5) Oando Nig. Plc. v. Adijere W. A. Ltd. (2013) 5 KLR (pt. 330) 2459

ACCIDENTS - Damages - Chattel loss - Replacement time - Since the truck was completely burnt down - The reasonable period to make a replacement - Would be calculated as N9,672.30 multiplied by 180 days (H3) Oando Nig. Plc. v. Adijere W. A. Ltd. (2013) 5 KLR (pt. 330) 2459

ACCIDENTS - Defence of - Sustainability - 1999 Constitution s. 33(2) cannot avail appellant - Since his act in defence of property - Excludes shooting by accident (H3) Dogo v. State (2013) 3 KLR (pt. 326) 1249

ACCIDENTS - Evidence - Unchallenged evidence - As respondents did not deny the facts giving rise to the accident - Evidence given for appellant is credible - And should be accepted and acted upon by the court (H2) *Ighreriniovo v. S.C.C. Nig. Ltd.* (2013) 4 KLR (pt. 328) 1853

ACCIDENTS - Murder - Defence - Accident - Sustainability - Appellant failed to discharge the onus on him to prove the defence - And his words of threat attest to the intentional killing of the deceased (H3) *Jimmy v. State* (2013) 4 KLR (pt. 327) 1699

ACCIDENTS - Murder - Self defence - Plea of - Sustainability - Act done in slight anger could not have occurred by accident - And appellant being a military man - Cannot rely on self defence to kill unarmed civilian (H4) *Nwokeoru v. State* (2013) 5 KLR (pt. 329) 2165

ACTIONS - Appeals - Determination - Academic issue - Since appellant has retired with full benefits - He does not stand to gain further in the appeal - As to do so will amount to engaging in fruitless exercise (H4) *Abe v. University of Ilorin* (2013) 5 KLR (pt. 329) 2001

ACTIONS - Appeals - Fresh issue on - Appellate court can accommodate such issue - Provided appellant does not introduce - New line of defence different from those of parties at lower court (H4) *Udo v. Regd. Trustee of the Brotherhood of the Cross & Star* (2013) 2 KLR (pt. 324) 847

ACTIONS - Appeals - Issues - Purpose - Issues are formulated to enable parties narrow the matter in controversy in the appeal - In the interest of clarity and brevity (H2) *Akeredolu v. Mimiko* (2013) 8-12 KLR (pt. 336) 3895

ACTIONS - Appeals - Jurisdiction - Pursuant to SC Act s. 22 - Suit No. K/750/2000 is struck out for being incompetent - As the process leading to the judgment therein was flawed - Hence the HC had no jurisdiction to entertain it (H4) *Halilco Nig. Ltd. v. Equity Bank Nig. Ltd.* (2013) 6 KLR (pt. 332) 2937

ACTIONS - Appeals - Meaning - Is continuation of case instituted at trial court - And final end of appeal cannot produce a relief - Different from that which originated at trial (H6) *Eyigebe v. Iyaji* (2013) 5 KLR (pt. 330) 2329

ACTIONS - Appeals - Nature & purpose of - Appeal is continuation of an action - And no new issues can be raised on appeal (H16) *Nnakwe v. State* (2013) 7 KLR (pt. 333) 3273

ACTIONS - Appeals - Notice of appeal - Signing - Legal personality - N.O.O. Oke & Co. being a business name - Cannot sue nor defend action in court - For not being recognized as a legal person (H3) Nigerian Army v. Samuel (2013) 7 KLR (pt. 334) 3385

ACTIONS - Approbating and reprobating - Appeal - Parties - Pleadings - Consistency - Respondents are not permitted to approbate and reprobate - In their claim of ownership of the property - As parties are bound by their pleadings (H5) Abeke v. Odunsi (2013) 5 KLR (pt. 330) 2285

ACTIONS - Beneficial evidence - Use - Plaintiff is not to utilize both beneficial and non beneficial evidence - As he is only permitted to take the beneficial evidence - To reinforce his case (H7) Oguanuhu v. Chiegboka (2013) 1-2 KLR (pt. 323) 521

ACTIONS - Cause of action - Absence of - Cause of action enthrones jurisdiction on court - And absence of it renders the suit incompetent - And liable to be struck out (H4) Chukwu v. Akpelu (2013) 12 KLR (pt. 337) 4177

ACTIONS - Cause of action - Applicable law - Action is governed by the substantive law in force - At the time the cause of action arose - Which in this case is the 2007 Court of Appeal Rules (H1) Nworah v. Nwabueze (2013) 5 KLR (pt. 330) 2431

ACTIONS - Cause of action - Determination - Cause of action arose on 2<sup>nd</sup> October 1997 - When appellant made it known that it would not confirm the appointment of respondent (H1) University of Jos v. Ikegwuoha (2013) 12 KLR (pt. 338) 4615

ACTIONS - Cause of action - Ingredients - The phrase denotes presence of wrongful act of defendant - And subsequent damage caused to plaintiff (H3) Chukwu v. Akpelu (2013) 12 KLR (pt. 337) 4177

ACTIONS - Cause of action - Meaning - It means cause of complaint - Civil right or obligation fit to be determined by court - And dispute in which court can invoke its powers (H1) Yare v. N. S. W. I. C. (2013) 5 KLR (pt. 329) 2267

ACTIONS - Cause of action - Source - Plaintiff's statement of claim determines - Whether a cause of action is disclosed in a suit (H2) Chukwu v. Akpelu (2013) 12 KLR (pt. 337) 4177

ACTIONS - Commencement - Legal personality - Party who institutes action in court must be a legal person - Either as a natural person - Or as an institution having juristic personality (H1) Reptico

S.A. Geneva v. Afribank Plc (2013) 5 KLR (pt. 329) 2091

ACTIONS - Commencement - Validity - Appellant does not exist in law - For failing to prove its juristic personality to sue and be sued - Hence its action in the trial court is incompetent (H4) Reptico S.A. Geneva v. Afribank Plc (2013) 5 KLR (pt. 329) 2091

ACTIONS - Commencement - Wrong procedure - Such procedure does not constitute jurisdictional issue - Since the lapse does not defeat cause of action - Except where specifically stated in the rules of court (H5) Udo v. Regd. Trustee of the Brotherhood of the Cross & Star (2013) 2 KLR (pt. 324) 847

ACTIONS - Company - Legal personality - Proof - Issue of appellant's legal personality cannot be treated on affidavit evidence - And except it is admitted - It must be proved that appellant has ceased to exist (H15) Musaconi Ltd. v. Aspinall (2013) 6 KLR (pt. 331) 2695

ACTIONS - Consistency of - Appellant portrayed a confused state of affairs - As he shunts his case from pillar to post - Contrary to the holden in Okolo's case that litigation is not open ended (H4) Ekunola v. CBN (2013) 4 KLR (pt. 327) 162

ACTIONS - Constitutional law - Federal HC - Jurisdiction - 1999 Constitution s. 251(1)(p)(q)(r)- Applicability - To determine application of the provisions - Subject matter and parties in the action must be examined (H8) Ahmed v. Ahmed (2013) 7 KLR (pt. 335) 3561

ACTIONS - Contracts - Interest - Basis - Where appellant claimed 45% interest per month - Trial court's award of 45% interest per annum - Is awarding what was not claimed in statement of claim or oral evidence (H10) Abba v. SPDC Nig. Ltd. (2013) 4 KLR (pt. 327) 1473

ACTIONS - Counter claim - Proof - It is an independent and separate action - In which defendant/counter claimant has burden to prove the counter claim - To be entitled to judgment thereon (H2) Maobison Inter-link Associated Ltd. v. UTC Nig. Plc. (2013) 4 KLR (pt. 328) 1871

ACTIONS - Counter claim - Reply to - As there was no dispute on the amount counter claimed - Appellant's failure to file reply was not damaging to its case - And respondent is entitled to the amount (H3) Maobison Inter-link Associated Ltd. v. UTC Nig. Plc. (2013) 4 KLR (pt. 328) 1871

ACTIONS - Court - Discretion - Declaratory reliefs - Consideration of the reliefs calls for exercise of discretion - Which must be carried out

judicially and judiciously (H7) *Nwaogu v. Atuma* (2013) 12 KLR (pt. 338) 4491

ACTIONS - Court - Relief - Basis for grant - Any one that asks for indulgence of court must place before it - All necessary materials which will assist court - In arriving at a just decision (H12) *Vab Petroleum Inc. v. Momah* (2013) 1 KLR (pt. 322) 249

ACTIONS - Court processes - Abuse - Concept - This means that process of court has not been used properly - But process not filed in court - Cannot constitute abuse of process (H6) *CPC v. Ombugadu* (2013) 7 KLR (pt. 334) 3401

ACTIONS - Court processes - Filing fee - Claim for interest - Proof of rate - As there was no claim for interest in the writ - Its claim in statement of claim cannot be entertained - Since no such claim was assessed - Nor was filing fee paid for it (H9) *Abba v. SPDC Nig. Ltd.* (2013) 4 KLR (pt. 327) 1473

ACTIONS - Court processes - Originating process - Defect in - Amendment - Process that was not properly signed by counsel is incompetent ab initio - And same cannot be cured by amendment (H3) *Ministry of Works & Transport v. Yakubu* (2013) 1-2 KLR (pt. 323) 289

ACTIONS - Courts - Cause of action - Determination - Court is guided to restrict itself to the statement of claim - By considering those averments that form the gravamen of the claim (H2) *Yare v. N. S. W. I. C.* (2013) 5 KLR (pt. 329) 2267

ACTIONS - Courts - Illegality - Need to note - Court must take cognizance of illegality it finds in the course of a matter - Even if such is not triable in the court - But in another tribunal (H1) *Ajayi v. Total Nig. Plc.* (2013) 7 KLR (pt. 334) 3333

ACTIONS - Courts - Reliefs - Grant - Condition - For a party to be awarded relief - He must not only plead with particularity - But also prove by credible and convincing evidence - Entitlement to the relief he seeks (H4) *University of Jos v. Ikegwuoha* (2013) 12 KLR (pt. 338) 4615

ACTIONS - Damages - Award - Pleadings - Specific claim - Award of N9,672.30 per day for loss of vehicle usage up to a point is justifiable - For failure of appellant to deny the claim (H1) *Oando Nig. Plc. v. Adijere W. A. Ltd.* (2013) 5 KLR (pt. 330) 2459

ACTIONS - Damages - Contract - Torts - Since chattel does not include abstract money - The award of N2 million based on detainee is wrong - As measure of damages in tort is not the same as in contract

## **4700 INDEX OF SUBJECT MATTER ALL SC 2013 DECISIONS**

(H2) Aminu Ishola Invest. Ltd v. Afribank Plc (2013) 2 KLR (pt. 325) 1025

ACTIONS - Declaratory relief - Grant - Principles - Court must exercise its discretion judicially and judiciously - And should carefully weigh evidence on imaginary scale (H8) INEC v. Atuma (2013) 5 KLR (pt. 330) 2375

ACTIONS - Declaratory relief - Proof - Plaintiff must establish the relief to the satisfaction of court - As such relief is not granted - Even on admission by defendant (H1) Matanmi v. Dada (2013) 2 KLR (pt. 324) 725

ACTIONS - Declaratory relief - Proof - Plaintiff must establish the relief to the satisfaction of court - And such relief is not granted either in default - Or on admission by defendant (H2) INEC v. Atuma (2013) 5 KLR (pt. 330) 2375

ACTIONS - Delay - Elections - Jurisdiction - Supreme Court cannot interfere - Since the Lower courts correctly held that the matter is spent - As appellant delayed to claim his rights after the election (H2) Salim v. CPC (2013) 2 KLR (pt. 324) 829

ACTIONS - Documents - Admissibility - Mere fact that Exhibits E, F & C were prepared during pendency of suit - Does not render them inadmissible - As it has not been shown that the maker has financial or tainted interest - In the outcome of the case (H11) Nigerian Bottling Co. Plc v. Ubani (2013) 8-12 KLR (pt. 336) 4027

ACTIONS - Evidence - Admissibility - Evidence Act s. 91(3) does not support appellant's case - And Exhibits 4, 5, 6 & 7 are admissible - Since the maker acted in official capacity - And not as a person interested (H1) U.T.C. Nig. Plc. v. Lawal (2013) 8-12 KLR (pt. 336) 4133

ACTIONS - Evidence - Civil matters - Standard of proof - Civil cases are decided on preponderance of evidence - As Judge is expected to weigh evidence of both sides on imaginary scale - To determine where the pendulum will tilt (H10) Ajibulu v. Ajayi (2013) 12 KLR (pt. 337) 4153

ACTIONS - Evidence - Evidence Act s. 83(3) - Application - The section is not applicable to Exhibit CA1 - As 2<sup>nd</sup> respondent who made same - Was performing official assignment - Without direct personal interest in the result of litigation (H5) CPC v. Ombugadu (2013) 7 KLR (pt. 334) 3401

ACTIONS - Hearing - Interlocutory injunction - Since parties in suit no. HOS/134/64 differ from those in HRE/4/97 - Granting of the



injunction will prejudice trial in the substantive suit (H4) Adeleke v. Lawal (2013) 2 KLR (pt. 324) 623

ACTIONS - Injunctions - Grant - Basis for - Order of declaration or injunction can only be granted - If appellants established their legal right - To the subject matter of the claim (H4) Ayida v. Town Planning Authority (2013) 4 KLR (pt. 328) 1811

ACTIONS - Judgments - Declaratory judgment - Rights - Infringement - Once rights declared are infringed - Fresh proceedings are needed for enforcement - As the judgment cannot be enforced by execution (H2) Olabomi v. Oyewole (2013) 7 KLR (pt. 333) 3319

ACTIONS - Jurisdiction - Basis - For court to assume jurisdiction over a matter - The matter must be commenced by due process of law - And upon fulfillment of any condition precedent (H4) Nworah v. Nwabueze (2013) 5 KLR (pt. 330) 2431

ACTIONS - Justice - Importance - Expected result of adjudication on a matter is whether or not justice has been done - Hence technicality which breeds injustice should not be allowed (H4) Ikechukwu v. Nwoye (2013) 12 KLR (pt. 337) 4305

ACTIONS - Land law - Estoppel - Respondent having established title conveyed by Exhibit A - And relied on Exhibits D, C1 & C2 - Appellants are estopped from relitigating - The facts of the land belonging to the Oba - And that appellants were customary tenant (H5) Olaniyan v. Fatoki (2013) 7 KLR (pt. 335) 3829

ACTIONS - Land law - Title - Appellants are entitled to benefits that accrued to respondents by judgment in suit no. ID/1883/89 - Since title had passed to the former - At the time the action was instituted (H1) Gbadamosi v. Akinloye (2013) 7 KLR (pt. 333) 3225

ACTIONS - Legal practitioners - Authority - Conduct of case - Where counsel acts within scope of authority - Without express or implied limitation - Client is bound by exercise of such authority (H2) Ogboru v. Uduaghan (2013) 6 KLR (pt. 332) 2981

ACTIONS - Legal practitioners - Error - Effect on litigant - Principle of not visiting litigant with sins of counsel is not absolute - As litigant is supposed not to be indifferent - To his counsel's conduct of his case (H2) Ahmed v. Ahmed (2013) 7 KLR (pt. 335) 3561

ACTIONS - Limitation - Election petitions - Filing - Time limit - Such petitions are sui generis as they are limited by time - Hence by Electoral Act para. 14(2)(a)(b) 1<sup>st</sup> Sch. - Amendment or fresh evidence are not allowed at the expiration of the filing period (H1) Oke v. v.

## **4702 INDEX OF SUBJECT MATTER ALL SC 2013 DECISIONS**

Mimiko (2013) 5 KLR (pt. 329) 2195

ACTIONS - Limitation - Public Officers' Protection Act - Appellant's action is statute barred - As he delayed to enforce his right within 3 months - Upon being relieved of his employment (H4) Yare v. N. S. W. I. C. (2013) 5 KLR (pt. 329) 2267

ACTIONS - Limitation law - Applicability - Where a party is denied opportunity to bring his action timeously - The law will not apply (H6) Nigerian Army v. Warrant Officer Banni Yakubu (2013) 1-2 KLR (pt. 323) 471

ACTIONS - Main & alternative relief - Party can plead in the main and alternatively - But court is bound to grant only one at expense of the other - Where the latter was made ancillary to the former (H4) Abia State Ind. Elec. Com. v. Kanu (2013) 5 KLR (pt. 330) 2313

ACTIONS - Mandamus - Injunction - Claim for - Procedure - By High Court Rules of Lagos State O. 43 r. 1 - The reliefs could be claimed and considered separately (H3) Ayida v. Town Planning Authority (2013) 4 KLR (pt. 328) 1811

ACTIONS - Master & servant - Contract of service - Is bedrock upon which aggrieved employee may found his case - As he succeeds or falls on the terms thereof (H1) Dudusola v. Nigerian Gas Co. Ltd. (2013) 12 KLR (pt. 338) 4449

ACTIONS - Master & servant - High Court - Since the action is for wrongful termination of employment and not trade dispute - The court's jurisdiction is not ousted by Trade Dispute Act s. 47(1) (H8) Osoh v. Unity Bank Plc. (2013) 2 KLR (pt. 325) 1133

ACTIONS - Master & servant - Jurisdiction - Since there was non compliance with NICON Act s. 26(2) - The court has no jurisdiction to entertain the action (H4) Ugwuanyi v. NICON Insurance Plc (2013) 1-2 KLR (pt. 323) 587

ACTIONS - Master & servant - Pre action notice - NICON Act s. 26(2) placed duty on appellant to serve the notice - Before commencing any action against respondent (H2) Ugwuanyi v. NICON Insurance Plc (2013) 1-2 KLR (pt. 323) 587

ACTIONS - Master & servant - Termination - Damages in action for termination of employment - Can only follow events - Where the termination is wrongful (H5) Osoh v. Unity Bank Plc. (2013) 2 KLR (pt. 325) 1133

ACTIONS - Necessary party - Joinder - As the trial court's judgment

would affect 3<sup>rd</sup> respondent - It is desirable that 3<sup>rd</sup> respondent be heard - So that court can effectively settle all questions in the matter (H5) Gassol v. Tutare (2013) 12 KLR (pt. 338) 4463

ACTIONS - Negligence - Proof - To succeed in such action - Plaintiff must show that defendant owes him duty of care - And that he has suffered damage - In consequence of the breach of the duty towards him (H1) Ighreriniovo v. S.C.C. Nig. Ltd. (2013) 4 KLR (pt. 328) 1853

ACTIONS - Parties - Consistency - Party who is successful at trial court - Ought not to be confronted with new case on appeal - Simply because his adversary decided to bring his case in dribbles (H3) Adeyefa v. Bamgboye (2013) 2 KLR (pt. 324) 647

ACTIONS - Parties - Joinder of - Basis - Odeleye v. Adepegba - Defendant can be joined where plaintiff's or defendant's case in existing action - Cannot be effectively determined without the joinder (H4) Associated Discount House Ltd. v. Minister of FCT (2013) 2 KLR (pt. 324) 685

ACTIONS - Parties - Joinder of - Proper time - Nnaji v. Aneke - Order for joinder or non joinder may be made at anytime - Upon application of either party - But such must be done if the action is pending (H3) Associated Discount House Ltd. v. Minister of FCT (2013) 2 KLR (pt. 324) 685

ACTIONS - Parties - Need for consistency - A party should be consistent in stating his case - And in proving same (H2) Oshiomole v. Ehigie (2013) 1 KLR (pt. 322) 191

ACTIONS - Party - Necessary party - From the circumstances of the matter - Appellant is a necessary party that is to be bound by decision in the proceedings (H2) FBN Plc v. Ozokwere (2013) 12 KLR (pt. 337) 4203

ACTIONS - Party - Necessary party - Is one whose presence in an action is essential - For the effectual and complete determination of the claim before the court (H2) Olawoye v. Jimoh (2013) 4 KLR (pt. 328) 1887

ACTIONS - Party - Pleadings - Unclaimed relief - It does not lie within the power of court - To grant a relief not claimed by a party in his pleadings (H3) Eyigebe v. Iyaji (2013) 5 KLR (pt. 330) 2329

ACTIONS - Party - Status - Parties are natural or artificial persons - Whose names appear on the record of the court - As plaintiffs and defendants (H1) Olawoye v. Jimoh (2013) 4 KLR (pt. 328) 1887

ACTIONS - Pleadings - Averment - Specific denial - By amendment of Supreme Court Rules in 1989 - Defendant must specifically traverse - Any claim for damages in an action (H4) *Oando Nig. Plc. v. Adjire W. A. Ltd.* (2013) 5 KLR (pt. 330) 2459

ACTIONS - Pleadings - Relief - Facts - Party must plead facts needed to establish his right to relief claimed - As evidence of facts not pleaded goes to no issue (H3) *Yare v. N. S. W. I. C.* (2013) 5 KLR (pt. 329) 2267

ACTIONS - Pleadings - Unchallenged averments - Evidence on amount claimed constituted sufficient proof of special damages - Recoverable by respondent - As the evidence was admitted without objection (H6) *Nigerian Bottling Co. Plc v. Ubani* (2013) 8-12 KLR (pt. 336) 4027

ACTIONS - Practice & procedure - Applicable rule - Is the rule in force at the time of trial of the action - Or when the application is heard - Unless there is any provision to the contrary (H2) *Nworah v. Nwabueze* (2013) 5 KLR (pt. 330) 2431

ACTIONS - Private land - Acquisition - Locus standi - Appellants rightly instituted suit no. M/779/93 - To challenge the State government's acquisition of the hectares of land - The title to which appellants acquired by purchase (H2) *Gbadamosi v. Akinloye* (2013) 7 KLR (pt. 333) 3225

ACTIONS - Relief - Failure to claim - Since appellant never claimed for release of its title documents - Same was never decreed in its favour - As court does not grant relief not claimed (H8) *Alims Nig. Ltd. v. United Bank for Africa* (2013) 1 KLR (pt. 322) 35

ACTIONS - Reliefs - Binding nature - Courts are bound by claims sought before them - And any prayer granted without being pre-claimed by parties - Is invalid (H2) *Akinrimisi v. Maerks Nig. Ltd.* (2013) 3 KLR (pt. 326) 1237

ACTIONS - Reliefs - Vagueness of - Fate - Respondent's claims pertaining to promotions and entitlements are uncertain - And as such must fail as there was no evidence - To prove his entitlement to same (H5) *University of Jos v. Ikegwuoha* (2013) 12 KLR (pt. 338) 4615

ACTIONS - Statutes - Provisions - Adherence to - Where statute prescribes a legal line of action for initiating court process - All remedies in the statute should be followed to the letter (H5) *Aladejobi v. NBA* (2013) 7 KLR (pt. 335) 3623

ACTIONS - Technicality - Effect - The Procedural irregularities in the matter - Did not adversely affect appellant - Nor occasioned any miscarriage of justice (H13) Ahmed v. Ahmed (2013) 7 KLR (pt. 335) 3561

ACTIONS - Title - Possession - Respondents have established title as shown in exhibits P1 & P2 - As a successful defence of a previous land case - Is in itself an act of possession - In ascertaining title (H3) Apata v. Olanlokun (2013) 7 KLR (pt. 334) 3359

ACTIONS - Title - Res judicata - Application - Estoppel per rem judicatam is applicable here - As the parties, land and subject matter in exhibits P1 & P2 are the same (H2) Apata v. Olanlokun (2013) 7 KLR (pt. 334) 3359

ACTIONS - Torts - Detinue - Nature of - Kosile v. Folarin - Detinue involves unlawful diversion of plaintiff's chattel - Which he has immediate right to possess - After having demanded for its return (H1) Aminu Ishola Invest. Ltd v. Afribank Plc (2013) 2 KLR (pt. 325) 1025

ACTIONS - Town planning Law - Contravention of - Appellants do not have injunctive relief under Lagos Urban Planning Law - And they failed to show how they will suffer greater injury than others - By alleged contravention of that law (H5) Ayida v. Town Planning Authority (2013) 4 KLR (pt. 328) 1811

ACTIONS - Undefended list - General cause list - Transfer to - Basis - As issue raised by respondent is defence on merit - The same should be tested at the full trial of the action (H2) Ed-Of Nig. Ltd. v. Snig Nig. Ltd. (2013) 2 KLR (pt. 325) 965

ACTIONS - Undefended suits - Judgment - Merit - Judgment handed down under the list - Is one on merit and can only be set aside on appeal - Or by another action in case of fraud (H7) Obaro v. Hassan (2013) 1-2 KLR (pt. 323) 491

ACTIONS - Undefended suits - Procedure - Under High Court Rules of Delta State O. 23 - Plaintiff can by this process recover liquidated money demands from defendant - Without a full blown civil trial (H1) Ed-Of Nig. Ltd. v. Snig Nig. Ltd. (2013) 2 KLR (pt. 325) 965

ACTIONS - Waiver - Plea of - Sustainability - Court must be satisfied that a party has consciously waived his right - Before upholding the plea (H6) Ugwuanyi v. NICON Insurance Plc (2013) 1-2 KLR (pt. 323) 587

ADJOURNMENTS - Undefended suits - Defence - UTC v. Pamotei - Where defendant intends to defend but has taken improper step -

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Adjournment may be given to rectify the defect - To enable court consider his defence (H5) Dangote Textile Ltd. v. Hascon Asso. Nig. Ltd. (2013) 5 KLR (pt. 329) 2049

ADMINISTRATION OF ESTATES - Court - Jurisdiction - From the address available to court - The deceased lived and owned property in Lagos - Within jurisdiction of the trial court (H3) Amobi v. Nzegwu (2013) 8-12 KLR (pt. 336) 3953

ADMINISTRATION OF ESTATES - Court processes - Statement of defence - Amendment - Granting of the oral application to amend the statement - Brought the pleadings in line with evidence on record - As per due execution of the will (H5) Eta v. Dazie (2013) 3 KLR (pt. 326) 1269

ADMINISTRATION OF ESTATES - Customary law - Right of women - It is unfair to deny appellants' entitlement to benefit from their father's properties - By virtue of a customary law of their birth place (H1) Asika v. Atuanya (2013) 7 KLR (pt. 335) 3651

ADMINISTRATION OF ESTATES - Legal fees - Payment of - Legal fees of counsel are paid out of the estate of the deceased - Usually after counsel are heard (H7) Odutola v. Mabogunje (2013) 1 KLR (pt. 322) 161

ADMINISTRATION OF ESTATES - Letter of administration - Grant - HC has wide powers to make the grant - And where application for grant is not specific - The court may by Administration of Estate Law s. 22 - Limit the grant as it sees fit (H5) Amobi v. Nzegwu (2013) 8-12 KLR (pt. 336) 3953

ADMINISTRATION OF ESTATES - Probate grant - Revocation - Appellants must first call evidence to invalidate the grant - Before facing their claim on validity of the will - Where respondents are expected to begin evidence (H3) Nsefik v. Muna (2013) 12 KLR (pt. 337) 4347

ADMINISTRATION OF ESTATES - Will - Beneficiaries - Hierarchy - Justice demands that respondent takes his father's place in the will - As one who succeeds to another's right - Ought to use that person's right (H6) Asika v. Atuanya (2013) 7 KLR (pt. 335) 3651

ADMINISTRATION OF ESTATES - Will - Evidence - Unpleaded facts - Evidence led on facts not pleaded - Go to no issue and is liable to be expunged (H4) Eta v. Dazie (2013) 3 KLR (pt. 326) 1269

ADMINISTRATION OF ESTATES - Will - Proof - Where there is dispute as to a will - The propounders of the will must prove by evi-

dence - That prima facie all is in order in respect of the will (H2) Nsefik v. Muna (2013) 12 KLR (pt. 337) 4347

ADMINISTRATION OF ESTATES - Will - Propounder of - Respondent as the propounder of the will - Has a duty to plead and prove due execution of same (H3) Eta v. Dazie (2013) 3 KLR (pt. 326) 1269

ADMINISTRATION OF ESTATES - Will - Testamentary capacity - It is presumed that deceased's mental capacity exists - Until the contrary is proved by plaintiff (H4) Odutola v. Mabogunje (2013) 1 KLR (pt. 322) 161

ADMINISTRATION OF ESTATES - Wills - Beneficiaries - Equity - Justice demands that appellants who shared the property - Should not be the first to take by choice - As he who comes to equity must come with clean hands (H7) Asika v. Atuanya (2013) 7 KLR (pt. 335) 3651

ADMINISTRATION OF ESTATES - Wills - Bini native law - Deceased's will is voided only to the extent - That Igiogbe was not bequeathed to appellant as eldest son - But other parts of the will are valid (H3) Uwaifo v. Uwaifo (2013) 4 KLR (pt. 327) 1737

ADMINISTRATION OF ESTATES - Wills - Court of Appeal - Findings - Correctness of - The court did not act in excess of its jurisdiction - As it only directed that disposition of the property - Be guided by intention of the testator in exhibit P1 (H5) Asika v. Atuanya (2013) 7 KLR (pt. 335) 3651

ADMINISTRATION OF ESTATES - Wills - Equity - It is injustice to alter the 3<sup>rd</sup> position of respondent's father in the hierarchy of the will - And appellants who want equity are expected to do equity (H2) Asika v. Atuanya (2013) 7 KLR (pt. 335) 3651

ADMINISTRATIVE LAW - Appeals - Administrative body - Dealing with a matter - Based on printed or oral evidence or communications only - Is not in itself a breach of principles of fair hearing (H2) Gyang v. COP Lagos State (2013) 12 KLR (pt. 337) 4257

ADMINISTRATIVE LAW - Chieftaincy - Removal of chief - Governor's power - By Traditional Rulers Law s. 30(1) - Governor has discretion to withdraw recognition of a clan head - In the interest of peace (H2) Duke v. Government of Cross-River State (2013) 2 KLR (pt. 325) 941

ADMINISTRATIVE LAW - Chieftaincy - Tenure of village head - The tenure is not in perpetuity - As it is dependent on the goodwill and

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relationship - Between the holder of the office and his subjects (H5) Duke v. Government of Cross-River State (2013) 2 KLR (pt. 325) 941

ADMINISTRATIVE LAW - Fair hearing - Audi alteram partem - Application - Administrative bodies acting judicially in the imposition of decision - That is likely to affect civil rights and obligations - Are bound to observe principles of fair hearing (H1) Gyang v. COP Lagos State (2013) 12 KLR (pt. 337) 4257

ADMINISTRATIVE LAW - Fair hearing - Breach - Allegation of - Since appellant was served with petitions against him - And was also heard before a decision was taken - His complaint of breach is of no moment (H4) Duke v. Government of Cross-River State (2013) 2 KLR (pt. 325) 941

ADMINISTRATIVE LAW - Fair hearing - Tribunal - Exercise of power - By not complying with principles of natural justice - In retiring respondent from service - 1st appellant acted in excess of its powers as provided in the State Civil Service Rules (H4) Judicial Service Commission of Cross River State v. Young (2013) 5 KLR (pt. 329) 2129

ADMINISTRATIVE LAW - Mandamus - Grant - Conditions for - Applicant must establish that he made prior demand for the performance of the duty - But that same was refused by the public authority (H1) Ayida v. Town Planning Authority (2013) 4 KLR (pt. 328) 1811

ADMINISTRATIVE LAW - Mandamus - Meaning - It is an extraordinary writ issued by court - Compelling performance of an act - Usually when there is a duty under the law to perform the act (H1) Associated Discount House Ltd. v. Minister of FCT (2013) 2 KLR (pt. 324) 685

ADMINISTRATIVE LAW - Official & judicial acts - Presumption of regularity - By Evidence Act s. 150(1) - Where there is no evidence to the contrary - Things are presumed to have been rightly done (H6) Ugwu v. State (2013) 3 KLR (pt. 326) 1453

ADMINISTRATIVE LAW - Tribunals - Audi alteram partem - Even when acting in administrative capacity - Tribunal is to act in good faith and fairly listen to both sides before deciding (H2) Judicial Service Commission of Cross River State v. Young (2013) 5 KLR (pt. 329) 2129

AFFIDAVITS - Actions - Company - Legal personality - Proof - Issue of appellant's legal personality cannot be treated on affidavit evidence - And except it is admitted - It must be proved that appellant



has ceased to exist (H15) *Musaconi Ltd. v. Aspinnall* (2013) 6 KLR (pt. 331) 2695

**AFFIDAVITS** - Appeals - Concurrent findings - As there are irreconcilable conflicts with the affidavit upon which lower court made findings - Supreme Court has duty to interfere - And set aside the findings (H3) *Olley v. Tunji* (2013) 4 KLR (pt. 328) 1905

**AFFIDAVITS** - Appeals - Court of Appeal - Interlocutory injunction - Before the application can be made to the court - It must be shown on the supporting affidavit - That there exists special and exceptional circumstances (H1) *Commissioner for Education v. Amadi* (2013) 2 KLR (pt. 325) 1003

**AFFIDAVITS** - Appeals - Extension of time - Conditions - By C.A. Rules O. 7 r. 10(2) - Affidavit evidence must disclose good and substantial reasons - And the ground must show good cause why appeal should be heard (H4) *Nigerian Army v. Warrant Officer Banni Yakubu* (2013) 1-2 KLR (pt. 323) 471

**AFFIDAVITS** - Appeals - Extension of time - Conditions - S.C. Rules O. 2 r. 31(2) - The affidavit evidence must disclose good & substantial reason for the delay - And proposed grounds of appeal must be arguable (H2) *Imegwu v. Okolocha* (2013) 1-2 KLR (pt. 323) 433

**AFFIDAVITS** - Appeals - Injunction pending appeal - Applicant's duty - He must establish by evidence in affidavit - The legal right he seeks to protect by the order (H5) *Aboseldehyde Lab. Plc. v. Union Merchant Bank Plc* (2013) 3 KLR (pt. 326) 1205

**AFFIDAVITS** - Averments - Contradiction - Where a party does not file counter affidavit - To contradict averments in affidavit in support of motion - He is deemed to have admitted them (H2) *Inegbedion v. Selo-Ojemen* (2013) 1 KLR (pt. 322) 69

**AFFIDAVITS** - Chieftaincy matters - Resolution - As demand were made on appellants to surrender the chieftaincy property - CA rightly held that no conflict exist - That calls for oral evidence (H6) *Atungwu v. Ochekwu* (2013) 7 KLR (pt. 335) 3681

**AFFIDAVITS** - Contents - By Evidence Act ss. 86 & 87 - Affidavit shall contain only facts - Derived from personal knowledge of deponent - And not objection or legal argument (H4) *Okponipere v. State* (2013) 2 KLR (pt. 325) 1119

**AFFIDAVITS** - Deposition - Proof - To substantiate the allegation against counsel - Evidence must be adduced to show that exhibit E was served on him (H3) *Ogboru v. Uduaghan* (2013) 6 KLR (pt. 332) 2981

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**AFFIDAVITS** - False declaration - Allegation of - Proof - Invention and fabrication of evidence - Should not be made against anyone - Without proof (H4) *Nwaogu v. Atuma* (2013) 1-2 KLR (pt. 323) 305

**AFFIDAVITS** - Injunction - Grant - Preconditions - Applicant must inter alia show in his affidavit - That there is existence of legal right - Substantial issue to be tried - And a balance of convenience (H3) *Adeleke v. Lawal* (2013) 2 KLR (pt. 324) 623

**AFFIDAVITS** - Objections - Preliminary objection - Basis - It deals with law and hence no need for supporting affidavit - As applicant contends that the court process has not complied with the enabling law (H3) *Abba v. SPDC Nig. Ltd.* (2013) 4 KLR (pt. 327) 1473

**AFFIDAVITS** - Objections - Preliminary objection - Failure to reply - Absence of counter affidavit to objection - Does not mean that the objection is conceded - As courts are enjoined to consider the objection on its merits (H1) *FRN v. Tawakalitu* (2013) 5 KLR (pt. 329) 2079

**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) *Ahmed v. CBN* (2013) 6 KLR (pt. 331) 2611

**AFFIDAVITS** - Undefended suits - Defence - Materials for - Court is guided by facts of the case - Parties' affidavit evidence - Notice of intention to defend disclosing the defence (H3) *Dangote Textile Ltd. v. Hascon Asso. Nig. Ltd.* (2013) 5 KLR (pt. 329) 2049

**AFFIDAVITS** - Undefended suits - Determination - Cases under the list are decided on affidavit but not on pleadings - But pleadings are ordered after court is satisfied - That defendant has good defence (H8) *Obaro v. Hassan* (2013) 1-2 KLR (pt. 323) 491

**AFFIDAVITS** - Undefended suits - Interest - Proof - Plaintiff's affidavit must disclose - How his right to the interest being claimed accrues - And how the rate thereof was arrived at (H4) *Akpan v. Akwa-Ibom Property Invest. Co. Ltd.* (2013) 6 KLR (pt. 331) 2631

**AFFIDAVITS** - Undefended suits - Writ of summons - Definitive affidavit - Where the writ does not have the required separate affidavit - Defendant cannot be said to have been served (H3) *Obaro v. Hassan* (2013) 1-2 KLR (pt. 323) 491

**AGREEMENTS** - Contracts - Binding nature of - Parties are bound

by terms of agreement freely entered into - And court must give effect to such agreement - And is not to make a new one (H4) Aminu Ishola Investment Ltd v. Afribank Plc (2013) 2 KLR (pt. 325) 1025

AGREEMENTS - Master & servant - Collective agreement - Contract - There is no privity of contract - As the agreement was not incorporated into the contract of employment (H3) Osoh v. Unity Bank Plc. (2013) 2 KLR (pt. 325) 1133

ALIBI - Armed robbery - Alibi - Plea - Investigation - As appellant was duly identified and fixed at the crime scene by PW1 and 3 - There was no burden to verify the plea (H2) Victor v. State (2013) 6 KLR (pt. 331) 2763

ALIBI - Armed robbery - Recent possession - E A s. 167(a) was rightly invoked and alibi rightly rejected - Since appellant was found in the vicinity of the crime - Shortly after the robbery and was also in possession of the stolen items (H7) Sadiku v. State (2013) 5 KLR (pt. 330) 2521

ALIBI - Defence - Accused at crime scene - Where presence of accused is fixed at the scene - The defence is defeated and need no investigation (H4) Ayan v. State (2013) 7 KLR (pt. 335) 3717

ALIBI - Defence - Identification parade - There was no need for the parade since PW1 recognized appellant as one of the robbers - And the defence of alibi cannot be sustained - As appellant was arrested at crime scene (H6) Ibrahim v. State (2013) 12 KLR (pt. 337) 4273

ALIBI - Defence - Inconsistencies - Where material facts of the defence are found to be false - Prosecution is not bound to investigate - As no alibi is established (H3) Ayan v. State (2013) 7 KLR (pt. 335) 3717

ALIBI - Defence - Investigation - Where alibi has been promptly set up - Prosecution must carry on an investigation - But failure to do so would not always be fatal to prosecution's case (H2) Ayan v. State (2013) 7 KLR (pt. 335) 3717

ALIBI - Failure to investigate - It is not every such failure by police - That is fatal to the case of prosecution (H4) Olatinwo v. State (2013) 1-2 KLR (pt. 323) 541

ALIBI - Plea - Conditions of - Accused must inter alia - Raise the defence at the earliest opportunity - Detailing his whereabouts - And must adduce evidence in support (H3) Egwemi v. State (2013) 1-2 KLR (pt. 323) 325

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**ALIBI** - Plea of - Failure to investigate - Prosecution's case is not made fatal by every failure of police to investigate alibi - As accused alibi is demolished - Where there are sufficient evidence fixing him at crime scene at the material time (H2) *Aliyu v. State* (2013) 6 KLR (pt. 332) 2873

**ALIBI** - Plea of - Investigation - Appellant did not fully disclose his whereabouts at the time of the incident to police - To warrant any investigation of his plea by the police (H1) *Aliyu v. State* (2013) 6 KLR (pt. 332) 2873

**ALIBI** - Proof - Onus is not on accused to establish alibi - To the satisfaction of court - But for prosecution to disprove it (H3) *Osuagwu v. State* (2013) 1 KLR (pt. 322) 223

**ALIBI** - Proof - Prosecution has onus to adduce credible evidence to disprove alibi - But accused must firstly discharge the evidential burden of setting up facts - On which alibi can rest (H1) *Ayan v. State* (2013) 7 KLR (pt. 335) 3717

**ALIBI** - Proof - Where accused raises alibi - Prosecution must investigate same - But accused is still bound to give particulars of his whereabouts (H4) *Agboola v. State* (2013) 5 KLR (pt. 329) 2019

**ALIBI** - Time to raise - Accused must raise the defence when his caution statement is being taken - Stating clearly the time and address of his whereabouts (H2) *Osuagwu v. State* (2013) 1 KLR (pt. 322) 223

**APPEALS** - Action - Jurisdiction - Pursuant to SC Act s. 22 - Suit No. K/750/2000 is struck out for being incompetent - As the process leading to the judgment therein was flawed - Hence the HC had no jurisdiction to entertain it (H4) *Halilco Nig. Ltd. v. Equity Bank Nig. Ltd.* (2013) 6 KLR (pt. 332) 2937

**APPEALS** - Actions - Consistency of - Appellant portrayed a confused state of affairs - As he shunts his case from pillar to post - Contrary to the holden in *Okolo's* case that litigation is not open ended (H4) *Ekunola v. CBN* (2013) 4 KLR (pt. 327) 162

**APPEALS** - Application for extension of time - Propriety - Since appellant who later filed proper appeal was out of time - C.A. should have granted the prayers in the motion (H3) *Nwite v. State* (2013) 2 KLR (pt. 324) 799

**APPEALS** - Brief - Fair hearing - C.A. Rules O. 17 r. 5 - C.A. was wrong to hear the appeal and reserve judgment thereof - When the period given to appellant to file reply has not been determined (H2)

Audu v. FRN (2013) 1 KLR (pt. 322) 53

APPEALS - Briefs - Reply - Purpose - Appellant's reply brief is liable to be discountenanced - As such brief is not to raise fresh points - Or repeat arguments in previously filed brief (H6) Musaconi Ltd. v. Aspinall (2013) 6 KLR (pt. 331) 2695

APPEALS - CA ruling - Interference - There is no justification to set aside the ruling - As CA comments did not prejudice the substantive case of appellants - Which is pending at trial court (H4) Nsefik v. Muna (2013) 12 KLR (pt. 337) 4347

APPEALS - Chieftaincy matters - Concurrent findings - Concerning approval of Benue State Govt. - With regards to appointment and assumption of duties by clan head - Cannot be faulted by SC - As same have not been shown to be perverse (H3) Atungwu v. Ochekwu (2013) 7 KLR (pt. 335) 3681

APPEALS - Concurrent findings - As there are irreconcilable conflicts with the affidavit upon which lower court made findings - Supreme Court has duty to interfere - And set aside the findings (H3) Olley v. Tunji (2013) 4 KLR (pt. 328) 1905

APPEALS - Concurrent findings - Damages - Award of - No ground exists for Supreme Court to interfere with award of N15 million - As there is no credible case - That the amount is ridiculously high (H17) Nigerian Bottling Co. Plc v. Ubani (2013) 8-12 KLR (pt. 336) 4027

APPEALS - Concurrent findings - Findings of the two lower courts are unassailable - As appellants were unable to prove - Existence of contract of employment with respondents (H9) Organ v. Nig. Liquefied Natural Gas Ltd. (2013) 7 KLR (pt. 334) 3521

APPEALS - Concurrent findings - Since appellant has not shown perversity - Or miscarriage of justice in the findings - Supreme Court cannot interfere (H4) Ibeme v. State (2013) 1-2 KLR (pt. 323) 379

APPEALS - Concurrent findings - Since the findings of the lower courts were not supported by evidence - Supreme Court will intervene - By virtue of its powers in S.C. Act s. 22 (H4) Matanmi v. Dada (2013) 2 KLR (pt. 324) 725

APPEALS - Concurrent findings - Supreme Court does not interfere with the findings of facts of lower courts - That are not tainted with miscarriage of justice (H7) Arum v. Nwobodo (2013) 4 KLR (pt. 327) 1583

APPEALS - Concurrent findings - Supreme Court does not interfere

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- Where the findings are reasonably justified - And supported by evidence (H3) Denton-West v. Jack (2013) 12 KLR (pt. 338) 4435

APPEALS - Confession - Corroboration - Conviction not founded on evidence on record as per the charge - But on mere confessional statement - Cannot stand on appeal (H5) Abdullahi v. State (2013) 5 KLR (pt. 329) 1979

APPEALS - Confession - Corroboration - Where confession is not comprehensive in relation to offence convicted - Existence of evidence outside the statement is necessary - To justify the conviction on appeal (H3) Shodiya v. State (2013) 12 KLR (pt. 338) 4557

APPEALS - Confession - Validity - Once court is satisfied with genuineness of confession - Conviction can be based on it entirely - And such will not be disturbed on appeal (H6) Osuagwu v. State (2013) 1 KLR (pt. 322) 223

APPEALS - Contract - Court - Findings - Correctness of - CA was right in finding that - The trial court had no evidence supported by pleadings - That the contract between the parties was voided by illegality (H5) Ajayi v. Total Nig. Plc. (2013) 7 KLR (pt. 334) 3333

APPEALS - Contracts - Termination - Correctness of - As there is no illegality in the contract between the parties - CA rightly allowed respondent's appeal - By granting it relief in affirming the termination of the contract (H4) Ajayi v. Total Nig. Plc. (2013) 7 KLR (pt. 334) 3333

APPEALS - Conviction - Confession - Validity - Court of Appeal rightly affirmed the conviction of appellant - Since exhibit 7A was direct and voluntarily made (H1) Fatai v. State (2013) 3 KLR (pt. 326) 1291

APPEALS - Court - Academic issue - Courts do not decide on hypothetical cases - The result of which will not grant any benefit to applicant (H4) Imegwu v. Okolocha (2013) 1-2 KLR (pt. 323) 433

APPEALS - Court - Discretion - Determination - Appellate court determines whether discretion was judicial and judicious - And not whether it would have exercised the discretion differently (H2) Aroh v. PDP (2013) 6 KLR (pt. 331) 2655

APPEALS - Court - Discretion - Exercise of - Correctness - CA rightly exercised its discretion - Having considered that appellant can still adduce evidence at the trial proper (H5) Aroh v. PDP (2013) 6 KLR (pt. 331) 2655

APPEALS - Court - Finding - Correctness of - CA decision affirming

trial court's finding stands - As appellants were unable to show that findings of the two courts - Were not based on pleadings and evidence on record (H6) *Olaniyan v. Fatoki* (2013) 7 KLR (pt. 335) 3829

APPEALS - Court - Finding - Correctness of - Supreme Court will not interfere with the finding of CA - On the available evidence before the trial court - That is not considered to be perverse (H4) *Amobi v. Nzegwu* (2013) 8-12 KLR (pt. 336) 3953

APPEALS - Court - Finding - Failure to challenge - Where finding of lower court is not appealed against - The finding is deemed to be valid and subsisting - And appellate court will not disturb it (H1) *Okwaranonobi v. Mbadugha* (2013) 6 KLR (pt. 332) 3007

APPEALS - Court - Findings - Interference - Appellate court remains slow in departing - From findings made by trial court - Except to correct errors (H2) *Udo v. Regd. Trustee of the Brotherhood of the Cross & Star* (2013) 2 KLR (pt. 324) 847

APPEALS - Court - Findings - The trial court's findings of facts are deemed admitted - As there is no appeal against them - And CA was at liberty to rely on same in its decision (H3) *FBN Plc v. Ozokwere* (2013) 12 KLR (pt. 337) 4203

APPEALS - Court - Findings of fact - Where Court of Appeal wrongly disturbed findings of trial court - Supreme Court will not hesitate in restoring the finding (H8) *Vab Petroleum Inc. v. Momah* (2013) 1 KLR (pt. 322) 249

APPEALS - Court - Issue - Formulation - Appellate court is not bound by issues formulated by parties - As it can identify appropriate issues - Provided no new issue is introduced (H2) *Yisi Nig. Ltd. v. Trade Bank Plc.* (2013) 2 KLR (pt. 324) 863

APPEALS - Court - Issue - Reformulation - Where appellant's issues are verbose - Court is entitled to reframe the issues - For the purpose of narrowing down same - In the interest of clarity (H4) *Musaconi Ltd. v. Aspinall* (2013) 6 KLR (pt. 331) 2695

APPEALS - Court - Issues - Formulation - Provided no new issues are introduced - Appellate court can in appropriate circumstances - Identify proper issues in appeal (H4) *Tukuru v. Sabi* (2013) 3 KLR (pt. 326) 1433

APPEALS - Court - Issues - *Suo motu* formulation - Appeal court can adopt issues *suo motu* - Provided such issues arise from valid grounds of appeal - And address the real grievance therein (H6) *Odutola v.*

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Mabogunje (2013) 1 KLR (pt. 322) 161

APPEALS - Court - Obiter dictum - Remarks by the trial Judge on prosecuting appellant for bigamy - Constitute obiter dicta - And cannot form the basis of appeal (H10) Amobi v. Nzegwu (2013) 8-12 KLR (pt. 336) 3953

APPEALS - Court - Record of appeal - Binding nature of - Appellate courts are not only bound by the record - But also bound to examine the state of same - On conflicting claims of parties (H1) Audu v. FRN (2013) 1 KLR (pt. 322) 53

APPEALS - Court martial - CA Rules O. 4 r. 1 - Applicability - The provisions of the Order is not applicable - In appeals to CA in criminal cases from General Court Martial (H2) Nigerian Army v. Samuel (2013) 7 KLR (pt. 334) 3385

APPEALS - Court martial - Fair hearing - Sentence - Review of - By Armed Forces Act s. 149 - A convict has 3 months to appeal for a review - And is also allowed by s. 154(6) to appeal to CA - And thereafter to SC (H3) Odunlami v. Nigerian Navy (2013) 6 KLR (pt. 331) 2721

APPEALS - Court of Appeal - Interlocutory injunction - Before the application can be made to the court - It must be shown on the supporting affidavit - That there exists special and exceptional circumstances (H1) Commissioner for Education v. Amadi (2013) 2 KLR (pt. 325) 1003

APPEALS - Court of Appeal - Powers - By C.A. Act s. 18 - The court can make equitable order(s) - In the interest of justice administration - So as to preserve the subject matter of dispute between parties (H4) Contract Resources Ltd v. Standard Trust Bank Ltd (2013) 2 KLR (pt. 325) 915

APPEALS - Court processes - Jurisdiction - An initiating process must be valid - To confer jurisdiction on court - In order to adjudicate between parties on a subject matter in dispute (H2) Okarika v. Samuel (2013) 2 KLR (pt. 324) 807

APPEALS - Court processes - Originating process - Not signed by counsel - Since the process was not signed by a legal practitioner - The same is incompetent as well as an appeal arising therefrom (H2) Ministry of Works & Transport v. Yakubu (2013) 1-2 KLR (pt. 323) 289

APPEALS - Courts - Customary courts - Proceedings - Trials in the court is on substance and not form - And appellate court must re-



spect decisions therefrom - Provided nothing therein contravenes the law (H9) *Arum v. Nwobodo* (2013) 4 KLR (pt. 327) 1583

APPEALS - Courts - Evaluation - Finding of fact involves perception and evaluation - And it is not for appeal court to evaluate evidence - As that is primary duty of trial court (H1) *Odutola v. Mabogunje* (2013) 1 KLR (pt. 322) 161

APPEALS - Courts - Evidence - Evaluation - Trial court has primary duty to ascribe probative value - On evidence placed before it - But appellate court steps in - When trial court fails to perform the duty (H5) *Oguanuhu v. Chiegboka* (2013) 1-2 KLR (pt. 323) 521

APPEALS - Courts - Fair hearing - Parties - Issues - Binding nature - Court should not set up a case - Different from the one presented by parties - Without allowing parties to address it on same (H5) *Omokuwajo v. FRN* (2013) 3 KLR (pt. 326) 1365

APPEALS - Courts - Findings - Court of Appeal was right in its reasoning for upholding respondents' counter claim - Hence Supreme Court cannot deviate from same (H3) *Ameen v. Amao* (2013) 2 KLR (pt. 324) 667

APPEALS - Courts - Findings of fact - Appellate court should not interfere with findings of trial court - Save where there is misdirection by trial court (H6) *Achilihu v. Anyatonwu* (2013) 1 KLR (pt. 322) 1

APPEALS - Courts - Findings of facts - C.A. did not overrule trial court's findings - As the operative findings of facts is the one - Made after the oral application for amendment had been granted (H2) *Eta v. Dazie* (2013) 3 KLR (pt. 326) 1269

APPEALS - Courts - Hearing - Academic issues - Courts do not make pronouncement on academic issues - As no useful purpose is served by so doing (H2) *Oke v. Mimiko* (2013) 5 KLR (pt. 329) 2195

APPEALS - Courts - Interlocutory application - Exercise of discretion - Is not appellable but must be judicious and judicial - And not whimsical or irrational (H2) *Commissioner for Education v. Amadi* (2013) 2 KLR (pt. 325) 1003

APPEALS - Courts - Issues - Formulation of - Courts have power to formulate issues in the interest of justice - But parties must be heard on such issues - Before judgment is delivered (H7) *Ekunola v. CBN* (2013) 4 KLR (pt. 327) 1621

APPEALS - Criminal procedure - AG's Fiat - Duration of - On authority of *Ebe v. COP* - AG need not issue fresh fiat - Before counsel

can proceed with prosecution of appeals - Arising from the charge (H15) Nnakwe v. State (2013) 7 KLR (pt. 333) 3273

APPEALS - Criminal procedure - Concurrent findings - Appellant failed to displace the findings - As there is no proof of how the circumstantial evidence was weakened - By any co existing circumstances in the matter (H1) Babatunde v. State (2013) 6 KLR (pt. 332) 2895

APPEALS - Criminal procedure - Consistency in - Prosecution should be consistent in prosecuting his case at trial court as well as on appeal - As there should be no somersault (H4) George v. FRN (2013) 12 KLR (pt. 337) 4235

APPEALS - Criminal procedure - Conviction - Validity - CA rightly affirmed appellant's conviction - As the trial court considered a host of corroborative evidence - From which inference was rightly drawn (H4) Shodiya v. State (2013) 12 KLR (pt. 338) 4557

APPEALS - Criminal procedure - Interpreter - Non provision of - Where accused is represented by counsel at trial - And there was no objection on the issue - It is futile to raise the issue on appeal (H2) Egwemi v. State (2013) 1-2 KLR (pt. 323) 325

APPEALS - Criminal procedure - Irregularity - Objection - Appellants were not prejudiced on the procedure they elected to adopt - And having failed to object at trial court - They cannot be allowed to do so on appeal (H4) Oguno v. State (2013) 12 KLR (pt. 338) 4529

APPEALS - Criminal procedure - Nullity - Arraignment CPL s. 215 - The section which deals on taking of appellant's plea - Does not give room for exercise of discretion - And failure to comply with it - Renders the proceedings a nullity (H1) Lasisi v. State (2013) 5 KLR (pt. 330) 2419

APPEALS - Criminal procedure - Retrial - Contradictions in prosecution's evidence in aborted trial - Is immaterial when considering whether the case should be retried (H4) Adeyemi v. State (2013) 4 KLR (pt. 328) 1771

APPEALS - Criminal procedure - Retrial order - Is made where inter alia - There has been error in law or irregularity in procedure - That neither renders the trial a nullity - Nor was there a miscarriage of justice (H1) Elijah v. State (2013) 2 KLR (pt. 325) 983

APPEALS - Criminal procedure - Sentence - Interference - Appellate court does not interfere with sentence imposed by trial court - Unless same is manifestly excessive or wrong in principle (H6) Omokuwajo v. FRN (2013) 3 KLR (pt. 326) 1365

APPEALS - Criminal proceedings - Retrial order - Since the proceedings is nullity - The order is wrong and appellant whose conviction and sentence have been nullified - Shall be set free (H3) Mohammed v. State (2013) 1 KLR (pt. 322) 99

APPEALS - Cross appeal - Filing - Respondent who seeks either the setting aside - Or the complete reversal of finding of lower court - Can only do so through a substantive cross appeal (H1) Organ v. Nig. Liquefied Natural Gas Ltd. (2013) 7 KLR (pt. 334) 3521

APPEALS - Damages - Award - Interference - Appellate court does not interfere with award made by trial court - Unless the latter acted on wrong principle of law - Or that the amount awarded is extremely high or ridiculously small (H4) Ighreriniovo v. S.C.C. Nig. Ltd. (2013) 4 KLR (pt. 328) 1853

APPEALS - Damages - Interference - Since trial court relied on wrong premise of tort of detinue instead of contract - Court of Appeal rightly disturbed the excessive damages awarded (H3) Aminu Ishola Investment Ltd v. Afribank Plc (2013) 2 KLR (pt. 325) 1025

APPEALS - Damages - Quantum - Appellate court can interfere with amount of damages awarded by trial court - Where it is shown that the court proceeded on wrong principle (H2) Kaja v. Oke (2013) 2 KLR (pt. 325) 1051

APPEALS - Determination - Academic issue - Since appellant has retired with full benefits - He does not stand to gain further in the appeal - As to do so will amount to engaging in fruitless exercise (H4) Abe v. University of Ilorin (2013) 5 KLR (pt. 329) 2001

APPEALS - Determination - Basis - Appeal is determined by appellate court - Based on the issues - But not on the grounds (H1) Okponipere v. State (2013) 2 KLR (pt. 325) 1119

APPEALS - Dismissal - Basis - Appeal court can only dismiss appeal - If the appeal appears to be a non starter - And the court does not reevaluate evidence - Except there are genuine complaints (H6) Ayan v. State (2013) 7 KLR (pt. 335) 3717

APPEALS - Dismissal - Fair hearing - Court of Appeal Rules 2007 O. 8 - Deprived the court the power to act on notice of noncompliance - With compilation & transmission of appeal records - Without putting parties on notice to dismiss the appeal (H3) Nworah v. Nwabueze (2013) 5 KLR (pt. 330) 2431

APPEALS - Documentary evidence - Evaluation - Where findings of

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trial Judge on document are perverse - Appellate court will employ its appellate power - To correct the perversity (H7) CPC v. Ombugadu (2013) 7 KLR (pt. 334) 3401

APPEALS - Election - Legislative Houses - Final court - CA has jurisdiction in matters under 1999 Constitution s. 246(a)(b)(c)(i)(ii)(iii) - And its decisions on appeals arising from the election - Shall be final (H5) Opara v. Amadi (2013) 6 KLR (pt. 332) 3027

APPEALS - Election petitions - Gubernatorial election - Jurisdiction - Final court - By 1999 Constitution s. 246(3) - SC has no jurisdiction to review decision of CA in appeals in respect of such election (H1) Oni v. Fayemi (2013) 5 KLR (pt. 330) 2497

APPEALS - Elections - Court - Pleadings - Binding nature - It is not the duty of CA to fish for disqualifying factors for senatorial office - Which were not specifically raised in the question for determination (H4) Nwaogu v. Atuma (2013) 12 KLR (pt. 338) 4491

APPEALS - Elections - Extension of time - ANPP v. Albishir - As no reason was given for delay - Grant of the application will frustrate hearing of main appeal at CA - Which borders on pre election matter that must be heard timeously (H2) Chime v. Onwuegbu (2013) 7 KLR (pt. 335) 3739

APPEALS - Elections - Legislative Houses election - Appeal - Specific provisions in 1999 Constitution s. 246(3) - Rather than general provisions in s. 233(2)(b)(c) - Donates and subscribes right to appeal - Against decision of CA arising from the election (H1) Madumere v. Okwara (2013) 6 KLR (pt. 332) 2955

APPEALS - Elections - Legislative Houses election - Final court - By 1999 Constitution s. 246(3) - CA decision in such election is final - And there cannot be a further appeal against same (H2) Madumere v. Okwara (2013) 6 KLR (pt. 332) 2955

APPEALS - Estoppel - Res judicata - Application - A plaintiff cannot relitigate an action that has been competently decided by court - Where parties - Issues and subject matter in previous proceedings are the same (H2) Igbeke v. Okadigbo (2013) 5 KLR (pt. 330) 2351

APPEALS - Evidence - Confession - Evaluation - Decision of trial court in trial within trial which is on credibility of witnesses - Is not to be interfered with by appellate court (H2) Abiodun v. State (2013) 4 KLR (pt. 328) 1753

APPEALS - Evidence - Evaluation - Ascription of probative value to evidence - Is primary function of trial court - And appellate court

does not substitute its own view - For that of trial court (H1) State v. Rabiū (2013) 1-2 KLR (pt. 323) 563

APPEALS - Evidence - Evaluation - Evaluating and drawing inference from accused's statement - Is the duty of trial court - Which appellate courts do not enjoy the advantage of doing (H3) Lasisi v. State (2013) 3 KLR (pt. 326) 1313

APPEALS - Evidence - Evaluation - Interference - Appellate courts interfere to ensure that justice prevails - Only where trial court failed to draw correct inferences (H4) Lasisi v. State (2013) 3 KLR (pt. 326) 1313

APPEALS - Evidence - Evaluation - Interference - Where credibility of witnesses is not involved - But complaint is against improper evaluation - Appellate court is in as good a position as trial court - To do its own evaluation (H8) FBN Plc v. Ozokwere (2013) 12 KLR (pt. 337) 4203

APPEALS - Evidence - Evaluation - Interference - Where trial court failed to properly evaluate evidence - Appeal court can interfere - By making proper findings justified by evidence (H2) State v. Rabiū (2013) 1-2 KLR (pt. 323) 563

APPEALS - Evidence - Evaluation - Is the primary responsibility of trial court - And once properly done - Appellate court cannot interfere - Unless the decision is perverse and has occasioned miscarriage of justice (H7) FBN Plc v. Ozokwere (2013) 12 KLR (pt. 337) 4203

APPEALS - Evidence - Evaluation - Provided appellate court took full cognizance of evaluation of evidence alongside pleadings by trial court - It must not deal line by line on judgment of tribunal (H4) Oke v. Mimiko (2013) 8-12 KLR (pt. 336) 4077

APPEALS - Evidence - Evaluation - Trial court ascribes probative value to evidence - And appellate court does not interfere - Save where the evaluation was perverse - Or not supported by evidence on record (H3) Adebayo v. PDP (2013) 4 KLR (pt. 327) 1523

APPEALS - Evidence - Evaluation - Trial court assesses demeanour of witnesses - And appellate court does not interfere with findings reached thereat - Unless where such findings are perverse - Or based on evidence not legally admissible (H11) Ajibulu v. Ajayi (2013) 12 KLR (pt. 337) 4153

APPEALS - Evidence - Evaluation - Trial court evaluates and ascribes probative value to evidence - Appellate court does not interfere where credibility of witness is involved - Save where the decision is by wrong

inference (H4) *Garan v. Olomu* (2013) 4 KLR (pt. 327) 1675

APPEALS - Evidence - Reevaluation - Appellate court would be in as good a position as trial court had been - To reappraise documentary evidence - Since doing so does not involve credibility of witness (H2) *U.T.C. Nig. Plc. v. Lawal* (2013) 8-12 KLR (pt. 336) 4133

APPEALS - Evidence - Reevaluation - Where credibility of witnesses is not involved - But complaint is on improper evaluation - Appellate court is in a good position as trial court - To do its own evaluation (H3) *Babatunde v. State* (2013) 6 KLR (pt. 332) 2895

APPEALS - Evidence - Reevaluation - Where trial court fails to properly evaluate evidence - Appeal court can reevaluate and make findings - Provided credibility of witnesses is not involved (H2) *Odutola v. Mabogunje* (2013) 1 KLR (pt. 322) 161

APPEALS - Extension of time - Application - Grant - Notwithstanding defect in the application - Interest of justice will be served - If SC Rules O. 10 r. 1(1)(2) is invoked to grant the application (H6) *Ikechukwu v. Nwoye* (2013) 12 KLR (pt. 337) 4305

APPEALS - Extension of time - Conditions - By C.A. Rules O. 7 r. 10(2) - Affidavit evidence must disclose good and substantial reasons - And the ground must show good cause why appeal should be heard (H4) *Nigerian Army v. Warrant Officer Banni Yakubu* (2013) 1-2 KLR (pt. 323) 471

APPEALS - Extension of time - Conditions - S.C. Rules O. 2 r. 31(2) - The affidavit evidence must disclose good & substantial reason for the delay - And proposed grounds of appeal must be arguable (H2) *Imegwu v. Okolocha* (2013) 1-2 KLR (pt. 323) 433

APPEALS - Fair hearing - Administrative body - Dealing with a matter - Based on printed or oral evidence or communications only - Is not in itself a breach of principles of fair hearing (H2) *Gyang v. COP Lagos State* (2013) 12 KLR (pt. 337) 4257

APPEALS - Filing - Applicable laws - Filing of original appeal from CA to SC is governed by 1999 Constitution s. 233 & SC Act s. 27 - While filing additional grounds is governed by SC Rules - By virtue of 1999 Constitution ss. 233(6) & 236 (H1) *South Atlantic Pet. Ltd. v. Minister Pet. Resources* (2013) 12 KLR (pt. 337) 4393

APPEALS - Filing - Procedure - Appeal to Supreme Court lies against decision of Court of Appeal - But not against the decision of High Court (H3) *Ugwu v. State* (2013) 3 KLR (pt. 326) 1453

APPEALS - Filing - Time limit - Principles - Non compliance with the Constitution and the SC Act is fatal - But non compliance with the rules of court is mere irregularity (H2) *South Atlantic Pet. Ltd. v. Minister Pet. Resources* (2013) 12 KLR (pt. 337) 4393

APPEALS - Fresh evidence - Admission - Leave is granted to adduce such evidence - Where inter alia the evidence could not have with reasonable diligence - Been obtained for use at trial (H4) *CPC v. Ombugadu* (2013) 7 KLR (pt. 334) 3401

APPEALS - Fresh evidence - Admission - Power of CA - By CA Rules O. 4 r. 2 - The court can grant leave to adduce further evidence on appeal - And it must act judicially and judiciously in exercise of such discretion (H1) *Aroh v. PDP* (2013) 6 KLR (pt. 331) 2655

APPEALS - Fresh evidence - Admission - Principles - Under CA Rules O. 4 r. 2 - The evidence sought to be adduced must inter alia - Be of such that could not have been obtained with reasonable care for use at the trial (H3) *Aroh v. PDP* (2013) 6 KLR (pt. 331) 2655

APPEALS - Fresh evidence - Application - Appellate court will grant leave if it was impossible to obtain such evidence at trial - And if the evidence is credible as to influence judgment (H3) *Nwaogu v. Atuma* (2013) 1-2 KLR (pt. 323) 305

APPEALS - Fresh evidence - CA Rule O. 4 r. 2 - Applicability - The provision is only invoked in appeal - Against decision of a lower court on the merits of the case (H4) *Aroh v. PDP* (2013) 6 KLR (pt. 331) 2655

APPEALS - Fresh issue - Determination - Court must be satisfied that it has the facts of the new point - And that were the points raised at lower courts - The same would have remained unsatisfactorily determined (H3) *Udo v. Regd. Trustee of the Brotherhood of the Cross & Star* (2013) 2 KLR (pt. 324) 847

APPEALS - Fresh issue - Grant of application to raise new points - Arising from grounds not covered in earlier notice of appeal - Would not be given - Save where the points are substantial - And not necessitating taking of fresh evidence (H1) *Intercontinental Bank Plc v. Olam Nig Ltd* (2013) 1 KLR (pt. 322) 89

APPEALS - Fresh issue - Leave - Party who seeks to file and argue new issue on appeal - Must first seek and obtain leave of court - Save where such fresh issue touches on jurisdiction (H4) *Organ v. Nig. Liquefied Natural Gas Ltd.* (2013) 7 KLR (pt. 334) 3521

APPEALS - Fresh issue - Raised without leave - Fate - Issue 5 not

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having been taken in lower courts - Cannot be competently raised in SC - Without leave of the court (H19) Nigerian Bottling Co. Plc v. Ubani (2013) 8-12 KLR (pt. 336) 4027

APPEALS - Ground - Issue - Formulation - Where no issue is formulated from a ground of appeal - The ground is deemed abandoned - And liable to be struck out (H1) Alims Nig. Ltd. v. United Bank for Africa (2013) 1 KLR (pt. 322) 35

APPEALS - Ground 5 - Competence - Any issue formulated from the ground is incompetent - As the ground has been struck out - Since incompetence of issue argued together with competent issues - Affects all issue argued with it (H3) CPC v. Ombugadu (2013) 7 KLR (pt. 334) 3401

APPEALS - Ground of appeal - Injunction pending appeal - Since the pending appeal and application for injunction - Are based on same consideration - The grounds of appeal must be the same (H3) Aboseldehyde Lab. Plc. v. Union Merchant Bank Plc (2013) 3 KLR (pt. 326) 1205

APPEALS - Ground of appeal - Meaning - This is the reason why the decision of inferior court - Is considered wrong by the aggrieved party (H3) Okponipere v. State (2013) 2 KLR (pt. 325) 1119

APPEALS - Ground of law - As appellant's ground comes within 1999 Constitution s. 233(2)(c) - Appeal from CA on such a ground lies to SC as of right - Requiring no leave for its validity (H3) South Atlantic Pet. Ltd. v. Minister Pet. Resources (2013) 12 KLR (pt. 337) 4393

APPEALS - Ground of law - Sufficiency of - Appeal can be sustained by one competent ground of law - Contained in the notice of appeal (H2) Ekunola v. Central Bank of Nigeria (2013) 4 KLR (pt. 327) 1621

APPEALS - Ground of law - Sufficiency of - Single ground of law is sufficient - To sustain a notice of appeal (H5) Ekunola v. CBN (2013) 4 KLR (pt. 327) 1621

APPEALS - Ground of law - Validity - Ground 7 having questioned jurisdiction of court is one of law - Which is competent to sustain the appeal - Even if leave was not obtained for other grounds (H6) Olabomi v. Oyewole (2013) 7 KLR (pt. 333) 3319

APPEALS - Ground of mixed law & facts - Leave - By 1999 Constitution s. 233(3) - Appeal on such ground shall lie from CA to SC not as of right - But with leave of court (H1) Ekunola v. CBN (2013) 4



KLR (pt. 327) 1621

APPEALS - Grounds - Absence of particulars - Such absence is of no moment - As what is needed is that the other party knows precisely - What is in contest on appeal (H2) Ameen v. Amao (2013) 2 KLR (pt. 324) 667

APPEALS - Grounds - Amendment - Can be made at any time before judgment - Because once judgment is delivered - A seal is put to the controversy between parties - Which ends adjudication in that court (H5) Ikechukwu v. Nwoye (2013) 12 KLR (pt. 337) 4305

APPEALS - Grounds - Basis - Grounds and issues they give rise to - Must relate and challenge the decision appealed against - As they must not be formulated in vacuo (H5) Organ v. Nig. Liquefied Natural Gas Ltd. (2013) 7 KLR (pt. 334) 3521

APPEALS - Grounds - Competence - Slightest infraction of SC Rules O. 8 r. 2(3)(4) - Does not render grounds incompetent - As appellant need only give sufficient notice - And the complaints the grounds convey (H1) Abe v. University of Ilorin (2013) 5 KLR (pt. 329) 2001

APPEALS - Grounds - Defective particulars - Grounds may stand on their own - And once it represents appellant's complaint against a decision - Such particulars would not render the ground incompetent (H2) Abe v. University of Ilorin (2013) 5 KLR (pt. 329) 2001

APPEALS - Grounds - Determination - Grounds challenging finding of fact - Evaluation of facts - Or calling for investigation of existence or otherwise of facts - Are of mixed law and facts (H2) Ugwu v. State (2013) 3 KLR (pt. 326) 1453

APPEALS - Grounds - From which no issue arose - Fate - As no issues have been raised from grounds 5 & 6 - The grounds must be deemed as having been abandoned by appellant (H14) Nigerian Bottling Co. Plc v. Ubani (2013) 8-12 KLR (pt. 336) 4027

APPEALS - Grounds - Issue - Any ground from which no issue is formulated - Is deemed abandoned and is liable to be struck out (H1) Maobison Inter-link Associated Ltd. v. UTC Nig. Plc. (2013) 4 KLR (pt. 328) 1871

APPEALS - Grounds - Issue - Formulation - Grounds 2 and 3 from which no issue was formulated - Are deemed abandoned and are to be struck out (H2) Ajibulu v. Ajayi (2013) 12 KLR (pt. 337) 4153

APPEALS - Grounds - Issue - Formulation - Where appellant failed to distil issue in respect of any ground - The ground is deemed aban-

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doned - And court is to strike same out (H1) Victor v. State (2013) 6 KLR (pt. 331) 2763

APPEALS - Grounds - Mixed law & facts - Competence - Grounds 1, 2 & 3 being of mixed law & facts - Are incompetent having been raised without leave - As required by 1999 Constitution s. 233(3) (H1) Abdul v. CPC (2013) 12 KLR (pt. 338) 4409

APPEALS - Grounds - Mixed law & facts - Failure to obtain leave - Appellant is expected to obtain leave of CA or SC for ground 4 - And failure to do so robs court of jurisdiction to adjudicate on the matter (H4) Abdul v. CPC (2013) 12 KLR (pt. 338) 4409

APPEALS - Grounds - Mixed law & facts - Leave - Supreme Court does not entertain appeal on such grounds - Unless leave is obtained from it - Or from Court of Appeal (H1) Ugwu v. State (2013) 3 KLR (pt. 326) 1453

APPEALS - Grounds - Nature of - Ground is of law where it raises complaint on an issue of law based on admitted facts - But it is of mixed law & facts where the complaint is on disputed facts (H6) Ekunola v. CBN (2013) 4 KLR (pt. 327) 1621

APPEALS - Grounds - Not raised from judgment - Fate - Such grounds and issues formulated therefrom - Are liable to be struck out (H1) Ndulue v. Ojiakor (2013) 2 KLR (pt. 324) 771

APPEALS - Grounds - Of law & mixed law and facts - Distinction - The grounds should be examined - To see whether they reveal a misunderstanding of the law - To facts already proved or admitted (H2) Njemanze v. Njemanze (2013) 2 KLR (pt. 325) 1071

APPEALS - Grounds - Of mixed law & facts - Raised without leave - By 1999 Constitution s. 233(3) - Supreme Court has no jurisdiction to entertain the appeal - As the grounds are incompetent (H3) Njemanze v. Njemanze (2013) 2 KLR (pt. 325) 1071

APPEALS - Grounds - Particulars - Striking out - Particulars which are argumentative & narrative - Offend Supreme Court Rules O. 8 r. 2(4) - And should be struck out (H4) Njemanze v. Njemanze (2013) 2 KLR (pt. 325) 1071

APPEALS - Grounds - Vagueness - Any ground which is general in nature or speculative - Will fall short and not disclose any reasonable ground of appeal (H2) Ikechukwu v. Nwoye (2013) 12 KLR (pt. 337) 4305

APPEALS - Grounds - Validity - Appellants' ground one is compe-

tent - As it arose from the decision of CA - With regard to issue of which of the parties was to start calling evidence (H1) Nsefik v. Muna (2013) 12 KLR (pt. 337) 4347

APPEALS - Grounds 1 & 2 - Validity - The learned trial Judge's pronouncement on Exhibits D1-D5 and the sum of N150,000 - Constitutes a ratio decidendi - Upon which the grounds were framed (H5) Nidocco Ltd. v. Gbajabiamila (2013) 7 KLR (pt. 334) 3479

APPEALS - Grounds of appeal - Validity - Counsel's argument - Appellant's grounds 2, 3, 6 & 10 are incompetent - Having arisen from statement of counsel - That was found incorrect by the court (H1) Akeredolu v. Mimiko (2013) 8-12 KLR (pt. 336) 3895

APPEALS - Hearing - Appeals are by way of rehearing - And appellate court should reconsider materials before trial court - And may overrule where the decision is wrong (H3) Ihunwo v. Ihunwo (2013) 1-2 KLR (pt. 323) 403

APPEALS - Hearing - Contempt of court - Hadikinson's case - Contemnor may not be heard if his disobedience - Impedes the cause of justice - Except where he raises issue of lack of court's jurisdiction (H2) Abeke v. Odunsi (2013) 5 KLR (pt. 330) 2285

APPEALS - Hearing - Preliminary objection - Where objection is successful - Litigation is brought to an end - But if dismissed - Appeal will be determined on merit (H1) Njemanze v. Njemanze (2013) 2 KLR (pt. 325) 1071

APPEALS - Injunction pending appeal - Applicant's duty - He must establish by evidence in affidavit - The legal right he seeks to protect by the order (H5) Aboseldehyde Lab. Plc. v. Union Merchant Bank Plc (2013) 3 KLR (pt. 326) 1205

APPEALS - Injunction pending appeal - Grant - Precondition - Court must go into a consideration of - Competing legal rights of the parties - To the protection of the injunctive relief (H4) Aboseldehyde Lab. Plc. v. Union Merchant Bank Plc (2013) 3 KLR (pt. 326) 1205

APPEALS - Interlocutory stage - Substantive matter - Court of Appeal should not have determined the merit of plaintiffs' case - At the time it decided the issue of jurisdiction (H5) Abia State Ind. Elec. Com. v. Kanu (2013) 5 KLR (pt. 330) 2313

APPEALS - Issue - "Attempted substitution" - This phrase used by 1<sup>st</sup> respondent is not a relief - Rather it is definition and substance of the processes - That brought the parties to the trial Court (H8) CPC v. Ombugadu (2013) 7 KLR (pt. 334) 3401

APPEALS - Issue - Basis - Issue must arise from one or a combination of grounds of appeal - But more than one issue should not be framed from one ground (H1) *Yisi Nig. Ltd. v. Trade Bank Plc.* (2013) 2 KLR (pt. 324) 863

APPEALS - Issue - Basis - Issue must emerge from appellant's valid grounds of appeal - And any issue framed outside such grounds - Is incompetent and liable to be struck out (H1) *Halilco Nig. Ltd. v. Equity Bank Nig. Ltd.* (2013) 6 KLR (pt. 332) 2937

APPEALS - Issue - Basis - Issue must relate and derive from grounds - Otherwise such an issue would be rendered incompetent - And ought to be ignored and struck out (H1) *Chukwu v. Akpelu* (2013) 12 KLR (pt. 337) 4177

APPEALS - Issue - Clarity of - Parties are to avoid verbosity in formulating issues - But economy of words should not be made at the expense of clarity (H3) *Musaconi Ltd. v. Aspinall* (2013) 6 KLR (pt. 331) 2695

APPEALS - Issue - Competence - Appellant's issue 2 is incompetent for not relating to decision of CA - As appeal to SC is against decision of CA - And not that of trial HC (H1) *Musaconi Ltd. v. Aspinall* (2013) 6 KLR (pt. 331) 2695

APPEALS - Issue - Determination - Appeals are decided upon issues raised - And once issues are distilled from grounds of appeal - The latter become extinguished (H2) *Musaconi Ltd. v. Aspinall* (2013) 6 KLR (pt. 331) 2695

APPEALS - Issue - Formulation - An issue is competent only if it arises from ground of appeal - And appeal must be based on ratio decidendi - From which issues must be formulated (H3) *Contract Resources Ltd v. Standard Trust Bank Ltd* (2013) 2 KLR (pt. 325) 915

APPEALS - Issue - Formulation - Basis - Issue must relate to a ground - Which challenges the validity of ratio or decision - Being appealed against (H1) *Abdullahi v. State* (2013) 5 KLR (pt. 329) 1979

APPEALS - Issue - Formulation - Respondent's notice - Respondent can raise and argue issues in the notice - But cannot raise issue from the notice - Along with issues drawn from the grounds of appeal (H2) *Halilco Nig. Ltd. v. Equity Bank Nig. Ltd.* (2013) 6 KLR (pt. 332) 2937

APPEALS - Issue - Formulation by respondent - Respondent can formulate different issues - But such must be traceable to the grounds

of appeal filed by appellant - And appellate court can rely on such issues - To determine the appeal (H5) *Musaconi Ltd. v. Aspinall* (2013) 6 KLR (pt. 331) 2695

APPEALS - Issue - Jurisdiction - Locus standi - Since the issue is a matter of locus standi of respondent - The same shall not be merely brushed aside - Even though it did not come up at pleadings (H2) *Intercontinental Bank Plc v. Olam Nig Ltd* (2013) 1 KLR (pt. 322) 89

APPEALS - Issue - Objection to - Based on any valid law can be raised - Though the Constitution & S.C. Rules - Have not made provisions relating to the point or issue (H1) *Okarika v. Samuel* (2013) 2 KLR (pt. 324) 807

APPEALS - Issue - Suo motu raising - CA rightly raised the issue of competence or otherwise of the writ of summons - But erred for not inviting counsel for parties to address it on the issue (H3) *Halilco Nig. Ltd. v. Equity Bank Nig. Ltd.* (2013) 6 KLR (pt. 332) 2937

APPEALS - Issues - Abandonment - Issue 5 is deemed abandoned as no argument was proffered by appellant under it - As such the issue is struck out having been abandoned (H18) *Nigerian Bottling Co. Plc v. Ubani* (2013) 8-12 KLR (pt. 336) 4027

APPEALS - Issues - Basis - Any issue not distilled from ground of appeal - Goes to no issue in appeal - And is liable to be struck out (H1) *Eta v. Dazie* (2013) 3 KLR (pt. 326) 1269

APPEALS - Issues - Basis - Decision is made based on issues arising from valid grounds - Hence any issue which does not so arise - Is not one the court can base its judgment upon (H5) *Abba v. SPDC Nig. Ltd.* (2013) 4 KLR (pt. 327) 1473

APPEALS - Issues - Basis - Issues must fall within grounds of appeal - And grounds must relate to decision appealed against - And should be a challenge to validity of ratio of that decision (H6) *Amobi v. Nzegwu* (2013) 8-12 KLR (pt. 336) 3953

APPEALS - Issues - Clarity of - Issue is short question raised against ground(s) of appeal - Which is meant to be a guide to arguments - To be advanced in support of the ground(s) (H6) *Nidocco Ltd. v. Gbajabiamila* (2013) 7 KLR (pt. 334) 3479

APPEALS - Issues - Determination - Limit - Courts do not determine academic issues - That are far removed from the real issues - In controversy between the parties (H2) *FRN v. Wabara* (2013) 1-2 KLR (pt. 323) 357

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APPEALS - Issues - Different from case - Where party has premised his case on issue that does not cover his case - His arguments under the said issue literally goes to no issue - And is liable to be struck out (H16) *Nigerian Bottling Co. Plc v. Ubani* (2013) 8-12 KLR (pt. 336) 4027

APPEALS - Issues - Failure to raise - Question of entitlement to general damages was not raised under any of appellant's issue - Hence submissions made in that regard - Go to no issue and ought to be discountenanced (H13) *Nigerian Bottling Co. Plc v. Ubani* (2013) 8-12 KLR (pt. 336) 4027

APPEALS - Issues - Formulation - Basis - Issues are distilled from grounds of appeal - And any issue which does not arise from a ground - Is incompetent and must be struck out (H1) *Ajibulu v. Ajayi* (2013) 12 KLR (pt. 337) 4153

APPEALS - Issues - Formulation - Principle - Grounds of appeal should not be less than issues - Although court may tolerate equal number of grounds and issues (H1) *Odogwu v. State* (2013) 7 KLR (pt. 335) 3779

APPEALS - Issues - Formulation - Respondent who neither cross appealed nor gave respondent's notice - Cannot formulate issues - That have no relevance to the grounds of appeal (H1) *Arum v. Nwobodo* (2013) 4 KLR (pt. 327) 1583

APPEALS - Issues - Formulation of must be from grounds of appeal - Which grounds must derive from ratio of the judgment appealed against - Otherwise the grounds are incompetent (H1) *Eyigebe v. Iyaji* (2013) 5 KLR (pt. 330) 2329

APPEALS - Issues - Grounds - Abandoned - Fate - Grounds not utilized in the raising of issues - Are taken as abandoned - And court may strike them out (H1) *Maigari v. State* (2013) 7 KLR (pt. 333) 3251

APPEALS - Issues - Objection - Not challenged - Appellant must be deemed as having known respondent's stance on the issue - Since the brief containing the objection was served on it - And it made no effort to counter the objection (H15) *Nigerian Bottling Co. Plc v. Ubani* (2013) 8-12 KLR (pt. 336) 4027

APPEALS - Issues - Proliferation - Omega Bank case - It is not the number of issues in a brief that determine the quality - Or that determine the success of an appeal (H1) *Inegbedion v. Selo-Ojemen* (2013) 1 KLR (pt. 322) 69

APPEALS - Issues - Proliferation - Supreme Court abhors proliferation of issues - Where only a few issues would determine appeal (H1) *Apata v. Olanlokun* (2013) 7 KLR (pt. 334) 3359

APPEALS - Issues - Purpose - Issues are formulated to enable parties narrow the matter in controversy in the appeal - In the interest of clarity and brevity (H2) *Akeredolu v. Mimiko* (2013) 8-12 KLR (pt. 336) 3895

APPEALS - Issues - Suo motu raising - Appellate court is allowed to set out issues - That are considered apt and relevant to determination of appeal (H6) *Abba v. SPDC Nig. Ltd.* (2013) 4 KLR (pt. 327) 1473

APPEALS - Judgment - Arrest - Application - Competence - Appellant's application which is intended to arrest judgment of CA - Is not recognized by SC rules and hence it is misconceived and incompetent (H1) *Ukachukwu v. PDP* (2013) 12 KLR (pt. 338) 4591

APPEALS - Judgment - Correctness of - CA rightly affirmed trial court's judgment - Despite resolving issue 2 in appellants' favour - Since there was overwhelming credible evidence evaluated by the trial court (H5) *Atungwu v. Ochekwu* (2013) 7 KLR (pt. 335) 3681

APPEALS - Judgment - Correctness of - Court of Appeal meticulously arrived at its decision - Hence its judgment is unassailable - As the errors of the trial court have all been shown (H2) *Okwaranonobi v. Mbadugha* (2013) 6 KLR (pt. 332) 3007

APPEALS - Judgment - Court of Appeal - Power - By CA Rules O. 18 r. 11 - The court can give any judgment or order as the case may require - Including any order as to costs (H3) *Asika v. Atuanya* (2013) 7 KLR (pt. 335) 3651

APPEALS - Judgment - Error - Effect - An issue that complains about lapse in decision appealed against - Is resolved in favour of appellant - Where there is proof that the error has occasioned miscarriage of justice (H1) *Garan v. Olomu* (2013) 4 KLR (pt. 327) 1675

APPEALS - Judgment - Interference - Basis - It is necessary to determine whether or not the judgment - Had evolved from pleadings and evidence of parties - And where found to be perverse - Whether miscarriage of justice has been occasioned (H2) *Olaniyan v. Fatoki* (2013) 7 KLR (pt. 335) 3829

APPEALS - Judgment - undefended suit - Decision transferring the matter to undefended list - Is correctly adjudged as defective - Even though CA wrongfully ruled that trial court is not bound - To consider documents for such transfer (H5) *Akpan v. Akwa-Ibom Prop-*

erty Invest. Co. Ltd. (2013) 6 KLR (pt. 331) 2631

APPEALS - Judgments - Declaratory judgment - Appeal - Relief - Where court delivers such judgment - Party appealing may be granted injunction - But never a stay of execution pending determination of appeal (H3) Olabomi v. Oyewole (2013) 7 KLR (pt. 333) 3319

APPEALS - Judgments - Default judgment - Failure to appeal - Since there is no appeal to set aside the foreign judgment - Supreme Court will not be of any assistance - To party who willingly abdicate his responsibility (H7) Vab Petroleum Inc. v. Momah (2013) 1 KLR (pt. 322) 249

APPEALS - Judgments - Mistake in - Effect - Statement of CA that grounds 3 & 4 were not covered by the issues - Occasioned no miscarriage of justice - For it is not every error in judgment - That results in appeal being allowed (H2) Atungwu v. Ochekwu (2013) 7 KLR (pt. 335) 3681

APPEALS - Judgments - Slip - Effect - It is not every mistake that results in setting aside of judgment on appeal - As mistake must be relevant to issues between parties - And substantial as to lead to miscarriage of justice (H9) FBN Plc v. Ozokwere (2013) 12 KLR (pt. 337) 4203

APPEALS - Jurisdiction - Court - Previous judgment - Jurisdiction of trial court to make order in respect of its earlier judgment - Which is subject to appeal - Is clearly ousted (H6) Alims Nig. Ltd. v. United Bank for Africa (2013) 1 KLR (pt. 322) 35

APPEALS - Jurisdiction - Court of Appeal - Court martial - By 1999 Constitution s. 240 - C.A. is given exclusive appellate jurisdiction - Over decisions of general court martial (H1) Nigerian Army v. Warrant Officer Banni Yakubu (2013) 1-2 KLR (pt. 323) 471

APPEALS - Jurisdiction - Determination - To determine whether or not it has jurisdiction over a matter - Court must examine the nature of claims - And the parties before it (H1) Abia State Ind. Elec. Com. v. Kanu (2013) 5 KLR (pt. 330) 2313

APPEALS - Jurisdiction - Fresh issue of - Awuse v. Odili - Being a fundamental principle - Leave is not required to raise jurisdiction at any stage of the proceedings (H7) Dangote Textile Ltd. v. Hascon Asso. Nig. Ltd. (2013) 5 KLR (pt. 329) 2049

APPEALS - Jurisdiction - Fresh issue of - Raised in Supreme Court - Appellant seeking to raise the issue for the first time before the court - Does not need leave - He only needs to raise it in his brief (H2)



NNPC v. Orhiowasele (2013) 4 KLR (pt. 327) 1719

APPEALS - Jurisdiction - Fresh issue on - Appellate court can accommodate such issue - Provided appellant does not introduce - New line of defence different from those of parties at lower court (H4) Udo v. Regd. Trustee of the Brotherhood of the Cross & Star (2013) 2 KLR (pt. 324) 847

APPEALS - Jurisdiction - Issue of - Time to raise - Jurisdiction can be raised at any stage of the proceedings - Either at trial court or on appeal - Even before the Supreme Court (H12) Musaconi Ltd. v. Aspinall (2013) 6 KLR (pt. 331) 2695

APPEALS - Jurisdiction - Issue of - Time to raise - Jurisdiction can be taken at any stage of proceedings - At trial even on appeal to Supreme Court for the first time (H8) Olabomi v. Oyewole (2013) 7 KLR (pt. 333) 3319

APPEALS - Land law - Evidence - Interference - By failing to properly weigh evidence of both parties - Trial court occasioned injustice against respondent - And CA rightly interfered by remedying the situation (H8) Chukwu v. Akpelu (2013) 12 KLR (pt. 337) 4177

APPEALS - Landlord & tenant - Parties - Pleadings - Consistency - Respondents are not permitted to approbate and reprobate - In their claim of ownership of the property - As parties are bound by their pleadings (H5) Abeke v. Odunsi (2013) 5 KLR (pt. 330) 2285

APPEALS - Leave - Condition for application - Proof - Since appellant asserted that the condition precedent for leave was not complied with - He has the burden to prove same (H2) Nigerian Army v. Warrant Officer Banni Yakubu (2013) 1-2 KLR (pt. 323) 471

APPEALS - Leave - Necessity of - Where it is required - It is condition precedent to the exercise of right of appeal - And failure to obtain leave when needed - Renders any appeal filed incompetent - As no jurisdiction is conferred on appellate court (H3) Organ v. Nig. Liquefied Natural Gas Ltd. (2013) 7 KLR (pt. 334) 3521

APPEALS - Legal practitioners - Supreme Court - Jurisdiction - By LP Act s. 12(1) - Appellant cannot appeal to SC against decision of LPDC - Without first appealing to Appeal Committee of Body of Benchers (H4) Aladejobi v. NBA (2013) 7 KLR (pt. 335) 3623

APPEALS - Meaning - Is continuation of case instituted at trial court - And final end of appeal cannot produce a relief - Different from that which originated at trial (H6) Eyigebe v. Iyaji (2013) 5 KLR (pt. 330) 2329

APPEALS - Meaning of - This is a resort to superior court - To review the decision of an inferior court - To find out whether from available facts - The inferior court has come to a right decision (H2) Okponipere v. State (2013) 2 KLR (pt. 325) 1119

APPEALS - Motions - Striking out - Regularization of - Party whose motion is struck out - Can either file fresh application or apply for relisting - But the options do not avail applicants - Since their application constitutes abuse of process (H4) Ogboru v. Uduaghan (2013) 6 KLR (pt. 332) 2981

APPEALS - Murder - Circumstantial evidence - Evidence of circumstances in this case is inadmissible - As same is capable of explanation upon other hypothesis - Than that of appellant's guilt (H12) Odogwu v. State (2013) 7 KLR (pt. 335) 3779

APPEALS - Murder - Evaluation - If trial court had properly evaluated oral evidence of prosecution witnesses - The same would have been expunged as inadmissible hearsay - Given by tainted witnesses (H7) Odogwu v. State (2013) 7 KLR (pt. 335) 3779

APPEALS - Nature & purpose of - Appeal is continuation of an action - And no new issues can be raised on appeal (H16) Nnakwe v. State (2013) 7 KLR (pt. 333) 3273

APPEALS - Notice of appeal - Amendment - By Supreme Court Rules O. 8 r. 4 - Notice may be amended with leave of the court - In appropriate cases (H1) Udo v. Regd. Trustee of the Brotherhood of the Cross & Star (2013) 2 KLR (pt. 324) 847

APPEALS - Notice of appeal - Amendment - Once there is justification for amendment - SC is empowered by O. 8 r. 4 of its rules - To Grant leave allowing applicant to regularize his irregular notice of appeal (H4) South Atlantic Pet. Ltd. v. Minister Pet. Resources (2013) 12 KLR (pt. 337) 4393

APPEALS - Notice of appeal - Amendment - Provided the ends of justice and fairness are served - There is no limit to number of times a party can amend processes in appeal (H2) Salisu v. Mobolaji (2013) 12 KLR (pt. 337) 4375

APPEALS - Notice of appeal - Artificial person - Signature -Where appeal proceeds from company or law firm - The notice must signed by the legal representative (H4) Okarika v. Samuel (2013) 2 KLR (pt. 324) 807

APPEALS - Notice of appeal - Contents - The notice should clearly

convey the substance of appellant's complaint against judgment appealed - So as not to leave respondent in doubt as to the case expected in court (H1) Ikechukwu v. Nwoye (2013) 12 KLR (pt. 337) 4305

APPEALS - Notice of appeal - Defect in - Effect - Lack of legal personality in the signing of the notice - Is fundamental defect which cannot be cured by amendment - As it renders the proceedings void ab initio (H5) Nigerian Army v. Samuel (2013) 7 KLR (pt. 334) 3385

APPEALS - Notice of appeal - Natural person - Signature - Notice of appeal proceeding from such person - Must be signed by appellant - Or his counsel as the circumstances demand (H3) Okarika v. Samuel (2013) 2 KLR (pt. 324) 807

APPEALS - Notice of appeal - Signature - Validity - The notice signed by H.E. Wabara & Co is invalid - Since it does not qualify as a legal practitioner - As statutorily defined (H5) Okarika v. Samuel (2013) 2 KLR (pt. 324) 807

APPEALS - Notice of appeal - Signing - By C.A. Rules O. 16 r. 4(1) - Every notice of appeal or application for leave to appeal - Shall be signed by appellant not counsel - Except as provided in r. 4(5)(6) (H1) Nwite v. State (2013) 2 KLR (pt. 324) 799

APPEALS - Notice of appeal - Signing - By C.A. Rules O. 4 r. 4(1) - Appellant is only required to personally sign his notice of appeal - Which must not be done at a particular location (H1) Duru v. Federal Republic of Nigeria (2013) 2 KLR (pt. 324) 705

APPEALS - Notice of appeal - Signing - CA Rules O. 4 r. 4(1) - Notice of appeal or notice of application for leave to appeal - Shall be signed by appellant himself (H1) Nigerian Army v. Samuel (2013) 7 KLR (pt. 334) 3385

APPEALS - Notice of appeal - Signing - Legal personality - N.O.O. Oke & Co. being a business name - Cannot sue nor defend action in court - For not being recognized as a legal person (H3) Nigerian Army v. Samuel (2013) 7 KLR (pt. 334) 3385

APPEALS - Notice of appeal - Striking out of - Court of Appeal rightly struck out the appeal - Since appellants abandoned their appeal - After obtaining order for stay of execution (H1) Osun S.I.E.C. v. NCP (2013) 3 KLR (pt. 326) 1401

APPEALS - Notice of appeal - Validity - As there is no valid appeal - Court of Appeal ought to have made an order - Striking out the appeal (H2) Nwite v. State (2013) 2 KLR (pt. 324) 799

APPEALS - Notice of appeal - Validity - Cross appellants having failed to refer the matter to Code of Conduct Tribunal - Alleged violations of the code by counsel - Have not been established as to affect competence of the processes (H5) Ahmed v. Ahmed (2013) 7 KLR (pt. 335) 3561

APPEALS - Parties - Actions - Consistency - Party who is successful at trial court - Ought not to be confronted with new case on appeal - Simply because his adversary decided to bring his case in dribbles (H3) Adeyefa v. Bamgboye (2013) 2 KLR (pt. 324) 647

APPEALS - Perverse finding - Meaning - Decision is perverse when it runs counter to pleadings and evidence on record - Or where the affected court considered matters - Which it ought not to have taken into account (H1) Olaniyan v. Fatoki (2013) 7 KLR (pt. 335) 3829

APPEALS - Practice & procedure - Pending appeal - After appeal has been entered - Appellate court shall be seised of the whole proceedings - As between the parties - Except as otherwise provided in the rules (H9) Vab Petroleum Inc. v. Momah (2013) 1 KLR (pt. 322) 249

APPEALS - Preliminary objection - Determination - Appellate court will take such objection as threshold issue - Provided it will be decisive of question of competence of the appeal (H3) Ekunola v. CBN (2013) 4 KLR (pt. 327) 1621

APPEALS - Preliminary objection - Determination - Objection must first be determined - As it is capable of disposing the entire appeal - Without necessarily delving into the merit thereof (H1) Contract Resources Ltd v. Standard Trust Bank Ltd (2013) 2 KLR (pt. 325) 915

APPEALS - Preliminary objection - Leave - The objection can be incorporated in respondent's brief - But the party must seek for leave to move it - Otherwise it is deemed abandoned (H2) Abba v. SPDC Nig. Ltd. (2013) 4 KLR (pt. 327) 1473

APPEALS - Preliminary objection - Notice of - By Supreme Court Rules O. 2 r. 9(i) - Respondent relying upon the objection - Must give appellant 3 days notice thereof - Before the hearing (H2) Arum v. Nwobodo (2013) 4 KLR (pt. 327) 1583

APPEALS - Preliminary objection - Notice of - Filing - By Supreme Court Rules O. 2 r. 9 - Respondent relying on the objection - Shall give 3 days notice before date of hearing appeal (H1) Abba v. SPDC Nig. Ltd. (2013) 4 KLR (pt. 327) 1473

APPEALS - Preliminary objection - Purpose - The success of such objection has the effect of terminating the litigation - But where it is dismissed - Appeal will be determined on merit (H1) Igbeke v. Okadigbo (2013) 5 KLR (pt. 330) 2351

APPEALS - Record of proceedings - Binding nature of - Appellate court is bound by the record - But Supreme Court can by virtue of SC Act s. 22 - Amend any defect in the record (H3) Arum v. Nwobodo (2013) 4 KLR (pt. 327) 1583

APPEALS - Record of proceedings - Transmission of - Appellant is to ensure that the record he proposes to challenge at Supreme Court - Is made available to the court (H4) Arum v. Nwobodo (2013) 4 KLR (pt. 327) 1583

APPEALS - Reply brief - Filing - SC Rules O. 6. r. 3 - Appellant is required to file and serve on respondent - A reply brief within four weeks after service of respondent's brief on him - But for good reason appellant can do same at least three days before hearing date (H3) Salisu v. Mobolaji (2013) 12 KLR (pt. 337) 4375

APPEALS - Reply brief - Purpose - It is filed in answer to an issue of law or fact raised in respondent's brief - But it is not used to extend scope of arguments in appellant's brief (H1) Nidocco Ltd. v. Gbajabiamila (2013) 7 KLR (pt. 334) 3479

APPEALS - Reply brief - Purpose - Reply brief deals on points of law - Addressing only new issue(s) raised in respondent's brief - But does not re argue or analyze appellant's case (H1) Ahmed v. Ahmed (2013) 7 KLR (pt. 335) 3561

APPEALS - Reply brief - Purpose - This is not meant to be repetition of arguments in appellant's brief - But a reply to respondent's brief (H1) Oguanuhu v. Chiegboka (2013) 1-2 KLR (pt. 323) 521

APPEALS - Respondent's issue - Formulation - In absence of cross appeal - Respondent must confine himself to appellant's grounds - In formulating his issues for determination (H1) Raja v. Oke (2013) 2 KLR (pt. 325) 1051

APPEALS - Retrial - Conditions for - Appellate court will inter alia grant retrial - Where apart from irregularity in the proceeding - Evidence discloses a substantial case against appellant (H1) Adeyemi v. State (2013) 4 KLR (pt. 328) 1771

APPEALS - Retrial - Confession - As Exhibit C upon which trial court can solely convict appellant - Has made out prima facie case against him - It is necessary that he offers explanations at the trial de novo

ordered by CA (H2) Adeyemi v. State (2013) 4 KLR (pt. 328) 1771

APPEALS - Retrial - Improper arraignment - Retrial was rightly ordered by CA - After it nullified the trial of appellant - Since the trial Judge did not take his plea upon arraignment (H3) Adeyemi v. State (2013) 4 KLR (pt. 328) 1771

APPEALS - Retrial - Principles - Appellate court will inter alia grant retrial - Where apart from irregularity in the proceeding - Evidence discloses a substantial case against appellant (H3) Ganiyu v. State (2013) 4 KLR (pt. 327) 1661

APPEALS - Retrial order - Basis - Appellate court will inter alia order retrial - Where there is error in law - That did not render trial a nullity - And it cannot also be said that there is no miscarriage of justice (H2) Mpama v. First Bank Nig. Plc (2013) 1 KLR (pt. 322) 113

APPEALS - Retrial order - Sustainability - The order is not oppressive - As appellant has explanation to make - Judging from his statement and evidence on record (H2) Lasisi v. State (2013) 5 KLR (pt. 330) 2419

APPEALS - Reversal of judgment - Jurisdiction - CA can reverse itself where it earlier ruled - That lower court has no jurisdiction - Provided fresh arguments arose in the same case - As between same parties (H2) Abiola & Sons Bottling Co. Ltd v. First City Merchant Bank Ltd (2013) 4 KLR (pt. 327) 1501

APPEALS - Right of - Legislative Houses election - Appeal shall lie as of right from decisions of CA to SC - Only in items listed under 1999 Constitution s. 233(e)(i)(ii)(iii)(iv)(v)(vi) - Thus SC has no jurisdiction to hear appeal on such election petitions (H4) Opara v. Amadi (2013) 6 KLR (pt. 332) 3027

APPEALS - Right of appeal - By 1999 Constitution s. 233 - Every aggrieved party has right to challenge - Decision of C. A. in S.C. - And the right cannot be denied by any subsidiary legislation (H1) Imegwu v. Okolocha (2013) 1-2 KLR (pt. 323) 433

APPEALS - Right of appeal - Ground of law - 1999 Constitution s. 241(a)(b) - Where ground involves questions of law alone - Appeal would be as of right - But other appeals shall be by leave of either trial or appellate court (H2) Organ v. Nig. Liquefied Natural Gas Ltd. (2013) 7 KLR (pt. 334) 3521

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

(H3) Abe v. University of Ilorin (2013) 5 KLR (pt. 329) 2001

APPEALS - Right of appeal - Grounds of law - Abubakar v. Waziri - Leave is not required where ground is of law - And appeal shall lie as of right from decisions of CA to SC (H3) Abdul v. CPC (2013) 12 KLR (pt. 338) 4409

APPEALS - Right of appeal - Guarantee - Court must ensure that the right as enshrined in the Constitution - Are neither unduly fettered nor frustrated (H4) Duru v. Federal Republic of Nigeria (2013) 2 KLR (pt. 324) 705

APPEALS - Right of hearing - Order of court - Contempt - Right to be heard differs from right to enforce a right whilst still in disobedience - And appellant on facts of the case - Cannot be denied of being heard on appeal (H3) Abeke v. Odunsi (2013) 5 KLR (pt. 330) 2285

APPEALS - Robbery - Sentence - Validity - Appellant suffered no miscarriage of justice - As CA rightly sentenced him to 21 years imprisonment - As provided under CPA s. 381 (H5) Afolabi v. State (2013) 6 KLR (pt. 332) 2841

APPEALS - Stay of execution - Grant - Stay of execution pending appeal is granted - Where judgment is executory - Though the stay merely suspends rights of successful party - Until appeal is decided (H5) Olabomi v. Oyewole (2013) 7 KLR (pt. 333) 3319

APPEALS - Supreme Court - Competence - Principles - The court is competent to hear the appeal if it is properly constituted - The subject matter is within its jurisdiction - And the case initiated by due process of law (H3) Opara v. Amadi (2013) 6 KLR (pt. 332) 3027

APPEALS - Supreme Court - Criminal appeals - Time limit - By Supreme Court Act s. 27(2)(b) - Such appeals from CA to SC must be filed within 30 days - Otherwise leave of SC must be sought and obtained to do so (H2) FRN v. Tawakalitu (2013) 5 KLR (pt. 329) 2079

APPEALS - Supreme Court - Evidence - Evaluation - SC does not make primary findings of fact as to credibility of witnesses - But is entitled to draw inferences from accepted facts (H2) Babatunde v. State (2013) 6 KLR (pt. 332) 2895

APPEALS - Supreme Court - Extension of time - Condition - Before the court grants such prayer - Reason why the application was not earlier filed after the time statutorily allowed - Must be given (H1) Chime v. Onwuegbu (2013) 7 KLR (pt. 335) 3739

#### **4740 INDEX OF SUBJECT MATTER ALL SC 2013 DECISIONS**

APPEALS - Supreme Court - Fresh issue - Leave - Without leave being sought and obtained - The court is not competent to pronounce on issue - Not raised in Court of Appeal (H3) Nidocco Ltd. v. Gbajabiamila (2013) 7 KLR (pt. 334) 3479

APPEALS - Supreme Court - Fresh issue - Leave must be sought and obtained to raise such issue - Otherwise the court will be incapable of determining the issue (H2) Abdullahi v. State (2013) 5 KLR (pt. 329) 1979

APPEALS - Supreme Court - Fresh issues - SC will not allow party to raise such issues - Save where the new issues involve substantial points of law - Which need to be allowed in the interest of justice (H1) Salisu v. Mobolaji (2013) 12 KLR (pt. 337) 4375

APPEALS - Supreme Court - Grounds of facts - Leave - Power of SC to entertain leave to appeal is as per 1999 Constitution s. 233(3) - And the power is not superseded by SC Rules O. 2 r. 32 (H2) Abdul v. CPC (2013) 12 KLR (pt. 338) 4409

APPEALS - Supreme Court - Jurisdiction - Supreme Court does not hear appeals from State High Courts - But those from the Court of Appeal (H2) Eyigebe v. Iyaji (2013) 5 KLR (pt. 330) 2329

APPEALS - Supreme Court - Preliminary objection - Purpose - If the objection is successful - Hearing in the appeal is brought to an end - So as to avoid engaging in futile venture (H1) Opara v. Amadi (2013) 6 KLR (pt. 332) 3027

APPEALS - Title - Proof - Appellant succeeds in his claim - As he proved better title to that of respondent - Lower court was wrong for not affirming finding of trial court - That was based on pleadings and evidence of the parties (H3) Garan v. Olomu (2013) 4 KLR (pt. 327) 1675

APPEALS - Undefended suits - Court - Exercise of discretion - Interference - CA ought to have interfered - On the basis that the discretion exercised by trial court - Was neither judicial nor judicious (H1) Dangote Textile Ltd. v. Hascon Asso. Nig. Ltd. (2013) 5 KLR (pt. 329) 2049

APPEALS - Undefended suits - Judgment - Merit - Judgment handed down under the list - Is one on merit and can only be set aside on appeal - Or by another action in case of fraud (H7) Obaro v. Hassan (2013) 1-2 KLR (pt. 323) 491

APPEALS - Unlawful proceeding - Failure to object - Where accused fails to raise objection to such a procedure at trial - He cannot be



allowed to raise same at appellate stage (H4) Nnakwe v. State (2013) 7 KLR (pt. 333) 3273

APPEALS - Words & phrases - Judgment - Ruling - Use of judgment or ruling connotes a decision of court - And should not therefore be a reason for controversy (H2) Contract Resources Ltd v. Standard Trust Bank Ltd (2013) 2 KLR (pt. 325) 915

ARMED ROBBERY - Alibi - Recent possession - E A s. 167(a) was rightly invoked and alibi rightly rejected - Since appellant was found in the vicinity of the crime - Shortly after the robbery and was also in possession of the stolen items (H7) Sadiku v. State (2013) 5 KLR (pt. 330) 2521

ARMED ROBBERY - Charge - Filing - Time - Robbery & firearms Act ss. 9, 10, 11 & 14 were deleted by Decree 62 - Before appellant was arraigned - Hence he cannot benefit from the repealed sections of the Act (H4) Sadiku v. State (2013) 5 KLR (pt. 330) 2521

ARMED ROBBERY - Ingredients - Proof - Prosecution must prove that there was a robbery - That accused was armed - And participated in the robbery (H4) Osuagwu v. State (2013) 1 KLR (pt. 322) 223

ARMED ROBBERY - Ingredients - Proof - Prosecution must prove that there was a robbery - That the robbery was armed robbery - And that accused was the robber (H2) Olatinwo v. State (2013) 1-2 KLR (pt. 323) 541

ARMED ROBBERY - Ingredients - Proof - Prosecution must prove that there was a robbery - In which the robbers were armed - And that accused persons were the robbers (H3) Abiodun v. State (2013) 4 KLR (pt. 328) 1753

ARMED ROBBERY - Ingredients - Proof - Prosecution must prove that there was a robbery - That the robbery was armed robbery - And that accused was the armed robber (H1) Agboola v. State (2013) 5 KLR (pt. 329) 2019

ARMED ROBBERY - Ingredients - Proof - Prosecution must prove that there was a robbery - That the robbery was armed robbery - And that the accused was the armed robber (H1) State v. Isiaka (2013) 5 KLR (pt. 329) 2243

ARMED ROBBERY - Ingredients - Proof - Prosecution must prove that there was robbery - That the robbery was armed robbery - And that accused took part in the armed robbery (H5) Babarinde v. State (2013) 8-12 KLR (pt. 336) 3995

ARMED ROBBERY - Number of witnesses - Prosecution must not call a host of witnesses on same point - To prove essential elements of the crime (H5) *Osuagwu v. State* (2013) 1 KLR (pt. 322) 223

ARMED ROBBERY - Offensive weapon - Where such weapon was used in commission of offence - It is not essential to tender it to secure conviction - Provided there is cogent eye witness or circumstantial evidence - That points to guilt of accused (H6) *Babarinde v. State* (2013) 8-12 KLR (pt. 336) 3995

ARMED ROBBERY - Proof - Number of witness - Prosecution is not bound to call all witnesses - But only essential witness(s) to prove its case (H4) *Victor v. State* (2013) 6 KLR (pt. 331) 2763

ARMED ROBBERY - Prosecution - Power of AG State - Robbery & Firearms Act s. 9(2) empowers the AG to institute proceedings - In respect of offences created by the Act (H2) *Sadiku v. State* (2013) 5 KLR (pt. 330) 2521

BAIL - Consideration for - Since the error of not taking appellant's plea was caused by the trial court - It will be just if that court considers his application for bail - Pending determination of the case (H3) *Lasisi v. State* (2013) 5 KLR (pt. 330) 2419

BANKING - Bank account - Credit to - Evidence before trial court shows - That appellant's account was credited with \$82,560 - Within his knowledge (H3) *Yisi Nig. Ltd. v. Trade Bank Plc.* (2013) 2 KLR (pt. 324) 863

BANKING - Charges - Unauthorized loan - To succeed prosecution must inter alia - Establish that accused is a manager/officer of the bank - Who granted such loan without authorization (H1) *Mmamman v. FRN* (2013) 1-2 KLR (pt. 323) 459

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CONTRACTS - Employment - Termination - Notice of - By payment of salary for period of notice - Party can be discharged from his obligations - Where there is agreement that condition for termination is by notice - Or salary in lieu of notice (H4) Dudusola v. Nigerian Gas Co. Ltd. (2013) 12 KLR (pt. 338) 4449

CONTRACTS - Employment agreement - Binding force - Since Exhibits D, F, J1-J5, P1 & G did not create legal relations between the parties - Respondent is not contractually bound (H2) Osoh v. Unity Bank Plc. (2013) 2 KLR (pt. 325) 1133

CONTRACTS - Employment contract - Proof - Appellants who alleged wrongful termination of their employment - Must not only prove existence of such contract - But also the terms of the contract that

was breached (H7) *Organ v. Nig. Liquefied Natural Gas Ltd.* (2013) 7 KLR (pt. 334) 3521

CONTRACTS - Illegal contract - Effect - Once a transaction is illegal - It is void and all things emanating from that transaction - Is a nullity (H2) *Ajayi v. Total Nig. Plc.* (2013) 7 KLR (pt. 334) 3333

CONTRACTS - Illegal contract - Meaning - Contract is said to be illegal - If the consideration involves illegality - Or the intention of parties is illegal - Or contrary to public policy (H3) *Ajayi v. Total Nig. Plc.* (2013) 7 KLR (pt. 334) 3333

CONTRACTS - Interest - Basis - Where appellant claimed 45% interest per month - Trial court's award of 45% interest per annum - Is awarding what was not claimed in statement of claim or oral evidence (H10) *Abba v. SPDC Nig. Ltd.* (2013) 4 KLR (pt. 327) 1473

CONTRACTS - Master & servant - Collective agreement - Contract - There is no privity of contract - As the agreement was not incorporated into the contract of employment (H3) *Osoh v. Unity Bank Plc.* (2013) 2 KLR (pt. 325) 1133

CONTRACTS - Sale of goods - Offer - Concept of - Under Sale of Goods Law s. 3(1) - Offer made by appellant must be capable of acceptance not by mere delivery - But its acceptance as well (H7) *Abba v. SPDC Nig. Ltd.* (2013) 4 KLR (pt. 327) 1473

CONTRACTS - Sale of goods - Offer & acceptance - Due delivery in such contract requires acceptance of goods delivered - Otherwise delivery is not done - And no contract is established (H4) *Abba v. SPDC Nig. Ltd.* (2013) 4 KLR (pt. 327) 1473

CONTRACTS - Statutory employment - Confirmation - Proof - Respondent had in para. 5 of the statement of claim - Pleaded that he was positively recommended for confirmation by his HOD & Dean of Faculty - Which assertion was not denied by appellant (H3) *University of Jos v. Ikegwuoha* (2013) 12 KLR (pt. 338) 4615

CONTRACTS - Statutory employment - If appellant's employment had statutory flavour - Respondent must comply with the conditions of service - Otherwise any termination would be declared null and void (H2) *Dudusola v. Nigerian Gas Co. Ltd.* (2013) 12 KLR (pt. 338) 4449

CONTRACTS - Statutory employment - Notice of non confirmation - As the period of notice provided in s. 22(vii) of Exhibit 5 was not complied with - Exhibit 3 was rightly treated as recommendation for non confirmation referred to in the section (H2) *University of Jos v.*

Ikegwuoha (2013) 12 KLR (pt. 338) 4615

CONTRACTS - Termination - Correctness of - As there is no illegality in the contract between the parties - CA rightly allowed respondent's appeal - By granting it relief in affirming the termination of the contract (H4) Ajayi v. Total Nig. Plc. (2013) 7 KLR (pt. 334) 3333

CONVEYANCING - Land law - Title - Proof - Mere production of deed of conveyance - Does not automatically establish title - As court must inter alia be satisfied - That the conveyance is valid and duly executed (H4) Olaniyan v. Fatoki (2013) 7 KLR (pt. 335) 3829

CONVICTION - Appeals - Criminal procedure - Conviction - Validity - CA rightly affirmed appellant's conviction - As the trial court considered a host of corroborative evidence - From which inference was rightly drawn (H4) Shodiya v. State (2013) 12 KLR (pt. 338) 4557

CONVICTION - Appeals - Retrial - Confession - As Exhibit C upon which trial court can solely convict appellant - Has made out prima facie case against him - It is necessary that he offers explanations at the trial de novo ordered by CA (H2) Adeyemi v. State (2013) 4 KLR (pt. 328) 1771

CONVICTION - Appeals - Retrial order - Since the proceedings is nullity - The order is wrong and appellant whose conviction and sentence have been nullified - Shall be set free (H3) Mohammed v. State (2013) 1 KLR (pt. 322) 99

CONVICTION - Based on confession - Conviction - Based on confession - Conviction may be based on confession - Where the statement is voluntarily positive - And court is satisfied with its truth (H6) Agboola v. State (2013) 5 KLR (pt. 329) 2019

CONVICTION - Charges - Murder - Provocation - Defence of - Once the defence is sustained in the charge - Accused would be found guilty of manslaughter - And the Judge has discretion to impose sentence (H7) Odunlami v. Nigerian Navy (2013) 6 KLR (pt. 331) 2721

CONVICTION - Confession - Can be solely based on confession where the statement is not only voluntary - But also direct and unequivocal as to guilt of accused (H2) Shodiya v. State (2013) 12 KLR (pt. 338) 4557

CONVICTION - Confession - Corroboration - Conviction not founded on evidence on record as per the charge - But on mere confessional statement - Cannot stand on appeal (H5) Abdullahi v. State (2013) 5 KLR (pt. 329) 1979



CONVICTION - Confession - Corroboration - Where confession is not comprehensive in relation to offence convicted - Existence of evidence outside the statement is necessary - To justify the conviction on appeal (H3) Shodiya v. State (2013) 12 KLR (pt. 338) 4557

CONVICTION - Confession - Court can convict accused only on his confession - Where the statement is found to be direct and unequivocal (H2) Lasisi v. State (2013) 3 KLR (pt. 326) 1313

CONVICTION - Confession - Court can convict upon a confession - Once it is satisfied that the confession is voluntary (H2) Mmamman v. FRN (2013) 1-2 KLR (pt. 323) 459

CONVICTION - Confession - In order to ground a conviction Confession must be positive and direct - But reason for commission of the crime - Must not be stated (H1) Dogo v. State (2013) 3 KLR (pt. 326) 1249

CONVICTION - Confession - So long as a confession is positive and voluntary - It is enough to found a conviction (H2) Adeleke v. State (2013) 7 KLR (pt. 333) 3093

CONVICTION - Confession - Validity - A voluntary confession is sufficient to support conviction - Once it meets with the six tests - Laid down by Supreme Court (H3) Musa v. State (2013) 2 KLR (pt. 324) 749

CONVICTION - Confession - Validity - A voluntary confession of guilt is sufficient to warrant conviction - Provided that court is satisfied that it is true (H3) Olatunbosun v. State (2013) 7 KLR (pt. 335) 3851

CONVICTION - Confession - Validity - Court of Appeal rightly affirmed the conviction of appellant - Since exhibit 7A was direct and voluntarily made (H1) Fatai v. State (2013) 3 KLR (pt. 326) 1291

CONVICTION - Confession - Validity - Having found exhibit H as voluntarily made - Trial court rightly relied on same in convicting appellant (H4) Abiodun v. State (2013) 4 KLR (pt. 328) 1753

CONVICTION - Confession - Validity - Once court is satisfied with genuineness of confession - Conviction can be based on it entirely - And such will not be disturbed on appeal (H6) Osuagwu v. State (2013) 1 KLR (pt. 322) 223

CONVICTION - Confession - Without corroboration a confession can sustain conviction - Provided court is satisfied of the truth therein (H1) Stephen v. State (2013) 3 KLR (pt. 326) 1417

CONVICTION - Evidence - Correctness of - Court can convict on evidence of one witness - If such evidence is credible - And it is believed and accepted by court (H3) Victor v. State (2013) 6 KLR (pt. 331) 2763

CONVICTION - Evidence - Tainted witness - This is a witness with some purpose to serve by given evidence - Thus a Judge should scrupulously examine such evidence - And be slow to convict without corroboration (H4) Egwemi v. State (2013) 1-2 KLR (pt. 323) 325

CONVICTION - Identification parade - Appellant was not solely convicted on evidence obtained at the parade - As court relied on testimony of PW1 - That linked appellant with the offence (H5) Aliyu v. State (2013) 6 KLR (pt. 332) 2873

CONVICTION - Identification parade - Relevance of - Where identity of accused is not in doubt - The parade is not needed - As same is not a sine qua non to conviction (H2) Fatai v. State (2013) 3 KLR (pt. 326) 1291

CONVICTION - Military law - Manslaughter - Sentence - Under Armed Forces Act s. 105 - Once accused is convicted of the offence - Trial Judge has no discretion - But to impose sentence of life imprisonment (H6) Odunlami v. Nigerian Navy (2013) 6 KLR (pt. 331) 2721

CONVICTION - Murder - Circumstantial evidence - Evidence of circumstances in this case is inadmissible - As same is capable of explanation upon other hypothesis - Than that of appellant's guilt (H12) Odogwu v. State (2013) 7 KLR (pt. 335) 3779

CONVICTION - Murder - Confession - Medical report - Corroboration - Appellant's confessions corroborated by the medical report - Are fully descriptive of the crime - And sufficient for court to find him guilty (H2) Usman v. State (2013) 5 KLR (pt. 330) 2569

CONVICTION - Murder - Contradictions - Effect - Minor difference in evidence of prosecution witnesses - Are not of a serious nature to vitiate the conviction (H7) Maigari v. State (2013) 7 KLR (pt. 333) 3251

CONVICTION - Murder - Death sentence - Penal Code s. 221 - Once accused has been found guilty - Judge has no jurisdiction to listen to allocutus - And should not reduce sentence to term of years (H6) State v. John (2013) 5 KLR (pt. 330) 2539

CONVICTION - Murder - Ingredients - Proof - Conviction of appellant for the offence - Can be sustained by the testimonies of respondent's witnesses - Medical report - And appellant's statements (H2) *Jimmy v. State* (2013) 4 KLR (pt. 327) 1699

CONVICTION - Murder - Ingredients - Proof - To secure conviction for murder - Prosecution must prove that deceased died - As a result of act of accused - Which was intentional (H2) *Afosi v. State* (2013) 6 KLR (pt. 331) 2583

CONVICTION - No case submission - Court is not to determine - Whether evidence is sufficient to justify conviction - But it must be satisfied that there is a prima facie case - Against accused (H2) *Agbo v. State* (2013) 4 KLR (pt. 328) 1787

CONVICTION - No case submission - Principle - The submission postulates that there is no legally admissible evidence - Or that prosecution's evidence has been so discredited - That no reasonable court can convict accused on such evidence (H1) *Fagoriola v. FRN* (2013) 7 KLR (pt. 335) 3753

CONVICTION - Offence not known to law - Charge and conviction of appellant under CC ss. 104, 203 & 517 cannot stand - Since the basis of the offence charged was unknown to law - At the material time (H2) *Tafidi v. FRN* (2013) 12 KLR (pt. 338) 4575

CONVICTION - Offensive weapon - Where such weapon was used in commission of offence - It is not essential to tender it to secure conviction - Provided there is cogent eye witness or circumstantial evidence - That points to guilt of accused (H6) *Babarinde v. State* (2013) 8-12 KLR (pt. 336) 3995

CONVICTION - Proof - Number of witness - Evidence of single witness can ground a conviction - Where the evidence is credible and cogent - Provided that corroboration is not required (H4) *Babarinde v. State* (2013) 8-12 KLR (pt. 336) 3995

CONVICTION - Prosecution's case - Discrepancies - The minor discrepancies in prosecution's case - Are not sufficient to overturn the conviction of appellant (H7) *Ibrahim v. State* (2013) 12 KLR (pt. 337) 4273

CONVICTION - Rape - Ingredient - Supreme Court will not interfere with concurrent conviction - Since the infant victim gave evidence of having been penetrated by accused (H1) *Musa v. State* (2013) 2 KLR (pt. 324) 749

CONVICTION - Retracted statement - Weight - Where it is confes-

sional statement - Court can convict on strength of the confession - But there should be some corroboration (H5) Ibrahim v. State (2013) 12 KLR (pt. 337) 4273

CONVICTION - Robbery - Confession - Accused can be convicted solely on his confession - Where same is direct and properly proved (H1) Afolabi v. State (2013) 6 KLR (pt. 332) 2841

CONVICTION - Sustainability - Disobedience to lawful order - Exhibit P3 does not have legal effect - To justify finding appellant guilty under CC s. 203 - For the alleged disobedience (H1) Maideribe v. FRN (2013) 12 KLR (pt. 337) 4321

CONVICTION - Sustainability - Public servant - Appellant not being a staff of NPA - Cannot come within the definition of person employed by the Authority - To support his conviction for offence in CC s. 104 (H3) Maideribe v. FRN (2013) 12 KLR (pt. 337) 4321

CONVICTION - Undisclosed offence - Appellant's alleged disobedience of exhibit P3 - Is not an offence disclosed in CC ss. 203, 104 & 517 - Hence conviction of appellant for same - Violates his right under 1999 Constitution s. 36(8) (H6) Maideribe v. FRN (2013) 12 KLR (pt. 337) 4321

CORROBORATION - Appeals - Criminal procedure - Conviction - Validity - CA rightly affirmed appellant's conviction - As the trial court considered a host of corroborative evidence - From which inference was rightly drawn (H4) Shodiya v. State (2013) 12 KLR (pt. 338) 4557

CORROBORATION - Confession - Conviction - Without corroboration a confession can sustain conviction - Provided court is satisfied of the truth therein (H1) Stephen v. State (2013) 3 KLR (pt. 326) 1417

CORROBORATION - Confession - Conviction not founded on evidence on record as per the charge - But on mere confessional statement - Cannot stand on appeal (H5) Abdullahi v. State (2013) 5 KLR (pt. 329) 1979

CORROBORATION - Confession - It is desirable to have some evidence outside the confession - Which would make it probable that the confession is true (H4) Olatunbosun v. State (2013) 7 KLR (pt. 335) 3851

CORROBORATION - Confession - Where confession is not comprehensive in relation to offence convicted - Existence of evidence outside the statement is necessary - To justify the conviction on appeal (H3) Shodiya v. State (2013) 12 KLR (pt. 338) 4557

CORROBORATION - Evidence - Tainted witness - This is a witness with some purpose to serve by given evidence - Thus a Judge should scrupulously examine such evidence - And be slow to convict without corroboration (H4) Egwemi v. State (2013) 1-2 KLR (pt. 323) 325

CORROBORATION - Murder - Confession - Medical report - Corroboration - Appellant's confessions corroborated by the medical report - Are fully descriptive of the crime - And sufficient for court to find him guilty (H2) Usman v. State (2013) 5 KLR (pt. 330) 2569

CORROBORATION - Rape - Corroboration - Although corroboration is desirable in rape - Trial Judge can convict on uncorroborated evidence - After having watched the demeanor of accused (H5) Musa v. State (2013) 2 KLR (pt. 324) 749

CORROBORATION - Retracted statement - Weight - Where it is confessional statement - Court can convict on strength of the confession - But there should be some corroboration (H5) Ibrahim v. State (2013) 12 KLR (pt. 337) 4273

CORROBORATION - Robbery - Proof - Corroborative evidence from PW1 & 2 show that there was a robbery - And that the robbery was not proved to be armed robbery (H3) Adeleke v. State (2013) 7 KLR (pt. 333) 3093

COSTS - Award - Purpose of - Costs are to compensate successful party - Without being punitive to unsuccessful party - And wrong exercise of discretion on costs - Can be varied by CA under s. 16 of its Act (H4) Olusanya v. Osineye (2013) 5 KLR (pt. 329) 2225

COURT MARTIAL - Appeals - CA Rules O. 4 r. 1 - Applicability - The provisions of the Order is not applicable - In appeals to CA in criminal cases from General Court Martial (H2) Nigerian Army v. Samuel (2013) 7 KLR (pt. 334) 3385

COURT MARTIAL - Fair hearing - Sentence - Review of - By Armed Forces Act s. 149 - A convict has 3 months to appeal for a review - And is also allowed by s. 154(6) to appeal to CA - And thereafter to SC (H3) Odunlami v. Nigerian Navy (2013) 6 KLR (pt. 331) 2721

COURT MARTIAL - Jurisdiction - Court of Appeal - By 1999 Constitution s. 240 - C.A. is given exclusive appellate jurisdiction - Over decisions of general court martial (H1) Nigerian Army v. Warrant Officer Banni Yakubu (2013) 1-2 KLR (pt. 323) 471

COURT PROCESSES - Abuse - Characteristics - Abuse happens when

a party improperly uses judicial process - To the irritation of his opponent - In respect of multiple actions between same parties - On same subject matter (H10) *Vab Petroleum Inc. v. Momah* (2013) 1 KLR (pt. 322) 249

COURT PROCESSES - Abuse - Characteristics - It arises where a party improperly uses judicial processes - To the irritation and annoyance of his opponent (H2) *Osun S.I.E.C. v. NCP* (2013) 3 KLR (pt. 326) 1401

COURT PROCESSES - Abuse - Characteristics - The action as constituted by appellant is abuse of process - As it is a multiplication of actions involving same parties and subject matter (H3) *Igbeke v. Okadigbo* (2013) 5 KLR (pt. 330) 2351

COURT PROCESSES - Abuse - Concept - This means that process of court has not been used properly - But process not filed in court - Cannot constitute abuse of process (H6) *CPC v. Ombugadu* (2013) 7 KLR (pt. 334) 3401

COURT PROCESSES - Abuse - Dismissal - Once court is satisfied that any proceeding before it is abuse of process - It has power to strike it out (H4) *Commissioner for Education v. Amadi* (2013) 2 KLR (pt. 325) 1003

COURT PROCESSES - Abuse - Effect - Courts do not treat abuse as mere irregularity - As it is a fundamental vice punishable by dismissal of the offending process (H3) *Ukachukwu v. PDP* (2013) 12 KLR (pt. 338) 4591

COURT PROCESSES - Abuse - Features - It shows in the improper use of judicial process by party - To interfere with the due administration of justice (H2) *Ukachukwu v. PDP* (2013) 12 KLR (pt. 338) 4591

COURT PROCESSES - Abuse - Instance of - Is where a party improperly uses judicial process - To the irritation of his opponent - Not only in same subject matter - But also where issues are the same (H3) *Commissioner for Education v. Amadi* (2013) 2 KLR (pt. 325) 1003

COURT PROCESSES - Abuse - Meaning - Abuse features where a party improperly uses process of court - To the irritation and annoyance of his opponent (H1) *Ogboru v. Uduaghan* (2013) 6 KLR (pt. 332) 2981

COURT PROCESSES - Abuse - Prevention - Court has inherent power to ward off abuse of its process - For purpose of maintaining its sanctity and dignity (H5) *Ogboru v. Uduaghan* (2013) 6 KLR (pt. 332)

2981

COURT PROCESSES - Actions - Cause of action - Source - Plaintiff's statement of claim determines - Whether a cause of action is disclosed in a suit (H2) Chukwu v. Akpelu (2013) 12 KLR (pt. 337) 4177

COURT PROCESSES - Appeals - Jurisdiction - An initiating process must be valid - To confer jurisdiction on court - In order to adjudicate between parties on a subject matter in dispute (H2) Okarika v. Samuel (2013) 2 KLR (pt. 324) 807

COURT PROCESSES - Appeals - Notice of appeal - Validity - Cross appellants having failed to refer the matter to Code of Conduct Tribunal - Alleged violations of the code by counsel - Have not been established as to affect competence of the processes (H5) Ahmed v. Ahmed (2013) 7 KLR (pt. 335) 3561

COURT PROCESSES - Courts - Power to prevent abuse - By Constitution 1999 s. 6(6)(a) - Once satisfied that any proceeding before it - Is an abuse of process - Court is empowered to terminate same (H3) Osun S.I.E.C. v. NCP (2013) 3 KLR (pt. 326) 1401

COURT PROCESSES - Error - Amendment - Mistake which is not intended to overreach the court can be corrected - And it must be done without injustice to the other party (H6) Eta v. Dazie (2013) 3 KLR (pt. 326) 1269

COURT PROCESSES - Fair hearing - Breach - Allegation of - The principle cannot avail appellant - As he was properly served with the process - And it is not for court to compel him to act on the opportunity presented (H12) Ahmed v. Ahmed (2013) 7 KLR (pt. 335) 3561

COURT PROCESSES - Filing fee - Claim for interest - Proof of rate - As there was no claim for interest in the writ - Its claim in statement of claim cannot be entertained - Since no such claim was assessed - Nor was filing fee paid for it (H9) Abba v. SPDC Nig. Ltd. (2013) 4 KLR (pt. 327) 1473

COURT PROCESSES - Jurisdiction - Determination - Basis - To ascertain jurisdiction of court in a matter - Writ of summons and statement of claim - Are the most crucial processes to be examined (H7) Ahmed v. Ahmed (2013) 7 KLR (pt. 335) 3561

COURT PROCESSES - Legal practitioners - Signing - By LPA ss. 2(1) & 24 - Only a person registered in Supreme Court - Whose name is on the roll - Is recognized as legal practitioner - Entitled to sign or file processes in courts (H4) Nigerian Army v. Samuel (2013)

7 KLR (pt. 334) 3385

COURT PROCESSES - Motions - Striking out - Regularization of - Party whose motion is struck out - Can either file fresh application or apply for relisting - But the options do not avail applicants - Since their application constitutes abuse of process (H4) *Ogboru v. Uduaghan* (2013) 6 KLR (pt. 332) 2981

COURT PROCESSES - Objections - Preliminary objection - Basis - It deals with law and hence no need for supporting affidavit - As applicant contends that the court process has not complied with the enabling law (H3) *Abba v. SPDC Nig. Ltd.* (2013) 4 KLR (pt. 327) 1473

COURT PROCESSES - Orders of court - Non service - Effect - An order is not binding if made on a person - Who has not been served with it (H2) *Uwazuruike v. A-G Federation* (2013) 4 KLR (pt. 328) 1953

COURT PROCESSES - Originating process - Defect in - Amendment - Process that was not properly signed by counsel is incompetent ab initio - And same cannot be cured by amendment (H3) *Ministry of Works & Transport v. Yakubu* (2013) 1-2 KLR (pt. 323) 289

COURT PROCESSES - Originating process - Not signed by counsel - Since the process was not signed by a legal practitioner - The same is incompetent as well as an appeal arising therefrom (H2) *Ministry of Works & Transport v. Yakubu* (2013) 1-2 KLR (pt. 323) 289

COURT PROCESSES - Originating summons - Irregularity in - Absence of question for determination in the application - Is fundamental error - Which trial court ought not to have treated as mere irregularity (H2) *Olley v. Tunji* (2013) 4 KLR (pt. 328) 1905

COURT PROCESSES - Originating summons - Validity - Application made by this procedure without questions for determination - Is incompetent and as such court cannot validly exercise its jurisdiction under Electoral Act s. 87(9) (H1) *Olley v. Tunji* (2013) 4 KLR (pt. 328) 1905

COURT PROCESSES - Service - Defect in - By Cross River HC Rules O. 2 rr. 1 & 2 - Defect in service amounts to non compliance - And the irregularity is deemed as waived - Where party after being aware of same - Took further steps in the proceedings (H1) *Nigerian Bottling Co. Plc v. Ubani* (2013) 8-12 KLR (pt. 336) 4027

COURT PROCESSES - Service - Defect in - Waiver - Effect - Appellant having let go of its right is not allowed to resurrect same in SC -



As the right is deemed waived - And it cannot rely on same to set aside service on it (H5) Nigerian Bottling Co. Plc v. Ubani (2013) 8-12 KLR (pt. 336) 4027

COURT PROCESSES - Service - Fair hearing - Appellant having been duly served the originating process - But chose to ignore same - Should not complain but take the consequences (H10) Ahmed v. Ahmed (2013) 7 KLR (pt. 335) 3561

COURT PROCESSES - Service - Legal practitioner - Service on counsel is as good service on party - And proof of service is unnecessary - Where defendant appears (H4) Vab Petroleum Inc. v. Momah (2013) 1 KLR (pt. 322) 249

COURT PROCESSES - Service - Proof - As appellant filed no process to controvert proper service on him - Nothing exists in the record precluding trial court - From proceeding with the case (H11) Ahmed v. Ahmed (2013) 7 KLR (pt. 335) 3561

COURT PROCESSES - Service - Proof - It is wrong to say that defendant who filed defence to statement of claim - Was not served writ of summons - Because there was no bailiff's endorsement on the writ (H5) Vab Petroleum Inc. v. Momah (2013) 1 KLR (pt. 322) 249

COURT PROCESSES - Service - Undefended suits - Definitive affidavit - Where the writ does not have the required separate affidavit - Defendant cannot be said to have been served (H3) Obaro v. Hassan (2013) 1-2 KLR (pt. 323) 491

COURT PROCESSES - Service - Validity - The State HC Rules has relaxed mode of service on company - Hence service on the depot manager is proper - Since he is principal officer served within jurisdiction (H4) Nigerian Bottling Co. Plc v. Ubani (2013) 8-12 KLR (pt. 336) 4027

COURT PROCESSES - Service on company - Mode of - By virtue of CAMA s. 78 - Service must comply with the rules of the particular court prevailing in the jurisdiction (H3) Nigerian Bottling Co. Plc v. Ubani (2013) 8-12 KLR (pt. 336) 4027

COURT PROCESSES - Statement of defence - Amendment - Granting of the oral application to amend the statement - Brought the pleadings in line with evidence on record - As per due execution of the will (H5) Eta v. Dazie (2013) 3 KLR (pt. 326) 1269

COURT PROCESSES - Statutes - Provisions - Adherence to - Where statute prescribes a legal line of action for initiating court process - All remedies in the statute should be followed to the letter (H5) Aladejobi

v. NBA (2013) 7 KLR (pt. 335) 3623

COURT PROCESSES - Writ of summons - Service - Proof - The act of filing a defence to the action before the original court - Is enough to establish service of the process on respondent (H3) Vab Petroleum Inc. v. Momah (2013) 1 KLR (pt. 322) 249

COURT PROCESSES - Writ of Summons - Superseding process - A process is said to supersede another - If it is subsequent to and completely severed from that other (H2) Garan v. Olomu (2013) 4 KLR (pt. 327) 1675

COURTS - Aborted trial - Implication of - Where a proceeding is declared a nullity by court - Such a proceeding is legally deemed not to have existed (H1) Ganiyu v. State (2013) 4 KLR (pt. 327) 1661

COURTS - Academic issue - Where a question before court is entirely speculative - Court will decline to decide the point - As same does not aid in determining live issues in the matter (H1) INEC v. Atuma (2013) 5 KLR (pt. 330) 2375

COURTS - Actions - Cause of action - Absence of - Cause of action enthrones jurisdiction on court - And absence of it renders the suit incompetent - And liable to be struck out (H4) Chukwu v. Akpelu (2013) 12 KLR (pt. 337) 4177

COURTS - Actions - Cause of action - Determination - Court is guided to restrict itself to the statement of claim - By considering those averments that form the gravamen of the claim (H2) Yare v. N. S. W. I. C. (2013) 5 KLR (pt. 329) 2267

COURTS - Actions - Cause of action - Meaning - It means cause of complaint - Civil right or obligation fit to be determined by court - And dispute in which court can invoke its powers (H1) Yare v. N. S. W. I. C. (2013) 5 KLR (pt. 329) 2267

COURTS - Actions - Commencement - Legal personality - Party who institutes action in court must be a legal person - Either as a natural person - Or as an institution having juristic personality (H1) Reptico S.A. Geneva v. Afribank Plc (2013) 5 KLR (pt. 329) 2091

COURTS - Actions - Commencement - Validity - Appellant does not exist in law - For failing to prove its juristic personality to sue and be sued - Hence its action in the trial court is incompetent (H4) Reptico S.A. Geneva v. Afribank Plc (2013) 5 KLR (pt. 329) 2091

COURTS - Actions - Illegality - Need to note - Court must take cognizance of illegality it finds in the course of a matter - Even if such is

not triable in the court - But in another tribunal (H1) Ajayi v. Total Nig. Plc. (2013) 7 KLR (pt. 334) 3333

COURTS - Actions - Necessary party - Joinder - As the trial court's judgment would affect 3<sup>rd</sup> respondent - It is desirable that 3<sup>rd</sup> respondent be heard - So that court can effectively settle all questions in the matter (H5) Gassol v. Tutare (2013) 12 KLR (pt. 338) 4463

COURTS - Actions - Party - Necessary party - Is one whose presence in an action is essential - For the effectual and complete determination of the claim before the court (H2) Olawoye v. Jimoh (2013) 4 KLR (pt. 328) 1887

COURTS - Actions - Party - Status - Parties are natural or artificial persons - Whose names appear on the record of the court - As plaintiffs and defendants (H1) Olawoye v. Jimoh (2013) 4 KLR (pt. 328) 1887

COURTS - Actions - Waiver - Plea of - Sustainability - Court must be satisfied that a party has consciously waived his right - Before upholding the plea (H6) Ugwuanyi v. NICON Insurance Plc (2013) 1-2 KLR (pt. 323) 587

COURTS - Administration of estates - Jurisdiction - From the address available to court - The deceased lived and owned property in Lagos - Within jurisdiction of the trial court (H3) Amobi v. Nzegwu (2013) 8-12 KLR (pt. 336) 3953

COURTS - Administration of estates - Letter of administration - Grant - HC has wide powers to make the grant - And where application for grant is not specific - The court may by Administration of Estate Law s. 22 - Limit the grant as it sees fit (H5) Amobi v. Nzegwu (2013) 8-12 KLR (pt. 336) 3953

COURTS - 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) Ahmed v. CBN (2013) 6 KLR (pt. 331) 2611

COURTS - Appeal - Election petitions - Gubernatorial election - Jurisdiction - Final court - By 1999 Constitution s. 246(3) - SC has no jurisdiction to review decision of CA in appeals in respect of such election (H1) Oni v. Fayemi (2013) 5 KLR (pt. 330) 2497

COURTS - Appeal - Findings of fact - Where Court of Appeal wrongly disturbed findings of trial court - Supreme Court will not hesitate in restoring the finding (H8) Vab Petroleum Inc. v. Momah (2013) 1 KLR (pt. 322) 249

COURTS - Appeals - "Attempted substitution" - This phrase used by 1<sup>st</sup> respondent is not a relief - Rather it is definition and substance of the processes - That brought the parties to the trial Court (H8) CPC v. Ombugadu (2013) 7 KLR (pt. 334) 3401

COURTS - Appeals - Academic issue - Courts do not decide on hypothetical cases - The result of which will not grant any benefit to applicant (H4) Imegwu v. Okolocha (2013) 1-2 KLR (pt. 323) 433

COURTS - Appeals - Action - Pursuant to SC Act s. 22 - Suit No. K/750/2000 is struck out for being incompetent - As the process leading to the judgment therein was flawed - Hence the HC had no jurisdiction to entertain it (H4) Halilco Nig. Ltd. v. Equity Bank Nig. Ltd. (2013) 6 KLR (pt. 332) 2937

COURTS - Appeals - Application for extension of time - Propriety - Since appellant who later filed proper appeal was out of time - C.A. should have granted the prayers in the motion (H3) Nwite v. State (2013) 2 KLR (pt. 324) 799

COURTS - Appeals - Contract - Findings - Correctness of - CA was right in finding that - The trial court had no evidence supported by pleadings - That the contract between the parties was voided by illegality (H5) Ajayi v. Total Nig. Plc. (2013) 7 KLR (pt. 334) 3333

COURTS - Appeals - Court of Appeal - Interlocutory injunction - Before the application can be made to the court - It must be shown on the supporting affidavit - That there exists special and exceptional circumstances (H1) Commissioner for Education v. Amadi (2013) 2 KLR (pt. 325) 1003

COURTS - Appeals - Court of Appeal - Powers - By C.A. Act s. 18 - The court can make equitable order(s) - In the interest of justice administration - So as to preserve the subject matter of dispute between parties (H4) Contract Resources Ltd v. Standard Trust Bank Ltd (2013) 2 KLR (pt. 325) 915

COURTS - Appeals - Criminal procedure - Conviction - Validity - CA rightly affirmed appellant's conviction - As the trial court considered a host of corroborative evidence - From which inference was rightly drawn (H4) Shodiya v. State (2013) 12 KLR (pt. 338) 4557

COURTS - Appeals - Criminal procedure - Irregularity - Objection - Appellants were not prejudiced on the procedure they elected to adopt - And having failed to object at trial court - They cannot be allowed to do so on appeal (H4) Oguno v. State (2013) 12 KLR (pt. 338) 4529

COURTS - Appeals - Criminal procedure - Sentence - Interference - Appellate court does not interfere with sentence imposed by trial court - Unless same is manifestly excessive or wrong in principle (H6) Omokuwajo v. FRN (2013) 3 KLR (pt. 326) 1365

COURTS - Appeals - Cross appeal - Filing - Respondent who seeks either the setting aside - Or the complete reversal of finding of lower court - Can only do so through a substantive cross appeal (H1) Organ v. Nig. Liquefied Natural Gas Ltd. (2013) 7 KLR (pt. 334) 3521

COURTS - Appeals - Damages - Interference - Since trial court relied on wrong premise of tort of detainee instead of contract - Court of Appeal rightly disturbed the excessive damages awarded (H3) Aminu Ishola Investment Ltd v. Afribank Plc (2013) 2 KLR (pt. 325) 1025

COURTS - Appeals - Damages - Quantum - Appellate court can interfere with amount of damages awarded by trial court - Where it is shown that the court proceeded on wrong principle (H2) Kaja v. Oke (2013) 2 KLR (pt. 325) 1051

COURTS - Appeals - Determination - Basis - Appeal is determined by appellate court - Based on the issues - But not on the grounds (H1) Okponipere v. State (2013) 2 KLR (pt. 325) 1119

COURTS - Appeals - Discretion - Determination - Appellate court determines whether discretion was judicial and judicious - And not whether it would have exercised the discretion differently (H2) Aroh v. PDP (2013) 6 KLR (pt. 331) 2655

COURTS - Appeals - Discretion - Exercise of - Correctness - CA rightly exercised its discretion - Having considered that appellant can still adduce evidence at the trial proper (H5) Aroh v. PDP (2013) 6 KLR (pt. 331) 2655

COURTS - Appeals - Dismissal - Basis - Appeal court can only dismiss appeal - If the appeal appears to be a non starter - And the court does not reevaluate evidence - Except there are genuine complaints (H6) Ayan v. State (2013) 7 KLR (pt. 335) 3717

COURTS - Appeals - Documentary evidence - Evaluation - Where findings of trial Judge on document are perverse - Appellate court will employ its appellate power - To correct the perversity (H7) CPC v. Ombugadu (2013) 7 KLR (pt. 334) 3401

COURTS - Appeals - Evaluation - Provided appellate court took full cognizance of evaluation of evidence alongside pleadings by trial court - It must not deal line by line on judgment of tribunal (H4) Oke v.

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Mimiko (2013) 8-12 KLR (pt. 336) 4077

COURTS - Appeals - Evidence - Evaluation - Interference - Appellate courts interfere to ensure that justice prevails - Only where trial court failed to draw correct inferences (H4) Lasisi v. State (2013) 3 KLR (pt. 326) 1313

COURTS - Appeals - Evidence - Reevaluation - Appellate court would be in as good a position as trial court had been - To reappraise documentary evidence - Since doing so does not involve credibility of witness (H2) U.T.C. Nig. Plc. v. Lawal (2013) 8-12 KLR (pt. 336) 4133

COURTS - Appeals - Evidence - Reevaluation - Where credibility of witnesses is not involved - But complaint is on improper evaluation - Appellate court is in a good position as trial court - To do its own evaluation (H3) Babatunde v. State (2013) 6 KLR (pt. 332) 2895

COURTS - Appeals - Evidence - Reevaluation - Where trial court fails to properly evaluate evidence - Appeal court can reevaluate and make findings - Provided credibility of witnesses is not involved (H2) Odutola v. Mabogunje (2013) 1 KLR (pt. 322) 161

COURTS - Appeals - Fair hearing - Parties - Issues - Binding nature - Court should not set up a case - Different from the one presented by parties - Without allowing parties to address it on same (H5) Omokuwajo v. FRN (2013) 3 KLR (pt. 326) 1365

COURTS - Appeals - Filing - Procedure - Appeal to Supreme Court lies against decision of Court of Appeal - But not against the decision of High Court (H3) Ugwu v. State (2013) 3 KLR (pt. 326) 1453

COURTS - Appeals - Finding - Correctness of - CA decision affirming trial court's finding stands - As appellants were unable to show that findings of the two courts - Were not based on pleadings and evidence on record (H6) Olaniyan v. Fatoki (2013) 7 KLR (pt. 335) 3829

COURTS - Appeals - Finding - Correctness of - Supreme Court will not interfere with the finding of CA - On the available evidence before the trial court - That is not considered to be perverse (H4) Amobi v. Nzegwu (2013) 8-12 KLR (pt. 336) 3953

COURTS - Appeals - Finding - Failure to challenge - Where finding of lower court is not appealed against - The finding is deemed to be valid and subsisting - And appellate court will not disturb it (H1) Okwaranonobi v. Mbadugha (2013) 6 KLR (pt. 332) 3007

COURTS - Appeals - Findings - Court of Appeal was right in its reasoning for upholding respondents' counter claim - Hence Supreme Court cannot deviate from same (H3) Ameen v. Amao (2013) 2 KLR (pt. 324) 667

COURTS - Appeals - Findings - Interference - Appellate court remains slow in departing - From findings made by trial court - Except to correct errors (H2) Udo v. Regd. Trustee of the Brotherhood of the Cross & Star (2013) 2 KLR (pt. 324) 847

COURTS - Appeals - Findings - The trial court's findings of facts are deemed admitted - As there is no appeal against them - And CA was at liberty to rely on same in its decision (H3) FBN Plc v. Ozokwere (2013) 12 KLR (pt. 337) 4203

COURTS - Appeals - Findings of fact - Appellate court should not interfere with findings of trial court - Save where there is misdirection by trial court (H6) Achilihu v. Anyatonwu (2013) 1 KLR (pt. 322) 1

COURTS - Appeals - Findings of facts - C.A. did not overrule trial court's findings - As the operative findings of facts is the one - Made after the oral application for amendment had been granted (H2) Eta v. Dazie (2013) 3 KLR (pt. 326) 1269

COURTS - Appeals - Fresh evidence - Application - Appellate court will grant leave if it was impossible to obtain such evidence at trial - And if the evidence is credible as to influence judgment (H3) Nwaogu v. Atuma (2013) 1-2 KLR (pt. 323) 305

COURTS - Appeals - Fresh evidence - CA Rule O. 4 r. 2 - Applicability - The provision is only invoked in appeal - Against decision of a lower court on the merits of the case (H4) Aroh v. PDP (2013) 6 KLR (pt. 331) 2655

COURTS - Appeals - Fresh issue - Determination - Court must be satisfied that it has the facts of the new point - And that were the points raised at lower courts - The same would have remained unsatisfactorily determined (H3) Udo v. Regd. Trustee of the Brotherhood of the Cross & Star (2013) 2 KLR (pt. 324) 847

COURTS - Appeals - Fresh issue - Leave - Party who seeks to file and argue new issue on appeal - Must first seek and obtain leave of court - Save where such fresh issue touches on jurisdiction (H4) Organ v. Nig. Liquefied Natural Gas Ltd. (2013) 7 KLR (pt. 334) 3521

COURTS - Appeals - Fresh issue - Raised without leave - Fate - Issue 5 not having been taken in lower courts - Cannot be competently raised in SC - Without leave of the court (H19) Nigerian Bottling Co.

Plc v. Ubani (2013) 8-12 KLR (pt. 336) 4027

COURTS - Appeals - Ground of law - Validity - Ground 7 having questioned jurisdiction of court is one of law - Which is competent to sustain the appeal - Even if leave was not obtained for other grounds (H6) Olabomi v. Oyewole (2013) 7 KLR (pt. 333) 3319

COURTS - Appeals - Ground of mixed law & facts - Leave - By 1999 Constitution s. 233(3) - Appeal on such ground shall lie from CA to SC not as of right - But with leave of court (H1) Ekunola v. CBN (2013) 4 KLR (pt. 327) 1621

COURTS - Appeals - Grounds - Amendment - Can be made at any time before judgment - Because once judgment is delivered - A seal is put to the controversy between parties - Which ends adjudication in that court (H5) Ikechukwu v. Nwoye (2013) 12 KLR (pt. 337) 4305

COURTS - Appeals - Grounds - Issue - Formulation - Where appellant failed to distil issue in respect of any ground - The ground is deemed abandoned - And court is to strike same out (H1) Victor v. State (2013) 6 KLR (pt. 331) 2763

COURTS - Appeals - Grounds - Mixed law & facts - Competence - Grounds 1, 2 & 3 being of mixed law & facts - Are incompetent having been raised without leave - As required by 1999 Constitution s. 233(3) (H1) Abdul v. CPC (2013) 12 KLR (pt. 338) 4409

COURTS - Appeals - Grounds - Mixed law & facts - Failure to obtain leave - Appellant is expected to obtain leave of CA or SC for ground 4 - And failure to do so robs court of jurisdiction to adjudicate on the matter (H4) Abdul v. CPC (2013) 12 KLR (pt. 338) 4409

COURTS - Appeals - Grounds - Mixed law & facts - Leave - Supreme Court does not entertain appeal on such grounds - Unless leave is obtained from it - Or from Court of Appeal (H1) Ugwu v. State (2013) 3 KLR (pt. 326) 1453

COURTS - Appeals - Grounds of appeal - Validity - Counsel's argument - Appellant's grounds 2, 3, 6 & 10 are incompetent - Having arisen from statement of counsel - That was found incorrect by the court (H1) Akeredolu v. Mimiko (2013) 8-12 KLR (pt. 336) 3895

COURTS - Appeals - Hearing - Appeals are by way of rehearing - And appellate court should reconsider materials before trial court - And may overrule where the decision is wrong (H3) Ihunwo v. Ihunwo (2013) 1-2 KLR (pt. 323) 403



COURTS - Appeals - Hearing - Contempt of court - Hadikinson's case - Contemnor may not be heard if his disobedience - Impedes the cause of justice - Except where he raises issue of lack of court's jurisdiction (H2) Abeke v. Odunsi (2013) 5 KLR (pt. 330) 2285

COURTS - Appeals - Injunction pending appeal - Grant - Precondition - Court must go into a consideration of - Competing legal rights of the parties - To the protection of the injunctive relief (H4) Aboseldehyde Lab. Plc. v. Union Merchant Bank Plc (2013) 3 KLR (pt. 326) 1205

COURTS - Appeals - Interlocutory stage - Substantive matter - Court of Appeal should not have determined the merit of plaintiffs' case - At the time it decided the issue of jurisdiction (H5) Abia State Ind. Elec. Com. v. Kanu (2013) 5 KLR (pt. 330) 2313

COURTS - Appeals - Issue - Competence - Appellant's issue 2 is incompetent for not relating to decision of CA - As appeal to SC is against decision of CA - And not that of trial HC (H1) Musaconi Ltd. v. Aspinall (2013) 6 KLR (pt. 331) 2695

COURTS - Appeals - Issue - Formulation - Appellate court is not bound by issues formulated by parties - As it can identify appropriate issues - Provided no new issue is introduced (H2) Yisi Nig. Ltd. v. Trade Bank Plc. (2013) 2 KLR (pt. 324) 863

COURTS - Appeals - Issue - Formulation by respondent - Respondent can formulate different issues - But such must be traceable to the grounds of appeal filed by appellant - And appellate court can rely on such issues - To determine the appeal (H5) Musaconi Ltd. v. Aspinall (2013) 6 KLR (pt. 331) 2695

COURTS - Appeals - Issue - Reformulation - Where appellant's issues are verbose - Court is entitled to reframe the issues - For the purpose of narrowing down same - In the interest of clarity (H4) Musaconi Ltd. v. Aspinall (2013) 6 KLR (pt. 331) 2695

COURTS - Appeals - Issue - Suo motu raising - CA rightly raised the issue of competence or otherwise of the writ of summons - But erred for not inviting counsel for parties to address it on the issue (H3) Halilco Nig. Ltd. v. Equity Bank Nig. Ltd. (2013) 6 KLR (pt. 332) 2937

COURTS - Appeals - Issues - Basis - Decision is made based on issues arising from valid grounds - Hence any issue which does not so arise - Is not one the court can base its judgment upon (H5) Abba v. SPDC Nig. Ltd. (2013) 4 KLR (pt. 327) 1473

COURTS - Appeals - Issues - Formulation - Principle - Grounds of appeal should not be less than issues - Although court may tolerate equal number of grounds and issues (H1) *Odogwu v. State* (2013) 7 KLR (pt. 335) 3779

COURTS - Appeals - Issues - Formulation - Provided no new issues are introduced - Appellate court can in appropriate circumstances - Identify proper issues in appeal (H4) *Tukuru v. Sabi* (2013) 3 KLR (pt. 326) 1433

COURTS - Appeals - Issues - Formulation of - Courts have power to formulate issues in the interest of justice - But parties must be heard on such issues - Before judgment is delivered (H7) *Ekunola v. CBN* (2013) 4 KLR (pt. 327) 1621

COURTS - Appeals - Issues - Grounds - Abandoned - Fate - Grounds not utilized in the raising of issues - Are taken as abandoned - And court may strike them out (H1) *Maigari v. State* (2013) 7 KLR (pt. 333) 3251

COURTS - Appeals - Issues - *Suo motu* formulation - Appeal court can adopt issues *suo motu* - Provided such issues arise from valid grounds of appeal - And address the real grievance therein (H6) *Odutola v. Mabogunje* (2013) 1 KLR (pt. 322) 161

COURTS - Appeals - Issues - *Suo motu* raising - Appellate court is allowed to set out issues - That are considered apt and relevant to determination of appeal (H6) *Abba v. SPDC Nig. Ltd.* (2013) 4 KLR (pt. 327) 1473

COURTS - Appeals - Judgment - Correctness of - CA rightly affirmed trial court's judgment - Despite resolving issue 2 in appellants' favour - Since there was overwhelming credible evidence evaluated by the trial court (H5) *Atungwu v. Ochekwu* (2013) 7 KLR (pt. 335) 3681

COURTS - Appeals - Judgment - Correctness of - Court of Appeal meticulously arrived at its decision - Hence its judgment is unassailable - As the errors of the trial court have all been shown (H2) *Okwaranonobi v. Mbadugha* (2013) 6 KLR (pt. 332) 3007

COURTS - Appeals - Judgment - Court of Appeal - Power - By CA Rules O. 18 r. 11 - The court can give any judgment or order as the case may require - Including any order as to costs (H3) *Asika v. Atuanya* (2013) 7 KLR (pt. 335) 3651

COURTS - Appeals - Judgment - Undefended suit - Decision transferring the matter to undefended list - Is correctly adjudged as defective - Even though CA wrongfully ruled that trial court is not bound

- To consider documents for such transfer (H5) Akpan v. Akwa-Ibom Property Invest. Co. Ltd. (2013) 6 KLR (pt. 331) 2631

COURTS - Appeals - Jurisdiction - Determination - To determine whether or not it has jurisdiction over a matter - Court must examine the nature of claims - And the parties before it (H1) Abia State Ind. Elec. Com. v. Kanu (2013) 5 KLR (pt. 330) 2313

COURTS - Appeals - Jurisdiction - Fresh issue on - Appellate court can accommodate such issue - Provided appellant does not introduce - New line of defence different from those of parties at lower court (H4) Udo v. Regd. Trustee of the Brotherhood of the Cross & Star (2013) 2 KLR (pt. 324) 847

COURTS - Appeals - Jurisdiction - Previous judgment - Jurisdiction of trial court to make order in respect of its earlier judgment - Which is subject to appeal - Is clearly ousted (H6) Alims Nig. Ltd. v. United Bank for Africa (2013) 1 KLR (pt. 322) 35

COURTS - Appeals - Leave - Necessity of - Where it is required - It is condition precedent to the exercise of right of appeal - And failure to obtain leave when needed - Renders any appeal filed incompetent - As no jurisdiction is conferred on appellate court (H3) Organ v. Nig. Liquefied Natural Gas Ltd. (2013) 7 KLR (pt. 334) 3521

COURTS - Appeals - Meaning - Is continuation of case instituted at trial court - And final end of appeal cannot produce a relief - Different from that which originated at trial (H6) Eyigebe v. Iyaji (2013) 5 KLR (pt. 330) 2329

COURTS - Appeals - Notice of appeal - Amendment - Provided the ends of justice and fairness are served - There is no limit to number of times a party can amend processes in appeal (H2) Salisu v. Mobolaji (2013) 12 KLR (pt. 337) 4375

COURTS - Appeals - Notice of appeal - Contents - The notice should clearly convey the substance of appellant's complaint against judgment appealed - So as not to leave respondent in doubt as to the case expected in court (H1) Ikechukwu v. Nwoye (2013) 12 KLR (pt. 337) 4305

COURTS - Appeals - Notice of appeal - Striking out of - Court of Appeal rightly struck out the appeal - Since appellants abandoned their appeal - After obtaining order for stay of execution (H1) Osun S.I.E.C. v. NCP (2013) 3 KLR (pt. 326) 1401

COURTS - Appeals - Obiter dictum - Remarks by the trial Judge on prosecuting appellant for bigamy - Constitute obiter dicta - And can-

not form the basis of appeal (H10) *Amobi v. Nzegwu* (2013) 8-12 KLR (pt. 336) 3953

COURTS - Appeals - Perverse finding - Meaning - Decision is perverse when it runs counter to pleadings and evidence on record - Or where the affected court considered matters - Which it ought not to have taken into account (H1) *Olaniyan v. Fatoki* (2013) 7 KLR (pt. 335) 3829

COURTS - Appeals - Preliminary objection - Determination - Appellate court will take such objection as threshold issue - Provided it will be decisive of question of competence of the appeal (H3) *Ekunola v. CBN* (2013) 4 KLR (pt. 327) 1621

COURTS - Appeals - Record of appeal - Binding nature of - Appellate courts are not only bound by the record - But also bound to examine the state of same - On conflicting claims of parties (H1) *Audu v. FRN* (2013) 1 KLR (pt. 322) 53

COURTS - Appeals - Record of proceedings - Binding nature of - Appellate court is bound by the record - But Supreme Court can by virtue of SC Act s. 22 - Amend any defect in the record (H3) *Arum v. Nwobodo* (2013) 4 KLR (pt. 327) 1583

COURTS - Appeals - Retrial - Confession - As Exhibit C upon which trial court can solely convict appellant - Has made out prima facie case against him - It is necessary that he offers explanations at the trial de novo ordered by CA (H2) *Adeyemi v. State* (2013) 4 KLR (pt. 328) 1771

COURTS - Appeals - Retrial - Improper arraignment - Retrial was rightly ordered by CA - After it nullified the trial of appellant - Since the trial Judge did not take his plea upon arraignment (H3) *Adeyemi v. State* (2013) 4 KLR (pt. 328) 1771

COURTS - Appeals - Retrial order - Basis - Appellate court will inter alia order retrial - Where there is error in law - That did not render trial a nullity - And it cannot also be said that there is no miscarriage of justice (H2) *Mpama v. First Bank Nig. Plc* (2013) 1 KLR (pt. 322) 113

COURTS - Appeals - Reversal of judgment - Jurisdiction - CA can reverse itself where it earlier ruled - That lower court has no jurisdiction - Provided fresh arguments arose in the same case - As between same parties (H2) *Abiola & Sons Bottling Co. Ltd v. First City Merchant Bank Ltd* (2013) 4 KLR (pt. 327) 1501

COURTS - Appeals - Right of appeal - By 1999 Constitution s. 233 -

Every aggrieved party has right to challenge - Decision of C. A. in S.C. - And the right cannot be denied by any subsidiary legislation (H1) Imegwu v. Okolocha (2013) 1-2 KLR (pt. 323) 433

COURTS - Appeals - Right of appeal - Ground of law - 1999 Constitution s. 241(a)(b) - Where ground involves questions of law alone - Appeal would be as of right - But other appeals shall be by leave of either trial or appellate court (H2) Organ v. Nig. Liquefied Natural Gas Ltd. (2013) 7 KLR (pt. 334) 3521

COURTS - Appeals - Right of appeal - Grounds of law - Abubakar v. Waziri - Leave is not required where ground is of law - And appeal shall lie as of right from decisions of CA to SC (H3) Abdul v. CPC (2013) 12 KLR (pt. 338) 4409

COURTS - Appeals - Right of appeal - Guarantee - Court must ensure that the right as enshrined in the Constitution - Are neither unduly fettered nor frustrated (H4) Duru v. Federal Republic of Nigeria (2013) 2 KLR (pt. 324) 705

COURTS - Arraignment - Plea taking - Plea by accused upon arraignment is a matter of procedural law - And any defect therein renders proceedings a nullity - As it affects jurisdiction of court (H2) Ganiyu v. State (2013) 4 KLR (pt. 327) 1661

COURTS - Bail - Consideration for - Since the error of not taking appellant's plea was caused by the trial court - It will be just if that court considers his application for bail - Pending determination of the case (H3) Lasisi v. State (2013) 5 KLR (pt. 330) 2419

COURTS - Bias - Allegation of - Where a Judge is accused of bias - He is expected to disqualify himself - From hearing the case (H8) Egwemi v. State (2013) 1-2 KLR (pt. 323) 325

COURTS - Charges - Arraignment - Requirements - Accused must be placed before court unfettered - Charge read and explained to him in language he understands - And he is called upon to plea thereto (H1) Ibrahim v. State (2013) 12 KLR (pt. 337) 4273

COURTS - Charges - Contract - Tender splitting - Exhibit P3 subjects erring public officer to disciplinary action under Civil Service Rules - Hence officer who breached provisions of the exhibit - Cannot be criminally prosecuted in court (H4) Maideribe v. FRN (2013) 12 KLR (pt. 337) 4321

COURTS - Charges - Preferment - Application for leave - By CPC s. 185(b) - Annexure of witnesses' statements is not vital - As appellant

is only required to show court - Why respondent should be put to trial (H1) FRN v. Wabara (2013) 1-2 KLR (pt. 323) 357

COURTS - Charges - Preferment - Jurisdiction - Appellant having entered FCT was rightly charged in its HC - As entry required in Penal Code s. 4(2)(b) - And the decision in Njoven's case were satisfied (H11) Nnakwe v. State (2013) 7 KLR (pt. 333) 3273

COURTS - Charges - Summary trial - Unfavourable condition to accused - Where accused is not satisfied with the information attached - He is expected to apply to the court (H8) Uwazuruike v. A-G Federation (2013) 4 KLR (pt. 328) 1953

COURTS - Company law - Companies & allied matters - Jurisdiction - By 1991 Decree No. 60 s. 7(1) & other enabling laws - Federal High Court was conferred with exclusive jurisdiction - Over such matters (H1) Abiola & Sons Bottling Co. Ltd v. First City Merchant Bank Ltd (2013) 4 KLR (pt. 327) 1501

COURTS - Competence - Basis - Court is competent to hear matter - When the subject matter is within its jurisdiction - No feature in the case prevents it from exercising jurisdiction - And is properly constituted as regards its members (H2) Amobi v. Nzegwu (2013) 8-12 KLR (pt. 336) 3953

COURTS - Competence - Defect in - If the composition of a panel changes while oral evidence is still being taken - And a reconstituted panel reaches a decision - That decision is a nullity (H6) Arum v. Nwobodo (2013) 4 KLR (pt. 327) 1583

COURTS - Competence - Principles - Court is competent to adjudicate over matter when inter alia - It is properly constituted - Subject matter is within its jurisdiction - And the case is initiated by due process of law (H10) Musaconi Ltd. v. Aspinall (2013) 6 KLR (pt. 331) 2695

COURTS - Competence of - Basis - Court is competent when it is properly constituted - With the subject matter within its jurisdiction - And the case initiated by due process of law (H8) Nnakwe v. State (2013) 7 KLR (pt. 333) 3273

COURTS - Competence of - Court is competent when inter alia - It is properly constituted - With the subject matter of the case within its jurisdiction - And the case initiated by due process of law (H4) Obaro v. Hassan (2013) 1-2 KLR (pt. 323) 491

COURTS - Confession - Conviction - Without corroboration a confession can sustain conviction - Provided court is satisfied of the truth

therein (H1) Stephen v. State (2013) 3 KLR (pt. 326) 1417

COURTS - Confession - Retraction - Statement is retracted when accused admits making same - But denies making it voluntarily - Court is then expected to determine if the statement is voluntary before admitting it (H4) Ibrahim v. State (2013) 12 KLR (pt. 337) 4273

COURTS - Confession - Retraction - The fact that accused resiled from his confession - Does not negatively affect evaluation of evidence made by court (H2) Musa v. State (2013) 2 KLR (pt. 324) 749

COURTS - Confession - Retraction - Weight - In determining weight to be attached to retracted confession - Court is to test its truthfulness by examining the statement - In the light of other available credible evidence (H7) Agboola v. State (2013) 5 KLR (pt. 329) 2019

COURTS - Confession - Retraction - Where accused denies making a confession - Court shall admit the statement - Without holding trial within trial (H3) Ibeme v. State (2013) 1-2 KLR (pt. 323) 379

COURTS - Confession - Trial within trial - Once objection is made against voluntariness of confession - Court must stop further proceedings - To conduct trial within trial (H1) Ibeme v. State (2013) 1-2 KLR (pt. 323) 379

COURTS - Confession - Validity - Having found exhibit H as voluntarily made - Trial court rightly relied on same in convicting appellant (H4) Abiodun v. State (2013) 4 KLR (pt. 328) 1753

COURTS - Confession - Validity - Once court is satisfied with genuineness of confession - Conviction can be based on it entirely - And such will not be disturbed on appeal (H6) Osuagwu v. State (2013) 1 KLR (pt. 322) 223

COURTS - Confession - Voluntariness - Test - Court conducts trial within trial on admissibility of such statement - And it is prosecution that begins first - As it will be wrong to call on accused to start calling witness first (H3) Oguno v. State (2013) 12 KLR (pt. 338) 4529

COURTS - Constitution - Amendment - Court is not competent to alter the Constitution - As such duty is in the exclusive domain of the legislature (H2) Oni v. Fayemi (2013) 5 KLR (pt. 330) 2497

COURTS - Constitutional law - Federal HC - Jurisdiction - 1999 Constitution s. 251(1)(p)(q)(r)- Applicability - To determine application of the provisions - Subject matter and parties in the action must be examined (H8) Ahmed v. Ahmed (2013) 7 KLR (pt. 335) 3561

COURTS - Constitutional law - Jurisdiction - 1999 Constitution 5<sup>th</sup> schdl - Breach of - Para.12 gives exclusive jurisdiction to Code of Conduct Tribunal - Powers of regular courts are thereby ousted (H4) Ahmed v. Ahmed (2013) 7 KLR (pt. 335) 3561

COURTS - Constitutional law - Jurisdiction - Federal High Court - Exclusive jurisdiction is vested on the court by 1999 Constitution s. 251(1)(p)(q)(r) - Over matters in which Fed. Govt. or its agency is a party (H3) Inegbedion v. Selo-Ojemen (2013) 1 KLR (pt. 322) 69

COURTS - Contempt of - Meaning - This is conduct that defies authority of court or legislature - And since it interferes with administration of justice - It is punishable by fine or imprisonment (H1) Abeke v. Odunsi (2013) 5 KLR (pt. 330) 2285

COURTS - Contracts - Binding nature of - Parties are bound by terms of agreement freely entered into - And court must give effect to such agreement - And is not to make a new one (H4) Aminu Ishola Investment Ltd v. Afribank Plc (2013) 2 KLR (pt. 325) 1025

COURTS - Contracts - Dispute - Court - Jurisdiction - Where performance of the contract took place in Kano State - It is Kano and not Zamfara State High Court that has jurisdiction (H8) Dangote Textile Ltd. v. Hascon Asso. Nig. Ltd. (2013) 5 KLR (pt. 329) 2049

COURTS - Contracts - Interest - Basis - Where appellant claimed 45% interest per month - Trial court's award of 45% interest per annum - Is awarding what was not claimed in statement of claim or oral evidence (H10) Abba v. SPDC Nig. Ltd. (2013) 4 KLR (pt. 327) 1473

COURTS - Conviction - Based on confession - Conviction - Based on confession - Conviction may be based on confession - Where the statement is voluntarily positive - And court is satisfied with its truth (H6) Agboola v. State (2013) 5 KLR (pt. 329) 2019

COURTS - Costs - Award - Purpose of - Costs are to compensate successful party - Without being punitive to unsuccessful party - And wrong exercise of discretion on costs - Can be varied by CA under s. 16 of its Act (H4) Olusanya v. Osineye (2013) 5 KLR (pt. 329) 2225

COURTS - Court martial - Fair hearing - Sentence - Review of - By Armed Forces Act s. 149 - A convict has 3 months to appeal for a review - And is also allowed by s. 154(6) to appeal to CA - And thereafter to SC (H3) Odunlami v. Nigerian Navy (2013) 6 KLR (pt. 331) 2721



COURTS - Crime - Pretrial - CPL s. 340(2)(b) - A Judge is enjoined by the provision to examine proofs of evidence of offence - So as to determine whether or not the offence is one requiring to put accused on trial (H9) Babatunde v. State (2013) 6 KLR (pt. 332) 2895

COURTS - Crime - Pretrial - Fair hearing - Breach - Fair hearing cannot be raised against quasi judicial function of a Judge - Being performed under CPL s. 340(2)(b) - As such does not constitute a trial (H10) Babatunde v. State (2013) 6 KLR (pt. 332) 2895

COURTS - Crime - Trial - Absence of accused - Exception - Accused must be tried in his presence - Except where he is kept out of court in the interest of public safety - Due to violent tendencies (H4) State v. Lawal (2013) 2 KLR (pt. 325) 1181

COURTS - Criminal procedure - Alibi - Proof - Onus is not on accused to establish alibi - To the satisfaction of court - But for prosecution to disprove it (H3) Osuagwu v. State (2013) 1 KLR (pt. 322) 223

COURTS - Criminal procedure - Arraignment - Requirements - Accused must be brought to court unfettered - With the charge read and explained to him - And his pleas are taken thereto (H1) Omokuwajo v. FRN (2013) 3 KLR (pt. 326) 1365

COURTS - Criminal procedure - Charge - Arraignment - CPA s. 215 does not require that notes be made - In record of proceedings of name of the court official - Who read and explained the charge to accused (H2) Omokuwajo v. FRN (2013) 3 KLR (pt. 326) 1365

COURTS - Criminal procedure - Commencement - Power of AG - By Constitution 1999 ss. 174 & 211 - AG Federation & State can institute criminal proceedings - Against any person before any court in Nigeria - Other than a Court Martial (H1) Sadiku v. State (2013) 5 KLR (pt. 330) 2521

COURTS - Criminal procedure - Confession - Conviction - Court can convict upon a confession - Once it is satisfied that the confession is voluntary (H2) Mmamman v. FRN (2013) 1-2 KLR (pt. 323) 459

COURTS - Criminal procedure - Confession - Conviction - Court can convict accused only on his confession - Where the statement is found to be direct and unequivocal (H2) Lasisi v. State (2013) 3 KLR (pt. 326) 1313

COURTS - Criminal procedure - Consistency in - Prosecution should be consistent in prosecuting his case at trial court as well as on appeal - As there should be no somersault (H4) George v. FRN (2013) 12

KLR (pt. 337) 4235

COURTS - Criminal procedure - Conspiracy - Ingredients - It is complete upon presumed agreement by the conspirators - And court must be satisfied with evidence of complicity of accused (H8) *Osuagwu v. State* (2013) 1 KLR (pt. 322) 223

COURTS - Criminal procedure - Defence - Determination of - Court should consider the defence of an accused - No matter how stupid or unreasonable it appears (H2) *State v. Isiaka* (2013) 5 KLR (pt. 329) 2243

COURTS - Criminal procedure - Interpreter - Need for - Accused who is not represented by counsel - And does not understand court's language - Must be provided with interpreter - Otherwise it will amount to breach of fair hearing (H1) *Egwemi v. State* (2013) 1-2 KLR (pt. 323) 325

COURTS - Criminal procedure - Judicial bias - Comments made by the trial Judge in his ruling on voluntariness of appellants' statements - Did not show a likelihood of bias against appellants - In respect of the substantive trial (H1) *Babarinde v. State* (2013) 8-12 KLR (pt. 336) 3995

COURTS - Criminal procedure - Retrial - Principles - *Abodundu's* case - Retrial order is made where there has been error in law - Which neither renders the trial a nullity - Nor can court say there is no miscarriage of justice (H2) *Mohammed v. State* (2013) 1 KLR (pt. 322) 99

COURTS - Criminal procedure - Sentence - Statutory provision - S. 11(1) of the Cultism Prohibition Law - Does not give court discretion - To reduce the punishment provided therein (H2) *Stephen v. State* (2013) 3 KLR (pt. 326) 1417

COURTS - Customary court - Procedure - Strict rules of pleadings and application of Evidence Act - Are not observed in the court - But decision therein must be based on common sense (H4) *Oguanuhu v. Chiegboka* (2013) 1-2 KLR (pt. 323) 521

COURTS - Customary court's judgment - Appraisal of - It is the substance and not the form of the judgment - That must be considered - So as not to undermine the real essence therein (H3) *Oguanuhu v. Chiegboka* (2013) 1-2 KLR (pt. 323) 521

COURTS - Customary courts - Proceedings - Trials in the court is on substance and not form - And appellate court must respect decisions therefrom - Provided nothing therein contravenes the law (H9) *Arum*

v. Nwobodo (2013) 4 KLR (pt. 327) 1583

COURTS - Damages - Award - Interference - Appellate court does not interfere with award made by trial court - Unless the latter acted on wrong principle of law - Or that the amount awarded is extremely high or ridiculously small (H4) Ighreriniovo v. S.C.C. Nig. Ltd. (2013) 4 KLR (pt. 328) 1853

COURTS - Damages - Award - Purpose - The intention is to compensate plaintiff for financial loss and sufferings caused by injury - And a Judge should consider the purchasing power of naira - At the time of judgment (H3) Ighreriniovo v. S.C.C. Nig. Ltd. (2013) 4 KLR (pt. 328) 1853

COURTS - Damages - Award - Sustainability - As no evidence was taken in HC - The alleged trespass leading to award of N500,000 damages was not proved - And CA was in error to affirm the award (H5) Gbadamosi v. Akinloye (2013) 7 KLR (pt. 333) 3225

COURTS - Damages - General damages - Award of - This may be awarded where a Judge cannot point out any measure - By which they are to be assessed - Except the opinion of a reasonable man (H2) Oando Nig. Plc. v. Adjire W. A. Ltd. (2013) 5 KLR (pt. 330) 2459

COURTS - Declaratory relief - Grant - Principles - Court must exercise its discretion judicially and judiciously - And should carefully weigh evidence on imaginary scale (H8) INEC v. Atuma (2013) 5 KLR (pt. 330) 2375

COURTS - Declaratory reliefs - Grant - Condition - Plaintiff must establish the reliefs to satisfaction of court - As such reliefs are not granted even on admission by defendant (H6) Nwaogu v. Atuma (2013) 12 KLR (pt. 338) 4491

COURTS - Defamation - Test - In determining whether or not a publication is libelous - Court should consider the view of a reasonable man - Who comes into contact with the words therein (H2) Ologe v. New Africa Holdings Ltd. (2013) 3 KLR (pt. 326) 1345

COURTS - Discretion - Criminal procedure - Nullity - Arraignment CPL s. 215 - The section which deals on taking of appellant's plea - Does not give room for exercise of discretion - And failure to comply with it - Renders the proceedings a nullity (H1) Lasisi v. State (2013) 5 KLR (pt. 330) 2419

COURTS - Discretion - Declaratory reliefs - Consideration of the reliefs calls for exercise of discretion - Which must be carried out judi-

cially and judiciously (H7) Nwaogu v. Atuma (2013) 12 KLR (pt. 338) 4491

COURTS - Discretion - Exercise of - Court is constitutionally empowered to do justice - But must exercise such power judicially and judiciously - Having regards to facts placed before it (H3) Ikechukwu v. Nwoye (2013) 12 KLR (pt. 337) 4305

COURTS - Discretion - Interlocutory application - Exercise of discretion - Is not appellable but must be judicious and judicial - And not whimsical or irrational (H2) Commissioner for Education v. Amadi (2013) 2 KLR (pt. 325) 1003

COURTS - Document - Wrongful admission - Where document is wrongly admitted - Court has jurisdiction to expunge it at judgment - Since judgment can only be based on legally admissible document (H2) Nwaogu v. Atuma (2013) 12 KLR (pt. 338) 4491

COURTS - Documents - Unpleaded documents - Fate - Since nothing shows that the unpleaded documents were tendered and admitted in Customary Court - They cannot be admitted on appeal (H7) Adeyefa v. Bamgboye (2013) 2 KLR (pt. 324) 647

COURTS - Election petitions - Grounds - Adherence - Where petitioner relies on a ground - It will be injustice to adverse party - For court to look for other grounds to question the petition (H4) Oshiomole v. Ehigie (2013) 1 KLR (pt. 322) 191

COURTS - Election petitions - Voters register - Objection to - To impugn content of the register - Court must be presented with something - To compare with what was available and in use - And what the proper register should be (H3) Oke v. Mimiko (2013) 8-12 KLR (pt. 336) 4077

COURTS - Elections - Declaration of winner - Electoral Act 2010 s. 141 - The section implies that before a person is returned as elected by tribunal or court - That person must have fully participated in all stages of the election (H2) CPC v. Ombugadu (2013) 7 KLR (pt. 334) 3401

COURTS - Elections - Evidence - Uncontroverted - Weight - Evidence of Osisioma Ngwa LGA being part of Abia Central Senatorial District in previous elections - Remains unchallenged and should be acted upon by court (H8) Nwaogu v. Atuma (2013) 12 KLR (pt. 338) 4491

COURTS - Elections - Federal HC - Jurisdiction - Expansion - 1999 Constitution ss. 4 & 228 empowers NA to add to jurisdictional limit

of the court - To entertain pre election matters - And Electoral Act s. 87(9) is an addition contemplated by the sections (H4) Gassol v. Tutare (2013) 12 KLR (pt. 338) 4463

COURTS - Elections - Jurisdiction - Supreme Court cannot interfere - Since the Lower courts correctly held that the matter is spent - As appellant delayed to claim his rights after the election (H2) Salim v. CPC (2013) 2 KLR (pt. 324) 829

COURTS - Elections - Legislative Houses election - Appeal - Final court - By 1999 Constitution s. 246(3) - CA decision in such election is final - And there cannot be a further appeal against same (H2) Madumere v. Okwara (2013) 6 KLR (pt. 332) 2955

COURTS - Elections - Party - Necessary party - Inclusion of INEC in the matter at Federal HC is indispensable - Because respondents' relief No. 4 claimed for an order - Mandating INEC to release voters register to appellant (H3) Abia State Ind. Elec. Com. v. Kanu (2013) 5 KLR (pt. 330) 2313

COURTS - Elections - Pleadings - Binding nature - It is not the duty of CA to fish for disqualifying factors for senatorial office - Which were not specifically raised in the question for determination (H4) Nwaogwu v. Atuma (2013) 12 KLR (pt. 338) 4491

COURTS - Elections - Pre election matters - Jurisdiction - By Electoral Act 2011 s. 87(9) - Federal High Court no longer enjoys exclusive jurisdiction over such matters (H1) Salim v. CPC (2013) 2 KLR (pt. 324) 829

COURTS - Elections - Pre election matters - Jurisdiction - It is only Federal and State High Courts that have jurisdiction in such matters - And judgment of Supreme Court is final in the matter (H6) Opara v. Amadi (2013) 6 KLR (pt. 332) 3027

COURTS - Estoppel - Res judicata - Application - A plaintiff cannot relitigate an action that has been competently decided by court - Where parties - Issues and subject matter in previous proceedings are the same (H2) Igbeke v. Okadigbo (2013) 5 KLR (pt. 330) 2351

COURTS - Evidence - Civil matters - Standard of proof - Civil cases are decided on preponderance of evidence - As Judge is expected to weigh evidence of both sides on imaginary scale - To determine where the pendulum will tilt (H10) Ajibulu v. Ajayi (2013) 12 KLR (pt. 337) 4153

COURTS - Evidence - Confession - Evaluation - Decision of trial court in trial within trial which is on credibility of witnesses - Is not to

be interfered with by appellate court (H2) *Abiodun v. State* (2013) 4 KLR (pt. 328) 1753

COURTS - Evidence - Contradiction - Court is only concerned with testimony on material facts - And not on peripherals that have no bearing on the substance in issue (H10) *Egwemi v. State* (2013) 1-2 KLR (pt. 323) 325

COURTS - Evidence - Conviction - Correctness of - Court can convict on evidence of one witness - If such evidence is credible - And it is believed and accepted by court (H3) *Victor v. State* (2013) 6 KLR (pt. 331) 2763

COURTS - Evidence - Crime - Sworn evidence - Contradiction of - Counsel may use statements obtained during investigation - For purposes of cross examination - To contradict such evidence in open court (H3) *Olatinwo v. State* (2013) 1-2 KLR (pt. 323) 541

COURTS - Evidence - Evaluation - Ascription of probative value to evidence - Is primary function of trial court - And appellate court does not substitute its own view - For that of trial court (H1) *State v. Rabi* (2013) 1-2 KLR (pt. 323) 563

COURTS - Evidence - Evaluation - Evaluating and drawing inference from accused's statement - Is the duty of trial court - Which appellate courts do not enjoy the advantage of doing (H3) *Lasisi v. State* (2013) 3 KLR (pt. 326) 1313

COURTS - Evidence - Evaluation - Finding of fact involves perception and evaluation - And it is not for appeal court to evaluate evidence - As that is primary duty of trial court (H1) *Odutola v. Mabogunje* (2013) 1 KLR (pt. 322) 161

COURTS - Evidence - Evaluation - Interference - Where credibility of witnesses is not involved - But complaint is against improper evaluation - Appellate court is in as good a position as trial court - To do its own evaluation (H8) *FBN Plc v. Ozokwere* (2013) 12 KLR (pt. 337) 4203

COURTS - Evidence - Evaluation - Interference - Where trial court failed to properly evaluate evidence - Appeal court can interfere - By making proper findings justified by evidence (H2) *State v. Rabi* (2013) 1-2 KLR (pt. 323) 563

COURTS - Evidence - Evaluation - Is the primary responsibility of trial court - And once properly done - Appellate court cannot interfere - Unless the decision is perverse and has occasioned miscarriage of justice (H7) *FBN Plc v. Ozokwere* (2013) 12 KLR (pt. 337) 4203

COURTS - Evidence - Evaluation - Mogaji v. Odofin - Trial court is bound to evaluate evidence adduced by parties - For the purpose of arriving at a right conclusion - In adjudication of the case before it (H6) Chukwu v. Akpelu (2013) 12 KLR (pt. 337) 4177

COURTS - Evidence - Evaluation - Trial court ascribes probative value to evidence - And appellate court does not interfere - Save where the evaluation was perverse - Or not supported by evidence on record (H3) Adebayo v. PDP (2013) 4 KLR (pt. 327) 1523

COURTS - Evidence - Evaluation - Trial court assesses demeanour of witnesses - And appellate court does not interfere with findings reached thereat - Unless where such findings are perverse - Or based on evidence not legally admissible (H11) Ajibulu v. Ajayi (2013) 12 KLR (pt. 337) 4153

COURTS - Evidence - Evaluation - Trial court evaluates and ascribes probative value to evidence - Appellate court does not interfere where credibility of witness is involved - Save where the decision is by wrong inference (H4) Garan v. Olomu (2013) 4 KLR (pt. 327) 1675

COURTS - Evidence - Evaluation - Trial court has primary duty to ascribe probative value - On evidence placed before it - But appellate court steps in - When trial court fails to perform the duty (H5) Oguanuhu v. Chiegboka (2013) 1-2 KLR (pt. 323) 521

COURTS - Evidence - Expert opinion - Admissibility - Court is not bound to accept evidence of any expert - Even one who has not disclosed motive - Other than helping the court in the quest for justice (H4) Akeredolu v. Mimiko (2013) 8-12 KLR (pt. 336) 3895

COURTS - Evidence - Inadmissible document - Weight - Such document is invalid for all intents and purposes - As it cannot form the basis of any competent finding of court (H1) Nwaogu v. Atuma (2013) 12 KLR (pt. 338) 4491

COURTS - Evidence - Inconsistency in - Effect - Appellant's evidence at trial is unreliable - And his previous statement does not constitute evidence upon which court can act - And both are no defence to the murder charge (H2) Dogo v. State (2013) 3 KLR (pt. 326) 1249

COURTS - Evidence - Unchallenged evidence - As respondents did not deny the facts giving rise to the accident - Evidence given for appellant is credible - And should be accepted and acted upon by the court (H2) Ighreriniovo v. S.C.C. Nig. Ltd. (2013) 4 KLR (pt. 328) 1853

COURTS - Evidence - Unchallenged evidence - Effect - Such evidence stands - And court should accept and act on same (H3) Nigerian Army v. Warrant Officer Banni Yakubu (2013) 1-2 KLR (pt. 323) 471

COURTS - Evidence - Unchallenged evidence - Weight - For failure of appellant to call the vital witnesses - Court may by Evidence Act s. 167(c) & decision in Ogbuanyinya's case - Draw inference as to existence of facts - Where there is no evidence to the contrary (H1) Olusanya v. Osineye (2013) 5 KLR (pt. 329) 2225

COURTS - Evidence - Unchallenged facts - Fate - Averments that are not specifically denied - Are deemed as accepted - And court can act on them (H3) Ugwuanyi v. NICON Insurance Plc (2013) 1-2 KLR (pt. 323) 587

COURTS - Fair hearing - Breach - Allegation of - The principle cannot avail appellant - As he was properly served with the process - And it is not for court to compel him to act on the opportunity presented (H12) Ahmed v. Ahmed (2013) 7 KLR (pt. 335) 3561

COURTS - Fair hearing - Breach - Effect - Once there is breach of fair hearing - The whole proceedings and decision arrived at by court - Becomes a nullity (H4) Audu v. FRN (2013) 1 KLR (pt. 322) 53

COURTS - Fair hearing - Principle - Fundamentality of - Under Constitution 1999 s. 36 (1) - A person shall be entitled to fair hearing by a court or tribunal - That is constituted in such a manner - As to secure its independence and impartiality (H1) Judicial Service Commission of Cross River State v. Young (2013) 5 KLR (pt. 329) 2129

COURTS - Federal HC - Jurisdiction - By 1999 Constitution s. 251(1)(P)(r) - Exclusive jurisdiction is vested in the court in civil causes and matters - Affecting the administration and management of the Federal Government (H1) Gassol v. Tutare (2013) 12 KLR (pt. 338) 4463

COURTS - Federal High Court - Divisions - There are several divisions of the court - But their decisions are not binding on each other - As they are courts of coordinate jurisdiction (H3) Uwazuruike v. AG Federation (2013) 4 KLR (pt. 328) 1953

COURTS - Federal High Court - Jurisdiction - By 1999 Constitution s. 251 - The court exercises jurisdiction - Once any of the parties is Federal government or any of its agencies (H2) Abia State Ind. Elec. Com. v. Kanu (2013) 5 KLR (pt. 330) 2313

COURTS - Federal High Court - Jurisdiction - Mines & minerals - By



Constitution 1979 s. 230(i)(a) - Jurisdiction of State HC on the subject and allied matters is ousted - But is given exclusively to FHC (H4) NNPC v. Orhiowasele (2013) 4 KLR (pt. 327) 1719

COURTS - Federal High Court - Jurisdiction - Treason - By 1999 Constitution s. 251(2) - The court can summarily try treason - Treasonable felony - And allied offences (H4) Uwazuruike v. A-G Federation (2013) 4 KLR (pt. 328) 1953

COURTS - Foreign court - Jurisdiction - Determination - By Foreign Judgment (Reciprocal Enforcement) s. 6 - The court shall inter alia have jurisdiction - Where judgment is given in action in personam (H2) Vab Petroleum Inc. v. Momah (2013) 1 KLR (pt. 322) 249

COURTS - Function - Court is simply an arbiter that decides matter as presented by parties - Thus it is not to examine disqualifying factors for senatorial office - Which were not specifically raised in issue (H4) INEC v. Atuma (2013) 5 KLR (pt. 330) 2375

COURTS - Fundamental rights - Enforcement - Jurisdiction - As rule of law must be maintained always - Trial court acted within its power - When it heard 1<sup>st</sup> respondent's application for enforcement of his rights (H2) Denton-West v. Jack (2013) 12 KLR (pt. 338) 4435

COURTS - Hearing - Academic issues - Courts do not make pronouncement on academic issues - As no useful purpose is served by so doing (H2) Oke v. Mimiko (2013) 5 KLR (pt. 329) 2195

COURTS - Identification - Mistake in - Where accused alleges that there is mistake in his identity - Court must closely examine the evidence - As weakness discovered therein leads to giving accused the benefit of doubt (H3) Afolabi v. State (2013) 6 KLR (pt. 332) 2841

COURTS - Improper arraignment - Effect - Arraignment touches on jurisdiction of court - The breach of which is capable of rendering the totality of proceedings null and void (H2) Ibrahim v. State (2013) 12 KLR (pt. 337) 4273

COURTS - Inference - Criminal procedure - Identification - The testimony given by PW3 positively identified respondent as the culprit - And the learned trial Judge rightly drew inference from same (H3) State v. Isiaka (2013) 5 KLR (pt. 329) 2243

COURTS - Insanity - Procedure to adopt - CPL ss. 223 & 224 - When the issue is raised - Court is expected to put the trial on hold - And inquire into the sanity of accused - To see if he can continue with his trial or not (H1) Popoola v. State (2013) 7 KLR (pt. 335) 3873

COURTS - Issue - Determination - Court decides live issues between the evidence and prevailing law - And does not manufacture evidence for parties - As a party wins on the strength of his evidence (H5) Ayan v. State (2013) 7 KLR (pt. 335) 3717

COURTS - Issue - Determination - Court should not make case different from the one made by parties - Hence since question 2 was not founded on any material evidence - It ought not to have been entertained by CA (H3) INEC v. Atuma (2013) 5 KLR (pt. 330) 2375

COURTS - Issue - Suo motu raising - Court can raise issue suo motu - But must call on parties to address it on the said issue - Otherwise it would be breach of fair hearing - And decision reach thereat is liable to be set aside (H5) Adebayo v. PDP (2013) 4 KLR (pt. 327) 1523

COURTS - Issues - Determination - Limit - Courts do not determine academic issues - That are far removed from the real issues - In controversy between the parties (H2) FRN v. Wabara (2013) 1-2 KLR (pt. 323) 357

COURTS - Issues - Determination - Limit - Courts should not spend time on academic issues - But determine live issues - That would meet ends of justice (H3) Mmamman v. FRN (2013) 1-2 KLR (pt. 323) 459

COURTS - Issues - Determination - Sagay v. Sajere - To arrive at just decisions - Court must not only ascertain the facts in contention - But also deftly apply the law relevant to the issue (H2) Duru v. Federal Republic of Nigeria (2013) 2 KLR (pt. 324) 705

COURTS - Judgment - Review - The court became functus officio after granting the order of mandamus - But can revisit same where application is made timeously - To set aside the order for default of appearance (H5) Associated Discount House Ltd. v. Minister of FCT (2013) 2 KLR (pt. 324) 685

COURTS - Judgments - Concurring judgments - By 1979 Constitution s. 258(3) - Where decision of court consists of more than one Judge - The concurring opinion of the majority - Shall be the binding judgment (H5) Arum v. Nwobodo (2013) 4 KLR (pt. 327) 1583

COURTS - Judgments - Declaratory judgment - Appeal - Relief - Where court delivers such judgment - Party appealing may be granted injunction - But never a stay of execution pending determination of appeal (H3) Olabomi v. Oyewole (2013) 7 KLR (pt. 333) 3319

COURTS - Judgments - Declaratory judgment - Execution - As judgment of trial court in suit no. HAU/72/95 was declaratory - There is nothing in it that required application for stay of execution (H7) Alims Nig. Ltd. v. United Bank for Africa (2013) 1 KLR (pt. 322) 35

COURTS - Judgments - Delivery - Delay in - Effect - The delay did not affect the trial court's judgment - As issues raised were considered and resolved - And no miscarriage of justice was shown to have been suffered by appellant (H1) Atungwu v. Ochekwu (2013) 7 KLR (pt. 335) 3681

COURTS - Judgments - Foreign currency - Award - Foreign currency judgments are within the general jurisdiction of courts in Nigeria - Depending on facts of the cases (H5) FBN Plc v. Ozokwere (2013) 12 KLR (pt. 337) 4203

COURTS - Judgments - Foreign judgment - Registration time - The judgment is registered within twelve months after the judgment - And within such longer period - As the High Court will allow (H11) Vab Petroleum Inc. v. Momah (2013) 1 KLR (pt. 322) 249

COURTS - Judgments - Obiter dictum - In resolving an issue - The Judge can make comment which is usually harmless - And such is considered as obita dictum - That does not constitute the decision of court (H6) Adebayo v. PDP (2013) 4 KLR (pt. 327) 1523

COURTS - Judgments - Perverse decision - Meaning - It is one which ignores evidence before court - And which results in miscarriage of justice (H10) FBN Plc v. Ozokwere (2013) 12 KLR (pt. 337) 4203

COURTS - Judicial immunity - HC Laws of Eastern Nig s. 55(1) - Appellant is not protected by the section - As he went outside circumstances created by the law - And thereby failed to meet the requirement for immunity (H1) Denton-West v. Jack (2013) 12 KLR (pt. 338) 4435

COURTS - Judicial precedents - Kojo v. Bonsie - Principle - Where traditional evidence of parties are inconclusive - Court should consider recent facts - To determine which of the evidence is probable (H3) Matanmi v. Dada (2013) 2 KLR (pt. 324) 725

COURTS - Judicial precedents - Stare decisis - Application - Appellant should not expect CA to prefer dictum of HC judge - Over that of a judge in an appellate court - As the doctrine does not operate in such a manner (H2) Uwaifo v. Uwaifo (2013) 4 KLR (pt. 327) 1737

COURTS - Judicial precedents - Stare decisis - Principle of - It states that lower courts are bound to follow principles of law - Established

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in prior cases by superior courts - As such helps to steady justice on its proper course (H2) Nigerian Bottling Co. Plc v. Ubani (2013) 8-12 KLR (pt. 336) 4027

COURTS - Judicial precedents - Stare decisis - Purpose - Point of law that has been settled by superior court - Should be followed by lower court - In order to avoid confusion (H3) George v. FRN (2013) 12 KLR (pt. 337) 4235

COURTS - Judicial precedents - Stare decisis - Purpose - The principle is that lower courts are bound by ratio decidendi of higher courts - To ensure uniformity in decision making - And enhance development of coherent body of laws (H10) Nnakwe v. State (2013) 7 KLR (pt. 333) 3273

COURTS - Jurisdiction - Absence of - Effect - Where court lacks jurisdiction - All proceedings it conducts - Including ruling or judgment - Is a nullity (H3) Abiola & Sons Bottling Co. Ltd v. First City Merchant Bank Ltd (2013) 4 KLR (pt. 327) 1501

COURTS - Jurisdiction - Absence of - Where court fails to pronounce whether or not it has jurisdiction - Once the law or subject matter before the court divested it of jurisdiction - Then jurisdiction does not reside in it (H1) Vab Petroleum Inc. v. Momah (2013) 1 KLR (pt. 322) 249

COURTS - Jurisdiction - Basis - Court assumes jurisdiction in criminal trial - Where justice will be attained by it - And accused was apprehended within its judicial division - As well as for convenience of witnesses (H6) Nnakwe v. State (2013) 7 KLR (pt. 333) 3273

COURTS - Jurisdiction - Basis - For court to assume jurisdiction over a matter - The matter must be commenced by due process of law - And upon fulfillment of any condition precedent (H4) Nworah v. Nwabueze (2013) 5 KLR (pt. 330) 2431

COURTS - Jurisdiction - Court of Appeal - Court martial - By 1999 Constitution s. 240 - C.A. is given exclusive appellate jurisdiction - Over decisions of general court martial (H1) Nigerian Army v. War-rant Officer Banni Yakubu (2013) 1-2 KLR (pt. 323) 471

COURTS - Jurisdiction - Determination - Basis - For court to assume jurisdiction - The subject matter must be within its jurisdiction - With no feature in the case preventing it - And the case must be initiated by due process of law (H3) NNPC v. Orhiowasele (2013) 4 KLR (pt. 327) 1719

COURTS - Jurisdiction - Determination - Basis - To ascertain jurisdic-

tion of court in a matter - Writ of summons and statement of claim - Are the most crucial processes to be examined (H7) Ahmed v. Ahmed (2013) 7 KLR (pt. 335) 3561

COURTS - Jurisdiction - Determination - Jurisdiction of court in a suit - Is based on plaintiff's averments in the statement of claim - And the reliefs claimed therein (H6) Osoh v. Unity Bank Plc. (2013) 2 KLR (pt. 325) 1133

COURTS - Jurisdiction - Election - Nomination - The matter is not within exclusive jurisdiction of Federal HC - As relief 7 cannot be construed as challenging the decision of 4<sup>th</sup> respondent - In recognizing 1<sup>st</sup> respondent as candidate of CPC (H9) Ahmed v. Ahmed (2013) 7 KLR (pt. 335) 3561

COURTS - Jurisdiction - Election - Pre election matters - Jurisdiction conferred on Federal High Court by NA under Electoral Act s. 87(9) - Has not been taken away by 1999 Constitution (H3) Gassol v. Tutare (2013) 12 KLR (pt. 338) 4463

COURTS - Jurisdiction - Elections - Pre election - Electoral Act s. 87(9) & Lado's case - Are not applicable to this case - As 2<sup>nd</sup> appellant is not aspirant - And his complaint is not founded on nomination (H1) CPC v. Ombugadu (2013) 7 KLR (pt. 334) 3401

COURTS - Jurisdiction - Fundamental nature - Jurisdiction should be determined once raised - Since if court lacks jurisdiction to hear and determine case - The proceedings remain a nullity ab initio (H5) Alims Nig. Ltd. v. United Bank for Africa (2013) 1 KLR (pt. 322) 35

COURTS - Jurisdiction - Fundamental rights - Ifegwu's case - Appellant's right to seek redress for breach of his right is not terminated - By reason of CA final judgment in the election proceedings - As such right can be pursued in a competent court (H7) Opara v. Amadi (2013) 6 KLR (pt. 332) 3027

COURTS - Jurisdiction - Fundamentality - Jurisdiction is threshold issue that must first be resolved - Since if court lacks jurisdiction to hear a matter - The entire proceedings no matter how well conducted would amount to nullity (H1) Amobi v. Nzegwu (2013) 8-12 KLR (pt. 336) 3953

COURTS - Jurisdiction - Fundamentality of - It can be raised at any stage of a proceeding - And cannot be compromised - As court that acts without jurisdiction - Acts in futility (H6) Dangote Textile Ltd. v. Hascon Asso. Nig. Ltd. (2013) 5 KLR (pt. 329) 2049

COURTS - Jurisdiction - Fundamentality of - It is bedrock of adjudi-

cation that cannot be conferred by consent of parties on court - And it can be raised at any stage - As absence of same renders the whole proceeding a nullity (H7) *Nnakwe v. State* (2013) 7 KLR (pt. 333) 3273

COURTS - Jurisdiction - Fundamentality of - It is important in adjudication process - As where there is no jurisdiction in court - Every step taken in the proceedings amounts to a nullity (H8) *Musaconi Ltd. v. Aspinall* (2013) 6 KLR (pt. 331) 2695

COURTS - Jurisdiction - Fundamentality of - It should be determined at earliest opportunity - Because if court has no jurisdiction in a case - The proceedings remain a nullity ab initio - No matter how well conducted (H1) *Aladejobi v. NBA* (2013) 7 KLR (pt. 335) 3623

COURTS - Jurisdiction - Fundamentality of - Once raised all proceedings abate till resolved - It can be raised by any party including court at any stage - Absence of it renders the entire proceeding a nullity (H1) *NNPC v. Orhiowasele* (2013) 4 KLR (pt. 327) 1719

COURTS - Jurisdiction - Issue of - Objection to - Basis - Objection to competence of court is on the basis of statement of claim - Evidence received - Motion supported by affidavit setting out facts relied on - And on the face of writ of summons (H13) *Musaconi Ltd. v. Aspinall* (2013) 6 KLR (pt. 331) 2695

COURTS - Jurisdiction - Issue of - Objection to - Where there is challenge to jurisdiction of court - The court must first settle that issue - Before proceeding to hear the case on merit (H9) *Musaconi Ltd. v. Aspinall* (2013) 6 KLR (pt. 331) 2695

COURTS - Jurisdiction - Issue of - Suo motu raising - Where court raises jurisdiction suo motu - It is proper to invite address of both counsel - Before deciding one way or the other (H3) *Alims Nig. Ltd. v. United Bank for Africa* (2013) 1 KLR (pt. 322) 35

COURTS - Jurisdiction - Issue of - Time to raise - Jurisdiction can be raised at any stage of the proceedings - Either at trial court or on appeal - Even before the Supreme Court (H12) *Musaconi Ltd. v. Aspinall* (2013) 6 KLR (pt. 331) 2695

COURTS - Jurisdiction - Limitation - Courts are bound by the Constitutional provision - Wherein their powers of operation are defined - And any act outside its powers is a nullity (H5) *Eyigebe v. Iyaji* (2013) 5 KLR (pt. 330) 2329

COURTS - Jurisdiction - Meaning - It is the authority which court has to decided matters - That are litigated before it - Or take cognizance

of matters presented in a formal way for its decision (H7) Musaconi Ltd. v. Aspinall (2013) 6 KLR (pt. 331) 2695

COURTS - Jurisdiction - Meaning of - It is authority which court has to decide matters before it - And such power is controlled by statute creating the court - Or by condition precedent which must be fulfilled - Before court can entertain the suit (H2) Aladejobi v. NBA (2013) 7 KLR (pt. 335) 3623

COURTS - Jurisdiction - National Industrial Court - Trade dispute - For jurisdiction of the court to arise - It must be established that the subject matter comes within the Trade Dispute Act s. 47(1) (H7) Osoh v. Unity Bank Plc. (2013) 2 KLR (pt. 325) 1133

COURTS - Jurisdiction - Objection to - Option available - When court's jurisdiction is challenged - Court still has competence to enquire whether it has jurisdiction - To hear the case (H11) Musaconi Ltd. v. Aspinall (2013) 6 KLR (pt. 331) 2695

COURTS - Jurisdiction - Preliminary finding - Court can inquire whether it has jurisdiction over matter before it - Prior to dealing with the main matter - And such finding does not mean it has assumed jurisdiction over the matter (H3) Ahmed v. Ahmed (2013) 7 KLR (pt. 335) 3561

COURTS - Jurisdiction - Statutory conferment - Court must be satisfied that offence is directly donated - By jurisdiction conferred in the enabling law (H9) Nnakwe v. State (2013) 7 KLR (pt. 333) 3273

COURTS - Jurisdiction - Time to raise - Jurisdiction can be raised at any stage of proceedings - And in any court - Even in the Supreme Court for the first time (H7) Egwemi v. State (2013) 1-2 KLR (pt. 323) 325

COURTS - Land law - Arbitral panel - Since nothing in the law shows that the arbitrators constituted judicial tribunal - Court of Appeal rightly affirmed findings of trial court on the panels (H6) Nruamah v. Ebuzoeme (2013) 1 KLR (pt. 322) 133

COURTS - Land law - Grant - Root of title - Proof of - Where party relies and pleads a grant as his root of title - He must prove such grant to the satisfaction of court (H12) Ajibulu v. Ajayi (2013) 12 KLR (pt. 337) 4153

COURTS - Land law - Pledge - Courts - Findings - C.A. was right by holding that - Trial Judge specifically found that - The transactions in exhibit B is a pledge (H1) Ihunwo v. Ihunwo (2013) 1-2 KLR (pt. 323) 403

COURTS - Land law - Title - Grant - Nature of - It is an equitable relief that is subject to the discretion of court - Which must be of the opinion that party seeking it - Is entitled to an exercise of discretion in his favour (H1) *Tukuru v. Sabi* (2013) 3 KLR (pt. 326) 1433

COURTS - Land law - Title - Proof - Mere production of deed of conveyance - Does not automatically establish title - As court must inter alia be satisfied - That the conveyance is valid and duly executed (H4) *Olanayan v. Fatoki* (2013) 7 KLR (pt. 335) 3829

COURTS - Land law - Title - Proof - Title can be proved through any of the five modes - But one mode will suffice - If properly established to the satisfaction of court (H2) *Matanmi v. Dada* (2013) 2 KLR (pt. 324) 725

COURTS - Legal practitioners - Signing - By LPA ss. 2(1) & 24 - Only a person registered in Supreme Court - Whose name is on the roll - Is recognized as legal practitioner - Entitled to sign or file processes in courts (H4) *Nigerian Army v. Samuel* (2013) 7 KLR (pt. 334) 3385

COURTS - Master & servant - Jurisdiction - High Court - Since the action is for wrongful termination of employment and not trade dispute - The court's jurisdiction is not ousted by Trade Dispute Act s. 47(1) (H8) *Osoh v. Unity Bank Plc.* (2013) 2 KLR (pt. 325) 1133

COURTS - Master & servant - Jurisdiction - Since there was non compliance with NICON Act s. 26(2) - The court has no jurisdiction to entertain the action (H4) *Ugwuanyi v. NICON Insurance Plc* (2013) 1-2 KLR (pt. 323) 587

COURTS - Miscarriage of justice - Meaning - This occurs when judgment of court is prejudicial to right of the party concerned (H4) *Mmamman v. FRN* (2013) 1-2 KLR (pt. 323) 459

COURTS - Multiple charges - Trial of - Jurisdiction - As offences in counts 1 & 2 and those in counts 3 & 4 - Were committed in the course of same transaction - Any of the States HC where the offence(s) occurred - Can entertain the case (H12) *Nnakwe v. State* (2013) 7 KLR (pt. 333) 3273

COURTS - Murder - Confession - Medical report - Corroboration - Appellant's confessions corroborated by the medical report - Are fully descriptive of the crime - And sufficient for court to find him guilty (H2) *Usman v. State* (2013) 5 KLR (pt. 330) 2569

COURTS - Murder - Defence - Consideration of - After considering defence of accused - Court can consider other defence available to



accused - But failure to do so will not amount to miscarriage of justice (H1) *State v. John* (2013) 5 KLR (pt. 330) 2539

COURTS - Murder - Evidence - Evaluation - If trial court had properly evaluated oral evidence of prosecution witnesses - The same would have been expunged as inadmissible hearsay - Given by tainted witnesses (H7) *Odogwu v. State* (2013) 7 KLR (pt. 335) 3779

COURTS - No case submission - Court is not to determine - Whether evidence is sufficient to justify conviction - But it must be satisfied that there is a prima facie case - Against accused (H2) *Agbo v. State* (2013) 4 KLR (pt. 328) 1787

COURTS - No case submission - Principle - The submission postulates that there is no legally admissible evidence - Or that prosecution's evidence has been so discredited - That no reasonable court can convict accused on such evidence (H1) *Fagoriola v. FRN* (2013) 7 KLR (pt. 335) 3753

COURTS - No case submission - Procedure to adopt - When the submission is made - Court is not called upon to express opinion on evidence before it - But to rule that evidence exist or not - That links accused with offence charged (H2) *Fagoriola v. FRN* (2013) 7 KLR (pt. 335) 3753

COURTS - Objections - Preliminary objection - Failure to reply - Absence of counter affidavit to objection - Does not mean that the objection is conceded - As courts are enjoined to consider the objection on its merits (H1) *FRN v. Tawakalitu* (2013) 5 KLR (pt. 329) 2079

COURTS - Order - Basis - CA was wrong to have ordered that 2<sup>nd</sup> respondent had no candidate - And that 3<sup>rd</sup> respondent was not qualified to contest - As the order was not sought by the parties (H5) *INEC v. Atuma* (2013) 5 KLR (pt. 330) 2375

COURTS - Order - Proclamation - Basis - Court should not make unsolicited orders - Or grant prayers not sought by parties - As it is not a charitable organization (H5) *Nwaogu v. Atuma* (2013) 12 KLR (pt. 338) 4491

COURTS - Orders - Fair hearing - Breach - Order made by Gumel J was a nullity - Since it was made inter alia in breach of 3<sup>rd</sup> defendant's right to fair hearing (H1) *Akinrimisi v. Maerks Nig. Ltd.* (2013) 3 KLR (pt. 326) 1237

COURTS - Orders - Injunction - Purpose - The aim is to protect - An established right of the applicant (H2) *Aboseldehyde Lab. Plc. v.*

Union Merchant Bank Plc (2013) 3 KLR (pt. 326) 1205

COURTS - Orders of court - Validity of - Order made by court of competent jurisdiction is valid - Until it is declared void by court of competent jurisdiction - And party whose interest is affected - Must seek for such declaration (H2) Nidocco Ltd. v. Gbajabiamila (2013) 7 KLR (pt. 334) 3479

COURTS - Originating summons - Irregularity in - Absence of question for determination in the application - Is fundamental error - Which trial court ought not to have treated as mere irregularity (H2) Olley v. Tunji (2013) 4 KLR (pt. 328) 1905

COURTS - Ouster clause - Interpretation - Courts guard their jurisdiction jealously - And any enactment that takes away rights to court - Should be narrowly construed (H5) Nigerian Army v. Warrant Officer Banni Yakubu (2013) 1-2 KLR (pt. 323) 471

COURTS - Parties - Actions - Consistency - Party who is successful at trial court - Ought not to be confronted with new case on appeal - Simply because his adversary decided to bring his case in dribbles (H3) Adeyefa v. Bamgboye (2013) 2 KLR (pt. 324) 647

COURTS - Party - Legal representation - Where party is represented by counsel - His physical appearance to conduct the proceeding is not necessary - Except where court orders otherwise (H6) Vab Petroleum Inc. v. Momah (2013) 1 KLR (pt. 322) 249

COURTS - Party - Pleadings - Unclaimed relief - It does not lie within the power of court - To grant a relief not claimed by a party in his pleadings (H3) Eyigebe v. Iyaji (2013) 5 KLR (pt. 330) 2329

COURTS - Pleadings - Amendment - Validity - Amendment is allowed provided that averments are material - And intends to bring out real issues in controversy between parties before court - In order to avoid multiplicity of actions (H7) Nigerian Bottling Co. Plc v. Ubani (2013) 8-12 KLR (pt. 336) 4027

COURTS - Pleadings - Binding nature - As parties have settled issues of admitted and disputed facts - The High Court and CA ought to have identified same - In arriving at their decisions (H4) Gbadamosi v. Akinloye (2013) 7 KLR (pt. 333) 3225

COURTS - Pleadings - Declaratory relief - Proof - Plaintiff must establish the relief to the satisfaction of court - And such relief is not granted either in default - Or on admission by defendant (H2) INEC v. Atuma (2013) 5 KLR (pt. 330) 2375

COURTS - Pleadings - Parties - Main & alternative relief - Party can plead in the main and alternatively - But court is bound to grant only one at expense of the other - Where the latter was made ancillary to the former (H4) *Abia State Ind. Elec. Com. v. Kanu* (2013) 5 KLR (pt. 330) 2313

COURTS - Process - Abuse - Concept - This means that process of court has not been used properly - But process not filed in court - Cannot constitute abuse of process (H6) *CPC v. Ombugadu* (2013) 7 KLR (pt. 334) 3401

COURTS - Process - Abuse - Prevention - Court has inherent power to ward off abuse of its process - For purpose of maintaining its sanctity and dignity (H5) *Ogboru v. Uduaghan* (2013) 6 KLR (pt. 332) 2981

COURTS - Processes - Abuse - Dismissal - Once court is satisfied that any proceeding before it is abuse of process - It has power to strike it out (H4) *Commissioner for Education v. Amadi* (2013) 2 KLR (pt. 325) 1003

COURTS - Processes - Appeals - An initiating process must be valid - To confer jurisdiction on court - In order to adjudicate between parties on a subject matter in dispute (H2) *Okarika v. Samuel* (2013) 2 KLR (pt. 324) 807

COURTS - Processes - Error - Amendment - Mistake which is not intended to overreach the court can be corrected - And it must be done without injustice to the other party (H6) *Eta v. Dazie* (2013) 3 KLR (pt. 326) 1269

COURTS - Processes - Power to prevent abuse - By Constitution 1999 s. 6(6)(a) - Once satisfied that any proceeding before it - Is an abuse of process - Court is empowered to terminate same (H3) *Osun S.I.E.C. v. NCP* (2013) 3 KLR (pt. 326) 1401

COURTS - Processes - Service - Proof - As appellant filed no process to controvert proper service on him - Nothing exists in the record precluding trial court - From proceeding with the case (H11) *Ahmed v. Ahmed* (2013) 7 KLR (pt. 335) 3561

COURTS - Processes - Service on company - Mode of - By virtue of CAMA s. 78 - Service must comply with the rules of the particular court prevailing in the jurisdiction (H3) *Nigerian Bottling Co. Plc v. Ubani* (2013) 8-12 KLR (pt. 336) 4027

COURTS - Rape - Denial - Proof - Medical evidence - Once there is denial - The evidence is not always mandatory - As court is encour-

aged to look for such evidence - Which shows injury to private part of prosecutrix (H3) *Popoola v. State* (2013) 7 KLR (pt. 335) 3873

COURTS - Records - Arraignment - Failure to object - As appellant's counsel did not object - It is presumed that the record of compliance with CPC s. 242 is correct - And that the proceedings were translated to appellant (H3) *Ibrahim v. State* (2013) 12 KLR (pt. 337) 4273

COURTS - Relief - Basis for grant - Any one that asks for indulgence of court must place before it - All necessary materials which will assist court - In arriving at a just decision (H12) *Vab Petroleum Inc. v. Momah* (2013) 1 KLR (pt. 322) 249

COURTS - Relief - Failure to claim - Since appellant never claimed for release of its title documents - Same was never decreed in its favour - As court does not grant relief not claimed (H8) *Alims Nig. Ltd. v. United Bank for Africa* (2013) 1 KLR (pt. 322) 35

COURTS - Reliefs - Binding nature - Courts are bound by claims sought before them - And any prayer granted without being pre-claimed by parties - Is invalid (H2) *Akinrimisi v. Maerks Nig. Ltd.* (2013) 3 KLR (pt. 326) 1237

COURTS - Reliefs - Grant - Condition - For a party to be awarded relief - He must not only plead with particularity - But also prove by credible and convincing evidence - Entitlement to the relief he seeks (H4) *University of Jos v. Ikegwuoha* (2013) 12 KLR (pt. 338) 4615

COURTS - Retracted statement - Weight - Where it is confessional statement - Court can convict on strength of the confession - But there should be some corroboration (H5) *Ibrahim v. State* (2013) 12 KLR (pt. 337) 4273

COURTS - Robbery - Confession - Accused can be convicted solely on his confession - Where same is direct and properly proved (H1) *Afolabi v. State* (2013) 6 KLR (pt. 332) 2841

COURTS - Rules of court - Compliance - *Solanke v. Somefun* - Rules of court are meant to be complied with - As they regulate matters in court - And help parties to present their cases - For fair and quick trial (H4) *Asika v. Atuanya* (2013) 7 KLR (pt. 335) 3651

COURTS - Rules of court - Compliance with - Applicant who seeks indulgence of court - Must comply with its rules - Otherwise his prayers do not deserve favour of court's discretion (H3) *Imegwu v. Okolocha* (2013) 1-2 KLR (pt. 323) 433

COURTS - Rules of Court - Imo State H.C. Rules O. 37 r. 18 - Court

can only properly evaluate evidence adduced - When counsel in the matter have properly summed up (H3) *Mpama v. First Bank Nig. Plc* (2013) 1 KLR (pt. 322) 113

COURTS - Statute - Interpretation - Elect. Act etc - Words used in the provision clearly expressed intention of legislature - Hence court must give same its ordinary meaning - Unless where such is inconsistency with the rest of the legislation (H2) *Gassol v. Tutare* (2013) 12 KLR (pt. 338) 4463

COURTS - Statutes - Interpretation - Penal legislation - Interpretation of statute should not be left to whims & caprices of Judge - And conduct that carries sanction of imprisonment - Must be stated in written law (H3) *Tafidi v. FRN* (2013) 12 KLR (pt. 338) 4575

COURTS - Statutes - Interpretation - Principle - Intendment of law maker is deciphered - By assigning literal meaning - To the unambiguous words of the statute - And interpretation by court is limited to the words (H3) *Duru v. Federal Republic of Nigeria* (2013) 2 KLR (pt. 324) 705

COURTS - Statutes - Validity - Lagos Urban Planning Law Edict No. 2 of 1998 - The High Court rightly applied the Edict in dismissing appellants' alternative reliefs - As the provisions therein did not oust jurisdiction of the court (H2) *Ayida v. Town Planning Authority* (2013) 4 KLR (pt. 328) 1811

COURTS - Supervisory role - Certiorari - The writ is available under the 1999 Constitution and High Court Rules - To empower High Courts to checkmate - The arbitrariness of inferior courts or Tribunals (H1) *State v. Lawal* (2013) 2 KLR (pt. 325) 1181

COURTS - Supreme Court - Jurisdiction - Supreme Court does not hear appeals from State High Courts - But those from the Court of Appeal (H2) *Eyigebe v. Iyaji* (2013) 5 KLR (pt. 330) 2329

COURTS - Title - Proof - Appellant succeeds in his claim - As he proved better title to that of respondent - Lower court was wrong for not affirming finding of trial court - That was based on pleadings and evidence of the parties (H3) *Garan v. Olomu* (2013) 4 KLR (pt. 327) 1675

COURTS - Undefended suit - Motions - Ex parte application - Even where respondent was in court - When the application was being taken - He cannot be heard (H5) *Obaro v. Hassan* (2013) 1-2 KLR (pt. 323) 491

COURTS - Undefended suits - Appeal - Exercise of discretion - Inter-

ference - CA ought to have interfered - On the basis that the discretion exercised by trial court - Was neither judicial nor judicious (H1) Dangote Textile Ltd. v. Hascon Asso. Nig. Ltd. (2013) 5 KLR (pt. 329) 2049

COURTS - Undefended suits - Defence - Materials for - Court is guided by facts of the case - Parties' affidavit evidence - Notice of intention to defend disclosing the defence (H3) Dangote Textile Ltd. v. Hascon Asso. Nig. Ltd. (2013) 5 KLR (pt. 329) 2049

COURTS - Undefended suits - Defence - Notice of - Failure to file - Judgment is not automatically given to plaintiff where defence is not filed - As trial court must scrutinize the claim - To ensure that it is one that could be heard under the procedure (H6) Akpan v. Akwa-Ibom Property Invest. Co. Ltd. (2013) 6 KLR (pt. 331) 2631

COURTS - Undefended suits - Defence - UTC v. Pamotei - Where defendant intends to defend but has taken improper step - Adjournment may be given to rectify the defect - To enable court consider his defence (H5) Dangote Textile Ltd. v. Hascon Asso. Nig. Ltd. (2013) 5 KLR (pt. 329) 2049

COURTS - Undefended suits - Writ of summons - Issuance of - Writ initiated cannot be issued by Registrar - Prior to presentation and consideration of the application - For issuance of same by court (H1) Obaro v. Hassan (2013) 1-2 KLR (pt. 323) 491

COURTS - Wills - Court of Appeal - Findings - Correctness of - The court did not act in excess of its jurisdiction - As it only directed that disposition of the property - Be guided by intention of the testator in exhibit P1 (H5) Asika v. Atuanya (2013) 7 KLR (pt. 335) 3651

COURTS - Words & phrases - Order - Definition - Blacks Law Dictionary 5<sup>th</sup> Ed - Order is defined as mandate - Or direction of court entered in writing - And not included in judgment (H2) Maideribe v. FRN (2013) 12 KLR (pt. 337) 4321

CRIME - Elections - Allegation of - Proof - By Evidence Act s. 135(1) - Appellant must prove the alleged manipulation of voters' register - And the effect it had on the election result (H3) Akeredolu v. Mimiko (2013) 8-12 KLR (pt. 336) 3895

CRIMINAL LAW - Defence of accident - Sustainability - 1999 Constitution s. 33(2) cannot avail appellant - Since his act in defence of property - Excludes shooting by accident (H3) Dogo v. State (2013) 3 KLR (pt. 326) 1249

CRIMINAL LAW - Murder - Definition of - The offence is defined as

the taking of human life - By a person with malicious and willful intent to kill - Or is wickedly reckless as to the consequences of his act upon his victim (H1) Afosi v. State (2013) 6 KLR (pt. 331) 2583

CRIMINAL LAW - Murder - Ingredients - Proof - A person is guilty of murder if inter alia - He intends to cause the death of deceased - And prosecution must prove that there was death - As a result of intentional act of accused (H1) Nwokeoru v. State (2013) 5 KLR (pt. 329) 2165

CRIMINAL LAW - Murder - Mens rea - Proof - Appellant's intention to kill the deceased can be inferred from the dagger he used - Part of the body the injury was inflicted upon - And the force with which the stabbing was done (H2) Nwokeoru v. State (2013) 5 KLR (pt. 329) 2165

CRIMINAL LAW - Murder - Provocation - Elements - Provocation consists of the provocative incident - Actual and reasonable loss of self control - And proportionate retaliation to the provocation (H6) Njokwu v. State (2013) 2 KLR (pt. 325) 1093

CRIMINAL LAW - Murder - Provocation - Witchcraft - Plea of provocation founded on witchcraft and mere words - Cannot stand in law (H7) Njokwu v. State (2013) 2 KLR (pt. 325) 1093

CRIMINAL LAW - Provocation - Defence of - The defence can be considered if there was unlawful assault - That was not provoked by accused - And accused reaction must be proportionate with the provocation (H1) Odunlami v. Nigerian Navy (2013) 6 KLR (pt. 331) 2721

CRIMINAL LAW - Rape - Ingredient - Supreme Court will not interfere with concurrent conviction - Since the infant victim gave evidence of having been penetrated by accused (H1) Musa v. State (2013) 2 KLR (pt. 324) 749

CRIMINAL LAW - Robbery - Definition of - By Robbery & Firearms Act s. 15 - Robbery means stealing - Using or threatening to use violence to person or property - In order to obtain and retain the thing stolen (H2) Afolabi v. State (2013) 6 KLR (pt. 332) 2841

CRIMINAL LAW - Sanity - Presumption of - Under Criminal Code s. 27 - Every person is presumed to be sane - Until the contrary is proved (H2) State v. John (2013) 5 KLR (pt. 330) 2539

CRIMINAL LAW & PROCEDURE - Insanity - Proof - The burden of proving insanity lies on accused - And it must be discharged on the balance of probabilities (H3) State v. John (2013) 5 KLR (pt. 330) 2539

CRIMINAL LAW & PROCEDURE - Murder - Accident & self defence - Plea of - Sustainability - Act done in slight anger could not have occurred by accident - And appellant being a military man - Cannot rely on self defence to kill unarmed civilian (H4) Nwokeoru v. State (2013) 5 KLR (pt. 329) 2165

CRIMINAL LAW & PROCEDURE - Murder - Automatism - Plea of - Sustainability - The plea is not available to appellant - As he was master of his senses - When he deliberately stabbed the deceased to death (H3) Nwokeoru v. State (2013) 5 KLR (pt. 329) 2165

CRIMINAL LAW & PROCEDURE - Provocation - Defence of - Ingredients - The defence can avail accused where his act in the heat of passion - Was caused by sudden provocation - With no time for passion to cool - And his resentment proportionate to the provocation (H5) Afosi v. State (2013) 6 KLR (pt. 331) 2583

CRIMINAL LAW & PROCEDURE - Self defence - Sustainability - The defence is available to an accused - Who proved that he was victim of unprovoked assault - Which caused him reasonable apprehension of death or grievous harm (H3) Afosi v. State (2013) 6 KLR (pt. 331) 2583

CRIMINAL PROCEDURE - Murder - Composition - The offence is committed if inter alia - The offender intends to cause death of deceased - Or to do to deceased some grievous harm (H2) Njokwu v. State (2013) 2 KLR (pt. 325) 1093

CRIMINAL PROCEDURE - Aborted trial - Implication of - Where a proceeding is declared a nullity by court - Such a proceeding is legally deemed not to have existed (H1) Ganiyu v. State (2013) 4 KLR (pt. 327) 1661

CRIMINAL PROCEDURE - AG Federation - Represented by proxy - Challenge - Authority of counsel to prefer charge on behalf of the AG - Cannot be questioned by any other person (H3) Nnakwe v. State (2013) 7 KLR (pt. 333) 3273

CRIMINAL PROCEDURE - AG'S power - Delegation - Extent of - Count 4 cannot be excised from other preceding counts - As it arose from same transaction - And was incidental to the offences for which fiat was given (H5) Nnakwe v. State (2013) 7 KLR (pt. 333) 3273

CRIMINAL PROCEDURE - Alibi - Defence - Accused at crime scene - Where presence of accused is fixed at the scene - The defence is defeated and need no investigation (H4) Ayan v. State (2013) 7 KLR (pt. 335) 3717



CRIMINAL PROCEDURE - Alibi - Defence - Identification parade - There was no need for the parade since PW1 recognized appellant as one of the robbers - And the defence of alibi cannot be sustained - As appellant was arrested at crime scene (H6) Ibrahim v. State (2013) 12 KLR (pt. 337) 4273

CRIMINAL PROCEDURE - Alibi - Defence - Investigation - Where alibi has been promptly set up - Prosecution must carry on an investigation - But failure to do so would not always be fatal to prosecution's case (H2) Ayan v. State (2013) 7 KLR (pt. 335) 3717

CRIMINAL PROCEDURE - Alibi - Failure to investigate - It is not every such failure by police - That is fatal to the case of prosecution (H4) Olatinwo v. State (2013) 1-2 KLR (pt. 323) 541

CRIMINAL PROCEDURE - Alibi - Inconsistencies - Where material facts of the defence are found to be false - Prosecution is not bound to investigate - As no alibi is established (H3) Ayan v. State (2013) 7 KLR (pt. 335) 3717

CRIMINAL PROCEDURE - Alibi - Plea - Conditions of - Accused must inter alia - Raise the defence at the earliest opportunity - Detailing his whereabouts - And must adduce evidence in support (H3) Egwemi v. State (2013) 1-2 KLR (pt. 323) 325

CRIMINAL PROCEDURE - Alibi - Plea of - Failure to investigate - Prosecution's case is not made fatal by every failure of police to investigate alibi - As accused alibi is demolished - Where there are sufficient evidence fixing him at crime scene at the material time (H2) Aliyu v. State (2013) 6 KLR (pt. 332) 2873

CRIMINAL PROCEDURE - Alibi - Plea of - Investigation - Appellant did not fully disclose his whereabouts at the time of the incident to police - To warrant any investigation of his plea by the police (H1) Aliyu v. State (2013) 6 KLR (pt. 332) 2873

CRIMINAL PROCEDURE - Alibi - Proof - Onus is not on accused to establish alibi - To the satisfaction of court - But for prosecution to disprove it (H3) Osuagwu v. State (2013) 1 KLR (pt. 322) 223

CRIMINAL PROCEDURE - Alibi - Proof - Prosecution has onus to adduce credible evidence to disprove alibi - But accused must firstly discharge the evidential burden of setting up facts - On which alibi can rest (H1) Ayan v. State (2013) 7 KLR (pt. 335) 3717

CRIMINAL PROCEDURE - Alibi - Proof - Where accused raises alibi - Prosecution must investigate same - But accused is still bound to

give particulars of his whereabouts (H4) Agboola v. State (2013) 5 KLR (pt. 329) 2019

CRIMINAL PROCEDURE - Alibi - Time to raise - Accused must raise the defence when his caution statement is being taken - Stating clearly the time and address of his whereabouts (H2) Osuagwu v. State (2013) 1 KLR (pt. 322) 223

CRIMINAL PROCEDURE - Appeal - AG's Fiat - Duration of - On authority of Ebe v. COP - AG need not issue fresh fiat - Before counsel can proceed with prosecution of appeals - Arising from the charge (H15) Nnakwe v. State (2013) 7 KLR (pt. 333) 3273

CRIMINAL PROCEDURE - Appeal - Retrial order - Is made where inter alia - There has been error in law or irregularity in procedure - That neither renders the trial a nullity - Nor was there a miscarriage of justice (H1) Elijah v. State (2013) 2 KLR (pt. 325) 983

CRIMINAL PROCEDURE - Appeal - Retrial order - Sustainability - The order is not oppressive - As appellant has explanation to make - Judging from his statement and evidence on record (H2) Lasisi v. State (2013) 5 KLR (pt. 330) 2419

CRIMINAL PROCEDURE - Appeals - Concurrent findings - Appellant failed to displace the findings - As there is no proof of how the circumstantial evidence was weakened - By any co existing circumstances in the matter (H1) Babatunde v. State (2013) 6 KLR (pt. 332) 2895

CRIMINAL PROCEDURE - Appeals - Conviction - Validity - CA rightly affirmed appellant's conviction - As the trial court considered a host of corroborative evidence - From which inference was rightly drawn (H4) Shodiya v. State (2013) 12 KLR (pt. 338) 4557

CRIMINAL PROCEDURE - Appeals - Irregularity - Objection - Appellants were not prejudiced on the procedure they elected to adopt - And having failed to object at trial court - They cannot be allowed to do so on appeal (H4) Oguno v. State (2013) 12 KLR (pt. 338) 4529

CRIMINAL PROCEDURE - Appeals - Retrial - Conditions for - Appellate court will inter alia grant retrial - Where apart from irregularity in the proceeding - Evidence discloses a substantial case against appellant (H1) Adeyemi v. State (2013) 4 KLR (pt. 328) 1771

CRIMINAL PROCEDURE - Appeals - Retrial - Confession - As Exhibit C upon which trial court can solely convict appellant - Has made out prima facie case against him - It is necessary that he offers expla-

nations at the trial de novo ordered by CA (H2) Adeyemi v. State (2013) 4 KLR (pt. 328) 1771

CRIMINAL PROCEDURE - Appeals - Retrial - Contradictions in prosecution's evidence in aborted trial - Is immaterial when considering whether the case should be retried (H4) Adeyemi v. State (2013) 4 KLR (pt. 328) 1771

CRIMINAL PROCEDURE - Appeals - Retrial - Improper arraignment - Retrial was rightly ordered by CA - After it nullified the trial of appellant - Since the trial Judge did not take his plea upon arraignment (H3) Adeyemi v. State (2013) 4 KLR (pt. 328) 1771

CRIMINAL PROCEDURE - Appeals - Retrial - Principles - Appellate court will inter alia grant retrial - Where apart from irregularity in the proceeding - Evidence discloses a substantial case against appellant (H3) Ganiyu v. State (2013) 4 KLR (pt. 327) 1661

CRIMINAL PROCEDURE - Appeals - Retrial order - Since the proceedings is nullity - The order is wrong and appellant whose conviction and sentence have been nullified - Shall be set free (H3) Mohammed v. State (2013) 1 KLR (pt. 322) 99

CRIMINAL PROCEDURE - Appeals - Sentence - Interference - Appellate court does not interfere with sentence imposed by trial court - Unless same is manifestly excessive or wrong in principle (H6) Omokuwajo v. FRN (2013) 3 KLR (pt. 326) 1365

CRIMINAL PROCEDURE - Armed robbery - Alibi - Plea - Investigation - As appellant was duly identified and fixed at the crime scene by PW1 and 3 - There was no burden to verify the plea (H2) Victor v. State (2013) 6 KLR (pt. 331) 2763

CRIMINAL PROCEDURE - Armed robbery - Alibi - Recent possession - E A s. 167(a) was rightly invoked and alibi rightly rejected - Since appellant was found in the vicinity of the crime - Shortly after the robbery and was also in possession of the stolen items (H7) Sadiku v. State (2013) 5 KLR (pt. 330) 2521

CRIMINAL PROCEDURE - Armed robbery - Ingredients - Proof - Prosecution must prove that there was a robbery - That accused was armed - And participated in the robbery (H4) Osuagwu v. State (2013) 1 KLR (pt. 322) 223

CRIMINAL PROCEDURE - Armed robbery - Ingredients - Proof - Prosecution must prove that there was a robbery - That the robbery was armed robbery - And that accused was the robber (H2) Olatinwo v. State (2013) 1-2 KLR (pt. 323) 541

CRIMINAL PROCEDURE - Armed robbery - Ingredients - Proof - Prosecution must prove that there was a robbery - In which the robbers were armed - And that accused persons were the robbers (H3) Abiodun v. State (2013) 4 KLR (pt. 328) 1753

CRIMINAL PROCEDURE - Armed robbery - Ingredients - Proof - Prosecution must prove that there was a robbery - That the robbery was armed robbery - And that accused was the armed robber (H1) Agboola v. State (2013) 5 KLR (pt. 329) 2019

CRIMINAL PROCEDURE - Armed robbery - Ingredients - Proof - Prosecution must prove that there was a robbery - That the robbery was armed robbery - And that the accused was the armed robber (H1) State v. Isiaka (2013) 5 KLR (pt. 329) 2243

CRIMINAL PROCEDURE - Armed robbery - Ingredients - Proof - Prosecution must prove that there was robbery - That the robbery was armed robbery - And that accused took part in the armed robbery (H5) Babarinde v. State (2013) 8-12 KLR (pt. 336) 3995

CRIMINAL PROCEDURE - Armed robbery - Number of witnesses - Prosecution must not call a host of witnesses on same point - To prove essential elements of the crime (H5) Osuagwu v. State (2013) 1 KLR (pt. 322) 223

CRIMINAL PROCEDURE - Armed Robbery - Prosecution - Power of AG State - Robbery & Firearms Act s. 9(2) empowers the AG to institute proceedings - In respect of offences created by the Act (H2) Sadiku v. State (2013) 5 KLR (pt. 330) 2521

CRIMINAL PROCEDURE - Arraignment - Failure to object - As appellant's counsel did not object - It is presumed that the record of compliance with CPC s. 242 is correct - And that the proceedings were translated to appellant (H3) Ibrahim v. State (2013) 12 KLR (pt. 337) 4273

CRIMINAL PROCEDURE - Arraignment - Fair hearing - Appellant was fairly heard - As she was properly arraigned - And her brief and caution statement were equally considered (H4) Omokuwajo v. FRN (2013) 3 KLR (pt. 326) 1365

CRIMINAL PROCEDURE - Arraignment - Fair hearing - Appellant's complaint of breach of fair hearing is without basis - As the charge was read and explained to him - And he was represented by counsel (H5) Sadiku v. State (2013) 5 KLR (pt. 330) 2521

CRIMINAL PROCEDURE - Arraignment - Plea taking - Plea by ac-

cused upon arraignment is a matter of procedural law - And any defect therein renders proceedings a nullity - As it affects jurisdiction of court (H2) Ganiyu v. State (2013) 4 KLR (pt. 327) 1661

CRIMINAL PROCEDURE - Arraignment - Requirements - Accused must be brought to court unfettered - With the charge read and explained to him - And his pleas are taken thereto (H1) Omokuwajo v. FRN (2013) 3 KLR (pt. 326) 1365

CRIMINAL PROCEDURE - Bad character - Evidence of - Admissibility - Under Evidence Act s. 82 - Evidence of appellant's character is not admissible - As same was not in issue (H6) Odogwu v. State (2013) 7 KLR (pt. 335) 3779

CRIMINAL PROCEDURE - Bail - Consideration for - Since the error of not taking appellant's plea was caused by the trial court - It will be just if that court considers his application for bail - Pending determination of the case (H3) Lasisi v. State (2013) 5 KLR (pt. 330) 2419

CRIMINAL PROCEDURE - Banking - Charges - Unauthorized loan - To succeed prosecution must inter alia - Establish that accused is a manager/officer of the bank - Who granted such loan without authorization (H1) Mmamman v. FRN (2013) 1-2 KLR (pt. 323) 459

CRIMINAL PROCEDURE - Charge - Arraignment - CPA s. 215 does not require that notes be made - In record of proceedings of name of the court official - Who read and explained the charge to accused (H2) Omokuwajo v. FRN (2013) 3 KLR (pt. 326) 1365

CRIMINAL PROCEDURE - Charge - Interpretation - Where accused speaks English language - Points relating to interpretation of the charge - Is of no moment (H3) Omokuwajo v. FRN (2013) 3 KLR (pt. 326) 1365

CRIMINAL PROCEDURE - Charges - Arraignment - Requirements - Accused must be placed before court unfettered - Charge read and explained to him in language he understands - And he is called upon to plea thereto (H1) Ibrahim v. State (2013) 12 KLR (pt. 337) 4273

CRIMINAL PROCEDURE - Charges - Contract - Tender splitting - Exhibit P3 subjects erring public officer to disciplinary action under Civil Service Rules - Hence officer who breached provisions of the exhibit - Cannot be criminally prosecuted in court (H4) Maideribe v. FRN (2013) 12 KLR (pt. 337) 4321

CRIMINAL PROCEDURE - Charges - Intention to defraud - Proof - As the phrase was made element of the offence - Prosecution had onus to prove the offence as charged - Irrespective of provisions of

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statute creating the offence (H1) *Tafidi v. FRN* (2013) 12 KLR (pt. 338) 4575

CRIMINAL PROCEDURE - Charges - Preferment - Application - Leave of High Court Judge must be sought and obtained - And the application must be accompanied by - A copy of the charge - Names of witnesses at trial - And proof of evidence (H5) *Ugwu v. State* (2013) 3 KLR (pt. 326) 1453

CRIMINAL PROCEDURE - Charges - Preferment - Application for leave - By CPC s. 185(b) - Annexure of witnesses' statements is not vital - As appellant is only required to show court - Why respondent should be put to trial (H1) *FRN v. Wabara* (2013) 1-2 KLR (pt. 323) 357

CRIMINAL PROCEDURE - Charges - Preferment - Jurisdiction - Appellant having entered FCT was rightly charged in its HC - As entry required in Penal Code s. 4(2)(b) - And the decision in *Njoven's* case were satisfied (H11) *Nnakwe v. State* (2013) 7 KLR (pt. 333) 3273

CRIMINAL PROCEDURE - Charges - Preferment - Validity - Powers of AG Federation - Having been statutorily empowered - The AG validly issued the fiat to counsel - For prosecution of appellant in counts 3 & 4 in the FCT (H14) *Nnakwe v. State* (2013) 7 KLR (pt. 333) 3273

CRIMINAL PROCEDURE - Charges - Summary trial - CPA s. 277 provides for summary trial - Whereby accused is not provided with - All evidence relied on by prosecution (H5) *Uwazuruike v. A-G Federation* (2013) 4 KLR (pt. 328) 1953

CRIMINAL PROCEDURE - Charges - Summary trial - Unfavourable condition to accused - Where accused is not satisfied with the information attached - He is expected to apply to the court (H8) *Uwazuruike v. A-G Federation* (2013) 4 KLR (pt. 328) 1953

CRIMINAL PROCEDURE - Charges - Validity - Federal H.C. Act s. 33(1)(2) - The four count charge is proper - Since proof of evidence does not accompany charge - In summary trial (H7) *Uwazuruike v. A-G Federation* (2013) 4 KLR (pt. 328) 1953

CRIMINAL PROCEDURE - Circumstantial evidence - Weight - Such evidence is good and sometimes better than other evidence - If it is positive and conclusive as to guilt of accused (H5) *Oguno v. State* (2013) 12 KLR (pt. 338) 4529

CRIMINAL PROCEDURE - Commencement - AG Federation - Powers - By Constitution 1999 s. 174(1) - He can inter alia institute and

discontinue - Criminal proceedings against any person in any court in Nigeria - Other than a Court Martial (H13) Nnakwe v. State (2013) 7 KLR (pt. 333) 3273

CRIMINAL PROCEDURE - Commencement - Power of AG - By Constitution 1999 ss. 174 & 211 - AG Federation & State can institute criminal proceedings - Against any person before any court in Nigeria - Other than a Court Martial (H1) Sadiku v. State (2013) 5 KLR (pt. 330) 2521

CRIMINAL PROCEDURE - Confession - Admissibility - For statement of accused to be admissible in evidence - It must have been made freely and without any inducement (H4) State v. Rabi (2013) 1-2 KLR (pt. 323) 563

CRIMINAL PROCEDURE - Confession - Admissibility - Involuntary confession is inadmissible - But accused who denies making statement at all - Will be seen as resiling from the one he voluntarily made - And that fact does not render the statement inadmissible (H4) Abdullahi v. State (2013) 5 KLR (pt. 329) 1979

CRIMINAL PROCEDURE - Confession - Admissibility - The law renders irrelevant admission obtained - By oppression or duress of the maker - Admissible confession must be voluntary (H1) Lasisi v. State (2013) 3 KLR (pt. 326) 1313

CRIMINAL PROCEDURE - Confession - Conviction - Can be solely based on confession where the statement is not only voluntary - But also direct and unequivocal as to guilt of accused (H2) Shodiya v. State (2013) 12 KLR (pt. 338) 4557

CRIMINAL PROCEDURE - Confession - Conviction - Court can convict upon a confession - Once it is satisfied that the confession is voluntary (H2) Mmamman v. FRN (2013) 1-2 KLR (pt. 323) 459

CRIMINAL PROCEDURE - Confession - Conviction - Court can convict accused only on his confession - Where the statement is found to be direct and unequivocal (H2) Lasisi v. State (2013) 3 KLR (pt. 326) 1313

CRIMINAL PROCEDURE - Confession - Conviction - In order to ground a conviction Confession must be positive and direct - But reason for commission of the crime - Must not be stated (H1) Dogo v. State (2013) 3 KLR (pt. 326) 1249

CRIMINAL PROCEDURE - Confession - Conviction - So long as a confession is positive and voluntary - It is enough to found a conviction (H2) Adeleke v. State (2013) 7 KLR (pt. 333) 3093

CRIMINAL PROCEDURE - Confession - Conviction - Validity - A voluntary confession of guilt is sufficient to warrant conviction - Provided that court is satisfied that it is true (H3) Olatunbosun v. State (2013) 7 KLR (pt. 335) 3851

CRIMINAL PROCEDURE - Confession - Conviction - Validity - Having found exhibit H as voluntarily made - Trial court rightly relied on same in convicting appellant (H4) Abiodun v. State (2013) 4 KLR (pt. 328) 1753

CRIMINAL PROCEDURE - Confession - Conviction - Without corroboration a confession can sustain conviction - Provided court is satisfied of the truth therein (H1) Stephen v. State (2013) 3 KLR (pt. 326) 1417

CRIMINAL PROCEDURE - Confession - Corroboration - Conviction not founded on evidence on record as per the charge - But on mere confessional statement - Cannot stand on appeal (H5) Abdullahi v. State (2013) 5 KLR (pt. 329) 1979

CRIMINAL PROCEDURE - Confession - Corroboration - It is desirable to have some evidence outside the confession - Which would make it probable that the confession is true (H4) Olatunbosun v. State (2013) 7 KLR (pt. 335) 3851

CRIMINAL PROCEDURE - Confession - Corroboration - Where confession is not comprehensive in relation to offence convicted - Existence of evidence outside the statement is necessary - To justify the conviction on appeal (H3) Shodiya v. State (2013) 12 KLR (pt. 338) 4557

CRIMINAL PROCEDURE - Confession - Evaluation - Decision of trial court in trial within trial which is on credibility of witnesses - Is not to be interfered with by appellate court (H2) Abiodun v. State (2013) 4 KLR (pt. 328) 1753

CRIMINAL PROCEDURE - Confession - Meaning - By Evidence Act s. 28 - Confession is admission made at any time - By a person charged with crime - Suggesting the inference that he committed the crime (H2) Ibeme v. State (2013) 1-2 KLR (pt. 323) 379

CRIMINAL PROCEDURE - Confession - Objection to - Accused who denies voluntariness of his extra judicial statement made to police - Must object when prosecution seeks to tender the statement in evidence (H2) Oguno v. State (2013) 12 KLR (pt. 338) 4529

CRIMINAL PROCEDURE - Confession - Objection to - In raising



objection as to voluntariness of his confession - Being tendered as exhibit - Accused must be categorical and specific (H3) Abdullahi v. State (2013) 5 KLR (pt. 329) 1979

CRIMINAL PROCEDURE - Confession - Proof - Onus to prove voluntariness of extra judicial statement made by accused - Is on prosecution (H1) Oguno v. State (2013) 12 KLR (pt. 338) 4529

CRIMINAL PROCEDURE - Confession - Relevancy - Confession is relevant when it establishes elements of the crime charged - And identifies the person who committed the offence (H5) Olatunbosun v. State (2013) 7 KLR (pt. 335) 3851

CRIMINAL PROCEDURE - Confession - Retraction - Statement is retracted when accused admits making same - But denies making it voluntarily - Court is then expected to determine if the statement is voluntary before admitting it (H4) Ibrahim v. State (2013) 12 KLR (pt. 337) 4273

CRIMINAL PROCEDURE - Confession - Retraction - The fact that accused resiled from his confession - Does not negatively affect evaluation of evidence made by court (H2) Musa v. State (2013) 2 KLR (pt. 324) 749

CRIMINAL PROCEDURE - Confession - Retraction - Weight - In determining weight to be attached to retracted confession - Court is to test its truthfulness by examining the statement - In the light of other available credible evidence (H7) Agboola v. State (2013) 5 KLR (pt. 329) 2019

CRIMINAL PROCEDURE - Confession - Retraction - Where accused denies making a confession - Court shall admit the statement - Without holding trial within trial (H3) Ibeme v. State (2013) 1-2 KLR (pt. 323) 379

CRIMINAL PROCEDURE - Confession - Trial within trial - Once objection is made against voluntariness of confession - Court must stop further proceedings - To conduct trial within trial (H1) Ibeme v. State (2013) 1-2 KLR (pt. 323) 379

CRIMINAL PROCEDURE - Confession - Validity - A voluntary confession is sufficient to support conviction - Once it meets with the six tests - Laid down by Supreme Court (H3) Musa v. State (2013) 2 KLR (pt. 324) 749

CRIMINAL PROCEDURE - Confession - Validity - Once court is satisfied with genuineness of confession - Conviction can be based on it entirely - And such will not be disturbed on appeal (H6) Osuagwu v.

State (2013) 1 KLR (pt. 322) 223

CRIMINAL PROCEDURE - Confession - Voluntariness - Test - Court conducts trial within trial on admissibility of such statement - And it is prosecution that begins first - As it will be wrong to call on accused to start calling witness first (H3) *Oguno v. State* (2013) 12 KLR (pt. 338) 4529

CRIMINAL PROCEDURE - Confession - Voluntariness - The test for voluntariness is whether accused was properly guided - To write what he actually wanted to write (H5) *State v. Rabi* (2013) 1-2 KLR (pt. 323) 563

CRIMINAL PROCEDURE - Confessional statement - Trial within trial - Proving that the statement was voluntarily made - Must be done beyond reasonable doubt - As in every criminal trial (H1) *Abiodun v. State* (2013) 4 KLR (pt. 328) 1753

CRIMINAL PROCEDURE - Consistency in - Prosecution should be consistent in prosecuting his case at trial court as well as on appeal - As there should be no somersault (H4) *George v. FRN* (2013) 12 KLR (pt. 337) 4235

CRIMINAL PROCEDURE - Conspiracy - Ingredients - It is complete upon presumed agreement by the conspirators - And court must be satisfied with evidence of complicity of accused (H8) *Osuagwu v. State* (2013) 1 KLR (pt. 322) 223

CRIMINAL PROCEDURE - Conspiracy - Proof - Appellant's guilt can be inferred from totality of evidence led by respondent - As the offence is usually proved by inference - Made from acts or inactions of parties concerned (H1) *Shodiya v. State* (2013) 12 KLR (pt. 338) 4557

CRIMINAL PROCEDURE - Conspiracy - Proof - Conspiracy being agreement between two or more persons - To do or omit to do an act criminally - Has not been disclosed from conduct of appellant - In not complying with exhibit P3 (H5) *Maidiribe v. FRN* (2013) 12 KLR (pt. 337) 4321

CRIMINAL PROCEDURE - Conspiracy - Proof - Conspiracy is established once it is shown in evidence - That the alleged criminal design - Is common to all suspects (H6) *Afolabi v. State* (2013) 6 KLR (pt. 332) 2841

CRIMINAL PROCEDURE - Contradictions - Effect - Contradictions must be fundamental and substantial - Before they may affect prosecution's case - As discrepancies are minor differences in details -

Which are allowed in proceedings (H4) *Odunlami v. Nigerian Navy* (2013) 6 KLR (pt. 331) 2721

CRIMINAL PROCEDURE - Contradictions - Effect - It is only contradictions that are substantial and fundamental to main issue - That would be fatal to prosecution's case (H7) *Babarinde v. State* (2013) 8-12 KLR (pt. 336) 3995

CRIMINAL PROCEDURE - Conviction - Based on confession - Conviction may be based on confession - Where the statement is voluntarily positive - And court is satisfied with its truth (H6) *Agboola v. State* (2013) 5 KLR (pt. 329) 2019

CRIMINAL PROCEDURE - Conviction - Confession - Validity - Court of Appeal rightly affirmed the conviction of appellant - Since exhibit 7A was direct and voluntarily made (H1) *Fatai v. State* (2013) 3 KLR (pt. 326) 1291

CRIMINAL PROCEDURE - Conviction - Identification parade - Appellant was not solely convicted on evidence obtained at the parade - As court relied on testimony of PW1 - That linked appellant with the offence (H5) *Aliyu v. State* (2013) 6 KLR (pt. 332) 2873

CRIMINAL PROCEDURE - Conviction - Offence not known to law - Charge and conviction of appellant under CC ss. 104, 203 & 517 cannot stand - Since the basis of the offence charged was unknown to law - At the material time (H2) *Tafidi v. FRN* (2013) 12 KLR (pt. 338) 4575

CRIMINAL PROCEDURE - Conviction - Offensive weapon - Where such weapon was used in commission of offence - It is not essential to tender it to secure conviction - Provided there is cogent eye witness or circumstantial evidence - That points to guilt of accused (H6) *Babarinde v. State* (2013) 8-12 KLR (pt. 336) 3995

CRIMINAL PROCEDURE - Conviction - Sustainability - Disobedience to lawful order - Exhibit P3 does not have legal effect - To justify finding appellant guilty under CC s. 203 - For the alleged disobedience (H1) *Maidenibe v. FRN* (2013) 12 KLR (pt. 337) 4321

CRIMINAL PROCEDURE - Conviction - Sustainability - Public servant - Appellant not being a staff of NPA - Cannot come within the definition of person employed by the Authority - To support his conviction for offence in CC s. 104 (H3) *Maidenibe v. FRN* (2013) 12 KLR (pt. 337) 4321

CRIMINAL PROCEDURE - Conviction - Undisclosed offence - Appellant's alleged disobedience of exhibit P3 - Is not an offence

disclosed in CC ss. 203, 104 & 517 - Hence conviction of appellant for same - Violates his right under 1999 Constitution s. 36(8) (H6) Maideribe v. FRN (2013) 12 KLR (pt. 337) 4321

CRIMINAL PROCEDURE - Court - Jurisdiction - Statutory conferment - Court must be satisfied that offence is directly donated - By jurisdiction conferred in the enabling law (H9) Nnakwe v. State (2013) 7 KLR (pt. 333) 3273

CRIMINAL PROCEDURE - Court martial - Fair hearing - Sentence - Review of - By Armed Forces Act s. 149 - A convict has 3 months to appeal for a review - And is also allowed by s. 154(6) to appeal to CA - And thereafter to SC (H3) Odunlami v. Nigerian Navy (2013) 6 KLR (pt. 331) 2721

CRIMINAL PROCEDURE - Courts - Crime - Pretrial - CPL s. 340(2)(b) - A Judge is enjoined by the provision to examine proofs of evidence of offence - So as to determine whether or not the offence is one requiring to put accused on trial (H9) Babatunde v. State (2013) 6 KLR (pt. 332) 2895

CRIMINAL PROCEDURE - Courts - No case submission - Procedure to adopt - When the submission is made - Court is not called upon to express opinion on evidence before it - But to rule that evidence exist or not - That links accused with offence charged (H2) Fagoriola v. FRN (2013) 7 KLR (pt. 335) 3753

CRIMINAL PROCEDURE - Crime - Proof - Guilt of an accused can be established by his confessional statement - Circumstantial evidence - Or evidence of an eye witness (H5) Agboola v. State (2013) 5 KLR (pt. 329) 2019

CRIMINAL PROCEDURE - Crime - Proof - Number of witness - Prosecution is not bound to call all witnesses - But only essential witness(s) to prove its case (H4) Victor v. State (2013) 6 KLR (pt. 331) 2763

CRIMINAL PROCEDURE - Defence - Determination of - Court should consider the defence of an accused - No matter how stupid or unreasonable it appears (H2) State v. Isiaka (2013) 5 KLR (pt. 329) 2243

CRIMINAL PROCEDURE - Evidence - Contradiction - Weight - Error in evidence of PW1 is minor discrepancy - Which neither affected his credibility - Nor weight of evidence of prosecution (H4) Musa v. State (2013) 2 KLR (pt. 324) 749

CRIMINAL PROCEDURE - Evidence - Conviction - Correctness of - Court can convict on evidence of one witness - If such evidence is

credible - And it is believed and accepted by court (H3) Victor v. State (2013) 6 KLR (pt. 331) 2763

CRIMINAL PROCEDURE - Evidence - Crime - Sworn evidence - Contradiction of - Counsel may use statements obtained during investigation - For purposes of cross examination - To contradict such evidence in open court (H3) Olatinwo v. State (2013) 1-2 KLR (pt. 323) 541

CRIMINAL PROCEDURE - Evidence - Withholding of - As no reason was given for failure to call a relevant witness - It is assumed that the evidence if produced - Would have been unfavourable to prosecution vide s. 149(d) EA (H11) Odogwu v. State (2013) 7 KLR (pt. 335) 3779

CRIMINAL PROCEDURE - Federal High Court - Jurisdiction - Treason - By 1999 Constitution s. 251(2) - The court can summarily try treason - Treasonable felony - And allied offences (H4) Uwazuruike v. A-G Federation (2013) 4 KLR (pt. 328) 1953

CRIMINAL PROCEDURE - Hearsay evidence - Fate - Evidence of PW2 is inadmissible and was wrongly admitted in violation of Evidence Act - Since the witness was repeating what another person told him (H5) Odogwu v. State (2013) 7 KLR (pt. 335) 3779

CRIMINAL PROCEDURE - Identification - Mistake in - Where accused alleges that there is mistake in his identity - Court must closely examine the evidence - As weakness discovered therein leads to giving accused the benefit of doubt (H3) Afolabi v. State (2013) 6 KLR (pt. 332) 2841

CRIMINAL PROCEDURE - Identification - The testimony given by PW3 positively identified respondent as the culprit - And the learned trial Judge rightly drew inference from same (H3) State v. Isiaka (2013) 5 KLR (pt. 329) 2243

CRIMINAL PROCEDURE - Identification - When not necessary - The parade is not necessary where suspect is caught at crime scene - Where accused identified himself by his confession - Or where there is circumstantial evidence showing his involvement in the offence (H3) Babarinde v. State (2013) 8-12 KLR (pt. 336) 3995

CRIMINAL PROCEDURE - Identification parade - Correctness of - PW6 was not cross examined on the propriety or otherwise of the parade - And there is presumption of regularity of the parade under Evidence Act s. 168(1) (H6) Aliyu v. State (2013) 6 KLR (pt. 332) 2873

CRIMINAL PROCEDURE - Identification parade - Failure to conduct - The parade is not needed - Since PW1 had opportunity to visually observe appellant - Failure to conduct same - Did not affect appellant's identification to police (H3) *Agboola v. State* (2013) 5 KLR (pt. 329) 2019

CRIMINAL PROCEDURE - Identification parade - It is essential where identity of accused is in dispute - But is not useful where witness knew accused well - Before the alleged crime was committed (H6) *Sadiku v. State* (2013) 5 KLR (pt. 330) 2521

CRIMINAL PROCEDURE - Identification parade - Necessity of - It is conducted inter alia - Where victim does not have prior knowledge of accused - Before commission of the offence (H2) *Agboola v. State* (2013) 5 KLR (pt. 329) 2019

CRIMINAL PROCEDURE - Identification parade - Relevance - It should be conducted when inter alia - Name of suspect was not mentioned at earliest opportunity - And he was not arrested at scene of robbery (H1) *Osuagwu v. State* (2013) 1 KLR (pt. 322) 223

CRIMINAL PROCEDURE - Identification parade - Relevance of - Where identity of accused is not in doubt - The parade is not needed - As same is not a sine qua non to conviction (H2) *Fatai v. State* (2013) 3 KLR (pt. 326) 1291

CRIMINAL PROCEDURE - Identification parade - When irrelevant - Where accused identified himself with commission of the offence - Need for the parade is completely ruled out (H4) *Afolabi v. State* (2013) 6 KLR (pt. 332) 2841

CRIMINAL PROCEDURE - Identification parade - When necessary - The parade becomes necessary if there is grave doubt - As to who committed an offence - But the need does not arise in present case (H5) *Egwemi v. State* (2013) 1-2 KLR (pt. 323) 325

CRIMINAL PROCEDURE - Improper arraignment - Effect - Arraignment touches on jurisdiction of court - The breach of which is capable of rendering the totality of proceedings null and void (H2) *Ibrahim v. State* (2013) 12 KLR (pt. 337) 4273

CRIMINAL PROCEDURE - Insanity - Procedure to adopt - CPL ss. 223 & 224 - When the issue is raised - Court is expected to put the trial on hold - And inquire into the sanity of accused - To see if he can continue with his trial or not (H1) *Popoola v. State* (2013) 7 KLR (pt. 335) 3873

CRIMINAL PROCEDURE - Insanity - Proof - Appellant failed to dis-

charge the onus of establishing his insanity - On the balance of probability (H2) *Popoola v. State* (2013) 7 KLR (pt. 335) 3873

CRIMINAL PROCEDURE - Intention to defraud - Proof - Having made the phrase element of contract splitting - Prosecution must prove same - And cannot be heard to say that it is not an element in statute creating the offence (H2) *George v. FRN* (2013) 12 KLR (pt. 337) 4235

CRIMINAL PROCEDURE - Interpreter - Need for - Accused who is not represented by counsel - And does not understand court's language - Must be provided with interpreter - Otherwise it will amount to breach of fair hearing (H1) *Egwemi v. State* (2013) 1-2 KLR (pt. 323) 325

CRIMINAL PROCEDURE - Interpreter - Non provision of - Where accused is represented by counsel at trial - And there was no objection on the issue - It is futile to raise the issue on appeal (H2) *Egwemi v. State* (2013) 1-2 KLR (pt. 323) 325

CRIMINAL PROCEDURE - Judgment - Fair hearing - The proceedings of the inferior court in the absence of some of the accused - Is a nullity as well as the judgment thereof - For denial of fair hearing (H3) *State v. Lawal* (2013) 2 KLR (pt. 325) 1181

CRIMINAL PROCEDURE - Judicial bias - Comments made by the trial Judge in his ruling on voluntariness of appellants' statements - Did not show a likelihood of bias against appellants - In respect of the substantive trial (H1) *Babarinde v. State* (2013) 8-12 KLR (pt. 336) 3995

CRIMINAL PROCEDURE - Jurisdiction - Basis - Court assumes jurisdiction in criminal trial - Where justice will be attained by it - And accused was apprehended within its judicial division - As well as for convenience of witnesses (H6) *Nnakwe v. State* (2013) 7 KLR (pt. 333) 3273

CRIMINAL PROCEDURE - Justice - Retrial order - The order shall be sustained in the interest of justice - So as to know the truth of the case - And properly put appellant to trial (H2) *Elijah v. State* (2013) 2 KLR (pt. 325) 983

CRIMINAL PROCEDURE - Military law - Manslaughter - Sentence - Under Armed Forces Act s. 105 - Once accused is convicted of the offence - Trial Judge has no discretion - But to impose sentence of life imprisonment (H6) *Odunlami v. Nigerian Navy* (2013) 6 KLR (pt. 331) 2721

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CRIMINAL PROCEDURE - Military law - Service property - Loss of - To establish the offence under Armed Forces Act s. 68(1)(a) - Prosecution must inter alia prove that accused is subject to service law - And was in charge of the property (H2) Odunlami v. Nigerian Navy (2013) 6 KLR (pt. 331) 2721

CRIMINAL PROCEDURE - Multiple charges - Trial of - Jurisdiction - As offences in counts 1 & 2 and those in counts 3 & 4 - Were committed in the course of same transaction - Any of the States HC where the offence(s) occurred - Can entertain the case (H12) Nnakwe v. State (2013) 7 KLR (pt. 333) 3273

CRIMINAL PROCEDURE - Murder - Charge - Under CC s. 319 - Charge for murder in any Southern State in Nigeria would be correct - If brought under CC s. 319 (H1) Olatunbosun v. State (2013) 7 KLR (pt. 335) 3851

CRIMINAL PROCEDURE - Murder - Circumstantial evidence - Weight - In absence of confession or eye witness account - Prosecution rightly resorted to circumstantial evidence to discharge onus of proof on it (H5) Babatunde v. State (2013) 6 KLR (pt. 332) 2895

CRIMINAL PROCEDURE - Murder - Confession - Medical report - Corroboration - Appellant's confessions corroborated by the medical report - Are fully descriptive of the crime - And sufficient for court to find him guilty (H2) Usman v. State (2013) 5 KLR (pt. 330) 2569

CRIMINAL PROCEDURE - Murder - Conspiracy - Culpability - Where two or more persons conspire to kill another person - But the deed was done by one or more of them - Each of them is guilty of murder (H12) Egwemi v. State (2013) 1-2 KLR (pt. 323) 325

CRIMINAL PROCEDURE - Murder - Conviction - Circumstantial evidence - Evidence of circumstances in this case is inadmissible - As same is capable of explanation upon other hypothesis - Than that of appellant's guilt (H12) Odogwu v. State (2013) 7 KLR (pt. 335) 3779

CRIMINAL PROCEDURE - Murder - Conviction - Contradictions - Effect - Minor difference in evidence of prosecution witnesses - Are not of a serious nature to vitiate the conviction (H7) Maigari v. State (2013) 7 KLR (pt. 333) 3251

CRIMINAL PROCEDURE - Murder - Conviction - Death sentence - Penal Code s. 221 - Once accused has been found guilty - Judge has no jurisdiction to listen to allocutus - And should not reduce sentence to term of years (H6) State v. John (2013) 5 KLR (pt. 330) 2539

CRIMINAL PROCEDURE - Murder - Date of death - Contradictions



- Discrepancies as to the actual date is not fatal to prosecution's case  
- Since the death occurred due to injuries sustained from attack by appellant (H5) *Njokwu v. State* (2013) 2 KLR (pt. 325) 1093

CRIMINAL PROCEDURE - Murder - Defence - Accident - Sustainability - Appellant failed to discharge the onus on him to prove the defence - And his words of threat attest to the intentional killing of the deceased (H3) *Jimmy v. State* (2013) 4 KLR (pt. 327) 1699

CRIMINAL PROCEDURE - Murder - Defence - Consideration of - After considering defence of accused - Court can consider other defence available to accused - But failure to do so will not amount to miscarriage of justice (H1) *State v. John* (2013) 5 KLR (pt. 330) 2539

CRIMINAL PROCEDURE - Murder - Defence - Provocation - Is not a complete defence to charge of murder - As its being upheld would not result in discharge & acquittal - But in reduction of the offence to manslaughter (H1) *Njokwu v. State* (2013) 2 KLR (pt. 325) 1093

CRIMINAL PROCEDURE - Murder - Doctrine of last seen - As prosecution established that appellants - Were last seen with the deceased - Appellants should explain what happened to him (H4) *Agbo v. State* (2013) 4 KLR (pt. 328) 1787

CRIMINAL PROCEDURE - Murder - Evidence - Contradictions in respondent's case cannot avail appellant - As evidence of murder of deceased by appellant remains uncontroverted (H1) *Jimmy v. State* (2013) 4 KLR (pt. 327) 1699

CRIMINAL PROCEDURE - Murder - Evidence - Evaluation - If trial court had properly evaluated oral evidence of prosecution witnesses - The same would have been expunged as inadmissible hearsay - Given by tainted witnesses (H7) *Odogwu v. State* (2013) 7 KLR (pt. 335) 3779

CRIMINAL PROCEDURE - Murder - Evidence - Identity of deceased - Since there is no doubt as to identity of body of deceased - Failure of prosecution to call witness in respect of same - Is irrelevant (H4) *Njokwu v. State* (2013) 2 KLR (pt. 325) 1093

CRIMINAL PROCEDURE - Murder - Evidence - Inconsistencies - Effect - Minor discrepancies in evidence of PW3 - Did not destroy inferences from the circumstantial evidence - That culminated in conclusive findings that appellant killed the deceased (H6) *Babatunde v. State* (2013) 6 KLR (pt. 332) 2895

CRIMINAL PROCEDURE - Murder - Ingredients - Proof - Convic-

tion of appellant for the offence - Can be sustained by the testimonies of respondent's witnesses - Medical report - And appellant's statements (H2) *Jimmy v. State* (2013) 4 KLR (pt. 327) 1699

CRIMINAL PROCEDURE - Murder - Ingredients - Proof - It must be proved that deceased died - As a result of the act of accused - Which was intentional or with knowledge that death or grievous bodily harm will occur (H2) *Maigari v. State* (2013) 7 KLR (pt. 333) 3251

CRIMINAL PROCEDURE - Murder - Ingredients - Proof - Prosecution must prove that the deceased died - And that the death was caused by act of accused - Which was intentional (H1) *Adeyeye v. State* (2013) 2 KLR (pt. 325) 885

CRIMINAL PROCEDURE - Murder - Ingredients - Proof - Prosecution must prove that deceased died - Which death was caused by accused - Who intended to either kill or cause grievous bodily harm (H3) *Njokwu v. State* (2013) 2 KLR (pt. 325) 1093

CRIMINAL PROCEDURE - Murder - Ingredients - Proof - Prosecution must prove that deceased died - And that the death was caused by act of accused - Which was intentional (H4) *State v. John* (2013) 5 KLR (pt. 330) 2539

CRIMINAL PROCEDURE - Murder - Ingredients - Proof - Prosecution must prove that the deceased died - That the death occurred as a result of act of accused - Which was intentional (H1) *Usman v. State* (2013) 5 KLR (pt. 330) 2569

CRIMINAL PROCEDURE - Murder - Ingredients - Proof - To secure conviction for murder - Prosecution must prove that deceased died - As a result of act of accused - Which was intentional (H2) *Afosi v. State* (2013) 6 KLR (pt. 331) 2583

CRIMINAL PROCEDURE - Murder - Ingredients - Proof - To secure conviction prosecution must prove that deceased died - That the death was caused by accused - Whose act was intentional with knowledge that death will occur (H4) *Babatunde v. State* (2013) 6 KLR (pt. 332) 2895

CRIMINAL PROCEDURE - Murder - Medical report - The report is not relevant - Since appellant attributed the cause of death of the deceased to himself (H4) *Dogo v. State* (2013) 3 KLR (pt. 326) 1249

CRIMINAL PROCEDURE - Murder - Mens rea - Presumption - A person is presumed to intend the natural consequences of his act - Hence accused is presumed to have intentionally killed the deceased (H5) *State v. John* (2013) 5 KLR (pt. 330) 2539

CRIMINAL PROCEDURE - Murder - Missing exhibits - Effect - Doubt created by disappearance of the vital exhibits - And the resultant inability of Supreme Court to evaluate same - Enures to benefit of appellant (H8) *Odogwu v. State* (2013) 7 KLR (pt. 335) 3779

CRIMINAL PROCEDURE - Murder - Objection - Where the charge under CC s. 319(1) is wrong - It is the duty of counsel to take objection - Before appellant takes his plea (H2) *Olatunbosun v. State* (2013) 7 KLR (pt. 335) 3851

CRIMINAL PROCEDURE - Murder - Proof - Apart from confessional statements of appellants - Evidence adduced by prosecution witnesses point to the only fact - That it was appellant that killed deceased (H6) *Oguno v. State* (2013) 12 KLR (pt. 338) 4529

CRIMINAL PROCEDURE - Murder - Proof - Circumstantial evidence - From the evidence it can be conclusively deduced that appellant intentionally killed the deceased - By inflicting grievous bodily harm on him (H7) *Babatunde v. State* (2013) 6 KLR (pt. 332) 2895

CRIMINAL PROCEDURE - Murder - Proof - Confession - Exhibits C & C1 tendered without objection - Along with evidence of PWs and the medical report - Settled question of the fact of death of the deceased (H3) *Maigari v. State* (2013) 7 KLR (pt. 333) 3251

CRIMINAL PROCEDURE - Murder - Proof - Doctrine of last seen - Presumption of the doctrine operates - Since appellant was the last to see deceased alive - And he had not proffered evidence of anything to the contrary (H5) *Maigari v. State* (2013) 7 KLR (pt. 333) 3251

CRIMINAL PROCEDURE - Murder - Proof - Document - Relevancy - The funeral programme is relevant as it was not meant to contradict PW4 - But to show from its content that deceased could have been killed - By any of those on whose toes he had stepped (H10) *Odogwu v. State* (2013) 7 KLR (pt. 335) 3779

CRIMINAL PROCEDURE - Murder - Proof - Means of - Prosecution can establish that accused caused death through - Confessional statement - Circumstantial evidence - And evidence of an eye witness (H4) *Maigari v. State* (2013) 7 KLR (pt. 333) 3251

CRIMINAL PROCEDURE - Murder - Proof - The newspaper wherein cult group - Claimed responsibility for death of deceased is relevant - And ought to have been admitted (H9) *Odogwu v. State* (2013) 7 KLR (pt. 335) 3779

CRIMINAL PROCEDURE - Murder - Retrial order - Correctness of -

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Yahaya v. State - Long incarceration cannot justify discharge & acquittal of accused - When the charge borders on murder (H4) Ganiyu v. State (2013) 4 KLR (pt. 327) 1661

CRIMINAL PROCEDURE - Murder - Self defence - Failure of - Since there is no credible evidence of appellant's life being in danger - He is deemed to have intentionally killed the deceased (H3) Adeyeye v. State (2013) 2 KLR (pt. 325) 885

CRIMINAL PROCEDURE - Murder - Self defence - Implication of - This presupposes that accused committed the offence in self defence - As the action he took was unavoidable (H4) Afosi v. State (2013) 6 KLR (pt. 331) 2583

CRIMINAL PROCEDURE - Murder - Self defence - Sustainability - Accused must show an act of grave and sudden provocation - Loss of self control - And his retaliation must be proportionate (H2) Adeyeye v. State (2013) 2 KLR (pt. 325) 885

CRIMINAL PROCEDURE - No case submission - Conditions - It is upheld where there was no legally admissible evidence - To prove essential element of the offence - Or evidence adduced was discredited as a result of cross examination (H1) Agbo v. State (2013) 4 KLR (pt. 328) 1787

CRIMINAL PROCEDURE - No case submission - Court is not to determine - Whether evidence is sufficient to justify conviction - But it must be satisfied that there is a prima facie case - Against accused (H2) Agbo v. State (2013) 4 KLR (pt. 328) 1787

CRIMINAL PROCEDURE - No case submission - Principle - The submission postulates that there is no legally admissible evidence - Or that prosecution's evidence has been so discredited - That no reasonable court can convict accused on such evidence (H1) Fagoriola v. FRN (2013) 7 KLR (pt. 335) 3753

CRIMINAL PROCEDURE - Nullity - Arraignment CPL s. 215 - The section which deals on taking of appellant's plea - Does not give room for exercise of discretion - And failure to comply with it - Renders the proceedings a nullity (H1) Lasisi v. State (2013) 5 KLR (pt. 330) 2419

CRIMINAL PROCEDURE - Party - Legal representation - Right to - By Constitution 1999 s. 36 - Every party to a case has right of representation - By counsel of his choice (H1) Nnakwe v. State (2013) 7 KLR (pt. 333) 3273

CRIMINAL PROCEDURE - Police - Criminal investigation - Basis -

This is carried out based on information available to the force - And the investigator uses his discretion - To determine how to go about it (H1) *Olatinwo v. State* (2013) 1-2 KLR (pt. 323) 541

CRIMINAL PROCEDURE - Prima facie case - Exists when there is sufficient evidence - To support the allegation made against accused - Of which he is expected to rebut in his defence (H3) *Fagoriola v. FRN* (2013) 7 KLR (pt. 335) 3753

CRIMINAL PROCEDURE - Proof - Circumstantial evidence - In the absence of direct testimonies of eye witnesses - Evidence of circumstances that can prove a proposition with accuracy of mathematics - Is sufficient to prove the offence charged (H6) *Maigari v. State* (2013) 7 KLR (pt. 333) 3251

CRIMINAL PROCEDURE - Proof - Number of witness - Evidence of single witness can ground a conviction - Where the evidence is credible and cogent - Provided that corroboration is not required (H4) *Babarinde v. State* (2013) 8-12 KLR (pt. 336) 3995

CRIMINAL PROCEDURE - Proof - Number of witness - Prosecution is not bound to call a host of witnesses - As single witness believed by court - Can establish a crime even in murder charge (H3) *Aliyu v. State* (2013) 6 KLR (pt. 332) 2873

CRIMINAL PROCEDURE - Proof - Purpose - It is to the effect that if the essential ingredients of offence have been proved by prosecution - The charge is proved beyond reasonable doubt (H1) *Adeleke v. State* (2013) 7 KLR (pt. 333) 3093

CRIMINAL PROCEDURE - Proof - Vital witness - Where prosecution failed to call a particular witness considered vital - Accused is at liberty to call such witness (H4) *Aliyu v. State* (2013) 6 KLR (pt. 332) 2873

CRIMINAL PROCEDURE - Proof beyond reasonable doubt - *Joseph v. State* - The phrase does not mean proof beyond all doubt - But prosecution proving guilt of accused - With compelling and conclusive evidence (H11) *Egwemi v. State* (2013) 1-2 KLR (pt. 323) 325

CRIMINAL PROCEDURE - Prosecution's case - Discrepancies - The minor discrepancies in prosecution's case - Are not sufficient to overturn the conviction of appellant (H7) *Ibrahim v. State* (2013) 12 KLR (pt. 337) 4273

CRIMINAL PROCEDURE - Rape - Denial - Proof - Medical evidence - Once there is denial - The evidence is not always mandatory - As court is encouraged to look for such evidence - Which shows injury

to private part of prosecutrix (H3) Popoola v. State (2013) 7 KLR (pt. 335) 3873

CRIMINAL PROCEDURE - Retracted statement - Weight - Where it is confessional statement - Court can convict on strength of the confession - But there should be some corroboration (H5) Ibrahim v. State (2013) 12 KLR (pt. 337) 4273

CRIMINAL PROCEDURE - Retrial - Principles - Abodundu's case - Retrial order is made where there has been error in law - Which neither renders the trial a nullity - Nor can court say there is no miscarriage of justice (H2) Mohammed v. State (2013) 1 KLR (pt. 322) 99

CRIMINAL PROCEDURE - Right to counsel - Violation of the Constitutional right to try accused in the absence of his counsel - Is irregularity that renders the trial a nullity (H1) Mohammed v. State (2013) 1 KLR (pt. 322) 99

CRIMINAL PROCEDURE - Robbery - Confession - Conviction - Accused can be convicted solely on his confession - Where same is direct and properly proved (H1) Afolabi v. State (2013) 6 KLR (pt. 332) 2841

CRIMINAL PROCEDURE - Robbery - Evidence - Police - Failure to call policeman who recovered the items is of no moment - As PW2 stated that the item was recovered from appellant in his presence (H2) Banjo v. State (2013) 6 KLR (pt. 331) 2683

CRIMINAL PROCEDURE - Robbery - Sentence - Validity - Appellant suffered no miscarriage of justice - As CA rightly sentenced him to 21 years imprisonment - As provided under CPA s. 381 (H5) Afolabi v. State (2013) 6 KLR (pt. 332) 2841

CRIMINAL PROCEDURE - Robbery - Stolen item - Recent possession - Where accused cannot explain how a robbed item got to his possession - It is presumed that he was one of the robbers - Or that he participated in the robbery (H1) Banjo v. State (2013) 6 KLR (pt. 331) 2683

CRIMINAL PROCEDURE - Sentence - Statutory provision - S. 11(1) of the Cultism Prohibition Law - Does not give court discretion - To reduce the punishment provided therein (H2) Stephen v. State (2013) 3 KLR (pt. 326) 1417

CRIMINAL PROCEDURE - Supreme Court - Criminal appeals - Time limit - By Supreme Court Act s. 27(2)(b) - Such appeals from CA to SC must be filed within 30 days - Otherwise leave of SC must be

sought and obtained to do so (H2) FRN v. Tawakalitu (2013) 5 KLR (pt. 329) 2079

CRIMINAL PROCEDURE - Tainted witness - This is a witness with some purpose to serve by given evidence - Thus a Judge should scrupulously examine such evidence - And be slow to convict without corroboration (H4) Egwemi v. State (2013) 1-2 KLR (pt. 323) 325

CRIMINAL PROCEDURE - Tainted witness - Witnesses - Tainted witness is one who is an accomplice in crime charged - Or who by evidence he gives - May be regarded as having some purpose of his own to serve (H2) Odogwu v. State (2013) 7 KLR (pt. 335) 3779

CRIMINAL PROCEDURE - Trial - Absence of accused - Exception - Accused must be tried in his presence - Except where he is kept out of court in the interest of public safety - Due to violent tendencies (H4) State v. Lawal (2013) 2 KLR (pt. 325) 1181

CRIMINAL PROCEDURE - Trial - Absence of accused - Trial of 1<sup>st</sup> accused in his absence - Constitutes a breach of the law - As addresses by parties or their counsel - Are integral part of the proceedings (H2) State v. Lawal (2013) 2 KLR (pt. 325) 1181

CRIMINAL PROCEDURE - Trial on information - CPA s. 334 provides for trial on information - Containing the charge - PW statement - Accused's statement - And list of exhibits (H6) Uwazuruike v. A-G Federation (2013) 4 KLR (pt. 328) 1953

CRIMINAL PROCEDURE - Trial within trial - Purpose - It is mini trial conducted to determine - Whether or not confessional statement of accused was made voluntarily (H2) Babarinde v. State (2013) 8-12 KLR (pt. 336) 3995

CRIMINAL PROCEDURE - Trial within trial - Purpose - The trial is conducted to ascertain - Whether the statement made by accused was voluntarily made (H3) State v. Rabi (2013) 1-2 KLR (pt. 323) 563

CRIMINAL PROCEDURE - Trial within trial - When conducted - It is held when accused objects to confession - On the ground that it was not made voluntarily (H7) Osuagwu v. State (2013) 1 KLR (pt. 322) 223

CRIMINAL PROCEDURE - Unlawful proceeding - Failure to object - Where accused fails to raise objection to such a procedure at trial - He cannot be allowed to raise same at appellate stage (H4) Nnakwe v. State (2013) 7 KLR (pt. 333) 3273

CROSS EXAMINATION - Evidence - Crime - Sworn evidence - Contradiction of - Counsel may use statements obtained during investigation - For purposes of cross examination - To contradict such evidence in open court (H3) *Olatinwo v. State* (2013) 1-2 KLR (pt. 323) 541

CROSS EXAMINATION - Identification parade - Correctness of - PW6 was not cross examined on the propriety or otherwise of the parade - And there is presumption of regularity of the parade under Evidence Act s. 168(1) (H6) *Aliyu v. State* (2013) 6 KLR (pt. 332) 2873

CROSS EXAMINATION - Land law - Customary pledge - Validity - Admission by plaintiff and evidence of PW3 under cross examination - Strengthened defendant's claim - That the land was pledged by family head (H5) *Achilihu v. Anyatonwu* (2013) 1 KLR (pt. 322) 1

CROSS EXAMINATION - Material fact - When witness testifies on such fact - Appellant who denies it - Should cross examine the witness - To show the contrary (H6) *Egwemi v. State* (2013) 1-2 KLR (pt. 323) 325

CROSS EXAMINATION - No case submission - Conditions - It is upheld where there was no legally admissible evidence - To prove essential element of the offence - Or evidence adduced was discredited as a result of cross examination (H1) *Agbo v. State* (2013) 4 KLR (pt. 328) 1787

CULTISM - Criminal procedure - Sentence - Statutory provision - S. 11(1) of the Cultism Prohibition Law - Does not give court discretion - To reduce the punishment provided therein (H2) *Stephen v. State* (2013) 3 KLR (pt. 326) 1417

CUSTOMARY LAW - Administration of estate - Right of women - It is unfair to deny appellants' entitlement to benefit from their father's properties - By virtue of a customary law of their birth place (H1) *Asika v. Atuanya* (2013) 7 KLR (pt. 335) 3651

CUSTOMARY LAW - Administration of estates - Wills - Bini native law - Deceased's will is voided only to the extent - That Igiogbe was not bequeathed to appellant as eldest son - But other parts of the will are valid (H3) *Uwaifo v. Uwaifo* (2013) 4 KLR (pt. 327) 1737

CUSTOMARY LAW - Bini native law - Igiogbe - Ogbanon's case - By this custom an eldest son of a deceased is entitled - To inherit without question - The house in which deceased lived and died (H1) *Uwaifo v. Uwaifo* (2013) 4 KLR (pt. 327) 1737



CUSTOMARY LAW - Customary court - Procedure - Strict rules of pleadings and application of Evidence Act - Are not observed in the court - But decision therein must be based on common sense (H4) Oguanuhu v. Chiegboka (2013) 1-2 KLR (pt. 323) 521

CUSTOMARY LAW - Customary court's judgment - Appraisal of - It is the substance and not the form of the judgment - That must be considered - So as not to undermine the real essence therein (H3) Oguanuhu v. Chiegboka (2013) 1-2 KLR (pt. 323) 521

CUSTOMARY LAW - Customary courts - Proceedings - Trials in the court is on substance and not form - And appellate court must respect decisions therefrom - Provided nothing therein contravenes the law (H9) Arum v. Nwobodo (2013) 4 KLR (pt. 327) 1583

CUSTOMARY LAW - Documents - Unpleaded documents - Fate - Since nothing shows that the unpleaded documents were tendered and admitted in Customary Court - They cannot be admitted on appeal (H7) Adeyefa v. Bamgboye (2013) 2 KLR (pt. 324) 647

CUSTOMARY LAW - Land law - Arbitral panel - Since nothing in the law shows that the arbitrators constituted judicial tribunal - Court of Appeal rightly affirmed findings of trial court on the panels (H6) Nruamah v. Ebuzoeme (2013) 1 KLR (pt. 322) 133

CUSTOMARY LAW - Land law - Customary pledge - Principles - Okoiko's case - A pledge is perpetually redeemable - And pledgee is not entitled to compensation - For putting the land to economic uses (H3) Achilihu v. Anyatonwu (2013) 1 KLR (pt. 322) 1

CUSTOMARY LAW - Land law - Customary pledge - Validity - Admission by plaintiff and evidence of PW3 under cross examination - Strengthened defendant's claim - That the land was pledged by family head (H5) Achilihu v. Anyatonwu (2013) 1 KLR (pt. 322) 1

DAMAGES - Appeals - Concurrent findings - Damages - Award of - No ground exists for Supreme Court to interfere with award of N15 million - As there is no credible case - That the amount is ridiculously high (H17) Nigerian Bottling Co. Plc v. Ubani (2013) 8-12 KLR (pt. 336) 4027

DAMAGES - Appeals - Interference - Since trial court relied on wrong premise of tort of detainee instead of contract - Court of Appeal rightly disturbed the excessive damages awarded (H3) Aminu Ishola Investment Ltd v. Afribank Plc (2013) 2 KLR (pt. 325) 1025

DAMAGES - Appeals - Quantum - Appellate court can interfere with amount of damages awarded by trial court - Where it is shown that

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the court proceeded on wrong principle (H2) *Kaja v. Oke* (2013) 2 KLR (pt. 325) 1051

DAMAGES - Award - Chattel loss - Value - Restitutio integrum - Cross appellant should recover such sum - As will place him so far as can be done monetarily - In the same position as if the loss had not occurred (H5) *Oando Nig. Plc. v. Adijere W. A. Ltd.* (2013) 5 KLR (pt. 330) 2459

DAMAGES - Award - Interference - Appellate court does not interfere with award made by trial court - Unless the latter acted on wrong principle of law - Or that the amount awarded is extremely high or ridiculously small (H4) *Ighreriniovo v. S.C.C. Nig. Ltd.* (2013) 4 KLR (pt. 328) 1853

DAMAGES - Award - Pleadings - Specific claim - Award of N9,672.30 per day for loss of vehicle usage up to a point is justifiable - For failure of appellant to deny the claim (H1) *Oando Nig. Plc. v. Adijere W. A. Ltd.* (2013) 5 KLR (pt. 330) 2459

DAMAGES - Award - Purpose - The intention is to compensate plaintiff for financial loss and sufferings caused by injury - And a Judge should consider the purchasing power of naira - At the time of judgment (H3) *Ighreriniovo v. S.C.C. Nig. Ltd.* (2013) 4 KLR (pt. 328) 1853

DAMAGES - Award - Sustainability - As no evidence was taken in HC - The alleged trespass leading to award of N500,000 damages was not proved - And CA was in error to affirm the award (H5) *Gbadamosi v. Akinloye* (2013) 7 KLR (pt. 333) 3225

DAMAGES - Cause of action - Ingredients - The phrase denotes presence of wrongful act of defendant - And subsequent damage caused to plaintiff (H3) *Chukwu v. Akpelu* (2013) 12 KLR (pt. 337) 4177

DAMAGES - Chattel loss - Replacement time - Since the truck was completely burnt down - The reasonable period to make a replacement - Would be calculated as N9,672.30 multiplied by 180 days (H3) *Oando Nig. Plc. v. Adijere W. A. Ltd.* (2013) 5 KLR (pt. 330) 2459

DAMAGES - Contract - Torts - Since chattel does not include abstract money - The award of N2 million based on detinue is wrong - As measure of damages in tort is not the same as in contract (H2) *Aminu Ishola Invest. Ltd v. Afribank Plc* (2013) 2 KLR (pt. 325) 1025

DAMAGES - Evidence - Pleadings - Unchallenged averments - Evidence on amount claimed constituted sufficient proof of special dam-

ages - Recoverable by respondent - As the evidence was admitted without objection (H6) Nigerian Bottling Co. Plc v. Ubani (2013) 8-12 KLR (pt. 336) 4027

DAMAGES - General damages - Award of - This may be awarded where a Judge cannot point out any measure - By which they are to be assessed - Except the opinion of a reasonable man (H2) Oando Nig. Plc. v. Adjere W. A. Ltd. (2013) 5 KLR (pt. 330) 2459

DAMAGES - General damages - Trespass - Plaintiff who has by evidence established that defendant is a trespasser - Is entitled without more to general damages for trespass (H8) Nigerian Bottling Co. Plc v. Ubani (2013) 8-12 KLR (pt. 336) 4027

DAMAGES - General damages - Where plaintiff pleaded and gave particulars of special damages - He is entitled to be granted relief over and above general damages awarded (H10) Nigerian Bottling Co. Plc v. Ubani (2013) 8-12 KLR (pt. 336) 4027

DAMAGES - Land law - Trespass - Damages - Plaintiff who claims damages and injunction for trespass - Puts his title in issue - And succeeds on proving that he has better title than defendant (H3) Olaniyan v. Fatoki (2013) 7 KLR (pt. 335) 3829

DAMAGES - Landlord & tenant - Mesne profits - Entitlement - As quit notice was not served on respondents - Appellant is not entitled to the profits - But to damages for use and occupation of the property (H11) Abeke v. Odunsi (2013) 5 KLR (pt. 330) 2285

DAMAGES - Master & servant - Termination - Damages in action for termination of employment - Can only follow events - Where the termination is wrongful (H5) Osoh v. Unity Bank Plc. (2013) 2 KLR (pt. 325) 1133

DAMAGES - Negligence - Proof - Plaintiff must lead evidence in proof of his entitlement - As award of damages depends on facts that sustain the plea for the award (H3) Kaja v. Oke (2013) 2 KLR (pt. 325) 1051

DAMAGES - Negligence - Proof - To succeed in such action - Plaintiff must show that defendant owes him duty of care - And that he has suffered damage - In consequence of the breach of the duty towards him (H1) Ighreriniovo v. S.C.C. Nig. Ltd. (2013) 4 KLR (pt. 328) 1853

DAMAGES - Pleadings - Averment - Specific denial - By amendment of Supreme Court Rules in 1989 - Defendant must specifically traverse - Any claim for damages in an action (H4) Oando Nig. Plc. v. Adjere

W. A. Ltd. (2013) 5 KLR (pt. 330) 2459

DAMAGES - Special damages - When plaintiff has suffered specific losses as to his income - In addition to general damages on account of trespass - He can claim the losses by way of special damages (H9) Nigerian Bottling Co. Plc v. Ubani (2013) 8-12 KLR (pt. 336) 4027

DEBTS - Land law - Pledgee - Duties of - He is to take proper care of the pledged property - And to deliver it to pledgor - When the debt is repaid (H4) Achilihu v. Anyatonwu (2013) 1 KLR (pt. 322) 1

DEEDS - Land law - Title - Proof - Mere production of deed of conveyance - Does not automatically establish title - As court must inter alia be satisfied - That the conveyance is valid and duly executed (H4) Olaniyan v. Fatoki (2013) 7 KLR (pt. 335) 3829

DEEDS - Property law - Sale of property - Validity - As Exhibit D1-D5 was abandoned - And respondent having breached terms of the Sheraton Deed of Assignment - There is no valid sale of the property (H4) Nidocco Ltd. v. Gbajabiamila (2013) 7 KLR (pt. 334) 3479

DISCLAIMER - Documents - Disclaimer - Effect - Disclaimer does not destroy document on which it appears - Rather it limits the scope and operation - For the express purpose tied to the disclaimer (H6) INEC v. Atuma (2013) 5 KLR (pt. 330) 2375

DISCLAIMER - Elections - Disclaimer - Exhibit INEC 1 - Limitation of the exhibit is that it should not be used by persons - In order to foster boundary and political claims (H7) INEC v. Atuma (2013) 5 KLR (pt. 330) 2375

DOCUMENTS - "Certify" - Meaning - It means to authenticate or vouch for a thing in writing - Or to attest as being true or as represented (H6) Adeyefa v. Bamgboye (2013) 2 KLR (pt. 324) 647

DOCUMENTS - Admissibility - Mere fact that Exhibits E, F & C were prepared during pendency of suit - Does not render them inadmissible - As it has not been shown that the maker has financial or tainted interest - In the outcome of the case (H11) Nigerian Bottling Co. Plc v. Ubani (2013) 8-12 KLR (pt. 336) 4027

DOCUMENTS - Admissibility - Pleadings - For document to be admissible in civil proceedings - It must not only be pleaded by plaintiff - But must also be relevant (H5) Adeyefa v. Bamgboye (2013) 2 KLR (pt. 324) 647

DOCUMENTS - Appeals - Documentary evidence - Evaluation - Where findings of trial Judge on document are perverse - Appellate

court will employ its appellate power - To correct the perversity (H7) CPC v. Ombugadu (2013) 7 KLR (pt. 334) 3401

DOCUMENTS - Appeals - Evidence - Reevaluation - Appellate court would be in as good a position as trial court had been - To reappraise documentary evidence - Since doing so does not involve credibility of witness (H2) U.T.C. Nig. Plc. v. Lawal (2013) 8-12 KLR (pt. 336) 4133

DOCUMENTS - Appeals - Judgment - Decision transferring the matter to undefended list - Is correctly adjudged as defective - Even though CA wrongfully ruled that trial court is not bound - To consider documents for such transfer (H5) Akpan v. Akwa-Ibom Property Invest. Co. Ltd. (2013) 6 KLR (pt. 331) 2631

DOCUMENTS - Banking - Restitution - Exchange control documents - Appellant does not need the documents to refund the money to respondent - Since the money has not been paid over to the principal in the transaction (H6) FBN Plc v. Ozokwere (2013) 12 KLR (pt. 337) 4203

DOCUMENTS - Company law - Company - Incorporation - Proof - No document will satisfactorily establish the legal personality of a company - Than its certificate of incorporation (H3) Reptico S.A. Geneva v. Afribank Plc (2013) 5 KLR (pt. 329) 2091

DOCUMENTS - Courts - Wrongful admission - Where document is wrongly admitted - Court has jurisdiction to expunge it at judgment - Since judgment can only be based on legally admissible document (H2) Nwaogu v. Atuma (2013) 12 KLR (pt. 338) 4491

DOCUMENTS - Disclaimer - Effect - Disclaimer does not destroy document on which it appears - Rather it limits the scope and operation - For the express purpose tied to the disclaimer (H6) INEC v. Atuma (2013) 5 KLR (pt. 330) 2375

DOCUMENTS - Documentary & oral evidence - Relationship - The latter throws more light on the former - As documentary evidence is used as hanger on which to hang oral evidence (H2) Ndulue v. Ojiakor (2013) 2 KLR (pt. 324) 771

DOCUMENTS - Documentary & oral evidence - Relationship - When the former supports the latter - The latter becomes more credible (H5) Odutola v. Mabogunje (2013) 1 KLR (pt. 322) 161

DOCUMENTS - Documentary evidence - Weight - Where the evidence supports oral testimony - The latter becomes more credible - As the former serves as hanger from which to assess the latter (H5)

Odunlami v. Nigerian Navy (2013) 6 KLR (pt. 331) 2721

DOCUMENTS - Elections - Disclaimer - Exhibit INEC 1 - Limitation of the exhibit is that it should not be used by persons - In order to foster boundary and political claims (H7) INEC v. Atuma (2013) 5 KLR (pt. 330) 2375

DOCUMENTS - Inadmissible document - Weight - Such document is invalid for all intents and purposes - As it cannot form the basis of any competent finding of court (H1) Nwaogu v. Atuma (2013) 12 KLR (pt. 338) 4491

DOCUMENTS - Legal practitioners - L.P. Act ss. 2(1) & 24 - Purpose - The sections ensure that only a lawyer whose name is on the call roll - Can sign legal documents - Thereby eliminating impersonators (H1) Ministry of Works & Transport v. Yakubu (2013) 1-2 KLR (pt. 323) 289

DOCUMENTS - Made during pendency of suit - Fate - By EA s. 91 - Such document is inadmissible for it is capable of gross abuse to advantage of maker - Whose interest negates principle of fair hearing (H12) Nigerian Bottling Co. Plc v. Ubani (2013) 8-12 KLR (pt. 336) 4027

DOCUMENTS - Murder - Proof - Document - Relevancy - The funeral programme is relevant as it was not meant to contradict PW4 - But to show from its content that deceased could have been killed - By any of those on whose toes he had stepped (H10) Odogwu v. State (2013) 7 KLR (pt. 335) 3779

DOCUMENTS - Public document - Certification - Exhibit EA3 being uncertified public document - Is inadmissible in law and should not be countenanced (H3) Nwaogu v. Atuma (2013) 12 KLR (pt. 338) 4491

DOCUMENTS - Public documents - Admissibility - Under Evidence Act s. 110 - Such documents must be duly certified - Before they can be admissible in evidence (H4) Adeyefa v. Bamgboye (2013) 2 KLR (pt. 324) 647

DOCUMENTS - Relief - Failure to claim - Since appellant never claimed for release of its title documents - Same was never decreed in its favour - As court does not grant relief not claimed (H8) Alims Nig. Ltd. v. United Bank for Africa (2013) 1 KLR (pt. 322) 35

DOCUMENTS - Signature - Expert opinion - Weight - Expert on handwriting may give his opinion on disputed signature - But final decision is made by the Judge (H3) Odotola v. Mabogunje (2013) 1

KLR (pt. 322) 161

DOCUMENTS - Supreme Court - Objection - Tendering of documents in the court are subject to valid objection - Since they cannot be cross examined upon - Unless the court assumes role of trial court (H1) Adeyefa v. Bamgboye (2013) 2 KLR (pt. 324) 647

DOCUMENTS - Unpleaded documents - Fate - Since nothing shows that the unpleaded documents were tendered and admitted in Customary Court - They cannot be admitted on appeal (H7) Adeyefa v. Bamgboye (2013) 2 KLR (pt. 324) 647

ELECTION PETITIONS - Appeal - Gubernatorial election - Jurisdiction - Final court - By 1999 Constitution s. 246(3) - SC has no jurisdiction to review decision of CA in appeals in respect of such election (H1) Oni v. Fayemi (2013) 5 KLR (pt. 330) 2497

ELECTION PETITIONS - Appeals - Right of - Legislative Houses election - Appeal shall lie as of right from decisions of CA to SC - Only in items listed under 1999 Constitution s. 233(e)(i)(ii)(iii)(iv)(v)(vi) - Thus SC has no jurisdiction to hear appeal on such election petitions (H4) Opara v. Amadi (2013) 6 KLR (pt. 332) 3027

ELECTION PETITIONS - Crime - Proof - Appellants are to prove criminal acts of infraction of the Electoral Act - Based on proof beyond reasonable doubt (H1) Oke v. Mimiko (2013) 8-12 KLR (pt. 336) 4077

ELECTION PETITIONS - Electoral Act - Non compliance - Proof - Petitioner must not only prove that there was non compliance - But that the same substantially affected result of the election (H2) Oke v. Mimiko (2013) 8-12 KLR (pt. 336) 4077

ELECTION PETITIONS - Evidence - Hearsay - Under Electoral Act s. 45(2) - PW45 is not qualified to testify to what happened in disputed units - Other than the one he was physically available (H5) Oke v. Mimiko (2013) 8-12 KLR (pt. 336) 4077

ELECTION PETITIONS - Filing - Time limit - Such petitions are sui generis as they are limited by time - Hence by Electoral Act para. 14(2)(a)(b) 1<sup>st</sup> Sch. - Amendment or fresh evidence are not allowed at the expiration of the filing period (H1) Oke v. Mimiko (2013) 5 KLR (pt. 329) 2195

ELECTION PETITIONS - Grounds - Court - Adherence - Where petitioner relies on a ground - It will be injustice to adverse party - For court to look for other grounds to question the petition (H4) Oshiomole v. Ehigie (2013) 1 KLR (pt. 322) 191

ELECTION PETITIONS - Non qualification - Pleadings - Petitioner who relies on non qualification to nullify election - Must make the issue a ground - And support same by specific pleadings (H1) Oshiomole v. Ehigie (2013) 1 KLR (pt. 322) 191

ELECTION PETITIONS - Tribunal - Jurisdiction - Voters register - Trial tribunal can determine issues on the register - Since there cannot be dichotomy between the register - And what transpired at contest grounds of the election (H6) Oke v. Mimiko (2013) 8-12 KLR (pt. 336) 4077

ELECTION PETITIONS - Voters register - Objection to - To impugn content of the register - Court must be presented with something - To compare with what was available and in use - And what the proper register should be (H3) Oke v. Mimiko (2013) 8-12 KLR (pt. 336) 4077

ELECTIONS - Appeals - Extension of time - ANPP v. Albishir - As no reason was given for delay - Grant of the application will frustrate hearing of main appeal at CA - Which borders on pre election matter that must be heard timeously (H2) Chime v. Onwuegbu (2013) 7 KLR (pt. 335) 3739

ELECTIONS - Appeals - Legislative Houses - Final court - CA has jurisdiction in matters under 1999 Constitution s. 246(a)(b)(c)(i)(ii)(iii) - And its decisions on appeals arising from the election - Shall be final (H5) Opara v. Amadi (2013) 6 KLR (pt. 332) 3027

ELECTIONS - Court - Pleadings - Binding nature - It is not the duty of CA to fish for disqualifying factors for senatorial office - Which were not specifically raised in the question for determination (H4) Nwaogu v. Atuma (2013) 12 KLR (pt. 338) 4491

ELECTIONS - Court processes - Originating summons - Validity - Application made by this procedure without questions for determination - Is incompetent and as such court cannot validly exercise its jurisdiction under Electoral Act s. 87(9) (H1) Olley v. Tunji (2013) 4 KLR (pt. 328) 1905

ELECTIONS - Courts - Jurisdiction - Supreme Court cannot interfere - Since the Lower courts correctly held that the matter is spent - As appellant delayed to claim his rights after the election (H2) Salim v. CPC (2013) 2 KLR (pt. 324) 829

ELECTIONS - Courts - Order - Basis - CA was wrong to have ordered that 2<sup>nd</sup> respondent had no candidate - And that 3<sup>rd</sup> respondent was not qualified to contest - As the order was not sought by the



parties (H5) INEC v. Atuma (2013) 5 KLR (pt. 330) 2375

ELECTIONS - Crime - Allegation of - Proof - By Evidence Act s. 135(1) - Appellant must prove the alleged manipulation of voters' register - And the effect it had on the election result (H3) Akeredolu v. Mimiko (2013) 8-12 KLR (pt. 336) 3895

ELECTIONS - Declaration of winner - Electoral Act 2010 s. 141 - The section implies that before a person is returned as elected by tribunal or court - That person must have fully participated in all stages of the election (H2) CPC v. Ombugadu (2013) 7 KLR (pt. 334) 3401

ELECTIONS - Documents - Disclaimer - Exhibit INEC 1 - Limitation of the exhibit is that it should not be used by persons - In order to foster boundary and political claims (H7) INEC v. Atuma (2013) 5 KLR (pt. 330) 2375

ELECTIONS - Election petitions - Non qualification - Pleadings - Petitioner who relies on non qualification to nullify election - Must make the issue a ground - And support same by specific pleadings (H1) Oshiomole v. Ehigie (2013) 1 KLR (pt. 322) 191

ELECTIONS - Evidence - Uncontroverted - Weight - Evidence of Osisioma Ngwa LGA being part of Abia Central Senatorial District in previous elections - Remains unchallenged and should be acted upon by court (H8) Nwaogu v. Atuma (2013) 12 KLR (pt. 338) 4491

ELECTIONS - Federal HC - Jurisdiction - Expansion - 1999 Constitution ss. 4 & 228 empowers NA to add to jurisdictional limit of the court - To entertain pre election matters - And Electoral Act s. 87(9) is an addition contemplated by the sections (H4) Gassol v. Tutare (2013) 12 KLR (pt. 338) 4463

ELECTIONS - Jurisdiction - Fundamental rights - Ifegwu's case - Appellant's right to seek redress for breach of his right is not terminated - By reason of CA final judgment in the election proceedings - As such right can be pursued in a competent court (H7) Opara v. Amadi (2013) 6 KLR (pt. 332) 3027

ELECTIONS - Jurisdiction - Nomination - The matter is not within exclusive jurisdiction of Federal HC - As relief 7 cannot be construed as challenging the decision of 4<sup>th</sup> respondent - In recognizing 1<sup>st</sup> respondent as candidate of CPC (H9) Ahmed v. Ahmed (2013) 7 KLR (pt. 335) 3561

ELECTIONS - Jurisdiction - Pre election - Electoral Act s. 87(9) & Lado's case - Are not applicable to this case - As 2<sup>nd</sup> appellant is not

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aspirant - And his complaint is not founded on nomination (H1) CPC v. Ombugadu (2013) 7 KLR (pt. 334) 3401

ELECTIONS - Jurisdiction - Pre election matters - Jurisdiction conferred on Federal High Court by NA under Electoral Act s. 87(9) - Has not been taken away by 1999 Constitution (H3) Gassol v. Tutare (2013) 12 KLR (pt. 338) 4463

ELECTIONS - Legislative Houses election - Appeal - Final court - By 1999 Constitution s. 246(3) - CA decision in such election is final - And there cannot be a further appeal against same (H2) Madumere v. Okwara (2013) 6 KLR (pt. 332) 2955

ELECTIONS - Legislative Houses election - Appeal - Specific provisions in 1999 Constitution s. 246(3) - Rather than general provisions in s. 233(2)(b)(c) - Donates and subscribes right to appeal - Against decision of CA arising from the election (H1) Madumere v. Okwara (2013) 6 KLR (pt. 332) 2955

ELECTIONS - Party - Necessary party - Inclusion of INEC in the matter at Federal HC is indispensable - Because respondents' relief No. 4 claimed for an order - Mandating INEC to release voters register to appellant (H3) Abia State Ind. Elec. Com. v. Kanu (2013) 5 KLR (pt. 330) 2313

ELECTIONS - Pre election matters - Jurisdiction - By Electoral Act 2011 s. 87(9) - Federal High Court no longer enjoys exclusive jurisdiction over such matters (H1) Salim v. CPC (2013) 2 KLR (pt. 324) 829

ELECTIONS - Pre election matters - Jurisdiction - It is only Federal and State High Courts that have jurisdiction in such matters - And judgment of Supreme Court is final in the matter (H6) Opara v. Amadi (2013) 6 KLR (pt. 332) 3027

ELECTIONS - Senatorial districts - Division - Under 1999 Constitution s. 71 - Division of each State into three Senatorial districts - Is a function assigned exclusively to INEC (H1) Nwaogu v. Atuma (2013) 1-2 KLR (pt. 323) 305

ELECTIONS - Senatorial districts - Location of Local Govt. - This is a sensitive constitutional geopolitical issue - Which cannot be admitted or denied - At the whims and caprices of parties (H2) Nwaogu v. Atuma (2013) 1-2 KLR (pt. 323) 305

ELECTIONS - Tribunal - Jurisdiction - It is the use of the allegedly manipulated voters' register at the election - As distinct from the act of the alleged manipulation - That the tribunal had jurisdiction to

entertain (H5) *Akeredolu v. Mimiko* (2013) 8-12 KLR (pt. 336) 3895

EQUITY - Administration of estate - Wills - Equity - It is injustice to alter the 3<sup>rd</sup> position of respondent's father in the hierarchy of the will - And appellants who want equity are expected to do equity (H2) *Asika v. Atuanya* (2013) 7 KLR (pt. 335) 3651

EQUITY - Administration of estates - Will - Beneficiaries - Hierarchy - Justice demands that respondent takes his father's place in the will - As one who succeeds to another's right - Ought to use that person's right (H6) *Asika v. Atuanya* (2013) 7 KLR (pt. 335) 3651

EQUITY - Administration of estates - Wills - Beneficiaries - Equity - Justice demands that appellants who shared the property - Should not be the first to take by choice - As he who comes to equity must come with clean hands (H7) *Asika v. Atuanya* (2013) 7 KLR (pt. 335) 3651

EQUITY - Appeals - Court of Appeal - Powers - By C.A. Act s. 18 - The court can make equitable order(s) - In the interest of justice administration - So as to preserve the subject matter of dispute between parties (H4) *Contract Resources Ltd v. Standard Trust Bank Ltd* (2013) 2 KLR (pt. 325) 915

EQUITY - Banking - Technicality - It is unjust to allow appellant hold unto the money deposited by respondent - On technical ground that appellant was not a privy to - Contract between respondent and the company (H1) *FBN Plc v. Ozokwere* (2013) 12 KLR (pt. 337) 4203

EQUITY - Injunction - Grant - Purpose - Being an equitable remedy - Injunction is granted discretionarily - To preserve the subject matter in dispute - Or to maintain the status quo (H1) *Adeleke v. Lawal* (2013) 2 KLR (pt. 324) 623

EQUITY - Land law - Title - Grant - Nature of - It is an equitable relief that is subject to the discretion of court - Which must be of the opinion that party seeking it - Is entitled to an exercise of discretion in his favour (H1) *Tukuru v. Sabi* (2013) 3 KLR (pt. 326) 1433

EQUITY - Maxims - Audi alteram partem - Application - Administrative bodies acting judicially in the imposition of decision - That is likely to affect civil rights and obligations - Are bound to observe principles of fair hearing (H1) *Gyang v. COP Lagos State* (2013) 12 KLR (pt. 337) 4257

EQUITY - Maxims - Audi alteram partem - Even when acting in administrative capacity - Tribunal is to act in good faith and fairly listen to both sides before deciding (H2) *Judicial Service Commission of*

Cross River State v. Young (2013) 5 KLR (pt. 329) 2129

ESTOPPEL - Land law - Action - Estoppel - Respondent having established title conveyed by Exhibit A - And relied on Exhibits D, C1 & C2 - Appellants are estopped from relitigating - The facts of the land belonging to the Oba - And that appellants were customary tenant (H5) Olaniyan v. Fatoki (2013) 7 KLR (pt. 335) 3829

ESTOPPEL - Land law - Title - Res judicata - Application - Estoppel per rem judicatam is applicable here - As the parties, land and subject matter in exhibits P1 & P2 are the same (H2) Apata v. Olanlokun (2013) 7 KLR (pt. 334) 3359

ESTOPPEL - Landlord's title - Denial of - Tenant that denies that his landlord is the owner of the premises he lives in - Is liable to forfeit the tenancy (H4) Abeke v. Odunsi (2013) 5 KLR (pt. 330) 2285

ESTOPPEL - Res judicata - Application - A plaintiff cannot relitigate an action that has been competently decided by court - Where parties - Issues and subject matter in previous proceedings are the same (H2) Igbeke v. Okadigbo (2013) 5 KLR (pt. 330) 2351

EVIDENCE - "Prima facie case" - Meaning of - It suggests that evidence produced so far - Indicates that there is something - Worth looking at (H3) Agbo v. State (2013) 4 KLR (pt. 328) 1787

EVIDENCE - Actions - Civil matters - Standard of proof - Civil cases are decided on preponderance of evidence - As Judge is expected to weigh evidence of both sides on imaginary scale - To determine where the pendulum will tilt (H10) Ajibulu v. Ajayi (2013) 12 KLR (pt. 337) 4153

EVIDENCE - Actions - Commencement - Validity - Appellant does not exist in law - For failing to prove its juristic personality to sue and be sued - Hence its action in the trial court is incompetent (H4) Reptico S.A. Geneva v. Afribank Plc (2013) 5 KLR (pt. 329) 2091

EVIDENCE - Actions - Company - Legal personality - Proof - Issue of appellant's legal personality cannot be treated on affidavit evidence - And except it is admitted - It must be proved that appellant has ceased to exist (H15) Musaconi Ltd. v. Aspinall (2013) 6 KLR (pt. 331) 2695

EVIDENCE - Actions - Counter claim - Proof - It is an independent and separate action - In which defendant/counter claimant has burden to prove the counter claim - To be entitled to judgment thereon (H2) Maobison Inter-link Associated Ltd. v. UTC Nig. Plc. (2013) 4 KLR (pt. 328) 1871

EVIDENCE - Actions - Declaratory relief - Proof - Plaintiff must establish the relief to the satisfaction of court - As such relief is not granted - Even on admission by defendant (H1) *Matanmi v. Dada* (2013) 2 KLR (pt. 324) 725

EVIDENCE - Actions - Evidence Act s. 83(3) - Application - The section is not applicable to Exhibit CA1 - As 2<sup>nd</sup> respondent who made same - Was performing official assignment - Without direct personal interest in the result of litigation (H5) *CPC v. Ombugadu* (2013) 7 KLR (pt. 334) 3401

EVIDENCE - Actions - Reliefs - Vagueness of - Fate - Respondent's claims pertaining to promotions and entitlements are uncertain - And as such must fail as there was no evidence - To prove his entitlement to same (H5) *University of Jos v. Ikegwuoha* (2013) 12 KLR (pt. 338) 4615

EVIDENCE - Administration of estates - Probate grant - Revocation - Appellants must first call evidence to invalidate the grant - Before facing their claim on validity of the will - Where respondents are expected to begin evidence (H3) *Nsefik v. Muna* (2013) 12 KLR (pt. 337) 4347

EVIDENCE - Administration of estates - Will - Proof - Where there is dispute as to a will - The propounders of the will must prove by evidence - That prima facie all is in order in respect of the will (H2) *Nsefik v. Muna* (2013) 12 KLR (pt. 337) 4347

EVIDENCE - Administration of estates - Will - Propounder of - Respondent as the propounder of the will - Has a duty to plead and prove due execution of same (H3) *Eta v. Dazie* (2013) 3 KLR (pt. 326) 1269

EVIDENCE - Administration of estates - Will - Unpleaded facts - Evidence led on facts not pleaded - Go to no issue and is liable to be expunged (H4) *Eta v. Dazie* (2013) 3 KLR (pt. 326) 1269

EVIDENCE - Administrative law - Official & judicial acts - Presumption of regularity - By Evidence Act s. 150(1) - Where there is no evidence to the contrary - Things are presumed to have been rightly done (H6) *Ugwu v. State* (2013) 3 KLR (pt. 326) 1453

EVIDENCE - Admissibility - Evidence Act s. 91(3) does not support appellant's case - And Exhibits 4, 5, 6 & 7 are admissible - Since the maker acted in official capacity - And not as a person interested (H1) *U.T.C. Nig. Plc. v. Lawal* (2013) 8-12 KLR (pt. 336) 4133

EVIDENCE - Admission - Definition - By s. 19 E. A. - It is oral or documentary statement - That suggests any inference as to fact in issue - Which must be unequivocal and not based on misapprehension (H6) Oguanuhu v. Chiegboka (2013) 1-2 KLR (pt. 323) 521

EVIDENCE - Admitted facts - Weight - Absence of issues signifies admission - And admitted facts are never in issue - And therefore need no proof (H5) Ajibulu v. Ajayi (2013) 12 KLR (pt. 337) 4153

EVIDENCE - Affidavits - Contents - By Evidence Act ss. 86 & 87 - Affidavit shall contain only facts - Derived from personal knowledge of deponent - And not objection or legal argument (H4) Okponipere v. State (2013) 2 KLR (pt. 325) 1119

EVIDENCE - Affidavits - Deposition - Proof - To substantiate the allegation against counsel - Evidence must be adduced to show that exhibit E was served on him (H3) Ogboru v. Uduaghan (2013) 6 KLR (pt. 332) 2981

EVIDENCE - Affidavits - False declaration - Allegation of - Proof - Invention and fabrication of evidence - Should not be made against anyone - Without proof (H4) Nwaogu v. Atuma (2013) 1-2 KLR (pt. 323) 305

EVIDENCE - 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) Ahmed v. CBN (2013) 6 KLR (pt. 331) 2611

EVIDENCE - Alibi - Inconsistencies - Where material facts of the defence are found to be false - Prosecution is not bound to investigate - As no alibi is established (H3) Ayan v. State (2013) 7 KLR (pt. 335) 3717

EVIDENCE - Alibi - Plea - Conditions of - Accused must inter alia - Raise the defence at the earliest opportunity - Detailing his whereabouts - And must adduce evidence in support (H3) Egwemi v. State (2013) 1-2 KLR (pt. 323) 325

EVIDENCE - Alibi - Plea of - Failure to investigate - Prosecution's case is not made fatal by every failure of police to investigate alibi - As accused alibi is demolished - Where there are sufficient evidence fixing him at crime scene at the material time (H2) Aliyu v. State (2013) 6 KLR (pt. 332) 2873

EVIDENCE - Alibi - Proof - Prosecution has onus to adduce credible evidence to disprove alibi - But accused must firstly discharge the evidential burden of setting up facts - On which alibi can rest (H1)

Ayan v. State (2013) 7 KLR (pt. 335) 3717

EVIDENCE - Alibi - Proof - Where accused raises alibi - Prosecution must investigate same - But accused is still bound to give particulars of his whereabouts (H4) Agboola v. State (2013) 5 KLR (pt. 329) 2019

EVIDENCE - Appeals - Concurrent findings - Appellant failed to displace the findings - As there is no proof of how the circumstantial evidence was weakened - By any co existing circumstances in the matter (H1) Babatunde v. State (2013) 6 KLR (pt. 332) 2895

EVIDENCE - Appeals - Concurrent findings - As there are irreconcilable conflicts with the affidavit upon which lower court made findings - Supreme Court has duty to interfere - And set aside the findings (H3) Olley v. Tunji (2013) 4 KLR (pt. 328) 1905

EVIDENCE - Appeals - Concurrent findings - Findings of the two lower courts are unassailable - As appellants were unable to prove - Existence of contract of employment with respondents (H9) Organ v. Nig. Liquefied Natural Gas Ltd. (2013) 7 KLR (pt. 334) 3521

EVIDENCE - Appeals - Concurrent findings - Since the findings of the lower courts were not supported by evidence - Supreme Court will intervene - By virtue of its powers in S.C. Act s. 22 (H4) Matanmi v. Dada (2013) 2 KLR (pt. 324) 725

EVIDENCE - Appeals - Concurrent findings - Supreme Court does not interfere - Where the findings are reasonably justified - And supported by evidence (H3) Denton-West v. Jack (2013) 12 KLR (pt. 338) 4435

EVIDENCE - Appeals - Contract - Court - Findings - Correctness of - CA was right in finding that - The trial court had no evidence supported by pleadings - That the contract between the parties was voided by illegality (H5) Ajayi v. Total Nig. Plc. (2013) 7 KLR (pt. 334) 3333

EVIDENCE - Appeals - Court - Discretion - Exercise of - Correctness - CA rightly exercised its discretion - Having considered that appellant can still adduce evidence at the trial proper (H5) Aroh v. PDP (2013) 6 KLR (pt. 331) 2655

EVIDENCE - Appeals - Court - Finding - Correctness of - Supreme Court will not interfere with the finding of CA - On the available evidence before the trial court - That is not considered to be perverse (H4) Amobi v. Nzegwu (2013) 8-12 KLR (pt. 336) 3953

EVIDENCE - Appeals - Court of Appeal - Interlocutory injunction -

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Before the application can be made to the court - It must be shown on the supporting affidavit - That there exists special and exceptional circumstances (H1) Commissioner for Education v. Amadi (2013) 2 KLR (pt. 325) 1003

EVIDENCE - Appeals - Dismissal - Basis - Appeal court can only dismiss appeal - If the appeal appears to be a non starter - And the court does not reevaluate evidence - Except there are genuine complaints (H6) Ayan v. State (2013) 7 KLR (pt. 335) 3717

EVIDENCE - Appeals - Documentary evidence - Evaluation - Where findings of trial Judge on document are perverse - Appellate court will employ its appellate power - To correct the perversity (H7) CPC v. Ombugadu (2013) 7 KLR (pt. 334) 3401

EVIDENCE - Appeals - Evaluation - Interference - Appellate courts interfere to ensure that justice prevails - Only where trial court failed to draw correct inferences (H4) Lasisi v. State (2013) 3 KLR (pt. 326) 1313

EVIDENCE - Appeals - Evaluation - Provided appellate court took full cognizance of evaluation of evidence alongside pleadings by trial court - It must not deal line by line on judgment of tribunal (H4) Oke v. Mimiko (2013) 8-12 KLR (pt. 336) 4077

EVIDENCE - Appeals - Extension of time - Conditions - By C.A. Rules O. 7 r. 10(2) - Affidavit evidence must disclose good and substantial reasons - And the ground must show good cause why appeal should be heard (H4) Nigerian Army v. Warrant Officer Banni Yakubu (2013) 1-2 KLR (pt. 323) 471

EVIDENCE - Appeals - Extension of time - Conditions - S.C. Rules O. 2 r. 31(2) - The affidavit evidence must disclose good & substantial reason for the delay - And proposed grounds of appeal must be arguable (H2) Imegwu v. Okolocha (2013) 1-2 KLR (pt. 323) 433

EVIDENCE - Appeals - Fair hearing - Administrative body - Dealing with a matter - Based on printed or oral evidence or communications only - Is not in itself a breach of principles of fair hearing (H2) Gyang v. COP Lagos State (2013) 12 KLR (pt. 337) 4257

EVIDENCE - Appeals - Finding - Correctness of - CA decision affirming trial court's finding stands - As appellants were unable to show that findings of the two courts - Were not based on pleadings and evidence on record (H6) Olaniyan v. Fatoki (2013) 7 KLR (pt. 335) 3829

EVIDENCE - Appeals - Fresh evidence - Admission - Leave is granted



to adduce such evidence - Where inter alia the evidence could not have with reasonable diligence - Been obtained for use at trial (H4) CPC v. Ombugadu (2013) 7 KLR (pt. 334) 3401

EVIDENCE - Appeals - Fresh evidence - Admission - Power of CA - By CA Rules O. 4 r. 2 - The court can grant leave to adduce further evidence on appeal - And it must act judicially and judiciously in exercise of such discretion (H1) Aroh v. PDP (2013) 6 KLR (pt. 331) 2655

EVIDENCE - Appeals - Fresh evidence - Admission - Principles - Under CA Rules O. 4 r. 2 - The evidence sought to be adduced must inter alia - Be of such that could not have been obtained with reasonable care for use at the trial (H3) Aroh v. PDP (2013) 6 KLR (pt. 331) 2655

EVIDENCE - Appeals - Fresh evidence - Application - Appellate court will grant leave if it was impossible to obtain such evidence at trial - And if the evidence is credible as to influence judgment (H3) Nwaogu v. Atuma (2013) 1-2 KLR (pt. 323) 305

EVIDENCE - Appeals - Fresh evidence - CA Rule O. 4 r. 2 - Applicability - The provision is only invoked in appeal - Against decision of a lower court on the merits of the case (H4) Aroh v. PDP (2013) 6 KLR (pt. 331) 2655

EVIDENCE - Appeals - Fresh issue - Determination - Court must be satisfied that it has the facts of the new point - And that were the points raised at lower courts - The same would have remained unsatisfactorily determined (H3) Udo v. Regd. Trustee of the Brotherhood of the Cross & Star (2013) 2 KLR (pt. 324) 847

EVIDENCE - Appeals - Fresh issue - Grant of application to raise new points - Arising from grounds not covered in earlier notice of appeal - Would not be given - Save where the points are substantial - And not necessitating taking of fresh evidence (H1) Intercontinental Bank Plc v. Olam Nig Ltd (2013) 1 KLR (pt. 322) 89

EVIDENCE - Appeals - Grounds - Nature of - Ground is of law where it raises complaint on an issue of law based on admitted facts - But it is of mixed law & facts where the complaint is on disputed facts (H6) Ekunola v. CBN (2013) 4 KLR (pt. 327) 1621

EVIDENCE - Appeals - Grounds - Validity - Appellants' ground one is competent - As it arose from the decision of CA - With regard to issue of which of the parties was to start calling evidence (H1) Nsefik v. Muna (2013) 12 KLR (pt. 337) 4347

EVIDENCE - Appeals - Injunction pending appeal - Applicant's duty - He must establish by evidence in affidavit - The legal right he seeks to protect by the order (H5) *Aboseldehyde Lab. Plc. v. Union Merchant Bank Plc* (2013) 3 KLR (pt. 326) 1205

EVIDENCE - Appeals - Judgment - Correctness of - CA rightly affirmed trial court's judgment - Despite resolving issue 2 in appellants' favour - Since there was overwhelming credible evidence evaluated by the trial court (H5) *Atungwu v. Ochekwu* (2013) 7 KLR (pt. 335) 3681

EVIDENCE - Appeals - Leave - Condition for application - Proof - Since appellant asserted that the condition precedent for leave was not complied with - He has the burden to prove same (H2) *Nigerian Army v. Warrant Officer Banni Yakubu* (2013) 1-2 KLR (pt. 323) 471

EVIDENCE - Appeals - Perverse finding - Meaning - Decision is perverse when it runs counter to pleadings and evidence on record - Or where the affected court considered matters - Which it ought not to have taken into account (H1) *Olaniyan v. Fatoki* (2013) 7 KLR (pt. 335) 3829

EVIDENCE - Appeals - Reevaluation - Appellate court would be in as good a position as trial court had been - To reappraise documentary evidence - Since doing so does not involve credibility of witness (H2) *U.T.C. Nig. Plc. v. Lawal* (2013) 8-12 KLR (pt. 336) 4133

EVIDENCE - Appeals - Reevaluation - Where credibility of witnesses is not involved - But complaint is on improper evaluation - Appellate court is in a good position as trial court - To do its own evaluation (H3) *Babatunde v. State* (2013) 6 KLR (pt. 332) 2895

EVIDENCE - Appeals - Reevaluation - Where trial court fails to properly evaluate evidence - Appeal court can reevaluate and make findings - Provided credibility of witnesses is not involved (H2) *Odutola v. Mabogunje* (2013) 1 KLR (pt. 322) 161

EVIDENCE - Appeals - Retrial - Conditions for - Appellate court will inter alia grant retrial - Where apart from irregularity in the proceeding - Evidence discloses a substantial case against appellant (H1) *Adeyemi v. State* (2013) 4 KLR (pt. 328) 1771

EVIDENCE - Appeals - Retrial - Principles - Appellate court will inter alia grant retrial - Where apart from irregularity in the proceeding - Evidence discloses a substantial case against appellant (H3) *Ganiyu v. State* (2013) 4 KLR (pt. 327) 1661

EVIDENCE - Armed robbery - Alibi - Recent possession - E A s. 167(a) was rightly invoked and alibi rightly rejected - Since appellant was found in the vicinity of the crime - Shortly after the robbery and was also in possession of the stolen items (H7) Sadiku v. State (2013) 5 KLR (pt. 330) 2521

EVIDENCE - Armed robbery - Ingredients - Proof - Prosecution must prove that there was a robbery - That accused was armed - And participated in the robbery (H4) Osuagwu v. State (2013) 1 KLR (pt. 322) 223

EVIDENCE - Armed robbery - Ingredients - Proof - Prosecution must prove that there was a robbery - That the robbery was armed robbery - And that accused was the robber (H2) Olatinwo v. State (2013) 1-2 KLR (pt. 323) 541

EVIDENCE - Armed robbery - Ingredients - Proof - Prosecution must prove that there was a robbery - In which the robbers were armed - And that accused persons were the robbers (H3) Abiodun v. State (2013) 4 KLR (pt. 328) 1753

EVIDENCE - Armed robbery - Ingredients - Proof - Prosecution must prove that there was a robbery - That the robbery was armed robbery - And that accused was the armed robber (H1) Agboola v. State (2013) 5 KLR (pt. 329) 2019

EVIDENCE - Armed robbery - Ingredients - Proof - Prosecution must prove that there was a robbery - That the robbery was armed robbery - And that the accused was the armed robber (H1) State v. Isiaka (2013) 5 KLR (pt. 329) 2243

EVIDENCE - Armed robbery - Ingredients - Proof - Prosecution must prove that there was robbery - That the robbery was armed robbery - And that accused took part in the armed robbery (H5) Babarinde v. State (2013) 8-12 KLR (pt. 336) 3995

EVIDENCE - Armed robbery - Number of witnesses - Prosecution must not call a host of witnesses on same point - To prove essential elements of the crime (H5) Osuagwu v. State (2013) 1 KLR (pt. 322) 223

EVIDENCE - Banking - Bank account - Credit to - Evidence before trial court shows - That appellant's account was credited with \$82,560 - Within his knowledge (H3) Yisi Nig. Ltd. v. Trade Bank Plc. (2013) 2 KLR (pt. 324) 863

EVIDENCE - Banking - Charges - Unauthorized loan - To succeed prosecution must inter alia - Establish that accused is a manager/

officer of the bank - Who granted such loan without authorization (H1) Mmamman v. FRN (2013) 1-2 KLR (pt. 323) 459

EVIDENCE - Banking - Restitution - Basis - From evidence on record and value of goods reflected in Bill of Exchange - Relationship between the parties was defined by \$186,990.00 - Which ought to also define refund by appellant (H4) FBN Plc v. Ozokwere (2013) 12 KLR (pt. 337) 4203

EVIDENCE - Beneficial evidence - Use - Plaintiff is not to utilize both beneficial and non beneficial evidence - As he is only permitted to take the beneficial evidence - To reinforce his case (H7) Oguanuhu v. Chiegboka (2013) 1-2 KLR (pt. 323) 521

EVIDENCE - Charges - Intention to defraud - Proof - As the phrase was made element of the offence - Prosecution had onus to prove the offence as charged - Irrespective of provisions of statute creating the offence (H1) Tafidi v. FRN (2013) 12 KLR (pt. 338) 4575

EVIDENCE - Charges - Summary trial - CPA s. 277 provides for summary trial - Whereby accused is not provided with - All evidence relied on by prosecution (H5) Uwazuruike v. A-G Federation (2013) 4 KLR (pt. 328) 1953

EVIDENCE - Charges - Validity - Federal H.C. Act s. 33(1)(2) - The four count charge is proper - Since proof of evidence does not accompany charge - In summary trial (H7) Uwazuruike v. A-G Federation (2013) 4 KLR (pt. 328) 1953

EVIDENCE - Chieftaincy matters - Affidavit - Resolution - As demand were made on appellants to surrender the chieftaincy property - CA rightly held that no conflict exist - That calls for oral evidence (H6) Atungwu v. Ochekwu (2013) 7 KLR (pt. 335) 3681

EVIDENCE - Circumstantial evidence - Admissibility - Ijioffor v. State - Such evidence is receivable in criminal and civil cases - And it is often said to be the best evidence (H3) Usman v. State (2013) 5 KLR (pt. 330) 2569

EVIDENCE - Circumstantial evidence - Weight - Such evidence is good and sometimes better than other evidence - If it is positive and conclusive as to guilt of accused (H5) Oguno v. State (2013) 12 KLR (pt. 338) 4529

EVIDENCE - Company law - Company - Incorporation - Proof - No document will satisfactorily establish the legal personality of a company - Than its certificate of incorporation (H3) Reptico S.A. Geneva v. Afribank Plc (2013) 5 KLR (pt. 329) 2091

EVIDENCE - Confession - Admissibility - Exhibit 4 was rightly admitted as it was tendered without objection - And PW4 through whom it was tendered - Was member of team of policemen that investigated the case (H8) *Oguno v. State* (2013) 12 KLR (pt. 338) 4529

EVIDENCE - Confession - Admissibility - For statement of accused to be admissible in evidence - It must have been made freely and without any inducement (H4) *State v. Rabi* (2013) 1-2 KLR (pt. 323) 563

EVIDENCE - Confession - Admissibility - The law renders irrelevant admission obtained - By oppression or duress of the maker - Admissible confession must be voluntary (H1) *Lasisi v. State* (2013) 3 KLR (pt. 326) 1313

EVIDENCE - Confession - Conviction - Can be solely based on confession where the statement is not only voluntary - But also direct and unequivocal as to guilt of accused (H2) *Shodiya v. State* (2013) 12 KLR (pt. 338) 4557

EVIDENCE - Confession - Conviction - In order to ground a conviction Confession must be positive and direct - But reason for commission of the crime - Must not be stated (H1) *Dogo v. State* (2013) 3 KLR (pt. 326) 1249

EVIDENCE - Confession - Conviction - Validity - A voluntary confession of guilt is sufficient to warrant conviction - Provided that court is satisfied that it is true (H3) *Olatunbosun v. State* (2013) 7 KLR (pt. 335) 3851

EVIDENCE - Confession - Conviction - Validity - Having found exhibit H as voluntarily made - Trial court rightly relied on same in convicting appellant (H4) *Abiodun v. State* (2013) 4 KLR (pt. 328) 1753

EVIDENCE - Confession - Corroboration - Conviction not founded on evidence on record as per the charge - But on mere confessional statement - Cannot stand on appeal (H5) *Abdullahi v. State* (2013) 5 KLR (pt. 329) 1979

EVIDENCE - Confession - Corroboration - It is desirable to have some evidence outside the confession - Which would make it probable that the confession is true (H4) *Olatunbosun v. State* (2013) 7 KLR (pt. 335) 3851

EVIDENCE - Confession - Corroboration - Where confession is not comprehensive in relation to offence convicted - Existence of evi-

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dence outside the statement is necessary - To justify the conviction on appeal (H3) Shodiya v. State (2013) 12 KLR (pt. 338) 4557

EVIDENCE - Confession - Evaluation - Decision of trial court in trial within trial which is on credibility of witnesses - Is not to be interfered with by appellate court (H2) Abiodun v. State (2013) 4 KLR (pt. 328) 1753

EVIDENCE - Confession - Meaning - By Evidence Act s. 28 - Confession is admission made at any time - By a person charged with crime - Suggesting the inference that he committed the crime (H2) Ibeme v. State (2013) 1-2 KLR (pt. 323) 379

EVIDENCE - Confession - Objection to - Accused who denies voluntariness of his extra judicial statement made to police - Must object when prosecution seeks to tender the statement in evidence (H2) Oguno v. State (2013) 12 KLR (pt. 338) 4529

EVIDENCE - Confession - Proof - Onus to prove voluntariness of extra judicial statement made by accused - Is on prosecution (H1) Oguno v. State (2013) 12 KLR (pt. 338) 4529

EVIDENCE - Confession - Relevancy - Confession is relevant when it establishes elements of the crime charged - And identifies the person who committed the offence (H5) Olatunbosun v. State (2013) 7 KLR (pt. 335) 3851

EVIDENCE - Confession - Retraction - Statement is retracted when accused admits making same - But denies making it voluntarily - Court is then expected to determine if the statement is voluntary before admitting it (H4) Ibrahim v. State (2013) 12 KLR (pt. 337) 4273

EVIDENCE - Confession - Retraction - The fact that accused resiled from his confession - Does not negatively affect evaluation of evidence made by court (H2) Musa v. State (2013) 2 KLR (pt. 324) 749

EVIDENCE - Confession - Retraction - Weight - In determining weight to be attached to retracted confession - Court is to test its truthfulness by examining the statement - In the light of other available credible evidence (H7) Agboola v. State (2013) 5 KLR (pt. 329) 2019

EVIDENCE - Confession - Retraction - Where accused denies making a confession - Court shall admit the statement - Without holding trial within trial (H3) Ibeme v. State (2013) 1-2 KLR (pt. 323) 379

EVIDENCE - Confession - Trial within trial - Once objection is made against voluntariness of confession - Court must stop further pro-

ceedings - To conduct trial within trial (H1) Ibeme v. State (2013) 1-2 KLR (pt. 323) 379

EVIDENCE - Confession - Voluntariness - Test - Court conducts trial within trial on admissibility of such statement - And it is prosecution that begins first - As it will be wrong to call on accused to start calling witness first (H3) Oguno v. State (2013) 12 KLR (pt. 338) 4529

EVIDENCE - Confession - Voluntariness - The test for voluntariness is whether accused was properly guided - To write what he actually wanted to write (H5) State v. Rabiu (2013) 1-2 KLR (pt. 323) 563

EVIDENCE - Confessional statement - Trial within trial - Proving that the statement was voluntarily made - Must be done beyond reasonable doubt - As in every criminal trial (H1) Abiodun v. State (2013) 4 KLR (pt. 328) 1753

EVIDENCE - Conspiracy - Ingredients - It is complete upon presumed agreement by the conspirators - And court must be satisfied with evidence of complicity of accused (H8) Osuagwu v. State (2013) 1 KLR (pt. 322) 223

EVIDENCE - Conspiracy - Proof - Appellant's guilt can be inferred from totality of evidence led by respondent - As the offence is usually proved by inference - Made from acts or inactions of parties concerned (H1) Shodiya v. State (2013) 12 KLR (pt. 338) 4557

EVIDENCE - Conspiracy - Proof - Conspiracy being agreement between two or more persons - To do or omit to do an act criminally - Has not been disclosed from conduct of appellant - In not complying with exhibit P3 (H5) Maideribe v. FRN (2013) 12 KLR (pt. 337) 4321

EVIDENCE - Conspiracy - Proof - Conspiracy is established once it is shown in evidence - That the alleged criminal design - Is common to all suspects (H6) Afolabi v. State (2013) 6 KLR (pt. 332) 2841

EVIDENCE - Contracts - Declaratory reliefs - Proof - Appellants must establish their entitlement to the reliefs - Upon the strength of their own case - And not on the weakness of respondents' case (H8) Organ v. Nig. Liquefied Natural Gas Ltd. (2013) 7 KLR (pt. 334) 3521

EVIDENCE - Contracts - Employment contract - Proof - Appellants who alleged wrongful termination of their employment - Must not only prove existence of such contract - But also the terms of the contract that was breached (H7) Organ v. Nig. Liquefied Natural Gas Ltd. (2013) 7 KLR (pt. 334) 3521

EVIDENCE - Contracts - Interest - Basis - Where appellant claimed 45% interest per month - Trial court's award of 45% interest per annum - Is awarding what was not claimed in statement of claim or oral evidence (H10) *Abba v. SPDC Nig. Ltd.* (2013) 4 KLR (pt. 327) 1473

EVIDENCE - Contracts - Statutory employment - Confirmation - Proof - Respondent had in para. 5 of the statement of claim - Pleaded that he was positively recommended for confirmation by his HOD & Dean of Faculty - Which assertion was not denied by appellant (H3) *University of Jos v. Ikegwuoha* (2013) 12 KLR (pt. 338) 4615

EVIDENCE - Contradiction - Court is only concerned with testimony on material facts - And not on peripherals that have no bearing on the substance in issue (H10) *Egwemi v. State* (2013) 1-2 KLR (pt. 323) 325

EVIDENCE - Contradiction - Meaning - A piece of evidence contradicts another - When it affirms the opposite of what the other has stated (H9) *Egwemi v. State* (2013) 1-2 KLR (pt. 323) 325

EVIDENCE - Contradiction - Weight - Error in evidence of PW1 is minor discrepancy - Which neither affected his credibility - Nor weight of evidence of prosecution (H4) *Musa v. State* (2013) 2 KLR (pt. 324) 749

EVIDENCE - Contradictions - Effect - Contradictions must be fundamental and substantial - Before they may affect prosecution's case - As discrepancies are minor differences in details - Which are allowed in proceedings (H4) *Odunlami v. Nigerian Navy* (2013) 6 KLR (pt. 331) 2721

EVIDENCE - Contradictions - Effect - It is only contradictions that are substantial and fundamental to main issue - That would be fatal to prosecution's case (H7) *Babarinde v. State* (2013) 8-12 KLR (pt. 336) 3995

EVIDENCE - Conviction - Correctness of - Court can convict on evidence of one witness - If such evidence is credible - And it is believed and accepted by court (H3) *Victor v. State* (2013) 6 KLR (pt. 331) 2763

EVIDENCE - Conviction - Identification parade - Appellant was not solely convicted on evidence obtained at the parade - As court relied on testimony of PW1 - That linked appellant with the offence (H5) *Aliyu v. State* (2013) 6 KLR (pt. 332) 2873

EVIDENCE - Conviction - Offensive weapon - Where such weapon



was used in commission of offence - It is not essential to tender it to secure conviction - Provided there is cogent eye witness or circumstantial evidence - That points to guilt of accused (H6) Babarinde v. State (2013) 8-12 KLR (pt. 336) 3995

EVIDENCE - Court processes - Filing fee - Claim for interest - Proof of rate - As there was no claim for interest in the writ - Its claim in statement of claim cannot be entertained - Since no such claim was assessed - Nor was filing fee paid for it (H9) Abba v. SPDC Nig. Ltd. (2013) 4 KLR (pt. 327) 1473

EVIDENCE - Court processes - Service - Proof - As appellant filed no process to controvert proper service on him - Nothing exists in the record precluding trial court - From proceeding with the case (H11) Ahmed v. Ahmed (2013) 7 KLR (pt. 335) 3561

EVIDENCE - Court processes - Service - Proof - It is wrong to say that defendant who filed defence to statement of claim - Was not served writ of summons - Because there was no bailiff's endorsement on the writ (H5) Vab Petroleum Inc. v. Momah (2013) 1 KLR (pt. 322) 249

EVIDENCE - Court processes - Statement of defence - Amendment - Granting of the oral application to amend the statement - Brought the pleadings in line with evidence on record - As per due execution of the will (H5) Eta v. Dazie (2013) 3 KLR (pt. 326) 1269

EVIDENCE - Courts - Competence - Defect in - If the composition of a panel changes while oral evidence is still being taken - And a reconstituted panel reaches a decision - That decision is a nullity (H6) Arum v. Nwobodo (2013) 4 KLR (pt. 327) 1583

EVIDENCE - Courts - Crime - Pretrial - CPL s. 340(2)(b) - A Judge is enjoined by the provision to examine proofs of evidence of offence - So as to determine whether or not the offence is one requiring to put accused on trial (H9) Babatunde v. State (2013) 6 KLR (pt. 332) 2895

EVIDENCE - Courts - Declaratory reliefs - Grant - Condition - Plaintiff must establish the reliefs to satisfaction of court - As such reliefs are not granted even on admission by defendant (H6) Nwaogu v. Atuma (2013) 12 KLR (pt. 338) 4491

EVIDENCE - Courts - Discretion - Exercise of - Court is constitutionally empowered to do justice - But must exercise such power judicially and judiciously - Having regards to facts placed before it (H3) Ikechukwu v. Nwoye (2013) 12 KLR (pt. 337) 4305

EVIDENCE - Courts - Evaluation - Finding of fact involves perception and evaluation - And it is not for appeal court to evaluate evidence - As that is primary duty of trial court (H1) *Odutola v. Mabogunje* (2013) 1 KLR (pt. 322) 161

EVIDENCE - Courts - Evaluation - *Mogaji v. Odojin* - Trial court is bound to evaluate evidence adduced by parties - For the purpose of arriving at a right conclusion - In adjudication of the case before it (H6) *Chukwu v. Akpelu* (2013) 12 KLR (pt. 337) 4177

EVIDENCE - Courts - Evaluation - Trial court has primary duty to ascribe probative value - On evidence placed before it - But appellate court steps in - When trial court fails to perform the duty (H5) *Ogunu v. Chiegboka* (2013) 1-2 KLR (pt. 323) 521

EVIDENCE - Courts - Issue - Determination - Court decides live issues between the evidence and prevailing law - And does not manufacture evidence for parties - As a party wins on the strength of his evidence (H5) *Ayan v. State* (2013) 7 KLR (pt. 335) 3717

EVIDENCE - Courts - Issue - Determination - Court should not make case different from the one made by parties - Hence since question 2 was not founded on any material evidence - It ought not to have been entertained by CA (H3) *INEC v. Atuma* (2013) 5 KLR (pt. 330) 2375

EVIDENCE - Courts - No case submission - Procedure to adopt - When the submission is made - Court is not called upon to express opinion on evidence before it - But to rule that evidence exist or not - That links accused with offence charged (H2) *Fagoriola v. FRN* (2013) 7 KLR (pt. 335) 3753

EVIDENCE - Courts - Reliefs - Grant - Condition - For a party to be awarded relief - He must not only plead with particularity - But also prove by credible and convincing evidence - Entitlement to the relief he seeks (H4) *University of Jos v. Ikegwuoha* (2013) 12 KLR (pt. 338) 4615

EVIDENCE - Courts - Wrongful admission - Where document is wrongly admitted - Court has jurisdiction to expunge it at judgment - Since judgment can only be based on legally admissible document (H2) *Nwaogu v. Atuma* (2013) 12 KLR (pt. 338) 4491

EVIDENCE - Crime - Bad character - Evidence of - Admissibility - Under Evidence Act s. 82 - Evidence of appellant's character is not admissible - As same was not in issue (H6) *Odogwu v. State* (2013) 7 KLR (pt. 335) 3779

EVIDENCE - Crime - Evidence - Withholding of - As no reason was given for failure to call a relevant witness - It is assumed that the evidence if produced - Would have been unfavourable to prosecution vide s. 149(d) EA (H11) *Odogwu v. State* (2013) 7 KLR (pt. 335) 3779

EVIDENCE - Crime - Proof - Guilt of an accused can be established by his confessional statement - Circumstantial evidence - Or evidence of an eye witness (H5) *Agboola v. State* (2013) 5 KLR (pt. 329) 2019

EVIDENCE - Crime - Proof - Number of witness - Prosecution is not bound to call all witnesses - But only essential witness(s) to prove its case (H4) *Victor v. State* (2013) 6 KLR (pt. 331) 2763

EVIDENCE - Crime - Proof - Purpose - It is to the effect that if the essential ingredients of offence have been proved by prosecution - The charge is proved beyond reasonable doubt (H1) *Adeleke v. State* (2013) 7 KLR (pt. 333) 3093

EVIDENCE - Crime - Sworn evidence - Contradiction of - Counsel may use statements obtained during investigation - For purposes of cross examination - To contradict such evidence in open court (H3) *Olatinwo v. State* (2013) 1-2 KLR (pt. 323) 541

EVIDENCE - Crime - Trial within trial - When conducted - It is held when accused objects to confession - On the ground that it was not made voluntarily (H7) *Osuagwu v. State* (2013) 1 KLR (pt. 322) 223

EVIDENCE - Criminal law - Provocation - Defence of - The defence can be considered if there was unlawful assault - That was not provoked by accused - And accused reaction must be proportionate with the provocation (H1) *Odunlami v. Nigerian Navy* (2013) 6 KLR (pt. 331) 2721

EVIDENCE - Criminal law - Sanity - Presumption of - Under Criminal Code s. 27 - Every person is presumed to be sane - Until the contrary is proved (H2) *State v. John* (2013) 5 KLR (pt. 330) 2539

EVIDENCE - Criminal procedure - Appeals - Retrial - Contradictions in prosecution's evidence in aborted trial - Is immaterial when considering whether the case should be retried (H4) *Adeyemi v. State* (2013) 4 KLR (pt. 328) 1771

EVIDENCE - Criminal procedure - Defence - Determination of - Court should consider the defence of an accused - No matter how stupid or unreasonable it appears (H2) *State v. Isiaka* (2013) 5 KLR (pt. 329) 2243

EVIDENCE - Criminal procedure - Proof beyond reasonable doubt - Joseph v. State - The phrase does not mean proof beyond all doubt - But prosecution proving guilt of accused - With compelling and conclusive evidence (H11) Egwemi v. State (2013) 1-2 KLR (pt. 323) 325

EVIDENCE - Customary court - Procedure - Strict rules of pleadings and application of Evidence Act - Are not observed in the court - But decision therein must be based on common sense (H4) Oguanuhu v. Chiegboka (2013) 1-2 KLR (pt. 323) 521

EVIDENCE - Damages - Award - Pleadings - Specific claim - Award of N9,672.30 per day for loss of vehicle usage up to a point is justifiable - For failure of appellant to deny the claim (H1) Oando Nig. Plc. v. Adjire W. A. Ltd. (2013) 5 KLR (pt. 330) 2459

EVIDENCE - Damages - Award - Sustainability - As no evidence was taken in HC - The alleged trespass leading to award of N500,000 damages was not proved - And CA was in error to affirm the award (H5) Gbadamosi v. Akinloye (2013) 7 KLR (pt. 333) 3225

EVIDENCE - Damages - General damages - Trespass - Plaintiff who has by evidence established that defendant is a trespasser - Is entitled without more to general damages for trespass (H8) Nigerian Bottling Co. Plc v. Ubani (2013) 8-12 KLR (pt. 336) 4027

EVIDENCE - Damages - Negligence - Proof - Plaintiff must lead evidence in proof of his entitlement - As award of damages depends on facts that sustain the plea for the award (H3) Kaja v. Oke (2013) 2 KLR (pt. 325) 1051

EVIDENCE - Documentary & oral evidence - Relationship - The latter throws more light on the former - As documentary evidence is used as hanger on which to hang oral evidence (H2) Ndulue v. Ojiakor (2013) 2 KLR (pt. 324) 771

EVIDENCE - Documentary & oral evidence - Relationship - When the former supports the latter - The latter becomes more credible (H5) Odutola v. Mabogunje (2013) 1 KLR (pt. 322) 161

EVIDENCE - Documentary evidence - Weight - Where the evidence supports oral testimony - The latter becomes more credible - As the former serves as hanger from which to assess the latter (H5) Odunlami v. Nigerian Navy (2013) 6 KLR (pt. 331) 2721

EVIDENCE - Documents - "Certify" - Meaning - It means to authenticate or vouch for a thing in writing - Or to attest as being true or as

represented (H6) Adeyefa v. Bamgboye (2013) 2 KLR (pt. 324) 647

EVIDENCE - Documents - Admissibility - For document to be admissible in civil proceedings - It must not only be pleaded by plaintiff - But must also be relevant (H5) Adeyefa v. Bamgboye (2013) 2 KLR (pt. 324) 647

EVIDENCE - Documents - Admissibility - Mere fact that Exhibits E, F & C were prepared during pendency of suit - Does not render them inadmissible - As it has not been shown that the maker has financial or tainted interest - In the outcome of the case (H11) Nigerian Bottling Co. Plc v. Ubani (2013) 8-12 KLR (pt. 336) 4027

EVIDENCE - Documents - Made during pendency of suit - Fate - By EA s. 91 - Such document is inadmissible for it is capable of gross abuse to advantage of maker - Whose interest negates principle of fair hearing (H12) Nigerian Bottling Co. Plc v. Ubani (2013) 8-12 KLR (pt. 336) 4027

EVIDENCE - Documents - Public document - Certification - Exhibit EA3 being uncertified public document - Is inadmissible in law and should not be countenanced (H3) Nwaogu v. Atuma (2013) 12 KLR (pt. 338) 4491

EVIDENCE - Documents - Signature - Expert opinion - Weight - Expert on handwriting may give his opinion on disputed signature - But final decision is made by the Judge (H3) Odutola v. Mabogunje (2013) 1 KLR (pt. 322) 161

EVIDENCE - Documents - Unpleaded documents - Fate - Since nothing shows that the unpleaded documents were tendered and admitted in Customary Court - They cannot be admitted on appeal (H7) Adeyefa v. Bamgboye (2013) 2 KLR (pt. 324) 647

EVIDENCE - Election petitions - Crime - Proof - Appellants are to prove criminal acts of infraction of the Electoral Act - Based on proof beyond reasonable doubt (H1) Oke v. Mimiko (2013) 8-12 KLR (pt. 336) 4077

EVIDENCE - Election petitions - Electoral Act - Non compliance - Proof - Petitioner must not only prove that there was non compliance - But that the same substantially affected result of the election (H2) Oke v. Mimiko (2013) 8-12 KLR (pt. 336) 4077

EVIDENCE - Election petitions - Filing - Time limit - Such petitions are sui generis as they are limited by time - Hence by Electoral Act para. 14(2)(a)(b) 1<sup>st</sup> Sch. - Amendment or fresh evidence are not allowed at the expiration of the filing period (H1) Oke v. Mimiko

(2013) 5 KLR (pt. 329) 2195

EVIDENCE - Election petitions - Hearsay - Under Electoral Act s. 45(2) - PW45 is not qualified to testify to what happened in disputed units - Other than the one he was physically available (H5) Oke v. Mimiko (2013) 8-12 KLR (pt. 336) 4077

EVIDENCE - Elections - Crime - Allegation of - Proof - By Evidence Act s. 135(1) - Appellant must prove the alleged manipulation of voters' register - And the effect it had on the election result (H3) Akeredolu v. Mimiko (2013) 8-12 KLR (pt. 336) 3895

EVIDENCE - Elections - Uncontroverted - Weight - Evidence of Osioma Ngwa LGA being part of Abia Central Senatorial District in previous elections - Remains unchallenged and should be acted upon by court (H8) Nwaogu v. Atuma (2013) 12 KLR (pt. 338) 4491

EVIDENCE - Elections - Voters register - Objection to - To impugn content of the register - Court must be presented with something - To compare with what was available and in use - And what the proper register should be (H3) Oke v. Mimiko (2013) 8-12 KLR (pt. 336) 4077

EVIDENCE - Evaluation - Ascription of probative value to evidence - Is primary function of trial court - And appellate court does not substitute its own view - For that of trial court (H1) State v. Rabiū (2013) 1-2 KLR (pt. 323) 563

EVIDENCE - Evaluation - Evaluating and drawing inference from accused's statement - Is the duty of trial court - Which appellate courts do not enjoy the advantage of doing (H3) Lasisi v. State (2013) 3 KLR (pt. 326) 1313

EVIDENCE - Evaluation - Interference - Where credibility of witnesses is not involved - But complaint is against improper evaluation - Appellate court is in as good a position as trial court - To do its own evaluation (H8) FBN Plc v. Ozokwere (2013) 12 KLR (pt. 337) 4203

EVIDENCE - Evaluation - Interference - Where trial court failed to properly evaluate evidence - Appeal court can interfere - By making proper findings justified by evidence (H2) State v. Rabiū (2013) 1-2 KLR (pt. 323) 563

EVIDENCE - Evaluation - Is the primary responsibility of trial court - And once properly done - Appellate court cannot interfere - Unless the decision is perverse and has occasioned miscarriage of justice (H7) FBN Plc v. Ozokwere (2013) 12 KLR (pt. 337) 4203

EVIDENCE - Evaluation - Trial court ascribes probative value to evidence - And appellate court does not interfere - Save where the evaluation was perverse - Or not supported by evidence on record (H3) Adebayo v. PDP (2013) 4 KLR (pt. 327) 1523

EVIDENCE - Evaluation - Trial court assesses demeanour of witnesses - And appellate court does not interfere with findings reached thereat - Unless where such findings are perverse - Or based on evidence not legally admissible (H11) Ajibulu v. Ajayi (2013) 12 KLR (pt. 337) 4153

EVIDENCE - Evaluation - Trial court evaluates and ascribes probative value to evidence - Appellate court does not interfere where credibility of witness is involved - Save where the decision is by wrong inference (H4) Garan v. Olomu (2013) 4 KLR (pt. 327) 1675

EVIDENCE - Evidence - Inadmissible document - Weight - Such document is invalid for all intents and purposes - As it cannot form the basis of any competent finding of court (H1) Nwaogu v. Atuma (2013) 12 KLR (pt. 338) 4491

EVIDENCE - Exhibits - Title - Possession - Respondents have established title as shown in exhibits P1 & P2 - As a successful defence of a previous land case - Is in itself an act of possession - In ascertaining title (H3) Apata v. Olanlokun (2013) 7 KLR (pt. 334) 3359

EVIDENCE - Exhibits - Title - Res judicata - Application - Estoppel per rem judicatam is applicable here - As the parties, land and subject matter in exhibits P1 & P2 are the same (H2) Apata v. Olanlokun (2013) 7 KLR (pt. 334) 3359

EVIDENCE - Exhibits - Wills - Court of Appeal - Findings - Correctness of - The court did not act in excess of its jurisdiction - As it only directed that disposition of the property - Be guided by intention of the testator in exhibit P1 (H5) Asika v. Atuanya (2013) 7 KLR (pt. 335) 3651

EVIDENCE - Expert opinion - Admissibility - Court is not bound to accept evidence of any expert - Even one who has not disclosed motive - Other than helping the court in the quest for justice (H4) Akeredolu v. Mimiko (2013) 8-12 KLR (pt. 336) 3895

EVIDENCE - Hearsay evidence - Definition - By Evidence Act s. 37 - It is oral or written statement made otherwise than by a witness - Which is not admissible - And which is tendered to prove the truth of matter stated in it (H4) Odogwu v. State (2013) 7 KLR (pt. 335) 3779

EVIDENCE - Hearsay evidence - Fate - Evidence of PW2 is inadmissible and was wrongly admitted in violation of Evidence Act - Since the witness was repeating what another person told him (H5) *Odogwu v. State* (2013) 7 KLR (pt. 335) 3779

EVIDENCE - Identification - Mistake in - Where accused alleges that there is mistake in his identity - Court must closely examine the evidence - As weakness discovered therein leads to giving accused the benefit of doubt (H3) *Afolabi v. State* (2013) 6 KLR (pt. 332) 2841

EVIDENCE - Identification - When not necessary - The parade is not necessary where suspect is caught at crime scene - Where accused identified himself by his confession - Or where there is circumstantial evidence showing his involvement in the offence (H3) *Babarinde v. State* (2013) 8-12 KLR (pt. 336) 3995

EVIDENCE - Identification parade - Correctness of - PW6 was not cross examined on the propriety or otherwise of the parade - And there is presumption of regularity of the parade under Evidence Act s. 168(1) (H6) *Aliyu v. State* (2013) 6 KLR (pt. 332) 2873

EVIDENCE - Identification parade - It is essential where identity of accused is in dispute - But is not useful where witness knew accused well - Before the alleged crime was committed (H6) *Sadiku v. State* (2013) 5 KLR (pt. 330) 2521

EVIDENCE - Identification parade - When irrelevant - Where accused identified himself with commission of the offence - Need for the parade is completely ruled out (H4) *Afolabi v. State* (2013) 6 KLR (pt. 332) 2841

EVIDENCE - Inadmissible document - Fate - Such document is invalid for all intents and purposes - As it cannot form the basis of any competent finding of court (H1) *Nwaogu v. Atuma* (2013) 12 KLR (pt. 338) 4491

EVIDENCE - Inconclusive evidence - Meaning - This means that adduced evidence does not lead to a conclusion - Or definite result (H4) *Nruamah v. Ebuzoeme* (2013) 1 KLR (pt. 322) 133

EVIDENCE - Inconsistency in - Effect - Appellant's evidence at trial is unreliable - And his previous statement does not constitute evidence upon which court can act - And both are no defence to the murder charge (H2) *Dogo v. State* (2013) 3 KLR (pt. 326) 1249

EVIDENCE - Inference - Criminal procedure - Identification - The testimony given by PW3 positively identified respondent as the culprit - And the learned trial Judge rightly drew inference from same



(H3) *State v. Isiaka* (2013) 5 KLR (pt. 329) 2243

EVIDENCE - Injunction - Grant - Preconditions - Applicant must inter alia show in his affidavit - That there is existence of legal right - Substantial issue to be tried - And a balance of convenience (H3) *Adeleke v. Lawal* (2013) 2 KLR (pt. 324) 623

EVIDENCE - Insanity - Proof - Appellant failed to discharge the onus of establishing his insanity - On the balance of probability (H2) *Popoola v. State* (2013) 7 KLR (pt. 335) 3873

EVIDENCE - Insanity - Proof - The burden of proving insanity lies on accused - And it must be discharged on the balance of probabilities (H3) *State v. John* (2013) 5 KLR (pt. 330) 2539

EVIDENCE - Intention to defraud - Proof - Having made the phrase element of contract splitting - Prosecution must prove same - And cannot be heard to say that it is not an element in statute creating the offence (H2) *George v. FRN* (2013) 12 KLR (pt. 337) 4235

EVIDENCE - Judgments - Perverse decision - Meaning - It is one which ignores evidence before court - And which results in miscarriage of justice (H10) *FBN Plc v. Ozokwere* (2013) 12 KLR (pt. 337) 4203

EVIDENCE - Judicial precedents - *Kojo v. Bonsie* - Principle - Where traditional evidence of parties are inconclusive - Court should consider recent facts - To determine which of the evidence is probable (H3) *Matanmi v. Dada* (2013) 2 KLR (pt. 324) 725

EVIDENCE - Land law - Boundary neighbours - As none can give the evidence save such neighbours - There is no difference between failure to call boundary neighbours - And failure to produce evidence of the neighbours (H3) *Tukuru v. Sabi* (2013) 3 KLR (pt. 326) 1433

EVIDENCE - Land law - Customary pledge - Validity - Admission by plaintiff and evidence of PW3 under cross examination - Strengthened defendant's claim - That the land was pledged by family head (H5) *Achilihu v. Anyatonwu* (2013) 1 KLR (pt. 322) 1

EVIDENCE - Land law - Damages - Plaintiff who claims damages and injunction for trespass - Puts his title in issue - And succeeds on proving that he has better title than defendant (H3) *Olaniyan v. Fatoki* (2013) 7 KLR (pt. 335) 3829

EVIDENCE - Land law - Grant - Root of title - Proof of - Where party relies and pleads a grant as his root of title - He must prove such

grant to the satisfaction of court (H12) Ajibulu v. Ajayi (2013) 12 KLR (pt. 337) 4153

EVIDENCE - Land law - Independent witnesses - Weight - Evidence of independent boundary neighbour - Is weightier than that of witnesses who are blood relations of the claimant (H8) Arum v. Nwobodo (2013) 4 KLR (pt. 327) 1583

EVIDENCE - Land law - Interference - By failing to properly weigh evidence of both parties - Trial court occasioned injustice against respondent - And CA rightly interfered by remedying the situation (H8) Chukwu v. Akpelu (2013) 12 KLR (pt. 337) 4177

EVIDENCE - Land law - Pledge - Proof - Onus is on plaintiff to prove the existence of type of pledge - To which he owes title of the land he claims (H2) Ihunwo v. Ihunwo (2013) 1-2 KLR (pt. 323) 403

EVIDENCE - Land law - Pledge - Redemption time - Length of time of redeeming the land - Or the use it has been put to by pledgee - Is not necessary and cannot be relied on in proof of anything (H2) Achilihu v. Anyatonwu (2013) 1 KLR (pt. 322) 1

EVIDENCE - Land law - Root of title - Proof - Plaintiff who seeks title to land has the onus to show how he or his predecessor in title - Has acquired such (H8) Ajibulu v. Ajayi (2013) 12 KLR (pt. 337) 4153

EVIDENCE - Land law - Title - Conflicting claims - Where claimant fails to prove title via traditional history as pleaded - He is not allowed to turn round and rely on mere acts of ownership & possession - Upon which he originally based his title (H5) Nruamah v. Ebuzoeme (2013) 1 KLR (pt. 322) 133

EVIDENCE - Land law - Title - Identity of land - Proof - Okolo v. Dakolo - Plaintiff succeeds only where he has ascertained identity of the land in dispute - And its boundaries with precision (H4) Okwaranonobi v. Mbadugha (2013) 6 KLR (pt. 332) 3007

EVIDENCE - Land law - Title - Identity of land - Proof - Plaintiff cannot be granted title - If he fails to prove identity of land - With certainty and precision (H7) Tukuru v. Sabi (2013) 3 KLR (pt. 326) 1433

EVIDENCE - Land law - Title - Proof - Admitted facts - DW2 by his confession and evidence - Gave credence to respondent's claim for title and possession - Hence the facts need no proof (H7) Chukwu v. Akpelu (2013) 12 KLR (pt. 337) 4177

EVIDENCE - Land law - Title - Proof - Burden of - Plaintiff must

succeed on strength of his case - And not on weakness of defence - Save where defence's case supports his case (H2) *Nruamah v. Ebuzoeme* (2013) 1 KLR (pt. 322) 133

EVIDENCE - Land law - Title - Proof - Means of - *Idundun v. Okumagba* - Title can be proved by traditional evidence - Documents of title - Acts of ownership - Acts of possession - And proof of possession of adjacent or connected land (H9) *Ajibulu v. Ajayi* (2013) 12 KLR (pt. 337) 4153

EVIDENCE - Land law - Title - Proof - Mere production of deed of conveyance - Does not automatically establish title - As court must inter alia be satisfied - That the conveyance is valid and duly executed (H4) *Olaniyan v. Fatoki* (2013) 7 KLR (pt. 335) 3829

EVIDENCE - Land law - Title - Proof - Onus is on plaintiff to prove his case on his own strength - And not on weakness of adverse party - Save where defence case supports plaintiff's title (H2) *Oguanuhu v. Chiegboka* (2013) 1-2 KLR (pt. 323) 521

EVIDENCE - Land law - Title - Proof - Plaintiff must rely on the strength of his case - And not on weakness of defence - Except where evidence of defence supports the case of plaintiff (H7) *Ajibulu v. Ajayi* (2013) 12 KLR (pt. 337) 4153

EVIDENCE - Land law - Title - Proof - Plaintiff must succeed on the strength of his case - And not on weakness of defence - Though he may rely on defendant's evidence that supports his case (H2) *Tukuru v. Sabi* (2013) 3 KLR (pt. 326) 1433

EVIDENCE - Land law - Title - Proof - Title can be proved through any of the five modes - But one mode will suffice - If properly established to the satisfaction of court (H2) *Matanmi v. Dada* (2013) 2 KLR (pt. 324) 725

EVIDENCE - Land law - Title - Proof - Title may be proved through any of the five methods - But plaintiff is not required to prove all - As it is sufficient if one is proved (H1) *Nruamah v. Ebuzoeme* (2013) 1 KLR (pt. 322) 133

EVIDENCE - Land law - Traditional history - Proof - A party who relies on such history - Must plead founder of the land - Manner the land was founded - And the names of successive owners (H3) *Nruamah v. Ebuzoeme* (2013) 1 KLR (pt. 322) 133

EVIDENCE - Land law - Traditional history - Weight - Although such evidence is hearsay - But Evidence Act s. 44 provides that where title is in issue - Evidence of communal tradition concerning the title is

relevant (H3) Okwaranonobi v. Mbadugha (2013) 6 KLR (pt. 332) 3007

EVIDENCE - Land law - Trespass - Proof - Plaintiff who claims relief for trespass and injunction - Must prove that he is in exclusive possession of the land - Or has singular right to its possession (H5) Chukwu v. Akpelu (2013) 12 KLR (pt. 337) 4177

EVIDENCE - Land law - Trespass - Proof - To succeed in such claim - Plaintiff must establish identity of the land - And he must be in exclusive occupation of it (H6) Tukur v. Sabi (2013) 3 KLR (pt. 326) 1433

EVIDENCE - Legal practitioners - Submission of - Weight - Counsel's submission no matter how brilliant - Is not a substitute for credible evidence (H6) Ajayi v. Total Nig. Plc. (2013) 7 KLR (pt. 334) 3333

EVIDENCE - Material fact - Cross examination - When witness testifies on such fact - Appellant who denies it - Should cross examine the witness - To show the contrary (H6) Egwemi v. State (2013) 1-2 KLR (pt. 323) 325

EVIDENCE - Military law - Service property - Loss of - To establish the offence under Armed Forces Act s. 68(1)(a) - Prosecution must inter alia prove that accused is subject to service law - And was in charge of the property (H2) Odunlami v. Nigerian Navy (2013) 6 KLR (pt. 331) 2721

EVIDENCE - Murder - Aiding & abetting - Proof - The charge was proved beyond reasonable doubt - For the fact that 2<sup>nd</sup> appellant was present at the scene without raising alarm - And assisted 1<sup>st</sup> appellant in carrying the corpse downstairs (H7) Oguno v. State (2013) 12 KLR (pt. 338) 4529

EVIDENCE - Murder - Circumstantial evidence - Weight - In absence of confession or eye witness account - Prosecution rightly resorted to circumstantial evidence to discharge onus of proof on it (H5) Babatunde v. State (2013) 6 KLR (pt. 332) 2895

EVIDENCE - Murder - Contradictions in respondent's case cannot avail appellant - As evidence of murder of deceased by appellant remains uncontroverted (H1) Jimmy v. State (2013) 4 KLR (pt. 327) 1699

EVIDENCE - Murder - Conviction - Circumstantial evidence - Evidence of circumstances in this case is inadmissible - As same is capable of explanation upon other hypothesis - Than that of appellant's guilt (H12) Odogwu v. State (2013) 7 KLR (pt. 335) 3779

EVIDENCE - Murder - Conviction - Contradictions - Effect - Minor difference in evidence of prosecution witnesses - Are not of a serious nature to vitiate the conviction (H7) Maigari v. State (2013) 7 KLR (pt. 333) 3251

EVIDENCE - Murder - Defence - Accident - Sustainability - Appellant failed to discharge the onus on him to prove the defence - And his words of threat attest to the intentional killing of the deceased (H3) Jimmy v. State (2013) 4 KLR (pt. 327) 1699

EVIDENCE - Murder - Doctrine of last seen - As prosecution established that appellants - Were last seen with the deceased - Appellants should explain what happened to him (H4) Agbo v. State (2013) 4 KLR (pt. 328) 1787

EVIDENCE - Murder - Evaluation - If trial court had properly evaluated oral evidence of prosecution witnesses - The same would have been expunged as inadmissible hearsay - Given by tainted witnesses (H7) Odogwu v. State (2013) 7 KLR (pt. 335) 3779

EVIDENCE - Murder - Inconsistencies - Effect - Minor discrepancies in evidence of PW3 - Did not destroy inferences from the circumstantial evidence - That culminated in conclusive findings that appellant killed the deceased (H6) Babatunde v. State (2013) 6 KLR (pt. 332) 2895

EVIDENCE - Murder - Ingredients - Proof - A person is guilty of murder if inter alia - He intends to cause the death of deceased - And prosecution must prove that there was death - As a result of intentional act of accused (H1) Nwokeoru v. State (2013) 5 KLR (pt. 329) 2165

EVIDENCE - Murder - Ingredients - Proof - Conviction of appellant for the offence - Can be sustained by the testimonies of respondent's witnesses - Medical report - And appellant's statements (H2) Jimmy v. State (2013) 4 KLR (pt. 327) 1699

EVIDENCE - Murder - Ingredients - Proof - It must be proved that deceased died - As a result of the act of accused - Which was intentional or with knowledge that death or grievous bodily harm will occur (H2) Maigari v. State (2013) 7 KLR (pt. 333) 3251

EVIDENCE - Murder - Ingredients - Proof - Prosecution must prove that the deceased died - And that the death was caused by act of accused - Which was intentional (H1) Adeyeye v. State (2013) 2 KLR (pt. 325) 885

EVIDENCE - Murder - Ingredients - Proof - Prosecution must prove that deceased died - Which death was caused by accused - Who intended to either kill or cause grievous bodily harm (H3) Njokwu v. State (2013) 2 KLR (pt. 325) 1093

EVIDENCE - Murder - Ingredients - Proof - Prosecution must prove that deceased died - And that the death was caused by act of accused - Which was intentional (H4) State v. John (2013) 5 KLR (pt. 330) 2539

EVIDENCE - Murder - Ingredients - Proof - Prosecution must prove that the deceased died - That the death occurred as a result of act of accused - Which was intentional (H1) Usman v. State (2013) 5 KLR (pt. 330) 2569

EVIDENCE - Murder - Ingredients - Proof - To secure conviction for murder - Prosecution must prove that deceased died - As a result of act of accused - Which was intentional (H2) Afosi v. State (2013) 6 KLR (pt. 331) 2583

EVIDENCE - Murder - Ingredients - Proof - To secure conviction prosecution must prove that deceased died - That the death was caused by accused - Whose act was intentional with knowledge that death will occur (H4) Babatunde v. State (2013) 6 KLR (pt. 332) 2895

EVIDENCE - Murder - Ingredients - Prosecution must prove that there is death - Which was caused by the accused - And that the act of accused was intentional (H7) Aliyu v. State (2013) 6 KLR (pt. 332) 2873

EVIDENCE - Murder - Medical report - The report is not relevant - Since appellant attributed the cause of death of the deceased to himself (H4) Dogo v. State (2013) 3 KLR (pt. 326) 1249

EVIDENCE - Murder - Mens rea - Presumption - A person is presumed to intend the natural consequences of his act - Hence accused is presumed to have intentionally killed the deceased (H5) State v. John (2013) 5 KLR (pt. 330) 2539

EVIDENCE - Murder - Mens rea - Proof - Appellant's intention to kill the deceased can be inferred from the dagger he used - Part of the body the injury was inflicted upon - And the force with which the stabbing was done (H2) Nwokeoru v. State (2013) 5 KLR (pt. 329) 2165

EVIDENCE - Murder - Missing exhibits - Effect - Doubt created by disappearance of the vital exhibits - And the resultant inability of Su-

preme Court to evaluate same - Enures to benefit of appellant (H8) Odogwu v. State (2013) 7 KLR (pt. 335) 3779

EVIDENCE - Murder - Proof - Apart from confessional statements of appellants - Evidence adduced by prosecution witnesses point to the only fact - That it was appellant that killed deceased (H6) Oguno v. State (2013) 12 KLR (pt. 338) 4529

EVIDENCE - Murder - Proof - Circumstantial evidence - From the evidence it can be conclusively deduced that appellant intentionally killed the deceased - By inflicting grievous bodily harm on him (H7) Babatunde v. State (2013) 6 KLR (pt. 332) 2895

EVIDENCE - Murder - Proof - Confession - Exhibits C & C1 tendered without objection - Along with evidence of PWs and the medical report - Settled question of the fact of death of the deceased (H3) Maigari v. State (2013) 7 KLR (pt. 333) 3251

EVIDENCE - Murder - Proof - Doctrine of last seen - Presumption of the doctrine operates - Since appellant was the last to see deceased alive - And he had not proffered evidence of anything to the contrary (H5) Maigari v. State (2013) 7 KLR (pt. 333) 3251

EVIDENCE - Murder - Proof - Document - Relevancy - The funeral programme is relevant as it was not meant to contradict PW4 - But to show from its content that deceased could have been killed - By any of those on whose toes he had stepped (H10) Odogwu v. State (2013) 7 KLR (pt. 335) 3779

EVIDENCE - Murder - Proof - Means of - Prosecution can establish that accused caused death through - Confessional statement - Circumstantial evidence - And evidence of an eye witness (H4) Maigari v. State (2013) 7 KLR (pt. 333) 3251

EVIDENCE - Murder - Proof - The newspaper wherein cult group - Claimed responsibility for death of deceased is relevant - And ought to have been admitted (H9) Odogwu v. State (2013) 7 KLR (pt. 335) 3779

EVIDENCE - Murder - Self defence - Failure of - Since there is no credible evidence of appellant's life being in danger - He is deemed to have intentionally killed the deceased (H3) Adeyeye v. State (2013) 2 KLR (pt. 325) 885

EVIDENCE - Murder - Self defence - Sustainability - Accused must show an act of grave and sudden provocation - Loss of self control - And his retaliation must be proportionate (H2) Adeyeye v. State (2013) 2 KLR (pt. 325) 885

EVIDENCE - Negligence - Proof - To succeed in such action - Plaintiff must show that defendant owes him duty of care - And that he has suffered damage - In consequence of the breach of the duty towards him (H1) *Ighreriniovo v. S.C.C. Nig. Ltd.* (2013) 4 KLR (pt. 328) 1853

EVIDENCE - No case submission - Conditions - It is upheld where there was no legally admissible evidence - To prove essential element of the offence - Or evidence adduced was discredited as a result of cross examination (H1) *Agbo v. State* (2013) 4 KLR (pt. 328) 1787

EVIDENCE - No case submission - Court is not to determine - Whether evidence is sufficient to justify conviction - But it must be satisfied that there is a prima facie case - Against accused (H2) *Agbo v. State* (2013) 4 KLR (pt. 328) 1787

EVIDENCE - No case submission - Principle - The submission postulates that there is no legally admissible evidence - Or that prosecution's evidence has been so discredited - That no reasonable court can convict accused on such evidence (H1) *Fagoriola v. FRN* (2013) 7 KLR (pt. 335) 3753

EVIDENCE - Objections - Preliminary objection - Basis - It deals with law and hence no need for supporting affidavit - As applicant contends that the court process has not complied with the enabling law (H3) *Abba v. SPDC Nig. Ltd.* (2013) 4 KLR (pt. 327) 1473

EVIDENCE - Parties - Action - Need for consistency - A party should be consistent in stating his case - And in proving same (H2) *Oshiomole v. Ehigie* (2013) 1 KLR (pt. 322) 191

EVIDENCE - Parties - Issues - Proof - When issues are joined by parties in pleadings - Evidence is required to prove them as averred - And the person with the burden of proving the issue - Must adduce satisfactory evidence (H2) *Reptico S.A. Geneva v. Afribank Plc* (2013) 5 KLR (pt. 329) 2091

EVIDENCE - Pleadings - Absence of - On the authority of *Newbreed Ltd* case - Appellant's claims 1-5 fail - As no evidence was adduced to support them (H3) *Olusanya v. Osineye* (2013) 5 KLR (pt. 329) 2225

EVIDENCE - Pleadings - Averments - Proof - Averments do not take the place of evidence - Since whatever facts that are pleaded - Must be established by evidence in support (H4) *Eyigebe v. Iyaji* (2013) 5 KLR (pt. 330) 2329



EVIDENCE - Pleadings - Content - Pleadings contains statements of facts - Which are explicit in stating the case contested by parties - And such facts give rise to issues which are to be proved by evidence (H4) *Ajibulu v. Ajayi* (2013) 12 KLR (pt. 337) 4153

EVIDENCE - Pleadings - Declaratory relief - Proof - Plaintiff must establish the relief to the satisfaction of court - And such relief is not granted either in default - Or on admission by defendant (H2) *INEC v. Atuma* (2013) 5 KLR (pt. 330) 2375

EVIDENCE - Pleadings - Relief - Facts - Party must plead facts needed to establish his right to relief claimed - As evidence of facts not pleaded goes to no issue (H3) *Yare v. N. S. W. I. C.* (2013) 5 KLR (pt. 329) 2267

EVIDENCE - Pleadings - Unchallenged averments - Evidence on amount claimed constituted sufficient proof of special damages - Recoverable by respondent - As the evidence was admitted without objection (H6) *Nigerian Bottling Co. Plc v. Ubani* (2013) 8-12 KLR (pt. 336) 4027

EVIDENCE - Appeals - Judgment - Interference - Basis - It is necessary to determine whether or not the judgment - Had evolved from pleadings and evidence of parties - And where found to be perverse - Whether miscarriage of justice has been occasioned (H2) *Olaniyan v. Fatoki* (2013) 7 KLR (pt. 335) 3829

EVIDENCE - Prima facie case - Exists when there is sufficient evidence - To support the allegation made against accused - Of which he is expected to rebut in his defence (H3) *Fagoriola v. FRN* (2013) 7 KLR (pt. 335) 3753

EVIDENCE - Proof - Circumstantial evidence - In the absence of direct testimonies of eye witnesses - Evidence of circumstances that can prove a proposition with accuracy of mathematics - Is sufficient to prove the offence charged (H6) *Maigari v. State* (2013) 7 KLR (pt. 333) 3251

EVIDENCE - Proof - Number of witness - Evidence of single witness can ground a conviction - Where the evidence is credible and cogent - Provided that corroboration is not required (H4) *Babarinde v. State* (2013) 8-12 KLR (pt. 336) 3995

EVIDENCE - Proof - Number of witness - Prosecution is not bound to call a host of witnesses - As single witness believed by court - Can establish a crime even in murder charge (H3) *Aliyu v. State* (2013) 6 KLR (pt. 332) 2873

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EVIDENCE - Proof - Vital witness - Where prosecution failed to call a particular witness considered vital - Accused is at liberty to call such witness (H4) Aliyu v. State (2013) 6 KLR (pt. 332) 2873

EVIDENCE - Public documents - Admissibility - Under Evidence Act s. 110 - Such documents must be duly certified - Before they can be admissible in evidence (H4) Adeyefa v. Bamgboye (2013) 2 KLR (pt. 324) 647

EVIDENCE - Rape - Corroboration - Although corroboration is desirable in rape - Trial Judge can convict on uncorroborated evidence - After having watched the demeanor of accused (H5) Musa v. State (2013) 2 KLR (pt. 324) 749

EVIDENCE - Rape - Denial - Proof - Medical evidence - Once there is denial - The evidence is not always mandatory - As court is encouraged to look for such evidence - Which shows injury to private part of prosecutrix (H3) Popoola v. State (2013) 7 KLR (pt. 335) 3873

EVIDENCE - Rape - Ingredient - Supreme Court will not interfere with concurrent conviction - Since the infant victim gave evidence of having been penetrated by accused (H1) Musa v. State (2013) 2 KLR (pt. 324) 749

EVIDENCE - Relevance - Murder - Identity of deceased - Since there is no doubt as to identity of body of deceased - Failure of prosecution to call witness in respect of same - Is irrelevant (H4) Njokwu v. State (2013) 2 KLR (pt. 325) 1093

EVIDENCE - Robbery - Police - Failure to call policeman who recovered the items is of no moment - As PW2 stated that the item was recovered from appellant in his presence (H2) Banjo v. State (2013) 6 KLR (pt. 331) 2683

EVIDENCE - Robbery - Proof - Corroborative evidence from PW1 & 2 show that there was a robbery - And that the robbery was not proved to be armed robbery (H3) Adeleke v. State (2013) 7 KLR (pt. 333) 3093

EVIDENCE - Sale of goods - Title - Proof - Sale of Goods Law s. 13(a)(b)(e) imposes duty on seller to show title - And exhibit A has not relieved appellant of such duty (H8) Abba v. SPDC Nig. Ltd. (2013) 4 KLR (pt. 327) 1473

EVIDENCE - Sources - Can be from direct evidence of fact in issue - Or from witness who claims personal knowledge of facts to which he testified (H3) Odogwu v. State (2013) 7 KLR (pt. 335) 3779

EVIDENCE - Supreme Court - Evaluation - SC does not make primary findings of fact as to credibility of witnesses - But is entitled to draw inferences from accepted facts (H2) Babatunde v. State (2013) 6 KLR (pt. 332) 2895

EVIDENCE - Supreme Court - Fresh evidence - Admission - It must inter alia be shown that it was impossible to obtain such evidence at trial - And the evidence must be credible though not incontrovertible (H2) Adeyefa v. Bamgboye (2013) 2 KLR (pt. 324) 647

EVIDENCE - Tainted witness - This is a witness with some purpose to serve by given evidence - Thus a Judge should scrupulously examine such evidence - And be slow to convict without corroboration (H4) Egwemi v. State (2013) 1-2 KLR (pt. 323) 325

EVIDENCE - Testamentary capacity - It is presumed that deceased's mental capacity exists - Until the contrary is proved by plaintiff (H4) Odutola v. Mabogunje (2013) 1 KLR (pt. 322) 161

EVIDENCE - Title - Proof - Appellant succeeds in his claim - As he proved better title to that of respondent - Lower court was wrong for not affirming finding of trial court - That was based on pleadings and evidence of the parties (H3) Garan v. Olomu (2013) 4 KLR (pt. 327) 1675

EVIDENCE - Trespass - Title - Possession - Where title has been proved to reside in the other party - Possession is of no moment - As the act of the possessor translates as trespass (H4) Ameen v. Amao (2013) 2 KLR (pt. 324) 667

EVIDENCE - Trial within trial - Purpose - It is mini trial conducted to determine - Whether or not confessional statement of accused was made voluntarily (H2) Babarinde v. State (2013) 8-12 KLR (pt. 336) 3995

EVIDENCE - Trial within trial - Purpose - The trial is conducted to ascertain - Whether the statement made by accused was voluntarily made (H3) State v. Rabi (2013) 1-2 KLR (pt. 323) 563

EVIDENCE - Unchallenged evidence - As respondents did not deny the facts giving rise to the accident - Evidence given for appellant is credible - And should be accepted and acted upon by the court (H2) Ighreriniovo v. S.C.C. Nig. Ltd. (2013) 4 KLR (pt. 328) 1853

EVIDENCE - Unchallenged evidence - Effect - Such evidence stands - And court should accept and act on same (H3) Nigerian Army v. Warrant Officer Banni Yakubu (2013) 1-2 KLR (pt. 323) 471

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**EVIDENCE** - Unchallenged evidence - Pleadings - Where party fails to give evidence - Or fails to challenge evidence of his adversary - He is deemed to have accepted such evidence (H3) *Ndulue v. Ojiakor* (2013) 2 KLR (pt. 324) 771

**EVIDENCE** - Unchallenged evidence - Weight - For failure of appellant to call the vital witnesses - Court may by Evidence Act s. 167(c) & decision in *Ogbuanyinya's* case - Draw inference as to existence of facts - Where there is no evidence to the contrary (H1) *Olusanya v. Osineye* (2013) 5 KLR (pt. 329) 2225

**EVIDENCE** - Unchallenged facts - Fate - Averments that are not specifically denied - Are deemed as accepted - And court can act on them (H3) *Ugwuanyi v. NICON Insurance Plc* (2013) 1-2 KLR (pt. 323) 587

**EVIDENCE** - Undefended suits - Defence - Materials for - Court is guided by facts of the case - Parties' affidavit evidence - Notice of intention to defend disclosing the defence (H3) *Dangote Textile Ltd. v. Hascon Asso. Nig. Ltd.* (2013) 5 KLR (pt. 329) 2049

**EVIDENCE** - Undefended suits - Interest - Proof - Plaintiff's affidavit must disclose - How his right to the interest being claimed accrues - And how the rate thereof was arrived at (H4) *Akpan v. Akwa-Ibom Property Invest. Co. Ltd.* (2013) 6 KLR (pt. 331) 2631

**EVIDENCE** - Witnesses - Tainted witness is one who is an accomplice in crime charged - Or who by evidence he gives - May be regarded as having some purpose of his own to serve (H2) *Odogwu v. State* (2013) 7 KLR (pt. 335) 3779

**EVIDENCE** - Writ of summons - Service - Proof - The act of filing a defence to the action before the original court - Is enough to establish service of the process on respondent (H3) *Vab Petroleum Inc. v. Momah* (2013) 1 KLR (pt. 322) 249

**EXAMINATION MALPRACTICES** - Objections - Preliminary objection - Failure to reply - Absence of counter affidavit to objection - Does not mean that the objection is conceded - As courts are enjoined to consider the objection on its merits (H1) *FRN v. Tawakalitu* (2013) 5 KLR (pt. 329) 2079

**EXAMINATION MALPRACTICES** - Supreme Court - Criminal appeals - Time limit - By Supreme Court Act s. 27(2)(b) - Such appeals from CA to SC must be filed within 30 days - Otherwise leave of SC must be sought and obtained to do so (H2) *FRN v. Tawakalitu* (2013) 5 KLR (pt. 329) 2079

EXPERT OPINION - Evidence - Expert opinion - Admissibility - Court is not bound to accept evidence of any expert - Even one who has not disclosed motive - Other than helping the court in the quest for justice (H4) *Akeredolu v. Mimiko* (2013) 8-12 KLR (pt. 336) 3895

EXPERT WITNESSES - Documents - Signature - Expert opinion - Weight - Expert on handwriting may give his opinion on disputed signature - But final decision is made by the Judge (H3) *Odotola v. Mabogunje* (2013) 1 KLR (pt. 322) 161

FAIR HEARING - Appeals - Administrative body - Dealing with a matter - Based on printed or oral evidence or communications only - Is not in itself a breach of principles of fair hearing (H2) *Gyang v. COP Lagos State* (2013) 12 KLR (pt. 337) 4257

FAIR HEARING - Appeals - Brief - C.A. Rules O. 17 r. 5 - C.A. was wrong to hear the appeal and reserve judgment thereof - When the period given to appellant to file reply has not been determined (H2) *Audu v. FRN* (2013) 1 KLR (pt. 322) 53

FAIR HEARING - Appeals - Dismissal - Court of Appeal Rules 2007 O. 8 - Deprived the court the power to act on notice of noncompliance - With compilation & transmission of appeal records - Without putting parties on notice to dismiss the appeal (H3) *Nworah v. Nwabueze* (2013) 5 KLR (pt. 330) 2431

FAIR HEARING - Arraignment - Appellant's complaint of breach of fair hearing is without basis - As the charge was read and explained to him - And he was represented by counsel (H5) *Sadiku v. State* (2013) 5 KLR (pt. 330) 2521

FAIR HEARING - Audi alteram partem - Application - Administrative bodies acting judicially in the imposition of decision - That is likely to affect civil rights and obligations - Are bound to observe principles of fair hearing (H1) *Gyang v. COP Lagos State* (2013) 12 KLR (pt. 337) 4257

FAIR HEARING - Breach - Allegation of - Since appellant was served with petitions against him - And was also heard before a decision was taken - His complaint of breach is of no moment (H4) *Duke v. Government of Cross-River State* (2013) 2 KLR (pt. 325) 941

FAIR HEARING - Breach - Allegation of - The principle cannot avail appellant - As he was properly served with the process - And it is not for court to compel him to act on the opportunity presented (H12) *Ahmed v. Ahmed* (2013) 7 KLR (pt. 335) 3561

FAIR HEARING - Breach - Effect - Once there is breach of fair hear-

ing - The whole proceedings and decision arrived at by court - Becomes a nullity (H4) Audu v. FRN (2013) 1 KLR (pt. 322) 53

FAIR HEARING - Concept of - Hearing can be said to be fair - When both parties are given a hearing - Or an opportunity of a hearing (H9) Obaro v. Hassan (2013) 1-2 KLR (pt. 323) 491

FAIR HEARING - Court martial - Sentence - Review of - By Armed Forces Act s. 149 - A convict has 3 months to appeal for a review - And is also allowed by s. 154(6) to appeal to CA - And thereafter to SC (H3) Odunlami v. Nigerian Navy (2013) 6 KLR (pt. 331) 2721

FAIR HEARING - Court processes - Service - Appellant having been duly served the originating process - But chose to ignore same - Should not complain but take the consequences (H10) Ahmed v. Ahmed (2013) 7 KLR (pt. 335) 3561

FAIR HEARING - Courts - Issue - Suo motu raising - Court can raise issue suo motu - But must call on parties to address it on the said issue - Otherwise it would be breach of fair hearing - And decision reach thereat is liable to be set aside (H5) Adebayo v. PDP (2013) 4 KLR (pt. 327) 1523

FAIR HEARING - Courts - Parties - Issues - Binding nature - Court should not set up a case - Different from the one presented by parties - Without allowing parties to address it on same (H5) Omokuwajo v. FRN (2013) 3 KLR (pt. 326) 1365

FAIR HEARING - Courts - Pretrial - Fair hearing - Breach - Fair hearing cannot be raised against quasi judicial function of a Judge - Being performed under CPL s. 340(2)(b) - As such does not constitute a trial (H10) Babatunde v. State (2013) 6 KLR (pt. 332) 2895

FAIR HEARING - Criminal procedure - Arraignment - Fair hearing - Appellant was fairly heard - As she was properly arraigned - And her brief and caution statement were equally considered (H4) Omokuwajo v. FRN (2013) 3 KLR (pt. 326) 1365

FAIR HEARING - Criminal procedure - Interpreter - Need for - Accused who is not represented by counsel - And does not understand court's language - Must be provided with interpreter - Otherwise it will amount to breach of fair hearing (H1) Egwemi v. State (2013) 1-2 KLR (pt. 323) 325

FAIR HEARING - Criminal procedure - Judgment - The proceedings of the inferior court in the absence of some of the accused - Is a nullity as well as the judgment thereof - For denial of fair hearing (H3) State v. Lawal (2013) 2 KLR (pt. 325) 1181

FAIR HEARING - Criminal procedure - Right to counsel - Violation of the Constitutional right to try accused in the absence of his counsel - Is irregularity that renders the trial a nullity (H1) Mohammed v. State (2013) 1 KLR (pt. 322) 99

FAIR HEARING - Documents - Made during pendency of suit - Fate - By EA s. 91 - Such document is inadmissible for it is capable of gross abuse to advantage of maker - Whose interest negates principle of fair hearing (H12) Nigerian Bottling Co. Plc v. Ubani (2013) 8-12 KLR (pt. 336) 4027

FAIR HEARING - Fundamentality of - Constitution s. 36(1) -It's is a right embedded in the Constitution - And its infringement renders the proceedings a nullity ab initio (H8) Babatunde v. State (2013) 6 KLR (pt. 332) 2895

FAIR HEARING - Master & servant - Dismissal - Fair hearing - Appellant was not denied fair hearing by his dismissal - As he was given opportunity to exculpate himself - From the allegations of fraud (H8) Ekunola v. CBN (2013) 4 KLR (pt. 327) 1621

FAIR HEARING - Meaning - By 1999 Constitution s. 36(1) - Fair hearing means trial conducted according to legal rules - Formulated to ensure that justice is done to parties (H3) Audu v. FRN (2013) 1 KLR (pt. 322) 53

FAIR HEARING - Orders of court - Breach of fair hearing - Order made by Gumel J was a nullity - Since it was made inter alia in breach of 3<sup>rd</sup> defendant's right to fair hearing (H1) Akinrimisi v. Maerks Nig. Ltd. (2013) 3 KLR (pt. 326) 1237

FAIR HEARING - Principle - Fundamentality of - Under Constitution 1999 s. 36 (1) - A person shall be entitled to fair hearing by a court or tribunal - That is constituted in such a manner - As to secure its independence and impartiality (H1) Judicial Service Commission of Cross River State v. Young (2013) 5 KLR (pt. 329) 2129

FAIR HEARING - Principle - It entails giving both parties opportunity to present their cases - As each side has right to know - What case is being made against it (H3) Duke v. Government of Cross-River State (2013) 2 KLR (pt. 325) 941

FAIR HEARING - Principles - Compliance - The principles were not complied with - As appellants had predetermined the fate of respondent - Before conducting investigations and deliberations (H3) Judicial Service Commission of Cross River State v. Young (2013) 5 KLR

(pt. 329) 2129

FAIR HEARING - Rules of Court - Imo State H.C. Rules O. 37 r. 18 - Court can only properly evaluate evidence adduced - When counsel in the matter have properly summed up (H3) *Mpama v. First Bank Nig. Plc* (2013) 1 KLR (pt. 322) 113

FAIR HEARING - Test - Okafor case - True test of fair hearing is the impression of a reasonable man present at the trial - Whether from his observation - Justice has been done in the case (H1) *Mpama v. First Bank Nig. Plc* (2013) 1 KLR (pt. 322) 113

FAIR HEARING - Tribunal - Exercise of power - By not complying with principles of natural justice - In retiring respondent from service - 1st appellant acted in excess of its powers as provided in the State Civil Service Rules (H4) *Judicial Service Commission of Cross River State v. Young* (2013) 5 KLR (pt. 329) 2129

FAIR HEARING - Tribunals - Audi alteram partem - Even when acting in administrative capacity - Tribunal is to act in good faith and fairly listen to both sides before deciding (H2) *Judicial Service Commission of Cross River State v. Young* (2013) 5 KLR (pt. 329) 2129

FAIR HEARING - Undefended suits - Audi alterem partem - Applicability - The principle has no application - In cases tried under the list - As stated in the Rules (H6) *Obaro v. Hassan* (2013) 1-2 KLR (pt. 323) 491

FAIR HEARING - Undefended suits - Defence - UTC v. Pamotei - Where defendant intends to defend but has taken improper step - Adjournment may be given to rectify the defect - To enable court consider his defence (H5) *Dangote Textile Ltd. v. Hascon Asso. Nig. Ltd.* (2013) 5 KLR (pt. 329) 2049

FAMILY LAW - Family land - Sale - The family head acts as trustee of the land - And he cannot transfer the land - Without the consent of principal members of the family (H1) *Achilihu v. Anyatonwu* (2013) 1 KLR (pt. 322) 1

FAMILY LAW - Land law - Customary pledge - Validity - Admission by plaintiff and evidence of PW3 under cross examination - Strengthened defendant's claim - That the land was pledged by family head (H5) *Achilihu v. Anyatonwu* (2013) 1 KLR (pt. 322) 1

FRAUD - Master & servant - Dismissal - Fair hearing - Appellant was not denied fair hearing by his dismissal - As he was given opportunity to exculpate himself - From the allegations of fraud (H8) *Ekunola v. CBN* (2013) 4 KLR (pt. 327) 1621



FUNDAMENTAL RIGHTS - Enforcement - Court - Jurisdiction - As rule of law must be maintained always - Trial court acted within its power - When it heard 1<sup>st</sup> respondent's application for enforcement of his rights (H2) Denton-West v. Jack (2013) 12 KLR (pt. 338) 4435

GOVERNMENT - Constitutional law - Federal High Court - Exclusive jurisdiction is vested on the court by 1999 Constitution s. 251(1)(p)(q)(r) - Over matters in which Fed. Govt. or its agency is a party (H3) Inegbedion v. Selo-Ojemen (2013) 1 KLR (pt. 322) 69

GOVERNMENT - Constitutional law - National Assembly - Power - Extent of - NA cannot in exercise of its powers - Confer authority on FG to engage in matters - Which ordinarily ought to be responsibility of State Government (H3) A-G Federation v. A-G Lagos State (2013) 7 KLR (pt. 333) 3119

GOVERNMENT - Courts - Federal HC - Jurisdiction - By 1999 Constitution s. 251(1)(P)(r) - Exclusive jurisdiction is vested in the court in civil causes and matters - Affecting the administration and management of the Federal Government (H1) Gassol v. Tutare (2013) 12 KLR (pt. 338) 4463

GOVERNMENT - Legislature - Hospitality industry - Lagos State HA - Is entitled to the exclusion of any other legislative body - To enact laws with regard to rendering technical advice - To the State government and LG in the State - In the field of tourism (H1) A-G Lagos State v. A-G Federation (2013) 7 KLR (pt. 333) 3217

IDENTIFICATION PARADE - Alibi - Defence - Identification parade - There was no need for the parade since PW1 recognized appellant as one of the robbers - And the defence of alibi cannot be sustained - As appellant was arrested at crime scene (H6) Ibrahim v. State (2013) 12 KLR (pt. 337) 4273

IDENTIFICATION PARADE - Conviction - Appellant was not solely convicted on evidence obtained at the parade - As court relied on testimony of PW1 - That linked appellant with the offence (H5) Aliyu v. State (2013) 6 KLR (pt. 332) 2873

IDENTIFICATION PARADE - Correctness of - PW6 was not cross examined on the propriety or otherwise of the parade - And there is presumption of regularity of the parade under Evidence Act s. 168(1) (H6) Aliyu v. State (2013) 6 KLR (pt. 332) 2873

IDENTIFICATION PARADE - Failure to conduct - The parade is not needed - Since PW1 had opportunity to visually observe appellant - Failure to conduct same - Did not affect appellant's identification to

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police (H3) *Agboola v. State* (2013) 5 KLR (pt. 329) 2019

IDENTIFICATION PARADE - Necessity - It is essential where identity of accused is in dispute - But is not useful where witness knew accused well - Before the alleged crime was committed (H6) *Sadiku v. State* (2013) 5 KLR (pt. 330) 2521

IDENTIFICATION PARADE - Necessity of - It is conducted inter alia - Where victim does not have prior knowledge of accused - Before commission of the offence (H2) *Agboola v. State* (2013) 5 KLR (pt. 329) 2019

IDENTIFICATION PARADE - Relevance - It should be conducted when inter alia - Name of suspect was not mentioned at earliest opportunity - And he was not arrested at scene of robbery (H1) *Osuagwu v. State* (2013) 1 KLR (pt. 322) 223

IDENTIFICATION PARADE - Relevance of - Where identity of accused is not in doubt - The parade is not needed - As same is not a sine qua non to conviction (H2) *Fatai v. State* (2013) 3 KLR (pt. 326) 1291

IDENTIFICATION PARADE - When irrelevant - Where accused identified himself with commission of the offence - Need for the parade is completely ruled out (H4) *Afolabi v. State* (2013) 6 KLR (pt. 332) 2841

IDENTIFICATION PARADE - When necessary - The parade becomes necessary if there is grave doubt - As to who committed an offence - But the need does not arise in present case (H5) *Egwemi v. State* (2013) 1-2 KLR (pt. 323) 325

IDENTIFICATION PARADE - When not necessary - The parade is not necessary where suspect is caught at crime scene - Where accused identified himself by his confession - Or where there is circumstantial evidence showing his involvement in the offence (H3) *Babarinde v. State* (2013) 8-12 KLR (pt. 336) 3995

INJUNCTIONS - Actions - Hearing - Interlocutory injunction - Since parties in suit no. HOS/134/64 differ from those in HRE/4/97 - Granting of the injunction will prejudice trial in the substantive suit (H4) *Adeleke v. Lawal* (2013) 2 KLR (pt. 324) 623

INJUNCTIONS - Actions - Town planning Law - Contravention of - Appellants do not have injunctive relief under Lagos Urban Planning Law - And they failed to show how they will suffer greater injury than others - By alleged contravention of that law (H5) *Ayida v. Town Planning Authority* (2013) 4 KLR (pt. 328) 1811

INJUNCTIONS - Appeals - Court of Appeal - Interlocutory injunction - Before the application can be made to the court - It must be shown on the supporting affidavit - That there exists special and exceptional circumstances (H1) Commissioner for Education v. Amadi (2013) 2 KLR (pt. 325) 1003

INJUNCTIONS - Appeals - Ground of appeal - Injunction pending appeal - Since the pending appeal and application for injunction - Are based on same consideration - The grounds of appeal must be the same (H3) Aboseldehyde Lab. Plc. v. Union Merchant Bank Plc (2013) 3 KLR (pt. 326) 1205

INJUNCTIONS - Appeals - Injunction pending appeal - Applicant's duty - He must establish by evidence in affidavit - The legal right he seeks to protect by the order (H5) Aboseldehyde Lab. Plc. v. Union Merchant Bank Plc (2013) 3 KLR (pt. 326) 1205

INJUNCTIONS - Appeals - Injunction pending appeal - Grant - Precondition - Court must go into a consideration of - Competing legal rights of the parties - To the protection of the injunctive relief (H4) Aboseldehyde Lab. Plc. v. Union Merchant Bank Plc (2013) 3 KLR (pt. 326) 1205

INJUNCTIONS - Definition - It is a court order prohibiting the doing of some specified act - Or commanding to undo some wrong (H2) Adeleke v. Lawal (2013) 2 KLR (pt. 324) 623

INJUNCTIONS - Grant - Basis for - Order of declaration or injunction can only be granted - If appellants established their legal right - To the subject matter of the claim (H4) Ayida v. Town Planning Authority (2013) 4 KLR (pt. 328) 1811

INJUNCTIONS - Grant - Preconditions - Applicant must inter alia show in his affidavit - That there is existence of legal right - Substantial issue to be tried - And a balance of convenience (H3) Adeleke v. Lawal (2013) 2 KLR (pt. 324) 623

INJUNCTIONS - Grant - Purpose - Being an equitable remedy - Injunction is granted discretionarily - To preserve the subject matter in dispute - Or to maintain the status quo (H1) Adeleke v. Lawal (2013) 2 KLR (pt. 324) 623

INJUNCTIONS - Judgments - Declaratory judgment - Appeal - Relief - Where court delivers such judgment - Party appealing may be granted injunction - But never a stay of execution pending determination of appeal (H3) Olabomi v. Oyewole (2013) 7 KLR (pt. 333) 3319

INJUNCTIONS - Land law - Title - When in issue - Where claim for trespass is coupled with claim for injunction - Title of parties to the land in dispute - Is automatically put in issue (H3) Ajibulu v. Ajayi (2013) 12 KLR (pt. 337) 4153

INJUNCTIONS - Land law - Trespass - Damages - Plaintiff who claims damages and injunction for trespass - Puts his title in issue - And succeeds on proving that he has better title than defendant (H3) Olaniyan v. Fatoki (2013) 7 KLR (pt. 335) 3829

INJUNCTIONS - Land law - Trespass - Proof - Plaintiff who claims relief for trespass and injunction - Must prove that he is in exclusive possession of the land - Or has singular right to its possession (H5) Chukwu v. Akpelu (2013) 12 KLR (pt. 337) 4177

INJUNCTIONS - Purpose - The aim is to protect - An established right of the applicant (H2) Aboseldehyde Lab. Plc. v. Union Merchant Bank Plc (2013) 3 KLR (pt. 326) 1205

INTERESTS - Contracts - Interest - Basis - Where appellant claimed 45% interest per month - Trial court's award of 45% interest per annum - Is awarding what was not claimed in statement of claim or oral evidence (H10) Abba v. SPDC Nig. Ltd. (2013) 4 KLR (pt. 327) 1473

INTERESTS - Court processes - Filing fee - Claim for interest - Proof of rate - As there was no claim for interest in the writ - Its claim in statement of claim cannot be entertained - Since no such claim was assessed - Nor was filing fee paid for it (H9) Abba v. SPDC Nig. Ltd. (2013) 4 KLR (pt. 327) 1473

INTERESTS - Undefended suits - Interest - Proof - Plaintiff's affidavit must disclose - How his right to the interest being claimed accrues - And how the rate thereof was arrived at (H4) Akpan v. Akwa-Ibom Property Invest. Co. Ltd. (2013) 6 KLR (pt. 331) 2631

INTERLOCUTORY APPLICATIONS - Courts - Discretion - Exercise of discretion - Is not appealable but must be judicious and judicial - And not whimsical or irrational (H2) Commissioner for Education v. Amadi (2013) 2 KLR (pt. 325) 1003

INTERNATIONAL LAW - Court - Foreign court - Jurisdiction - Determination - By Foreign Judgment (Reciprocal Enforcement) s. 6 - The court shall inter alia have jurisdiction - Where judgment is given in action in personam (H2) Vab Petroleum Inc. v. Momah (2013) 1 KLR (pt. 322) 249

INTERNATIONAL LAW - Judgments - Foreign judgment - Registration time - The judgment is registered within twelve months after the judgment - And within such longer period - As the High Court will allow (H11) Vab Petroleum Inc. v. Momah (2013) 1 KLR (pt. 322) 249

JUDGMENTS - Actions - Counter claim - Proof - It is an independent and separate action - In which defendant/counter claimant has burden to prove the counter claim - To be entitled to judgment thereon (H2) Maobison Inter-link Associated Ltd. v. UTC Nig. Plc. (2013) 4 KLR (pt. 328) 1871

JUDGMENTS - Actions - Necessary party - Joinder - As the trial court's judgment would affect 3<sup>rd</sup> respondent - It is desirable that 3<sup>rd</sup> respondent be heard - So that court can effectively settle all questions in the matter (H5) Gassol v. Tutare (2013) 12 KLR (pt. 338) 4463

JUDGMENTS - Appeals - Action - Pursuant to SC Act s. 22 - Suit No. K/750/2000 is struck out for being incompetent - As the process leading to the judgment therein was flawed - Hence the HC had no jurisdiction to entertain it (H4) Halilco Nig. Ltd. v. Equity Bank Nig. Ltd. (2013) 6 KLR (pt. 332) 2937

JUDGMENTS - Appeals - Arrest - Application - Competence - Appellant's application which is intended to arrest judgment of CA - Is not recognized by SC rules and hence it is misconceived and incompetent (H1) Ukachukwu v. PDP (2013) 12 KLR (pt. 338) 4591

JUDGMENTS - Appeals - Brief - Fair hearing - C.A. Rules O. 17 r. 5 - C.A. was wrong to hear the appeal and reserve judgment thereof - When the period given to appellant to file reply has not been determined (H2) Audu v. FRN (2013) 1 KLR (pt. 322) 53

JUDGMENTS - Appeals - CA ruling - Interference - There is no justification to set aside the ruling - As CA comments did not prejudice the substantive case of appellants - Which is pending at trial court (H4) Nsefik v. Muna (2013) 12 KLR (pt. 337) 4347

JUDGMENTS - Appeals - Correctness of - CA rightly affirmed trial court's judgment - Despite resolving issue 2 in appellants' favour - Since there was overwhelming credible evidence evaluated by the trial court (H5) Atungwu v. Ochekwu (2013) 7 KLR (pt. 335) 3681

JUDGMENTS - Appeals - Correctness of - Court of Appeal meticulously arrived at its decision - Hence its judgment is unassailable - As the errors of the trial court have all been shown (H2) Okwaranonobi v. Mbadugha (2013) 6 KLR (pt. 332) 3007

JUDGMENTS - Appeals - Court - Obiter dictum - Remarks by the trial Judge on prosecuting appellant for bigamy - Constitute obiter dicta - And cannot form the basis of appeal (H10) Amobi v. Nzegwu (2013) 8-12 KLR (pt. 336) 3953

JUDGMENTS - Appeals - Court of Appeal - Power - By CA Rules O. 18 r. 11 - The court can give any judgment or order as the case may require - Including any order as to costs (H3) Asika v. Atuanya (2013) 7 KLR (pt. 335) 3651

JUDGMENTS - Appeals - Error - Effect - An issue that complains about lapse in decision appealed against - Is resolved in favour of appellant - Where there is proof that the error has occasioned miscarriage of justice (H1) Garan v. Olomu (2013) 4 KLR (pt. 327) 1675

JUDGMENTS - Appeals - Evaluation - Provided appellate court took full cognizance of evaluation of evidence alongside pleadings by trial court - It must not deal line by line on judgment of tribunal (H4) Oke v. Mimiko (2013) 8-12 KLR (pt. 336) 4077

JUDGMENTS - Appeals - Finding - Failure to challenge - Where finding of lower court is not appealed against - The finding is deemed to be valid and subsisting - And appellate court will not disturb it (H1) Okwaranonobi v. Mbadugha (2013) 6 KLR (pt. 332) 3007

JUDGMENTS - Appeals - Findings - The trial court's findings of facts are deemed admitted - As there is no appeal against them - And CA was at liberty to rely on same in its decision (H3) FBN Plc v. Ozokwere (2013) 12 KLR (pt. 337) 4203

JUDGMENTS - Appeals - Fresh evidence - Application - Appellate court will grant leave if it was impossible to obtain such evidence at trial - And if the evidence is credible as to influence judgment (H3) Nwaogu v. Atuma (2013) 1-2 KLR (pt. 323) 305

JUDGMENTS - Appeals - Fresh evidence - CA Rule O. 4 r. 2 - Applicability - The provision is only invoked in appeal - Against decision of a lower court on the merits of the case (H4) Aroh v. PDP (2013) 6 KLR (pt. 331) 2655

JUDGMENTS - Appeals - Fresh issue - Determination - Court must be satisfied that it has the facts of the new point - And that were the points raised at lower courts - The same would have remained unsatisfactorily determined (H3) Udo v. Regd. Trustee of the Brotherhood of the Cross & Star (2013) 2 KLR (pt. 324) 847

JUDGMENTS - Appeals - Ground of appeal - Meaning - This is the

reason why the decision of inferior court - Is considered wrong by the aggrieved party (H3) Okponipere v. State (2013) 2 KLR (pt. 325) 1119

JUDGMENTS - Appeals - Grounds - Amendment - Can be made at any time before judgment - Because once judgment is delivered - A seal is put to the controversy between parties - Which ends adjudication in that court (H5) Ikechukwu v. Nwoye (2013) 12 KLR (pt. 337) 4305

JUDGMENTS - Appeals - Grounds - Not raised from judgment - Fate - Such grounds and issues formulated therefrom - Are liable to be struck out (H1) Ndulue v. Ojiakor (2013) 2 KLR (pt. 324) 771

JUDGMENTS - Appeals - Interference - Basis - It is necessary to determine whether or not the judgment - Had evolved from pleadings and evidence of parties - And where found to be perverse - Whether miscarriage of justice has been occasioned (H2) Olaniyan v. Fatoki (2013) 7 KLR (pt. 335) 3829

JUDGMENTS - Appeals - Issue - Formulation - Basis - Issue must relate to a ground - Which challenges the validity of ratio or decision - Being appealed against (H1) Abdullahi v. State (2013) 5 KLR (pt. 329) 1979

JUDGMENTS - Appeals - Issues - Basis - Decision is made based on issues arising from valid grounds - Hence any issue which does not so arise - Is not one the court can base its judgment upon (H5) Abba v. SPDC Nig. Ltd. (2013) 4 KLR (pt. 327) 1473

JUDGMENTS - Appeals - Issues - Formulation of must be from grounds of appeal - Which grounds must derive from ratio of the judgment appealed against - Otherwise the grounds are incompetent (H1) Eyigebe v. Iyaji (2013) 5 KLR (pt. 330) 2329

JUDGMENTS - Appeals - Jurisdiction - Court - Previous judgment - Jurisdiction of trial court to make order in respect of its earlier judgment - Which is subject to appeal - Is clearly ousted (H6) Alims Nig. Ltd. v. United Bank for Africa (2013) 1 KLR (pt. 322) 35

JUDGMENTS - Appeals - Meaning of - This is a resort to superior court - To review the decision of an inferior court - To find out whether from available facts - The inferior court has come to a right decision (H2) Okponipere v. State (2013) 2 KLR (pt. 325) 1119

JUDGMENTS - Appeals - Notice of appeal - Contents - The notice should clearly convey the substance of appellant's complaint against judgment appealed - So as not to leave respondent in doubt as to

the case expected in court (H1) Ikechukwu v. Nwoye (2013) 12 KLR (pt. 337) 4305

JUDGMENTS - Appeals - Reversal of judgment - Jurisdiction - CA can reverse itself where it earlier ruled - That lower court has no jurisdiction - Provided fresh arguments arose in the same case - As between same parties (H2) Abiola & Sons Bottling Co. Ltd v. First City Merchant Bank Ltd (2013) 4 KLR (pt. 327) 1501

JUDGMENTS - Appeals - Stay of execution - Grant - Stay of execution pending appeal is granted - Where judgment is executory - Though the stay merely suspends rights of successful party - Until appeal is decided (H5) Olabomi v. Oyewole (2013) 7 KLR (pt. 333) 3319

JUDGMENTS - Appeals - Undefended suit - Decision transferring the matter to undefended list - Is correctly adjudged as defective - Even though CA wrongfully ruled that trial court is not bound - To consider documents for such transfer (H5) Akpan v. Akwa-Ibom Property Invest. Co. Ltd. (2013) 6 KLR (pt. 331) 2631

JUDGMENTS - Appeals - Words & phrases - Ruling - Use of judgment or ruling connotes a decision of court - And should not therefore be a reason for controversy (H2) Contract Resources Ltd v. Standard Trust Bank Ltd (2013) 2 KLR (pt. 325) 915

JUDGMENTS - Concurring judgments - By 1979 Constitution s. 258(3) - Where decision of court consists of more than one Judge - The concurring opinion of the majority - Shall be the binding judgment (H5) Arum v. Nwobodo (2013) 4 KLR (pt. 327) 1583

JUDGMENTS - Court - Foreign court - Jurisdiction - Determination - By Foreign Judgment (Reciprocal Enforcement) s. 6 - The court shall inter alia have jurisdiction - Where judgment is given in action in personam (H2) Vab Petroleum Inc. v. Momah (2013) 1 KLR (pt. 322) 249

JUDGMENTS - Court martial - Fair hearing - Sentence - Review of - By Armed Forces Act s. 149 - A convict has 3 months to appeal for a review - And is also allowed by s. 154(6) to appeal to CA - And thereafter to SC (H3) Odunlami v. Nigerian Navy (2013) 6 KLR (pt. 331) 2721

JUDGMENTS - Courts - Appeals - Issues - Formulation of - Courts have power to formulate issues in the interest of justice - But parties must be heard on such issues - Before judgment is delivered (H7) Ekunola v. CBN (2013) 4 KLR (pt. 327) 1621



JUDGMENTS - Courts - Customary court's judgment - Appraisal of - It is the substance and not the form of the judgment - That must be considered - So as not to undermine the real essence therein (H3) Oguanuhu v. Chiegboka (2013) 1-2 KLR (pt. 323) 521

JUDGMENTS - Courts - Issues - Determination - Sagay v. Sajere - To arrive at just decisions - Court must not only ascertain the facts in contention - But also deftly apply the law relevant to the issue (H2) Duru v. Federal Republic of Nigeria (2013) 2 KLR (pt. 324) 705

JUDGMENTS - Courts - Miscarriage of justice - Meaning - This occurs when judgment of court is prejudicial to right of the party concerned (H4) Mmamman v. FRN (2013) 1-2 KLR (pt. 323) 459

JUDGMENTS - Courts - Review - The court became functus officio after granting the order of mandamus - But can revisit same where application is made timeously - To set aside the order for default of appearance (H5) Associated Discount House Ltd. v. Minister of FCT (2013) 2 KLR (pt. 324) 685

JUDGMENTS - Courts - Wrongful admission - Where document is wrongly admitted - Court has jurisdiction to expunge it at judgment - Since judgment can only be based on legally admissible document (H2) Nwaogu v. Atuma (2013) 12 KLR (pt. 338) 4491

JUDGMENTS - Criminal procedure - Fair hearing - The proceedings of the inferior court in the absence of some of the accused - Is a nullity as well as the judgment thereof - For denial of fair hearing (H3) State v. Lawal (2013) 2 KLR (pt. 325) 1181

JUDGMENTS - Damages - Award - Purpose - The intention is to compensate plaintiff for financial loss and sufferings caused by injury - And a Judge should consider the purchasing power of naira - At the time of judgment (H3) Ighreriniovo v. S.C.C. Nig. Ltd. (2013) 4 KLR (pt. 328) 1853

JUDGMENTS - Declaratory judgment - Appeal - Relief - Where court delivers such judgment - Party appealing may be granted injunction - But never a stay of execution pending determination of appeal (H3) Olabomi v. Oyewole (2013) 7 KLR (pt. 333) 3319

JUDGMENTS - Declaratory judgment - Execution - As judgment of trial court in suit no. HAU/72/95 was declaratory - There is nothing in it that required application for stay of execution (H7) Alims Nig. Ltd. v. United Bank for Africa (2013) 1 KLR (pt. 322) 35

JUDGMENTS - Declaratory judgment - Meaning - It is judgment that proclaims the existence of a legal relationship - But does not contain

any order which may be enforced against defendant (H1) Olabomi v. Oyewole (2013) 7 KLR (pt. 333) 3319

JUDGMENTS - Declaratory judgment - Rights - Infringement - Once rights declared are infringed - Fresh proceedings are needed for enforcement - As the judgment cannot be enforced by execution (H2) Olabomi v. Oyewole (2013) 7 KLR (pt. 333) 3319

JUDGMENTS - Declaratory judgment - Stay of - Such judgment cannot be stayed by an interim order - Except the declaratory order is coupled with a mandatory order (H1) Aboseldehyde Lab. Plc. v. Union Merchant Bank Plc (2013) 3 KLR (pt. 326) 1205

JUDGMENTS - Default judgment - Failure to appeal - Since there is no appeal to set aside the foreign judgment - Supreme Court will not be of any assistance - To party who willingly abdicate his responsibility (H7) Vab Petroleum Inc. v. Momah (2013) 1 KLR (pt. 322) 249

JUDGMENTS - Delivery - Delay in - Effect - The delay did not affect the trial court's judgment - As issues raised were considered and resolved - And no miscarriage of justice was shown to have been suffered by appellant (H1) Atungwu v. Ochekwu (2013) 7 KLR (pt. 335) 3681

JUDGMENTS - Elections - Pre election matters - It is only Federal and State High Courts that have jurisdiction in such matters - And judgment of Supreme Court is final in the matter (H6) Opara v. Amadi (2013) 6 KLR (pt. 332) 3027

JUDGMENTS - Evidence - Evaluation - Interference - Where trial court failed to properly evaluate evidence - Appeal court can interfere - By making proper findings justified by evidence (H2) State v. Rabiui (2013) 1-2 KLR (pt. 323) 563

JUDGMENTS - Evidence - Inadmissible document - Weight - Such document is invalid for all intents and purposes - As it cannot form the basis of any competent finding of court (H1) Nwaogu v. Atuma (2013) 12 KLR (pt. 338) 4491

JUDGMENTS - Executory judgment - Meaning - It is order that states the respective rights of parties - And orders defendant to act in a particular way - Or refrain from interfering with plaintiff's right (H4) Olabomi v. Oyewole (2013) 7 KLR (pt. 333) 3319

JUDGMENTS - Fair hearing - Audi alteram partem - Application - Administrative bodies acting judicially in the imposition of decision - That is likely to affect civil rights and obligations - Are bound to observe principles of fair hearing (H1) Gyang v. COP Lagos State (2013)

12 KLR (pt. 337) 4257

JUDGMENTS - Fair hearing - Breach - Effect - Once there is breach of fair hearing - The whole proceedings and decision arrived at by court - Becomes a nullity (H4) Audu v. FRN (2013) 1 KLR (pt. 322) 53

JUDGMENTS - Federal High Court - Divisions - There are several divisions of the court - But their decisions are not binding on each other - As they are courts of coordinate jurisdiction (H3) Uwazuruike v. A-G Federation (2013) 4 KLR (pt. 328) 1953

JUDGMENTS - Foreign currency - Award - Foreign currency judgments are within the general jurisdiction of courts in Nigeria - Depending on facts of the cases (H5) FBN Plc v. Ozokwere (2013) 12 KLR (pt. 337) 4203

JUDGMENTS - Foreign judgment - Registration time - The judgment is registered within twelve months after the judgment - And within such longer period - As the High Court will allow (H11) Vab Petroleum Inc. v. Momah (2013) 1 KLR (pt. 322) 249

JUDGMENTS - Jurisdiction - Absence of - Effect - Where court lacks jurisdiction - All proceedings it conducts - Including ruling or judgment - Is a nullity (H3) Abiola & Sons Bottling Co. Ltd v. First City Merchant Bank Ltd (2013) 4 KLR (pt. 327) 1501

JUDGMENTS - Jurisdiction - Elections - Fundamental rights - Ifegwu's case - Appellant's right to seek redress for breach of his right is not terminated - By reason of CA final judgment in the election proceedings - As such right can be pursued in a competent court (H7) Opara v. Amadi (2013) 6 KLR (pt. 332) 3027

JUDGMENTS - Jurisdiction - Meaning of - It is authority which court has to decide matters before it - And such power is controlled by statute creating the court - Or by condition precedent which must be fulfilled - Before court can entertain the suit (H2) Aladejobi v. NBA (2013) 7 KLR (pt. 335) 3623

JUDGMENTS - Jurisdiction - Suo motu raising - Failure to invite counsel - Failure to invite address of counsel - Does not render decision a nullity - Unless it is shown that the decision is incorrect (H4) Alims Nig. Ltd. v. United Bank for Africa (2013) 1 KLR (pt. 322) 35

JUDGMENTS - Land law - Interference - By failing to properly weigh evidence of both parties - Trial court occasioned injustice against respondent - And CA rightly interfered by remedying the situation (H8) Chukwu v. Akpelu (2013) 12 KLR (pt. 337) 4177

JUDGMENTS - Land law - Title - Appellants are entitled to benefits that accrued to respondents by judgment in suit no. ID/1883/89 - Since title had passed to the former - At the time the action was instituted (H1) Gbadamosi v. Akinloye (2013) 7 KLR (pt. 333) 3225

JUDGMENTS - Mistake in - Effect - Statement of CA that grounds 3 & 4 were not covered by the issues - Occasioned no miscarriage of justice - For it is not every error in judgment - That results in appeal being allowed (H2) Atungwu v. Ochekwu (2013) 7 KLR (pt. 335) 3681

JUDGMENTS - Obiter dictum - In resolving an issue - The Judge can make comment which is usually harmless - And such is considered as obita dictum - That does not constitute the decision of court (H6) Adebayo v. PDP (2013) 4 KLR (pt. 327) 1523

JUDGMENTS - Perverse decision - Meaning - It is one which ignores evidence before court - And which results in miscarriage of justice (H10) FBN Plc v. Ozokwere (2013) 12 KLR (pt. 337) 4203

JUDGMENTS - Robbery - Sentence - Validity - Appellant suffered no miscarriage of justice - As CA rightly sentenced him to 21 years imprisonment - As provided under CPA s. 381 (H5) Afolabi v. State (2013) 6 KLR (pt. 332) 2841

JUDGMENTS - Ruling - Criminal procedure - Judicial bias - Comments made by the trial Judge in his ruling on voluntariness of appellants' statements - Did not show a likelihood of bias against appellants - In respect of the substantive trial (H1) Babarinde v. State (2013) 8-12 KLR (pt. 336) 3995

JUDGMENTS - Slip - Effect - It is not every mistake that results in setting aside of judgment on appeal - As mistake must be relevant to issues between parties - And substantial as to lead to miscarriage of justice (H9) FBN Plc v. Ozokwere (2013) 12 KLR (pt. 337) 4203

JUDGMENTS - Stare decisis - Purpose - The principle is that lower courts are bound by ratio decidendi of higher courts - To ensure uniformity in decision making - And enhance development of coherent body of laws (H10) Nnakwe v. State (2013) 7 KLR (pt. 333) 3273

JUDGMENTS - Supreme Court - 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) Ahmed v. CBN (2013) 6 KLR (pt. 331) 2611

JUDGMENTS - Supreme Court - Departure from - Procedure - The court examines facts of the decision it is called upon to reverse - In the light of facts of the case calling for reversal (H2) Adebayo v. PDP (2013) 4 KLR (pt. 327) 1523

JUDGMENTS - Supreme Court - 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) Ahmed v. CBN (2013) 6 KLR (pt. 331) 2611

JUDGMENTS - Supreme Court - Setting aside of judgment - Instances - The court may overrule its previous decision - Where the decision was given per incuriam - Or has become an instrument of injustice (H1) Adebayo v. PDP (2013) 4 KLR (pt. 327) 1523

JUDGMENTS - Tribunals - Audi alteram partem - Even when acting in administrative capacity - Tribunal is to act in good faith and fairly listen to both sides before deciding (H2) Judicial Service Commission of Cross River State v. Young (2013) 5 KLR (pt. 329) 2129

JUDGMENTS - Undefended suits - Defence - Notice of - Failure to file - Judgment is not automatically given to plaintiff where defence is not filed - As trial court must scrutinize the claim - To ensure that it is one that could be heard under the procedure (H6) Akpan v. Akwa-Ibom Property Invest. Co. Ltd. (2013) 6 KLR (pt. 331) 2631

JUDGMENTS - Undefended suits - Merit - Judgment handed down under the list - Is one on merit and can only be set aside on appeal - Or by another action in case of fraud (H7) Obaro v. Hassan (2013) 1-2 KLR (pt. 323) 491

JUDGMENTS - Undefended suits - Rules of court - Purpose - FCT H.C. Rules O. 23 - The aim is for obtaining summary judgment - Without proceeding to trial (H2) Obaro v. Hassan (2013) 1-2 KLR (pt. 323) 491

JUDGMENTS - Words & phrases - Order - Definition - Blacks Law Dictionary 5<sup>th</sup> Ed - Order is defined as mandate - Or direction of court entered in writing - And not included in judgment (H2) Maideribe v. FRN (2013) 12 KLR (pt. 337) 4321

JUDICIAL PRECEDENTS - Actions - Consistency of - Appellant portrayed a confused state of affairs - As he shunts his case from pillar to post - Contrary to the holden in Okolo's case that litigation is not open ended (H4) Ekunola v. CBN (2013) 4 KLR (pt. 327) 162

JUDICIAL PRECEDENTS - Appeals - Hearing - Contempt of court -

## **4890 INDEX OF SUBJECT MATTER ALL SC 2013 DECISIONS**

Hadikinson's case - Contemnor may not be heard if his disobedience - Impedes the cause of justice - Except where he raises issue of lack of court's jurisdiction (H2) Abeke v. Odunsi (2013) 5 KLR (pt. 330) 2285

JUDICIAL PRECEDENTS - Appeals - Issues - Proliferation - Omega Bank case - It is not the number of issues in a brief that determine the quality - Or that determine the success of an appeal (H1) Inegbedion v. Selo-Ojemen (2013) 1 KLR (pt. 322) 69

JUDICIAL PRECEDENTS - Appeals - Jurisdiction - Fresh issue of - Awuse v. Odili - Being a fundamental principle - Leave is not required to raise jurisdiction at any stage of the proceedings (H7) Dangote Textile Ltd. v. Hascon Asso. Nig. Ltd. (2013) 5 KLR (pt. 329) 2049

JUDICIAL PRECEDENTS - Courts - Evidence - Evaluation - Mogaji v. Odojin - Trial court is bound to evaluate evidence adduced by parties - For the purpose of arriving at a right conclusion - In adjudication of the case before it (H6) Chukwu v. Akpelu (2013) 12 KLR (pt. 337) 4177

JUDICIAL PRECEDENTS - Courts - Issues - Determination - Sagay v. Sajere - To arrive at just decisions - Court must not only ascertain the facts in contention - But also deftly apply the law relevant to the issue (H2) Duru v. Federal Republic of Nigeria (2013) 2 KLR (pt. 324) 705

JUDICIAL PRECEDENTS - Criminal procedure - Appeal - AG's Fiat - Duration of - On authority of Ebe v. COP - AG need not issue fresh fiat - Before counsel can proceed with prosecution of appeals - Arising from the charge (H15) Nnakwe v. State (2013) 7 KLR (pt. 333) 3273

JUDICIAL PRECEDENTS - Criminal procedure - Proof beyond reasonable doubt - Joseph v. State - The phrase does not mean proof beyond all doubt - But prosecution proving guilt of accused - With compelling and conclusive evidence (H11) Egwemi v. State (2013) 1-2 KLR (pt. 323) 325

JUDICIAL PRECEDENTS - Criminal procedure - Retrial - Principles - Abodundu's case - Retrial order is made where there has been error in law - Which neither renders the trial a nullity - Nor can court say there is no miscarriage of justice (H2) Mohammed v. State (2013) 1 KLR (pt. 322) 99

JUDICIAL PRECEDENTS - Customary law - Bini native law - Igiogbe - Ogbanon's case - By this custom an eldest son of a deceased is entitled - To inherit without question - The house in which deceased

lived and died (H1) Uwaifo v. Uwaifo (2013) 4 KLR (pt. 327) 1737

JUDICIAL PRECEDENTS - Elections - Appeals - Extension of time - ANPP v. Albishir - As no reason was given for delay - Grant of the application will frustrate hearing of main appeal at CA - Which borders on pre election matter that must be heard timeously (H2) Chime v. Onwuegbu (2013) 7 KLR (pt. 335) 3739

JUDICIAL PRECEDENTS - Evidence - Circumstantial evidence - Admissibility - Ijioffor v. State - Such evidence is receivable in criminal and civil cases - And it is often said to be the best evidence (H3) Usman v. State (2013) 5 KLR (pt. 330) 2569

JUDICIAL PRECEDENTS - Evidence - Unchallenged evidence - Weight - For failure of appellant to call the vital witnesses - Court may by Evidence Act s. 167(c) & decision in Ogbuanyinya's case - Draw inference as to existence of facts - Where there is no evidence to the contrary (H1) Olusanya v. Osineye (2013) 5 KLR (pt. 329) 2225

JUDICIAL PRECEDENTS - Fair hearing - Test - Okafor case - True test of fair hearing is the impression of a reasonable man present at the trial - Whether from his observation - Justice has been done in the case (H1) Mpama v. First Bank Nig. Plc (2013) 1 KLR (pt. 322) 113

JUDICIAL PRECEDENTS - Jurisdiction - Elections - Fundamental rights - Ifegwu's case - Appellant's right to seek redress for breach of his right is not terminated - By reason of CA final judgment in the election proceedings - As such right can be pursued in a competent court (H7) Opara v. Amadi (2013) 6 KLR (pt. 332) 3027

JUDICIAL PRECEDENTS - Jurisdiction - Elections - Pre election - Electoral Act s. 87(9) & Lado's case - Are not applicable to this case - As 2<sup>nd</sup> appellant is not aspirant - And his complaint is not founded on nomination (H1) CPC v. Ombugadu (2013) 7 KLR (pt. 334) 3401

JUDICIAL PRECEDENTS - Kojo v. Bonsie - Principle - Where traditional evidence of parties are inconclusive - Court should consider recent facts - To determine which of the evidence is probable (H3) Matanmi v. Dada (2013) 2 KLR (pt. 324) 725

JUDICIAL PRECEDENTS - Land law - Customary pledge - Principles - Okoiko's case - A pledge is perpetually redeemable - And pledgee is not entitled to compensation - For putting the land to economic uses (H3) Achilihu v. Anyatonwu (2013) 1 KLR (pt. 322) 1

JUDICIAL PRECEDENTS - Land law - Title - Identity of land - Proof - Okolo v. Dakolo - Plaintiff succeeds only where he has ascertained identity of the land in dispute - And its boundaries with precision (H4) Okwaranonobi v. Mbadugha (2013) 6 KLR (pt. 332) 3007

JUDICIAL PRECEDENTS - Land law - Title - Proof - Means of - Idundun v. Okumagba - Title can be proved by traditional evidence - Documents of title - Acts of ownership - Acts of possession - And proof of possession of adjacent or connected land (H9) Ajibulu v. Ajayi (2013) 12 KLR (pt. 337) 4153

JUDICIAL PRECEDENTS - Murder - Retrial order - Correctness of - Yahaya v. State - Long incarceration cannot justify discharge & acquittal of accused - When the charge borders on murder (H4) Ganiyu v. State (2013) 4 KLR (pt. 327) 1661

JUDICIAL PRECEDENTS - Parties - Joinder of - Basis - Odeleye v. Adepegba - Defendant can be joined where plaintiff's or defendant's case in existing action - Cannot be effectively determined without the joinder (H4) Associated Discount House Ltd. v. Minister of FCT (2013) 2 KLR (pt. 324) 685

JUDICIAL PRECEDENTS - Parties - Joinder of - Proper time - Nnaji v. Aneke - Order for joinder or non joinder may be made at anytime - Upon application of either party - But such must be done if the action is pending (H3) Associated Discount House Ltd. v. Minister of FCT (2013) 2 KLR (pt. 324) 685

JUDICIAL PRECEDENTS - Pleadings - Evidence - Absence of - On the authority of Newbreed Ltd case - Appellant's claims 1-5 fail - As no evidence was adduced to support them (H3) Olusanya v. Osineye (2013) 5 KLR (pt. 329) 2225

JUDICIAL PRECEDENTS - Rules of court - Compliance - Solanke v. Somefun - Rules of court are meant to be complied with - As they regulate matters in court - And help parties to present their cases - For fair and quick trial (H4) Asika v. Atuanya (2013) 7 KLR (pt. 335) 3651

JUDICIAL PRECEDENTS - Stare decisis - Application - Appellant should not expect CA to prefer dictum of HC judge - Over that of a judge in an appellate court - As the doctrine does not operate in such a manner (H2) Uwaifo v. Uwaifo (2013) 4 KLR (pt. 327) 1737

JUDICIAL PRECEDENTS - Stare decisis - Principle of - It states that lower courts are bound to follow principles of law - Established in prior cases by superior courts - As such helps to steady justice on its



proper course (H2) Nigerian Bottling Co. Plc v. Ubani (2013) 8-12 KLR (pt. 336) 4027

JUDICIAL PRECEDENTS - Stare decisis - Purpose - Point of law that has been settled by superior court - Should be followed by lower court - In order to avoid confusion (H3) George v. FRN (2013) 12 KLR (pt. 337) 4235

JUDICIAL PRECEDENTS - Stare decisis - Purpose - The principle is that lower courts are bound by ratio decidendi of higher courts - To ensure uniformity in decision making - And enhance development of coherent body of laws (H10) Nnakwe v. State (2013) 7 KLR (pt. 333) 3273

JUDICIAL PRECEDENTS - Torts - Detinue - Nature of - Kosile v. Folarin - Detinue involves unlawful diversion of plaintiff's chattel - Which he has immediate right to possess - After having demanded for its return (H1) Aminu Ishola Invest. Ltd v. Afribank Plc (2013) 2 KLR (pt. 325) 1025

JUDICIAL PRECEDENTS - Undefended suits - Defence - UTC v. Pamotei - Where defendant intends to defend but has taken improper step - Adjournment may be given to rectify the defect - To enable court consider his defence (H5) Dangote Textile Ltd. v. Hascon Asso. Nig. Ltd. (2013) 5 KLR (pt. 329) 2049

JUDICIAL PRECEDENTS - Undefended suits - Liquidated sum - Meaning - Maja's case - It is an ascertained claim or specific amount - That requires no further determination of extent of defendant's liability (H2) Akpan v. Akwa-Ibom Property Invest. Co. Ltd. (2013) 6 KLR (pt. 331) 2631

JURISDCITION - Appeals - Action - Pursuant to SC Act s. 22 - Suit No. K/750/2000 is struck out for being incompetent - As the process leading to the judgment therein was flawed - Hence the HC had no jurisdiction to entertain it (H4) Halilco Nig. Ltd. v. Equity Bank Nig. Ltd. (2013) 6 KLR (pt. 332) 2937

JURISDICTION - 1999 Constitution 5<sup>th</sup> schdl - Breach of - Para.12 gives exclusive jurisdiction to Code of Conduct Tribunal - Powers of regular courts are thereby ousted (H4) Ahmed v. Ahmed (2013) 7 KLR (pt. 335) 3561

JURISDICTION - Absence of - Effect - Where court lacks jurisdiction - All proceedings it conducts - Including ruling or judgment - Is a nullity (H3) Abiola & Sons Bottling Co. Ltd v. First City Merchant Bank Ltd (2013) 4 KLR (pt. 327) 1501

JURISDICTION - Actions - Cause of action - Absence of - Cause of action enthrones jurisdiction on court - And absence of it renders the suit incompetent - And liable to be struck out (H4) Chukwu v. Akpelu (2013) 12 KLR (pt. 337) 4177

JURISDICTION - Actions - Cause of action - Meaning - It means cause of complaint - Civil right or obligation fit to be determined by court - And dispute in which court can invoke its powers (H1) Yare v. N. S. W. I. C. (2013) 5 KLR (pt. 329) 2267

JURISDICTION - Actions - Commencement - Wrong procedure - Such procedure does not constitute jurisdictional issue - Since the lapse does not defeat cause of action - Except where specifically stated in the rules of court (H5) Udo v. Regd. Trustee of the Brotherhood of the Cross & Star (2013) 2 KLR (pt. 324) 847

JURISDICTION - Administration of estates - Court - From the address available to court - The deceased lived and owned property in Lagos - Within jurisdiction of the trial court (H3) Amobi v. Nzegwu (2013) 8-12 KLR (pt. 336) 3953

JURISDICTION - Appeals - Court - Previous judgment - Jurisdiction of trial court to make order in respect of its earlier judgment - Which is subject to appeal - Is clearly ousted (H6) Alims Nig. Ltd. v. United Bank for Africa (2013) 1 KLR (pt. 322) 35

JURISDICTION - Appeals - Determination - To determine whether or not it has jurisdiction over a matter - Court must examine the nature of claims - And the parties before it (H1) Abia State Ind. Elec. Com. v. Kanu (2013) 5 KLR (pt. 330) 2313

JURISDICTION - Appeals - Fresh issue - Leave - Party who seeks to file and argue new issue on appeal - Must first seek and obtain leave of court - Save where such fresh issue touches on jurisdiction (H4) Organ v. Nig. Liquefied Natural Gas Ltd. (2013) 7 KLR (pt. 334) 3521

JURISDICTION - Appeals - Fresh issue of jurisdiction - Awuse v. Odili - Being a fundamental principle - Leave is not required to raise jurisdiction at any stage of the proceedings (H7) Dangote Textile Ltd. v. Hascon Asso. Nig. Ltd. (2013) 5 KLR (pt. 329) 2049

JURISDICTION - Appeals - Fresh issue on - Appellate court can accommodate such issue - Provided appellant does not introduce - New line of defence different from those of parties at lower court (H4) Udo v. Regd. Trustee of the Brotherhood of the Cross & Star (2013) 2 KLR (pt. 324) 847

JURISDICTION - Appeals - Ground of law - Validity - Ground 7 having questioned jurisdiction of court is one of law - Which is competent to sustain the appeal - Even if leave was not obtained for other grounds (H6) Olabomi v. Oyewole (2013) 7 KLR (pt. 333) 3319

JURISDICTION - Appeals - Grounds - Mixed law & facts - Failure to obtain leave - Appellant is expected to obtain leave of CA or SC for ground 4 - And failure to do so robs court of jurisdiction to adjudicate on the matter (H4) Abdul v. CPC (2013) 12 KLR (pt. 338) 4409

JURISDICTION - Appeals - Grounds - Of mixed law & facts - Raised without leave - By 1999 Constitution s. 233(3) - Supreme Court has no jurisdiction to entertain the appeal - As the grounds are incompetent (H3) Njemanze v. Njemanze (2013) 2 KLR (pt. 325) 1071

JURISDICTION - Appeals - Hearing - Contempt of court - Hadikinson's case - Contemnor may not be heard if his disobedience - Impedes the cause of justice - Except where he raises issue of lack of court's jurisdiction (H2) Abeke v. Odunsi (2013) 5 KLR (pt. 330) 2285

JURISDICTION - Appeals - Interlocutory stage - Substantive matter - Court of Appeal should not have determined the merit of plaintiffs' case - At the time it decided the issue of jurisdiction (H5) Abia State Ind. Elec. Com. v. Kanu (2013) 5 KLR (pt. 330) 2313

JURISDICTION - Appeals - Issue - Locus standi - Since the issue is a matter of locus standi of respondent - The same shall not be merely brushed aside - Even though it did not come up at pleadings (H2) Intercontinental Bank Plc v. Olam Nig Ltd (2013) 1 KLR (pt. 322) 89

JURISDICTION - Appeals - Leave - Necessity of - Where it is required - It is condition precedent to the exercise of right of appeal - And failure to obtain leave when needed - Renders any appeal filed incompetent - As no jurisdiction is conferred on appellate court (H3) Organ v. Nig. Liquefied Natural Gas Ltd. (2013) 7 KLR (pt. 334) 3521

JURISDICTION - Appeals - Reversal of judgment - CA can reverse itself where it earlier ruled - That lower court has no jurisdiction - Provided fresh arguments arose in the same case - As between same parties (H2) Abiola & Sons Bottling Co. Ltd v. First City Merchant Bank Ltd (2013) 4 KLR (pt. 327) 1501

JURISDICTION - Arraignment - Plea taking - Plea by accused upon arraignment is a matter of procedural law - And any defect therein

renders proceedings a nullity - As it affects jurisdiction of court (H2) Ganiyu v. State (2013) 4 KLR (pt. 327) 1661

JURISDICTION - Basis - For court to assume jurisdiction over a matter - The matter must be commenced by due process of law - And upon fulfillment of any condition precedent (H4) Nworah v. Nwabueze (2013) 5 KLR (pt. 330) 2431

JURISDICTION - Charges - Preferment - Appellant having entered FCT was rightly charged in its HC - As entry required in Penal Code s. 4(2)(b) - And the decision in Njoven's case were satisfied (H11) Nnakwe v. State (2013) 7 KLR (pt. 333) 3273

JURISDICTION - Company law - Companies & allied matters - By 1991 Decree No. 60 s. 7(1) & other enabling laws - Federal High Court was conferred with exclusive jurisdiction - Over such matters (H1) Abiola & Sons Bottling Co. Ltd v. First City Merchant Bank Ltd (2013) 4 KLR (pt. 327) 1501

JURISDICTION - Constitutional law - Federal High Court - Exclusive jurisdiction is vested on the court by 1999 Constitution s. 251(1)(p)(q)(r) - Over matters in which Fed. Govt. or its agency is a party (H3) Inegbedion v. Selo-Ojemen (2013) 1 KLR (pt. 322) 69

JURISDICTION - Contracts - Dispute - Court - Jurisdiction - Where performance of the contract took place in Kano State - It is Kano and not Zamfara State High Court that has jurisdiction (H8) Dangote Textile Ltd. v. Hascon Asso. Nig. Ltd. (2013) 5 KLR (pt. 329) 2049

JURISDICTION - Court - Foreign court - Jurisdiction - Determination - By Foreign Judgment (Reciprocal Enforcement) s. 6 - The court shall inter alia have jurisdiction - Where judgment is given in action in personam (H2) Vab Petroleum Inc. v. Momah (2013) 1 KLR (pt. 322) 249

JURISDICTION - Court - Statutory conferment - Court must be satisfied that offence is directly donated - By jurisdiction conferred in the enabling law (H9) Nnakwe v. State (2013) 7 KLR (pt. 333) 3273

JURISDICTION - Court of Appeal - Court martial - By 1999 Constitution s. 240 - C.A. is given exclusive appellate jurisdiction - Over decisions of general court martial (H1) Nigerian Army v. Warrant Officer Banni Yakubu (2013) 1-2 KLR (pt. 323) 471

JURISDICTION - Court processes - Appeals - An initiating process must be valid - To confer jurisdiction on court - In order to adjudicate between parties on a subject matter in dispute (H2) Okarika v. Samuel (2013) 2 KLR (pt. 324) 807

JURISDICTION - Court processes - Originating summons - Validity - Application made by this procedure without questions for determination - Is incompetent and as such court cannot validly exercise its jurisdiction under Electoral Act s. 87(9) (H1) *Olley v. Tunji* (2013) 4 KLR (pt. 328) 1905

JURISDICTION - Court processes - Service on company - Mode of - By virtue of CAMA s. 78 - Service must comply with the rules of the particular court prevailing in the jurisdiction (H3) *Nigerian Bottling Co. Plc v. Ubani* (2013) 8-12 KLR (pt. 336) 4027

JURISDICTION - Court processes - Service on company - Mode of - By virtue of CAMA s. 78 - Service must comply with the rules of the particular court prevailing in the jurisdiction (H3) *Nigerian Bottling Co. Plc v. Ubani* (2013) 8-12 KLR (pt. 336) 4027

JURISDICTION - Courts - Absence of - Where court fails to pronounce whether or not it has jurisdiction - Once the law or subject matter before the court divested it of jurisdiction - Then jurisdiction does not reside in it (H1) *Vab Petroleum Inc. v. Momah* (2013) 1 KLR (pt. 322) 249

JURISDICTION - Courts - Competence - Basis - Court is competent to hear matter - When the subject matter is within its jurisdiction - No feature in the case prevents it from exercising jurisdiction - And is properly constituted as regards its members (H2) *Amobi v. Nzegwu* (2013) 8-12 KLR (pt. 336) 3953

JURISDICTION - Courts - Competence of - Basis - Court is competent when it is properly constituted - With the subject matter within its jurisdiction - And the case initiated by due process of law (H8) *Nnakwe v. State* (2013) 7 KLR (pt. 333) 3273

JURISDICTION - Courts - Competence of - Court is competent when inter alia - It is properly constituted - With the subject matter of the case within its jurisdiction - And the case initiated by due process of law (H4) *Obaro v. Hassan* (2013) 1-2 KLR (pt. 323) 491

JURISDICTION - Courts - Document - Wrongful admission - Where document is wrongly admitted - Court has jurisdiction to expunge it at judgment - Since judgment can only be based on legally admissible document (H2) *Nwaogu v. Atuma* (2013) 12 KLR (pt. 338) 4491

JURISDICTION - Courts - Federal HC - By 1999 Constitution s. 251(1)(P)(r) - Exclusive jurisdiction is vested in the court in civil causes and matters - Affecting the administration and management of the

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Federal Government (H1) *Gassol v. Tutare* (2013) 12 KLR (pt. 338) 4463

JURISDICTION - Courts - Federal High Court - By 1999 Constitution s. 251 - The court exercises jurisdiction - Once any of the parties is Federal government or any of its agencies (H2) *Abia State Ind. Elec. Com. v. Kanu* (2013) 5 KLR (pt. 330) 2313

JURISDICTION - Courts - Limitation - Courts are bound by the Constitutional provision - Wherein their powers of operation are defined - And any act outside its powers is a nullity (H5) *Eyigebe v. Iyaji* (2013) 5 KLR (pt. 330) 2329

JURISDICTION - Courts - Objection to - Option available - When court's jurisdiction is challenged - Court still has competence to enquire whether it has jurisdiction - To hear the case (H11) *Musaconi Ltd. v. Aspinall* (2013) 6 KLR (pt. 331) 2695

JURISDICTION - Courts - Ouster clause - Interpretation - Courts guard their jurisdiction jealously - And any enactment that takes away rights to court - Should be narrowly construed (H5) *Nigerian Army v. Warrant Officer Banni Yakubu* (2013) 1-2 KLR (pt. 323) 471

JURISDICTION - Courts - Preliminary finding - Court can inquire whether it has jurisdiction over matter before it - Prior to dealing with the main matter - And such finding does not mean it has assumed jurisdiction over the matter (H3) *Ahmed v. Ahmed* (2013) 7 KLR (pt. 335) 3561

JURISDICTION - Courts - Processes - Power to prevent abuse - By Constitution 1999 s. 6(6)(a) - Once satisfied that any proceeding before it - Is an abuse of process - Court is empowered to terminate same (H3) *Osun S.I.E.C. v. NCP* (2013) 3 KLR (pt. 326) 1401

JURISDICTION - Criminal procedure - Basis - Court assumes jurisdiction in criminal trial - Where justice will be attained by it - And accused was apprehended within its judicial division - As well as for convenience of witnesses (H6) *Nnakwe v. State* (2013) 7 KLR (pt. 333) 3273

JURISDICTION - Determination - Basis - For court to assume jurisdiction - The subject matter must be within its jurisdiction - With no feature in the case preventing it - And the case must be initiated by due process of law (H3) *NNPC v. Orhiowasele* (2013) 4 KLR (pt. 327) 1719

JURISDICTION - Determination - Basis - To ascertain jurisdiction of court in a matter - Writ of summons and statement of claim - Are the

most crucial processes to be examined (H7) Ahmed v. Ahmed (2013) 7 KLR (pt. 335) 3561

JURISDICTION - Determination - Jurisdiction of court in a suit - Is based on plaintiff's averments in the statement of claim - And the reliefs claimed therein (H6) Osoh v. Unity Bank Plc. (2013) 2 KLR (pt. 325) 1133

JURISDICTION - Election - Nomination - The matter is not within exclusive jurisdiction of Federal HC - As relief 7 cannot be construed as challenging the decision of 4<sup>th</sup> respondent - In recognizing 1<sup>st</sup> respondent as candidate of CPC (H9) Ahmed v. Ahmed (2013) 7 KLR (pt. 335) 3561

JURISDICTION - Election - Pre election matters - Jurisdiction conferred on Federal High Court by NA under Electoral Act s. 87(9) - Has not been taken away by 1999 Constitution (H3) Gassol v. Tutare (2013) 12 KLR (pt. 338) 4463

JURISDICTION - Election petitions - Appeal - Gubernatorial election - Final court - By 1999 Constitution s. 246(3) - SC has no jurisdiction to review decision of CA in appeals in respect of such election (H1) Oni v. Fayemi (2013) 5 KLR (pt. 330) 2497

JURISDICTION - Election petitions - Tribunal - Jurisdiction - Voters register - Trial tribunal can determine issues on the register - Since there cannot be dichotomy between the register - And what transpired at contest grounds of the election (H6) Oke v. Mimiko (2013) 8-12 KLR (pt. 336) 4077

JURISDICTION - Elections - Courts - Supreme Court cannot interfere - Since the Lower courts correctly held that the matter is spent - As appellant delayed to claim his rights after the election (H2) Salim v. CPC (2013) 2 KLR (pt. 324) 829

JURISDICTION - Elections - Federal HC - Jurisdiction - Expansion - 1999 Constitution ss. 4 & 228 empowers NA to add to jurisdictional limit of the court - To entertain pre election matters - And Electoral Act s. 87(9) is an addition contemplated by the sections (H4) Gassol v. Tutare (2013) 12 KLR (pt. 338) 4463

JURISDICTION - Elections - Fundamental rights - Ifegwu's case - Appellant's right to seek redress for breach of his right is not terminated - By reason of CA final judgment in the election proceedings - As such right can be pursued in a competent court (H7) Opara v. Amadi (2013) 6 KLR (pt. 332) 3027

JURISDICTION - Elections - Pre election - Electoral Act s. 87(9) &

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Lado's case - Are not applicable to this case - As 2<sup>nd</sup> appellant is not aspirant - And his complaint is not founded on nomination (H1) CPC v. Ombugadu (2013) 7 KLR (pt. 334) 3401

JURISDICTION - Elections - Pre election matters - It is only Federal and State High Courts that have jurisdiction in such matters - And judgment of Supreme Court is final in the matter (H6) Opara v. Amadi (2013) 6 KLR (pt. 332) 3027

JURISDICTION - Elections - Pre election matters - Jurisdiction - By Electoral Act 2011 s. 87(9) - Federal High Court no longer enjoys exclusive jurisdiction over such matters (H1) Salim v. CPC (2013) 2 KLR (pt. 324) 829

JURISDICTION - Elections - Tribunal - It is the use of the allegedly manipulated voters' register at the election - As distinct from the act of the alleged manipulation - That the tribunal had jurisdiction to entertain (H5) Akeredolu v. Mimiko (2013) 8-12 KLR (pt. 336) 3895

JURISDICTION - Federal High Court - Divisions - There are several divisions of the court - But their decisions are not binding on each other - As they are courts of coordinate jurisdiction (H3) Uwazuruike v. A-G Federation (2013) 4 KLR (pt. 328) 1953

JURISDICTION - Federal High Court - Mines & minerals - By Constitution 1979 s. 230(i)(a) - Jurisdiction of State HC on the subject and allied matters is ousted - But is given exclusively to FHC (H4) NNPC v. Orhiowasele (2013) 4 KLR (pt. 327) 1719

JURISDICTION - Federal High Court - Treason - By 1999 Constitution s. 251(2) - The court can summarily try treason - Treasonable felony - And allied offences (H4) Uwazuruike v. A-G Federation (2013) 4 KLR (pt. 328) 1953

JURISDICTION - Fresh issue of - Raised in Supreme Court - Appellant seeking to raise the issue for the first time before the court - Does not need leave - He only needs to raise it in his brief (H2) NNPC v. Orhiowasele (2013) 4 KLR (pt. 327) 1719

JURISDICTION - Fundamental nature - Jurisdiction should be determined once raised - Since if court lacks jurisdiction to hear and determine case - The proceedings remain a nullity ab initio (H5) Alims Nig. Ltd. v. United Bank for Africa (2013) 1 KLR (pt. 322) 35

JURISDICTION - Fundamental rights - Enforcement - Court - As rule of law must be maintained always - Trial court acted within its power - When it heard 1<sup>st</sup> respondent's application for enforcement of his rights (H2) Denton-West v. Jack (2013) 12 KLR (pt. 338) 4435



**JURISDICTION** - Fundamentality - Jurisdiction is threshold issue that must first be resolved - Since if court lacks jurisdiction to hear a matter - The entire proceedings no matter how well conducted would amount to nullity (H1) *Amobi v. Nzegwu* (2013) 8-12 KLR (pt. 336) 3953

**JURISDICTION** - Fundamentality of - It can be raised at any stage of a proceeding - And cannot be compromised - As court that acts without jurisdiction - Acts in futility (H6) *Dangote Textile Ltd. v. Hascon Asso. Nig. Ltd.* (2013) 5 KLR (pt. 329) 2049

**JURISDICTION** - Fundamentality of - It is a threshold issue and once raised - It must be heard and resolved - As any proceeding conducted without jurisdiction - Amounts to a nullity (H2) *Opara v. Amadi* (2013) 6 KLR (pt. 332) 3027

**JURISDICTION** - Fundamentality of - It is bedrock of adjudication that cannot be conferred by consent of parties on court - And it can be raised at any stage - As absence of same renders the whole proceeding a nullity (H7) *Nnakwe v. State* (2013) 7 KLR (pt. 333) 3273

**JURISDICTION** - Fundamentality of - It is important in adjudication process - As where there is no jurisdiction in court - Every step taken in the proceedings amounts to a nullity (H8) *Musaconi Ltd. v. Aspinall* (2013) 6 KLR (pt. 331) 2695

**JURISDICTION** - Fundamentality of - It is threshold matter and once raised - All proceedings abate until same is resolved - As proceedings conducted without jurisdiction amount to nullity (H7) *Olabomi v. Oyewole* (2013) 7 KLR (pt. 333) 3319

**JURISDICTION** - Fundamentality of - It should be determined at earliest opportunity - Because if court has no jurisdiction in a case - The proceedings remain a nullity ab initio - No matter how well conducted (H1) *Aladejobi v. NBA* (2013) 7 KLR (pt. 335) 3623

**JURISDICTION** - Fundamentality of - Once raised all proceedings abate till resolved - It can be raised by any party including court at any stage - Absence of it renders the entire proceeding a nullity (H1) *NNPC v. Orhiowasele* (2013) 4 KLR (pt. 327) 1719

**JURISDICTION** - Improper arraignment - Effect - Arraignment touches on jurisdiction of court - The breach of which is capable of rendering the totality of proceedings null and void (H2) *Ibrahim v. State* (2013) 12 KLR (pt. 337) 4273

**JURISDICTION** - Issue of - Court - Suo motu raising - Where court

raises jurisdiction suo motu - It is proper to invite address of both counsel - Before deciding one way or the other (H3) Alims Nig. Ltd. v. United Bank for Africa (2013) 1 KLR (pt. 322) 35

JURISDICTION - Issue of - Objection to - Basis - Objection to competence of court is on the basis of statement of claim - Evidence received - Motion supported by affidavit setting out facts relied on - And on the face of writ of summons (H13) Musaconi Ltd. v. Aspinall (2013) 6 KLR (pt. 331) 2695

JURISDICTION - Issue of - Objection to - Where there is challenge to jurisdiction of court - The court must first settle that issue - Before proceeding to hear the case on merit (H9) Musaconi Ltd. v. Aspinall (2013) 6 KLR (pt. 331) 2695

JURISDICTION - Issue of - Time to raise - Jurisdiction can be raised at any stage of the proceeding - Even before the Supreme Court - As the existence or absence of it - Goes to the root of the matter (H4) Ugwu v. State (2013) 3 KLR (pt. 326) 1453

JURISDICTION - Issue of - Time to raise - Jurisdiction can be raised at any stage of the proceedings - Either at trial court or on appeal - Even before the Supreme Court (H12) Musaconi Ltd. v. Aspinall (2013) 6 KLR (pt. 331) 2695

JURISDICTION - Issue of - Time to raise - Jurisdiction can be taken at any stage of proceedings - Even before Supreme Court for the first time (H2) Alims Nig. Ltd. v. United Bank for Africa (2013) 1 KLR (pt. 322) 35

JURISDICTION - Issue of - Time to raise - Jurisdiction can be taken at any stage of proceedings - At trial even on appeal to Supreme Court for the first time (H8) Olabomi v. Oyewole (2013) 7 KLR (pt. 333) 3319

JURISDICTION - Judgments - Foreign currency - Award - Foreign currency judgments are within the general jurisdiction of courts in Nigeria - Depending on facts of the cases (H5) FBN Plc v. Ozokwere (2013) 12 KLR (pt. 337) 4203

JURISDICTION - Legal practitioners - Appeals - Supreme Court - By LP Act s. 12(1) - Appellant cannot appeal to SC against decision of LPDC - Without first appealing to Appeal Committee of Body of Benchers (H4) Aladejobi v. NBA (2013) 7 KLR (pt. 335) 3623

JURISDICTION - Master & servant - Court - Since there was non compliance with NICON Act s. 26(2) - The court has no jurisdiction to entertain the action (H4) Ugwuanyi v. NICON Insurance Plc (2013)

1-2 KLR (pt. 323) 587

JURISDICTION - Master & servant - High Court - Since the action is for wrongful termination of employment and not trade dispute - The court's jurisdiction is not ousted by Trade Dispute Act s. 47(1) (H8) Osoh v. Unity Bank Plc. (2013) 2 KLR (pt. 325) 1133

JURISDICTION - Meaning - It is the authority which court has to decided matters - That are litigated before it - Or take cognizance of matters presented in a formal way for its decision (H7) Musaconi Ltd. v. Aspinall (2013) 6 KLR (pt. 331) 2695

JURISDICTION - Meaning of - It is authority which court has to decide matters before it - And such power is controlled by statute creating the court - Or by condition precedent which must be fulfilled - Before court can entertain the suit (H2) Aladejobi v. NBA (2013) 7 KLR (pt. 335) 3623

JURISDICTION - Multiple charges - Trial of - Jurisdiction - As offences in counts 1 & 2 and those in counts 3 & 4 - Were committed in the course of same transaction - Any of the States HC where the offence(s) occurred - Can entertain the case (H12) Nnakwe v. State (2013) 7 KLR (pt. 333) 3273

JURISDICTION - Murder - Death sentence - Penal Code s. 221 - Once accused has been found guilty - Judge has no jurisdiction to listen to allocutus - And should not reduce sentence to term of years (H6) State v. John (2013) 5 KLR (pt. 330) 2539

JURISDICTION - National Industrial Court - Trade dispute - For jurisdiction of the court to arise - It must be established that the subject matter comes within the Trade Dispute Act s. 47(1) (H7) Osoh v. Unity Bank Plc. (2013) 2 KLR (pt. 325) 1133

JURISDICTION - Objection - Validity - Nothing exists on the writ of summons and statement of claim - To show that trial court had no jurisdiction - Hence the objection is premature (H16) Musaconi Ltd. v. Aspinall (2013) 6 KLR (pt. 331) 2695

JURISDICTION - Orders of court - Validity of - Order made by court of competent jurisdiction is valid - Until it is declared void by court of competent jurisdiction - And party whose interest is affected - Must seek for such declaration (H2) Nidocco Ltd. v. Gbajabiamila (2013) 7 KLR (pt. 334) 3479

JURISDICTION - Source - Jurisdiction is a matter that is statutorily based - As provided in the Constitution or Acts - And can only be removed or whittled down by express statutory provisions (H6)

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Ahmed v. Ahmed (2013) 7 KLR (pt. 335) 3561

JURISDICTION - Statutes - Validity - Lagos Urban Planning Law Edict No. 2 of 1998 - The High Court rightly applied the Edict in dismissing appellants' alternative reliefs - As the provisions therein did not oust jurisdiction of the court (H2) Ayida v. Town Planning Authority (2013) 4 KLR (pt. 328) 1811

JURISDICTION - Stay of execution - Grant - Basis - A prima facie case of jurisdiction is exceptional reason - To justify grant of stay of execution (H9) Olabomi v. Oyewole (2013) 7 KLR (pt. 333) 3319

JURISDICTION - Suo motu raising - Failure to invite counsel - Failure to invite address of counsel - Does not render decision a nullity - Unless it is shown that the decision is incorrect (H4) Alims Nig. Ltd. v. United Bank for Africa (2013) 1 KLR (pt. 322) 35

JURISDICTION - Supreme Court - Appeals - Supreme Court does not hear appeals from State High Courts - But those from the Court of Appeal (H2) Eyigebe v. Iyaji (2013) 5 KLR (pt. 330) 2329

JURISDICTION - Supreme Court - Competence - Principles - The court is competent to hear the appeal if it is properly constituted - The subject matter is within its jurisdiction - And the case initiated by due process of law (H3) Opara v. Amadi (2013) 6 KLR (pt. 332) 3027

JURISDICTION - Supreme Court - Fresh issue - Leave - Without leave being sought and obtained - The court is not competent to pronounce on issue - Not raised in Court of Appeal (H3) Nidocco Ltd. v. Gbajabiamila (2013) 7 KLR (pt. 334) 3479

JURISDICTION - Time to raise - Jurisdiction can be raised at any stage of proceedings - And in any court - Even in the Supreme Court for the first time (H7) Egwemi v. State (2013) 1-2 KLR (pt. 323) 325

JURISDICTION - Wills - Court of Appeal - Findings - Correctness of - The court did not act in excess of its jurisdiction - As it only directed that disposition of the property - Be guided by intention of the testator in exhibit P1 (H5) Asika v. Atuanya (2013) 7 KLR (pt. 335) 3651

JUSTICE - Actions - Importance - Expected result of adjudication on a matter is whether or not justice has been done - Hence technicality which breeds injustice should not be allowed (H4) Ikechukwu v. Nwoye (2013) 12 KLR (pt. 337) 4305

JUSTICE - Actions - Technicality - Effect - The Procedural irregularities in the matter - Did not adversely affect appellant - Nor occa-

sioned any miscarriage of justice (H13) Ahmed v. Ahmed (2013) 7 KLR (pt. 335) 3561

JUSTICE - Administration of estate - Wills - Equity - It is injustice to alter the 3<sup>rd</sup> position of respondent's father in the hierarchy of the will - And appellants who want equity are expected to do equity (H2) Asika v. Atuanya (2013) 7 KLR (pt. 335) 3651

JUSTICE - Administration of estates - Will - Beneficiaries - Hierarchy - Justice demands that respondent takes his father's place in the will - As one who succeeds to another's right - Ought to use that person's right (H6) Asika v. Atuanya (2013) 7 KLR (pt. 335) 3651

JUSTICE - Administration of estates - Wills - Beneficiaries - Equity - Justice demands that appellants who shared the property - Should not be the first to take by choice - As he who comes to equity must come with clean hands (H7) Asika v. Atuanya (2013) 7 KLR (pt. 335) 3651

JUSTICE - Appeals - Court of Appeal - Powers - By C.A. Act s. 18 - The court can make equitable order(s) - In the interest of justice administration - So as to preserve the subject matter of dispute between parties (H4) Contract Resources Ltd v. Standard Trust Bank Ltd (2013) 2 KLR (pt. 325) 915

JUSTICE - Appeals - Evidence - Evaluation - Interference - Appellate courts interfere to ensure that justice prevails - Only where trial court failed to draw correct inferences (H4) Lasisi v. State (2013) 3 KLR (pt. 326) 1313

JUSTICE - Appeals - Extension of time - Application - Grant - Notwithstanding defect in the application - Interest of justice will be served - If SC Rules O. 10 r. 1(1)(2) is invoked to grant the application (H6) Ikechukwu v. Nwoye (2013) 12 KLR (pt. 337) 4305

JUSTICE - Appeals - Hearing - Contempt of court - Hadikinson's case - Contemnor may not be heard if his disobedience - Impedes the cause of justice - Except where he raises issue of lack of court's jurisdiction (H2) Abeke v. Odunsi (2013) 5 KLR (pt. 330) 2285

JUSTICE - Appeals - Judgment - Error - Effect - An issue that complains about lapse in decision appealed against - Is resolved in favour of appellant - Where there is proof that the error has occasioned miscarriage of justice (H1) Garan v. Olomu (2013) 4 KLR (pt. 327) 1675

JUSTICE - Appeals - Notice of appeal - Amendment - Provided the ends of justice and fairness are served - There is no limit to number of

times a party can amend processes in appeal (H2) *Salisu v. Mobolaji* (2013) 12 KLR (pt. 337) 4375

JUSTICE - Appeals - Retrial - Conditions for - Appellate court will inter alia grant retrial - Where apart from irregularity in the proceeding - Evidence discloses a substantial case against appellant (H1) *Adeyemi v. State* (2013) 4 KLR (pt. 328) 1771

JUSTICE - Appeals - Retrial - Principles - Appellate court will inter alia grant retrial - Where apart from irregularity in the proceeding - Evidence discloses a substantial case against appellant (H3) *Ganiyu v. State* (2013) 4 KLR (pt. 327) 1661

JUSTICE - Appeals - Retrial order - Basis - Appellate court will inter alia order retrial - Where there is error in law - That did not render trial a nullity - And it cannot also be said that there is no miscarriage of justice (H2) *Mpama v. First Bank Nig. Plc* (2013) 1 KLR (pt. 322) 113

JUSTICE - Court processes - Abuse - Features - It shows in the improper use of judicial process by party - To interfere with the due administration of justice (H2) *Ukachukwu v. PDP* (2013) 12 KLR (pt. 338) 4591

JUSTICE - Courts - Appeals - Issues - Formulation of - Courts have power to formulate issues in the interest of justice - But parties must be heard on such issues - Before judgment is delivered (H7) *Ekunola v. CBN* (2013) 4 KLR (pt. 327) 1621

JUSTICE - Courts - Discretion - Exercise of - Court is constitutionally empowered to do justice - But must exercise such power judicially and judiciously - Having regards to facts placed before it (H3) *Ikechukwu v. Nwoye* (2013) 12 KLR (pt. 337) 4305

JUSTICE - Courts - Issues - Determination - Limit - Courts should not spend time on academic issues - But determine live issues - That would meet ends of justice (H3) *Mmamman v. FRN* (2013) 1-2 KLR (pt. 323) 459

JUSTICE - Courts - Miscarriage of justice - Meaning - This occurs when judgment of court is prejudicial to right of the party concerned (H4) *Mmamman v. FRN* (2013) 1-2 KLR (pt. 323) 459

JUSTICE - Criminal procedure - Jurisdiction - Basis - Court assumes jurisdiction in criminal trial - Where justice will be attained by it - And accused was apprehended within its judicial division - As well as for convenience of witnesses (H6) *Nnakwe v. State* (2013) 7 KLR (pt. 333) 3273

JUSTICE - Criminal procedure - Retrial - Principles - Abodundu's case - Retrial order is made where there has been error in law - Which neither renders the trial a nullity - Nor can court say there is no miscarriage of justice (H2) Mohammed v. State (2013) 1 KLR (pt. 322) 99

JUSTICE - Criminal procedure - Retrial order - Is made where inter alia - There has been error in law or irregularity in procedure - That neither renders the trial a nullity - Nor was there a miscarriage of justice (H1) Elijah v. State (2013) 2 KLR (pt. 325) 983

JUSTICE - Customary law - Administration of estate - Right of women - It is unfair to deny appellants' entitlement to benefit from their father's properties - By virtue of a customary law of their birth place (H1) Asika v. Atuanya (2013) 7 KLR (pt. 335) 3651

JUSTICE - Fair hearing - Meaning - By 1999 Constitution s. 36(1) - Fair hearing means trial conducted according to legal rules - Formulated to ensure that justice is done to parties (H3) Audu v. FRN (2013) 1 KLR (pt. 322) 53

JUSTICE - Fair hearing - Test - Okafor case - True test of fair hearing is the impression of a reasonable man present at the trial - Whether from his observation - Justice has been done in the case (H1) Mpama v. First Bank Nig. Plc (2013) 1 KLR (pt. 322) 113

JUSTICE - Fair hearing - Tribunal - Exercise of power - By not complying with principles of natural justice - In retiring respondent from service - 1st appellant acted in excess of its powers as provided in the State Civil Service Rules (H4) Judicial Service Commission of Cross River State v. Young (2013) 5 KLR (pt. 329) 2129

JUSTICE - Judgments - Delivery - Delay in - Effect - The delay did not affect the trial court's judgment - As issues raised were considered and resolved - And no miscarriage of justice was shown to have been suffered by appellant (H1) Atungwu v. Ochekwu (2013) 7 KLR (pt. 335) 3681

JUSTICE - Judgments - Mistake in - Effect - Statement of CA that grounds 3 & 4 were not covered by the issues - Occasioned no miscarriage of justice - For it is not every error in judgment - That results in appeal being allowed (H2) Atungwu v. Ochekwu (2013) 7 KLR (pt. 335) 3681

JUSTICE - Judgments - Perverse decision - Meaning - It is one which ignores evidence before court - And which results in miscarriage of justice (H10) FBN Plc v. Ozokwere (2013) 12 KLR (pt. 337) 4203

JUSTICE - Judgments - Slip - Effect - It is not every mistake that results in setting aside of judgment on appeal - As mistake must be relevant to issues between parties - And substantial as to lead to miscarriage of justice (H9) FBN Plc v. Ozokwere (2013) 12 KLR (pt. 337) 4203

JUSTICE - Murder - Defence - Consideration of - After considering defence of accused - Court can consider other defence available to accused - But failure to do so will not amount to miscarriage of justice (H1) State v. John (2013) 5 KLR (pt. 330) 2539

JUSTICE - Appeals - Judgment - Interference - Basis - It is necessary to determine whether or not the judgment - Had evolved from pleadings and evidence of parties - And where found to be perverse - Whether miscarriage of justice has been occasioned (H2) Olaniyan v. Fatoki (2013) 7 KLR (pt. 335) 3829

JUSTICE - Retrial order - The order shall be sustained in the interest of justice - So as to know the truth of the case - And properly put appellant to trial (H2) Elijah v. State (2013) 2 KLR (pt. 325) 983

JUSTICE - Supreme Court - Appeal - Fresh issues - SC will not allow party to raise such issues - Save where the new issues involve substantial points of law - Which need to be allowed in the interest of justice (H1) Salisu v. Mobolaji (2013) 12 KLR (pt. 337) 4375

JUSTICE - Supreme Court - Setting aside of judgment - Instances - The court may overrule its previous decision - Where the decision was given per incuriam - Or has become an instrument of injustice (H1) Adebayo v. PDP (2013) 4 KLR (pt. 327) 1523

JUSTICE - Undefended suits - Defence - Leave - Conditions for grant - A judge must objectively consider the justice of the case - As against technicalities that negates the principle of justice (H2) Dangote Textile Ltd. v. Hascon Asso. Nig. Ltd. (2013) 5 KLR (pt. 329) 2049

LAND LAW - Action - Estoppel - Respondent having established title conveyed by Exhibit A - And relied on Exhibits D, C1 & C2 - Appellants are estopped from relitigating - The facts of the land belonging to the Oba - And that appellants were customary tenant (H5) Olaniyan v. Fatoki (2013) 7 KLR (pt. 335) 3829

LAND LAW - Arbitration - Binding effect of - Since appellant participated in the arbitration - He is bound by the award as contained in exhibit G (H4) Ihunwo v. Ihunwo (2013) 1-2 KLR (pt. 323) 403

LAND LAW - Bini native law - Igiogbe - Ogbanon's case - By this



custom an eldest son of a deceased is entitled - To inherit without question - The house in which deceased lived and died (H1) Uwaifo v. Uwaifo (2013) 4 KLR (pt. 327) 1737

LAND LAW - Boundary neighbours - Evidence - As none can give the evidence save such neighbours - There is no difference between failure to call boundary neighbours - And failure to produce evidence of the neighbours (H3) Tukur v. Sabi (2013) 3 KLR (pt. 326) 1433

LAND LAW - Customary law - Arbitral panel - Since nothing in the law shows that the arbitrators constituted judicial tribunal - Court of Appeal rightly affirmed findings of trial court on the panels (H6) Nruamah v. Ebuzoeme (2013) 1 KLR (pt. 322) 133

LAND LAW - Customary pledge - Principles - Okoiko's case - A pledge is perpetually redeemable - And pledgee is not entitled to compensation - For putting the land to economic uses (H3) Achilihu v. Anyatonwu (2013) 1 KLR (pt. 322) 1

LAND LAW - Customary pledge - Validity - Admission by plaintiff and evidence of PW3 under cross examination - Strengthened defendant's claim - That the land was pledged by family head (H5) Achilihu v. Anyatonwu (2013) 1 KLR (pt. 322) 1

LAND LAW - Evidence - Independent witnesses - Weight - Evidence of independent boundary neighbour - Is weightier than that of witnesses who are blood relations of the claimant (H8) Arum v. Nwobodo (2013) 4 KLR (pt. 327) 1583

LAND LAW - Evidence - Interference - By failing to properly weigh evidence of both parties - Trial court occasioned injustice against respondent - And CA rightly interfered by remedying the situation (H8) Chukwu v. Akpelu (2013) 12 KLR (pt. 337) 4177

LAND LAW - Evidence - Traditional history - Weight - Although such evidence is hearsay - But Evidence Act s. 44 provides that where title is in issue - Evidence of communal tradition concerning the title is relevant (H3) Okwaranonobi v. Mbadugha (2013) 6 KLR (pt. 332) 3007

LAND LAW - Family land - Sale - The family head acts as trustee of the land - And he cannot transfer the land - Without the consent of principal members of the family (H1) Achilihu v. Anyatonwu (2013) 1 KLR (pt. 322) 1

LAND LAW - Forfeiture - Landlord's title - Denial of - Tenant that denies that his landlord is the owner of the premises he lives in - Is

liable to forfeit the tenancy (H4) Abeke v. Odunsi (2013) 5 KLR (pt. 330) 2285

LAND LAW - Grant - Root of title - Proof of - Where party relies and pleads a grant as his root of title - He must prove such grant to the satisfaction of court (H12) Ajibulu v. Ajayi (2013) 12 KLR (pt. 337) 4153

LAND LAW - Landlord & tenant - Notice to quit - Entitlement - Respondents' denial of landlord's title over the property in issue - Has robbed them of entitlement to the statutory notice (H8) Abeke v. Odunsi (2013) 5 KLR (pt. 330) 2285

LAND LAW - Ownership - Appeal - Parties - Pleadings - Consistency - Respondents are not permitted to approbate and reprobate - In their claim of ownership of the property - As parties are bound by their pleadings (H5) Abeke v. Odunsi (2013) 5 KLR (pt. 330) 2285

LAND LAW - Parties - Competing possession - Where two parties claim possession of land - Possession is given to the one - That has a better title (H2) Olusanya v. Osineye (2013) 5 KLR (pt. 329) 2225

LAND LAW - Pledge - Courts - Findings - C.A. was right by holding that - Trial Judge specifically found that - The transactions in exhibit B is a pledge (H1) Ihunwo v. Ihunwo (2013) 1-2 KLR (pt. 323) 403

LAND LAW - Pledge - Proof - Onus is on plaintiff to prove the existence of type of pledge - To which he owes title of the land he claims (H2) Ihunwo v. Ihunwo (2013) 1-2 KLR (pt. 323) 403

LAND LAW - Pledge - Redemption time - Length of time of redeeming the land - Or the use it has been put to by pledgee - Is not necessary and cannot be relied on in proof of anything (H2) Achilihu v. Anyatonwu (2013) 1 KLR (pt. 322) 1

LAND LAW - Pledgee - Duties of - He is to take proper care of the pledged property - And to deliver it to pledgor - When the debt is repaid (H4) Achilihu v. Anyatonwu (2013) 1 KLR (pt. 322) 1

LAND LAW - Private land - Acquisition - Locus standi - Appellants rightly instituted suit no. M/779/93 - To challenge the State government's acquisition of the hectares of land - The title to which appellants acquired by purchase (H2) Gbadamosi v. Akinloye (2013) 7 KLR (pt. 333) 3225

LAND LAW - Root of title - Proof - Plaintiff who seeks title to land has the onus to show how he or his predecessor in title - Has acquired such (H8) Ajibulu v. Ajayi (2013) 12 KLR (pt. 337) 4153

LAND LAW - Tenant - Meaning of - Under the Rent Control Law s. 40(i) - Tenant is an occupier of any premises - Whether on payment of rent or otherwise - But not an occupier claiming to be the owner of the premises (H6) Abeke v. Odunsi (2013) 5 KLR (pt. 330) 2285

LAND LAW - Tenant at sufferance - Such tenancy arises where a tenant with valid tenancy holds over - Without landlord's assent - And such a tenant differs from a trespasser - And a tenant at will (H7) Abeke v. Odunsi (2013) 5 KLR (pt. 330) 2285

LAND LAW - Title - Appellants are entitled to benefits that accrued to respondents by judgment in suit no. ID/1883/89 - Since title had passed to the former - At the time the action was instituted (H1) Gbadamosi v. Akinloye (2013) 7 KLR (pt. 333) 3225

LAND LAW - Title - Conflicting claims - Where claimant fails to prove title via traditional history as pleaded - He is not allowed to turn round and rely on mere acts of ownership & possession - Upon which he originally based his title (H5) Nruamah v. Ebuzoeme (2013) 1 KLR (pt. 322) 133

LAND LAW - Title - Excision of land - Effect - Renunciation of some portions of the acquired land in favour of Lagos government - Cannot affect appellants' interest - As respondents could not surrender what did not belong to them (H3) Gbadamosi v. Akinloye (2013) 7 KLR (pt. 333) 3225

LAND LAW - Title - Grant - Nature of - It is an equitable relief that is subject to the discretion of court - Which must be of the opinion that party seeking it - Is entitled to an exercise of discretion in his favour (H1) Tukur v. Sabi (2013) 3 KLR (pt. 326) 1433

LAND LAW - Title - Identity of land - Proof - Okolo v. Dakolo - Plaintiff succeeds only where he has ascertained identity of the land in dispute - And its boundaries with precision (H4) Okwaranonobi v. Mbadugha (2013) 6 KLR (pt. 332) 3007

LAND LAW - Title - Identity of land - Proof - Plaintiff cannot be granted title - If he fails to prove identity of land - With certainty and precision (H7) Tukur v. Sabi (2013) 3 KLR (pt. 326) 1433

LAND LAW - Title - Possession - Respondents have established title as shown in exhibits P1 & P2 - As a successful defence of a previous land case - Is in itself an act of possession - In ascertaining title (H3) Apata v. Olanlokun (2013) 7 KLR (pt. 334) 3359

LAND LAW - Title - Proof - Admitted facts - DW2 by his confession

and evidence - Gave credence to respondent's claim for title and possession - Hence the facts need no proof (H7) Chukwu v. Akpelu (2013) 12 KLR (pt. 337) 4177

LAND LAW - Title - Proof - Appellant succeeds in his claim - As he proved better title to that of respondent - Lower court was wrong for not affirming finding of trial court - That was based on pleadings and evidence of the parties (H3) Garan v. Olomu (2013) 4 KLR (pt. 327) 1675

LAND LAW - Title - Proof - Burden of - Plaintiff must succeed on strength of his case - And not on weakness of defence - Save where defence's case supports his case (H2) Nruamah v. Ebuzoeme (2013) 1 KLR (pt. 322) 133

LAND LAW - Title - Proof - Means of - Idundun v. Okumagba - Title can be proved by traditional evidence - Documents of title - Acts of ownership - Acts of possession - And proof of possession of adjacent or connected land (H9) Ajibulu v. Ajayi (2013) 12 KLR (pt. 337) 4153

LAND LAW - Title - Proof - Mere production of deed of conveyance - Does not automatically establish title - As court must inter alia be satisfied - That the conveyance is valid and duly executed (H4) Olaniyan v. Fatoki (2013) 7 KLR (pt. 335) 3829

LAND LAW - Title - Proof - Onus is on plaintiff to prove his case on his own strength - And not on weakness of adverse party - Save where defence case supports plaintiff's title (H2) Oguanuhu v. Chiegboka (2013) 1-2 KLR (pt. 323) 521

LAND LAW - Title - Proof - Plaintiff must rely on the strength of his case - And not on weakness of defence - Except where evidence of defence supports the case of plaintiff (H7) Ajibulu v. Ajayi (2013) 12 KLR (pt. 337) 4153

LAND LAW - Title - Proof - Plaintiff must succeed on the strength of his case - And not on weakness of defence - Though he may rely on defendant's evidence that supports his case (H2) Tukuru v. Sabi (2013) 3 KLR (pt. 326) 1433

LAND LAW - Title - Proof - Title can be proved through any of the five modes - But one mode will suffice - If properly established to the satisfaction of court (H2) Matanmi v. Dada (2013) 2 KLR (pt. 324) 725

LAND LAW - Title - Proof - Title may be proved through any of the five methods - But plaintiff is not required to prove all - As it is suffi-

cient if one is proved (H1) *Nruamah v. Ebuzoeme* (2013) 1 KLR (pt. 322) 133

LAND LAW - Title - Res judicata - Application - Estoppel per rem judicatam is applicable here - As the parties, land and subject matter in exhibits P1 & P2 are the same (H2) *Apata v. Olanlokun* (2013) 7 KLR (pt. 334) 3359

LAND LAW - Title - When in issue - Where claim for trespass is coupled with claim for injunction - Title of parties to the land in dispute - Is automatically put in issue (H3) *Ajibulu v. Ajayi* (2013) 12 KLR (pt. 337) 4153

LAND LAW - Traditional history - Proof - A party who relies on such history - Must plead founder of the land - Manner the land was founded - And the names of successive owners (H3) *Nruamah v. Ebuzoeme* (2013) 1 KLR (pt. 322) 133

LAND LAW - Trespass - Concept - Trespass is unjustified interference with exclusive possession of land - And placing a foot on land unlawfully - Is as much a trespass as walking a mile on it (H5) *Tukuru v. Sabi* (2013) 3 KLR (pt. 326) 1433

LAND LAW - Trespass - Damages - Plaintiff who claims damages and injunction for trespass - Puts his title in issue - And succeeds on proving that he has better title than defendant (H3) *Olaniyan v. Fatoki* (2013) 7 KLR (pt. 335) 3829

LAND LAW - Trespass - Proof - Plaintiff who claims relief for trespass and injunction - Must prove that he is in exclusive possession of the land - Or has singular right to its possession (H5) *Chukwu v. Akpelu* (2013) 12 KLR (pt. 337) 4177

LAND LAW - Trespass - Proof - To succeed in such claim - Plaintiff must establish identity of the land - And he must be in exclusive occupation of it (H6) *Tukuru v. Sabi* (2013) 3 KLR (pt. 326) 1433

LAND LAW - Trespass - Title - Possession - Where title has been proved to reside in the other party - Possession is of no moment - As the act of the possessor translates as trespass (H4) *Ameen v. Amao* (2013) 2 KLR (pt. 324) 667

LAND LAW - Wills - Bini native law - Deceased's will is voided only to the extent - That Igiogbe was not bequeathed to appellant as eldest son - But other parts of the will are valid (H3) *Uwaifo v. Uwaifo* (2013) 4 KLR (pt. 327) 1737

LAND USE ACT - Private land - Acquisition - Locus standi - Appel-

lants rightly instituted suit no. M/779/93 - To challenge the State government's acquisition of the hectares of land - The title to which appellants acquired by purchase (H2) Gbadamosi v. Akinloye (2013) 7 KLR (pt. 333) 2225

**LANDLORD & TENANT** - Appeal - Parties - Pleadings - Consistency - Respondents are not permitted to approbate and reprobate - In their claim of ownership of the property - As parties are bound by their pleadings (H5) Abeke v. Odunsi (2013) 5 KLR (pt. 330) 2285

**LANDLORD & TENANT** - Landlord's title - Denial of - Tenant that denies that his landlord is the owner of the premises he lives in - Is liable to forfeit the tenancy (H4) Abeke v. Odunsi (2013) 5 KLR (pt. 330) 2285

**LANDLORD & TENANT** - Mesne profits - Claim for - Basis - Claim for such profits is generally based on trespass - And it is inappropriate in respect of lawful occupation as a tenant (H10) Abeke v. Odunsi (2013) 5 KLR (pt. 330) 2285

**LANDLORD & TENANT** - Mesne profits - Entitlement - As quit notice was not served on respondents - Appellant is not entitled to the profits - But to damages for use and occupation of the property (H11) Abeke v. Odunsi (2013) 5 KLR (pt. 330) 2285

**LANDLORD & TENANT** - Mesne profits - Meaning - These are profits that accrue between when a tenant ceases to hold premises - And the date he gives up possession (H9) Abeke v. Odunsi (2013) 5 KLR (pt. 330) 2285

**LANDLORD & TENANT** - Notice to quit - Entitlement - Respondents' denial of landlord's title over the property in issue - Has robbed them of entitlement to the statutory notice (H8) Abeke v. Odunsi (2013) 5 KLR (pt. 330) 2285

**LANDLORD & TENANT** - Tenant - Meaning of - Under the Rent Control Law s. 40(i) - Tenant is an occupier of any premises - Whether on payment of rent or otherwise - But not an occupier claiming to be the owner of the premises (H6) Abeke v. Odunsi (2013) 5 KLR (pt. 330) 2285

**LANDLORD & TENANT** - Tenant at sufferance - Such tenancy arises where a tenant with valid tenancy holds over - Without landlord's assent - And such a tenant differs from a trespasser - And a tenant at will (H7) Abeke v. Odunsi (2013) 5 KLR (pt. 330) 2285

**LEGAL DRAFTING** - "Notwithstanding" - Effect of use of the word in Article 17.2 of 1<sup>st</sup> respondent's constitution - Makes the Article self

fulfilling - That no other provision therein shall subjugate it (H4)  
Adebayo v. PDP (2013) 4 KLR (pt. 327) 1523

LEGAL PRACTITIONERS - Administration of Estates - Legal fees -  
Payment of - Legal fees of counsel are paid out of the estate of the  
deceased - Usually after counsel are heard (H7) Odotola v. Mabogunje  
(2013) 1 KLR (pt. 322) 161

LEGAL PRACTITIONERS - Affidavits - Deposition - Proof - To sub-  
stantiate the allegation against counsel - Evidence must be adduced  
to show that exhibit E was served on him (H3) Ogboru v. Uduaghan  
(2013) 6 KLR (pt. 332) 2981

LEGAL PRACTITIONERS - AG Federation - Represented by proxy -  
Challenge - Authority of counsel to prefer charge on behalf of the  
AG - Cannot be questioned by any other person (H3) Nnakwe v.  
State (2013) 7 KLR (pt. 333) 3273

LEGAL PRACTITIONERS - Appeals - Grounds of appeal - Validity -  
Counsel's argument - Appellant's grounds 2, 3, 6 & 10 are incompe-  
tent - Having arisen from statement of counsel - That was found  
incorrect by the court (H1) Akeredolu v. Mimiko (2013) 8-12 KLR  
(pt. 336) 3895

LEGAL PRACTITIONERS - Appeals - Issue - Suo motu raising - CA  
rightly raised the issue of competence or otherwise of the writ of  
summons - But erred for not inviting counsel for parties to address it  
on the issue (H3) Halilco Nig. Ltd. v. Equity Bank Nig. Ltd. (2013) 6  
KLR (pt. 332) 2937

LEGAL PRACTITIONERS - Appeals - Notice of appeal - Natural per-  
son - Signature - Notice of appeal proceeding from such person -  
Must be signed by appellant - Or his counsel as the circumstances  
demand (H3) Okarika v. Samuel (2013) 2 KLR (pt. 324) 807

LEGAL PRACTITIONERS - Appeals - Notice of appeal - Signature -  
Validity - The notice signed by H.E. Wabara & Co is invalid - Since it  
does not qualify as a legal practitioner - As statutorily defined (H5)  
Okarika v. Samuel (2013) 2 KLR (pt. 324) 807

LEGAL PRACTITIONERS - Appeals - Notice of appeal - Validity -  
Cross appellants having failed to refer the matter to Code of Con-  
duct Tribunal - Alleged violations of the code by counsel - Have not  
been established as to affect competence of the processes (H5) Ahmed  
v. Ahmed (2013) 7 KLR (pt. 335) 3561

LEGAL PRACTITIONERS - Appeals - Supreme Court - Jurisdiction -  
By LP Act s. 12(1) - Appellant cannot appeal to SC against decision

of LPDC - Without first appealing to Appeal Committee of Body of Benchers (H4) Aladejobi v. NBA (2013) 7 KLR (pt. 335) 3623

LEGAL PRACTITIONERS - Arraignment - Fair hearing - Appellant's complaint of breach of fair hearing is without basis - As the charge was read and explained to him - And he was represented by counsel (H5) Sadiku v. State (2013) 5 KLR (pt. 330) 2521

LEGAL PRACTITIONERS - Authority - Conduct of case - Where counsel acts within scope of authority - Without express or implied limitation - Client is bound by exercise of such authority (H2) Ogboru v. Uduaghan (2013) 6 KLR (pt. 332) 2981

LEGAL PRACTITIONERS - Charges - Preferment - Validity - Powers of AG Federation - Having been statutorily empowered - The AG validly issued the fiat to counsel - For prosecution of appellant in counts 3 & 4 in the FCT (H14) Nnakwe v. State (2013) 7 KLR (pt. 333) 3273

LEGAL PRACTITIONERS - Court processes - Originating process - Defect in - Amendment - Process that was not properly signed by counsel is incompetent ab initio - And same cannot be cured by amendment (H3) Ministry of Works & Transport v. Yakubu (2013) 1-2 KLR (pt. 323) 289

LEGAL PRACTITIONERS - Court processes - Originating process - Not signed by counsel - Since the process was not signed by a legal practitioner - The same is incompetent as well as an appeal arising therefrom (H2) Ministry of Works & Transport v. Yakubu (2013) 1-2 KLR (pt. 323) 289

LEGAL PRACTITIONERS - Court processes - Service - Legal practitioner - Service on counsel is as good service on party - And proof of service is unnecessary - Where defendant appears (H4) Vab Petroleum Inc. v. Momah (2013) 1 KLR (pt. 322) 249

LEGAL PRACTITIONERS - Court processes - Signing - By LPA ss. 2(1) & 24 - Only a person registered in Supreme Court - Whose name is on the roll - Is recognized as legal practitioner - Entitled to sign or file processes in courts (H4) Nigerian Army v. Samuel (2013) 7 KLR (pt. 334) 3385

LEGAL PRACTITIONERS - Criminal procedure - AG's Fiat - Duration of - On authority of Ebe v. COP - AG need not issue fresh fiat - Before counsel can proceed with prosecution of appeals - Arising from the charge (H15) Nnakwe v. State (2013) 7 KLR (pt. 333) 3273



LEGAL PRACTITIONERS - Criminal procedure - Interpreter - Need for - Accused who is not represented by counsel - And does not understand court's language - Must be provided with interpreter - Otherwise it will amount to breach of fair hearing (H1) Egwemi v. State (2013) 1-2 KLR (pt. 323) 325

LEGAL PRACTITIONERS - Criminal procedure - Interpreter - Non provision of - Where accused is represented by counsel at trial - And there was no objection on the issue - It is futile to raise the issue on appeal (H2) Egwemi v. State (2013) 1-2 KLR (pt. 323) 325

LEGAL PRACTITIONERS - Criminal procedure - Right to counsel - Violation of the Constitutional right to try accused in the absence of his counsel - Is irregularity that renders the trial a nullity (H1) Mohammed v. State (2013) 1 KLR (pt. 322) 99

LEGAL PRACTITIONERS - Criminal procedure - Trial - Absence of accused - Trial of 1<sup>st</sup> accused in his absence - Constitutes a breach of the law - As addresses by parties or their counsel - Are integral part of the proceedings (H2) State v. Lawal (2013) 2 KLR (pt. 325) 1181

LEGAL PRACTITIONERS - Error - Effect on litigant - Principle of not visiting litigant with sins of counsel is not absolute - As litigant is supposed not to be indifferent - To his counsel's conduct of his case (H2) Ahmed v. Ahmed (2013) 7 KLR (pt. 335) 3561

LEGAL PRACTITIONERS - Evidence - Crime - Sworn evidence - Contradiction of - Counsel may use statements obtained during investigation - For purposes of cross examination - To contradict such evidence in open court (H3) Olatinwo v. State (2013) 1-2 KLR (pt. 323) 541

LEGAL PRACTITIONERS - Jurisdiction - Issue of - Court - Suo motu raising - Where court raises jurisdiction suo motu - It is proper to invite address of both counsel - Before deciding one way or the other (H3) Alims Nig. Ltd. v. United Bank for Africa (2013) 1 KLR (pt. 322) 35

LEGAL PRACTITIONERS - Jurisdiction - Suo motu raising - Failure to invite counsel - Failure to invite address of counsel - Does not render decision a nullity - Unless it is shown that the decision is incorrect (H4) Alims Nig. Ltd. v. United Bank for Africa (2013) 1 KLR (pt. 322) 35

LEGAL PRACTITIONERS - L.P. Act ss. 2(1) & 24 - Purpose - The sections ensure that only a lawyer whose name is on the call roll - Can sign legal documents - Thereby eliminating impersonators (H1) Ministry of Works & Transport v. Yakubu (2013) 1-2 KLR (pt. 323)

LEGAL PRACTITIONERS - Murder - Objection - Where the charge under CC s. 319(1) is wrong - It is the duty of counsel to take objection - Before appellant takes his plea (H2) *Olatunbosun v. State* (2013) 7 KLR (pt. 335) 3851

LEGAL PRACTITIONERS - Parties - Court - Legal representation - Where party is represented by counsel - His physical appearance to conduct the proceeding is not necessary - Except where court orders otherwise (H6) *Vab Petroleum Inc. v. Momah* (2013) 1 KLR (pt. 322) 249

LEGAL PRACTITIONERS - Party - Legal representation - Right to - By Constitution 1999 s. 36 - Every party to a case has right of representation - By counsel of his choice (H1) *Nnakwe v. State* (2013) 7 KLR (pt. 333) 3273

LEGAL PRACTITIONERS - Representation - Challenge to - Where counsel announces appearance on behalf of a party - The authority to challenge such representation - Only lies with the same party (H2) *Nnakwe v. State* (2013) 7 KLR (pt. 333) 3273

LEGAL PRACTITIONERS - Rules of Court - Fair hearing - Imo State H.C. Rules O. 37 r. 18 - Court can only properly evaluate evidence adduced - When counsel in the matter have properly summed up (H3) *Mpama v. First Bank Nig. Plc* (2013) 1 KLR (pt. 322) 113

LEGAL PRACTITIONERS - Submission of - Weight - Counsel's submission no matter how brilliant - Is not a substitute for credible evidence (H6) *Ajayi v. Total Nig. Plc.* (2013) 7 KLR (pt. 334) 3333

LEGISLATION - Appeals - Right of appeal - By 1999 Constitution s. 233 - Every aggrieved party has right to challenge - Decision of C. A. in S.C. - And the right cannot be denied by any subsidiary legislation (H1) *Imegwu v. Okolocha* (2013) 1-2 KLR (pt. 323) 433

LEGISLATION - Constitutional law - Existing law - Validity - By Constitution 1999 s. 315 - Robbery & firearms Act became existing law of Ogun State - And is deemed to have been made by the State House of Assembly (H3) *Sadiku v. State* (2013) 5 KLR (pt. 330) 2521

LEGISLATION - Lagos State HA - Power - Hospitality industry - As the items are not listed in exclusive & concurrent legislative lists - They are residual matters for State - Hence the 3 laws enacted by the HA in this respect - Are within its power (H4) *A-G Federation v. A-G Lagos State* (2013) 7 KLR (pt. 333) 3119

LEGISLATION - Statutes - Interpretation - Principle - Intendment of law maker is deciphered - By assigning literal meaning - To the unambiguous words of the statute - And interpretation by court is limited to the words (H3) *Duru v. Federal Republic of Nigeria* (2013) 2 KLR (pt. 324) 705

LEGISLATION - Validity - Nigerian Tourism Development Corporation Act ss. 4(2)(c)(d) & 7 - Is ultra vires the legislative competence of National Assembly - And therefore unconstitutional (H2) *A-G Lagos State v. A-G Federation* (2013) 7 KLR (pt. 333) 3217

LEGISLATURE - Constitution - Amendment - Court is not competent to alter the Constitution - As such duty is in the exclusive domain of the legislature (H2) *Oni v. Fayemi* (2013) 5 KLR (pt. 330) 2497

LEGISLATURE - Constitution - Supremacy - The powers of NA & State HA to legislate on a given matter - Must be traceable to the Constitution - As any legislation outside Constitutional provision - Is null and void (H5) *A-G Federation v. A-G Lagos State* (2013) 7 KLR (pt. 333) 3119

LEGISLATURE - Constitutional law - National Assembly - Power - Extent of - NA cannot in exercise of its powers - Confer authority on FG to engage in matters - Which ordinarily ought to be responsibility of State Government (H3) *A-G Federation v. A-G Lagos State* (2013) 7 KLR (pt. 333) 3119

LEGISLATURE - Contempt of - Meaning - This is conduct that defies authority of court or legislature - And since it interferes with administration of justice - It is punishable by fine or imprisonment (H1) *Abeke v. Odunsi* (2013) 5 KLR (pt. 330) 2285

LEGISLATURE - Hospitality industry - Lagos State HA - Is entitled to the exclusion of any other legislative body - To enact laws with regard to rendering technical advice - To the State government and LG in the State - In the field of tourism (H1) *A-G Lagos State v. A-G Federation* (2013) 7 KLR (pt. 333) 3217

LEGISLATURE - Statute - Interpretation - Elect. Act etc - Words used in the provision clearly expressed intention of legislature - Hence court must give same its ordinary meaning - Unless where such is inconsistency with the rest of the legislation (H2) *Gassol v. Tutare* (2013) 12 KLR (pt. 338) 4463

LIBEL - Defamation - Determination - Basis - General impression conveyed by the publication complained of is to be considered - And not the meaning of each word (H3) *Ologe v. New Africa Holdings*

Ltd. (2013) 3 KLR (pt. 326) 1345

**LIBEL** - Defamation - Test - In determining whether or not a publication is libelous - Court should consider the view of a reasonable man - Who comes into contact with the words therein (H2) *Ologe v. New Africa Holdings Ltd.* (2013) 3 KLR (pt. 326) 1345

**LOCUS STANDI** - Appeals - Issue - Since the issue is a matter of locus standi of respondent - The same shall not be merely brushed aside - Even though it did not come up at pleadings (H2) *Intercontinental Bank Plc v. Olam Nig Ltd* (2013) 1 KLR (pt. 322) 89

**LOCUS STANDI** - Courts - Actions - Cause of action - Determination - Court is guided to restrict itself to the statement of claim - By considering those averments that form the gravamen of the claim (H2) *Yare v. N. S. W. I. C.* (2013) 5 KLR (pt. 329) 2267

**LOCUS STANDI** - Land law - Private land - Acquisition - Locus standi - Appellants rightly instituted suit no. M/779/93 - To challenge the State government's acquisition of the hectares of land - The title to which appellants acquired by purchase (H2) *Gbadamosi v. Akinloye* (2013) 7 KLR (pt. 333) 3225

**LOCUS STANDI** - Town planning Law - Contravention of - Appellants do not have injunctive relief under Lagos Urban Planning Law - And they failed to show how they will suffer greater injury than others - By alleged contravention of that law (H5) *Ayida v. Town Planning Authority* (2013) 4 KLR (pt. 328) 1811

**MANDAMUS** - Grant - Conditions for - Applicant must establish that he made prior demand for the performance of the duty - But that same was refused by the public authority (H1) *Ayida v. Town Planning Authority* (2013) 4 KLR (pt. 328) 1811

**MANDAMUS** - Injunction - Claim for - Procedure - By High Court Rules of Lagos State O. 43 r. 1 - The reliefs could be claimed and considered separately (H3) *Ayida v. Town Planning Authority* (2013) 4 KLR (pt. 328) 1811

**MANDAMUS** - Meaning - It is an extraordinary writ issued by court - Compelling performance of an act - Usually when there is a duty under the law to perform the act (H1) *Associated Discount House Ltd. v. Minister of FCT* (2013) 2 KLR (pt. 324) 685

**MANDAMUS** - Orders of court - Mandamus - Setting aside - Application - Since appellant initiated the process by mandamus - It is only the Minister who is a party - That can apply to set aside the order (H2) *Associated Discount House Ltd. v. Minister of FCT* (2013) 2

KLR (pt. 324) 685

MANSLAUGHTER - Military law - Sentence - Under Armed Forces Act s. 105 - Once accused is convicted of the offence - Trial Judge has no discretion - But to impose sentence of life imprisonment (H6) *Odunlami v. Nigerian Navy* (2013) 6 KLR (pt. 331) 2721

MASTER & SERVANT - Actions - Cause of action - Determination - Cause of action arose on 2<sup>nd</sup> October 1997 - When appellant made it known that it would not confirm the appointment of respondent (H1) *University of Jos v. Ikegwuoha* (2013) 12 KLR (pt. 338) 4615

MASTER & SERVANT - Actions - Limitation - Public Officers' Protection Act - Appellant's action is statute barred - As he delayed to enforce his right within 3 months - Upon being relieved of his employment (H4) *Yare v. N. S. W. I. C.* (2013) 5 KLR (pt. 329) 2267

MASTER & SERVANT - Actions - Pre action notice - NICON Act s. 26(2) placed duty on appellant to serve the notice - Before commencing any action against respondent (H2) *Ugwuanyi v. NICON Insurance Plc* (2013) 1-2 KLR (pt. 323) 587

MASTER & SERVANT - Actions - Reliefs - Vagueness of - Fate - Respondent's claims pertaining to promotions and entitlements are uncertain - And as such must fail as there was no evidence - To prove his entitlement to same (H5) *University of Jos v. Ikegwuoha* (2013) 12 KLR (pt. 338) 4615

MASTER & SERVANT - Appeals - Determination - Academic issue - Since appellant has retired with full benefits - He does not stand to gain further in the appeal - As to do so will amount to engaging in fruitless exercise (H4) *Abe v. University of Ilorin* (2013) 5 KLR (pt. 329) 2001

MASTER & SERVANT - Collective agreement - Binding force - Since Exhibits D, F, J1-J5, P1 & G did not create legal relations between the parties - Respondent is not contractually bound (H2) *Osoh v. Unity Bank Plc.* (2013) 2 KLR (pt. 325) 1133

MASTER & SERVANT - Collective agreement - Contract - There is no privity of contract - As the agreement was not incorporated into the contract of employment (H3) *Osoh v. Unity Bank Plc.* (2013) 2 KLR (pt. 325) 1133

MASTER & SERVANT - Collective agreement - Justiciability - For Exhibits D, F, J1-J5, N & P1 to be justiciable - The same must be incorporated into existing service agreement - By amending old provision to reflect new one (H1) *Osoh v. Unity Bank Plc.* (2013) 2 KLR

(pt. 325) 1133

MASTER & SERVANT - Conditions of employment - NICON Act s. 26(2) - Since appellant's appointment is predicated on the Handbook - The Act is binding in the circumstance (H1) Ugwuanyi v. NICON Insurance Plc (2013) 1-2 KLR (pt. 323) 587

MASTER & SERVANT - Contract of service - Is bedrock upon which aggrieved employee may found his case - As he succeeds or falls on the terms thereof (H1) Dudusola v. Nigerian Gas Co. Ltd. (2013) 12 KLR (pt. 338) 4449

MASTER & SERVANT - Contracts - Declaratory reliefs - Proof - Appellants must establish their entitlement to the reliefs - Upon the strength of their own case - And not on the weakness of respondents' case (H8) Organ v. Nig. Liquefied Natural Gas Ltd. (2013) 7 KLR (pt. 334) 3521

MASTER & SERVANT - Contracts - Employment - Termination - Notice of - By payment of salary for period of notice - Party can be discharged from his obligations - Where there is agreement that condition for termination is by notice - Or salary in lieu of notice (H4) Dudusola v. Nigerian Gas Co. Ltd. (2013) 12 KLR (pt. 338) 4449

MASTER & SERVANT - Contracts - Statutory employment - Confirmation - Proof - Respondent had in para. 5 of the statement of claim - Pleaded that he was positively recommended for confirmation by his HOD & Dean of Faculty - Which assertion was not denied by appellant (H3) University of Jos v. Ikegwuoha (2013) 12 KLR (pt. 338) 4615

MASTER & SERVANT - Contracts - Statutory employment - If appellant's employment had statutory flavour - Respondent must comply with the conditions of service - Otherwise any termination would be declared null and void (H2) Dudusola v. Nigerian Gas Co. Ltd. (2013) 12 KLR (pt. 338) 4449

MASTER & SERVANT - Contracts - Statutory employment - Notice of non confirmation - As the period of notice provided in s. 22(vii) of Exhibit 5 was not complied with - Exhibit 3 was rightly treated as recommendation for non confirmation referred to in the section (H2) University of Jos v. Ikegwuoha (2013) 12 KLR (pt. 338) 4615

MASTER & SERVANT - Court - Jurisdiction - Since there was non compliance with NICON Act s. 26(2) - The court has no jurisdiction to entertain the action (H4) Ugwuanyi v. NICON Insurance Plc (2013) 1-2 KLR (pt. 323) 587

MASTER & SERVANT - Dismissal - Fair hearing - Appellant was not denied fair hearing by his dismissal - As he was given opportunity to exculpate himself - From the allegations of fraud (H8) Ekunola v. CBN (2013) 4 KLR (pt. 327) 1621

MASTER & SERVANT - Dismissal - Notice of - Where dismissal is based on allegation of gross misconduct - Appellant is not entitled to notice or salary in lieu of notice (H9) Ekunola v. CBN (2013) 4 KLR (pt. 327) 1621

MASTER & SERVANT - Dismissal - Validity - Appellant stands effectively dismissed - Since there was compliance with Exhibit D - As Exhibit G was served on appellant (H10) Ekunola v. CBN (2013) 4 KLR (pt. 327) 1621

MASTER & SERVANT - Fair hearing - Tribunal - Exercise of power - By not complying with principles of natural justice - In retiring respondent from service - 1st appellant acted in excess of its powers as provided in the State Civil Service Rules (H4) Judicial Service Commission of Cross River State v. Young (2013) 5 KLR (pt. 329) 2129

MASTER & SERVANT - Jurisdiction - High Court - Since the action is for wrongful termination of employment and not trade dispute - The court's jurisdiction is not ousted by Trade Dispute Act s. 47(1) (H8) Osoh v. Unity Bank Plc. (2013) 2 KLR (pt. 325) 1133

MASTER & SERVANT - Parties - Pleadings - As there is no specific claim for non payment of terminal benefits - The issue is an after-thought - Since parties are bound by their pleadings (H4) Osoh v. Unity Bank Plc. (2013) 2 KLR (pt. 325) 1133

MASTER & SERVANT - Termination - Conditions - Employer although can fire - But must adhere to the conditions of service - Before employee is fired - Otherwise he can be held liable for unlawful termination (H6) Organ v. Nig. Liquefied Natural Gas Ltd. (2013) 7 KLR (pt. 334) 3521

MASTER & SERVANT - Termination - Damages in action for termination of employment - Can only follow events - Where the termination is wrongful (H5) Osoh v. Unity Bank Plc. (2013) 2 KLR (pt. 325) 1133

MASTER & SERVANT - Termination - Validity - Appellants cannot be described as workers - Since their employment were duly ended - By service of notice of same on them (H9) Osoh v. Unity Bank Plc. (2013) 2 KLR (pt. 325) 1133

MASTER & SERVANT - Termination - Validity - Respondent has un-

fettered right to dismiss appellant - And the motive for exercising the right - Does not render same ineffective (H3) *Dudusola v. Nigerian Gas Co. Ltd.* (2013) 12 KLR (pt. 338) 4449

MASTER & SERVANT - Words & phrases - “No suit” - Meaning - NICON Act s. 26(2) - The expression is wide enough to cover all manner of action - As same does not admit of any exception (H5) *Ugwuanyi v. NICON Insurance Plc* (2013) 1-2 KLR (pt. 323) 587

MATRIMONIAL CAUSES - Family law - Divorce - Decree nisi - MC Act s. 58(4) - 1<sup>st</sup> respondent remains deceased lawful wife - As a decree nisi shall not become absolute by force of the section - Where one of the parties has died (H9) *Amobi v. Nzegwu* (2013) 8-12 KLR (pt. 336) 3953

MOTIONS - Affidavits - Averments - Contradiction - Where a party does not file counter affidavit - To contradict averments in affidavit in support of motion - He is deemed to have admitted them (H2) *Inegbedion v. Selo-Ojemen* (2013) 1 KLR (pt. 322) 69

MOTIONS - Appeals - Application for extension of time - Propriety - Since appellant who later filed proper appeal was out of time - C.A. should have granted the prayers in the motion (H3) *Nwite v. State* (2013) 2 KLR (pt. 324) 799

MOTIONS - Appeals - Fresh issue - Grant of application to raise new points - Arising from grounds not covered in earlier notice of appeal - Would not be given - Save where the points are substantial - And not necessitating taking of fresh evidence (H1) *Intercontinental Bank Plc v. Olam Nig Ltd* (2013) 1 KLR (pt. 322) 89

MOTIONS - Courts - Judgment - Review - The court became functus officio after granting the order of mandamus - But can revisit same where application is made timeously - To set aside the order for default of appearance (H5) *Associated Discount House Ltd. v. Minister of FCT* (2013) 2 KLR (pt. 324) 685

MOTIONS - Orders of court - Mandamus - Setting aside - Application - Since appellant initiated the process by mandamus - It is only the Minister who is a party - That can apply to set aside the order (H2) *Associated Discount House Ltd. v. Minister of FCT* (2013) 2 KLR (pt. 324) 685

MOTIONS - Parties - Joinder of - Proper time - *Nnaji v. Aneke* - Order for joinder or non joinder may be made at anytime - Upon application of either party - But such must be done if the action is pending (H3) *Associated Discount House Ltd. v. Minister of FCT* (2013) 2 KLR (pt. 324) 685



MOTIONS - Pleadings - Statement of claim - Averments in - For appellant to have successfully challenged the averments - It was required to join issue with respondent - And come up with its motion before the case proceeded to trial (H14) *Musaconi Ltd. v. Aspinall* (2013) 6 KLR (pt. 331) 2695

MOTIONS - Striking out - Regularization of - Party whose motion is struck out - Can either file fresh application or apply for relisting - But the options do not avail applicants - Since their application constitutes abuse of process (H4) *Ogboru v. Uduaghan* (2013) 6 KLR (pt. 332) 2981

MOTIONS - Supreme Court - Extension of time - Condition - Before the court grants such prayer - Reason why the application was not earlier filed after the time statutorily allowed - Must be given (H1) *Chime v. Onwuegbu* (2013) 7 KLR (pt. 335) 3739

MOTIONS - Undefended suits - Ex parte application - Even where respondent was in court - When the application was being taken - He cannot be heard (H5) *Obaro v. Hassan* (2013) 1-2 KLR (pt. 323) 491

MURDER - Accident & self defence - Plea of - Sustainability - Act done in slight anger could not have occurred by accident - And appellant being a military man - Cannot rely on self defence to kill unarmed civilian (H4) *Nwokeoru v. State* (2013) 5 KLR (pt. 329) 2165

MURDER - Aiding & abetting - Proof - The charge was proved beyond reasonable doubt - For the fact that 2<sup>nd</sup> appellant was present at the scene without raising alarm - And assisted 1<sup>st</sup> appellant in carrying the corpse downstairs (H7) *Oguno v. State* (2013) 12 KLR (pt. 338) 4529

MURDER - Automatism - Plea of - Sustainability - The plea is not available to appellant - As he was master of his senses - When he deliberately stabbed the deceased to death (H3) *Nwokeoru v. State* (2013) 5 KLR (pt. 329) 2165

MURDER - Charge - Objection - Where the charge under CC s. 319(1) is wrong - It is the duty of counsel to take objection - Before appellant takes his plea (H2) *Olatunbosun v. State* (2013) 7 KLR (pt. 335) 3851

MURDER - Charge - Under CC s. 319 - Charge for murder in any Southern State in Nigeria would be correct - If brought under CC s. 319 (H1) *Olatunbosun v. State* (2013) 7 KLR (pt. 335) 3851

**MURDER** - Charges - Provocation - Defence of - Once the defence is sustained in the charge - Accused would be found guilty of manslaughter - And the Judge has discretion to impose sentence (H7) Odunlami v. Nigerian Navy (2013) 6 KLR (pt. 331) 2721

**MURDER** - Circumstantial evidence - Weight - In absence of confession or eye witness account - Prosecution rightly resorted to circumstantial evidence to discharge onus of proof on it (H5) Babatunde v. State (2013) 6 KLR (pt. 332) 2895

**MURDER** - Composition - The offence is committed if inter alia - The offender intends to cause death of deceased - Or to do to deceased some grievous harm (H2) Njoku v. State (2013) 2 KLR (pt. 325) 1093

**MURDER** - Confession - Medical report - Corroboration - Appellant's confessions corroborated by the medical report - Are fully descriptive of the crime - And sufficient for court to find him guilty (H2) Usman v. State (2013) 5 KLR (pt. 330) 2569

**MURDER** - Conspiracy - Culpability - Where two or more persons conspire to kill another person - But the deed was done by one or more of them - Each of them is guilty of murder (H12) Egwemi v. State (2013) 1-2 KLR (pt. 323) 325

**MURDER** - Conviction - Circumstantial evidence - Evidence of circumstances in this case is inadmissible - As same is capable of explanation upon other hypothesis - Than that of appellant's guilt (H12) Odogwu v. State (2013) 7 KLR (pt. 335) 3779

**MURDER** - Conviction - Contradictions - Effect - Minor difference in evidence of prosecution witnesses - Are not of a serious nature to vitiate the conviction (H7) Maigari v. State (2013) 7 KLR (pt. 333) 3251

**MURDER** - Conviction - Death sentence - Penal Code s. 221 - Once accused has been found guilty - Judge has no jurisdiction to listen to allocutus - And should not reduce sentence to term of years (H6) State v. John (2013) 5 KLR (pt. 330) 2539

**MURDER** - Date of death - Contradictions - Discrepancies as to the actual date is not fatal to prosecution's case - Since the death occurred due to injuries sustained from attack by appellant (H5) Njoku v. State (2013) 2 KLR (pt. 325) 1093

**MURDER** - Defence - Accident - Sustainability - Appellant failed to discharge the onus on him to prove the defence - And his words of

threat attest to the intentional killing of the deceased (H3) Jimmy v. State (2013) 4 KLR (pt. 327) 1699

MURDER - Defence - Consideration of - After considering defence of accused - Court can consider other defence available to accused - But failure to do so will not amount to miscarriage of justice (H1) State v. John (2013) 5 KLR (pt. 330) 2539

MURDER - Defence - Provocation - Is not a complete defence to charge of murder - As its being upheld would not result in discharge & acquittal - But in reduction of the offence to manslaughter (H1) Njokwu v. State (2013) 2 KLR (pt. 325) 1093

MURDER - Definition of - The offence is defined as the taking of human life - By a person with malicious and willful intent to kill - Or is wickedly reckless as to the consequences of his act upon his victim (H1) Afosi v. State (2013) 6 KLR (pt. 331) 2583

MURDER - Doctrine of last seen - As prosecution established that appellants - Were last seen with the deceased - Appellants should explain what happened to him (H4) Agbo v. State (2013) 4 KLR (pt. 328) 1787

MURDER - Evidence - Contradictions in respondent's case cannot avail appellant - As evidence of murder of deceased by appellant remains uncontroverted (H1) Jimmy v. State (2013) 4 KLR (pt. 327) 1699

MURDER - Evidence - Evaluation - If trial court had properly evaluated oral evidence of prosecution witnesses - The same would have been expunged as inadmissible hearsay - Given by tainted witnesses (H7) Odogwu v. State (2013) 7 KLR (pt. 335) 3779

MURDER - Evidence - Identity of deceased - Since there is no doubt as to identity of body of deceased - Failure of prosecution to call witness in respect of same - Is irrelevant (H4) Njokwu v. State (2013) 2 KLR (pt. 325) 1093

MURDER - Evidence - Inconsistencies - Effect - Minor discrepancies in evidence of PW3 - Did not destroy inferences from the circumstantial evidence - That culminated in conclusive findings that appellant killed the deceased (H6) Babatunde v. State (2013) 6 KLR (pt. 332) 2895

MURDER - Evidence - Inconsistency in - Effect - Appellant's evidence at trial is unreliable - And his previous statement does not constitute evidence upon which court can act - And both are no defence to the murder charge (H2) Dogo v. State (2013) 3 KLR (pt.

326) 1249

MURDER - Evidence - Missing exhibits - Effect - Doubt created by disappearance of the vital exhibits - And the resultant inability of Supreme Court to evaluate same - Enures to benefit of appellant (H8) *Odogwu v. State* (2013) 7 KLR (pt. 335) 3779

MURDER - Ingredients - Proof - A person is guilty of murder if inter alia - He intends to cause the death of deceased - And prosecution must prove that there was death - As a result of intentional act of accused (H1) *Nwokeoru v. State* (2013) 5 KLR (pt. 329) 2165

MURDER - Ingredients - Proof - Conviction of appellant for the offence - Can be sustained by the testimonies of respondent's witnesses - Medical report - And appellant's statements (H2) *Jimmy v. State* (2013) 4 KLR (pt. 327) 1699

MURDER - Ingredients - Proof - It must be proved that deceased died - As a result of the act of accused - Which was intentional or with knowledge that death or grievous bodily harm will occur (H2) *Maigari v. State* (2013) 7 KLR (pt. 333) 3251

MURDER - Ingredients - Proof - Prosecution must prove that deceased died - Which death was caused by accused - Who intended to either kill or cause grievous bodily harm (H3) *Njokwu v. State* (2013) 2 KLR (pt. 325) 1093

MURDER - Ingredients - Proof - Prosecution must prove that deceased died - And that the death was caused by act of accused - Which was intentional (H4) *State v. John* (2013) 5 KLR (pt. 330) 2539

MURDER - Ingredients - Proof - Prosecution must prove that the deceased died - And that the death was caused by act of accused - Which was intentional (H1) *Adeyeye v. State* (2013) 2 KLR (pt. 325) 885

MURDER - Ingredients - Proof - Prosecution must prove that the deceased died - That the death occurred as a result of act of accused - Which was intentional (H1) *Usman v. State* (2013) 5 KLR (pt. 330) 2569

MURDER - Ingredients - Proof - To secure conviction for murder - Prosecution must prove that deceased died - As a result of act of accused - Which was intentional (H2) *Afosi v. State* (2013) 6 KLR (pt. 331) 2583

MURDER - Ingredients - Proof - To secure conviction prosecution

must prove that deceased died - That the death was caused by accused - Whose act was intentional with knowledge that death will occur (H4) Babatunde v. State (2013) 6 KLR (pt. 332) 2895

MURDER - Ingredients - Prosecution must prove that there is death - Which was caused by the accused - And that the act of accused was intentional (H7) Aliyu v. State (2013) 6 KLR (pt. 332) 2873

MURDER - Medical report - The report is not relevant - Since appellant attributed the cause of death of the deceased to himself (H4) Dogo v. State (2013) 3 KLR (pt. 326) 1249

MURDER - Mens rea - Presumption - A person is presumed to intend the natural consequences of his act - Hence accused is presumed to have intentionally killed the deceased (H5) State v. John (2013) 5 KLR (pt. 330) 2539

MURDER - Mens rea - Proof - Appellant's intention to kill the deceased can be inferred from the dagger he used - Part of the body the injury was inflicted upon - And the force with which the stabbing was done (H2) Nwokeoru v. State (2013) 5 KLR (pt. 329) 2165

MURDER - Proof - Apart from confessional statements of appellants - Evidence adduced by prosecution witnesses point to the only fact - That it was appellant that killed deceased (H6) Oguno v. State (2013) 12 KLR (pt. 338) 4529

MURDER - Proof - Circumstantial evidence - From the evidence it can be conclusively deduced that appellant intentionally killed the deceased - By inflicting grievous bodily harm on him (H7) Babatunde v. State (2013) 6 KLR (pt. 332) 2895

MURDER - Proof - Confession - Exhibits C & C1 tendered without objection - Along with evidence of PWs and the medical report - Settled question of the fact of death of the deceased (H3) Maigari v. State (2013) 7 KLR (pt. 333) 3251

MURDER - Proof - Doctrine of last seen - Presumption of the doctrine operates - Since appellant was the last to see deceased alive - And he had not proffered evidence of anything to the contrary (H5) Maigari v. State (2013) 7 KLR (pt. 333) 3251

MURDER - Proof - Document - Relevancy - The funeral programme is relevant as it was not meant to contradict PW4 - But to show from its content that deceased could have been killed - By any of those on whose toes he had stepped (H10) Odogwu v. State (2013) 7 KLR (pt. 335) 3779

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**MURDER - Proof - Means of - Prosecution can establish that accused caused death through - Confessional statement - Circumstantial evidence - And evidence of an eye witness (H4) Maigari v. State (2013) 7 KLR (pt. 333) 3251**

**MURDER - Proof - Number of witness - Prosecution is not bound to call a host of witnesses - As single witness believed by court - Can establish a crime even in murder charge (H3) Aliyu v. State (2013) 6 KLR (pt. 332) 2873**

**MURDER - Proof - The newspaper wherein cult group - Claimed responsibility for death of deceased is relevant - And ought to have been admitted (H9) Odogwu v. State (2013) 7 KLR (pt. 335) 3779**

**MURDER - Provocation - Elements - Provocation consists of the provocative incident - Actual and reasonable loss of self control - And proportionate retaliation to the provocation (H6) Njokwu v. State (2013) 2 KLR (pt. 325) 1093**

**MURDER - Provocation - Witchcraft - Plea of provocation founded on witchcraft and mere words - Cannot stand in law (H7) Njokwu v. State (2013) 2 KLR (pt. 325) 1093**

**MURDER - Retrial order - Correctness of - Yahaya v. State - Long incarceration cannot justify discharge & acquittal of accused - When the charge borders on murder (H4) Ganiyu v. State (2013) 4 KLR (pt. 327) 1661**

**MURDER - Self defence - Failure of - Since there is no credible evidence of appellant's life being in danger - He is deemed to have intentionally killed the deceased (H3) Adeyeye v. State (2013) 2 KLR (pt. 325) 885**

**MURDER - Self defence - Implication of - This presupposes that accused committed the offence in self defence - As the action he took was unavoidable (H4) Afosi v. State (2013) 6 KLR (pt. 331) 2583**

**MURDER - Self defence - Sustainability - Accused must show an act of grave and sudden provocation - Loss of self control - And his retaliation must be proportionate (H2) Adeyeye v. State (2013) 2 KLR (pt. 325) 885**

**NEGLIGENCE - Damages - Proof - Plaintiff must lead evidence in proof of his entitlement - As award of damages depends on facts that sustain the plea for the award (H3) Kaja v. Oke (2013) 2 KLR (pt. 325) 1051**

**NEGLIGENCE - Proof - To succeed in such action - Plaintiff must**

show that defendant owes him duty of care - And that he has suffered damage - In consequence of the breach of the duty towards him (H1) *Ighreriniovo v. S.C.C. Nig. Ltd.* (2013) 4 KLR (pt. 328) 1853

NO CASE SUBMISSION - Conditions - It is upheld where there was no legally admissible evidence - To prove essential element of the offence - Or evidence adduced was discredited as a result of cross examination (H1) *Agbo v. State* (2013) 4 KLR (pt. 328) 1787

NO CASE SUBMISSION - Courts - Procedure to adopt - When the submission is made - Court is not called upon to express opinion on evidence before it - But to rule that evidence exist or not - That links accused with offence charged (H2) *Fagoriola v. FRN* (2013) 7 KLR (pt. 335) 3753

NO CASE SUBMISSION - Evidence - Court is not to determine - Whether evidence is sufficient to justify conviction - But it must be satisfied that there is a prima facie case - Against accused (H2) *Agbo v. State* (2013) 4 KLR (pt. 328) 1787

NO CASE SUBMISSION - Prima facie case - Exists when there is sufficient evidence - To support the allegation made against accused - Of which he is expected to rebut in his defence (H3) *Fagoriola v. FRN* (2013) 7 KLR (pt. 335) 3753

NO CASE SUBMISSION - Principle - The submission postulates that there is no legally admissible evidence - Or that prosecution's evidence has been so discredited - That no reasonable court can convict accused on such evidence (H1) *Fagoriola v. FRN* (2013) 7 KLR (pt. 335) 3753

OBJECTIONS - Appeals - Criminal procedure - Irregularity - Objection - Appellants were not prejudiced on the procedure they elected to adopt - And having failed to object at trial court - They cannot be allowed to do so on appeal (H4) *Oguno v. State* (2013) 12 KLR (pt. 338) 4529

OBJECTIONS - Appeals - Determination - Objection must first be determined - As it is capable of disposing the entire appeal - Without necessarily delving into the merit thereof (H1) *Contract Resources Ltd v. Standard Trust Bank Ltd* (2013) 2 KLR (pt. 325) 915

OBJECTIONS - Appeals - Hearing - Preliminary objection - Where objection is successful - Litigation is brought to an end - But if dismissed - Appeal will be determined on merit (H1) *Njemanze v. Njemanze* (2013) 2 KLR (pt. 325) 1071

OBJECTIONS - Appeals - Issue - Objection to - Based on any valid law can be raised - Though the Constitution & S.C. Rules - Have not made provisions relating to the point or issue (H1) *Okarika v. Samuel* (2013) 2 KLR (pt. 324) 807

OBJECTIONS - Appeals - Issues - Objection - Not challenged - Appellant must be deemed as having known respondent's stance on the issue - Since the brief containing the objection was served on it - And it made no effort to counter the objection (H15) *Nigerian Bottling Co. Plc v. Ubani* (2013) 8-12 KLR (pt. 336) 4027

OBJECTIONS - Appeals - Preliminary objection - Determination - Appellate court will take such objection as threshold issue - Provided it will be decisive of question of competence of the appeal (H3) *Ekunola v. CBN* (2013) 4 KLR (pt. 327) 1621

OBJECTIONS - Appeals - Preliminary objection - Leave - The objection can be incorporated in respondent's brief - But the party must seek for leave to move it - Otherwise it is deemed abandoned (H2) *Abba v. SPDC Nig. Ltd.* (2013) 4 KLR (pt. 327) 1473

OBJECTIONS - Appeals - Preliminary objection - Notice of - By Supreme Court Rules O. 2 r. 9(i) - Respondent relying upon the objection - Must give appellant 3 days notice thereof - Before the hearing (H2) *Arum v. Nwobodo* (2013) 4 KLR (pt. 327) 1583

OBJECTIONS - Appeals - Preliminary objection - Notice of - Filing - By Supreme Court Rules O. 2 r. 9 - Respondent relying on the objection - Shall give 3 days notice before date of hearing appeal (H1) *Abba v. SPDC Nig. Ltd.* (2013) 4 KLR (pt. 327) 1473

OBJECTIONS - Appeals - Preliminary objection - Purpose - The success of such objection has the effect of terminating the litigation - But where it is dismissed - Appeal will be determined on merit (H1) *Igbeke v. Okadigbo* (2013) 5 KLR (pt. 330) 2351

OBJECTIONS - Appeals - Supreme Court - Preliminary objection - Purpose - If the objection is successful - Hearing in the appeal is brought to an end - So as to avoid engaging in futile venture (H1) *Opapa v. Amadi* (2013) 6 KLR (pt. 332) 3027

OBJECTIONS - Arraignment - Failure to object - As appellant's counsel did not object - It is presumed that the record of compliance with CPC s. 242 is correct - And that the proceedings were translated to appellant (H3) *Ibrahim v. State* (2013) 12 KLR (pt. 337) 4273

OBJECTIONS - Confession - Accused who denies voluntariness of his extra judicial statement made to police - Must object when pros-



ecution seeks to tender the statement in evidence (H2) Oguno v. State (2013) 12 KLR (pt. 338) 4529

OBJECTIONS - Confession - Trial within trial - Once objection is made against voluntariness of confession - Court must stop further proceedings - To conduct trial within trial (H1) Ibeme v. State (2013) 1-2 KLR (pt. 323) 379

OBJECTIONS - Criminal procedure - Interpreter - Non provision of - Where accused is represented by counsel at trial - And there was no objection on the issue - It is futile to raise the issue on appeal (H2) Egwemi v. State (2013) 1-2 KLR (pt. 323) 325

OBJECTIONS - Evidence - Confession - Admissibility - Exhibit 4 was rightly admitted as it was tendered without objection - And PW4 through whom it was tendered - Was member of team of policemen that investigated the case (H8) Oguno v. State (2013) 12 KLR (pt. 338) 4529

OBJECTIONS - Evidence - Pleadings - Unchallenged averments - Evidence on amount claimed constituted sufficient proof of special damages - Recoverable by respondent - As the evidence was admitted without objection (H6) Nigerian Bottling Co. Plc v. Ubani (2013) 8-12 KLR (pt. 336) 4027

OBJECTIONS - Jurisdiction - Issue - Basis - Objection to competence of court is on the basis of statement of claim - Evidence received - Motion supported by affidavit setting out facts relied on - And on the face of writ of summons (H13) Musaconi Ltd. v. Aspinall (2013) 6 KLR (pt. 331) 2695

OBJECTIONS - Jurisdiction - Validity - Nothing exists on the writ of summons and statement of claim - To show that trial court had no jurisdiction - Hence the objection is premature (H16) Musaconi Ltd. v. Aspinall (2013) 6 KLR (pt. 331) 2695

OBJECTIONS - Legal practitioners - Representation - Challenge to - Where counsel announces appearance on behalf of a party - The authority to challenge such representation - Only lies with the same party (H2) Nnakwe v. State (2013) 7 KLR (pt. 333) 3273

OBJECTIONS - Murder - Charge - Objection - Where the charge under CC s. 319(1) is wrong - It is the duty of counsel to take objection - Before appellant takes his plea (H2) Olatunbosun v. State (2013) 7 KLR (pt. 335) 3851

OBJECTIONS - Preliminary objection - Basis - It deals with law and hence no need for supporting affidavit - As applicant contends that

the court process has not complied with the enabling law (H3) Abba v. SPDC Nig. Ltd. (2013) 4 KLR (pt. 327) 1473

OBJECTIONS - Preliminary objection - Failure to reply - Absence of counter affidavit to objection - Does not mean that the objection is conceded - As courts are enjoined to consider the objection on its merits (H1) FRN v. Tawakalitu (2013) 5 KLR (pt. 329) 2079

OBJECTIONS - Preliminary Objection - Notice of filing - By S. C. Rules O. 2 r. 9 - Appellant must be given three days notice to the hearing - To enable him prepare a proper response (H1) Ameen v. Amao (2013) 2 KLR (pt. 324) 667

OBJECTIONS - Supreme Court - Document - Tendering of documents in the court are subject to valid objection - Since they cannot be cross examined upon - Unless the court assumes role of trial court (H1) Adeyefa v. Bamgboye (2013) 2 KLR (pt. 324) 647

OBJECTIONS - Unlawful proceeding - Failure to object - Where accused fails to raise objection to such a procedure at trial - He cannot be allowed to raise same at appellate stage (H4) Nnakwe v. State (2013) 7 KLR (pt. 333) 3273

ORDERS OF COURT - Appeal - Retrial order - Sustainability - The order is not oppressive - As appellant has explanation to make - Judging from his statement and evidence on record (H2) Lasisi v. State (2013) 5 KLR (pt. 330) 2419

ORDERS OF COURT - Appeals - Criminal proceedings - Retrial order - Since the proceedings is nullity - The order is wrong and appellant whose conviction and sentence have been nullified - Shall be set free (H3) Mohammed v. State (2013) 1 KLR (pt. 322) 99

ORDERS OF COURT - Appeals - Jurisdiction - Previous judgment - Jurisdiction of trial court to make order in respect of its earlier judgment - Which is subject to appeal - Is clearly ousted (H6) Alims Nig. Ltd. v. United Bank for Africa (2013) 1 KLR (pt. 322) 35

ORDERS OF COURT - Appeals - Notice of appeal - Validity - As there is no valid appeal - Court of Appeal ought to have made an order - Striking out the appeal (H2) Nwite v. State (2013) 2 KLR (pt. 324) 799

ORDERS OF COURT - Appeals - Retrial - Conditions for - Appellate court will inter alia grant retrial - Where apart from irregularity in the proceeding - Evidence discloses a substantial case against appellant (H1) Adeyemi v. State (2013) 4 KLR (pt. 328) 1771

ORDERS OF COURT - Appeals - Retrial - Principles - Appellate court will inter alia grant retrial - Where apart from irregularity in the proceeding - Evidence discloses a substantial case against appellant (H3) Ganiyu v. State (2013) 4 KLR (pt. 327) 1661

ORDERS OF COURT - Appeals - Retrial order - Is made where inter alia - There has been error in law or irregularity in procedure - That neither renders the trial a nullity - Nor was there a miscarriage of justice (H1) Elijah v. State (2013) 2 KLR (pt. 325) 983

ORDERS OF COURT - Appeals - Right of hearing - Order of court - Contempt - Right to be heard differs from right to enforce a right whilst still in disobedience - And appellant on facts of the case - Cannot be denied of being heard on appeal (H3) Abeke v. Odunsi (2013) 5 KLR (pt. 330) 2285

ORDERS OF COURT - Basis - CA was wrong to have ordered that 2<sup>nd</sup> respondent had no candidate - And that 3<sup>rd</sup> respondent was not qualified to contest - As the order was not sought by the parties (H5) INEC v. Atuma (2013) 5 KLR (pt. 330) 2375

ORDERS OF COURT - Fair hearing - Breach - Order made by Gumel J was a nullity - Since it was made inter alia in breach of 3<sup>rd</sup> defendant's right to fair hearing (H1) Akinrimisi v. Maerks Nig. Ltd. (2013) 3 KLR (pt. 326) 1237

ORDERS OF COURT - Injunction - Definition - It is a court order prohibiting the doing of some specified act - Or commanding to undo some wrong (H2) Adeleke v. Lawal (2013) 2 KLR (pt. 324) 623

ORDERS OF COURT - Injunction - Purpose - The aim is to protect - An established right of the applicant (H2) Aboseldehyde Lab. Plc. v. Union Merchant Bank Plc (2013) 3 KLR (pt. 326) 1205

ORDERS OF COURT - Injunctions - Grant - Basis for - Order of declaration or injunction can only be granted - If appellants established their legal right - To the subject matter of the claim (H4) Ayida v. Town Planning Authority (2013) 4 KLR (pt. 328) 1811

ORDERS OF COURT - Judgment - Review - The court became functus officio after granting the order of mandamus - But can revisit same where application is made timeously - To set aside the order for default of appearance (H5) Associated Discount House Ltd. v. Minister of FCT (2013) 2 KLR (pt. 324) 685

ORDERS OF COURT - Judgments - Declaratory judgment - Meaning - It is judgment that proclaims the existence of a legal relationship - But does not contain any order which may be enforced against

defendant (H1) *Olabomi v. Oyewole* (2013) 7 KLR (pt. 333) 3319

ORDERS OF COURT - Judgments - Declaratory judgment - Stay of  
- Such judgment cannot be stayed by an interim order - Except the  
declaratory order is coupled with a mandatory order (H1) *Aboseldehyde Lab. Plc. v. Union Merchant Bank Plc* (2013) 3 KLR  
(pt. 326) 1205

ORDERS OF COURT - Justice - Retrial order - The order shall be  
sustained in the interest of justice - So as to know the truth of the case  
- And properly put appellant to trial (H2) *Elijah v. State* (2013) 2  
KLR (pt. 325) 983

ORDERS OF COURT - Mandamus - Grant - Conditions for - Appli-  
cant must establish that he made prior demand for the performance  
of the duty - But that same was refused by the public authority (H1)  
*Ayida v. Town Planning Authority* (2013) 4 KLR (pt. 328) 1811

ORDERS OF COURT - Mandamus - Meaning - It is an extraordinary  
writ issued by court - Compelling performance of an act - Usually  
when there is a duty under the law to perform the act (H1) *Associ-  
ated Discount House Ltd. v. Minister of FCT* (2013) 2 KLR (pt. 324)  
685

ORDERS OF COURT - Mandamus - Setting aside - Application -  
Since appellant initiated the process by mandamus - It is only the  
Minister who is a party - That can apply to set aside the order (H2)  
*Associated Discount House Ltd. v. Minister of FCT* (2013) 2 KLR (pt.  
324) 685

ORDERS OF COURT - Non service - Effect - An order is not binding  
if made on a person - Who has not been served with it (H2)  
*Uwazuruike v. A-G Federation* (2013) 4 KLR (pt. 328) 1953

ORDERS OF COURT - Obedience to - A person served with valid  
court order - Should ensure that he obeys it in full - As failure to do  
so may amount to willful breach of it (H1) *Uwazuruike v. A-G Fed-  
eration* (2013) 4 KLR (pt. 328) 1953

ORDERS OF COURT - Parties - Joinder of - Proper time - *Nnaji v.  
Aneke* - Order for joinder or non joinder may be made at anytime -  
Upon application of either party - But such must be done if the action  
is pending (H3) *Associated Discount House Ltd. v. Minister of  
FCT* (2013) 2 KLR (pt. 324) 685

ORDERS OF COURT - Proclamation - Basis - Court should not make  
unsolicited orders - Or grant prayers not sought by parties - As it is  
not a charitable organization (H5) *Nwaogu v. Atuma* (2013) 12 KLR

(pt. 338) 4491

ORDERS OF COURT - Sale of property - Specific performance - Cannot be made against appellant - In respect of property it did not sell to cross appellant - Nor can order for joinder be made against PW2 (H7) Nidocco Ltd. v. Gbajabiamila (2013) 7 KLR (pt. 334) 3479

ORDERS OF COURT - Validity of - Order made by court of competent jurisdiction is valid - Until it is declared void by court of competent jurisdiction - And party whose interest is affected - Must seek for such declaration (H2) Nidocco Ltd. v. Gbajabiamila (2013) 7 KLR (pt. 334) 3479

ORDERS OF COURT - Words & phrases - Order - Definition - Blacks Law Dictionary 5<sup>th</sup> Ed - Order is defined as mandate - Or direction of court entered in writing - And not included in judgment (H2) Maideribe v. FRN (2013) 12 KLR (pt. 337) 4321

PARTIES - Action - Need for consistency - A party should be consistent in stating his case - And in proving same (H2) Oshiomole v. Ehigie (2013) 1 KLR (pt. 322) 191

PARTIES - Actions - Commencement - Legal personality - Party who institutes action in court must be a legal person - Either as a natural person - Or as an institution having juristic personality (H1) Reptico S.A. Geneva v. Afribank Plc (2013) 5 KLR (pt. 329) 2091

PARTIES - Actions - Consistency - Party who is successful at trial court - Ought not to be confronted with new case on appeal - Simply because his adversary decided to bring his case in dribbles (H3) Adeyefa v. Bamgboye (2013) 2 KLR (pt. 324) 647

PARTIES - Actions - Hearing - Interlocutory injunction - Since parties in suit no. HOS/134/64 differ from those in HRE/4/97 - Granting of the injunction will prejudice trial in the substantive suit (H4) Adeleke v. Lawal (2013) 2 KLR (pt. 324) 623

PARTIES - Actions - Limitation law - Applicability - Where a party is denied opportunity to bring his action timeously - The law will not apply (H6) Nigerian Army v. Warrant Officer Banni Yakubu (2013) 1-2 KLR (pt. 323) 471

PARTIES - Actions - Necessary party - From the circumstances of the matter - Appellant is a necessary party that is to be bound by decision in the proceedings (H2) FBN Plc v. Ozokwere (2013) 12 KLR (pt. 337) 4203

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PARTIES - Actions - Necessary party - Is one whose presence in an action is essential - For the effectual and complete determination of the claim before the court (H2) *Olawoye v. Jimoh* (2013) 4 KLR (pt. 328) 1887

PARTIES - Actions - Necessary party - Joinder - As the trial court's judgment would affect 3<sup>rd</sup> respondent - It is desirable that 3<sup>rd</sup> respondent be heard - So that court can effectively settle all questions in the matter (H5) *Gassol v. Tutare* (2013) 12 KLR (pt. 338) 4463

PARTIES - Actions - Reliefs - Vagueness of - Fate - Respondent's claims pertaining to promotions and entitlements are uncertain - And as such must fail as there was no evidence - To prove his entitlement to same (H5) *University of Jos v. Ikegwuoha* (2013) 12 KLR (pt. 338) 4615

PARTIES - Actions - Status of party - Party - Status - Parties are natural or artificial persons - Whose names appear on the record of the court - As plaintiffs and defendants (H1) *Olawoye v. Jimoh* (2013) 4 KLR (pt. 328) 1887

PARTIES - Actions - Waiver - Plea of - Sustainability - Court must be satisfied that a party has consciously waived his right - Before upholding the plea (H6) *Ugwuanyi v. NICON Insurance Plc* (2013) 1-2 KLR (pt. 323) 587

PARTIES - Affidavits - Averments - Contradiction - Where a party does not file counter affidavit - To contradict averments in affidavit in support of motion - He is deemed to have admitted them (H2) *Ingebedion v. Selo-Ojemen* (2013) 1 KLR (pt. 322) 69

PARTIES - Affidavits - Contents - By Evidence Act ss. 86 & 87 - Affidavit shall contain only facts - Derived from personal knowledge of deponent - And not objection or legal argument (H4) *Okponipere v. State* (2013) 2 KLR (pt. 325) 1119

PARTIES - Appeals - Contract - Court - Findings - Correctness of - CA was right in finding that - The trial court had no evidence supported by pleadings - That the contract between the parties was voided by illegality (H5) *Ajayi v. Total Nig. Plc.* (2013) 7 KLR (pt. 334) 3333

PARTIES - Appeals - Court - Issue - Formulation - Appellate court is not bound by issues formulated by parties - As it can identify appropriate issues - Provided no new issue is introduced (H2) *Yisi Nig. Ltd. v. Trade Bank Plc.* (2013) 2 KLR (pt. 324) 863

PARTIES - Appeals - Court - Record of appeal - Binding nature of - Appellate courts are not only bound by the record - But also bound

to examine the state of same - On conflicting claims of parties (H1) Audu v. FRN (2013) 1 KLR (pt. 322) 53

PARTIES - Appeals - Court of Appeal - Powers - By C.A. Act s. 18 - The court can make equitable order(s) - In the interest of justice administration - So as to preserve the subject matter of dispute between parties (H4) Contract Resources Ltd v. Standard Trust Bank Ltd (2013) 2 KLR (pt. 325) 915

PARTIES - Appeals - Determination - To determine whether or not it has jurisdiction over a matter - Court must examine the nature of claims - And the parties before it (H1) Abia State Ind. Elec. Com. v. Kanu (2013) 5 KLR (pt. 330) 2313

PARTIES - Appeals - Dismissal - Fair hearing - Court of Appeal Rules 2007 O. 8 - Deprived the court the power to act on notice of non-compliance - With compilation & transmission of appeal records - Without putting parties on notice to dismiss the appeal (H3) Nworah v. Nwabueze (2013) 5 KLR (pt. 330) 2431

PARTIES - Appeals - Fresh issue - Leave - Party who seeks to file and argue new issue on appeal - Must first seek and obtain leave of court - Save where such fresh issue touches on jurisdiction (H4) Organ v. Nig. Liquefied Natural Gas Ltd. (2013) 7 KLR (pt. 334) 3521

PARTIES - Appeals - Fresh issue on - Appellate court can accommodate such issue - Provided appellant does not introduce - New line of defence different from those of parties at lower court (H4) Udo v. Regd. Trustee of the Brotherhood of the Cross & Star (2013) 2 KLR (pt. 324) 847

PARTIES - Appeals - Grounds - Absence of particulars - Such absence is of no moment - As what is needed is that the other party knows precisely - What is in contest on appeal (H2) Ameen v. Amao (2013) 2 KLR (pt. 324) 667

PARTIES - Appeals - Grounds - Amendment - Can be made at any time before judgment - Because once judgment is delivered - A seal is put to the controversy between parties - Which ends adjudication in that court (H5) Ikechukwu v. Nwoye (2013) 12 KLR (pt. 337) 4305

PARTIES - Appeals - Hearing - Contempt of court - Hadikinson's case - Contemnor may not be heard if his disobedience - Impedes the cause of justice - Except where he raises issue of lack of court's jurisdiction (H2) Abeke v. Odunsi (2013) 5 KLR (pt. 330) 2285

PARTIES - Appeals - Injunction pending appeal - Grant - Precondi-

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tion - Court must go into a consideration of - Competing legal rights of the parties - To the protection of the injunctive relief (H4) *Aboseldehyde Lab. Plc. v. Union Merchant Bank Plc* (2013) 3 KLR (pt. 326) 1205

PARTIES - Appeals - Issue - "Attempted substitution" - This phrase used by 1<sup>st</sup> respondent is not a relief - Rather it is definition and substance of the processes - That brought the parties to the trial Court (H8) *CPC v. Ombugadu* (2013) 7 KLR (pt. 334) 3401

PARTIES - Appeals - Issue - Clarity of - Parties are to avoid verbosity in formulating issues - But economy of words should not be made at the expense of clarity (H3) *Musaconi Ltd. v. Aspinall* (2013) 6 KLR (pt. 331) 2695

PARTIES - Appeals - Issue - *Suo motu* raising - CA rightly raised the issue of competence or otherwise of the writ of summons - But erred for not inviting counsel for parties to address it on the issue (H3) *Halilco Nig. Ltd. v. Equity Bank Nig. Ltd.* (2013) 6 KLR (pt. 332) 2937

PARTIES - Appeals - Issues - Different from case - Where party has premised his case on issue that does not cover his case - His arguments under the said issue literally goes to no issue - And is liable to be struck out (H16) *Nigerian Bottling Co. Plc v. Ubani* (2013) 8-12 KLR (pt. 336) 4027

PARTIES - Appeals - Issues - Purpose - Issues are formulated to enable parties narrow the matter in controversy in the appeal - In the interest of clarity and brevity (H2) *Akeredolu v. Mimiko* (2013) 8-12 KLR (pt. 336) 3895

PARTIES - Appeals - Notice of appeal - Amendment - Provided the ends of justice and fairness are served - There is no limit to number of times a party can amend processes in appeal (H2) *Salisu v. Mobolaji* (2013) 12 KLR (pt. 337) 4375

PARTIES - Appeals - Practice & procedure - Pending appeal - After appeal has been entered - Appellate court shall be seised of the whole proceedings - As between the parties - Except as otherwise provided in the rules (H9) *Vab Petroleum Inc. v. Momah* (2013) 1 KLR (pt. 322) 249

PARTIES - Appeals - Preliminary objection - Leave - The objection can be incorporated in respondent's brief - But the party must seek for leave to move it - Otherwise it is deemed abandoned (H2) *Abba v. SPDC Nig. Ltd.* (2013) 4 KLR (pt. 327) 1473



PARTIES - Appeals - Reversal of judgment - Jurisdiction - CA can reverse itself where it earlier ruled - That lower court has no jurisdiction - Provided fresh arguments arose in the same case - As between same parties (H2) Abiola & Sons Bottling Co. Ltd v. First City Merchant Bank Ltd (2013) 4 KLR (pt. 327) 1501

PARTIES - Appeals - Right of appeal - By 1999 Constitution s. 233 - Every aggrieved party has right to challenge - Decision of C. A. in S.C. - And the right cannot be denied by any subsidiary legislation (H1) Imegwu v. Okolocha (2013) 1-2 KLR (pt. 323) 433

PARTIES - Appeals - Right of appeal - Grounds 2 & 10 did not reveal any lapse - And appellant being party to the appeal and cross appeal - Can appeal against CA decision in respect of either of the appeal (H3) Abe v. University of Ilorin (2013) 5 KLR (pt. 329) 2001

PARTIES - Appeals - Stay of execution - Grant - Stay of execution pending appeal is granted - Where judgment is executory - Though the stay merely suspends rights of successful party - Until appeal is decided (H5) Olabomi v. Oyewole (2013) 7 KLR (pt. 333) 3319

PARTIES - Constitutional law - Federal HC - Jurisdiction - 1999 Constitution s. 251(1)(p)(q)(r)- Applicability - To determine application of the provisions - Subject matter and parties in the action must be examined (H8) Ahmed v. Ahmed (2013) 7 KLR (pt. 335) 3561

PARTIES - Contracts - Agreement - Binding nature of - Parties are bound by terms of agreement freely entered into - And court must give effect to such agreement - And is not to make a new one (H4) Aminu Ishola Investment Ltd v. Afribank Plc (2013) 2 KLR (pt. 325) 1025

PARTIES - Contracts - Employment - Termination - Notice of - By payment of salary for period of notice - Party can be discharged from his obligations - Where there is agreement that condition for termination is by notice - Or salary in lieu of notice (H4) Dudusola v. Nigerian Gas Co. Ltd. (2013) 12 KLR (pt. 338) 4449

PARTIES - Contracts - Illegal contract - Meaning - Contract is said to be illegal - If the consideration involves illegality - Or the intention of parties is illegal - Or contrary to public policy (H3) Ajayi v. Total Nig. Plc. (2013) 7 KLR (pt. 334) 3333

PARTIES - Contracts - Termination - Correctness of - As there is no illegality in the contract between the parties - CA rightly allowed respondent's appeal - By granting it relief in affirming the termination of the contract (H4) Ajayi v. Total Nig. Plc. (2013) 7 KLR (pt. 334) 3333

**PARTIES** - Costs - Award - Purpose of - Costs are to compensate successful party - Without being punitive to unsuccessful party - And wrong exercise of discretion on costs - Can be varied by CA under s. 16 of its Act (H4) *Olusanya v. Osineye* (2013) 5 KLR (pt. 329) 2225

**PARTIES** - Court - Legal representation - Where party is represented by counsel - His physical appearance to conduct the proceeding is not necessary - Except where court orders otherwise (H6) *Vab Petroleum Inc. v. Momah* (2013) 1 KLR (pt. 322) 249

**PARTIES** - Court processes - Abuse - Characteristics - Abuse happens when a party improperly uses judicial process - To the irritation of his opponent - In respect of multiple actions between same parties - On same subject matter (H10) *Vab Petroleum Inc. v. Momah* (2013) 1 KLR (pt. 322) 249

**PARTIES** - Court processes - Abuse - Characteristics - It arises where a party improperly uses judicial processes - To the irritation and annoyance of his opponent (H2) *Osun S.I.E.C. v. NCP* (2013) 3 KLR (pt. 326) 1401

**PARTIES** - Court processes - Abuse - Features - It shows in the improper use of judicial process by party - To interfere with the due administration of justice (H2) *Ukachukwu v. PDP* (2013) 12 KLR (pt. 338) 4591

**PARTIES** - Court processes - Abuse - Instance of - Is where a party improperly uses judicial process - To the irritation of his opponent - Not only in same subject matter - But also where issues are the same (H3) *Commissioner for Education v. Amadi* (2013) 2 KLR (pt. 325) 1003

**PARTIES** - Court processes - Abuse - Meaning - Abuse features where a party improperly uses process of court - To the irritation and annoyance of his opponent (H1) *Ogboru v. Uduaghan* (2013) 6 KLR (pt. 332) 2981

**PARTIES** - Court processes - Appeals - An initiating process must be valid - To confer jurisdiction on court - In order to adjudicate between parties on a subject matter in dispute (H2) *Okarika v. Samuel* (2013) 2 KLR (pt. 324) 807

**PARTIES** - Court processes - Error - Amendment - Mistake which is not intended to overreach the court can be corrected - And it must be done without injustice to the other party (H6) *Eta v. Dazie* (2013) 3 KLR (pt. 326) 1269

PARTIES - Court processes - Service - Defect in - By Cross River HC Rules O. 2 rr. 1 & 2 - Defect in service amounts to non compliance - And the irregularity is deemed as waived - Where party after being aware of same - Took further steps in the proceedings (H1) Nigerian Bottling Co. Plc v. Ubani (2013) 8-12 KLR (pt. 336) 4027

PARTIES - Court processes - Service - Legal practitioner - Service on counsel is as good service on party - And proof of service is unnecessary - Where defendant appears (H4) Vab Petroleum Inc. v. Momah (2013) 1 KLR (pt. 322) 249

PARTIES - Courts - Appeals - Issues - Formulation of - Courts have power to formulate issues in the interest of justice - But parties must be heard on such issues - Before judgment is delivered (H7) Ekunola v. CBN (2013) 4 KLR (pt. 327) 1621

PARTIES - Courts - Contempt of - Meaning - This is conduct that defies authority of court or legislature - And since it interferes with administration of justice - It is punishable by fine or imprisonment (H1) Abeke v. Odunsi (2013) 5 KLR (pt. 330) 2285

PARTIES - Courts - Evaluation - Mogaji v. Odojin - Trial court is bound to evaluate evidence adduced by parties - For the purpose of arriving at a right conclusion - In adjudication of the case before it (H6) Chukwu v. Akpelu (2013) 12 KLR (pt. 337) 4177

PARTIES - Courts - Fair hearing - Issues - Binding nature - Court should not set up a case - Different from the one presented by parties - Without allowing parties to address it on same (H5) Omokuwajo v. FRN (2013) 3 KLR (pt. 326) 1365

PARTIES - Courts - Federal High Court - Jurisdiction - By 1999 Constitution s. 251 - The court exercises jurisdiction - Once any of the parties is Federal government or any of its agencies (H2) Abia State Ind. Elec. Com. v. Kanu (2013) 5 KLR (pt. 330) 2313

PARTIES - Courts - Function - Court is simply an arbiter that decides matter as presented by parties - Thus it is not to examine disqualifying factors for senatorial office - Which were not specifically raised in issue (H4) INEC v. Atuma (2013) 5 KLR (pt. 330) 2375

PARTIES - Courts - Issue - Determination - Court decides live issues between the evidence and prevailing law - And does not manufacture evidence for parties - As a party wins on the strength of his evidence (H5) Ayan v. State (2013) 7 KLR (pt. 335) 3717

PARTIES - Courts - Issue - Determination - Court should not make case different from the one made by parties - Hence since question 2

was not founded on any material evidence - It ought not to have been entertained by CA (H3) INEC v. Atuma (2013) 5 KLR (pt. 330) 2375

PARTIES - Courts - Issue - Suo motu raising - Court can raise issue suo motu - But must call on parties to address it on the said issue - Otherwise it would be breach of fair hearing - And decision reach thereat is liable to be set aside (H5) Adebayo v. PDP (2013) 4 KLR (pt. 327) 1523

PARTIES - Courts - Issues - Determination - Limit - Courts do not determine academic issues - That are far removed from the real issues - In controversy between the parties (H2) FRN v. Wabara (2013) 1-2 KLR (pt. 323) 357

PARTIES - Courts - Miscarriage of justice - Meaning - This occurs when judgment of court is prejudicial to right of the party concerned (H4) Mmamman v. FRN (2013) 1-2 KLR (pt. 323) 459

PARTIES - Courts - Order - Basis - CA was wrong to have ordered that 2<sup>nd</sup> respondent had no candidate - And that 3<sup>rd</sup> respondent was not qualified to contest - As the order was not sought by the parties (H5) INEC v. Atuma (2013) 5 KLR (pt. 330) 2375

PARTIES - Courts - Order - Proclamation - Basis - Court should not make unsolicited orders - Or grant prayers not sought by parties - As it is not a charitable organization (H5) Nwaogu v. Atuma (2013) 12 KLR (pt. 338) 4491

PARTIES - Courts - Pleadings - Unclaimed relief - It does not lie within the power of court - To grant a relief not claimed by a party in his pleadings (H3) Eyigebe v. Iyaji (2013) 5 KLR (pt. 330) 2329

PARTIES - Courts - Reliefs - Binding nature - Courts are bound by claims sought before them - And any prayer granted without being pre-claimed by parties - Is invalid (H2) Akinrimisi v. Maerks Nig. Ltd. (2013) 3 KLR (pt. 326) 1237

PARTIES - Courts - Reliefs - Grant - Condition - For a party to be awarded relief - He must not only plead with particularity - But also prove by credible and convincing evidence - Entitlement to the relief he seeks (H4) University of Jos v. Ikegwuoha (2013) 12 KLR (pt. 338) 4615

PARTIES - Courts processes - Abuse - Characteristics - The action as constituted by appellant is abuse of process - As it is a multiplication of actions involving same parties and subject matter (H3) Igbeke v. Okadigbo (2013) 5 KLR (pt. 330) 2351

PARTIES - Crime - Conspiracy - Proof - Appellant's guilt can be inferred from totality of evidence led by respondent - As the offence is usually proved by inference - Made from acts or inactions of parties concerned (H1) *Shodiya v. State* (2013) 12 KLR (pt. 338) 4557

PARTIES - Election petitions - Grounds - Court - Adherence - Where petitioner relies on a ground - It will be injustice to adverse party - For court to look for other grounds to question the petition (H4) *Oshiomole v. Ehigie* (2013) 1 KLR (pt. 322) 191

PARTIES - Elections - Necessary party - Inclusion of INEC in the matter at Federal HC is indispensable - Because respondents' relief No. 4 claimed for an order - Mandating INEC to release voters register to appellant (H3) *Abia State Ind. Elec. Com. v. Kanu* (2013) 5 KLR (pt. 330) 2313

PARTIES - Elections - Senatorial districts - Location of Local Govt. - This is a sensitive constitutional geopolitical issue - Which cannot be admitted or denied - At the whims and caprices of parties (H2) *Nwaogu v. Atuma* (2013) 1-2 KLR (pt. 323) 305

PARTIES - Employment agreement - Binding force - Since Exhibits D, F, J1-J5, P1 & G did not create legal relations between the parties - Respondent is not contractually bound (H2) *Osoh v. Unity Bank Plc.* (2013) 2 KLR (pt. 325) 1133

PARTIES - Estoppel - Res judicata - Application - A plaintiff cannot relitigate an action that has been competently decided by court - Where parties - Issues and subject matter in previous proceedings are the same (H2) *Igbeke v. Okadigbo* (2013) 5 KLR (pt. 330) 2351

PARTIES - Evidence - Unchallenged evidence - Pleadings - Where party fails to give evidence - Or fails to challenge evidence of his adversary - He is deemed to have accepted such evidence (H3) *Ndulue v. Ojiakor* (2013) 2 KLR (pt. 324) 771

PARTIES - Fair hearing - Concept of - Hearing can be said to be fair - When both parties are given a hearing - Or an opportunity of a hearing (H9) *Obaro v. Hassan* (2013) 1-2 KLR (pt. 323) 491

PARTIES - Fair hearing - Meaning - By 1999 Constitution s. 36(1) - Fair hearing means trial conducted according to legal rules - Formulated to ensure that justice is done to parties (H3) *Audu v. FRN* (2013) 1 KLR (pt. 322) 53

PARTIES - Fair hearing - Principle - It entails giving both parties opportunity to present their cases - As each side has right to know -

What case is being made against it (H3) *Duke v. Government of Cross-River State* (2013) 2 KLR (pt. 325) 941

PARTIES - Issues - Proof - When issues are joined by parties in pleadings - Evidence is required to prove them as averred - And the person with the burden of proving the issue - Must adduce satisfactory evidence (H2) *Reptico S.A. Geneva v. Afribank Plc* (2013) 5 KLR (pt. 329) 2091

PARTIES - Joinder of - Basis - *Odeleye v. Adepegba* - Defendant can be joined where plaintiff's or defendant's case in existing action - Cannot be effectively determined without the joinder (H4) *Associated Discount House Ltd. v. Minister of FCT* (2013) 2 KLR (pt. 324) 685

PARTIES - Joinder of - Proper time - *Nnaji v. Aneke* - Order for joinder or non joinder may be made at anytime - Upon application of either party - But such must be done if the action is pending (H3) *Associated Discount House Ltd. v. Minister of FCT* (2013) 2 KLR (pt. 324) 685

PARTIES - Judgments - Declaratory judgment - Appeal - Relief - Where court delivers such judgment - Party appealing may be granted injunction - But never a stay of execution pending determination of appeal (H3) *Olabomi v. Oyewole* (2013) 7 KLR (pt. 333) 3319

PARTIES - Judgments - Default judgment - Failure to appeal - Since there is no appeal to set aside the foreign judgment - Supreme Court will not be of any assistance - To party who willingly abdicate his responsibility (H7) *Vab Petroleum Inc. v. Momah* (2013) 1 KLR (pt. 322) 249

PARTIES - Judgments - Executory judgment - Meaning - It is order that states the respective rights of parties - And orders defendant to act in a particular way - Or refrain from interfering with plaintiff's right (H4) *Olabomi v. Oyewole* (2013) 7 KLR (pt. 333) 3319

PARTIES - Judgments - Slip - Effect - It is not every mistake that results in setting aside of judgment on appeal - As mistake must be relevant to issues between parties - And substantial as to lead to miscarriage of justice (H9) *FBN Plc v. Ozokwere* (2013) 12 KLR (pt. 337) 4203

PARTIES - Judicial precedents - *Kojo v. Bonsie* - Principle - Where traditional evidence of parties are inconclusive - Court should consider recent facts - To determine which of the evidence is probable (H3) *Matanmi v. Dada* (2013) 2 KLR (pt. 324) 725

PARTIES - Jurisdiction - Fundamentality of - It is bedrock of adjudication that cannot be conferred by consent of parties on court - And it can be raised at any stage - As absence of same renders the whole proceeding a nullity (H7) *Nnakwe v. State* (2013) 7 KLR (pt. 333) 3273

PARTIES - Jurisdiction - Fundamentality of - Once raised all proceedings abate till resolved - It can be raised by any party including court at any stage - Absence of it renders the entire proceeding a nullity (H1) *NNPC v. Orhiowasele* (2013) 4 KLR (pt. 327) 1719

PARTIES - Land law - Competing possession - Where two parties claim possession of land - Possession is given to the one - That has a better title (H2) *Olusanya v. Osineye* (2013) 5 KLR (pt. 329) 2225

PARTIES - Land law - Grant - Root of title - Proof of - Where party relies and pleads a grant as his root of title - He must prove such grant to the satisfaction of court (H12) *Ajibulu v. Ajayi* (2013) 12 KLR (pt. 337) 4153

PARTIES - Land law - Interference - By failing to properly weigh evidence of both parties - Trial court occasioned injustice against respondent - And CA rightly interfered by remedying the situation (H8) *Chukwu v. Akpelu* (2013) 12 KLR (pt. 337) 4177

PARTIES - Land law - Title - Grant - Nature of - It is an equitable relief that is subject to the discretion of court - Which must be of the opinion that party seeking it - Is entitled to an exercise of discretion in his favour (H1) *Tukuru v. Sabi* (2013) 3 KLR (pt. 326) 1433

PARTIES - Land law - Title - Proof - Onus is on plaintiff to prove his case on his own strength - And not on weakness of adverse party - Save where defence case supports plaintiff's title (H2) *Oguanuhu v. Chiegboka* (2013) 1-2 KLR (pt. 323) 521

PARTIES - Land law - Title - When in issue - Where claim for trespass is coupled with claim for injunction - Title of parties to the land in dispute - Is automatically put in issue (H3) *Ajibulu v. Ajayi* (2013) 12 KLR (pt. 337) 4153

PARTIES - Land law - Traditional history - Proof - A party who relies on such history - Must plead founder of the land - Manner the land was founded - And the names of successive owners (H3) *Nruamah v. Ebuzoeme* (2013) 1 KLR (pt. 322) 133

PARTIES - Landlord & tenant - Appeal - Pleadings - Consistency - Respondents are not permitted to approbate and reprobate - In their

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claim of ownership of the property - As parties are bound by their pleadings (H5) *Abeke v. Odunsi* (2013) 5 KLR (pt. 330) 2285

PARTIES - Legal practitioners - Representation - Challenge to - Where counsel announces appearance on behalf of a party - The authority to challenge such representation - Only lies with the same party (H2) *Nnakwe v. State* (2013) 7 KLR (pt. 333) 3273

PARTIES - Legal representation - Right to - By Constitution 1999 s. 36 - Every party to a case has right of representation - By counsel of his choice (H1) *Nnakwe v. State* (2013) 7 KLR (pt. 333) 3273

PARTIES - Master & servant - Pleadings - As there is no specific claim for non payment of terminal benefits - The issue is an afterthought - Since parties are bound by their pleadings (H4) *Osoh v. Unity Bank Plc.* (2013) 2 KLR (pt. 325) 1133

PARTIES - Matrimonial causes - Family law - Divorce - Decree nisi - MC Act s. 58(4) - 1<sup>st</sup> respondent remains deceased lawful wife - As a decree nisi shall not become absolute by force of the section - Where one of the parties has died (H9) *Amobi v. Nzegwu* (2013) 8-12 KLR (pt. 336) 3953

PARTIES - Motions - Striking out - Regularization of - Party whose motion is struck out - Can either file fresh application or apply for relisting - But the options do not avail applicants - Since their application constitutes abuse of process (H4) *Ogboru v. Uduaghan* (2013) 6 KLR (pt. 332) 2981

PARTIES - Orders of court - Mandamus - Setting aside - Application - Since appellant initiated the process by mandamus - It is only the Minister who is a party - That can apply to set aside the order (H2) *Associated Discount House Ltd. v. Minister of FCT* (2013) 2 KLR (pt. 324) 685

PARTIES - Orders of court - Validity of - Order made by court of competent jurisdiction is valid - Until it is declared void by court of competent jurisdiction - And party whose interest is affected - Must seek for such declaration (H2) *Nidocco Ltd. v. Gbajabiamila* (2013) 7 KLR (pt. 334) 3479

PARTIES - Pleadings - Amendment - Validity - Amendment is allowed provided that averments are material - And intends to bring out real issues in controversy between parties before court - In order to avoid multiplicity of actions (H7) *Nigerian Bottling Co. Plc v. Ubani* (2013) 8-12 KLR (pt. 336) 4027

PARTIES - Pleadings - Binding nature of - A party must confine him-



self to his pleadings - As pleaded facts must have nexus with ground (H3) Oshiomole v. Ehigie (2013) 1 KLR (pt. 322) 191

PARTIES - Pleadings - Content - Pleadings contains statements of facts - Which are explicit in stating the case contested by parties - And such facts give rise to issues which are to be proved by evidence (H4) Ajibulu v. Ajayi (2013) 12 KLR (pt. 337) 4153

PARTIES - Pleadings - Main & alternative relief - Party can plead in the main and alternatively - But court is bound to grant only one at expense of the other - Where the latter was made ancillary to the former (H4) Abia State Ind. Elec. Com. v. Kanu (2013) 5 KLR (pt. 330) 2313

PARTIES - Pleadings - Relief - Facts - Party must plead facts needed to establish his right to relief claimed - As evidence of facts not pleaded goes to no issue (H3) Yare v. N. S. W. I. C. (2013) 5 KLR (pt. 329) 2267

PARTIES - ppeals - Judgment - Interference - Basis - It is necessary to determine whether or not the judgment - Had evolved from pleadings and evidence of parties - And where found to be perverse - Whether miscarriage of justice has been occasioned (H2) Olaniyan v. Fatoki (2013) 7 KLR (pt. 335) 3829

PARTIES - Relief - Failure to claim - Since appellant never claimed for release of its title documents - Same was never decreed in its favour - As court does not grant relief not claimed (H8) Alims Nig. Ltd. v. United Bank for Africa (2013) 1 KLR (pt. 322) 35

PARTIES - Rules of court - Compliance - Solanke v. Somefun - Rules of court are meant to be complied with - As they regulate matters in court - And help parties to present their cases - For fair and quick trial (H4) Asika v. Atuanya (2013) 7 KLR (pt. 335) 3651

PARTIES - Supreme Court - Appeal - Fresh issues - SC will not allow party to raise such issues - Save where the new issues involve substantial points of law - Which need to be allowed in the interest of justice (H1) Salisu v. Mobolaji (2013) 12 KLR (pt. 337) 4375

PARTIES - Title - Proof - Appellant succeeds in his claim - As he proved better title to that of respondent - Lower court was wrong for not affirming finding of trial court - That was based on pleadings and evidence of the parties (H3) Garan v. Olomu (2013) 4 KLR (pt. 327) 1675

PARTIES - Trespass - Land law - Title - Possession - Where title has been proved to reside in the other party - Possession is of no mo-

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ment - As the act of the possessor translates as trespass (H4) Ameen v. Amao (2013) 2 KLR (pt. 324) 667

PARTIES - Trial - Absence of accused - Trial of 1<sup>st</sup> accused in his absence - Constitutes a breach of the law - As addresses by parties or their counsel - Are integral part of the proceedings (H2) State v. Lawal (2013) 2 KLR (pt. 325) 1181

PARTIES - Undefended suits - Defence - Materials for - Court is guided by facts of the case - Parties' affidavit evidence - Notice of intention to defend disclosing the defence (H3) Dangote Textile Ltd. v. Hascon Asso. Nig. Ltd. (2013) 5 KLR (pt. 329) 2049

PARTIES - Undefended suits - Liquidated demand - Contentious claims - As the dispute between the parties are contentious - The sum of N12,169, 847.71 and interest of 21% claimed by appellant - Were not liquidated money demand (H3) Akpan v. Akwa-Ibom Property Invest. Co. Ltd. (2013) 6 KLR (pt. 331) 2631

PARTIES - Undefended suits - Procedure - Under High Court Rules of Delta State O. 23 - Plaintiff can by this process recover liquidated money demands from defendant - Without a full blown civil trial (H1) Ed-Of Nig. Ltd. v. Snig Nig. Ltd. (2013) 2 KLR (pt. 325) 965

PLEADINGS - Actions - Company - Legal personality - Proof - Issue of appellant's legal personality cannot be treated on affidavit evidence - And except it is admitted - It must be proved that appellant has ceased to exist (H15) Musaconi Ltd. v. Aspinall (2013) 6 KLR (pt. 331) 2695

PLEADINGS - Administration of estates - Will - Propounder of - Respondent as the propounder of the will - Has a duty to plead and prove due execution of same (H3) Eta v. Dazie (2013) 3 KLR (pt. 326) 1269

PLEADINGS - Administration of estates - Will - Unpleaded facts - Evidence led on facts not pleaded - Go to no issue and is liable to be expunged (H4) Eta v. Dazie (2013) 3 KLR (pt. 326) 1269

PLEADINGS - Amendment - Validity - Amendment is allowed provided that averments are material - And intends to bring out real issues in controversy between parties before court - In order to avoid multiplicity of actions (H7) Nigerian Bottling Co. Plc v. Ubani (2013) 8-12 KLR (pt. 336) 4027

PLEADINGS - Appeals - Contract - Court - Findings - Correctness of - CA was right in finding that - The trial court had no evidence supported by pleadings - That the contract between the parties was voided

by illegality (H5) *Ajayi v. Total Nig. Plc.* (2013) 7 KLR (pt. 334) 3333

PLEADINGS - Appeals - Court - Finding - Correctness of - CA decision affirming trial court's finding stands - As appellants were unable to show that findings of the two courts - Were not based on pleadings and evidence on record (H6) *Olaniyan v. Fatoki* (2013) 7 KLR (pt. 335) 3829

PLEADINGS - Appeals - Evaluation - Provided appellate court took full cognizance of evaluation of evidence alongside pleadings by trial court - It must not deal line by line on judgment of tribunal (H4) *Oke v. Mimiko* (2013) 8-12 KLR (pt. 336) 4077

PLEADINGS - Appeals - Issue - Jurisdiction - Locus standi - Since the issue is a matter of locus standi of respondent - The same shall not be merely brushed aside - Even though it did not come up at pleadings (H2) *Intercontinental Bank Plc v. Olam Nig Ltd* (2013) 1 KLR (pt. 322) 89

PLEADINGS - Appeals - Judgment - Interference - Basis - It is necessary to determine whether or not the judgment - Had evolved from pleadings and evidence of parties - And where found to be perverse - Whether miscarriage of justice has been occasioned (H2) *Olaniyan v. Fatoki* (2013) 7 KLR (pt. 335) 3829

PLEADINGS - Appeals - Perverse finding - Meaning - Decision is perverse when it runs counter to pleadings and evidence on record - Or where the affected court considered matters - Which it ought not to have taken into account (H1) *Olaniyan v. Fatoki* (2013) 7 KLR (pt. 335) 3829

PLEADINGS - Averment - Specific denial - By amendment of Supreme Court Rules in 1989 - Defendant must specifically traverse - Any claim for damages in an action (H4) *Oando Nig. Plc. v. Adijere W. A. Ltd.* (2013) 5 KLR (pt. 330) 2459

PLEADINGS - Averments - Proof - Averments do not take the place of evidence - Since whatever facts that are pleaded - Must be established by evidence in support (H4) *Eyigebe v. Iyaji* (2013) 5 KLR (pt. 330) 2329

PLEADINGS - Binding nature of - A party must confine himself to his pleadings - As pleaded facts must have nexus with ground (H3) *Oshiomole v. Ehigie* (2013) 1 KLR (pt. 322) 191

PLEADINGS - Content - Pleadings contains statements of facts - Which are explicit in stating the case contested by parties - And such facts give rise to issues which are to be proved by evidence (H4) *Ajibulu v.*

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Ajayi (2013) 12 KLR (pt. 337) 4153

PLEADINGS - Contracts - Interest - Basis - Where appellant claimed 45% interest per month - Trial court's award of 45% interest per annum - Is awarding what was not claimed in statement of claim or oral evidence (H10) Abba v. SPDC Nig. Ltd. (2013) 4 KLR (pt. 327) 1473

PLEADINGS - Contracts - Statutory employment - Confirmation - Proof - Respondent had in para. 5 of the statement of claim - Pleaded that he was positively recommended for confirmation by his HOD & Dean of Faculty - Which assertion was not denied by appellant (H3) University of Jos v. Ikegwuoha (2013) 12 KLR (pt. 338) 4615

PLEADINGS - Court processes - Statement of defence - Amendment - Granting of the oral application to amend the statement - Brought the pleadings in line with evidence on record - As per due execution of the will (H5) Eta v. Dazie (2013) 3 KLR (pt. 326) 1269

PLEADINGS - Courts - Binding nature of pleadings - As parties have settled issues of admitted and disputed facts - The High Court and CA ought to have identified same - In arriving at their decisions (H4) Gbadamosi v. Akinloye (2013) 7 KLR (pt. 333) 3225

PLEADINGS - Courts - Cause of action - Determination - Court is guided to restrict itself to the statement of claim - By considering those averments that form the gravamen of the claim (H2) Yare v. N. S. W. I. C. (2013) 5 KLR (pt. 329) 2267

PLEADINGS - Courts - Customary court - Procedure - Strict rules of pleadings and application of Evidence Act - Are not observed in the court - But decision therein must be based on common sense (H4) Oguanuhu v. Chiegboka (2013) 1-2 KLR (pt. 323) 521

PLEADINGS - Courts - Function - Court is simply an arbiter that decides matter as presented by parties - Thus it is not to examine disqualifying factors for senatorial office - Which were not specifically raised in issue (H4) INEC v. Atuma (2013) 5 KLR (pt. 330) 2375

PLEADINGS - Courts - Party - Unclaimed relief - It does not lie within the power of court - To grant a relief not claimed by a party in his pleadings (H3) Eyigebe v. Iyaji (2013) 5 KLR (pt. 330) 2329

PLEADINGS - Damages - Award - Pleadings - Specific claim - Award of N9,672.30 per day for loss of vehicle usage up to a point is justifiable - For failure of appellant to deny the claim (H1) Oando Nig. Plc. v. Adijere W. A. Ltd. (2013) 5 KLR (pt. 330) 2459

PLEADINGS - Damages - General damages - Where plaintiff pleaded and gave particulars of special damages - He is entitled to be granted relief over and above general damages awarded (H10) Nigerian Bottling Co. Plc v. Ubani (2013) 8-12 KLR (pt. 336) 4027

PLEADINGS - Declaratory relief - Proof - Plaintiff must establish the relief to the satisfaction of court - And such relief is not granted either in default - Or on admission by defendant (H2) INEC v. Atuma (2013) 5 KLR (pt. 330) 2375

PLEADINGS - Documents - Admissibility - For document to be admissible in civil proceedings - It must not only be pleaded by plaintiff - But must also be relevant (H5) Adeyefa v. Bamgboye (2013) 2 KLR (pt. 324) 647

PLEADINGS - Election petitions - Non qualification - Pleadings - Petitioner who relies on non qualification to nullify election - Must make the issue a ground - And support same by specific pleadings (H1) Oshiomole v. Ehigie (2013) 1 KLR (pt. 322) 191

PLEADINGS - Elections - Courts - Pleadings - Binding nature - It is not the duty of CA to fish for disqualifying factors for senatorial office - Which were not specifically raised in the question for determination (H4) Nwaogu v. Atuma (2013) 12 KLR (pt. 338) 4491

PLEADINGS - Evidence - Absence of - On the authority of Newbreed Ltd case - Appellant's claims 1-5 fail - As no evidence was adduced to support them (H3) Olusanya v. Osineye (2013) 5 KLR (pt. 329) 2225

PLEADINGS - Evidence - Unchallenged averments - Evidence on amount claimed constituted sufficient proof of special damages - Recoverable by respondent - As the evidence was admitted without objection (H6) Nigerian Bottling Co. Plc v. Ubani (2013) 8-12 KLR (pt. 336) 4027

PLEADINGS - Evidence - Unchallenged evidence - Pleadings - Where party fails to give evidence - Or fails to challenge evidence of his adversary - He is deemed to have accepted such evidence (H3) Ndulue v. Ojiakor (2013) 2 KLR (pt. 324) 771

PLEADINGS - Land law - Title - Conflicting claims - Where claimant fails to prove title via traditional history as pleaded - He is not allowed to turn round and rely on mere acts of ownership & possession - Upon which he originally based his title (H5) Nruamah v. Ebuzoeme (2013) 1 KLR (pt. 322) 133

PLEADINGS - Land law - Traditional history - Proof - A party who

relies on such history - Must plead founder of the land - Manner the land was founded - And the names of successive owners (H3) *Nruamah v. Ebuzoeme* (2013) 1 KLR (pt. 322) 133

PLEADINGS - Landlord & tenant - Appeal - Parties - Pleadings - Consistency - Respondents are not permitted to approbate and reprobate - In their claim of ownership of the property - As parties are bound by their pleadings (H5) *Abeke v. Odunsi* (2013) 5 KLR (pt. 330) 2285

PLEADINGS - Master & servant - Parties - As there is no specific claim for non payment of terminal benefits - The issue is an after-thought - Since parties are bound by their pleadings (H4) *Osoh v. Unity Bank Plc.* (2013) 2 KLR (pt. 325) 1133

PLEADINGS - Parties - Issues - Proof - When issues are joined by parties in pleadings - Evidence is required to prove them as averred - And the person with the burden of proving the issue - Must adduce satisfactory evidence (H2) *Reptico S.A. Geneva v. Afribank Plc* (2013) 5 KLR (pt. 329) 2091

PLEADINGS - Parties - Main & alternative relief - Party can plead in the main and alternatively - But court is bound to grant only one at expense of the other - Where the latter was made ancillary to the former (H4) *Abia State Ind. Elec. Com. v. Kanu* (2013) 5 KLR (pt. 330) 2313

PLEADINGS - Relief - Facts - Party must plead facts needed to establish his right to relief claimed - As evidence of facts not pleaded goes to no issue (H3) *Yare v. N. S. W. I. C.* (2013) 5 KLR (pt. 329) 2267

PLEADINGS - Statement of claim - Averments in - For appellant to have successfully challenged the averments - It was required to join issue with respondent - And come up with its motion before the case proceeded to trial (H14) *Musaconi Ltd. v. Aspinall* (2013) 6 KLR (pt. 331) 2695

PLEADINGS - Title - Proof - Appellant succeeds in his claim - As he proved better title to that of respondent - Lower court was wrong for not affirming finding of trial court - That was based on pleadings and evidence of the parties (H3) *Garan v. Olomu* (2013) 4 KLR (pt. 327) 1675

PLEADINGS - Traverse - Denial must be unequivocal - And should not leave anyone in doubt as to the intention sought to portray (H6) *Ajibulu v. Ajayi* (2013) 12 KLR (pt. 337) 4153

PLEADINGS - Undefended suits - Affidavit - Determination - Cases under the list are decided on affidavit but not on pleadings - But pleadings are ordered after court is satisfied - That defendant has good defence (H8) Obaro v. Hassan (2013) 1-2 KLR (pt. 323) 491

POLICE - Alibi - Failure to investigate - It is not every such failure by police - That is fatal to the case of prosecution (H4) Olatinwo v. State (2013) 1-2 KLR (pt. 323) 541

POLICE - Alibi - Plea of - Failure to investigate - Prosecution's case is not made fatal by every failure of police to investigate alibi - As accused alibi is demolished - Where there are sufficient evidence fixing him at crime scene at the material time (H2) Aliyu v. State (2013) 6 KLR (pt. 332) 2873

POLICE - Alibi - Plea of - Investigation - Appellant did not fully disclose his whereabouts at the time of the incident to police - To warrant any investigation of his plea by the police (H1) Aliyu v. State (2013) 6 KLR (pt. 332) 2873

POLICE - Confession - Objection to - Accused who denies voluntariness of his extra judicial statement made to police - Must object when prosecution seeks to tender the statement in evidence (H2) Oguno v. State (2013) 12 KLR (pt. 338) 4529

POLICE - Criminal investigation - Basis - This is carried out based on information available to the force - And the investigator uses his discretion - To determine how to go about it (H1) Olatinwo v. State (2013) 1-2 KLR (pt. 323) 541

POLICE - Evidence - Confession - Admissibility - Exhibit 4 was rightly admitted as it was tendered without objection - And PW4 through whom it was tendered - Was member of team of policemen that investigated the case (H8) Oguno v. State (2013) 12 KLR (pt. 338) 4529

POLICE - Identification parade - Failure to conduct - The parade is not needed - Since PW1 had opportunity to visually observe appellant - Failure to conduct same - Did not affect appellant's identification to police (H3) Agboola v. State (2013) 5 KLR (pt. 329) 2019

POLICE - Robbery - Evidence - Failure to call policeman who recovered the items is of no moment - As PW2 stated that the item was recovered from appellant in his presence (H2) Banjo v. State (2013) 6 KLR (pt. 331) 2683

POLITICS - Court processes - Originating summons - Validity - Application made by this procedure without questions for determina-

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tion - Is incompetent and as such court cannot validly exercise its jurisdiction under Electoral Act s. 87(9) (H1) Olley v. Tunji (2013) 4 KLR (pt. 328) 1905

POLITICS - Legal drafting - "Notwithstanding" - Effect of use of the word in Article 17.2 of 1<sup>st</sup> respondent's constitution - Makes the Article self fulfilling - That no other provision therein shall subjugate it (H4) Adebayo v. PDP (2013) 4 KLR (pt. 327) 1523

PRACTICE & PROCEDURE - Actions - Applicable rule - Is the rule in force at the time of trial of the action - Or when the application is heard - Unless there is any provision to the contrary (H2) Nworah v. Nwabueze (2013) 5 KLR (pt. 330) 2431

PRACTICE & PROCEDURE - Actions - Commencement - Legal personality - Party who institutes action in court must be a legal person - Either as a natural person - Or as an institution having juristic personality (H1) Reptico S.A. Geneva v. Afribank Plc (2013) 5 KLR (pt. 329) 2091

PRACTICE & PROCEDURE - Actions - Commencement - Wrong procedure - Such procedure does not constitute jurisdictional issue - Since the lapse does not defeat cause of action - Except where specifically stated in the rules of court (H5) Udo v. Regd. Trustee of the Brotherhood of the Cross & Star (2013) 2 KLR (pt. 324) 847

PRACTICE & PROCEDURE - Actions - Counter claim - Reply to - As there was no dispute on the amount counter claimed - Appellant's failure to file reply was not damaging to its case - And respondent is entitled to the amount (H3) Maobison Inter-link Associated Ltd. v. UTC Nig. Plc. (2013) 4 KLR (pt. 328) 1871

PRACTICE & PROCEDURE - Actions - Necessary party - From the circumstances of the matter - Appellant is a necessary party that is to be bound by decision in the proceedings (H2) FBN Plc v. Ozokwere (2013) 12 KLR (pt. 337) 4203

PRACTICE & PROCEDURE - Actions - Necessary party - Is one whose presence in an action is essential - For the effectual and complete determination of the claim before the court (H2) Olawoye v. Jimoh (2013) 4 KLR (pt. 328) 1887

PRACTICE & PROCEDURE - Actions - Necessary party - Joinder - As the trial court's judgment would affect 3<sup>rd</sup> respondent - It is desirable that 3<sup>rd</sup> respondent be heard - So that court can effectively settle all questions in the matter (H5) Gassol v. Tutare (2013) 12 KLR (pt. 338) 4463



PRACTICE & PROCEDURE - Actions - Technicality - Effect - The Procedural irregularities in the matter - Did not adversely affect appellant - Nor occasioned any miscarriage of justice (H13) Ahmed v. Ahmed (2013) 7 KLR (pt. 335) 3561

PRACTICE & PROCEDURE - Appeal - Pending appeal - After appeal has been entered - Appellate court shall be seised of the whole proceedings - As between the parties - Except as otherwise provided in the rules (H9) Vab Petroleum Inc. v. Momah (2013) 1 KLR (pt. 322) 249

PRACTICE & PROCEDURE - Appeals - Extension of time - Application - Grant - Notwithstanding defect in the application - Interest of justice will be served - If SC Rules O. 10 r. 1(1)(2) is invoked to grant the application (H6) Ikechukwu v. Nwoye (2013) 12 KLR (pt. 337) 4305

PRACTICE & PROCEDURE - Appeals - Filing - Applicable laws - Filing of original appeal from CA to SC is governed by 1999 Constitution s. 233 & SC Act s. 27 - While filing additional grounds is governed by SC Rules - By virtue of 1999 Constitution ss. 233(6) & 236 (H1) South Atlantic Pet. Ltd. v. Minister Pet. Resources (2013) 12 KLR (pt. 337) 4393

PRACTICE & PROCEDURE - Appeals - Filing - Procedure - Appeal to Supreme Court lies against decision of Court of Appeal - But not against the decision of High Court (H3) Ugwu v. State (2013) 3 KLR (pt. 326) 1453

PRACTICE & PROCEDURE - Appeals - Filing - Time limit - Principles - Non compliance with the Constitution and the SC Act is fatal - But non compliance with the rules of court is mere irregularity (H2) South Atlantic Pet. Ltd. v. Minister Pet. Resources (2013) 12 KLR (pt. 337) 4393

PRACTICE & PROCEDURE - Appeals - Fresh issue of jurisdiction - Awuse v. Odili - Being a fundamental principle - Leave is not required to raise jurisdiction at any stage of the proceedings (H7) Dangote Textile Ltd. v. Hascon Asso. Nig. Ltd. (2013) 5 KLR (pt. 329) 2049

PRACTICE & PROCEDURE - Appeals - Ground of law - As appellant's ground comes within 1999 Constitution s. 233(2)(c) - Appeal from CA on such a ground lies to SC as of right - Requiring no leave for its validity (H3) South Atlantic Pet. Ltd. v. Minister Pet. Resources (2013) 12 KLR (pt. 337) 4393

PRACTICE & PROCEDURE - Appeals - Grounds - Mixed law & facts - Competence - Grounds 1, 2 & 3 being of mixed law & facts - Are incompetent having been raised without leave - As required by 1999 Constitution s. 233(3) (H1) Abdul v. CPC (2013) 12 KLR (pt. 338) 4409