

**SUPREME COURT OF NIGERIA**  
FRIDAY 15TH MAY, 2015. SC. 248/2003  
**CORAM:- I. T. MUHAMMAD,**  
**M. S. MUNTAKA-COOMASSIE, O. RHODES-VIVOUR,**  
**N. S. NGWUTA, K. B. AKA'AH, JJSC**

1. PATRICK MICHAEL & 759 ORS ..... APPELLANTS  
AND  
BANK OF THE NORTH ..... RESPONDENT

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JUDGMENTS - Setting aside - Court can set aside its previous decision in cases of lack of jurisdiction - Or fraud which must be connected to everything adjudicated upon (H1)

JUDGMENTS - Appeals - Issue - Bordering on defect in the notice of appeal was settled to finality - And the only option open to a dissatisfied party - Is to appeal against it (H2)

APPEALS - Record - Compilation - CA Rules 2007 - Appellant can compile record upon failure of registrar to do so - And respondent in such a situation is at liberty to compile additional records (H3)

APPEALS - Record - Completeness of - It is counsel's duty to ensure that record is complete - And a party cannot complain if a ground is not considered - Since he had opportunity to regularize the record (H4)

**FACTS**

The Court of Appeal sitting in Kaduna delivered a judgment on 10/12/2001 against the 760 named appellants. Appellants were aggrieved and instead of appealing against the judgment, they chose to file a motion for the court to set aside its judgment on grounds of jurisdiction and fraud. The court refused the application. In reaction, appellants appealed separately to Supreme Court against the ruling of the Court of Appeal refusing to set aside its own decision. The appeals were neatly consolidated for hearing. Appellants' contention is that they had throughout the proceedings at the Court of Appeal, before and after the judgment was delivered, continued to apply for

the striking out of the appeal.

Appellants' basis for the application is that the contents, filing and service of the Notice of Appeal were defective and thus affected the jurisdiction of the court to entertain the appeal. Appellants further contended that the Notice of Appeal is tainted with fraud and since the allegations of fact contained in appellants' affidavit were uncontradicted, they are deemed to be true. Appellants therefore alleged that the Court of Appeal ignored their prayers and went ahead to give judgment against them. Respondent on the other hand although conceded that the court can in clear cases of lack of jurisdiction or fraud, set aside its decision. Respondent however stated that the situation is different in the matter, as there was no establishment of fraud. Respondent further stated that appellants' issue on jurisdiction was the same earlier raised at the Court of Appeal prior to their judgment. Hence, the Court of Appeal has become functus officio on the issue.

### **ISSUES FOR DETERMINATION**

B. Whether the decision of the Lower Court refusing to set aside its judgment upon the allegations of lack of jurisdiction and fraud can be overturned by this Court as prayed by the appellants.

C. Whether the Supreme Court can set aside the judgment of the Court of Appeal on the basis of the present appeal which is an appeal against the refusal of the Court of Appeal to set aside its own decision when no appeal exists against the substantive decision of the Court of Appeal.

**HELD** (Unanimously dismissing the appeal per

**AKA'AH'S JSC)**

*JUDGMENTS - Setting aside*

**1. There is no doubt that a previous judgment given by a court can be set aside by the same court in clear cases of lack of jurisdiction or fraud. In order that fraud may be a ground for vacating the judgment it must be a fraud that is extrinsic or collateral to everything that has been adjudicated upon but not one that has been or must have been deemed to have been dealt with by the Court.**

**Where the steps taken by a court in the course of its proceeding amount to serious procedural irregularity, the mistake or error will render the proceedings a nullity and accordingly its judgment in that respect will be of no legal effect and the inherent power of the court to set aside a judgment that is palpably a nullity could be invoked by a motion or an application by the party affected by the order. (p. 1720 G)**

*Appeals - Issue*

**2. The issue about defect in the notice of appeal was settled to finality and if any party was dissatisfied, the only option left was to appeal against it but instead the appellants filed a post judgment application seeking to set aside the judgment of 10/12/2001. (p. 1721 H)**

*APPEALS - Record - Compilation - CA Rules 2007*

**3. The 1981 and 2002 Rules do not specifically provide for the compilation of records by the appellant as is the case under the 2007 Rules. The function of compiling the records is the primary responsibility of the Registrar of the court below. Where the Registrar fails to compile the records within sixty days after the filing of the notice of appeal, it becomes mandatory on the part of the appellant to compile and transmit the records. In a situation where the record of appeal is compiled by the appellant, the respondent is at liberty to compile additional records.**

**From the statement which learned counsel made that it was the appellant who compiled the record of appeal upon which the court below decided appeal No. CA/K/151/2000, it is obvious that a departure from the rules was granted to the appellant to compile the records. The appellant therefore included only those documents and exhibits it needed for its appeal. It was therefore incumbent on the present appellant (who was respondent in appeal No. CA/K/151/2000) to compile additional record for the appeal which would strengthen the argument that appeal No. CA/K/151/2000 was incompetent. Since the appellant knowingly chose not to compile the supplementary record which it was given the opportunity to**

**compile, it cannot be heard to argue that there was fraud or misrepresentation in the record compiled which robbed the court below of jurisdiction to hear and determine appeal No. CA/K/151/2000. The evidence needed to sustain the argument could not be found in the record. Learned counsel for the appellants was labouring under a misconception that it is solely the responsibility of the person appealing to compile all the records for an appeal whether the record will be of any use to his appeal or not. But this is not what the rules provide.**  
 (pp. 1723 E/1724 B)

*APPEALS - Record - Completeness of*

**4. It is counsel's duty to ensure that the record of appeal is a complete record. Thus where a document which was marked rejected for not having been certified, it was impossible for the appeal court to find out if the document was certified or not since it was not made part of the record and so could not make a finding on the issue. The Court stated that it is counsel's duty to ensure that the record of appeal is a complete record and a party cannot complain if a ground of appeal is not considered since he had an opportunity during the settlement of record to have the document included in the record.**

**The same consideration goes for the remaining issues. The concession made by learned counsel for the appellants that the record does not contain all the material that would be necessary to establish by the court that it lacks jurisdiction and the fact that the court granted him the option to file further papers but he failed to utilize the option has absolved the Lower Court of blame when counsel accused the court of going ahead to dismiss his application without a hearing. A court is not obliged to grant a hearing to a party where the record is incomplete and the party's attention is drawn to it and in spite of this, the party insists on proceeding with his case without remedying the situation. It becomes necessary for the appellants to compile the documents which were allegedly fraudulently excluded from the compiled record namely:-**

**(a) The Civil Summons of the 767 writs.**

**(b) The judgments and rulings in respect of the 759 cases**

***dated 3/6/99 and 26/6/2000 and the leave granted by the Lower Court on 20/3/2000 to argue additional grounds of appeal.*** (pp. 1724 F/1725 C)

## NOTABLE POINT OF INTEREST

### **AKA/AHS JSC**

#### ***1. Appeals – Brevity of issues***

In the appellants' brief more than one issue was formulated from grounds 1, 5 and 8. This Court has discouraged the practice of splitting a ground of appeal into a number of issues. The splitting of a ground into more than one issue renders the issues wider than the grounds of appeal complained of.

The purpose of issues for determination is to enable the parties narrow the issues in the grounds of appeal filed in the interest of accuracy, clarity and brevity.(p. 1717 E)

### **REPRESENTATION**

O. A. Abiose; for the Appellants

S. E. Elema; for the Respondent

### **CASES REFERRED TO**

A-G Bendel State v. Aideyan (1989) 4 NWLR (pt. 118) 646

Adelaja v. Fanoiki (1990) 2 NWLR (pt. 131) 137

Agu v. Ikewibe (1991) 3 NWLR (pt. 180) 385

Ogbuanyiya v. Okudo (No. 2) (1990) 4 NWLR (pt. 146) 551

Ndulue v. Ojiakor (2013) 8 NWLR (pt. 1356) 311

Flower v. Lloyd (1879) 10 Ch. D. 327

Ndigwe v. Nwude (1999) 11 NWLR (pt. 626) 315

Ezeokafor v. Ezeilo (1999) 9 (pt. 619) 513

Omoni v. Tom (1991) 6 NWLR (pt. 195) 93

Okonji v. Njokanma (1991) 7 NWLR (pt. 202) 131

Bakare v. Apena (1986) 4 NWLR (pt. 33) 1

Adigun v. A-G of Oyo State (1987) 2 NWLR (pt. 56) 197

Ugo v. Obiekwe (1989) 1 NWLR (pt. 99) 566

Highgrade Maritime Serv. Ltd v. FBN Ltd. (1991) 1 NWLR (Pt. 167) 290

S.P.D.C.N. Ltd. 2013 11 NWLR (Pt. 1364) 86

**STATUTES & RULES REFERRED TO**

Court of Appeal Act, s. 25

Constitution of the Federal Republic of Nigeria 1999, s. 233(2)

Supreme Court Rules, O. 2 r. 9(1)

B

**LEAD JUDGMENT BY AKA'AHS JSC**

This is an appeal by the appellants against the Ruling of the Court of Appeal, Kaduna in CA/K/22M/2001 delivered on 16/4/2002 wherein the Court of Appeal refused to set aside its judgment delivered on 10/12/2001. The Notice of Appeal dated 20/6/2002 contained nine grounds of appeal from which the following four issues were distilled for determination:

C

1. Whether the learned justices of the Court of Appeal in the circumstances of this case could be said to have had the inherent jurisdiction and indeed the duty to grant the appellants' application of 30/1/2002 and set aside their judgment of 10/2/2001 based on the defects in the filing, service and contents of the Notice of Appeal, as having been given without jurisdiction and therefore being a nullity, and/or as having been obtained by fraud (Grounds of Appeal Nos. 1, 3, 4, 5 and 8)

E

2. Whether, in view of the amendment of the processes and proceedings in the Lower Court including the addition of 759 names as respondents in the judgment of 10/12/2001 without hearing any of the parties or their counsel and other procedural irregularities, together with the summary dismissal of the appellants' application of 30/1/2002 to set aside the judgment of 10/12/2001, the appellants can be said to have been denied a fair hearing (Grounds of Appeal Nos. 2, 5 and 9).

F

3. Whether sufficient materials were placed before the Lower Court in the appellants' motion and affidavit of 30/1/2002 and the relevant documents and records they referred to, such as would have justified the Lower Court in invoking its inherent jurisdiction to set aside its own judgment of 10/12/2001 as having been obtained or tainted by fraud on the misrepresentation of the respondents (Grounds of Appeal Nos. 1, 7 and 8)

H

4. Whether the learned justices of the Court of Appeal were justified in refusing to set aside their judgment of 10/12/2001 as hav-

ing been given without jurisdiction on the grounds that there cannot or need not be any appeal against a civil summons within time since same is not a decision or order pronounced upon by the trial court (Ground of Appeal No. 6)

On his part the respondent's counsel submitted three issues for determination which are -

A. Whether the appellant's appeal is competent considering the fact that no leave of the Lower Court nor that of the Supreme Court was obtained in respect of this appeal (Grounds 1 to 9 of the Notice and Grounds of appeal).

B. Whether the decision of the Lower Court refusing to set aside its judgment upon the allegations of lack of jurisdiction and fraud can be overturned by this Court as prayed by the appellants. (Grounds 1, 2, 3, 4, 6, 7, 8 and 9 of the Notice and Grounds of Appeal)

C. Whether the Supreme Court can set aside the judgment of the Court of Appeal on the basis of the present appeal which is an appeal against the refusal of the Court of Appeal to set aside its own decision when no appeal exists against the substantive decision of the Court of Appeal. (Grounds 5 and 9 of the Notice and Grounds of Appeal)

In the appellants' brief more than one issue was formulated from grounds 1, 5 and 8. This Court has discouraged the practice of splitting a ground of appeal into a number of issues. See: A-G Bendel State v. Aideyan (1989) 4 NWLR (Pt. 118) 646; Adelaja v. Fanoiki (1990) 2 NWLR (Pt. 131) 137; Agu v. Ikewibe (1991) 3 NWLR (Pt. 180) 385. The splitting of a ground into more than one issue renders the issues wider than the grounds of appeal complained of. See: Highgrade Maritime Services Ltd v. First Bank (Nig) Ltd. (1991) 1 NWLR (Pt. 167) 290.

The purpose of issues for determination is to enable the parties narrow the issues in the grounds of appeal filed in the interest of accuracy, clarity and brevity. See: Ogbuanyiya v. Okudo (No. 2) (1990) 4 NWLR (Pt. 146) 551.

Among the issues submitted by the respondent's counsel, the first issue is a preliminary objection since it is an attack on the entire notice and grounds as being incompetent. No notice of preliminary objection was filed as required by Order 2 Rule 9 (1) of the Supreme

Court Rules which provides that -

*“9(1) A respondent intending to rely upon a preliminary objection to the hearing of an appeal shall give the appellant three clear days notice thereof before the hearing setting out the grounds of objection, and shall file such notice together with ten copies thereof with the Registrar within the same time”*

Since the respondent failed to file the notice of preliminary objection but raised the issue about the competence of the Notice of Appeal and the said issue was not distilled from any of the grounds of appeal, this issue has no leg on which to stand. It is incompetent and it is accordingly struck out. See: *Abba v. S.P.D.C.N. Ltd.* 2013 11 NWLR (Pt. 1364) 86; *Ndulue v. Ojiakor* (2013) 8 NWLR (Pt. 1356) 311.

The remaining two issues are the same as issues 1, 3 and 4 in the appellants' brief. I find that the respondent's issues B and C are more succinct and clear and I prefer them to the appellants' issues which are not so clear.

Learned counsel for the appellants stated the principle that a superior court has the inherent jurisdiction to set aside its own decision which is a nullity and given without jurisdiction, or one which is obtained by fraud and where this is the case a party can choose either to appeal against it or apply to set it aside. In this case, counsel chose the latter option. He pointed out that throughout the proceedings in the Lower Court, before and after the judgment was delivered on 10th December, 2001, counsel continued to apply for the striking out of the appeal on the grounds that the contents, filing and service of the Notice of Appeal were defective and thus affected the jurisdiction of the Lower Court to entertain the appeal but the allegations were glossed over, avoided and ignored by the Lower Court and the court proceeded with this attitude when it summarily dismissed the appellants' application of 30th January, 2002 to set aside the judgment of 10th December, 2001 on 16th April, 2002.

Learned counsel contended that since the record was compiled by the respondent in the Court of Appeal against a final decision and the jurisdiction of the Court of Appeal is statutory, which cannot be conferred on the court by consent of the parties, the fundamental defects in the Notice of Appeal rendered it incompetent and thus ousted the jurisdiction of the Lower Court to entertain the



proceedings or deliver judgment based on it since the notice of appeal is the foundation of the appeal. Learned counsel contended that the Notice of Appeal filed on 8th March, 2000 and which was endorsed with payment receipt No. B001382392 is tainted with fraud and since all the allegations of fact contained in the appellants' affidavit of 30th January, 2002 in support of the motion to set aside the judgment of 10th December, 2001 in the Lower Court were uncontradicted by the respondent, they are deemed admitted as true. He submitted that although the appellants chose to file an application to set aside the judgment rather than appeal against it, sweeping away arguments which challenged the jurisdiction of the lower court to entertain the appeal did nothing to help the administration of justice that if an appeal had been filed on the issues, the Supreme Court might decide to send the issue back to the Lower Court for a proper resolution. Since the appellants have insisted that the court below must resolve the issue of fraud and jurisdiction, it is duty bound to resolve the issue. These arguments were repeated in the remaining issues of the appellants' brief. B C D

Learned counsel for the respondent submitted at first that the Court of Appeal has no inherent jurisdiction to set aside its own judgment. He later shifted his stand to state that in clear cases of lack of jurisdiction or fraud, the court can set aside its own judgment and in dealing with this appeal the question that arises is whether the judgment of the Lower Court was one that was obtained by fraud or with lack of jurisdiction as to clothe the Lower Court with inherent jurisdiction to set aside the said judgment. He referred to the application dated 30th January, 2002 wherein the appellants' counsel prayed the Lower Court for an order setting aside the judgment delivered on 10th December, 2001 on allegations of fraud and lack of jurisdiction. He said that apart from the allegation in which specific mention was made about the payment receipt No. B001382392 for the Notice of Appeal filed on 8th March, 2000, there is no further evidence from any staff of the process Registry of the Court of Appeal in support of the allegation. He argued that if a receipt used in filing a process in the court is forged or "tainted with fraud" as alleged, the best evidence to prove it would be the evidence of the staff of the Court of Appeal who has custody of the Receipt Book of the court and a casual allegation by counsel and his employee without more, E F G H

would not elevate the standard of proof elicited therein to proof beyond reasonable doubt whether the fraud alleged was made in civil proceedings or not. On the allegation of lack of jurisdiction as a ground for setting aside the judgment of the lower court learned counsel pointed out that the issues raised by the appellants herein in their motion to set aside its judgment were the same arguments which were advanced in the main appeal on which judgment was delivered on 10th December, 2001 and this was what led the Lower Court to refuse to accede to the request and thereafter dismissed the application as it was functus officio.

A scrutiny of the record does not contain the motion of 30/1/2002. However the proceedings of 16/4/2002 are in respect of the said motion which was given appeal No. CA/K/22/M/02. (See Vol. 2 pages 905-907 of the records). It was the last attempt which the appellants made to have the judgment delivered in CA/K/151/2000 on 10/12/2001 set aside for fraud and when the court below failed to grant the application, counsel decided to appeal to this Court. Long before the judgment sought to be set aside was delivered, learned counsel for the appellants/applicants sought to strike out the Notice of Appeal filed on 8/3/2000 as being defective and incompetent and improperly filed. (See supplementary record page 1).

On 26/9/2001, learned counsel filed Notice of Preliminary Objection to say that the Court (i.e. Court of Appeal) had no jurisdiction to and could not properly determine the appeal on the basis of the Notice of Appeal purportedly dated 8/3/2000 on the grounds that the Notice of Appeal so dated was incompetent and incurably bad in law and the Notice of Appeal did not comply with Section 25 of the Court of Appeal Act or the Court of Appeal Rules. (See page 419 Volume 1 of the records).

***There is no doubt that a previous judgment given by a court can be set aside by the same court in clear cases of lack of jurisdiction or fraud. In order that fraud may be a ground for vacating the judgment it must be a fraud that is extrinsic or collateral to everything that has been adjudicated upon but not one that has been or must have been deemed to have been dealt with by the Court.*** See *Flower v. Lloyd* (1879) 10 Ch. D. 327. ***Where the steps taken by a court in the course of its proceeding amount to serious procedural irregularity, the mis-***

**take or error will render the proceedings a nullity and accordingly its judgment in that respect will be of no legal effect and the inherent power of the court to set aside a judgment that is palpably a nullity could be invoked by a motion or an application by the party affected by the order.** See: Ndigwe v. Nwude (1999) 11 NWLR (Pt. 626) 315 at 339; Ezeokafor v. Ezeilo (1999) 9 B (Pt. 619) 513 at 530.

As stated earlier in this judgment, even before the Court of Appeal heard the appeal, learned counsel for the appellant herein had made spirited attempts to strike out the Notice of Appeal filed on 8/3/2000 but did not succeed in doing so. Particular reference is made to the Notice of Preliminary Objection which learned counsel representing the respondents (now appellants) filed on 25/9/2001. He stated that the respondents will rely on the following Preliminary Objection at the hearing of the appeal:

*"This Honourable Court has no jurisdiction to and cannot properly determine this appeal as presently filed and on the basis of the Notice of Appeal purportedly dated 8/3/2000, the defective appellant's brief dated 22/11/2000, and the defective appellant's reply brief dated 12/9/01.*

*The grounds for the objection are as follows:-*

- 1. The Notice of Appeal dated 8/3/2000 is incompetent and incurably bad in law.*
- 2. The Notice of Appeal does not comply with Section 25 of the Court of Appeal Act or the Court of Appeal Rules.*
- 3. The appellant's brief and reply brief does not refer to the Notice of Appeal or the records before this Honourable Court.*
- 4. The appellant's brief and reply brief are deliberately misleading"*

Salami, J.C.A. (as he then was) who wrote the leading judgment overruled the objection and struck it out because it did not comply with Order 3 Rule 15 Court of Appeal Rules. (See: page 448 of the records). Omaxe, J.C.A. in his concurring judgment held that there was no error or defect in the notice of appeal. (See page 466 of the records).

***The issue about defect in the notice of appeal was settled to finality and if any party was dissatisfied, the only option left was to appeal against it but instead the appellants filed a post***

***judgment application seeking to set aside the judgment of 10/12/2001.***

The proceedings of 16th April, 2002 clearly brought out the fact that the material which counsel was relying on to say that the court had no jurisdiction to entertain appeal No. CA/K/151/2000 was not transmitted to the court. This is what transpired between learned counsel and the court:-

*“Okike:- Moves motion for the Judgment of this Court to be set aside, its judgment delivered in CA/K/151/2000 on the 10th day of December, 2000 (sic) on the ground of fraud... The record does not contain all the material that would be necessary to establish by the court that it has no jurisdiction because that appellant who compiled the record failed to include them.*

*Court:- Were you not granted option of filling (sic) further papers which you deem relevant to the hearing of the appeal (sic) and was not included in bundle of papers filed by the appellant*

*Okike:- Yes I was granted the option but I failed to exercise it.”*

The Court of Appeal Rules 1981 under which the judgment in CA/K/151/2000 was delivered and the one enacted in 2002 when the ruling, upon which the subject of this appeal is based was made provided in Order 3 Rules 9 (1) (c) (2) & (3) and Order 7 Rules 2 and 3 (2) as follows:-

*“9 (1) The record of appeal shall contain the following documents in the order set out:-*

*(c) Copies of documents settled by the Registrar of the court below for inclusion in the record of appeal in accordance with Rule 8 of this Order;*

*(2) The Registrar of the court below as well as the parties, shall endeavour to exclude from the record all documents (particularly such as are merely formal) that are not relevant to the subject matter of the appeal and generally to reduce the bulk of the record as far as practicable, taking special care to avoid duplication of documents and unnecessary repetitions of headings and other merely formal parts of documents; but the documents omitted to be copied shall be enumerated where part or parts only of any lengthy document are directly relevant to the subject matter of the appeal, it shall be permissible to omit to copy such parts of the documents as are neither directly relevant to the subject matter of the appeal nor necessary for*

*the proper understanding of the part or parts that are so relevant.*

*(3) If the Registrar of the court below, or any party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant and the other party nevertheless insists upon its being included, the document shall be included and the record shall, with a view to the subsequent adjustment of the costs of and incidental to the inclusion of such document, indicate in the index of papers or otherwise the fact that, and the party by whom, the inclusion of the document was objected to.*

*7-2 The Court may direct a departure from these Rules in any way when this is required in the interest of justice.*

*3(1) The Court may, in an exceptional circumstance, and where it considers it in the interest of justice so to do, waive compliance by the parties of these Rules or any part thereof.*

*(2) Where there is such waiver of compliance with the Rules, the Court may, in such manner as it thinks right, direct the appellant or the respondent as the case may be to remedy such non-compliance or may, notwithstanding, order the appeal to proceed or give such directions as it considers necessary in the circumstance.”*

***The 1981 and 2002 Rules do not specifically provide for the compilation of records by the appellant as is the case under the 2007 Rules. The function of compiling the records is the primary responsibility of the Registrar of the court below. Where the Registrar fails to compile the records within sixty days after the filing of the notice of appeal, it becomes mandatory on the part of the appellant to compile and transmit the records. In a situation where the record of appeal is compiled by the appellant, the respondent is at liberty to compile additional records.*** This is contained in Order 8 Rules 4, 5 and 6 which state -

*“4. Where at the expiration of sixty days after the filing of the notice of appeal the registrar has failed and or neglected to compile and transmit the records of appeal in accordance with the preceding provisions of this Rule, it shall become mandatory for the Appellant to compile the records of all documents and exhibits necessary for his appeal and transmit to the court within 30 days after the registrar’s failure or neglect.*

*5. Such records compiled by the appellant, shall be served on*

*the respondent or respondents within the time stipulated for transmitting such records to the Court, which is 30 days.*

6. *Where the respondent considers that there are additional records which may be necessary in disposing the appeal, he shall be at liberty, within 15 days of the service on him of the records, to*  
 B *compile and transmit to the Court such records of appeal."*

**From the statement which learned counsel made that it was the appellant who compiled the record of appeal upon which the court below decided appeal No. CA/K/151/2000, it**  
 C **is obvious that a departure from the rules was granted to the appellant to compile the records. The appellant therefore included only those documents and exhibits it needed for its appeal. It was therefore incumbent on the present appellant (who was respondent in appeal No. CA/K/151/2000) to com-**  
 D **pile additional record for the appeal which would strengthen the argument that appeal No. CA/K/151/2000 was incompetent. Since the appellant knowingly chose not to compile the supplementary record which it was given the opportunity to compile, it cannot be heard to argue that there was fraud or**  
 E **misrepresentation in the record compiled which robbed the court below of jurisdiction to hear and determine appeal No. CA/K/151/2000. The evidence needed to sustain the argument could not be found in the record. Learned counsel for the ap-**  
 F **pellants was labouring under a misconception that it is solely the responsibility of the person appealing to compile all the records for an appeal whether the record will be of any use to his appeal or not. But this is not what the rules provide.**

**It is counsel's duty to ensure that the record of appeal is**  
 G **a complete record. Thus where a document which was marked rejected for not having been certified, it was impossible for the appeal court to find out if the document was certified or not since it was not made part of the record and so could not make a finding on the issue. The Court stated that it is counsel's**  
 H **duty to ensure that the record of appeal is a complete record and a party cannot complain if a ground of appeal is not considered since he had an opportunity during the settlement of record to have the document included in the record. See Omoni v. Tom (1991) 6 NWLR (Part 195) 93.**

In Okonji v. Njokanma (1991) 7 NWLR (Pt. 202) 131 this Court stressed that counsel ought to devote personal attention to what should be embodied in the record of the court, otherwise it may lead to putting incomplete record before the appellate court and consequently delay the hearing of the appeal. The jurisdiction of the court below was not impaired nor was the judgment in appeal No. CA/K/151/2000 obtained by fraud. Since there is nothing to show that the judgment was given without jurisdiction or obtained by fraud, the Lower Court could not exercise any inherent jurisdiction to set it aside on the application of the appellants. The remedy of the appellants lay in appealing against the judgment. See: Section 233(2) of 1999 Constitution; Bakare v. Apena (1986) 4 NWLR (Pt. 33) 1, Adigun v. Attorney-General of Oyo State (1987) 2 NWLR (Pt. 56) 197.

***The same consideration goes for the remaining issues. The concession made by learned counsel for the appellants that the record does not contain all the material that would be necessary to establish by the court that it lacks jurisdiction and the fact that the court granted him the option to file further papers but he failed to utilize the option has absolved the Lower Court of blame when counsel accused the court of going ahead to dismiss his application without a hearing. A court is not obliged to grant a hearing to a party where the record is incomplete and the party's attention is drawn to it and in spite of this, the party insists on proceeding with his case without remedying the situation. It becomes necessary for the appellants to compile the documents which were allegedly fraudulently excluded from the compiled record namely:-***

***(a) The Civil Summons of the 767 writs.***

***(b) The judgments and rulings in respect of the 759 cases dated 3/6/99 and 26/6/2000 and the leave granted by the Lower Court on 20/3/2000 to argue additional grounds of appeal.***

I am in full agreement with the submission made by learned counsel for the respondent that all the grounds and facts upon which the allegations of fraud and lack of jurisdiction on which the motion to set aside the judgment of the Lower Court was predicated or erected on quick sand and was bound to collapse like a pack of cards.

I find that the appeal lacks merit and it is accordingly dismissed. I make no order on costs.

**MUHAMMAD JSC**

I read before now the judgment just delivered by my learned brother, Aka'ahs, JSC. I agree with his reasoning and conclusion which I adopt as mine.

B

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**MUNTAKA-COOMASSIE JSC**

The Court of Appeal now Court below, delivered a judgment on 10/12/2001 against the 760 named appellants. The Appellants were aggrieved and filed a motion to set aside the Court below decision. That Court turned down the application on the grounds of want of jurisdictions and fraud.

The Court below then dismissed the motion filed by the Appellants on 30/1/2002. Clearly the ruling favoured the Bank of the North Limited. The Appellants then appealed separately against the ruling of the Court below refusing to set aside its own decision. The appeals were neatly consolidated for hearing with one single suit No. K/919/97 Patrick Michael v. Bank of the North Limited.

Confidently, Justice Wada Umar Abubakar delivered separate Judgment in favour of 760 vis-à-vis 76 plaintiffs who filed separate suits against the respondent that was on 24/2/2000.

The Respondents Bank filed a Notice of Appeal which named only one of the Appellants as respondent and the appeal was heard by the Court below Kaduna.

The preliminary objection which raised as a matter of jurisdiction the failure to name the respondents, now Appellants in this Court, in the Notice of Appeal failure to serve the Notice of Appeal and other issues was struck out on technical grounds and the respondent breach's appeal allowed in a judgment which now named the 760 appellants.

The 760 named appellants then filed a motion to set aside the judgment of 10/12/2001 raising the same issues of lack of jurisdiction and fraud. However this application of 30/1/2002 was and was summarily dismissed on the same day.

The 760 named appellants being aggrieved now appealed to the Supreme Court and filed a Notice of appeal containing 9 grounds of Appeal.



The trial Court delivered separate judgments in suit No.K/919/97 in favour of the plaintiff, the respondent's former employees. These judgments had been written and decide to have been delivered in the 759 separate suits filed and heard together.

The Respondent bank initially filed a Notice of Appeal dated 3/3/2000 against the said judgment and subsequently relied on a Notice of Appeal dated 7/3/2000 but purportedly filed on 8/3/2000. So many other documents were filed and discussed. The appeal was heard on the bundle of documents filed by the respondent which did not include the writ of summons in Suit No. K/919/97 filed by Patrick Michael, the only named respondent to the appeal.

Even though I gathered that the notice of appeal was never amended at any time by order of the court below to include names of 759 others in the notice of appeal. Surprisingly the judgment of the court below dated 10/12/2001 suddenly and inexplicably named 760 persons as respondents to the appeal and as against whom the judgment was delivered.

Motion by the appellants to set aside the court below judgment of 10/12/01 was refused and struck out on the same day it was heard.

The 760 named appellants have now appealed to this court against the decision of the court below dated 16/4/2002 and filed, as I stated earlier, nine (9), grounds of appeal.

The appellants also distilled four (4) issues for consideration of the appeal.

Respondents counsel S. E. Elema filed respondents brief on 11/9/2014 and adopted same. He argued briefly that the Lower Court, (Court of Appeal Kaduna) delivered judgment on 10/12/01 rather than appeal against the said judgment the appellants, herein, brought a motion dated 30/1/2002 praying the court of Appeal Kaduna to set aside its judgment on grounds of lack of jurisdiction and fraud. The said motion was heard on 16/4/2002 and rightly dismissed on the same day. The appellants, according to him, did not file any notice of appeal against the substantive judgment of the court below, but have wish to the said judgment set aside by the Supreme Court on the basis of this appeal.

My learned brother Hon. Justice K. B. Aka'ahs, JSC, allowed me to have a preview over his lead judgment just delivered. I closely

read and analyzed the reasons and conclusion relied upon by him to hold that the appeal lacks merit. I found myself in total agreement with his lordship. The appeal therefore in my view is devoid of substance and I also dismiss this appeal. No order as to costs.

B

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**RHODES-VIVOUR JSC**

My lords, I have had the advantage of reading in draft the leading judgment prepared by my learned brother, Aka'ahs JSC. For the reasons he gives I too would dismiss the appeal with no order on costs.

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**NGWUTA JSC**

D I read before now the lead judgment just delivered by my learned brother, Aka'ahs, JSC and for the reasons therein stated I agree that the appeal is devoid of merit.

The principle which governs the formulation of issues for determination in an appeal has been repeatedly stated by the court. E The grounds of appeal should in no circumstance be less than the issues for determination. Though the court may tolerate equal number of grounds and issues formulated therefrom a situation where there are less grounds of appeal than issues for determination cannot be tolerated. See *Agu v. Ikewibe* (1991) 3 NWLR (Pt. 180) 385, A-G F *Bendel State v. Aideyan* (1989) 4 NWLR (Pt. 118) 649, *Ugo v. Obiekwe & Anor* (1989) 1 NWLR (Pt. 99) 566.

Learned Counsel for the appellant exhibited Perry Mason Shenanigans before the Court below to the detriment of his client's case. G In urging the Court to vacate its judgment in CA/IC/151/2000 delivered on 10th December, 2000 on grounds of fraud, he relied on the fact that:

*"The record does not contain all the material that would be necessary to establish by the court that it has no jurisdiction because H that the appellant who compiled the record failed to include them."*

When reminded by the Court that he was granted option of filing further papers which he deems relevant to the order he sought but omitted by the appellant he answered: "Yes, I was granted option but I failed to exercise it." From his own ipse dixit the processes that

formed the basis of his allegation of fraud were not before the court. He had an opportunity to file the process as additional record to support his application but he failed to do so.

It was not the duty of the court or even counsel on the other side to provide proof that the judgment of the court was obtained by fraud. The duty is that of the appellant who alleges fraud. B

For the above and the fuller reasons in the lead judgment I also dismiss the appeal for lack of merit. Parties shall bear their respective costs.

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