

**SUPREME COURT OF NIGERIA**  
FRIDAY 22ND JANUARY, 2016. SC. 162/2013  
**CORAM:- I. T. MUHAMMAD, M. S. MUNTAKA-**  
**COOMASSIE, S. GALADIMA, O. RHODES-VIVOUR,**  
**C. B. OGUNBIYI, C. C. NWEZE, A. SANUSI, JJSC**

NIGERIA AGIP OIL COMPANY LIMITED ..... APPELLANT  
AND

1. CHIEF GIFT NKWEKE ..... RESPONDENTS  
2. MR. VICTOR UZI

(For themselves and also  
representing the Umu-Agbua  
and Umu-Uju Families of  
Obrikom Town

---

APPEALS - Filing - Final decision - The order given by CA being a final one - SC Act s. 27(2)(a) guards the filing of notice of appeal - Thus appellant has three months within which to file the notice (H1)

APPEALS - Filing fee - Proper venue - In respect of appeal which is as of right - Filing fee is payable at registry of High Court - But where leave is granted to file notice - Fee is payable at appeal court (H2)

APPEALS - Filing - Rules of Court - Where there is no provision in rules of Federal High Court relating to appeals to Court of Appeal - Rules of Court of Appeal should be applied (H3)

JUDICIAL PRECEDENTS - Stare decisis - Constitution 1999 s. 287 - In the hierarchy of courts - A lower court is bound by the decision of a higher court (H4)

**FACTS**

Plaintiffs/respondents commenced this action at the Federal High Court, claiming declaratory reliefs and monetary compensation for a disastrous diesel spill that occurred on the 20<sup>th</sup> of August 2001 from defendant/appellant's facility. Respondents claimed that the oil substance polluted their creeks, family ponds channels and sources of their drinking water. Appellants admitted the spillage and

promised to clean up the polluted environment but failed to do so. Respondents consequently brought the action to court, asking appellants to clean up their polluted environment and pay damages as well. Pleadings were exchanged by the parties.

At the end of the hearing, the court in its judgment, found against appellants. Judgment was entered for respondents. The court awarded the sum of N313,247,056.00 against appellants. Dissatisfied, appellants appealed to the Court of Appeal and filed a Notice of Appeal. Their counsel was quite aware that N5,000 was to be paid as filing fees payable for the filing of the notice of appeal but decided to pay only N200.00. So many defects were discovered by respondents in filing the appeal and respondents filed a notice of preliminary objection. Respondents then urged the court to dismiss the appeal. The court entered judgment against appellant. Aggrieved, appellant appealed to the Supreme Court.

**HELD** (Unanimously allowing the appeal per  
**MUHAMMAD JSC**)

*APPEALS - Filing - Final decision*

**1. In the appeal on hand, the order made by the Court below on 20/3/13, striking out the appeal, is an order determinative of the appeal. Nothing of that appeal remains. The Court, in respect of that appeal as at the time it struck the appeal out, became FUNCTUS OFFICIO it could do nothing in respect of that appeal except where an application is filed, determined and granted, restoring the struck out appeal on the cause list of that Court. It is, in my view, a FINAL Order which determined the appeal with all finality. Therefore, it is the provision of Section 27(2)(a) which is applicable to the filing of the notice of appeal. In other words, the appellant had three months period within which to file Notice of Appeal. In that respect, since decision was delivered by the Court below on 20th of March, 2013, and a notice of appeal against the said decision upon which the appellants relied was filed on 4th of April, 2013, the notice of appeal, in my view, was properly and competently filed within time and it could sustain the appeal.**

**The preliminary objection by the respondents lack merit**

**and it is hereby dismissed.** (p. 600 H)

*APPEALS - Filing fee - Proper venue*

**2. The above rule is saying, in other words, to my humble understanding, that filing fees payable in respect of any appeal which is as of right must be paid to the registry of the High Court, whether Federal or State. Equally, where time is extended within which to file Notice of Appeal, the filing fees should be paid to the registry of that same High Court, Federal or State within the time extended. However, where leave is granted to an appellant to file his notice of appeal, and or, where the appeal has already been entered at the appeal Court, that applicant shall file his Notice of Appeal at the Registry of the appeal Court. Equally, where there is an amendment to the Notice of Appeal, filing fees in respect of the amended Notice of Appeal should be paid to the registry of that appeal Court.** (p. 604 H)

*APPEALS - Filing - Rules of Court*

**3. Thus, borrowing a leaf from the above dictum and other authorities referred to above, it sounds reasonable, where there is no provision in the Rules of the Federal High Court relating to appeals to the Court of Appeal to apply the rules of Court of Appeal.**

**Thus, by reason of purity, the powers of the President of the Court of Appeal conferred on him by Section 248 of the Constitution, are similar to the powers conferred on the Hon. Chief Justice of Nigeria by Section 236 of the Constitution. These powers, my lords are constitutional and legitimate in the best interest of the administration of justice. Order 12 Rule 1 of the Court of Appeal Rules, 2007, is not, in relation to Rules of the Federal High Court, unconstitutional. Rather, such rules are complimentary to the Federal High Court Rules and I so hold.** (p. 608 G)

*JUDICIAL PRECEDENTS - Stare decisis*

**4. My lords, the issue of stare decisis raised by the appellant has already been settled by the authorities I referred to earlier**

***in this judgment. Both the law and practice in Courts are trite that a lower Court is bound by the decision of a higher Court irrespective of its palatability. Section 287 of the Constitution is authority on the binding nature of the decisions of Courts as established by the Constitution in their hierarchical order.***

***A Court of appeal has no reason to prefer its own decision above the decision of this Court. That will in fact amount to judicial impertinence.*** (p. 609 B/G)

## C NOTABLE POINT OF INTEREST

### **MUHAMMAD JSC**

#### ***1. Interlocutory decision & Final decision - Difference***

The jurisprudence of what is “interlocutory” and what is “final” in relation to decisions of Courts has for long been developed. Anything interlocutory connotes provisional, interim, temporary and not final. It is an occurrence which intervenes between the commencement and the end of a suit which decides some point or matter, but is not a final decision of the whole controversy. See: Black’s Law Dictionary 5th edition, page 731. In relation to appeals, an interlocutory appeal is not determinable of the controversy, but which is necessary for a suitable adjudication of the pending issue/matter which arises within the life span of a substantive appeal. (p. 599 E)

### F **REPRESENTATION**

A. A. Adogbonmire, SAN for appellant/applicant with him; M. Mordi; T. J. Krukrubo; H. Chibo; O. E. Aliu (Mrs.); D. D. Killi and C. Caleb., for the Appellant

G J. U. K. Igwe, SAN for the respondent with him; S. Onyemenam, Esq., and E. Abiri (Miss).

Dr. Onyechi Ikpeazu, SAN with him; J. Mba as Amicus Curie  
Mr. Y Maikyau, SAN with him; A. Z. Teru Esq.; Nwabueze. Obasi-obi, Esq.; T. A. Rapu, Esq. and Mohammed Adelodun, Esq. as Amicus

H Curie., for the Respondents

### **CASES REFERRED TO**

First Bank of Nigeria Plc. v. TSA Ind. Ltd. (2010) 4-7 SC (pt. 1) 242

General Electric Co. v. Akande (2010) 12 SC (pt. iv) 75

Owoh v. Asuk (2008) 4 - 5 SC (pt. 1) 153

Agip Nig. Ltd v. Agip Petroleum (2009) 12 NWLR (pt. 1156) 435

A-G Federation v. A-G Abia State (2001) 11 NWLR (pt. 725) 689

Effon v. Fasan (1958) 3 FSC 68

Gilbert v. Endean (1875) Ch.D. 259

B

Balakey v. Lathan (1889) 43 Ch.D 25

Salter Rex & Co. v. Gosh (1971) 2 A.E R 865

Technistady Ltd. v. Kellard (1976) 31 A.E.R. 632

Safaman v. Warner (1891) 1 Q.B 734

C

Bozson v. Albencham UDC (1903) 1 K.B 547

Blay v. Solomon (1947) 12 WACA 175

Omonuwa v. Oshodi (1985) 2 SC 1

Igunbor v. Afolabi (2001) 11 NWLR (Pt. 723) 1483

D

### **STATUTES & RULES REFERRED TO**

Constitution of the Federal Republic of Nigeria 1999 ss. 236, 248, 254, 274, 287

Supreme Court Act, s. 27(2)

Federal High Court Act Cap F12 LFN 2004, ss. 32, 44

E

Court of Appeal Rules 2011, O. 12 r. 1, O. 6 r. 2(1)

### **BOOK REFERRED TO**

Black's Law Dictionary 5th ed. p. 731

F

### **LEAD JUDGMENT BY MUHAMMAD JSC**

One of the issues placed by the appellant for determination, which I consider more fundamental, is:

*"Whether it would not have been just, fair and proper in the circumstances for the Court of Appeal to have directed/ordered the appellant to pay the appropriate filing fees in respect of its Notice of Appeal filed on 22nd March, 2010, the Appellant having taken remedial steps to regularize same."*

Your Lordships, just quite some few weeks ago, this Court was faced with the same question in Appeal No. SC. 693/2013 delivered on the 11th of December, 2015. Except for matters of details and some obvious dissimilarities, this appeal is on all fours with SC.693/2013. In SC.693/2013, which I happened to write the lead judg-

H

ment, I made the following comments, among others:

“Secondly, a motion to regularize the payment of the shortfall was withdrawn by the learned SAN, Mr. Layonu, for the appellants and it was stuck out by the Court below. This, perhaps, influenced the mind of the Court below to strike out the appeal. It is true that such a decision is always placed within the discretionary powers of a Court. Exercise of discretion, however, must always be judicial and judicious. A discretionary decision based on a principle that inadequate/shortfall of filing fees is fatal to an appeal is certainly a wrong exercise of discretion. It is settled law that a Court of law will not allow the provisions of an enactment to be read in such a way to deny access to Court by citizens. Thus, it is not the intention of the law to deny any litigant access to justice. A rule of Court stands to guide the Court in the conduct of its business and it must not hold as a “mistress” but as a hand maid. See: *Onwuchaka v. NDIC (2002) 5 NWLR (Pt. 760) 371 at 393*; *Chrisdom Ind. Co. Ltd. v. AIB Ltd. (2002) 8 NWLR (Pt 768) 152 at 178 C & D*; *UTC Nig. Ltd. v. Pamotei (1989) 2 NWLR (Pt.103) 244 at 296*; *Chime v. Chime (2001) 3 NWLR (Pt. 701) 527 at 553*. The established practice of the Courts is to lean towards granting a litigant access to Court rather than denying him of such access. The principle of the law as settled by this Court, as seen *supra*, in relation to settlement of insufficient filing fees on documents placed before the registry of a Court is for the Court to direct that such insufficient, inadequate, shortfall be remedied. The striking out of the appeal at the stage the Court below did, was certainly unnecessary and improper.”

See: *The Shell Petroleum Development Company Nigeria Limited & 2 Ors v. Chief Isaac Osaro Agbara & 9 Ors*. Appeal No. SC 693/2013 delivered on Friday 11th December, 2015. (unreported).

Some of the points of difference between SC.693/2013 and this appeal are in the names of the parties; division of the Federal High Court: months of delivery of the decisions by the divisions of the Federal High Court, panel members of the same division of the Port Harcourt Court of Appeal; learned counsel for the respective parties in the two appeals and ancillary matters relating an appeal.

The initial filing fees in SC.693/2013 assessed by the registry of the Asaba Division of the Federal High Court was N500.00 (five hundred naira) which the appellants paid to the same registry whereas,

the one assessed by the registry of the Yenagoa Division of the Federal High Court was N200.00 (two hundred naira) which the appellant paid to the same registry.

In the appeal on hand, when the issue of payment of appropriate filing fees in respect of the appellants Notice of Appeal arose, the appellant took steps to regularize same by bringing before the lower Court a motion on notice filed on 18/3/2013. After hearing submissions of counsel on 20/3/2013 the lower Court in its ruling delivered on the same day, dismissed the appellant's application and proceeded to strike out the appellants appeal on the basis that its notice of appeal was incompetent by reason of the payment of insufficient filing fees.

Other issues of relevance in this appeal which were equally treated in SC.693/2013 are: filing of two Notices of Appeal; Leave to amend one of the Notices of Appeal etc. The appellants relied on the Notice of Appeal filed on 4th April, 2013 and abandoned the one filed on 20th, March, 2013.

For the detailed determination of this appeal the appellant formulated 3 issues as follows:

*a) Whether the provisions of Order 12 Rule 1 of the Court of Appeal Rules are unconstitutional, having regard to the provisions of Sections 248, 254 and 224 of the Constitution of the Federal Republic of Nigeria, 1999 (Distilled from ground 4 of the Amended Notice of Appeal.*

*(b) Whether in the light of the principle of stare decisis the Court of Appeal was right when in striking out the appellant's appeal it preferred its decision in Ibeabuchi & 4 Ors. v. Ikookpo & 2 Ors to the decision of this Hon. Court in Akpaii v. Udemba (Distilled from ground 2 of the appellant's grounds of appeal)*

*(c) Whether it would not have been just, fair and proper in the circumstances for the Court of Appeal to have directed/ordered the appellant to pay the appropriate filing fees in respect of its Notice of Appeal filed on 22nd March, 2010, the appellant having taken remedial steps to regularize same? (Distilled from grounds 1 and 3 of the appellants grounds of appeal)."*

Learned senior counsel for the respondents, Mr. Igwe, on his side, embedded a preliminary objection (which he argued in paragraphs 3.00-4.15, of pages 3-9) of the respondents' brief of argu-

ment which he filed, adopted and relied on same. He formulated the following two issues for determination in the event he is overruled on his preliminary objection

*“6.1. Whether Order 12 Rule 1 Court of Appeal Rules is unconstitutional as alleged by the appellant?”*

B *6.2. Whether there was a competent appeal placed before the Court of Appeal and whether the Court of Appeal was right to have dismissed the appellant’s motion on notice filed 18/3/2013? (Grounds 1, 2 and 3 of the appellants grounds of appeal)?*

C Your Lordships, the contention of the senior counsel for the respondents on the preliminary objection as contained in paragraph 3.1 (page 3) of his brief is that:

D *“This appeal is incompetent: the notice of appeal is defective and ought to be struck out as there is no appeal for this Hon. Court to entertain?”*

The learned SAN, argued that the ruling of the lower Court striking out the appeal as being incompetent was made on 20th March, 2013. The Notice of Appeal relied on by the appellant was dated and filed on the 4th of April, 2013. He stated that the Notice of Appeal is E defective or incompetent as it was dated and filed fifteen (15) days after the date of ruling striking out the appeal. He cited and relied on Section 27 of the Supreme Court Act and several cases among which are: First Bank of Nigeria Plc v TSA Industries Limited (2010) 4-7 SC (Pt.1) 242; General Electric Company v Akande & 4 Ors (2010) 12 F SC (Pt iv) 75; Owoh & 3 Ors v ASUK & Anor (2008) 4 - 5 SC (Pt.1) 153; Agip Nigeria Ltd v Agip Petroleum & 7 Ors (2009) 12 NWLR (Pt.1156) 435 at 453 to 454.

G Learned SAN argued that the lower Court in no way determined the rights of the parties in the case. The appellant has the right to file a fresh appeal and as no leave was sought and obtained in the instant appeal. He urged us to uphold the Preliminary Objection and resolve same in respondent’s favour.

H Learned senior counsel for the appellants contended in his reply to the Preliminary Objection of the respondent that the Notice of Appeal of 4th April, 2013 was filed within time, which is three months from the date of the decision appealed against. He argued that the decision of the Court of Appeal delivered on the 20th March 2013 by its nature is a final decision, an appeal against which can be initi-



ated within three months in accordance with Section 27(2) of the Supreme Court Act.

My Lords, in determining the period of time within which to file an appeal against a decision/decisions of the Court below to this Court, Section 27 of the Supreme Court Act provides the required guidelines. It states:

*“27(1) Where a person desires to appeal to the Supreme Court he shall give notice of appeal or notice of his application for leave to appeal in such manner as may be directed by Rules of Court within the period prescribed by Subsection (2) of this Section that is applicable to the case. (2) The periods prescribed for the giving of notice of appeal or notice of application for leave to appeal are-*

*(a) In an appeal in a civil case fourteen days in an appeal against an interlocutory decisions and three months in an appeal against a final decision.”*

Learned SAN for the respondents/objectors submitted that the decision delivered by the Court below on the 20th March, 2013, is an interlocutory decision which, by the Supreme Court Act, attracts 14 days to file an appeal. Learned SAN for the appellants/respondents submitted that the decision of the Court below of the 20th March, 2013, is a final decision which by the Supreme Court Act attracts three months within which to file an appeal.

The jurisprudence of what is “interlocutory” and what is “final” in relation to decisions of Courts has for long been developed. Anything interlocutory connotes provisional, interim, temporary and not final. It is an occurrence which intervenes between the commencement and the end of a suit which decides some point or matter, but is not a final decision of the whole controversy. See: Black’s Law Dictionary 5th edition, page 731. In relation to appeals, an interlocutory appeal is not determinable of the controversy, but which is necessary for a suitable adjudication of the pending issue/matter which arises within the life span of a substantive appeal. See: A-G Federation v. A-G Abia State (2001) 11 NWLR (Pt 725) 689.

In Effen v. Fasan (1958) 3 FSC 68, 69, the then Federal Supreme Court held that an Order as to costs made in the course of a proceeding is an interlocutory order. In the same case again, it has been observed that it is not sometimes easy to distinguish between what is an interlocutory order or what is a final order. Thus, there are

cases which adopt the nature of the application to the Court as the determining factor whether the judgment or order is interlocutory or final, and there are others which consider the nature of the order made. In some old English decisions, such as *Gilbert v. Endean* (1875) Ch.D. 259; *Balakey v. Lathan* (1889) 43 Ch.D 25; *Salter Rex & Co. v. Gosh* (1971) 2 A.E R 865 and *Technistady Ltd. v. Kellard* (1976) 31 A.E.R. 632, the former view was adopted. However, in *Safaman v. Warner* (1891) 1 Q.B 734; *Bozson v. Albencham UDC* (1903) 1 K.B 547 and *Blay & Ors v. Solomon* (1947) 12 WACA 175, the latter view was adopted. But it seems clear that the tests in the second class of cases had been adopted and applied by the Nigeria Courts and that is the test laid down in *Bozson v. Altrincham UDS* (supra), for instance, in *Omonuwa v. Oshodi & Anor* (1985) 2 SC 1 at page 22, this Court espoused the real test as follows:

D *“The real test of determining whether an order is final or interlocutory is this: Does the Judgment or Order as made, finally dispose of the rights of the parties? If it does, then it ought to be treated as a final Order; but if it does not, it is then an interlocutory Order.”*

E In *Igunbor v. Afolabi* (2001) 11 NWLR (Pt. 723) 1483, this Court Stated, per Karibi-Whyte, JSC (Rtd.):

F *“A final order or judgment at law is one which brings to an end the right of parties in the action. It disposes of the subject matter of the controversy or determines the litigation as to all parties on the merits. On the other hand, an interlocutory order or judgment is one given in the process of the action or cause, which is only intermediate and does not finally determine the rights of the parties in the action. It is an Order which determines some preliminary or subordinate issue or settles some step or question but does not adjudicate the ultimate rights of the parties in the action. However, where the order made finally determines the right of the parties, as to the particular issue disputed, it is a final order even if arising from an interlocutory application. For instance, an order of committal for contempt arising in the course of proceedings in an action is a final order.”*

H ***In the appeal on hand, the order made by the Court below on 20/3/13, striking out the appeal, is an order determinative of the appeal. Nothing of that appeal remains. The Court, in respect of that appeal as at the time it struck the appeal out, became FUNCTUS OFFICIO it could do nothing in re-***

**spect of that appeal except where an application is filed, determined and granted, restoring the struck out appeal on the cause list of that Court. It is, in my view, a FINAL Order which determined the appeal with all finality. Therefore, it is the provision of Section 27(2)(a) which is applicable to the filing of the notice of appeal. In other words, the appellant had three months period within which to file Notice of Appeal. In that respect, since decision was delivered by the Court below on 20th of March, 2013, and a notice of appeal against the said decision upon which the appellants relied was filed on 4th of April, 2013, the notice of appeal, in my view, was properly and competently filed within time and it could sustain the appeal.**

**The preliminary objection by the respondents lack merit and it is hereby dismissed.**

One nagging question is that of the constitutionality or otherwise of the provisions of Order 12 Rule 1 of the Court of Appeal Rules. Learned counsel for the appellants compared that Rule with Sections 248, 254, and 274 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Order 12 Rule 1 of the Court of Appeal Rules, 2007, provides as follows:

*“1. Save as hereunder provided, the fees prescribed in the Third Schedule hereto shall be charged in respect of matters which they are respectively assigned and shall be paid to the Registrar of the Court below or of the Court as the case may be.”*

The Third Schedule to the Court of Appeal Rules, 2007 provided:

*“On filing of Appeal against a final judgment or decision... N5,000.00.”*

Learned senior counsel for the respective parties made several submissions on this issue. The learned SAN for the appellant submitted that the President of the Court of Appeal under whose hands the 2007 Rules were made has made rules regarding the fees to be paid in respect of notices of appeal at the registries of the Courts from which appeals lie to the Court of Appeal. He argued further that the President of the Court of Appeal’s powers to make rules is limited to the authority given to him by Section 248 of the Constitution by

making rules limited to Court of Appeal only. That any exercise by the President, Court of Appeal of powers outside the scope of the provision of Section 248 of the Constitution would be unconstitutional, *ultra vires* ...his office and therefore null and void.

The learned SAN argued that Section 44 of the Federal High Court Act, Cap. F12, LFN, 2004, clothes only the Chief Judge of the Federal High Court with the power to determine the fees to be paid in respect of the filing of all processes filed at the registry of the Federal High Court. He cited and relied on Section 254 of the Constitution in support. He again supported his submissions by decided cases such as *Nwaigwe & Ors v. Okere* (2008) 13 NWLR (Pt. 1105) 445 at 473 C-E, *INEC & Anor v. Musa & Ors* (2003) 3 NWLR (Pt. 806) 72 at 157 D-G, *A-G of Lagos State v. The A-G of the Federation & Ors* (2003) 12 NWLR (Pt. 833) 1 at 244 A-D, *Clement v. Iwuanyanwu* (1989) 3 NWLR (Pt. 107) 39 at 64, etc.

The learned SAN conceded (paragraph 4.38 on page 17 of his brief) that no fee for filing a notice is included in the list as contained in Appendix 2 of the Federal High Court Rules. He however, referred to Order 56 Rule 8 of those Rules which made a provision to cover any lacunae by, for instance, adopting such similar procedure in other Rules as will do substantial justice between the parties concerned.

Learned SAN for the appellants conceded (paragraph 4.40, page 17 of the brief) that such default as in the full payment of the filing fees, would not ordinarily invalidate the notice of appeal. The default is an irregularity that can be remedied under Order 51(1) 1 of the Federal High Court Rules. He urged this Court to declare the provisions of Order 12 Rules 1 of the Court of Appeal Rules of 2007, inconsistent with the provisions of Section 248, 254 and 274 of the Constitution and urges further, that the issues should be resolved in the appellant's favour.

In his submissions on the issue of unconstitutionality of Order 12 Rule 1 of the Court of Appeal Rules (*supra*), the learned SAN for the respondents, argued that Section 32 of the Federal High Court Act clearly recognizes the application of the Court of Appeal Act and the Court of Appeal Rules to matters relating to appeals emanating from the Federal High Court to the Court of Appeal. Order 12 Rules 1 of the Court of Appeal Rules, in no way usurped the functions or

powers of the Chief Judge of the Federal High Court as alleged by the appellant. He stated that Section 44(1) of the Federal High Court Act, relied on by the appellant confers on the Chief Judge of that Court general power to make Rules for the Court. There is no conflict between the Federal High Court Act and Rules and the Court of Appeal Act and Rules. B

My Lords, when exercise of power by a person or authority is alleged to have been done outside the provisions of the Constitution or that such exercise is in direct conflict with the spirit of the Constitution, then that exercise is said to be unconstitutional. Is Order 12 Rule 1 of the Court of Appeal Rules, 2007 (as amended), unconstitutional? This is the issues under consideration. C

At the risk of repetition, it behooves me to set out, once more the provision of that Rule:

*"1. Save as hereunder provided, the fees prescribed in the Third Schedule hereto shall be charged in respect of matters which they are respectively assigned and shall be paid to the Registrar of the Court below or of the Court as the case may be."* D

Third Schedule to the said Rules, prescribes, inter alia, as follows: E

On filing of Appeal against a final judgment or decision ..... N5,000.00

On filing notice of appeal against an interlocutory order or decision .... N5,000.00

On filing notice of appeal where leave is granted ..... N5,000.00 F

On filing amended or additional grounds of appeal .....  
(various fees ranging from N1,000.00 - N2,000.00, depending on the period of filing)

The above were part of the Rules made by the Hon. President G of the Court of Appeal, in 2007, in exercise of the powers conferred upon him by Section 248 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and by virtue of all powers enabling him in that behalf. Learned senior counsel for the appellant argued that such exercise of power by the Hon. President of the Court of H Appeal could only be limited to Rules applicable to the Court of Appeal only and any exercise by the Hon. President of the Court of Appeal of powers outside the scope of Section 248 of the Constitution would be unconstitutional, ultra vires his office and null and void.

In a recent appeal which is almost on all fours with the one on hand, same issue of constitutionality of Order 12 of the Court of Appeal Rules 2007 was raised. Permit me my lords, to set out what I said in that appeal - SC.693/2013 (supra):

*“The next point under consideration is whether the Court below can make Rules for the trial Court. Mr. Nwosu SAN says, it can. Mr. Akoni, SAN, disagreed. Each supported his contentions with authorities.*

*Let me say right away that Court Rules are meant to guide the Court in the conduct of its affairs. The filing of notice of appeal by intending appellant has grown along with appellate Courts practice whereby the intending appellant is specifically requested by the Rules of the Appeal Court to raise with the Court which handed down the decision he would want appeal against by putting that Court on notice of his complaint against its decision. That is why the appeal Court mandates him to file his notice of appeal with the registry of that Court/tribunal. In almost all the appellate Courts including this Court, the Court Rules guiding the Practice and Procedure of that Court stipulate that notice of appeal should be filed at the registry of the Court that delivered the decision which is the subject matter of appeal. The Supreme Court Rules of 1999 (as amended) were made pursuant to the provision of Section 236 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Order 8 of the Rules deals with Civil Appeals in the Court. Order 9 deals with criminal appeals. In instituting an appeal to the Court, each of the above orders stipulates in the main.”*

*“All appeals shall be by way of rehearing and shall be brought by notice (hereinafter called ‘the notice of appeal’ TO BE FILED IN THE REGISTRY OF THE COURT BELOW*  
(emphasis supplied by me)

The Court of Appeal Rules 2007, Order 12 Rule 1, thereof, replicates the above rule of practice and it provides as follows:

*“Save as hereinafter provided, the fees prescribed in the 3rd Schedule hereto shall be charged in respect of the matters which they are respectively assigned and shall be paid to the Registry of the Court below or of this Court as the case may be.”*

**The above rule is saying, in other words, to my humble understanding, that filing fees payable in respect of any ap-**

***peal which is as of right must be paid to the registry of the High Court, whether Federal or State. Equally, where time is extended within which to file Notice of Appeal, the filing fees should be paid to the registry of that same High Court, Federal or State within the time extended. However, where leave is granted to an appellant to file his notice of appeal, and or, where the appeal has already been entered at the appeal Court, that applicant shall file his Notice of Appeal at the Registry of the appeal Court. Equally, where there is an amendment to the Notice of Appeal, filing fees in respect of the amended Notice of Appeal should be paid to the registry of that appeal Court.***

In relation to the appeal on hand, it is to be noted that the Federal High Court is not essentially an appellate Court and except for matters specified in Order 54 (appeal to the Court from Professional Bodies), limited number of appeals lies to the Court from Magistrate Courts.

The Rules do not provide either, fees for processing appeals to the Court of appeal. A Lacuna should not be allowed to peep into the conduct of affairs of that Court. In any event, the Constitution is very clear in Section 243(1)(b) where it provides, inter alia:

*“243(1) Any right of appeal to the Court of Appeal from the decisions of the Federal High Court, National Industrial Court or a High Court conferred by this Constitution shall be (b) exercised in accordance with any Act of the National Assembly and Rules of Court for the time being in force regulating the Process, Practice and Procedure of the Court of Appeal.”*

I am thus, in agreement with Mr. Nwosu, SAN in his submission that by the very IPSISIMA VERBA of the above provisions, it is the Rules of the Court of Appeal made pursuant to Section 248 of the Constitution, 1999 (as amended) that govern any right of appeal from the decision of a Federal High Court to the Court of Appeal.

I agree with Mr. Nwosu, SAN, again in his submission in respect of the Act as contained in Cap. F12, Laws of the Federation of Nigeria, 2004, which provides as follows:

*“32- Appeals to the Court of Appeal*

*Subject to the provisions of the Constitution of the Federal Republic of Nigeria, the Court of Appeal Act and the Rules of the*

*Court of Appeal, appeals shall lie from the decisions of the Court in its original or appellate jurisdiction to the Court of Appeal.”*

Thus, any right of appeal from the decision of the Federal High Court including the appeal on hand, is exercisable in accordance with the Rules of the Federal High Court. Order 12 Rule 1 is the correct Rule to guide the Registry of the trial Court in assessing the fees payable in respect of the appeal on hand.

I do not believe that the Rules as competently made by the President of the Court of Appeal are meant to rob or deprive the Federal High Court of its power to make Rules regulating its own practice and procedure as provided by Section 254 of the Constitution, 1999 (as amended). M.D. Muhammad, JSC, is again quoted, per his dictum, in *Ogwe v. IGP & 2 Ors* (supra) that:

*“The practice that has evolved over the years is for an appellant whose appeal is within time prescribed under Section 24 of the Court of Appeal Act to file his appeal to the lower Court to the registry of the Court against which decision the appeal is being filed. And this is what the appellant herein did. It is at that registry that he paid the fees to the officer of the Court assigned for the purpose assessed and requested him to pay. Having paid the fees and left his Notice of Appeal at the Registry with the officer responsible, the appeal on the authorities is deemed properly filed.*

*My Lords, that in my view, is the correct position of the law, I may even add that by the principle of hierarchy of Courts, the Supreme Court supervises all other Courts in this country. The Court of Appeal, thus, is not only an Appellate Court, but has supervisory role as well on all other Courts in the federation apart from this Court. Where it is mandated to make rules in respect of any matter, I do not think that such rules can easily be thrown away by the wave of hand. They should be complied with.”*

In giving more support to what I said in SC.693/2013 (supra), permit me to consider in greater details relevant provisions from the Federal High Court enabling Act, Rules and some other authorities. In the first place, it is my observation that nothing in Appendix 2 to the Federal High Court (Civil Procedure) Rules, 2009, contains any provision on the fees to be paid for filing of a notice of appeal from the Federal High Court to the Court of Appeal. In order not to allow for a lacuna, Order 56 Rule 8 of the Federal High Court (Civil Proce-



dures Rules, 2009, provides that:

*“Where a matter arises in respect of which no provision or no adequate provision are made in these Rules, the Court shall adopt such similar Procedure in other Rules as will in its view do substantial justice between the parties concerned.”*

Secondly, by the provisions of Sections 240 - 243 of the Constitution, appeals generally, lie from the decisions of the Federal High Court to the Court of Appeal. Section 243(1)(b), specifically stipulates that any right of appeal to the Court of Appeal from the decisions of the Federal High Court or a High Court conferred by the Constitution shall be exercised in accordance with any Act of the National Assembly and Rules of Court for the time being in force regulating the powers, practice and procedure of the Court of Appeal.

Section 32 of the Federal High Court Act, Cap F12, LFN, 2004 too, provides as follows:

*“Subject to the provisions of the Constitution of the Federal Republic of Nigeria, the Court of Appeal Act and the Rules of the Court of Appeal, appeals shall lie from the decisions of the Court in its original or appellate jurisdiction to the Court of Appeal.”*

Thirdly, it is the same Constitution that confers powers or authority on the President of the Court of Appeal to make rules of Practice and Procedure of the Court of Appeal. Section 248 of the Constitution provides:

*“Subject to the provision of any Act of the National Assembly, the President of the Court of Appeal may make rules regulating the Practice and Procedure of the Court of Appeal.”*

My humble understanding of the above constitutional provision is that the President of the Court of Appeal is clothed with powers to make rules governing the Practice and Procedure on matters, among other things, coming to the Court of Appeal. That was the essence of the use of the phrase regulating the Practice and Procedure “OF” the Court of Appeal.

Now, as I stated earlier, the practice of the Court of Appeal since its inception till now, is for an appellant to file his Notice of Appeal (except in a few instances), at the Court from where the appeal emanates. Perhaps it would have limited the practice only to matters in the Court of Appeal if the phrase used the word FOR

instead of 'OF'. In other words, if the phrase used was regulating the practice and procedure FOR the Court of Appeal.

Fourthly, although Section 44 of the Federal High Court, Cap F12, LFN, 2004, confers on the Chief Judge of the Federal High Court powers to make Rules of Court, those powers in contradistinction to the powers conferred on the President of the Court of Appeal, are general in nature and meant specifically to regulate matters highlighted therein.

It is my humble view therefore that Order 12 Rule 1 of the Court of Appeal Rules, 2007 is not in conflict with the Constitution, Federal High Court Act and or Rules. They are, rather, complementing one another. In the case of *Clement & Anor v. Iwuanyanwu & Anor* (1989) 3 NWLR (Pt 107) 39, also cited by both learned SANs for the respective parties, this Court recognized the need for the Court of Appeal to fall back on the Rules of this Court and even on the English Rules to fill in some lacunae where it exists. Oputa, JSC (rtd) and (now late) did observe:

*"The Court of Appeal Rules dealing with appeal from the High Court and other inferior Courts did not specifically provide for (in its Order 3 dealing with Civil Appeals) the procedure is applications for leave to appeal from the Court of Appeal to the Supreme Court. The jurisdiction to grant such leave having been vested in the Court of Appeal by the Constitutional provision of Section 213(3) of the 1979 Constitution, it is desirable that the President of the Court of Appeal makes definite Rules to regulate the exercise of that particular jurisdiction or else incorporates by reference, the provisions of Order 6 Rule 2 of our Supreme Court Rules, 1985 being incorporated, it is my view that as we fall back on English Rules to fill in some lacuna in our own Rules so also that Court of Appeal may fall back on Order 6 Rule 2 of the Supreme Court Rules of 1985"*

**Thus, borrowing a leaf from the above dictum and other authorities referred to above, it sounds reasonable, where there is no provision in the Rules of the Federal High Court relating to appeals to the Court of Appeal to apply the rules of Court of Appeal.**

**Thus, by reason of purity, the powers of the President of the Court of Appeal conferred on him by Section 248 of the Constitution, are similar to the powers conferred on the Hon.**

**Chief Justice of Nigeria by Section 236 of the Constitution. These powers, my lords are constitutional and legitimate in the best interest of the administration of justice. Order 12 Rule 1 of the Court of Appeal Rules, 2007, is not, in relation to Rules of the Federal High Court, unconstitutional. Rather, such rules are complimentary to the Federal High Court Rules and I so hold.**

**My lords, the issue of stare decisis raised by the appellant has already been settled by the authorities I referred to earlier in this judgment. Both the law and practice in Courts are trite that a lower Court is bound by the decision of a higher Court irrespective of its palatability. Section 287 of the Constitution is authority on the binding nature of the decisions of Courts as established by the Constitution in their hierarchical order.** See also: Dalhatu v. Turaki (2003) 15 NWLR (Pt 843) 310; where the attention of a Court is drawn to a superior authority, that Court, even if it is the Apex Court is bound to reconsider its stand and follow the superior authority. This Court, in the case of Veepee Ind Ltd. v. Cocoa Ind. Ltd. (2008) 13 NWLR (Pt 1105) 486, held, inter alia:

*“The position of the law is that ordinarily, the Court adheres to the principle of stare decisis. It will therefore hold itself bound by its previous decision. But where it is satisfied that any of its previous decisions is erroneous or was reached per incuriam and will amount to injustice to perpetuate the error by following such decision, it will overrule it or depart from it. This power of the Supreme Court is predicated on the fact that it is better to admit an error than to preserve in error.”*

**A Court of appeal has no reason to prefer its own decision above the decision of this Court. That will in fact amount to judicial impertinence.** See Dalhatu v. Turaki (supra).

In conclusion, I must commend the learned senior counsel for the respective parties for the industry in their submissions and of course same goes to Dr. Onyechi Ikpeazu, SAN and Mr. Y.C, Maikyau SAN, for accepting to serve as AMICI CURIAE in this appeal. We appreciate their industry.

Finally, I find merit in this appeal. I accordingly, allow the appeal. I hereby set aside the decision of the Court below which struck

610 Nig. Agip Oil Co. Ltd. v. Nkweke (2016) 1 KLR Muhammad JSC  
out the appeal, i.e. No. CA/PH/187/2010. The appeal is hereby re-  
stored to the Court of Appeal list. The appellant should take steps to  
remedy the defect in its Notice of Appeal filed on the 4th day of April,  
2013. I make no order as to costs.

B

### **MUNTAKA-COOMASSIE JSC**

This is an appeal against the judgment of the Court of Appeal,  
Port-Harcourt judicial division which struck out the appeal by the  
appellant on 18/3/2013. The Court of Appeal hereinafter called lower  
C Court.

It was the respondents as plaintiffs who filled an action at the  
trial Court and claimed “declaratory reliefs and monetary compensa-  
tion for a disastrous diesel spill that occurred on August 20, 2001  
D from the appellant’s facility which polluted the respondent’s creeks,  
family ponds channels and sources of their drinking water. The ap-  
pellants admitted the spillage and promised to clean up the polluted  
environment but failed to do so. That explained why the respon-  
dents filed this action at the trial Court asking the appellants to clean  
E up their polluted environment and pay them damages. Pleadings  
were exchanged by the parties and further exchanged their plead-  
ings. The trial Court after listening to the parties and their respective  
witnesses, in a reserved judgment entered judgment against the ap-  
pellants herein, and in favour of the plaintiffs (respondents).

F The trial Court awarded the sum of Three Hundred and Thir-  
teen Millions, Two Hundred and Forty Seven Thousand, Fifty Six  
Naira only against the appellants herein. The appellants dissatisfied  
with the trial Court’s judgment appealed to the Court of Appeal and  
G filed a Notice of Appeal. Their counsel was quite aware that N5,000  
was to be paid as filing fees payable for the filing of the notice of  
appeal but decided to pay only N200.00. So many defects were  
discovered by the respondents in filing the appeal and the respon-  
dents filed a notice of preliminary objection. He then urged the Court  
H below to dismiss the appeal. The Court below entered judgment  
against the appellant.

Aggrieved by the decisions of the Court below, the appellant  
appealed to this Court. Both parties filled their respective briefs of  
argument and issues for the determination of this appeal.

My Lord Hon. Justice I. T. Muhammad JSC was kind enough to allow me to have a preview of his lead judgment. I perused the said judgment and I entirely agree with his Lordship's reasoning. I adopt same as mine. I too, for the said reasons hold that the appeal is pregnant with a lot of merit, same is therefore allowed by me. I abide by the consequential orders made in the lead judgment. I too, make no orders as to costs. We appreciate the prompt contribution of those learned counsel invited as *amicus curiae*.

---

### **GALADIMA JSC**

In this appeal, appellant has distilled 3 issues for determination as follows:

(a). *“Whether the provisions of Order 12 Rule 7 of the Court of Appeal Rules are unconstitutional, having regard to the provisions of Sections 248, 254 and 274 of the Constitution of the Federal Republic of Nigeria, 1999 (Distilled from ground 4 of the Amended Notice of Appeal).”*

(b). *Whether in the light of the principle of stare decisis the Court of Appeal was right when in striking out the appellant's appeal, it preferred its decision in Ibeabuchi & 4 Ors. V. Ikpapo & 2 Ors to the decision of this Hon. Court in Akpaji v. Udemba (Distilled from ground 2 of the appellant's grounds of appeal).”*

(c). *Whether it would not have been just, fair and proper in the circumstances for the Court of Appeal to have directed/ordered the appellant to pay the appropriate filings fees in respect of its Notice of Appeal filed on 22nd March, 2010, the appellant having taken remedial steps to regularize same? (Distilled from grounds 7 and 3 of the appellant's grounds of appeal).”*

In the event of him being overruled on his preliminary objection learned S.A.N., has formulated two issues for determination as follows:

“6.1. *Whether Order 12 Rule 1 of Court of Appeal Rules is unconstitutional as alleged by the appellant.*”

“6.2. *Whether there was a competent appeal placed before the Court of Appeal and whether the Court of Appeal was right to have dismissed the appellants motion on notice filed on 18/3/2013. (Grounds 1,2, and 3 of the appellants' ground of appeal.)*”

First the threshold issue. The contention of the Senior counsel for the respondent on the preliminary objection, reproduced above, is that the Notice of Appeal is defective or incompetent as it was dated and filed 15 days after the date of the ruling, striking out the appeal, contrary to Section 27(2) of the Supreme Court Act and  
B which provides for 14 days within which to file an appeal in a civil case in an interlocutory decision.

Learned Counsel for the Appellants contended in his reply that the Notice of Appeal of 4/4/2013 was filed within 3 months from the date of the said decision delivered on 20/3/2013 which is by its nature a final decision.  
C

My learned brother has amply and exhaustively dealt with the jurisprudence of what is “interlocutory” and what is “final” in relation to decision of law Courts. Having carefully read the re-statement of the law by Karibi-Whyte JSC in IGUNBOR v. AFOLABI (2001) 11  
D NWLR (pt.723) 1483 on this point, and applying it to the circumstances of this case, I am in agreement, that by its nature, the order made by the Court below on 20/3/2013 striking out the appeal, is a final order which determines the right of the parties and indeed the  
E appeal with all finality. The Appellant has 3 months within which to file its notice of Appeal. Accordingly, the Respondent’s preliminary objection is not in any way defective and is worthy of consideration.

However, I need not go into the issue of constitutionality or otherwise of Order 12 Rule 1 Court of Appeal Rules as alleged by the  
F Appellant. From the robust submissions of the respective Senior Counsel for the parties and those contributions of the invited amicus curiae carefully considered in the lead judgment. I cannot fault the conclusion on this issue that Order 12 Rule 1 of the Court of Appeal Rules,  
G 2007 (supra) is not, inconsistent with the Rules of the Federal High Court and the provisions of Sections 248, 254 and 274 of the Constitution of the Federal Republic of Nigeria, 1999.

The position of this Court on the principle of Stare decisis raised by the Appellant, has been made clear in a number of authorities of  
H this Court, that the lower Court is bound by the decision of a higher Court. The Court will hold itself bound by its previous decisions except where it is satisfied that any of its previous decision is erroneous or was reached per incuriam. See DALHATU v. TURAKI (2003) 15 NWLR (pt.843) 310; VEEPEE IND. LTD v. COCOA IND. LTD (2008)

13 NWLR (pt. 1105)486.

In the light of the said principle of stare decisis the Court below erred when in striking out the Appellants' Appeal, it preferred its decision in IBEABUCHI & 4 ORS v. IKPOPO & 2 ORS (supra), in the light of the decision of this Honourable Court in the case of AKPAJI v. UDEMBA (2009) 6 NWLR (Pt.1138) 545. For this little contribution and further reasons given by my learned Brother I. T. MUHAMMAD JSC, I too allow the appeal and set aside the decision of the Court below which struck out the Appeal No. CA/PH/187/2010 before it. I abide by the orders including costs made in the lead judgment.

### **RHODES-VIVOUR JSC**

The Court of Appeal struck out the appeal simply because the Appellant did not pay the correct filing fees for his Notice of Appeal, or the fees paid were inadequate.

In SC. 693/2013 an appeal on an identical issue decided by the Court on 11/12/15 in my concurring judgment to the leading judgment delivered by my learned brother I.T. Muhammad, JSC I said that:

*"...non-payment of filing fees is different from inadequate payment, the latter being the fault of the Registry..."*

I must say that non payment of filing fees is a serious omission by the Appellant which in effect deprives the Court of jurisdiction to hear the appeal. See Okolo v. UBN Ltd (2004) 3 NWLR (Pt.859) p. 87. On the other hand in adequate payment of filing fees is usually the fault of the Registry who made a mistake when it told the Appellant the amount to be paid. In cases where the fees paid by the Appellant are inadequate it is the singular duty of the presiding Judge to order the erring Appellant to pay the correct filing fees instead of striking out the appeal.

For this and the more detailed reasoning in the leading judgment prepared by I.T. Muhammad, JSC which I read in draft, I find merit in this appeal. The appeal is hereby ordered restored to the Court of Appeal for hearing after the correct filing fees are paid. No order on costs.

**OGUNBIYI JSC**

I read in draft the lead judgment just delivered by my learned brother Hon. Justice Tanko Muhammad, JSC. I agree that the appeal has merit and same also allowed by me. I however wish to say a word or two in support of the judgment and specifically on the 1st B issue which poses a question:

*“Whether the provisions of Order 12 Rule 1 of the Court of Appeal Rules are unconstitutional, having regard to the provisions of Sections 248, 254 and 274 of the Constitution of the Federal Republic of Nigeria, 1999?”*

C While the learned senior counsel who represented the appellant holds a very strong notion that Order 12 Rule 1 of the Court of Appeal Rules is unconstitutional, the senior counsel representing the respondent disagrees with the submission vehemently. The unconstitutionality of the said order, appellant’s counsel submits, relates to its D conflicting specifically with Sections 248, 254 and 274 of the Constitution of the Federal Republic of Nigeria; that the President Court of Appeal by signing into law Order 12 Rule 1 of the Court of Appeal Rules acted ultra vires its powers by making Rules for the regulation E of the Practice and Procedure of the Federal High Court of Nigeria which authority is vested in the Chief Judge of the Federal High Court.

The determination of the constitutionality or not of Order 12 Rule 1 is subject to the interpretation of Sections 248, 254 and 274 F of the Constitution.

Suffice to say that the powers conferred on the President Court of Appeal under Section 248 of the Constitution are enormous and general in nature. Order 12 Rule 1 of the Court of Appeal Rules is made pursuant to the Act of the National Assembly. Therefore, it cannot function contrary to the Constitution which is the originating G legal framework upon which all legislations are subordinate, if they must have effect. Put differently Order 12 Rule 1 of the Court of Appeal Rules can in no way usurp the functions or powers of the Chief Judge of the Federal High Court as alleged by the learned H senior counsel for the appellant; rather it makes applicable to operate matters relating to appeals from the Federal High Court, the provisions of the Court of Appeal Act and the Court of Appeal Rules.

Section 44 of the Federal High Court Act confers general powers on the Chief Judge of the Federal High Court to make Rules of



Court but does not provide specifically and directly for matters relating to appeals emanating from the Federal High Court to the Court of Appeal as contained in Section 32 of the same Federal High Court Act. In effect, it is explicit to say that Section 32 of the Federal High Court Act directly recognizes the application of the Court of Appeal Act and the Rules to matters relating to appeals emanating from the Federal High Court to the Court of Appeal. Accordingly and as rightly submitted by the senior counsel for the respondent, Order 12 Rule 1 Court of Appeal Rules 2007 and the current 2011 Rules are not in conflict with Section 44 of the Federal High Court Act as contended by learned senior counsel for the Appellant; the rule is also not in conflict with any provision of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), particularly, Sections 248, 254 and 274 as alleged. Consequently, the attack against the President, Court of Appeal by the appellant's counsel for exercising the constitutional powers vested on His Lordship by Section 248 of the Constitution is grossly misconceived and also misplaced.

My learned brother has done justice to all the issues raised in the appeal thoroughly. I therefore endorse the reasoning and conclusion arrived thereat and hold that the appeal has merit and I also allow same in terms of the lead judgment. The judgment of the Court below is hereby set aside, and the appeal is restored to the Court of Appeal list for hearing while the appellant makes right the defect in its appeal.

F

---

### **NWEZE JSC**

I had the advantage of reading the draft of the leading judgment which my lord, Ibrahim Tanko Muhammad JSC, just delivered now. I agree with the reasoning and conclusion.

As pointed out in the leading judgment, the Court dealt with a similar question as that posed in this appeal, in SC.693/2013 delivered on December 11, 2015. In this contribution therefore I shall repeat what I said in that judgment. As in the earlier case, it has also been contended here for the appellant that the Court of Appeal Rules cannot determine the filing fees for a process filed at the trial Court (that is, the Federal High Court). Learned senior counsel cited *Chukwuma Ogwe v IGP* as the authority for this proposition.

It would appear that learned senior counsel did not have the opportunity of reading the peculiar provisions of the State High Court Rules that dictated the conclusion in that case. If he had, he would have discovered that the import of Section 243(1) (b) of the Constitution on the applicable Rules of the Federal High Court did not fall  
B for determination in that case. The reasoning in the said case of Chukwuma Ogwe v IGP must therefore be circumscribed to the facts that yielded it.

As such, the case (Chukwuma Ogwe v IGP) is not an authority  
C for his proposition on the interpretation of the effect of Section 243(1) (b) as regards the applicable Federal High Court Rules. It cannot be gainsaid that cases are decided on their peculiar facts and in light of the applicable law...

Only recently, I had the occasion to deal with the import of  
D Section 243(1) (b) (supra). In Okey Ikechukwu v. FRN (2015) 7 NWLR (Pt.1457) 1, 17-18, I opined that:

Section 243(1) (b) of the Constitution of the Federal Republic of Nigeria (as amended) provides thus:

243(1) Any right of appeal to the Court of Appeal against the  
E decision of the Federal High Court or a High Court conferred by this Constitution shall be:

(b) Exercised in accordance with any Act of the National Assembly and rules of Court for the time being in force regulating the powers, practice and procedure of the Court of Appeal. (italics supplied for emphasis)  
F

Pursuant to this subsection, rights of appeal from the High Court to the lower Court are exercisable in accordance inter alia with the Court of Appeal Rules Order 6 Rule 2 (1) of the Court of Appeal Rules, 2011 prescribes that every appeal shall be initiated through a  
G Notice of Appeal.

In my humble view, when a litigant is dissatisfied with a judgment of the Federal High Court, his decision to appeal against it is in pursuance of the right of appeal donated by the Section 243 (1) (b)  
H (supra) such a right of appeal can only be exercised inter alia "in accordance with any Act of the National Assembly and Rules of Court for the time being in force regulating the powers, practice and procedure of the Court of Appeal. The reference here must be decided to be a reference to the applicable Court of Appeal Rules.

Against this background, therefore, the formidable submission of J.U.K. Igwe. SAN, learned senior counsel for the respondents became “refutable.” That is why I, entirely agree with the leading judgment’s endorsement of his (Igwe, SAN’s) submission that by the very tenor of Section 243(1) (b) (supra), it is the Court of Appeal Rules, made pursuant to Section 248 of the 1999 Constitution (as amended) that govern the procedure for the exercise of any right from a decision of the Federal High Court to the lower Court (and this includes the prescriptions of the said Court of Appeal Rules as to filing fees thereat, that is, the Federal High Court).

In effect, the applicable Order 12 Rule 1 of the Court of Appeal Rules was the prevailing provision in the assessment of fees at the trial Court (Federal High Court) and not the Rules of the said Court (that is, Federal High Court).

If any further authority is required on this point it would only suffice to refer to Section 32 of the Federal High Court Act, Cap T12, LFN 2004. Its trenchant provisions read thus: “*subject to the provisions of the Constitution of the Federal Republic of Nigeria, the Court of Appeal Act and the Rules of the Court of Appeal, appeals shall lie from the decisions of the Court in its original or appellate jurisdictions to the Court of Appeal.*”?(italics supplied for emphasis).

Unarguably, by the choice and usage of the phrase “subject to”, the Federal High Court Rules cannot diminish the import of the Court of Appeal Rules since the former are subordinated to the latter rules, *Idehen v Idehen* (1991) 7 SCNJ (Pt...) 196, 215-216...

It is for these and the more elaborate reasons in the leading judgment that I, too, shall order the appellants to take steps to pay the short fall in the filing fees. I abide by the consequential orders in the leading judgment.

---

### **SANUSI JSC**

I had the advantage of reading in draft form, the judgment just rendered by my learned brother, Ibrahim Tanko Muhammad, JSC, His lordship had, as usual of him thoroughly and painstakingly dealt with the issues raised by parties learned counsel in this appeal before advancing good reasons why this appeal must be allowed for being devoid of merit. I am in entire agreement with the reasons given and

the conclusion he arrived at. I am also of the view that the appeal is meritorious and should be allowed. I accordingly allow the appeal and set aside the decision of the Court below which struck out the appeal. I abide by the consequential order made and decline to award costs too.

B

C

D

E

F

G

H