

**SUPREME COURT OF NIGERIA**  
FRIDAY 17TH APRIL, 2015. SC. 42/2005  
**CORAM:- I. T. MUHAMMAD, M. S. MUNTAKA-  
COOMASSIE, M. U. PETER-ODILI,  
K. M. O. KEKERE-EKUN, C. C. NWEZE, JJSC**

- |                                  |                  |
|----------------------------------|------------------|
| 1. CAPTAIN SHULGIN OLEKSANDR     |                  |
| 2. TYRKIN ANATOLIY               |                  |
| 3. COLUB ANALOLIY                | ..... APPELLANTS |
| 4. VLASYUK GENNADIY              |                  |
| 5. TIMCHENKO VOLODYMYR           |                  |
| AND                              |                  |
| 1. LONESTAR DRILLING COMPANY LTD |                  |
| 2. CHIEF H. I. S. IDISI          | .....RESPONDENTS |
- 

MARITIME LAW - Judgment - Appeal - As there was no appeal against the finding of trial court - Issue as to who was responsible for appellants' detention aboard the ship is settled (H1)

MARITIME LAW - Judgment - Validity - Conclusion reached by the lower court was based on proper appraisal of evidence - Hence there is no cogent reason to warrant interference (H2)

MARITIME LAW - Issue - Res judicata - Conditions for application of the doctrine are not available - Since neither the parties nor subject matter of the proceedings in England - Are the same in this appeal (H3)

**FACTS**

Plaintiffs/appellants commenced this action under the Fundamental Human Rights (Enforcement Procedure) Rules 1979 against defendants/respondents at the Federal High Court Lagos, as suit No. FHC/L/CS/81/98. The point of dispute in the matter is that a vessel named Dubai Valour was arrested and placed under the custody of the Admiral Marshal, following an arrest order made by the Federal High Court Benin City in suit no. FHC/B/228/92 filed by 1<sup>st</sup> respondent. Appellants were not parties to the suit in Benin City. Nevertheless, appellants' major contention for instituting the Lagos suit is that

they were unlawfully detained on the aforementioned vessel without food, water, bunkers and medical supplies. Appellants further stated that they had not been allowed to disembark and leave Nigeria due to the confiscation of their international passports and seamen's books.

Appellants therefore seek to enforce their fundamental human rights in the court. Hearing commenced in the matter and at the end of which the court found that appellants' fundamental rights had been breached. The court granted the reliefs sought by appellant. However, no order for award of compensation was made in favour of appellants. Respondents who were not satisfied with the decision of the court, appealed to the Court of Appeal Lagos Division. Appellants on their part, were displeased with the refusal of the court to award compensation in their favour. Hence, they filed cross-appeal. The appeal was allowed and cross-appeal dismissed. Aggrieved, appellants appealed to Supreme Court.

### **ISSUES FOR DETERMINATION**

1. Whether the Court of Appeal was right to have exonerated the respondents herein (4th & 5th respondents at the trial court) from responsibility for breach of the appellants' fundamental rights and the illegal and/or unlawful detention of the appellants in their vessel, "Dubai Valour" for over twenty (20) months?

3. Does the judgment of the Court of Appeal in England on the same issue namely, whether the respondents were guilty or not of false/wrongful imprisonment and/or detention of the appellants' hereto not constitute 'res judicata' or issue estoppels as between the parties hereto and/or their privies in the circumstances of the case?

4. Was it right for the Court of Appeal to have relied on what it called "fresh evidence" produced before the English Court alone, without more, to conclude that the respondents did not deny the appellants supply of food, bunkers and provisions?

5. Was the Court of Appeal right in failing and/or refusing to award any monetary compensation in favour of the appellants and against the respondents herein for the illegal and/or unlawful breach of the appellants' fundamental rights?

# **HELD** (Unanimously dismissing the appeal per **KEKERE-EKUN JSC**)

## *Judgment - Appeal*

**1. The respondents herein are clearly not agents or privies of the Nigerian Immigration service. It is also pertinent to note that there was no appeal against this crucial finding of the trial court. It is settled law that a decision of a court of competent jurisdiction not appealed against remains valid, subsisting and binding between the parties and is presumed to be acceptable to them. It therefore means that the issue as to who was responsible for the appellants' detention aboard the ship had been settled.** (p. 1320 H)

## *Judgment - Validity*

**2. As rightly found by the court below, Exhibits GO1 - GO95 cover the period from August 1997 when the vessel was detained by an order of the Federal High Court, Benin up to and including February 1998. They consist of invoices showing the supply of food, water, medical supplies and medical bills. These exhibits clearly debunked the appellants' claim that the respondents refused to permit any access to the ship. In arguing this appeal before us, the appellants have not shown any specific period not covered by the exhibits. It is settled law that an appellate court would not interfere with the judgment of a Lower Court unless it is shown that the decision is perverse; or that it is not based on a proper appraisal of the evidence; or there is a misapplication of the law to findings of fact properly made; or that there has been a miscarriage of justice occasioned by an error in procedural or substantive law.**

**In the instant case, I am satisfied that the conclusion reached by the Lower Court was based on a proper appraisal of the evidence before it. No cogent reason has been advanced by the appellant to warrant interference with those findings in this regard.** (p. 1324 E)

*MARITIME LAW - Issue - Res judicata*

**3. The conditions precedent to a successful plea of res judicata were amply set out by this Court in the case of *The Honda Place Ltd. Vs Globe Motors Ltd. (2005) 14 NWLR (945) 273 at 291 B-E as follows:***

**B (a) There must be an adjudication of the issues joined by the parties.**

**(b) The parties or their privies as the case may be must be the same in the present case as in the previous case.**

**C (c) The issues and subject matter must be the same in the previous case as in the present case.**

**(d) The adjudication on the previous case must have been by a court of competent jurisdiction.**

**D (e) The previous decision must have finally decided the issue between the parties, that is the rights of the parties must have been finally determined.**

**The parties to the proceedings before the Court of Appeal in England, as shown at page 548 of the record are:**

**1. Gulf Azo v Shipping Company Limited**

**E 2. The United Kingdom Mutual Steamship Assurance Association (Bermuda) Limited**

**And**

**1. Chief Humphrey Irikefe Idisi**

**F 2. Lonestar Drilling Nigeria Limited**

**3. Lonestar Overseas Limited**

**G Of the parties listed above, only the 1st and 2nd respondents in this appeal were parties to the proceedings in England. As rightly pointed out by learned Senior Counsel for the respondents, the claim before the court was in respect of losses incurred by the plaintiffs/ship owners against the defendants arising from the detention of the vessel in Nigeria. Interestingly Exhibits GO1 - GO95 were tendered before that court in proof of the period for which the vessel was detained**  
**H by showing the supply of food, water, bunkers and other necessities for the period. I am in full agreement with their Lordships of the court below that neither the parties nor the subject matter of the two cases is the same. The detention or otherwise of the present appellants was not in issue in that**

**case. In any event, as observed earlier, there is no appeal against the finding of the trial court that the Nigerian Immigration Service was responsible for the appellants' detention. I agree with their Lordships that the appellants failed to establish the conditions for the application of the doctrine of res judicata or issue estoppel in this case. This issue is accordingly answered in the negative and resolved against the appellants.** (p. 1328 A) B

## NOTABLE POINTS OF INTEREST C

### **KEKERE-EKUN JSC**

#### ***1. Appeals – Grounds – Particulars***

With regard to Grounds 6, 7, 8 and 9 of the grounds of appeal, the law is settled that particulars of error alleged in a ground of appeal are intended to highlight the complaint against the judgment on appeal. They are the specification of the error or misdirection complained of in order to demonstrate how the complaint will be canvassed in an attempt to reveal the flaw in a particular portion of the judgment. Particulars must not be independent of the ground of appeal but ancillary to it. (p. 1312 H) D  
E

#### ***2. Issue estoppel and estoppel per rem judicatam – Difference***

It is pertinent to note that although issue estoppel and estoppel per rem judicatam both come under one head of estoppel by judgment, there are subtle differences between the two. The difference was clearly illustrated by this court in: Oshodi Vs Eyifunmi (2000) 13 NWLR (Pt.684) 298 @ 326 A - D, thus: F

*“This type of estoppel are of two kinds. There is the cause of action estoppel which effectively precludes a party to an action or his agents or privies from disputing, as against the other party in any subsequent proceedings matters which had been adjudicated upon previously by a court of competent jurisdiction between him and his adversary and involving the same issues.* G  
H

*There is the second class of estoppel which is issue estoppel: within a cause of action, several issues may come into question which are necessary for the determination of the whole case. The rule is*

*that once one or more of such issues have been distinctly raised in a cause of action and appropriately resolved or determined between the same parties in a court of competent jurisdiction, as a general rule, neither party nor his servant, agent or privy is allowed to re-open or re-litigate that or those decided issues all over again in another action between the same parties or their agents or privies on the same issues.”*

Issue estoppel may arise where a plea of *res judicata* could not be established because the cause of action is not the same.

(p. 1327 D)

### **NWEZE JSC**

#### ***3. Appeals – Grounds – Effect of defective particulars***

Having said that, it remains to be added that there is now a current shift of emphasis from technical justice to substantial justice. In this context, it is instructive to note that this court acknowledges that an appellant is required to highlight the misdirection or error in law complained of. However, consistent with this shifting trend, it has been held that it is not every failure to do so that would render the ground so couched incompetent. This is, particularly, so where sufficient particulars can be gleaned from the ground of appeal in question and the opponent and the court are left in no doubt as to the particulars on which the ground is founded.

Even then, courts are now encouraged to make the best they can out of a bad or inelegant ground of appeal in the interest of justice. Hence, defective particulars in a ground of appeal would not, necessarily, render the ground itself incompetent. (p. 1346 B)

### **REPRESENTATION**

Ayo Olorunfemi Esq., with O. Yusuf Esq., For the Appellants  
N. I. Ntiaidem (Miss); For the Respondents

### **CASES REFERRED TO**

- Obatoyinbo v. Oshatoba (1996) 5 NWLR (pt. 450) 531
- Oni v. Fayemi (2008) 8 NWLR (pt. 1089) 400
- Akibu v. Oduntan (2000) 13 NWLR (pt. 685) 446
- Honika Sawmill Nig. Ltd. v. Hoff (1994) 2 NWLR (pt. 326) 252
- Kachia v. Yazid (2007) 17 NWLR (pt. 742) 431

Yelwa v. Umar (2005) All FWLR (pt. 291) 1670  
Globe Fishing Ind. Ltd. v. Coker (1990) 7 NWLR (pt. 162) 265  
Osasona v. Ajayi (2004) 14 NWLR (pt. 894) 527  
Diamond Bank Ltd. v. P.I.C. Co. Ltd. (2009) 18 NWLR (pt. 1172) 67  
F.H.A. v. Kalejaiye (2010) 19 NWLR (pt. 1226) 147  
MILAD of Benue State v. Udegede (2001) 17 NWLR (pt. 741) 194 B  
Ogboru v. Uduaghan (2012) 11 NWLR (pt. 1311) 357  
Uzoukwu v. Ezeonu II (1991) 6 NWLR (pt. 200) 708  
Fawehinmi v. Abacha (1996) 5 NWLR (pt. 447) 198  
Iyoho v. Effiong (2007) 11 NWLR (pt. 1044) 31 C

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

Constitution of the Federal Republic of Nigeria 1999, ss. 233 (2)(3), 318(1)  
Supreme Court Rules, O. 8 r. 2(2) D

### **LEAD JUDGMENT BY KEKERE-EKUN JSC**

This is an appeal against the judgment of the Court of Appeal, Lagos Division delivered on 16/9/2002 setting aside the ruling of the Federal High Court, Lagos (the trial court) delivered on 19/6/1998 E which held that the respondents herein had breached the fundamental rights of the present appellants and granted various consequential reliefs accordingly.

The appellants, Ukranian nationals, were crew members of a vessel named Dubai Valour, which was arrested and placed under the custody of the Admiral Marshal pursuant to an arrest order made on 5/8/1997 by the Federal High Court, Benin City in suit no. FHC/B/228/92 filed by the 1st respondent, as plaintiff, against five defendants. The vessel M/V Dubai Valour was the 4th defendant. The G present appellants were not parties to that suit. However it was their contention that they were unlawfully detained on the vessel without food, water, bunkers and medical supplies and had not been allowed to disembark and leave Nigeria because their international passports and seamen's books had been seized. They therefore instituted proceedings before the Federal High Court in Lagos in suit No. FHC/L/CS/81/98 against (1) The Attorney General of the Federation, (2) Comptroller General of Immigrations, (3) Minister of Internal Affairs, H (4) Lonestar Drilling Co. Ltd. (1st respondent herein), and (5) Chief

H. L. S. Idisi (2nd respondent herein). By a motion on notice dated 27/1/1998 the appellants sought the following reliefs:

(a) An order enforcing the Appellants' fundamental human rights to personal freedom and liberty pending the hearing and determination of the substantive suit to be heard within such time as  
B may be directed by this honourable Court, and

(b) An order directing the Defendants/Respondents either by themselves, their servants, agents, and/or privies and/or anyone acting for or purporting to act on their behalf to return forthwith to the  
C Plaintiffs/Applicants all their International Passports and/or Seamen's Pass Books and/or to do everything necessary to facilitate their disembarkation from the Vessel, "Dubai Valour" and travel out of this country to their countries without let or hindrance and US\$5,000,000 (Five Million US Dollars) damages for wrongful and/or illegal detention of the Applicants, and for such order or further orders as to this  
D Honourable Court may deem fit to make in the circumstances.

(c) An order allowing the Plaintiffs and their vessel to be supplied with bunkers, fresh water, provision and medicare without hindrance by the Defendants or any one claiming for or in trust for  
E them.

After hearing arguments on the application, the learned trial Judge, in a considered ruling delivered on 19/6/98, held that the appellants' fundamental rights had been breached and granted the reliefs sought. He however declined to make an order for the award  
F of compensation in their favour. The respondents were dissatisfied with the ruling and appealed to the Lower Court. The appellants were also dissatisfied with the refusal of the court to award compensation in their favour and filed a cross appeal. In a considered judgment delivered on 16/9/2002 the Lower Court allowed the appeal  
G and dismissed the cross appeal. The appellants are dissatisfied with the decision and have appealed to this court vide their notice of appeal dated 26/11/2002 containing 9 grounds of appeal.

The parties before us duly filed and exchanged their respective  
H briefs of argument. The appellants' brief, settled by FEMI ATOYEBI, SAN, was deemed properly filed on 16/1/2008. The respondents' brief settled by CHIEF T. J. ONOMIGBO OKPOKO, SAN, was deemed filed on 20/2/2013. At the hearing of the appeal on 27/1/2015, MISS N. I. NTIAIDEM who represented the respondents drew the court's



attention to the preliminary objection raised and argued at pages 1 - 8 of the respondents' brief and urged us to sustain the objection. AYO OLORUNFEMI ESQ, who represented the appellants adopted and relied on the appellants' brief. He urged us to overrule the preliminary objection and to allow the appeal. MISS NTIAIDEM urged us to dismiss the appeal. B

The appellants and the respondents each distilled five issues for determination. The appellants' issues are as follows:

1. Whether the Court of Appeal was right to have exonerated the respondents herein (4th & 5th respondents at the trial court) from responsibility for breach of the appellants' fundamental rights and the illegal and/or unlawful detention of the appellants in their vessel, "Dubai Valour" for over twenty (20) months? (Grounds 1, 4, 6 & 7) C

2. Is the decision by the Court of Appeal that the appellants D were wrong to have initiated the human rights action in Lagos not an obiter dictum? If no, whether the appellant's initiation of the present action in Lagos could be said to be wrongful law? (Ground 3)

3. Does the judgment of the Court of Appeal in England on the same issue namely, whether the respondents were guilty or not of false/wrongful imprisonment and/or detention of the appellants' hereto not constitute 'res judicata' or issue estoppels as between the parties hereto and/or their privies in the circumstances of the case? (Grounds 5 & 9) E

4. Was it right for the Court of Appeal to have relied on what it F called "fresh evidence" produced before the English Court alone, without more, to conclude that the respondents did not deny the appellants supply of food, bunkers and provisions? (Ground 8)

5. Was the Court of Appeal right in failing and/or refusing to G award any monetary compensation in favour of the appellants and against the respondents herein for the illegal and/or unlawful breach of the appellants' fundamental rights? (Ground 2)

The issues formulated by the respondents are:

1. Whether the learned Justices were wrong in holding that H respondents were not responsible for breach of appellants' alleged rights?

2. Whether the obiter or passing observations or remarks of the learned Justices which did not form the basis of the decision of

the Court constitute a valid basis for an appeal and if so, did the observations cause a miscarriage of justice in this case?

3. Whether appellants were entitled to an award of damages against respondents having regard to the finding of the learned trial Judge and the decision of the learned Justices?

B 4. Whether the learned Justices were wrong in law in not receiving the English decision as a binding judicial authority - establishing the defence of *res judicata* and or as creating issue estoppel?

5. Whether the learned Justices were wrong in the use they made of the said evidence?

C I am of the view that the issues formulated by the appellants will adequately address the issues in controversy in this appeal.

The appeal will therefore be determined on the said issues.

D However before delving into the merit of the appeal it is necessary to determine the preliminary objection raised and argued at pages 3 - 8 of the respondents' brief.

#### Preliminary Objection

The first ground of objection is that grounds 3 and 4 of the notice of appeal are complaints in respect of obiter dicta of the learned Justices of the Lower Court, which did not form the basis of the judgment appealed against. Learned Senior Counsel, Chief Okpoko, SAN, submitted that the right of appeal conferred by Section 233 (2) and (3) of the 1999 Constitution (as amended) is in respect of a 'decision' of a court and not in respect of passing remarks or observations made by the court. He relied on: *Obatoyinbo v. Oshatoba* (1996) 5 NWLR (Pt. 450) 531 @ 549 F; *Oni v. Fayemi* (2008) 8 NWLR (Pt. 1089) 400 @ 427 H - E; *Akibu v. Oduntan* (2000) 13 NWLR (Pt.685) 446 @ 462- 463.

G Secondly, it is contended that Grounds 6, 7, 8 and 9, which complain of misdirection on the facts, are incompetent for failure to satisfy the mandatory requirement of Order 8 Rule 2 (2) of the Supreme Court Rules on the ground that the particulars of misdirection or error given do not relate to the complaints in the said grounds. He referred to: *Honika Sawmill (Nig.) Ltd. Vs Hoff* (1994) 2 NWLR (Pt.326) 252 @ 262 - 263; *Kachia v. Yazid* (2007) 17 NWLR (Pt. 742) 431 @ 460; *Abdullahi Yelwa Vs Garba Umar* (2005) ALL FWLR (Pt. 291) 1670 @ 1694. The appellants did not respond to the objections.

As rightly submitted by learned Senior counsel for the respondents, the right conferred on a litigant pursuant to Section 233 (2) of the 1999 Constitution is the right to appeal against decisions of the Court of Appeal in respect of the matters enumerated therein. Section 318(1) of the Constitution provides:

“‘decision’ means, in relation to a court, any determination of that court and includes judgment, decree, order, conviction, sentence or recommendation.” <sup>B</sup>

I had cause, in a recent decision of this court in *Ominiya Vs Alabi SC.41/2004* delivered on 27/2/2015, to explain the distinction between “obiter dictum” and “ratio decidendi” as follows: <sup>C</sup>

“The law is settled that issues for determination must be distilled from the grounds of appeal, which in turn must be predicated upon the ratio decidendi of the decision of the court appealed against. See: *Honika Sawmill (Nig.) Ltd. v. Hoff* (1994) 2 NWLR (Pt. 326) 252; *Briggs v. C.L.O.R.S.N.* (2005) 12 NWLR (Pt. 938) 59 at 90 F-H; *Dalek Nig. Ltd. v. OMPADEC* (2007) ALL FWLR (Pt. 364) 204 at 226 F-H. The ratio decidendi of a case is the principle or rule of law upon which a court’s decision is founded. See: *Black’s Law Dictionary* (8th edition); also: *A.I.C. Ltd. v. NNPC* (2005) 11 NWLR (Pt.937) 563; *Ajibola vs Ajadi* (2004) 14 NWLR (Pt. 892) 14. On the other hand obiter dicta or obiter dictum means, “something said in passing”. It is a judicial comment made while delivering a judicial opinion, but one that does not embody the decision of the court. See: *Black’s Law Dictionary* (supra) and *A.I.C. Ltd. v. NNPC* (supra); *Akibu v. Oduntan* (2000) 13 NWLR (Pt.685) 406; *Odessa v. F.R.N. (No.2)* (2005) 10 NWLR (Pt.934) 528 at 555 B.” <sup>E</sup>

Grounds 3 and 4 of the grounds of appeal, shorn of their particulars read thus: <sup>F</sup>

Ground 3: The learned Justices of the Court of Appeal erred in law when they held that the initiation of the Human Rights action in Lagos was wrongful. <sup>G</sup>

Ground 4: The learned Justices of the Court of Appeal erred in law when they held that “if there was any detention of the crew members (here the Appellants) it was by the force of order of the Court of Law” and not by the Respondents. <sup>H</sup>

I have carefully examined the judgment of the court below, particularly at page 817 of Volume II of the record. One of the issues

in contention before the court was whether the decision of the Court of Appeal of England in *Gulf Azoy Shipping Co. Ltd. & Anor. Vs Idisi & Ors.* (2002) 1 Lloyd's Reports 727, which held that the present respondents were responsible for the detention of the crew aboard M/V Dubai Valour, constitutes *res judicata* as between the parties to this appeal. The court held that the plea was unsustainable. The court, per Aderemi JCA (as he then was) held at pages 816 - 817 of Vol. II of the record:

*"As I have pointed out supra, if there was any detention of the crew members - the cross-appellant: it was by force of order of a court of law. ...No doubt one of the parties to a case must be aggrieved by the judgment. The only course open to him is to appeal against the ruling or judgment of a court that aggrieved him... If the cross-appellants were aggrieved by the ruling of the court below refusing their application for evacuation, the best they could do was to appeal against that order. It was wrong of them to have initiated the suit which culminated in the ruling of the court below delivered on 19th June, 1998 - the subject matter of this appeal."*

It is clear from the portion of the judgment reproduced above that the remark regarding the form of action instituted by the cross-appellants at the trial court that led to the appeal was a passing remark that had no bearing on the issues before the court or the final decision reached therein. The remark amounted to *obiter dictum*, which could not form the basis of a ground of appeal. Ground 3 of the notice of appeal and issue 2 formulated thereon are therefore incompetent and accordingly struck out.

On the other hand, the view of the court that the appellants were detained by "the force of order of a court of law", which formed the basis of the complaint in ground 4 was not a mere passing remark, as the final decision of the court was based partly on its belief that the appellants' detention was based on a court order. Ground 4 and issue 1 formulated from Grounds 1, 4, 6 and 7 are therefore competent.

With regard to Grounds 6, 7, 8 and 9 of the grounds of appeal, the law is settled that particulars of error alleged in a ground of appeal are intended to highlight the complaint against the judgment on appeal. They are the specification of the error or misdirection complained of in order to demonstrate how the complaint will be

canvassed in an attempt to reveal the flaw in a particular portion of the judgment. Particulars must not be independent of the ground of appeal but ancillary to it. See *Globe Fishing Ind. Ltd. v. Coker* (1990) 7 NWLR (Pt.162) 265; *Osasona v. Ajayi* (2004) 14 NWLR (Pt. 894) 527 @ 545 E - H; *Diamond Bank Ltd. v. P.I.C. Co. Ltd.* (2009) 18 NWLR (Pt. 1172) 67. B

I have carefully examined the particulars of Grounds 6, 7, 8 & 9. There is no doubt that the particulars are prolix, unwieldy and argumentative. The particulars of a ground of appeal are expected to highlight briefly the misdirection or error in law complained of. The merit of the appeal should not be argued under the guise of supplying particulars. This is because an appeal is argued not on the grounds of appeal but on the basis of issues formulated therefrom, which may encompass more than one ground of appeal. C

It was held in *F.H.A. v. Kalejaiye* (2010) 19 NWLR (Pt. 1226) D 147 that in reading a ground of appeal and its particulars, the adverse party must be left in no doubt as to what the complaint of the appellant is. In the words of Ayoola, JSC in *Military Administrator of Benue State Vs. Udegede* (2001) 17 NWLR (Pt. 741) 194 @ 212-213 G - H: E

*“Where parties to an appeal and the court are not misled by the contents of a ground of appeal, complaint about its form becomes a technicality which does not occasion a miscarriage of justice and is inconsequential.”*

See also: *Ogboru Vs Uduaghan* (2012) 11 NWLR (Pt.1311) F 357 @ 380 B-D.

Thus, notwithstanding the inelegant drafting of the particulars of Grounds 6, 7, 8 & 9, the respondents and indeed the court are not in any doubt as to what the appellants' complaints are. I hold G that the particulars of Grounds 6, 7, 9 & 9 are in substantial compliance with the requirement of the law and the said grounds are therefore competent.

In conclusion, the preliminary objection is sustained in respect of Ground 3 and issue 2 formulated thereon only. The said ground H and issue are accordingly struck out. The objection fails in respect of Grounds 6, 7, 8 and 9. The said grounds are competent, it follows that issues 1, 3, 4 and 5 are competent and shall be considered on their merits. They are hereby renumbered as Issues 1, 2, 3 and 4.

## ISSUE 1

Whether the Court of Appeal was right to have exonerated the respondents herein (4th & 5th respondents at the trial court) from responsibility for breach of the appellants' fundamental rights and the illegal and/or unlawful detention of the appellants in their  
B vessel, "Dubai Valour" for over twenty (20) months?

In arguing this issue, learned Senior Counsel for the appellants, FEMI ATOYEBI, SAN, submitted that the Lower Court, in coming to the conclusion that the ruling of the learned trial Judge did not  
C reflect a thorough appraisal of the affidavit evidence before the court, overlooked certain letters, e-mails and fax messages attached as exhibits to the affidavits before the court, which he contends clearly point to the culpability of the respondents in the breach of the appellants' fundamental rights.

He submitted that the findings made by the learned trial Judge flowed directly from the evidence and materials placed before the court. He also submitted that the facts found and relied upon by the trial court were sufficiently proved by the appellants and uncontroverted by the respondents. He maintained that there was abundant  
E evidence to prove that the respondents did everything in their power to frustrate the evacuation or disembarkation of the crew from the vessel and access thereto by the owners. In paragraph 3.13 of his brief, Learned Senior Counsel set out specific aspects of the evidence  
F before the courts below, which in his view, demonstrated clearly the infringement of the appellants' fundamental rights by the respondents, by detaining them aboard the vessel and preventing them from disembarking.

Learned Senior Counsel argued that the filing of a motion ex  
G parte to shift the vessel to the respondents' backyard, and the positioning of drilling platforms in front of and behind it, was a clear indication of an intention to secure exclusive custody and control of the vessel and crew. He contended that the 1st respondents' averment in its reply to further affidavit deposed to on 30/1/98 before  
H the Federal High Court in Benin to the effect that it positioned its drilling platforms in front of and behind the vessel because it noticed "an active preparation by Master of the vessel to attempt another escape" confirmed the appellants' contention that the vessel and 'crew were under the respondents' exclusive control and that it was also

why they were aware that a crew member was sick and taken ashore for treatment. He maintained further that the faxes from the master of the vessel about the conditions on board constituted credible evidence of the fact that they were denied necessary supplies. He contended that the letter from an independent company whose tugboat was hired but was denied access to the vessel by the respondents also constituted credible evidence upon which the trial court rightly relied. He referred to a letter written by Union Freight Forwarders Ltd. to the Nigerian Immigration Service (Exhibit A1 at pages 159 - 160 of the record) which mentioned a court order to arrest the vessel and a subsequent order to shift the vessel; its request to the master of the vessel to submit all traveling documents for revalidation with the Immigration Service (which the master failed to produce); and its request for the dispatch of immigration officers to the ship for security purposes. He argued that the only way Union Freight Forwarders Ltd., which was not a party to the suit, could have known about the court orders, which were obtained ex-parte, was through the respondents.

He referred to Exhibits GO1 - GO95 - invoices for the supply of water, food and other necessities tendered by the owners of the vessel before the High Court of Justice in England, which were admitted by the Lower Court as fresh evidence. He submitted that the invoices cover a period of only eight months out of the entire period spent by the appellants inside the vessel and could therefore not absolve the respondents of responsibility for the flagrant breach of their rights. He submitted that it was not the appellants' case that they were not supplied with food for over eight months but that there were times when the respondents made it impossible to deliver food, water and other necessities to the crew. He referred to the findings of the trial court in this regard at page 422 lines 1 - 5 and pages 425 - 426 of Vol. II of the record. He submitted that the learned trial Judge was right to have found them liable.

He referred to the reliefs sought by the appellants in their statement of facts and reliefs at the trial court and submitted that a detention, which infringes on the appellants' right to dignity, which includes harassing, threatening or taking any step that would threaten and/or jeopardize that right, would be unconstitutional. He submitted that the right to dignity of the human person can be subsumed in the

right to personal liberty and urged the court to hold that denying the appellants access to the basic necessities of life constitutes a flagrant abuse of their fundamental rights. He referred to: Uzoukwu Vs Ezeonu II (1991) 6 NWLR (Pt.200) 708 @ 765 & 778; Fawehinmi Vs Abacha (1996) 5 NWLR (Pt.447) 198. He submitted that the findings of the learned trial Judge in this regard cannot be faulted and that the finding of the Lower Court that the appellants' detention was by the force of the order of a court was wrong. He submitted that the fact that there was no court order detaining the crew was confirmed by the ruling of Egbo-Egbo, J at page 196 of the record wherein the learned trial Judge refused the application for the appellants' release on the ground that there was no order to detain them in the first place. He made copious reference to the judgment of the English Court of Appeal in support of the contention that the appellants were unlawfully detained by the respondents and urged this court to resolve the issue against them.

In reply to the above submissions, learned Senior Counsel for the respondents submitted that the case of the appellants as set out in their motion on notice a pages 126 - 127 of the record was predicated on the allegation that their passports and seamen's passbooks were impounded by the respondents, which prevented them from disembarking from the vessel. That their case throughout was that it was the seizure of their travel documents that constituted the unlawful detention since they could not disembark without them. He submitted that the learned trial Judge clearly appreciated the basis of the appellants' complaint when he queried at page 18 of the supplementary record:

*"Have the applicants been arrested and detained by the defendants, by virtue of the seizure of the applicants' passports?"*

He noted further that in the course of its ruling, the trial court held that the impounding of the appellants' passports and Seaman's travel books was a clear breach of their right to freedom of movement and a restriction of their right to personal liberty and held categorically that the Immigration Authorities represented by the 2nd and 3rd respondents (Minister of Internal Affairs and Comptroller of Immigration respectively) were responsible for the breach. He submitted that the appellants did not appeal against this finding.

Learned Senior Counsel argued that the judgment of the trial



court was speculative, inconsistent and contradictory and therefore rightly set aside by the Lower Court. He argued that having held that the 2nd and 3rd respondents were responsible for the appellants' detention, it was contradictory for the learned trial Judge to later hold that it was the respondents who detained them. He submitted that it was not the appellants' case that the respondents had a duty, legal or contractual, to supply them with food, water, bunkers etc., and therefore there could not be a valid finding of denial of these items without proof of a duty to so provide.

He submitted that there was no finding that the positioning of the respondents' platform behind and in front of the vessel constituted the act of detention complained of and that in any event Exhibits GO1 - GO95 were proof that the vessel received supplies. He observed that there was no finding that any act of the respondents instigated the detention of the vessel. He also submitted that there was no evidence of inhuman treatment or fear of enemy attack. He contended that the appellants failed to refer to any evidence to support the trial court's findings.

Learned Senior Counsel submitted that it is wrong for the appellants to contend that their averments were uncontroverted, having regard to the fact that the respondents strongly denied the appellants' assertions in their counter affidavits. He submitted that the learned trial Judge neither called for oral evidence to resolve the conflicting affidavit evidence nor gave any reason for preferring one set over the other. He argued that any decision reached without resolving the conflicts could not stand. He submitted that the matters mentioned by learned Senior Counsel in paragraph 3.13 of his brief, such as the positioning of the drilling platform, the fact that the respondents vehemently opposed an application to evacuate the crew members and the allegation of denial of access to the ship, do not constitute evidence supporting the judgment of the learned trial Judge.

He submitted that having regard to its finding that it was the seizure of the appellants' passports and other documents by the 2nd and 3rd respondents (the Immigration Authority) that constituted the breach of their rights, the Lower Court was right when it narrowed down the issue for determination to a resolution of the question whether the respondents caused the appellants to be detained by impounding their passports and other travel documents. He sub-

mitted that the subsequent finding of the learned trial Judge in the same ruling that the 4th and 5th respondents (1st and 2nd respondents in this appeal) had breached the appellants' rights is inconsistent. He submitted that the court below was right when it held that the conclusion was reached without a proper appraisal of the affidavit evidence before it. He submitted that there was no appeal against the finding of the trial court that the Nigerian Immigration Service impounded the appellants' travel documents and were therefore responsible for their detention. He was of the view that the Lower Court rightly held that there was no basis for laying blame on the respondents in the circumstances.

Referring to the invoices, Exhibits GO1-GO95, admitted before the Lower Court as fresh evidence, learned senior counsel submitted that the said documents, showing supplies made to the vessel during the period that the appellants, claimed the respondents denied access to it, knocked the bottom off their case.

He noted that based on these documents the Lower Court rightly found that all essential supplies were made to and received by the vessel during the period complained of. He argued that the appellants have failed to show that the finding is perverse.

He urged the court to resolve this issue against the appellants. In order to determine this issue it is necessary to appreciate the complaint that was made before the trial court. I reproduced the reliefs sought by the appellants in their application to enforce their fundamental rights earlier in this judgment. Prayers (b) and (c) are for the following orders:

*"(b) An order directing the Defendants/Respondents either by themselves, their servants, agents, and/or privies and/or anyone acting for or purporting to act on their behalf to return forthwith to the Plaintiffs/Applicants all their International Passports and - Seamen's Pass Books and/or to do everything necessary to facilitate their disembarkation from the Vessel "Dubai Valour" and travel out of this country to their countries without let or hindrance and US\$5,000,000 (Five Million US Dollars) damages for wrongful and - illegal detention of the Applicants and for such order or further orders as to this Honourable Court may deem fit to make in the circumstances.*

*(c) An order allowing the plaintiffs and their vessel to be supplied with bunkers, fresh water, provisions and medicare without hin-*

*drance by the defendants or anyone claiming for or in trust for them.”*  
(Emphasis mine)

It is in prayer (b) that the allegation of a breach of the appellants’ fundamental rights to personal liberty by wrongful detention is made and it is premised upon the seizure of their passports and seamen’s passbooks. Prayer (c) is a separate relief for the supply of necessities to the ship. In the supporting affidavit it is averred that the 2nd and 3rd respondents (the Minister of Internal Affairs and the Comptroller of Immigrations) demanded and impounded the appellants’ international passports and seamen’s passbooks. It is further averred that the 4th defendant (1st respondent in this appeal) in connivance with the Comptroller of Immigration and the 2nd respondent herein had been using extra judicial means to prevent the ship from sailing, had prevented the crew from disembarking and had denied the Protective Agents (Gulf Agency Company) access to the ship to supply food, water, bunkers, etc. to the crew.

The 2nd and 3rd respondents (the Immigration Authority) denied preventing the appellants from disembarking from the ship. They referred to the appellants’ supporting affidavit wherein they averred that they voluntarily surrendered their documents through the 4th and 5th respondents. They averred that all they needed to do was to apply for shore leave, which they had not done. They also averred that there was no time the appellants applied for the supply of food, water, bunkers, etc. and the request was refused. The 4th and 5th respondents (the 1st and 2nd respondents in this appeal) also filed a counter affidavit denying the appellants’ allegations. Contrary to the appellants’ assertions, the averments in their supporting affidavit were stoutly controverted by the respondents. The main issues before the court were:

- i. Who was responsible for the appellants’ detention on board the vessel; and
- ii. Whether the respondents denied the appellants access to food, water, bunkers, etc.

In answer to the first issue, the court held inter alia at page 34 lines 6-26 of the supplementary record:

*“Who then has withheld the applicants’ passports?:*

*(a) The applicants alleged that the passports were delivered to the 2nd, 3rd and 4th respondents (that is, the Minister of Internal*

*Affairs, the Comptroller of Immigration and Lone Star Drilling Co. (paras. 11 and 12).*

(b) 4th and 5th respondents in para 11 of counter affidavit state that the Immigration demanded the passports. (See also Exhibit A annexed to counter affidavit which suggests the Immigration impounded the passports;

(c) Para 9 of the 2nd and 3rd respondents' counter affidavit admit holding the passports, but that the applicants have not applied for the return of the passports.

I therefore have no doubt, upon the affidavit and documentary exhibit before this court- that the 2nd Immigration and their agents did impound the passports and the travel papers of the 27-man crew of the M/V Dubai Valour." (Emphasis mine)

On the circumstances in which a citizen's right to personal liberty may be curtailed, the learned trial Judge quoted the provisions of Section 32 (a) - (c) of the 1979 Constitution and Section 12 (2) of the African Charter on Human and People's Rights and held that the applicants do not fall within any of the categories of restriction created in those provisions. His Lordship therefore held at page 35 lines 16 -23 and at page 36 lines 24-30 of the supplementary record:

"For that reason therefore, the impounding and withholding of the applicants' passports and Seamen's Travel Books is a clear breach of their right to freedom of movement and a restriction of right to personal liberty within the meaning of Section 32 (1) of the Constitution of the Federal Republic of Nigeria 1979 and Article 12 (2) of the African Charter on Human and People's Rights (Cap. 10 LFN 1990).

And I have already found that it is the 3rd respondents (Nigerian Immigration Authorities) that are responsible for the breach.

The want of their passports and their Seamen's Books is a severe restriction upon and a restriction of the applicants' right to freedom of movement as it prevents the applicants from leaving Nigeria. I therefore hold that the applicants have proved that their right to freedom of movement and right to personal liberty was curtailed and abridged without justification by the 2nd and 3rd respondents, their agents and their privies." (Emphasis mine)

**The respondents herein are clearly not agents or privies of the Nigerian Immigration service. It is also pertinent to note**

**that there was no appeal against this crucial finding of the trial court. It is settled law that a decision of a court of competent jurisdiction not appealed against remains valid, subsisting and binding between the parties and is presumed to be acceptable to them.** See: *Iyoho v. Effiong* (2007) 11 NWLR (Pt.1044) 31; *S.P.D.C. Nig. Ltd. v. X.M. Federal Ltd. & Anor.* (2006) 16 NWLR (Pt.1004) 189; *Adejobi & Anor. v. The State* (2011) 12 NWLR (Pt.1261) 347. **It therefore means that the issue as to who was responsible for the appellants' detention aboard the ship had been settled.**

Notwithstanding the above finding, the learned trial Judge, upon a further appraisal of the affidavit evidence held at pages 41 - 42 of the record:

*"Upon the authority of all the uncontroverted documentary exhibits and the admitted affidavit evidence, I find that the respondents generally, but specifically the 4th and 5th respondents have grossly abused the fundamental rights of the applicants. In the following regard inter alia, -*

*(i) By their getting them all 27 crew members holed up inside their vessel since September 1997, without leave of dis-embarkation except where ill and at the point of death;*

*(ii) By refusing them food, fresh water, bunker; and turning back any person wishing to supply those victual;*

*(iii) By refusing them medical attention and medicament; even at their own expense;*

*(iv) By positioning drilling platforms 400 yards in front of and behind the vessel at the applicants' jetty;*

*(v) By detaining them inside the vessel when there is no court order for that; and in contravention of Section 32 of the 1979 Constitution;*

*(vi) By instigating men of the Immigration Service to impound their passports and Seamen's Travel Books (per EXH. A1) annexed to 3rd defendant's counter affidavit.*

*The respondents and in particular the 4th and 5th Respondents have meted to the applicants -*

*(i) Inhuman treatment by acting without feeling for the mental, psychological and physical suffering of the applicants.*

*(ii) They have created a situation where the applicants have*

*lived in perpetual fear of an “enemy attack” (p.778 Uzoukwu v. Ezeonu), and*

*(iii) The 4th and 5th respondents have treated the applicants in an inhuman and cruel manner; a treatment totally devoid of human feelings.*

B *(iv) Finally and most importantly, the action of the 4th and 5th respondents in the entire circumstances of this case, particularly their action of restraining and detaining the 27 member crew in their vessel for over eight months now with no opportunity to disembark, denying them access to victual and medicament stationing drilling*  
C *platforms before and behind them, negate all known international maritime law and practice. And it is sure to do great violence to Nigeria’s claim to a Maritime Country before the International Maritime Community.*

D *I therefore find that the 4th and 5th respondents in particular, have grossly breached the fundamental rights of the applicants as guaranteed in Section 31(1) of the 1979 Constitution and Article 5 of the African Charter on Human and People’s Rights.”*

E The court below considered the averments in the appellants’ affidavit verifying the facts in support of their application for the enforcement of their fundamental rights, the counter affidavit of the respondents and the respondent’s affidavit to adduce further evidence and held at page 814 lines 1 - 25 of the record:

F *“From the affidavit and counter affidavit evidence it is beyond argument that the delay of the vessel “DUBAI VALOUR” was affected by the order of the Federal High Court, Benin City. The demand for the release of the passports of the 1st - 15th plaintiffs/cross-appellants was at the instance of the Nigerian Immigration Service as communi-*  
G *cated to them through Union Freight Forwarders Limited as evidence by Exhibit FA2, a letter dated December 3, 1997 addressed to the Master M.V. Dubai Valour, the salient part of the letter reads:*

*“As you are aware the long delay of your vessel is due to Federal High Court Benin City order for the period of fifty seven days.*

H *The Nigeria Immigration Service had directed that this huge period of day (sic) will be covered by their department as such, all twenty-seven crew members seamen Passports must be submitted to their office at Sapele for possible revalidation.*

*The plaintiffs/cross-appellants deposed that as law abiding*

*people they accordingly surrendered their passports as requested. As a result of their surrendering their passports, they contended that they were unable to disembark from the vessel.*

*...However it should be noted that the plaintiffs/appellants filed in court on the 11th of December, 1997 an application for an order evacuating the crew.* B

*...Suffice it to say that on 16th January, 1998, the trial Judge, in a considered ruling refused the application for evacuation of the crew from the vessel. Subsumed in the application filed on 11/12/97, which the court dismissed on 16/01/98 are two more orders for the supply of water etc. to the vessel and crew members and an order for the immediate return of their passports.* C

*Perhaps I should say that sequel to the order of this court granting leave to the appellant to adduce further evidence, the appellants have been able to show, through Exhibit GO1 - GO95 that all essential items needed for survival on the (sic) board were provided during the period of arrest and the receipts for their payment. Some of the members of the crew who fell ill were given medical attention of BERGER CLINIC, 18 Efejuku Street off Deco Road, Warri. The medical bills issued form part of the aforementioned exhibits. A thorough appraisal of the documentary evidence led undoubtedly lays no blame of the appellants.* E

As observed earlier, the issue as to who was responsible for the appellants' detention aboard the M/V Dubai Valour was settled by the decision of the trial court against which there is no appeal. F

On the issue as to whether there was denial of access to food and water, learned Senior Counsel for the appellants referred to Paragraph 18 of the appellants' verifying affidavit and submitted that some of the exhibits attached thereto, such as: (i) letters from Gulf Agency Company (Protective Agent to the vessel) dated 19/1/98; (ii) a letter from the suppliers, Keyn Ben Nig. Ltd. dated 29/1/98; (iii) e-mail message from Oasis Ship Management dated 22/1/98; and (iv) fax messages from the Master of the vessel dated 26/1/98 and 3/2/98 respectively, clearly point to the respondents' culpability and that the Lower Court would not have reached the conclusion it did had it properly averted its mind thereto. He maintained that the facts found and relied upon by the trial court were sufficiently proved by the appellants and uncontroverted by the respondents. H

Firstly, it would not be correct to state that the facts relied upon by the appellants were uncontroverted by the respondents. In the judgment appealed against, the Lower Court not only reproduced paragraphs 11 - 21 of the appellants' supporting affidavit but also reproduced paragraphs 11-15 of the respondents' counter affidavit, which specifically denied the averments in the aforesaid paragraphs, along with paragraph 4 of the respondents' affidavit to adduce further evidence to which Exhibits GO1 - GO95 were attached.

It is significant to note that the application for the enforcement of the appellants' fundamental rights, which included the prayer for an order that the vessel be supplied with food, water, etc. though dated 27/1/1998 was filed on 4/2/1998. In paragraph 18 of the affidavit verifying the facts it was averred as follows:

*"Paragraph 18:*

*The 2nd - 5th Defendants have not only refused to allow any or all of the Plaintiffs herein to disembark except on serious medical reasons as aforesaid but have also recently refused to permit any access to the vessel for the purposes of supplying the vessel and her crew with bunkers, fresh water, provisions, etc."* (Emphasis mine)

***As rightly found by the court below, Exhibits GO1 - GO95 cover the period from August 1997 when the vessel was detained by an order of the Federal High Court, Benin up to and including February 1998. They consist of invoices showing the supply of food, water, medical supplies and medical bills. These exhibits clearly debunked the appellants' claim that the respondents refused to permit any access to the ship. In arguing this appeal before us, the appellants have not shown any specific period not covered by the exhibits. It is settled law that an appellate court would not interfere with the judgment of a Lower Court unless it is shown that the decision is perverse; or that it is not based on a proper appraisal of the evidence; or there is a misapplication of the law to findings of fact properly made; or that there has been a miscarriage of justice occasioned by an error in procedural or substantive law.*** See: Aboseldehyde Laboratories Plc. Vs Union Merchant Bank Ltd. & Anor. (2013) 13 NWLR (Pt.1370) 91; Ojukwu Vs Obasanjo (2004) 12 NWLR (Pt.886) 169 @ 214; Nasiru Vs C.O.P. (1980) 1 - 2 SC 61; Saleh Vs B.O.N. Ltd. (2006) 6 NWLR (Pt.976) 316; Agbaje



Vs Fashola (2008) 6 NWLR (Pt.1082) 90 @ 153 B - E.

***In the instant case, I am satisfied that the conclusion reached by the Lower Court was based on a proper appraisal of the evidence before it. No cogent reason has been advanced by the appellant to warrant interference with those findings in this regard.***

B

This issue is accordingly resolved against the appellants.

## ISSUE 2

Does the judgment of the Court of Appeal in England on the same issue, namely whether the respondents were guilty or not of false/wrongful imprisonment and/or detention of the appellants hereto not constitute 'res judicata' or issue estoppel as between the parties hereto and/or their privies in the circumstances of the case?

C

It is the contention of learned Senior Counsel for the appellant that the issue of who was responsible for their detention had already been settled by the Court of Appeal in England and had already become res judicata as at the time the respondents applied to the Lower Court to rely on the fresh evidence (Exhibits GO1 - GO95), which was before the Court of Appeal in England. He argued that although on the face of the record the parties to the appeals in both cases are not the same, they are the same by their privies. He contended that the issues in dispute in both proceedings are the same. He conceded that decisions of the Court of Appeal of England and indeed the House of Lords do not bind any court in Nigeria but submitted that in so far as the Court of Appeal in England confirmed an earlier finding of fact by the trial court in Nigeria, there were two concurrent findings of fact, which the Court of Appeal could not overturn unless there were strong reasons to do so. He contended that there were no such reasons shown in this case. He argued that the Lower Court ought to have been persuaded by the said decision. He submitted that the Court of Appeal in England was in a better position to assess all the evidence and reach the conclusion it did because it had all the evidence before it while the Lower Court only had Exhibits GO1 - GO95. He argued further that it was wrong for the Lower Court to accept and rely on the fresh evidence, which emanated from the proceedings before the Court of Appeal in England, while at the same time refusing to accept the findings of the said court. He submitted that there is no appeal against the decision of

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the Court of Appeal in England and therefore the respondents are bound by it and the Lower Court ought to have accepted it as conclusive on the issue of detention. He relied on *Ukpong v. Commissioner for Finance and Economic Development* (2006) 19 NWLR (pt.1013) 187 at 216 F-G.

B In reply to the above submissions, learned Senior Counsel for the respondents submitted that learned Senior Counsel for the appellants did not fault the principles of *res judicata* and issue estoppel as stated by the Lower Court nor did he fault the finding that the parties in the appeal in England are not the same as the parties to the instant appeal.

C He submitted that the appellants were not parties to the case in England and therefore the plea of issue estoppel or estoppel per rem judicatam is not sustainable. He relied on the case of: *Oshodi Vs Eyifunmi* (2000) 13 NWLR (Pt.684) 298 @ 325. He submitted that apart from the parties not being the same, the claims in the two suits were also different: the claim at the trial court being for the enforcement of the appellants' fundamental rights while the claim before the court in England was in respect of the sum of US\$3 Million deposited in an escrow account in the UK pursuant to an agreement between the owners of the vessel, Dubai Valour and the respondents in this appeal.

E On the contention that the decisions of the Federal High Court and the Court of Appeal in England constitute concurrent findings of facts, learned Senior Counsel submitted that in the circumstances of this case where the parties and issues in the two cases are different, the decisions cannot qualify as concurrent findings of fact. He also noted that the Court of Appeal in England made no independent findings of its own but merely adopted the findings of the Federal High Court. He submitted further that the appellants tendered the judgment of the English court as evidence to be relied upon by the Lower Court and not as a judgment creating judicial precedent. He submitted further that in so far as the issue in contention before the court in England was the detention of the vessel and not the detention of the appellants, any reference to the appellants' detention was obiter and therefore could never be of persuasive value.

H The principle behind the doctrine of estoppel per rem judicatam was explained by this court in: *Yusuf Vs Adegoke & Anor.* (2007) 11

NWLR (Pt.1045) 332 @ 361 - 362 H - A per Aderemi, JSC thus:

*"It has now become well entrenched in our civil jurisprudence that once a matter has been finally and judicially pronounced upon or determined by a court of competent jurisdiction, neither the parties thereto nor their privies can subsequently be allowed to relitigate such matter in court. A judicial decision properly handed down is conclusive until reversed by a superior court and its veracity is not open to a challenge nor can it be contradicted. The term derives its force from good public policy which says there must be an end to litigation. The maxim is interest reipublicae ut sit finis litium."*

A successful plea of estoppel per rem judicatam ousts the jurisdiction of the court before which it is raised. See: Igbeke Vs Okadigbo (2013) 12 NWLR (Pt.1368) 225 @ 254 D - E; Igwego Vs Ezeugo (1992) 6 NWLR (Pt.249) 561.

It is pertinent to note that although issue estoppel and estoppel per rem judicatam both come under one head of estoppel by judgment, there are subtle differences between the two. The difference was clearly illustrated by this court in: Oshodi Vs Eyifunmi (2000) 13 NWLR (Pt.684) 298 @ 326 A - D, thus:

*"This type of estoppel are of two kinds. There is the cause of action estoppel which effectively precludes a party to an action or his agents or privies from disputing, as against the other party in any subsequent proceedings matters which had been adjudicated upon previously by a court of competent jurisdiction between him and his adversary and involving the same issues."*

*There is the second class of estoppel which is issue estoppel: within a cause of action, several issues may come into question which are necessary for the determination of the whole case. The rule is that once one or more of such issues have been distinctly raised in a cause of action and appropriately resolved or determined between the same parties in a court of competent jurisdiction, as a general rule, neither party nor his servant, agent or privy is allowed to re-open or re-litigate that or those decided issues all over again in another action between the same parties or their agents or privies on the same issues."* See *Lawal v. Yakubu Dawodu* (1972) 1 All NLR (Pt.2) 270 at 272; (1972) 8-9 SC 83; *Olu Ezewani v. Nkali Onwordi and Others* (1986) 4 NWLR (Pt.33) 27 at 42 - 43; *Samuel Fadiora and Another v. Festus Gbadebo and Another* (1978) 3 S.C. 219 at

*228 - 229 etc.* "See also: Ito Vs Ekpe (2000) 3 NWLR (Pt.650) 678.

Issue estoppel may arise where a plea of *res judicata* could not be established because the cause of action is not the same. See *Adedayo Vs Babalola* (1995) 7 NWLR (Pt.408) 383.

***The conditions precedent to a successful plea of res judicata were amply set out by this Court in the case of The Honda Place Ltd. Vs Globe Motors Ltd. (2005) 14 NWLR (945) 273 at 291 B-E as follows:***

***(a) There must be an adjudication of the issues joined by the parties.***

***(b) The parties or their privies as the case may be must be the same in the present case as in the previous case.***

***(c) The issues and subject matter must be the same in the previous case as in the present case.***

***(d) The adjudication on the previous case must have been by a court of competent jurisdiction.***

***(e) The previous decision must have finally decided the issue between the parties, that is the rights of the parties must have been finally determined.***

***The parties to the proceedings before the Court of Appeal in England, as shown at page 548 of the record are:***

***1. Gulf Azo v Shipping Company Limited***

***2. The United Kingdom Mutual Steamship Assurance Association (Bermuda) Limited***

***And***

***1. Chief Humphrey Irikefe Idisi***

***2. Lonestar Drilling Nigeria Limited***

***3. Lonestar Overseas Limited***

***Of the parties listed above, only the 1st and 2nd respondents in this appeal were parties to the proceedings in England. As rightly pointed out by learned Senior Counsel for the respondents, the claim before the court was in respect of losses incurred by the plaintiffs/ship owners against the defendants arising from the detention of the vessel in Nigeria. Interestingly Exhibits GO1 - GO95 were tendered before that court in proof of the period for which the vessel was detained by showing the supply of food, water, bunkers and other necessities for the period. I am in full agreement with their Lord-***

***ships of the court below that neither the parties nor the subject matter of the two cases is the same. The detention or otherwise of the present appellants was not in issue in that case. In any event, as observed earlier, there is no appeal against the finding of the trial court that the Nigerian Immigration Service was responsible for the appellants' detention. I agree with their Lordships that the appellants failed to establish the conditions for the application of the doctrine of res judicata or issue estoppel in this case. This issue is accordingly answered in the negative and resolved against the appellants.***

### ISSUE 3

Was it right for the Court of Appeal to have relied on what it called "fresh evidence" produced before the English Court alone, without more to conclude that the respondents did not deny the appellants supply of food, bunkers and provisions?

Learned Senior Counsel for the appellants argued that there was a plethora of documentary evidence besides Exhibits GO1 - GO95 that proved the wrongful acts of the respondents. He relied on his earlier submissions under issues 1 and 2 above with regard to emails, fax messages and letters written by the Protective Agency, vendors who were unable to discharge products and the letter of distress from the Master of the vessel. He contended that even if the fresh evidence established that necessary items were supplied to the ship, they only covered five out of the twenty months the appellants were detained. He maintained that there was ample evidence showing denial of access to the ship and crew and that it was only after the trial court granted the appellants' application compelling the respondents to allow them to be supplied with provisions that the respondents yielded. He submitted that apart from the documents referred to, the court failed to consider the far more important aspects of the breach of the appellants' fundamental rights to personal liberty and freedom, degrading and inhuman treatment and right to life.

In reply, learned Senior Counsel for the respondents submitted that the issue as to who was responsible for the appellants' detention had already been resolved by the trial court when it held that the Immigration Authority breached their fundamental right to liberty by seizing their passports and seamen's passbooks. That the issue in con-

tention was the allegation that the respondents denied access to vessel for the supply of provisions. He submitted that Exhibits GO1 - GO95, which cover the period from October 1997 to June 1998, showed that all necessary supplies were made to the vessel during that time. He submitted that the finding of the Lower Court in this regard is unassailable.

I dealt with this issue while resolving Issue 1 *infra*. As observed by learned Senior Counsel for the respondents, the documents show the delivery of necessary provisions to the ship before and up to the time the application was filed. These are the same documents tendered before the court in England by the ship owners to prove the length of time the vessel was detained by showing that it had to be supplied with provisions throughout the period. The finding of the Lower Court is not perverse as it is clearly based upon a proper appraisal of the evidence before it. I find no reason to disturb the said finding. This issue is therefore resolved against the appellant.

Having resolved Issues 1, 2 and 3 against the appellants, it becomes unnecessary to consider issue 4, which is based on the failure of the court below to award monetary compensation in their favour.

In conclusion, I hold that the appeal lacks merit. It is hereby dismissed. The parties shall bear their respective costs in the appeal.

F

### **MUHAMMAD JSC**

I read in advance the judgment just delivered by my learned brother, Kekere-Ekun, JSC. I agree with my lord's reasoning and conclusion which I adopt as mine including all orders therein.

G

### **MUNTAKA-COOMASSIE JSC**

The Federal High Court Lagos hereinafter called the trial court held that the respondents herein had already breached the fundamental rights of the appellants herein and granted various reliefs claimed by the appellants. On appeal to the Court of Appeal Lagos Division herein referred to as court below judgment was delivered on 16/9/2002 the decision of the trial court was set aside.

The appellants' motion was heard and in a considered ruling

delivered on 19/6/98, the court held that the motion shall be granted as the appellants' fundamental rights had been clearly breached by detaining them in the ship and as such granted all the claims of the appellants. The only appellants' claim the trial court turned down is the request of the appellant for the award of compensation in their favour. B

The appellants successfully appealed to the court below.

The appellants at the same time were aggrieved by the decision and or ruling and appealed to the same court below by filing a cross-appeal. In a considered judgment as stated earlier in this judgment, delivered on 16/9/2002, the court below allowed the appeal and dismissed the cross-appeal by the appellants. C

The appellants therefore filed an appeal to this court and filed a notice of appeal containing nine (9) grounds of appeal. There is no need for me in this judgment to reproduce the 9 grounds after same have been distinctively produced by my learned brother Kekere-Ekun JSC in his lead judgment. D

Parties before us on appeal had neatly filed and exchanged their respective briefs of arguments on 27/1/2015. The appellants' brief was deemed properly filed and served on 16/1/2008 prepared by Femi Atoyebi SAN which the respondents' brief of argument was settled by Chief T. J. Onomigbo and was deemed properly filed and served on 20/2/2013. E

At the hearing of the appeal before us the respondents counsel one Miss N. I. Ntiaidenu stated that their preliminary objection, P. O. for short, was raised and argued on pages 1 - 8 of their respondents' brief of argument and thereby urged the Supreme Court to kindly sustain the objection and urged us to dismiss the appeal. Learned counsel representing the appellants adopted and relied on their brief of argument in which he responded to the preliminary objection. He then forcefully submitted that the preliminary objection filed by the respondents is totally devoid of substance and therefore urged this court to over-rule same and to allow the main appeal. F G

Both the appellants and the respondents formulated five (5) issues each for the determination of the appeal. H

Again in my view I do not consider it necessary to reproduce the issues in this judgment of mine.

Having come to the merits or demerits of the preliminary ob-

jection I completely and entirely agree with the reasons and conclusion of my learned brother Kekere-Ekun JSC reached in holding that *“the remark regarding the form of action instituted by the cross-appellants at the trial court that led to the appeal was a passing remark that had no bearing on the issues before the court or the final decision reached therein. The remark amounted to obiter dictum, which could not form the basis of a ground of appeal. The ground 3 of the notice of appeal and the issue 2 formulated thereon are therefore incompetent and accordingly struck out”*. (Italics mine)

If we are to apply the law as it is we must accept for the reasons stated by Kekere-Ekun JSC that ground 4 and issue 1 formulated by grounds 1, 4, 6 and 7 are therefore competent.

The grounds 6, 7, 8 and 9 of the grounds of appeal constituted different and independent purpose from what particulars of error, was meant to achieve. Particulars, they say, shall not be independent of the grounds of appeal but ancillary to it. I am fortified by the authorities cited in the lead judgment, thus:-

1. Globe Fishing Ind. Ltd v. Coker (1990) 7 NWLR (Pt.162) 205.

2. Osasona v. Ajayi (2004) 14 NWLR (Pt.894) 527 at 545 E - H.

3. Diamond Bank Ltd V. P. I. C Co. Ltd (2009) 18 NWLR (Pt.1172) 67.

Consistently with the above particular of grounds 6, 7, 8 and 9 cannot in law stand. Why? The said particulars are really argumentative and prolix. The law states that particulars of a ground of appeal are supposed to highlight briefly the misdirection or error in law complained of. Of course the merit of the appeal should not be argued under the pretence of supplying particulars. It is absolutely clear that an appeal should be argued not on the ground of appeal but on the basis of issue or issues formulated therefrom, which may encompass more than one ground of appeal. I quite agree therefore with the reasons and conclusions by my learned brother that all in all the preliminary objection must and shall be held that it has substance with regard to ground 3 and issue distilled thereon. It is therefore struck out. However the preliminary objection fails in respect of grounds 6, 7, 9 and 9. The said grounds are richly competent. Issues 1, 2, 3, and 4 vis-à-vis grounds 6, 8 and 9. See *Ogboru v. Uduaghan*



(2012) 11 NWLR (Pt.1311) 357 at 380.

It is to be noted that the court below had elegantly and correctly too interpreted the provisions of the law as it applies to the matter at hand. That being the case, I entirely agree with his lordship that issues 1, 2, and 3 had no substance same must be struck out. There is no urgent need to consider issue 4 thereof. I too dismiss the appeal as my learned brother did. The appeal is hereby dismissed with no order as to costs. B

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C

**PETER-ODILI JSC**

I agree with the judgment just delivered by my learned brother, Kudirat Kekere-Ekun JSC and to show my support for the reasoning I shall make some comments.

The appellants herein as plaintiffs before the Federal High Court, Lagos commenced an action against the respondents (sued as 4th & 5th defendants in that suit) together with three other defendants, not parties to this appeal. The action was commenced in suit No.FHC/L/CS/81/98 under the Fundamental Human Rights (Enforcement Procedure) Rules, 1979 and the Constitution of the Federal Republic of Nigeria, 1979 (as amended) and the African Charter. D E

The said Fundamental Rights Enforcement action was an off-shoot of a civil action in suit No. FHC/B/228/97 commenced by the 1st respondent herein in the Federal High Court, Benin as plaintiffs including the vessel, Dubai Volour' (in which the appellants herein were crew members) and Gulf Azou Shipping Co. Ltd (Owners of the "MV Dubai Valour" and her owners aforesaid were sued as 4th - 5th defendants in the said Benin action. F

G

**BACKGROUND FACTS**

The 1st respondent had on the 5th August, 1997 commenced an "Admiralty action in rem' against five defendant including the MV "Dubai Valour" and Gulf Azoy Shipping Co. Ltd. (Owners of the MV "Dubai Valour" i.e. appellants employers) claiming a total sum of N1.43 Billion (or US \$17 Million) for alleged breach of contract of affreightment. Simultaneously with the filing of the Statement of claim, the 1st respondent also filed a motion ex-parte praying for an order for the arrest of the vessel known as "MV Dubai Volour" then at a jetty in Sapele within the jurisdiction of this court pending the deter- H

mination of a motion on Notice to be filed later.

On the 4th day of August, 1997 the learned trial Judge, Dan D. Abutu J (as he then was) granted an *ex parte* order for the arrest of the vessel “MV Dubai Valour” of the jetty in Sapele and for the vessel to be detained by the Admiralty Marshall pending the provision by the defendants of a satisfactory bank guarantee to secure the plaintiff’s claim together with interest or until further order of that court.

On the service of the order of arrest on the vessel, the appellant’s counsel commenced negotiations with the 1st respondent’s counsel as to the nature and question of security to be provided for the vessel’s release.

As both parties could not agree and the ship owners believed that the claim was grossly exaggerated, they filed a Motion on Notice for the court to intervene by fixing the amount of security to be provided for the vessel’s release. After taking arguments from both counsel the court, per Sanyaolu J., fixed the amount of security on the basis of the 1st respondent’s case at US\$ 1 Million in the form of a P 7 I Club Letter of undertaking. The shipowners promptly proceeded to file a letter of undertaking provided by the UK P & I club in that amount and the vessel was accordingly ordered to be released. The said letter of undertaking may be found at page 110 of the record. However, the respondents employed every extra judicial means to prevent the vessel from sailing by enlisting the help of officers of the Nigerian Navy to bring the vessel back to Nigerian waters.

The 1st respondent then filed a Motion on Notice dated 22/8/97 but which was not argued until 30/9/97 seeking for stay of execution of the said order of Sanyaolu J., pursuant to its Notice of Appeal against that ruling. That Notice of Appeal was never pursued till date. Meanwhile, the 1st respondent brought yet another application *ex parte* (notwithstanding that the shipowners and the vessel were already represented by counsel) to shift the vessel “from its present location to a distance of about 400 yards to Mooring Bouy of Sapele Port”. That order was granted and the vessel was effectively moved/shifted to the 1st respondent’s private jetty/backyard where they then positioned its drilling platforms both in front and behind the vessel. The vessel was thus brought within the exclusive and absolute control of the respondents.

The 1st respondent's motion for stay of execution of the order of Sanyoolu J., aforesaid releasing the vessel was later granted by Hon. Justice Abutu J., on 30/0/97.

Several of the crew members fell ill and at various times had to be treated in local hospital without permanent solutions to their health problems before the respondents herded them back to the vessel on gun point. Accordingly, counsel to the shipowners and the vessel then sought the co-operation of respondents' counsel by phone and followed by a letter to evacuate the crew, which request was turned down by the respondents. B

Subsequently, the shipowners filed an application on notice seeking to evacuate the crew but, the 1st respondent vehemently opposed same and filed a Counter-Affidavit to the said application. That application was eventually refused by the trial court, per Egbo - Egbo J., on the ground that since there was no order of court detaining the crew members, the court cannot order them to be evacuated. C D

The condition of the crew members inside the vessel later deteriorated as the vessel's protective Agent, Messrs. Gulf Agency Company (GAC) responsible for supplying the crew with bunkers, fresh water, food, provisions, etc, were said to be denied access to the vessel by the respondents, and at a time, the barge and tug boot hired for this purpose was turned back with the said supplies by the respondents. The crew's passports/seamen's books were also allegedly impounded by men of the Immigration at the instigation of the respondents and allegedly taken to Lagos under the pretext of revalidating them. E F

As the condition on board the vessel had become unbearable for all the crew members represented by the appellants herein they instituted an action at the Federal High Court, Lagos to enforce their fundamental rights pursuant to the 1970 Constitution and under the African Charter on Human and Peoples' Rights to freedom and Liberty. G

After full arguments by all parties concerned, the learned trial Judge, per R. N. Ukeje J., (as he then was) in a considered ruling delivered on 19/06/98 granted the application to enforce appellants' fundamental rights. It is the said ruling that culminated into the respondents' appeal vide their Notice of Appeal to the Court of Ap- H

peal, which may be found at pages 207 - 211 of the record.

It is germane at this juncture to state that on 28/9/2000, the respondents herein were granted leave to adduce fresh evidence on appeal by the Lower Court based on invoices which allegedly came to their attention in the course of the proceedings instituted against them by the owners of the vessel, "Dubai Valour" in the High Court of Justice in England.

The appellants were also granted leave to adduce additional evidence on appeal based on the judgment of the court of Appeal in England on the matter said to have been instituted by the shipowners on the High Court in England where the invoices sought to be relied upon were tendered.

Both parties filed their respective Briefs of Argument at the court below which Briefs included the Appellant's Amended Brief of Argument, 1st - 5th Respondents' Brief of Argument, Cross-appellant's Brief of Argument and appellant/cross respondents' Brief of Argument. The Lower Court per Oguntade, Aderemi and Chukwuma-Eneh JJCA (as they then were) allowed the respondents' appeal and dismissed the appellants' cross-appeal before them.

Dissatisfied with the said judgment the present appellants filed nine grounds of appeal pursuant to their Notice of Appeal dated 26/11/02 and filed on 27/11/02.

On the 27th day of January, 2010, learned counsel for the appellant, Mr. Olorunfemi adopted the appellants' Brief settled by Femi Atoyebi SAN filed on 22/10/07 and deemed filed on 16/1/08 in which were crafted five issues for determination, viz:

1. Whether the Court of Appeal was right to have exonerated the respondents herein (4th & 5th respondents of the trial court) from responsibility for breach of the appellants' fundamental rights and the illegal and/or unlawful detention of the appellants in their vessel, "Dubai Valour" for over twenty (20) months? (Grounds 1, 4, 6 & 7)

2. Is the decision by the Court of Appeal that the appellants were wrong to have initiated the human rights action in Lagos not an obiter dictum? If no, whether the appellant's initiation of the present action in Lagos could be said to be wrongful in law? (Ground 3)

3. Does the judgment of the Court of Appeal in England on the same issue namely, whether the respondents were guilty or not

of false/wrongful imprisonment and/or detention of the appellants hereto not constitute “res judicata” or issue estoppel as between the parties hereto and/or their privies in the circumstances of the case? (Grounds 5 & 9)

4. Was it right for the Court of Appeal to have relied on what it called “fresh evidence” produced before the English Court alone, without more to conclude that the respondents did not deny the appellants supply of food, bunkers and provisions? (Ground 8) B

5. Was the Court of Appeal right in failing and/or refusing to award any monetary compensation in favour of the appellants and against the respondents herein for the illegal and/or unlawful breach of the appellants’ fundamental rights? (Ground 2) C

Miss N. I. Ntiadem, learned counsel for the respondents adopted the Brief of Argument settled by T. J. O. Okpoko SAN and filed on 26/08/08 and deemed filed on 20/2/13. In the Brief of Argument were identified five issues for determination which are thus: D

1. Whether the learned Justices were wrong in holding that respondents were not responsible for breach of appellants’ alleged right?

2. Whether the obiter or passing observations or remarks of the learned justices which did not form the basis of the decision of the court constitute a valid basis for an appeal and if so, did the observations cause a miscarriage of justices in this case? E

3. Whether the appellants were entitled to an award of damages against respondents having regard to the finding of the learned trial judge and the decision of the learned Justices. F

4. Whether the learned Justices were wrong in law in not receiving the English decision as a binding judicial authority establishing the defence of res judicata and or as creating issue estoppel? and G

5. Whether the learned Justices were wrong in the use they made of the said evidence?

The respondents raised a Preliminary Objection which arguments were made in the Brief of Argument of the respondent. She contended that the right conferred on a litigant by S.233 (2) & (3) of the Constitution which guarantees the right of the accused to appeal when dissatisfied with the jurisdiction of the appellate court enured statutorily. That the right so guaranteed does not cover a passing remark or obiter in the judgment which is what happened in this case H

as shown in grounds 3 and 4 which damaged issue 2. She cited *Obotoyinbo v Oshotoba* (1996) 5 NWLR (Pt.450) 531 at 549; *Oni v Fayemi* (2008) 8 NWLR (Pt.1089) 400 at 427; *Akibu v Odutan* (2000) 13 NWLR (Pt.685) 446 at 462 - 3.

B For the Objector was further contended that Section 233(6) of the Constitution provided for Order 8 Rules 2(2) of the Rules of the Supreme Court regulating for misdirection or error in law for it to be stated clearly both the nature of and particulars of the misdirection and or error. That grounds 6, 7, 8 and 9 did not satisfy the mandatory requirement of the Rules of Court and therefore incompetent and void on the ground that Order 8 Rule 2(2) was not complied with. He cited *Globe Fishing Industries Ltd v Coker* (1990) 7 NWLR (Pt.162) 265 at 300 etc.

D The appellants made no response to the objection, though it would still be considered firstly before venturing into the appeal proper. In that regard the matter herein has to do with the competence or otherwise of ground 3 on which issue 2 is based being matters arising from a passing remark or obiter dictum which cannot be considered as arising from the judgment appealed against. It has become trite E that an obiter dictum is not covered within the ambit of Section 233(2) and (3) of the Constitution as those appealable areas for the consideration of an appellate court. See *Obatoyinbo v. Oshotoba* (1996) 5 NWLR (Pt.450) 531 or 549; *Oni v. Fayemi* (2008) 8 NWLR (Pt.1089) 400 at 427.

F The law is indeed well settled that the reasoning of a judge while on the journey in getting to the destination of a judgment or ruling could make some remarks along the way assisting him on a smooth sail, taking into his stride the peculiar style of the particular G Judge, these accessories remain what they are tools to propel a process and never the substantive basis of the decision and so cannot be ground for appeal upon which an issue for determination would be anchored. As a follow up a ground of appeal against a decision must therefore not only be related to the decision itself but should also be H the challenge to its ratio decidendi. See *Akibu v. Oduntan* (2000) 13 NWLR (Pt.685) 446 at 462; *Coker v. UBA* (1997) 4 SCNJ 130 at 145.

Therefore the remark by the Court of Appeal justices that the appellants were wrong to have initiated the human rights action in

Lagos was clearly an obiter and not a fundamental issue upon which an appeal could be based and so without further ado I hereby strike it out.

### MAIN APPEAL

The issues as differently crafted on either side are really asking the same questions and so I shall make use of those drafted by the appellant for ease of reference. B

### ISSUE 1

Whether the Court of Appeal was right to have exonerated the respondents herein (4th & 5th respondents at the trial court) from responsibility for breach of the appellants' fundamental rights and the illegal and/or unlawful detention of the appellants in their vessel, "Dubai Valour" for over twenty (20) months? C

Canvassing the position of the appellants' learned counsel on their behalf referred to the plaintiffs/applicants on their Motion on Notice at the trial court and the reliefs in the statement of facts culminating in the ruling resulting in the appeal to the Court of Appeal or court below for short. That the justices of the court below formulated a very narrow issue which produced a limited scope whereby that appellate court overlooked other serious acts of infringement of the appellants' fundamental rights by the respondents. That the Lower Court overlooked several important documents exhibited to the appellants' application at the trial court which made that court reach a decision which it would not otherwise have reached. That denying the applicant's access to basic necessities of life as in the present case for whatever number of days constituted a flagrant abuse of their rights to dignity of the human person, in human treatment and or torture and so the trial court was right to hold it come within the ambit of Section 37 of the 1979 Constitution. He referred to *Uzoukwu G v Ezeonu III* (1991) 6 NWLR (Pt.200) 208 or 778: *Fawehinmi v. Abacha* (1996) 5 NWLR (Pt.447) 198. E F

It was also submitted for the appellant that the court below was clearly wrong in holding that the crew were detained by a court order and also exonerating the respondents from blame in the unlawful detention of the appellants inside "Dubai Valour" for more than twenty months. H

In response, learned counsel for the respondent, Miss Ntiadem contended that having found that the acts of detention of appellants'

travel documents by Immigration Department that the trial judge could not justifiably turn round to make a finding that respondents breached appellants' rights. That the Lower Court critically examined the affidavit evidence and conclusion of the trial judge and came to a conclusion based on solid grounds.

B The grouse of the appellants is that the Lower Court formulated a narrow issue on which it made its decision setting aside that of the trial court and in that overlooked other serious acts of infringement of the appellants' fundamental rights by the respondents. This  
C stance is clearly outside the record evidencing the findings of the trial judge herself. Firstly that court of first instance found as a fact that it was seizure of the passports and passbooks of the seamen that accused the breach of the appellants' rights. The travel documents of the appellants had been lodged at the Immigration Service of Nigeria  
D by the appellants and they had not retrieved them. She further found that it was the Comptroller of Immigration Service and his agents who impounded those passports and so responsible for the breach of the appellants' rights and that the breach was not by the respondents. A strange conclusion therefore emerges when the same learned  
E trial judge held that the 4th and 5th respondents grossly breached the fundamental rights of the appellants as guaranteed in Section 31(1) of the 1979 constitution and Article of 31(1) of the 1979 constitution and Article 5 of the African Charter of Human & People's Rights.  
F

Of note is the fact that the learned trial Judge recognising and stating so that there was conflicting affidavit evidence and noting was done by way of oral evidence to resolve that difference in averment and did not proffer any reason for accepting one set of affidavit evidence to the other.  
G

That said, the Court of Appeal in its appellate duty had no option than to go into that affidavit evidence, thoroughly appraising the documentary evidence coming up with the exonerating verdict on the respondents who the Lower Court found to have no blame in  
H the travail of the appellants. They further considered the fact that the detention of the vessel was by the order of the Federal High Court which cannot be visited on the respondents or anyone else and so cannot be the foundation of a complaint against the respondents as the appellants have done. In its full consideration of the exhibits be-



fore the court below held that of a truth the vessel received supplies of necessities at the time the appellants alleged no one was allowed access to the vessel including medical facilities made available to the sick crew. Also none of them was stopped from disembarking at will.

Indeed from all that the court below found and decided upon supported by the records there is nothing on which what that appellate court did could be faulted and so I have no difficulty in resolving this issue in favour of the respondents. B

### ISSUES 3, 4 AND 5

3. Does the judgment of the Court of Appeal in England on the same issue namely, whether the respondents were guilty or not of false/wrongful imprisonment and/or detention of the appellants hereto not constitute “res judicata” or issue estoppels as between the parties hereto and/or their privies in the circumstances of the case. C

4. Was it right for the Court of Appeal to have relied on what it D called “Fresh evidence” produced before the English Court alone, without more, to conclude that the respondents did not deny the appellants supply of food, bunkers and provisions?

5. Whether the learned Justices were wrong in law in receiving the English decision as binding judicial authority-establishing the defence of res judicata and or creating issue estoppel. E

Learned counsel for the appellants contended that the issue whether the respondents were responsible for the detention of the crew was raised before the English Court of Appeal and it was held by that court upon the evidence before it that the respondents herein F were indeed responsible for the detention of 27 crew men (by the respondents and/or their privies) and there has been no further appeal to the House of Lords. That English Court of Appeal decision was only re-instating the position of the learned trial judge Ukeje J. G (as she then was) which makes it concurrent findings of facts by the two Lower Courts. That the matter of whether the respondents are responsible for the said detention was already settled and had become res judicata as at the time the respondents applied to the Court of Appeal of Nigeria to call further evidence on appeal, all of which H had been before the Court of Appeal of England and reported in (2001) 1 LL Rep.727 at 735.

Further submitted for the appellants is that there is ample evidence by the agents appointed by the appellants for the vessel that

the provisions they were attempting to supply to the ship and the crew were turned back by the respondents and they still submitted their invoice for the attempt aforesaid to the employers of the appellants i.e. owners of the vessel. That it was not until the appellant applied to and obtained an order of the Federal High Court in this case compelling the respondents to allow them to be supplied with provisions that the respondents allowed supply to the appellants. Learned counsel for the appellants said the court below was wrong in relying on Exhibits GO1 - GO95 without more to hold that the respondents permitted supplies to the appellants' vessel and to rely on this parochial finding to set aside the ruling of the trial judge.

Responding, learned counsel for the respondents contended that the finding of the learned Justices of the Court of Appeal that the London judgment was not anchored on the same parties as those before the Nigeria Court of Appeal. That since appellants were not parties in the case and cannot therefore plead the case either as establishing the defence of res judicata or the evidential principle of issue estoppel. He cited *Oshodi v. Eyifunmi* (2000) 13 NWLR (Pt.684) 298 at 325.

That appellants' claim in the Federal High Court was for the enforcement of their alleged fundamental rights under the Nigerian Constitution and Article 12(2) of the African Charter on Humans and Peoples Right which was not the claim before the English court thereby barring the application of res judicata or issue estoppel. That finding of the Nigerian Court of Appeal on Exhibits GO1 - GO95 is flawless.

The entitlement for damages which the appellants push cannot go beyond a mere wish the basis for it having been demolished as shown in the resolution of Issue 1. To adumbrate therefore it needs be said that the finding and ruling of the learned trial judge being based on faulty premises and such having failed the search light in the Court of Appeal, there is therefore nothing on which a claim for damages can be predicated since there is no liability established against the respondents.

In regard to the judgment of the Court of Appeal in London which the appellants were allowed to tender and the effect thereof to the case in hand. The Nigerian Court of Appeal had this to say:

*"I have had a careful study of the parties in the English Court*

*case: they are different from those before this court. To that extent, at least, the condition precedent has not been established. The pleas, therefore is not sustainable”.*

For a refreshing of the memory the appellants' claim in the Federal High Court was for the enforcement of their fundamental rights under the Nigerian Constitution and Article 12(2) of the African Charter on Humans and Peoples Right. A claim different from that of the Court of England which was for the sum of Three Million US Dollars deposited in an escrow account in the UK. Clearly the principle of *res judicata* and or issue estoppel was not available to the appellants as the issue or subject matters in two courts were not the same not to talk of the parties which were also different.

I would like to cite the case of *Oshodi v Eyifunmi* (2000) 13 NWLR (Pt.684) 298 at 325 for what the plea of *res judicata* or issue estoppel entails and its relevance for the present case.

*“This type of estoppel are of two kinds. There is the cause of action estoppel which effectively preclude a party to an action or his agent or privies from disputing, as against the other party in any subsequent proceedings matters which are being adjudicated upon previously by a court of competent jurisdiction between him and his adversary and involving the same issues.*

*There is the second class of estoppel which is issue estoppel: within a cause of action, several issues may come into question which are necessary for the determination of the whole case. The rule is that once one or more of such issues are being distinctly raised in a cause of action and appropriately resolved or determined between the same parties in a court of competent jurisdiction, as a general rule, neither party or his servant, agent, or privy is allowed to open or relitigate that or those decided issues all over again in another action between the same parties or their agents or privies on the same issues. See *Lawal v. Yakubu Dawodu* (1972) 1 ALL NLR (Pt.2) 270 AT 272; (1972) 8 - 9 SC 83; *Olu Azewani v. Nkali Onwedi & Ors* (1986) 4 NWLR (Pt.33) 27 at 42 - 43; *Samuel Fadiora & Anor v. Festus Gbadebo & Anor* (1978) 3 SC 219 AT 228 - 229 etc. Both classes of estoppels have been raised for consideration in this appeal.*

*It ought to be stressed, however, that for the plea of estoppel per rem judicata to succeed, the party relying on it must establish that:*

(i) *The parties or their privies are the same, that is, to say, that the parties involved in both the previous and present proceedings are the same.*

(ii) *The claim or the issue in dispute in both the pervious and present action are the same;*

B (iii) *The res, that is to say, the subject matter of the litigation in the two cases is the same;*

(iv) *The decision relied upon to support the plea of estoppel per rem judicatam must be valid, subsisting and final, and*

C (v) *The court that gave the previous decision relied upon to sustain the plea must be a curt of competent jurisdiction.*

*Unless the above pre- conditions are established, the plea of the estoppel per rem judicatam cannot be sustained. See generally Oke v. Atoloye (1985) 1 NWLR (Pt.15) 241 at 260; Yoye v Olubode D & Ors (1974) 1 ALL NLR (Pt.2) 118 at 122; (1974) 10 SC 2009; Idowu Alashe & Ors v Sanya Olori-Ilu (1965) NMLR 66; (1964) 1 ALL NLR 390; Fadiora v. Gbadebo (1978) 3 SC 219 at 229. The burden is on the party who sets up the defence of res judicata to establish the above precondition conclusively”.*

E Following in the heels of the guides in Oshodin’s case (Supra) is the fact that the Court of Appeal in England did not hear evidence of the detention of the appellant as alleged and no evidence on which such an allegation was to be evaluated and a finding made by them and though there is no gainsaying of a possible relevance or use is a  
F persuasive decision of Court of Appeal decision of England to our courts but when neither the facts nor parties bear relevance to a case in a Nigerian Court, then it is neither here nor there not to talk of that foreign judgment being taken as an estoppel or res judicata as is being  
G advanced by the appellants. The conclusion herein is that the issues here are resolved against the appellants and in favour of the respondent.

The appeal is dismissed as I abide by the consequential orders as made.

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### **NWEZE JSC**

My noble Lord, Kekere-Ekun, JSC, obliged me with a draft of the leading judgment just delivered now. I, entirely, endorse the con-

clusion that this appeal is, wholly, unmeritorious.

I shall, however, take the liberty of this contribution to make one or two remarks on aspects of the submissions on the Preliminary objection and the forensic summersault of Ukeje J (as she then was) at the trial court which the Court of Appeal, Benin Division, promptly, upturned to avert what would have amounted to a parody of justice. B

Like the leading judgment, I find that the author of Grounds 6, 7, 8 and 9 of the Grounds of Appeal falls into the category of counsel who do not possess the requisite skills for articulating their advocacy in writing, *Folorunsho v. Folorunsho* (1996) 5 NWLR (Pt.450) 612, 618. Most regrettably, counsel who fall into this category, almost always, fail or neglect to advance the salient or crucial legal arguments that avail their clients with the utmost pellucidity, and in accordance with the relevant provisions of the rules of this court, *Oyadeji and Ors v. Adenle* (1993) 9 NWLR (Pt.16) 224, 233. C D

Written advocacy in respect of the formulation of grounds of appeal and the particulars thereof typifies this ungainly approach. Thus, instances abound where the phraseology of the particulars of grounds of appeal betrayed either counsel's contempt of Order 8 Rule 2 (2) of the rules of this court or their ignorance of the import of the said provision. E

It cannot be gainsaid that, consistent with the said provision, particulars of grounds of appeal ought to relate to their grounds, *Anammco v. First Marina Trust Ltd* [2000] 1 NWLR (Pt.640) 309; *CRB and RDA v. Sule* (2001) 6 NWLR (Pt.708) 194; *UBA Ltd v Achoru* [1990] 6 NWLR (Pt.156) 254; *Nsirim v Nsirim* [1990] 3 NWLR (Pt.138) 285; *Osasona v Ajayi* [2004] 14 NWLR (Pt.894) 527. This ought to be so for the essence of particulars under the said Order 8 Rule 2 (2) of the Rules (supra) is to elucidate and advance reasons for the complaints in the grounds, *Abiodun v. FRN* (2009) 7 NWLR (Pt.1141) 489; in other words, to highlight the complaints against the judgment, *Osasona v Ajayi* (2004) 14 NWLR (Pt.894) 527, 545. F G

That is the rationale for the prescription that particulars should not be independent complaints from the grounds but should be ancillary to their grounds, *Globe Fishing Ind. Ltd v Coker* [1990] 7 NWLR (pt 162) 265; *Honika Sawmill (Nig) Ltd v. Hoff* (supra); *Briggs v. Chief Lands Officer, Rivers State* [2005] 12 All FWLR (Pt.938) 59. H

As a corollary to this prescription, particulars cannot stand alone as the ground is the foundation of the appeal, *Ojemem v Momodu* 11 [1983] 1 SCNLR 188; *NTA v Anigbo* [1972] 5 SC 156; *Osawaru v Ezeiruka* [1978] 6-7 SC 135. Thus, where the grounds are inexplicit, the particulars will fill the gap by stating specific details, *Iwuoha v NIPOST Ltd* [2007] 4 SC (Pt.11) 37, 54; *Madumere v Nwosu* [2010] All FWLR (Pt 545) 263.

Having said that, it remains to be added that there is now a current shift of emphasis from technical justice to substantial justice. In this context, it is instructive to note that this court acknowledges that an appellant is required to highlight the misdirection or error in law complained of. However, consistent with this shifting trend, it has been held that it is not every failure to do so that would render the ground so couched incompetent. This is, particularly, so where sufficient particulars can be gleaned from the ground of appeal in question and the opponent and the court are left in no doubt as to the particulars on which the ground is founded. *Ukpon and Anor v Commissioner for Finance and Economic Development and Anor* (2006) LPELR-3349 (SC), citing *Hambe v. Hueze* [2001] 4 NWLR (Pt.703) 372; [2001] 5 NSCQR 343, 352.

Even then, courts are now encouraged to make the best they can out of a bad or inelegant ground of appeal in the interest of justice. *Dakolo and Ors v Dakolo and Ors* (2011) LPELR - 915 (SC). Hence, defective particulars in a ground of appeal would not, necessarily, render the ground itself incompetent. *Prince Dr. B. A. Onafowokan v Wema Bank* NSCQR Vol 45 (2011); *Best (Nig) Ltd v. Black Wood Hodge* NSCQR Vol 45 (2011); *Abe v. UNILORIN* (2013) LPELR. Put differently, since the essence of particulars of error in law is to project the reason for the ground complained of, the inelegance of the said particulars would not invalidate the grounds from which they flow, *NNB Plc v Imonikhe* [2002] 5 NWLR (Pt.760) 241, 310; *D. Stephens Ind Ltd and Anor v. BCCI Inter (Nig) Ltd* (1999) 11 NWLR (Pt.625) 29, 3101.

In my view, therefore, the erstwhile technistic approach [exemplified in the objector's submissions herein] which invalidated appeals on account of defective particulars, *Nwadike v Ibekwe* [1987] 7 NWLR (pt 67) 718; *Anosike Building Commercial Coy v. FCDA* [1994] 8 NWLR (Pt.363) 421; *Nteogwuija v. Ikuru* [1998] 10 NWLR

(Pt.569) 267, must be deemed to have yielded its place to the current libertarian attitude: an attitude shaped by the contemporary shift from technicalities to substantial justice. Clear evidence of this shift could be found in *Aderounmu v. Olowu* [2000] 4 NWLR (Pt.652) 253; *Hambe v. Hueze* (supra); *Abe v UNILORIN* (2013) LPELR-20643 (SC); *Onafowokan and others v. Wema Bank Plc and others* B NSCQLR vol 45 (2011) 181 SC; *Best (Nigeria) Ltd v. Black Wood Hodge (Nigeria) Ltd and others* NSCQLR vol 45 (2011) 849. Like the leading judgment, I, therefore, hold that the particulars of Grounds 6, 7, 8 and 9, substantially, comply with the prescription in the above C rule of this court. As such, I find in favour of their competence.

With regard to the main appeal, I, equally, agree with the leading judgment that the Lower Court [Aderemi JCA, as he then was], rightly, found that Ukeje J (as she then was) was caught up in a web of analytical mix-up. On the one hand, Her Ladyship, expressly, found D that only the fourth and fifth respondents [Comptroller of Immigration and his agents] breached the appellants' fundamental rights; on the other hand, she went ahead to damnify the respondents on the spurious ground that they were liable for the infraction of the appellants' rights. In my humble view, the Lower Court's approach was a E saving grace for it averted what would have amounted to an indefensible affront to justice.

It is for these, and the more detailed, reasons in the leading judgment that I, too, shall enter an order dismissing this appeal for F being unmeritorious. Appeal dismissed.

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