

**SUPREME COURT OF NIGERIA**  
FRIDAY 6TH MARCH, 2015. SC. 278/2012  
**CORAM:- M. S. MUNTAKA-COOMASSIE,**  
**O. RHODES-VIVOUR, N. S. NGWUTA, K. B. AKA'AHs,**  
**C. C. NWEZE, JJSC**

DR OKEY IKECHUKWU ..... APPELLANT  
V.

1. FEDERAL REPUBLIC OF NIGERIA  
2. YUSUF MOHAMMED AGABI ..... RESPONDENTS  
3. STANLEY AMADI BROWN

---

APPEALS - Jurisdiction - Court of Appeal - Jurisdiction of the court to entertain appeals is statutorily derived - And it is equally guided by its Rules (H1)

APPEALS - Notice of - CA Rules O. 6 r. 2(1) - Every appeal shall be initiated through a notice of appeal - And any defect in it would render the appeal incompetent (H2)

APPEALS - Notice of - Signing - *Iwunze v. FRN* - Notice in criminal appeal must be personally signed by appellant - Save where circumstances warrant his counsel to discharge such duty for him (H3)

APPEALS - Jurisdiction - Issues - Although CA has a duty to pronounce on all issues before it - But where the court decides that it lacks jurisdiction - It is unnecessary to consider other issues (H4)

**FACTS**

Accused/appellant, 2<sup>nd</sup> and 3<sup>rd</sup> respondents were arraigned before the High Court of FCT Abuja for various offences under the Corrupt Practices and other Related Offences Act, 2000. After appellant was arraigned he sought before the court, inter alia, an order quashing the charge and arraignment. Appellant's objection was premised on the ground that, since the ICPC was a delegate of the prosecutorial powers of the Attorney-General of the Federation, it could not sub-delegate such powers to a private prosecutor.

Rather than accede to his prayer the learned trial judge dis-

missed the application to have the charge against him quashed. Being dissatisfied with the ruling of the court, appellant appealed to the Court of Appeal Abuja Division. However, he failed to personally sign his Notice of Appeal. Following the error, 1<sup>st</sup> respondent challenged the competence of appellant's appeal. 1<sup>st</sup> respondent therefore filed a notice of preliminary objection on the ground that appellant failed to personally sign his Notice of Appeal. The court upheld the objection and struck out the appeal. Not satisfied, appellant has further appealed to Supreme Court.

### **ISSUES FOR DETERMINATION**

1. Whether the Lower Court was right when their Lordships held the appellant's failure to personally sign the Notice of Appeal operates to rob the Court of requisite jurisdiction to entertain the appellant's appeal?

2. Whether the Lower Courts failure/refusal/neglect to consider and make pronouncement on all the issues submitted for determination was proper in law?

**HELD** (Unanimously dismissing the appeal per **NWEZE JSC**)

*Jurisdiction - Court of Appeal*

**1. In paragraph 4.1.2 of the appellant's brief, it was submitted that non-compliance with the above rule is "no more than a mere irregularity which cannot and should not preclude the court from the real issues raised in the appeal..." This cannot be correct. The jurisdiction of the Court of Appeal to entertain appeals does not derive from the sky or, to put it in the old Latin expression, in nubibus. It is rather statutory; it is equally guided by its Rules. That submission, indeed, betrays learned counsel's misunderstanding of the nature of the appeal process. (p. 855 E)**

*APPEALS - Notice of*

**2. Pursuant to this subsection, rights of appeal from the High Court to the Lower Court are exercisable in accordance, inter alia with the Court of Appeal Rules. Order 6 Rule 2 (1) of**

**the Court of Appeal Rules, 2011 prescribes that every appeal shall be initiated through a Notice of Appeal. Such a notice is thus the most important foundational step in the building block in the appeal pyramid. Thus, any defect in it would render the appeal incompetent. (p. 856 A)**

*APPEALS - Notice of - Signing - Iwunze v. FRN*

**3. Worse still, Oshobi, of counsel for the appellant, most impudently, invited this court to follow the decision of the Lower Court in *Alintah v FRN* (2010) 6 NWLR (Pt.1191) 508, 527-531 when in fact, this court in *Iwunze v FRN* [2014] 6 NWLR (Pt.1404) 580, 599, approvingly, re-affirmed *Uwazurike v AG Federation* (supra) as authority for the position that a notice of appeal in a criminal appeal must be signed by the appellant. In effect, ever since the old decision in *Umar Cham v Gombe Native Authority* (supra) to the most recent decision in *Iwunze v FRN* (supra), this court has been consistent in its position that a notice of appeal in a criminal appeal must be signed by the appellant personally.**

**The exceptions are, of course, where he [such an appellant] comes within the beneficent exceptions set out in Order 17 Rules (5) and (6) or where there are extenuating circumstances which warrant his counsel discharging such a duty on his behalf. While the exception in sub-rule 5 relates to an appellant who is insane; sub-rule 6 permits certain categories of bodies corporate to sign notices of appeal in criminal appeals. None of these applies to the present appellant who is yet to take his trial. (p. 856 G)**

*Jurisdiction - Issues*

**4. It cannot be gainsaid that as a general rule, an intermediate court, like the Lower Court, has a duty to pronounce on all the issues before it. That court is unlike this final court. As it is well-settled now, one major attribute which inheres in this court as the apex court is its power of isolating just one decisive issue, amongst others before it, and determining the appeal based on it.**

**However, there are some exceptions to the above broad**

***rule that applies to the Lower Court, as an intermediate court. Thus, for example, where the said court, as an intermediate court, decides that it lacks jurisdiction in an appeal before it, it then, becomes unnecessary to consider other issues once it has taken a decision on the question of its jurisdiction. It means therefore that where as was the case at the Lower Court, a preliminary objection challenging the competence of an appeal is upheld, it will be unnecessary to consider the arguments in support of the issues for determination distilled by the parties to the appeal.*** (p. 859 A)

### **REPRESENTATION**

T. Oshobi, with B. B. Lawal and L. Dunkwu, for the Appellant  
 Kehinde Ogunwumiju, with Ademo Abimbola, for the 1<sup>st</sup> respondent  
 D Keneth Omorua, with O. E. Bob, for the second and third respondents

### **CASES REFERRED TO**

Alintah v. FRN (2010) 6 NWLR (pt. 1191) 508  
 E Chrisdon Ind. Co. Ltd v. A.I.B. Ltd (2002) 8 NWLR (pt. 768) 182  
 Ikpassa v. AG Bendel (1981) 9 SC 7  
 Okafor v. Nweke (2007) 10 NWLR (pt. 1043) 521  
 Uwazurike v. AG Federation (2007) 8 NWLR (pt. 1035) 1  
 Adekanye v. FRN (2005) 15 NWLR (pt. 949) 433  
 F Iwunze v. FRN (2014) 6 NWLR (pt. 1404) 580  
 Amadi v. Okoli (1977) 7 SC 57  
 Adelekan v. ECU-Line NV (2006) 12 NWLR (pt. 993) 33  
 Okolo v. UBN Ltd. (2004) 3 NWLR (pt. 859) 87  
 G Ikweki v. Ebele (2005) 11 NWLR (pt. 936) 397  
 Akpan v. Bob (2010) 17 NWLR (pt. 1224) 421  
 General Electric Co. v. Akande (2010) 18 NWLR (pt. 1225) 596  
 Thor v. FCMB Ltd (2002) 2 SCNJ 85  
 Cham v. Gombe N. A. (1964) NNLR 94

H

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

Constitution of the Federal Republic of Nigeria 1999, s. 243(1)(b)  
 Court of Appeal Rules 2011, O. 17 r. 4(1)  
 Federal Supreme Court Rules 1961, O. 8 r. 4

***LEAD JUDGMENT BY NWEZE JSC***

At the instance of one of the prosecutorial agencies of the First respondent, namely, the Independent Corrupt Practices and Other Related Crimes Commission [throughout this judgment referred to as ICPC, for short], the High Court of the Federal Capital Territory (hereinafter referred to as the trial court) granted leave for the pre-ferment of Charge No: FCT/HC/CR/44/2010 against the second and third respondents in this appeal and the appellant [the third accused person in the said charge].

When the accused persons [the second and third respondents and the appellant in this appeal] were arraigned before the trial court, the appellant herein (as third accused person) sought, by Notice of Preliminary Objection, an order of the trial court setting aside the said leave [granted as aforesaid] and a further order of the said court quashing both the charge and his arraignment. The objection was premised on the ground that, since the ICPC was a delegate of the prosecutorial powers of the Federal Attorney General, it could not sub-delegate such powers to a private prosecutor. He invoked the old maxim, *delegatus non potest delegare*.

The trial court heard and dismissed the said objection, prompting the appellant's appeal to the Court of Appeal, Abuja Division (hereinafter, simply, referred to as "the Lower Court". At the Lower Court, the appellant's appeal was greeted with a Preliminary Objection. In the said objection, the first respondent in this appeal challenged the competence of his appeal. The sole ground was that the appellant failed to sign his Notice of Appeal personally. In its judgment of June 20, 2012, the Lower Court upheld the said objection and, in consequence, struck out the appellant's appeal.

This further appeal to this court is the appellant's expression of his grievance against the outcome of his appeal to the Lower Court. He identified two issues for our determination of his appeal thus:

1. Whether the Lower Court was right when their (sic, Their) Lordships held the appellant's failure to personally sign the Notice of Appeal operates to rob the Court of requisite jurisdiction to entertain the appellant's appeal?

2. Whether the Lower Court's failure/refusal/neglect to consider and make pronouncement on all the issues submitted for de-

termination was proper in law?

For the respondent, the following two issues were submitted for our consideration:

1. Whether or not the court below was right when it struck out the appellant's Notice of Appeal before it for incompetence?

B 2. Whether or not the failure of the Lower Court to pronounce on the issues in the main appeal before it after finding same to be incompetent occasioned any miscarriage of justice towards (sic) the appellant?

C The two sets of issues, though expressed in divergent phraseologies, essentially, deal with the main questions. We shall adopt the issues which the appellant formulated. After all, it is his appeal. Thus, the issues for the determination of this appeal are:

1. Whether the Lower Court was right when their Lordships D held the appellant's failure to personally sign the Notice of Appeal operates to rob the Court of requisite jurisdiction to entertain the appellant's appeal?

2. Whether the Lower Courts failure/refusal/neglect to consider and make pronouncement on all the issues submitted for determination was proper in law? E

#### ARGUMENTS OF COUNSEL ON THE ISSUES

##### ISSUE ONE

Whether the Lower Court was right when their (sic, Their) Lordships held the appellant's failure to personally sign the Notice of F Appeal operates to rob the Court of requisite jurisdiction to entertain the appellants appeal?

##### APPELLANT'S CONTENTION

When this appeal came up for hearing on December 12, 2014, G learned counsel for the appellant, T. Oshobi, who appeared with B. B. Lawal and L. Dunkwu, adopted the appellant's brief filed on November 23, 2012, although, deemed filed on November 14, 2013. He, equally, adopted the Reply brief filed on March 6, 2013.

H The main thrust of his submissions [paragraphs 4.1.2 - 4.1.22 of the main brief, on the one hand and paragraphs 1.1-4.2.21 of the reply brief] is that non-compliance with Order 17 Rule 4 (1) of the Court of Appeal Rules, 2011 [a provision requiring an appellant, in a criminal appeal, to sign the Notice of Appeal personally] is a mere irregularity. As such, it should not have precluded the Lower Court

from dealing with the main complaint in the appeal. In his view, the proviso to the above rule vested the Lower Court with discretion to overlook any incident of non-compliance. He placed reliance on the Court of Appeal decision in *Alintah v. FRN* (2010) 6 NWLR (Pt.1191) 508, 527-531; a decision that endorsed an earlier decision of the same Court of Appeal in *Chrisdon Industries Co. Ltd v. A.I.B. Ltd* (2002) 8 NWLR (Pt 768) 182. He cited *Ikpassa v AG. Bendel* [1981] 9 SC 7, 30-31. B

He drew attention to pages 360-362 of the record where the appellant declared his intention to prosecute his appeal and page 385 of the record which evidences the appellant's presence at the Lower Court on April 16, 2012. He contended that the above proviso was written into the Rules of the Lower Court in consonance with the prevailing shift from technicalities. He cited several authorities dealing with this shift in emphasis, [paragraph 4.1.11 of the brief]. C He veered off into the court's interpretation of the Legal Practitioner's Act, citing *Okafor v Nweke* [2007] 10 NWLR (pt 1043) 521 etc. Falling short of inviting this court to overrule its decisions in *Uwazurike v AG, Federation* [2007] 8 NWLR (Pt.1035) 1; *Adekanye v FRN* [2005] 15 NWLR (Pt 949) 433, 454 -456, he canvassed the view E that those cases did not consider the effect of the above proviso to the above-cited Order. Counsel expended energy on paragraphs 4.1 - 4.1. 34 of the Reply Brief in re-arguing the issues he had agitated in the main brief, In all, he urged the court to allow the appeal and set F aside the judgment of the Lower Court.

#### FIRST RESPONDENT'S ARGUMENTS

On his part, Kehinde Ogunwumiju, who appeared with Ademo Abimbola, for the first respondent, adopted the brief filed on December 7, 2012 and deemed, properly, filed on November 14, 2013. G Placing reliance on the said brief and the additional authority of *Iwunze v. FRN* [2014] 6 NWLR (Pt.1404) 580, he invited the court to discountenance the totality of the submissions offered on behalf of the appellant in the main and reply briefs.

In the said brief, which exemplifies the painstaking efforts which H characterize most of his briefs in this court, Kehinde Ogunwumiju methodically, advanced trenchant arguments why this court, just like the Lower Court, should not upset the long line of authorities of this court which had, consistently, found in favour of the approach of the

Lower Court. Citing Order 17 Rule 4 (1) of the Court of Appeal, 2011 and Uwazurike AG, Federation (supra), he contended that in a criminal appeal, the appellant must sign the Notice of Appeal personally. He pointed out that the provisions of Order 4 Rule 4 (1) of the Court of Appeal Rules, 1981, interpreted in Uwazurike v AG Federation (supra), were similarly worded like the provisions of Order 17 Rule 4 (1) (supra).

Observing that none of the provisos to the above rule operated in favour of the appellant, he maintained that rules of court which touch on competence and root of an action must be obeyed. Expectably, he unleashed so many cases on this point on the court, [paragraphs 4.10-4.11 of the respondent's brief]. He pointed out that the cases, which the appellant's counsel cited, were irrelevant just as the appellant's "affidavit for the record" was unhelpful to him, [paragraphs 4.12-4.21 of the brief].

He urged the court to resolve this issue against the appellant.

Keneth Omorua, who appeared with O. E. Bob, for the second and third respondents/confirmed to the court that he did not file any brief of argument in this appeal.

#### RESOLUTION OF ISSUE ONE

I find it curious that in the year 2011 of the Gregorian calendar, learned counsel who has the rare opportunity of practicing before our appellate courts could still relapse into the soft of avoidable faux pas that triggered off the first respondent's preliminary objection at the Lower Court. That objection yielded the said court's judgment now on appeal. So, since 2011, that is, for four whole years now, the appellant, through the disingenuous ploy of his counsel, has held up proceedings at the trial court relating to his alleged offences under the Corrupt Practices and other Related Offences Act. This is happening forty seven years after this court's definitive pronouncement in Umar Cham v. Gombe Native Authority (1964) NNLR 94, 95-96.

It would appear that Umar Cham v Gombe Native Authority (supra) was the proto-typical case to elicit a judicial clarification of the statutory prescription that, in a criminal appeal, the accused person must sign his Notice of Appeal personally. In that case, Order 8 Rule 4 of Federal Supreme Court Rules 1961 fell for construction. This Court interpreted the rule [similarly worded like Order 4 Rule 4 (1)

of the Court of Appeal Rules, 1981 and Order 17 Rule 4 (1) of the Rules of the Lower Court, 2011] to mean that “a notice of appeal in a criminal matter shall be signed by the appellant personally.”

Brett FJ, [with the concurrence of Bairamian JSC and Tailor FJ] took the pains to enunciate the rationale for this rule. According to the distinguished jurist:

“There are good reasons for insisting that a notice of appeal should be signed by the convicted person himself. He may believe that an appeal would be hopeless and be unwilling to suffer the suspense of waiting for it to be determined. In a non-capital case, he may fear that he would fare worse if a retrial was ordered, and in the case of an appeal against sentence, he may not wish to take the risk of having the sentence increased. He may recognize that he has done wrong and feel that he can best expiate his wrong-doing by undergoing the sentence passed on him.”

In effect, the rule codified in Order 17 Rule 4 (1) of the Court of Appeal Rules 2011 traces its pedigree to the ancestral provision in Order 8 Rule 4 of Federal Supreme Court Rules, 1961. Instructively, since Brett FJ’s eloquent rationalization in *Umaru Cham v. Gombe Native Authority* (supra), this court has had occasions to interpret subsequent rules of the Lower Court modeled on that pristine prescription in the Federal Supreme Court Rules (supra). Before we return to them, it would not be out of place to correct a wrong impression that was created by counsel for the appellant. In paragraph 4.1.25 of the reply brief, he cited the decision of the Lower Court in *Alintah v FRN* (2010) 6 NWLR (Pt. 1191) 508 and contended that the said case of *Alintah v FRN* (supra) was “reached in express reliance on the binding and compelling reason of Your Lordships per Udo Udoma JSC in *Ikpasa v. AG Bendel* [1981] 9 SC 7, 30-31.”

With respect, it is almost obvious that learned counsel only had a cursory glance at *Ikpasa v. AG Bendel* (supra) and its exquisite reasoning in response to the specific issues it was confronted with. It therefore, becomes necessary to re-examine the facts and decision in the said case here. In that case [*Ikpasa v AG Bendel*], Udo Udoma JSC gave insight to the nature of the objection that resulted in the appeal before this court. Instead of Criminal Form 1, which ought to have been used in giving the Notice of appeal, the appellant had used a Civil Form.

Counsel for the respondent, then submitted that the use of wrong form was a fundamental error and therefore fatal in view of the mandatory provisions of Order 8 Rule 3 of the old Supreme Court Rules applicable to the Federal Court of Appeal [as the Lower Court then was].

B The majority of the Court [Omo, Eboh and Agbaje, JJCA] overruled the objection and invoked Order 9 Rule 28 of the Rules of the Court and proceeded to hear and determine the appeal on its merits. The dissenting minority judgment [per Nnamaeka-Agu, JCA, as he then was] struck out the appeal on the ground that there was  
C no appeal properly before the court.

On appeal to this court, Udo Udoma JSC [speaking for the court] was of the opinion that that was a proper case for the exercise of the judicial discretion vested in the Federal Court of Appeal [as it  
D then was] by the invocation of O. 9 r. 28 of the Rules of the Court. His Lordship hinted on appellant's constraints and why the court's discretion should have been exercised in his favour. Listen to this:

*"The appellant was already confined in a condemned cell. He was no longer a free agent nor an ordinary prisoner undergoing ordinary incarceration. He was therefore at the mercy of the prisons  
E Authorities. It seems to me that in a case of this kind there ought to be in the prisons Department Officers sufficiently conversant with the court's procedure relating to the filing of a notice of appeal to render assistance to prisoners desirous of appealing against their conviction  
F and sentence."*

While conceding that the provisions of Order 8 Rule 3 were mandatory, he nevertheless took the view that: *"...to have denied the appellant the exercise of his constitutional right of appealing against  
G his conviction and sentence of death on a mere technicality in the circumstances disclosed in this matter might have been considered as having occasioned a miscarriage of justice; for apart from the form to which objection was taken, the appellant had filed eleven grounds of appeal with detailed particulars carefully numbered seriatim and contained in six pg. of foolscap size papers, which was a clear indication  
H of the determination on the part of the appellant to pursue his appeal."*

His Lordship further explained that:

*In any case, there were two limbs to the objection raised and*

argued in that appeal. The first aspect of the objection had to do with a defective bond and the other with a wrong notice of appeal which was directed not to the Supreme Court as the then court of appeal, but to the High Court of Lagos State in the Ikeja Judicial Division. The so-called notice, in addition to being wrongly headed was, contrary to the requirements of Civil Form 12 prescribed for use in terms of Order 7 Rule 2, signed not by the appellants themselves, but by their counsel.

In respect of the defective bond, this court had said at pages 54-55:

Our first impulse however was to invoke Order 9 Rule 28 of the Rules of the Court and so treat the matter as curable Irregularities amounting to non-compliance with the rules of the court having regard to the fact that the bond was prepared obviously by the Registrar of the court below who must ostensibly be held responsible for having used a wrong form for the purpose. The fault in that respect therefore cannot, at any rate, be laid at the door of the appellant. [Italics supplied for emphasis].

Against this background, it is almost crystal clear that Oshobi, for the appellant, did not acquaint himself with the peculiar facts that yielded the beneficent reasoning in the above case. His client, the present appellant, has not even taken his trial. His case, therefore, has no resemblance with the decision in Ikpassa (supra).

**In paragraph 4.1.2 of the appellant's brief, it was submitted that non-compliance with the above rule is "no more than a mere irregularity which cannot and should not preclude the court from the real issues raised in the appeal..." This cannot be correct. The jurisdiction of the Court of Appeal to entertain appeals does not derive from the sky or, to put it in the old Latin expression, in nubibus. It is rather statutory; it is equally guided by its Rules. That submission, indeed, betrays learned counsel's misunderstanding of the nature of the appeal process.**

Section 243(1)(b) of the Constitution of the Federal Republic of Nigeria (as amended) provides thus: 243 (1) Any right of appeal to the Court of Appeal from the decisions of the Federal High Court or a High Court conferred by this Constitution shall be-

(b) exercised in accordance with any Act of the National As-

*sembly and rules of court for the time being in force regulating the powers, practice and procedure of the Court of Appeal.* [Italics supplied for emphasis]

**Pursuant to this subsection, rights of appeal from the High Court to the Lower Court are exercisable in accordance, *inter alia* with the Court of Appeal Rules. Order 6 Rule 2 (1) of the Court of Appeal Rules, 2011 prescribes that every appeal shall be initiated through a Notice of Appeal. Such a notice is thus the most important foundational step in the building block in the appeal pyramid. Thus, any defect in it would render the appeal incompetent.** Okeke Amadi v. Okeke Okoli [1977] 7 SC 57, 58; Adelekan v. ECU-Line NV [2006] 12 NWLR (Pt.993) 33; Okolo v UBN Ltd. [2004] 3 NWLR (pt.859) 87; Ikweke v Ebele [2005] 11 NWLR (Pt.936) 397; Akpan v Bob [2010] 17 NWLR (pt.1224) 421; General Electric Co. v Akande [2010] 18 NWLR (Pt.1225) 596; Thor v FCMB Ltd [2002] 2 SCNJ 85; Ebokam v Ekwenibe and Sons Trading Coy Ltd [1977] 7 SCNJ 77; Uwazurike and Ors v. FRN (2007) LPELR -3448 (SC) 14, D-E.

That is not all. It is noteworthy that the appellants in all the cases decided thus far, on the prescription contained in Order 17 Rule 4 (1) (supra) were subject to one form of constraint or the other. For example, in Ikpasa (supra), the appellant was, already, confined in the condemned convicts' cell. As this court explained "he was no longer a free agent." With regard to the appellant in the present appeal, it was upon his arraignment that he brought a preliminary objection seeking to set aside the leave which the trial court granted to the first respondent and to quash the charge and his arraignment. It is therefore, surprising that instead of acknowledging the mistake of Oluwaseun Ben-Omotehinse of Babalakin and Co, who signed the Notice of Appeal, pages 274 of the record, and doing the needful, Iwunze v FRN (supra) 599 paragraph H, learned counsel for the appellant decided to embark on this appeal.

***Worse still, Oshobi, of counsel for the appellant, most impudently, invited this court to follow the decision of the Lower Court in Alintah v FRN (2010) 6 NWLR (Pt.1191) 508, 527-531 when in fact, this court in Iwunze v FRN [2014] 6 NWLR (Pt.1404) 580, 599, approvingly, re-affirmed Uwazurike v AG Federation (supra) as authority for the position that a notice***

**of appeal in a criminal appeal must be signed by the appellant. In effect, ever since the old decision in Umar Cham v Gombe Native Authority (supra) to the most recent decision in Iwunze v FRN (supra), this court has been consistent in its position that a notice of appeal in a criminal appeal must be signed by the appellant personally.** See also Ugochukwu Duru v FRN (2013) LPELR –19930 (SC) 16-7, paragraphs B-E.

**The exceptions are, of course, where he [such an appellant] comes within the beneficent exceptions set out in Order 17 Rules (5) and (6) or where there are extenuating circumstances which warrant his counsel discharging such a duty on his behalf.** See for example Ikpassa v. AG Bendel State (supra). **While the exception in sub-rule 5 relates to an appellant who is insane; sub-rule 6 permits certain categories of bodies corporate to sign notices of appeal in criminal appeals.** Umaru Cham v. Gombe Native Authority (supra). **None of these applies to the present appellant who is yet to take his trial.**

Learned counsel for the appellant, equally, submitted that the proviso to Order 17 Rule 4 (1) is a new feature of the 2011 Rules of the Lower Court and so, could not have been considered in Uwazurike's case which interpreted Order 4 Rule 4 (1) of the Court of Appeal Rules, 1981. Again, with respect, this is a specious argument woven in sheer sophistry. As indicated earlier, Order 4 Rule 4 (1) of the 1981 Rules of the Lower Court, like Order 17 Rule 4 (1) of the 2011 Rules (supra) and the proviso thereto, are legislative progeny of Order 8 Rule 4 of the Federal Supreme Rules (supra).

What is more, contrary to counsel's submission, Adekeye JCA (as she then was) considered the said proviso in Uwazurike and Ors v AG, Federation (2006) LPELR -11858 (CA) and still followed the above decisions of this court on the interpretation of the said rules of the Lower Court. On appeal, this court affirmed the said judgment. See Uwazurike and Ors v. AG Federation Uwazurike and Ors v FRN (2007) LPELR -3448 (SC). In all therefore, having regard to the settled position on this issue, see, Umar Cham v Gombe Native Authority (supra); Ikpassa v. AG, Bendel (supra); Uwazurike and Ors v AG, Federation (supra); Adekanye v. FRN (supra); Ugochukwu Duru v. FRN (supra); Iwunze v FRN (supra), I resolve this issue against and in favour of the respondent.

## ISSUE TWO

Whether or not the failure of the Lower Court to pronounce on the issues in the main appeal before it after finding same to be incompetent occasioned any miscarriage of justice towards (sic) the appellant?

### B APPELLANT'S SUBMISSIONS

In the main, the appellant, in this issue, inveighed against the judgment of the Lower Court on the ground that it elided the resolution of the two issues set out for its determination, citing page 398 of the record. Counsel contended that the Lower Court, being an intermediate court, was under obligation to pronounce on those two issues. He was generous in the authorities he cited on this issue, [paragraphs 4.2.4 - 4.2.12 of the brief]; see, also, paragraphs 4.2. 1-4.2.16 of the reply where he reiterated the earlier submissions on this point.

D He devoted the totality of the submissions on paragraphs 4.2.13 of the main brief and 4.2.20-4.2.21 of the reply brief to the justification of his invitation to this court to invoke section 22 of its constitutive Act, that is, the Supreme Court Act, and hear and determine the main issues in the appellant's appeal. He urged the court to resolve this issue in favour of the appellant.

### FIRST RESPONDENT'S REACTION TO ISSUE TWO

On his part, Kehinde Ogunwumiju, for the first respondent, canvassed the view that where a court finds that it lacks the requisite jurisdiction to entertain a matter, it has only one option which is to strike it out, citing *Obi v INEC* [2007] 11 NWLR (Pt.1046) 565, 628-629; *Lakanmi v Adene* [2003] 10 NWLR (pt.828) 353. He maintained that even if the Lower Court was in error, as contended, the alleged error did not occasion any miscarriage of justice on the appellant, *Kraus Thompson Org Ltd v. UNICAL* (2004) 9 NWLR (Pt.879) 631, 654; *Sule v The State* [2009] 17 NWLR (Pt.1169) 33, 64. He pointed out that the general position, on which the appellant hinged his arguments, would only have applied if he did not have the option to file a new Notice of Appeal, *Brawal v Shipping Ltd v. Onwadike H Co Ltd* [2000] 11 NWLR (Pt.678) 387.

On paragraphs 6.00-6.03 of the brief, he advanced reasons why it would be inappropriate for this court to invoke its section 22 powers. He urged the court to decline the appellant's invitation to the court to exercise its said section 22 powers.

## RESOLUTION OF ISSUE TWO

***It cannot be gainsaid that as a general rule, an intermediate court, like the Lower Court, has a duty to pronounce on all the issues before it.*** Federal Ministry of Health v Comet Shipping Agencies Ltd. [2009] 9 NWLR (Pt.1145) 193; Samba Petroleum Ltd and Ors v. UBA PLC and Ors [2010] 6 NWLR (Pt.) 530, 531; Brawal Shipping v Owonikoko [2000] 6 SCNJ 508, 522; Adeogun v. Fasogbon [2011] 8 NWLR (Pt.1250) 427; Ovunwo v. Woko [2011] 17 NWLR (Pt.1277) 522. ***That court is unlike this final court. As it is well-settled now, one major attribute which inheres in this court as the apex court is its power of isolating just one decisive issue, amongst others before it, and determining the appeal based on it.*** Shasi v Smith [2010] 6 NWLR 6 WRN 39, 68; Uzuda v Ebigah [2009] 48 WRN 1.

***However, there are some exceptions to the above broad rule that applies to the Lower Court, as an intermediate court. Thus, for example, where the said court, as an intermediate court, decides that it lacks jurisdiction in an appeal before it, it then, becomes unnecessary to consider other issues once it has taken a decision on the question of its jurisdiction.*** F.C.D.A. v. Sule [1994] 3 NWLR (Pt.332) 256, 282; Oro v. Falade [1995] 5 NWLR (Pt.396) 385, 407; Ifeanyi Chukwu Osondu Ltd v. Soleh Boneh Ltd [2000] 5 NWLR (Pt.656) 322, 352. ***It means therefore that where as was the case at the Lower Court, a preliminary objection challenging the competence of an appeal is upheld, it will be unnecessary to consider the arguments in support of the issues for determination distilled by the parties to the appeal.*** Onigemeh v. Egbochualam [1996] NWLR (Pt. 448) 255; NEPA v ANGO [2001] 15 NWLR (Pt.737) 627; Uwazurike and others v AG Federation (supra).

The appellant's complaint in this issue is that, at the Lower Court, he formulated two crucial issues for determination. However, when the Lower Court upheld the respondent's preliminary objection to the appeal, it *"failed, refused, neglected and/or omitted to give any consideration whatsoever to the parties' submissions..."* [paragraph 4.2.3 of the appellant's brief]. It was, however, the respondent's contention that where a court finds that it lacks jurisdiction, the appropriate order it should make is one striking out the matter, citing

Obi v. INEC [2007] 11 NWLR (Pt.1046) 565, 628-629.

Having regard to what I had said above, the respondent's submission is unanswerable, *Uwazurike and Ors v AG. Federation (supra)*; *Hambe and Anor v. Hueze and Ors* [2001] 2 SCNJ 31, 43; *Onyemah and Ors v. Egbuchulam and Ors* [1996] 5 NWLR (Pt.448) 255, 268; [1996] 4 SCNJ 237; *NEPA v Ango* [2001] 15 NWLR (Pt.737) 627. I find no merit in this issue and I hereby resolve it against the appellant.

In all, this appeal must be seen as one of those impish and unwholesome attempts to arm-twist the appeal process for as long as possible in what, evidently, is a wild goose chase. I find that I must, and I hereby enter an order dismissing it as being wholly unmeritorious. Appeal dismissed; judgment of the Lower Court is, hereby, affirmed.

D \_\_\_\_\_

### **MUNTAKA-COOMASSIE JSC**

I was opportune to have had a preview of the lead judgment rendered by Nweze JSC. I have read the issues and submissions articulated before us. I then compared them with the reasons and conclusions reached by my learned brother Nweze JSC. The reasons and conclusions tally with my understanding of the law on the subject. I entirely agreed with the points leading to dismissing this appeal. I therefore hold, as held by my learned brother that the appeal lacks merit. Same is therefore dismissed by me.

\_\_\_\_\_

### **RHODES-VIVOUR JSC**

I read in draft the leading judgment prepared by my learned brother, Nweze, JSC. I completely agree with his lordship's findings and conclusions. Briefly, the appellant and the 2nd and 3rd respondents were charged before an Abuja Federal High Court for various offences under the Corrupt Practices and other Related Offences Act, 2000. After the appellant was arraigned he sought before the court, inter alia, an order to quash the charge/s. Rather than accede to his prayer the learned trial judge dismissed this application to have the charges/s against him quashed.

He appealed, but failed to sign his Notice of Appeal personally.

The respondent filed a Preliminary Objection on the ground that the appellant failed to sign his Notice of Appeal personally. The Court of Appeal upheld the objection and struck out the appeal.

In *Iwunze v. FRN* (2014) 6 NWLR (Pt.1404) p.580, I said that:

*“By virtue of Order 16 Rule 4(1), (5) and (6) of the Court of Appeal Rules 2007 every Notice of Appeal in a criminal appeal must be signed by the appellant. Exceptions are if the appellant is insane, or is a company. Intrinsic in the above is the power of a judge to dispense with the mandatory provision of Order 16 Rule 4(1) when the interest of justice demands”*

My lord, Nweze, JSC did a detailed review on the cases on this issue decided by this court, starting with *Umar Cham v. Gombe Native Authority* (1964) NNLR p.94 and ending with *Iwunze* (supra). This court has been consistent in stating that where the originating process or initiating process, i.e. the Notice of Appeal is not signed by the appellant in criminal appeals, the appeal is incompetent. See further *Ipasa v. AG Bendel* (1981) 9 SC p.7.

The failure of appellant to sign his Notice of Appeal does not fall within any of the recognized exceptions as stated in *Iwunze v. FRN* (supra).

In such a situation the Court of Appeal has no jurisdiction to hear a criminal appeal that was not signed by the appellant. The judgment of the Lower Court is correct, and the appeal is dismissed.

---

### **NGWUTA JSC**

My noble Lords, I read before now lucid lead judgment just delivered by my learned brother, Nweze, JSC. While I agree entirely with His Lordship’s reasoning and conclusion, I would chip in a few words.

Not only are the two issues presented by each party substantially the same, the 1st and 2nd issues in each brief must sink or swim together. The success or failure of issue one will determine the fate of issue two.

Issue one relates to the competence of the notice of appeal and ipso facto, the jurisdiction of the Court. If the Court has no jurisdiction to hear the matter, a pronouncement on the main issue in the appeal will be an exercise in futility as any proceeding conducted

without jurisdiction is a nullity no matter how diligently conducted. See *National Bank v. Soyeye* (1977) 5 SC 181, *Ndeayi v. Ogunnaya* (1977) 1 SC 11.

A notice of appeal is an initiating process and failure by the appellant to sign the notice personally is an incurable defect which renders the notice of appeal incompetent. It is a condition precedent to a valid notice of appeal in a criminal case that the notice be signed by the appellant himself in line with Ord. 17 r.4 of the Court of Appeal Rules.

The reason for this rule as illustrated in *Umar Cham v. Gombe Native Authority* (1964) NALR 94, 95-96 cited in the lead judgment appears to me to be for the benefit of the appellant, the respondent and the Court itself. The appeal is bereft of merit and I also dismiss it.

---

D

### **AKA'AH'S JSC**

I was privileged to have a preview of the judgment of my learned brother, Nweze JSC. It is quite illuminating. It traces the evolution of Order 17 Rule 4(1) Court of Appeal Rules, 2011 which requires that the notice of appeal in a criminal matter shall be signed by the appellant personally. The provision is the same as Order 8 Rule 4 of the Federal Supreme Court Rules, 1961 which was construed in *Umar Cham vs Gombe Native Authority* (1964) NNLR 94.

It is to be noted that the trial of the appellant is yet to commence. It should become abundantly clear even to the layman that the sole aim of this appeal is to stall and eventually frustrate the actual trial of the appellant. It is in the interest of both the appellant and the wider society that his innocence or guilt is established as public confidence in the administration of criminal justice is eroded when those with means or the powerful erect legal bumps in the judicial process to delay justice. This leaves the people with no choice but to resort to lawlessness. The courts must stand firm to ensure that both the weak and mighty are equal before the law and anybody who is accused of committing an offence must be prepared to face his trial.

The appeal lacks merit and it is dismissed. It is hereby directed that the FCT High Court should proceed post haste with hearing of the case.