

SUPREME COURT OF NIGERIA
FRIDAY 29TH JANUARY, 2016. SC. 204/2014
**CORAM:- I. T. MUHAMMAD, M. S. MUNTAKA-
COOMASSIE, S. GALADIMA, O. ARIWOOLA,
M. D. MUHAMMAD, JJSC**

MAGAJI TINDAFI APPELLANT
AND
DANLADI JARA RESPONDENT

APPEALS - Remittal order - Powers of CA - Having found that Sharia CA lacked jurisdiction - CA was within its powers in remitting appeal to HC - For hearing on merits in its appellate jurisdiction (H1)

APPEALS - Transfer of - Powers of Sharia Court of Appeal - The Court can transfer appeal to HC - Where it is of the opinion that an appeal from Area Court - Should have properly been brought to HC (H2)

APPEALS - Issue - Determination - Incidental order - Appellate court can make an order once same is incidental to issue in appeal - Even if same was not sought and parties have not been heard (H3)

FACTS

At the Upper Sharia Court, Dakin Gari in Birnin Kebbi State, plaintiff/appellant instituted this action against defendant/respondent, claiming a “Fadama Farmland” which he said was leased to respondent’s father some 20 years prior to the commencement of the action. Respondent denied the claim. He asserted that he inherited the farm from his father and was not aware that the farm was leased to his father by appellant. At the trial, appellant called 3 witnesses (PW1, PW2 and PW3) who testified on his behalf. Respondent did not call any witness.

At the end of trial, the Court reviewed the evidence of witnesses and entered judgment in favour of appellant. Dissatisfied, respondent appealed to the Kebbi State Sharia Court of Appeal. The Court after further reviewing the case as presented and decided by the trial Court affirmed the decision of the trial Court. Aggrieved

further, respondent appealed to the Court of Appeal Sokoto Division. The Court in its judgment set aside the decision of the Sharia Court of Appeal on the ground of lack of jurisdiction on the part of the Sharia Court of Appeal. The appeal was therefore remitted to the Kebbi State High Court for hearing in its appellate jurisdiction. Dissatisfied, appellant appealed to the Supreme Court.

ISSUE FOR DETERMINATION

“Whether, in the entire circumstances of this case, the court below was not wrong, after it had held that the Sharia Court of Appeal of Kebbi State had no jurisdiction to entertain the Respondent’s appeal, to thereafter make an order of remittal of the appeal to the Chief Judge of Kebbi State for hearing before the High Court of Justice of Kebbi State in its appellate jurisdiction.

HELD (Unanimously dismissing the appeal per GALADIMA JSC)

APPEALS - Remittal order - Powers of CA

1. No doubt, the powers given to Court of Appeal as provided above are very wide. In the circumstances of the case at hand, where the Sharia Court of Appeal heard the appeal in its appellate jurisdiction and in view of the fact that the court below had found that that court lacked the jurisdiction to entertain the appeal and having set aside the judgment of the Sharia Court of Appeal, the said court below was well within its powers in remitting the appeal to the Chief Judge of Kebbi State for hearing before the High Court in its appellate jurisdiction being the court that has jurisdiction for determination on its merit.

With due respect to the learned Counsel for the Appellant I cannot agree with him that the Court of Appeal is restricted to exercising its general powers granted to it under section 15 of the Act only as has been allowed by the Sharia Court of Appeal under Section 14 of the Sharia Court of Appeal Law The decision to remit the appeal to Chief Judge of Birnin Kebbi for hearing before the State High Court, in its appellate

jurisdiction was because the Sharia Court of Appeal had no jurisdiction to entertain the appeal before it.

The situation and circumstance under which the Court of appeal will exercise its power under Section 15 of its Act is quite clear. The section adequately empowers it in its appellate jurisdiction to order the case to be heard by a Court of competent jurisdiction. It does not need to have recourse to section 14 of the Sharia Court of Appeal Law of Kebbi State to remit the appeal to the Chief Judge for hearing before the High Court in its appellate jurisdiction. This is made in tune with the true purpose of the Act. (p. 227 D)

APPEALS - Transfer of - Powers of Sharia Court of Appeal

2. Where there is a local legislation on a point in issue, then that should be correctly interpreted and applied to the situation. The Sharia Court of Appeal Law Cap 133, Laws of Kebbi State (1996) should be interpreted and applied to the situation and circumstances in which it was enacted. The law provides for a situation when at any time before the hearing of any appeal from any Area Court, the Sharia Court of Appeal is of opinion that the appeal should properly have been brought before the High Court may at any time or at any stage of the proceedings before final judgment either with or without application from any parties and with the consent in writing of the Chief Judge transfer such appeal to the High Court. (p. 228 C)

APPEALS - Issue - Determination - Incidental order

3. The issue as argued by the Appellant has become moot in view of the foregoing clear provisions. The court below having held that the Sharia Court of Appeal had no jurisdiction to entertain the appeal when it did and having consequently set aside the judgment of the Sharia Court of Appeal, had avowed responsibility to make an order that would result in the just determination of the Respondent's appeal which had not been determined on its merits. I agree with the learned Counsel for the respondent that the order remitting the appeal to the Chief Judge for hearing before the appellate State High Court was

incidental to the determination of the real question in controversy in the appeal. More so, in view of the fact that it was the Respondent herein, as the appellant before the court below, who had prayed for such an order. In a number of cases, this court has held that an appellate Court could make an order once same is incidental to a determination of the real question in controversy in the appeal, even if the same was not sought for the appellant and even if the parties have not been heard on same. (p. 228 H)

C NOTABLE POINT OF INTEREST

GALADIMA JSC

1. Appeal with remote chance of success

I shall not fail to appreciate the industry and research work exerted in this appeal by the learned Counsel for the respective parties. However, when the chances of an appeal succeeding are extremely remote it behooves Counsel in the case to advise his client on the uselessness of pursuing on such a protracted appeal which patently lacks merit. This is to save the time of Court and parties from incurring unnecessary expenses. (p. 229 D)

REPRESENTATION

Wole Agunbiade with Boluwaji Kunlere for the Appellants
F Abdullahi Yahaya for the Respondent

CASES REFERRED TO

Okolo v. Union Bank of Nig. Ltd. (2004) 3 NWLR (pt. 859) 60
Lado v. CPC (2011) 11 NWLR (pt. 1279) 689
G Magaji v. Matari (2000) 8 NWLR (pt. 670) 722
Abuja v. Bizi (1989) 5 NWLR (pt. 119) 120
Korau v. Korau (1998) 4 NWLR (pt. 545) 212
Kalu v. Odiu (1992) 6 SCNJ (pt. 76)
Nneji v. Chukwu (1988) 1 NSCC 115 at 1131
H The Rosicrucian Order (AMORC) Nigeria v. Awoniyi (1993-1994)
All NLR 479
Onifade v. Olayiwole (1990) 11 - 12 SC 1
Falomo v. Banigbe (1998) 7 NWLR (pt. 557) 679

STATUTES REFERRED TO

Court of Appeal Act Cap 36 LFN 2004, s. 15

Sharia Court of Appeal Law Cap 133 of 1996 (Kebbi State), s. 14

LEAD JUDGMENT BY GALADIMA JSC

This appeal is against the judgment of Sokoto Court of Appeal Division delivered on the 29th June, 2012, wherein the court allowed the appeal of the Respondent therein and set aside the judgment of the Sharia Court of Appeal Birnin Kebbi delivered on 16th August, 2005. The Court as well ordered that the Respondent's appeal be remitted to the Chief Judge of Kebbi State for hearing before the State High Court in its appellate jurisdiction.

The background facts leading to this protracted case can be summarized as follows:-

At the Upper Sharia Court, Dakin Gari in Birnin Kebbi State the Appellant, as Plaintiff, commenced this action against the Respondent as Defendant, claiming a "Fadama Farmland" which he said was leased to the Respondent's father some 20 years before the action was commenced. The Respondent denied the claim. He asserted that he inherited the Farm from his father and was not aware that the farm was leased to his father by the Appellant. At the trial Upper Sharia Court the Appellant called 3 witnesses (PW1, PW2, PW3) who testified on his behalf. Respondent did not call any witness. At the conclusion of hearing the court having reviewed the evidence of witnesses entered judgment in favour of the Appellant.

Dissatisfied with the decision of the Upper Sharia Court, he appealed to the Kebbi State Sharia Court of Appeal. The Court after further reviewing the case as presented and decided by the Upper Sharia Court, made the following findings:-

"The appellant is alleging lease and the respondent is claiming inheritance. We observed that the appellant has presented 3 witnesses and 2 of the witnesses were credible. In this regard we agree with the view of the lower court. Because the criticism lodged against them will not discredit their testimonies. And if evidence of ownership was established the issue of "HAUZI" will not be considered. See ASHALUL - MADARIK Vol. 2 as follows:

Also, under Islamic principles, 2 witnesses only are required in any claim on right apart from the issue of adultery, Magaji has 2 witnesses in his favour who confirmed the lease, and an issue of lease is returnable to its owner. This is as was contained in the book of RISALA where the holy Prophet (S.A.W) stated.

B *Similarly, we also agree with the view of the Upper Sharia Court who accepted and considered the testimonies of the appellant witnesses. This is because what can warrant not considering the testimony of witness is if testimony will bring benefit to him or if it will drive harm to him. For example seeking inheritance as happened.*
C *Supra.”*

Flowing from the above findings the Sharia Court of Appeal affirmed the decision of the Upper Sharia Court, Dakin Gari based on evidence of the two witnesses called by the Appellant at the trial.

D Further dissatisfied with the decision of the Sharia Court of Appeal, the Respondent appealed to the Court of Appeal upon 3 grounds of appeal. Needless reproducing the grounds but the 2 issues presented for determination in that Court are as follows:-

E *“(i) Whether the Sharia Court of Appeal has jurisdiction to entertain appeals relating to title to land.*

(ii) Whether a Plaintiff in an action for determination of title under Islamic Law can prove his case without proving boundaries of the land in dispute”.

F The Appellant who was the Respondent before the court below did not file brief of argument. Appeal was therefore heard only on the Appellant’s brief of argument filed before that Court.

G In its judgment the Court below allowed the appeal and set aside the judgment of the Sharia Court of Appeal on the ground that the claim before the trial Court was not “connected to Islamic Personal Law at all but on declaration of title to land simpliciter” and therefore the Sharia Court of Appeal has no jurisdiction to entertain the appeal before it.

H Dissatisfied with this decision Appellant further appealed to this Court; with his initial notice of appeal containing three grounds on 28/8/2012. At the hearing of this appeal on 18/11/2015 appellant was granted leave to file and argue the 4th additional ground of appeal.

In the Amended Notice of Appeal 4 grounds set out without their particulars are as follows:-

“Ground One

The Learned Justices of the Court of Appeal erred in law when, after holding that the Kebbi State Sharia Court of Appeal, Birnin Kebbi had no jurisdiction to entertain the Respondent’s appeal before it they made an order remitting the appeal to the Chief Judge of Kebbi State for hearing before the High Court in its appellate jurisdiction and this occasioned a miscarriage of justice.

Ground Two

The learned Justices of the Court of Appeal erred in law and acted without jurisdiction by making an order remitting the Respondent’s appeal at the Kebbi State Sharia Court of Appeal, Brinin Kebbi to the Chief Judge of Kebbi State for hearing before the High Court in its appellate jurisdiction when none of the parties sought such a relief and without affording the Appellant any opportunity of being heard before the order was made and this occasioned miscarriage of justice.

Ground Three

The learned Justices of the Court of Appeal erred in law by remitting the Respondent’s appeal at the Kebbi State Sharia Court of Appeal to the Chief Judge of Kebbi state for hearing before the High Court in its appellate jurisdiction when the court below had no jurisdiction or power to do so and this occasioned miscarriage of justice.

Ground Four

The learned Justices of the Court of Appeal erred in law and acted without jurisdiction by remitting the Respondent’s appeal at the Kebbi State Sharia Court of Appeal to the Chief Judge of Kebbi State for hearing before the High Court in its appellate jurisdiction, when that appeal had already been heard and final judgment had been delivered by the Kebbi State Sharia Court of Appeal and in the absence of the consent of the Chief Judge of Kebbi State and this occasioned a miscarriage of justice”.

In the Appellant’s brief deemed filed on 18/11/2015, based on the Appellant’s Amended Notice of Appeal the lone issue formulated for determination reads:-

“Whether, in the entire circumstances of this case, the court below was not wrong, after it had held that the Sharia Court of Appeal of Kebbi State had no jurisdiction to entertain the Respondent’s appeal, to thereafter make an order of remittal of the appeal to the Chief Judge of Kebbi State for hearing before the High Court of Justice of Kebbi State in its appellate jurisdiction. (Ground 1 and 4)

In Respondent’s brief of argument deemed filed on 18/11/2015 the Respondent’s lone issue raised for determination is as follows:-

“Whether in the entire circumstances of this case, the court below was right when it made an order remitting the appeal to the Chief Judge of Kebbi state for hearing before the High Court in its appellate jurisdiction having already declared that the Sharia Court of Appeal had no jurisdiction to entertain the appeal when it did and consequently set aside the judgment of the Sharia Court of Appeal on grounds of want of jurisdiction” (Grounds 1 and 4).

On the 18th November, 2015 when this appeal came up for hearing respective learned Counsel for the parties adopted and relied on their briefs of argument. While the learned Counsel for the Appellant has urged the Court to allow the appeal, the learned Counsel for the Respondent urged that the appeal be dismissed.

The argument put forward by the learned Counsel on the sole issue he formulated, is that the court below ought to have struck out the Respondent’s appeal before the Sharia Court of Appeal of Kebbi State. On this submission reliance was placed on a number of decisions of this Court, notably OKOLO AND ANOR v. UNION BANK OF NIGERIA LIMITED (2004) 3 NWLR (pt. 859) 60. LADO AND ORS. v. CONGRESS FOR PROGRESSIVE CHANGE AND ORS. (2011) 11 NWLR (pt. 1279) 689.

The learned Counsel for the Appellant is not unmindful of one exception to the settled position of the law on the proper order to make when it is found that the court below had no jurisdiction to entertain a matter. He finds that exception in Section 14 of the sharia Court of Appeal Law, Cap 133, Laws of Kebbi state 1996. Though it is conceded that the court below could exercise the power of Sharia Court of Appeal of Kebbi State to transfer the case to the High Court of Kebbi State by virtue of section 15 of the Court of Appeal Act (as amended) Cap. C 36 Laws of the Federation of Nigeria, 2004, but

that this power of transfer must be exercised within the compass of section 14 of the Sharia Court of Appeal (Supra). However, that in the instant case, the time within which the transfer of the case could have been done by the Sharia Court of Appeal to the High Court had elapsed before the court below made the order of remittal. B
 Expatriating further on the point learned Counsel stated that under Section 14 of Sharia Court of Appeal (supra) the transfer of the appeal by that Court to the High Court could only have been legally done before the court delivered its final judgment. Furthermore, that such transfer could only have been legally done with the consent in writing of the Chief Judge of Kebbi state. It is submitted that the order of remittal of the case made by the court below was without taking into consideration the clear provision of section 14 of the Sharia Court of Appeal Law (supra) and to that extent the said order of remittal is null and void and this court is urged to so hold. C D

On this issue the Respondent has argued that Appellant herein having not challenged the failure of the court below to make an order striking out the appeal before the Sharia Court of Appeal, by filing a ground of appeal complaining about same, cannot be heard to argue that the order which ought to be made was one striking out the appeal and not just setting aside the judgment as was done. E

However, on the argument advanced by the learned Counsel for the Appellant that the powers of remittal of case by the Court below for hearing before a court of competent jurisdiction, by virtue of Section 15 of the Court of Appeal Act, is prescribed by Section 14 of Sharia Court of Appeal Law, learned Counsel for the Respondent submitted otherwise. He submitted that the court below is sufficiently endowed with powers to remit the appeal, as it did, to the Chief Judge for hearing before the State High Court without a recourse to Section 14 of the Sharia Court of Appeal Law (supra). Contrary to the submission of the Respondent in his brief that the Appellant has failed to challenge the refusal of the court below to make an order striking out the appeal by filing a ground of appeal complaining same, I must observe that Appellant's "Ground One", with its particular in his amended Notice of Appeal is a clear complaint against the stance of the court below on the point. F G H

I have earlier on reproduced Ground One of the Grounds of Appeal of the Appellant. Its particulars read as follows:-

“PARTICULARS

(i) The court below found the Appellant’s claim against the Respondent before the trial Upper Sharia Court Dakin Gari, Kebbi State was not connected with Islamic personal law.

(ii) The court below therefore held that the Kebbi Sharia Court of Appeal had no jurisdiction to entertain the appeal by the Respondent herein from the decision of the Upper Sharia Court.

(iii) The proper order to make having concluded that the Sharia Court of Appeal had no jurisdiction is to strike out the Respondent’s appeal before the Sharia Court of Appeal”. (Underlining is for emphasis).

I have carefully read the ground one of appeal. The Appellant is clearly complaining about the failure or refusal of the court below to strike out the appeal before the Sharia Court of Appeal. Again I have perused the particulars in support of the ground. They form part and parcel of the ground of appeal. They particularize or specify errors or mistakes which show how the complaint against the decision of the lower court is going to be canvassed by the Appellant. He will be expected to demonstrate or point out the flaw (s) in the relevant aspect of the decision complained of.

The main complaints or contentions of the Appellant are two folds: Firstly, that the court below ought to have struck out the Respondent’s appeal, since it had been rightly determined that the appeal was not heard by the court that had jurisdiction to do so. Secondly, that the appeal was remitted to the Chief Judge of Kebbi State for hearing by the State High Court in its appellate jurisdiction instead of striking out the said appeal. What happened in this case is that the court below in its judgment having found in favour of the Appellant herein, set aside the judgment of the lower Sharia Court of Appeal for lacking jurisdiction to entertain the appeal and made order remitting the appeal to the Chief Judge of Kebbi State for hearing before the High Court in its appellate jurisdiction. Section 15 of the Court of Appeal Act (as amended) Cap. 36, Laws of the Federation of Nigeria 2004 provides general powers of the Court of Appeal to hear appeal in civil causes or matters as follows:-

“The Court of Appeal, may from time to time, make any order necessary for determining the real question in controversy in the appeal, and may amend any defect or error in the record of appeal,

and may direct the court below to inquire into and certify its findings on any question which the Court of Appeal thinks fit to determine before final judgment in the appeal, and may make an interim order or grant any injunction which the court below is authorised to make or grant and may direct any necessary inquiries or accounts to be made or taken, and, generally shall have full jurisdiction over the whole proceedings, as if the proceedings had been instituted in the Court of Appeal as Court of first instance and may re-hear the case in whole or in part or remit it to the Court below for the purpose of such re-hearing or may give such other directions as to the manner in which the court below shall deal with the case in accordance with the powers of that Court, or, in the case of an appeal from the Court below, in that Court's appellate jurisdiction, order the case to be reheard by a Court of Competent Jurisdiction" (Underlining mine for emphasis).

No doubt, the powers given to Court of Appeal as provided above are very wide. In the circumstances of the case at hand, where the Sharia Court of Appeal heard the appeal in its appellate jurisdiction and in view of the fact that the court below had found that that court lacked the jurisdiction to entertain the appeal and having set aside the judgment of the Sharia Court of Appeal, the said court below was well within its powers in remitting the appeal to the Chief Judge of Kebbi State for hearing before the High Court in its appellate jurisdiction being the court that has jurisdiction for determination on its merit.

With due respect to the learned Counsel for the Appellant I cannot agree with him that the Court of Appeal is restricted to exercising its general powers granted to it under section 15 of the Act only as has been allowed by the Sharia Court of Appeal under Section 14 of the Sharia Court of Appeal Law (supra), which provides as follows:-

"On or at any time before the hearing of any appeal from any area court, the Court, if it is of opinion that the appeal should properly have been brought before the High Court, may at any time or at any stage of proceedings, before final judgment, and either with or without application from any of the parties thereto, and with the consent in writing of the Chief Judge, transfer such appeal to the

High Court.”

The decision to remit the appeal to Chief Judge of Birnin Kebbi for hearing before the State High Court, in its appellate jurisdiction was because the Sharia Court of Appeal had no jurisdiction to entertain the appeal before it. The court below
 B relied on the decision, in similar circumstances, in *MAGAJI v. MATARI* (2000) 8 NWLR (pt. 670) 722. See earlier decisions of the Court of Appeal in *ALHAJI HASSAN ABUJA v. LAWAN GANA BIZI* (1989) 5 NWLR (pt. 119) 120; *SAFIYA KORAU v. BAZAI KORAU* (1998) 4
 C NWLR (pt. 545) 212 and a host of others.

Where there is a local legislation on a point in issue, then that should be correctly interpreted and applied to the situation. See *CHIEF J. ONWUKA KALU v. CHIEF VICTORI. ODIU AND ORS.* (1992) 6 SCNJ (pt. 76). **The Sharia Court of Appeal
 D Law Cap 133, Laws of Kebbi State (1996) should be interpreted and applied to the situation and circumstances in which it was enacted. The law provides for a situation when at any time before the hearing of any appeal from any Area Court, the Sharia Court of Appeal is of opinion that the appeal
 E should properly have been brought before the High Court may at any time or at any stage of the proceedings before final judgment either with or without application from any parties and with the consent in writing of the Chief Judge transfer such appeal to the High Court.**
 F

**The situation and circumstance under which the Court of appeal will exercise its power under Section 15 of its Act is quite clear. The section adequately empowers it in its appellate jurisdiction to order the case to be heard by a Court
 G of competent jurisdiction. It does not need to have recourse to section 14 of the Sharia Court of Appeal Law of Kebbi State to remit the appeal to the Chief Judge for hearing before the High Court in its appellate jurisdiction. This is made in tune with the true purpose of the Act.**

The issue as argued by the Appellant has become moot in view of the foregoing clear provisions. The court below having held that the Sharia Court of Appeal had no jurisdiction to entertain the appeal when it did and having consequently set aside the judgment of the Sharia Court of Appeal, had

avowed responsibility to make an order that would result in the just determination of the Respondent's appeal which had not been determined on its merits. I agree with the learned Counsel for the respondent that the order remitting the appeal to the Chief Judge for hearing before the appellate State High Court was incidental to the determination of the real question in controversy in the appeal. More so, in view of the fact that it was the Respondent herein, as the appellant before the court below, who had prayed for such an order. In a number of cases, this court has held that an appellate Court could make an order once same is incidental to a determination of the real question in controversy in the appeal, even if the same was not sought for the appellant and even if the parties have not been heard on same. See EZEKIEL NNEJI AND ORS. v. CHIEF NWANKWO CHUKWU AND ORS. (1988) 1 NSCC 115 at 1131; The Rosicrucian Order (AMORC) Nigeria v. AWONIYI AND 3 ORS (1993 -1994) All NLR 479, LADEJO ONIFADE v. OLAYIWOLE (1990) 11 - 12 SC 1.

I shall not fail to appreciate the industry and research work exerted in this appeal by the learned Counsel for the respective parties. However, when the chances of an appeal succeeding are extremely remote it behooves Counsel in the case to advise his client on the uselessness of pursuing on such a protracted appeal which patently lacks merit. This is to save the time of Court and parties from incurring unnecessary expenses.

However, in sum this appeal is adjudged lacking in merit, and it is dismissed. The decision of the court below setting aside, the decision of Kebbi Sharia Court of Appeal, and remittal order of the case to the learned Chief Judge of the State for hearing before the High Court in its appellate jurisdiction is hereby affirmed. No order is made as to costs in the circumstance.

I. T. MUHAMMAD JSC

I had the advantage of reading in draft the Judgment delivered by my learned brother, Galadima, JSC. I agree with him in his reasoning and conclusion. I dismiss the appeal. I abide by orders made in the lead Judgment.

MUNTAKA-COOMASSIE JSC

I have had the opportunity of reading in advance the lead judgment rendered by my learned lord Galadima JSC. I entirely agree with his reasons and reasoning, I adopt them as mine. The appeal is dismissed as it lacks merit. I abide by the consequential orders adumbrated in the lead judgment.

ARIWOOLA JSC

I had the opportunity of reading in draft the lead judgment of my learned brother, Galadima, JSC just delivered. I am in total agreement with the reasoning that led to the conclusion that the appeal is unmeritorious and should be dismissed. The court below properly acted in compliance with the appropriate Act and Rules of the court in remitting the case to the Chief Judge of Kebbi State for it to be taken by the High Court in its appellate jurisdiction. It was an avoidable misconception to say the least, for the appellant's counsel to have argued that the consent of the Chief Judge was required before the matter could be remitted to the State High Court, or that the remittal order ought to have taken place before the Sharia Court of Appeal took a final decision on the matter. The power of the court below pursuant to its act and Rules of Court is wide enough to cover the ground in question. See; Chief Samuel Adebisi Falomo Vs. Omoniyi Banigbe (1998) 7 NWLR (P .557) 679 at 701 in which this court opined as follows:-

"In the first place, there is Section 16 of the Court of Appeal Act, 1976 which empowers the Court of Appeal to exercise full jurisdiction over all matters before it and may, inter alia, remit a case to the court below for the purpose of rehearing or may give such other directions as to the manner in which the court below shall deal with the case, or, in case of an appeal from the court below in that court's appellate jurisdiction, order the case to be reheard by a court of competent jurisdiction. See; Iyaji Vs Eyigebe (1987) 3 NWLR (Pt.61) 523 at 530, E-G, Igboho Irepo L.G.A. and Another Vs The Boundary Settlement Commissioner (1988) 2 SCNJ 28; (1988) 1 NWLR (Pt.69) 189 etc.

There is also the provision of Order 3 rule 23 of the Court of Appeal, Rules, 1981 which inter alia, empowers the Court of Appeal to give any judgment or make such further or other order as a case may require. These powers are exercisable by the court in favour of all or any of the parties although such parties may not have appealed from or complained of the decision.” B

For the above brief comment and the fuller reasoning in the lead judgment, I too will dismiss the appeal for lacking in merits. Appeal is dismissed.

I abide by the consequential orders in the lead judgment including that on costs. C

M.D. MUHAMMAD JSC

I read in draft the lead judgment of my learned brother D Galadima JSC, just delivered. I agree with his lordship that the appeal lacks merit and also dismiss same. I abide by the consequential orders made therein.

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