

SUPREME COURT OF NIGERIA
FRIDAY 29TH JANUARY, 2016. SC. 388/2014
CORAM:- N. S. NGWUTA, M. U. PETER-ODILI,
O. ARIWOOLA, M. D. MUHAMMAD,
J. I. OKORO, JJSC

BRITANIA-U NIGERIA LIMITED APPELLANT
AND	
1. SEPLAT PETROLEUM	
DEVELOPMENT COMPANY LIMITED	
2. CHEVRON NIGERIA LIMITED RESPONDENTS
3. CHEVRON USA INC.	
4. BNP PARIBAS SECURITIES CORP.	
5. MR. HERMANT PATEL	

APPEALS - Reply brief - Appellant who fails to respond to new points in respondent's brief - Is deemed to concede the points - And the points must be new - Not being an answer to issue raised by appellant (H1)

APPEALS - Fresh issue - Additional authority - It is wrong for appellant in the guise of submitting additional authorities - To have advanced further argument - After appeal has been adjourned for judgment (H2)

APPEALS - Grounds - Challenge - It is duty of respondent who challenges classification of ground - To satisfy court that the ground belongs to a classification - Different from one assigned by appellant (H3)

APPEALS - Record - Transmission of - CA Rule O. 8 r. 1 - Registrar of court below has duty to compile and transmit its record to CA - Within 60 days after the filing of notice of appeal (H4)

APPEALS - Interlocutory - Record - Transmission of - CA Practice Direction O. 8 r. 2 - Appellant and respondent jointly settle the record - And fix estimated cost for compilation and transmission

790 Brittania-U Nig. Ltd. v. Seplat Pet. Dev. Co. Ltd. (2016) 1
of same (H5)

APPEALS - Record - Challenge - Procedure - The appropriate manner to impeach the contents of record of appeal - Is by affidavit evidence (H6)

APPEALS - Record - Binding nature of - Parties and court are bound by the record of appeal - Which is presumed correct - Unless the contrary is proved (H7)

COURTS - Case law - Application of - Court is not bound to apply any authority it has considered in its judgment - As it may not apply an authority - If issue decided therein is inapplicable to facts before it (H8)

COURTS - Case law - Failure to apply - Non application of the two case laws - Means that CA did not accept appellant's case based on abuse of process - Hence issue of incorrect application did not arise (H9)

CONTEMPT OF COURT - Concept - It is an affront to authority of court - Which can either be *ex facie curiae* or *in facie curiae* - And it is nobody's duty to determine for court - When party is in contempt (H10)

JURISDICTION - Challenge - Orders of court - The order made on 27/1/2014 to extend life span of spent order - In the face of challenge to jurisdiction not yet decided - Is a nullity (H11)

FACTS

This action was commenced on 12/12/13 by way of writ of summons issued at Registry of the Federal High Court Lagos by plaintiff/appellant. Appellant claims declaratory and other reliefs against defendants/respondents. Appellant on the same day he instituted the action, filed other processes including a motion *ex parte* for interim injunction pending the hearing of the motion on

notice for an interlocutory injunction. On 13/12/13 the court heard and granted the motion *ex parte* for interim injunction. The motion on notice for an interlocutory injunction was fixed for hearing on 27/1/14. On 18/12/13, appellant filed another motion *ex parte* for an order to correct errors on the face of the order granted on 13/12/13 and the motion on notice was fixed for hearing on 22/1/14. On 23/12/13 the motion *ex parte* to amend the order of interim injunction was granted. On 27/12/13 1st respondent filed a motion on notice for an order to vary, discharge or set aside the motion for interim injunction as granted on 13/12/13 and amended on 18/12/13.

Appellant objected to the application on the ground that the same was not filed within the period allowed by the appropriate rules of court. The motion to discharge the order of interim injunction was fixed for hearing on 10/1/14. On 21/1/14, 2nd and 3rd respondents filed a motion on notice to strike out the suit and the order made for want of jurisdiction or in the alternative an order to stay proceedings pending referral to arbitration. On 24/1/14, 5th respondent filed a motion to challenge the competence of the suit. On 27/1/14 the trial court ruled *inter alia* that the interim order stands extended as the condition precedent that will warrant its discharge is not yet fulfilled. The matter was adjourned to 10/2/14 for pending applications. On 31/1/14, 5th respondent appealed to the Court of Appeal Lagos Division against the order of the trial court made on 27/1/14 extending the life span of the interim order of 13/12/13 as amended. In its judgment, the court allowed the appeal on the ground that the order of interim injunction made on 13/12/13 as amended had expired and that there was nothing to preserve. Aggrieved, appellant on 4/7/14 appealed to the Supreme Court.

ISSUES FOR DETERMINATION

“1. Whether the failure of the 1st respondent to assist the Registrar to compile comprehensive record of appeal as appellant in the lower Court did not lead to jurisdictional incompetence of its appeal?”

2. Whether the Court of Appeal correctly applied the case of

A-G Ondo State v. Ekiti State (2001) 17 NWLR (Pt. 243) 706 and ACB Plc v. Nwaigwe (2011) 7 NWLR at 1246 page 380 at 395 paras E-H by not dismissing the appeal of the 1st respondent as an abuse of Court processes.

B 3. *Whether the learned Justices of the lower Court rightly construed the binding decisions of the Supreme Court in Ebhogaghe v. Okoye (2004) 18 NWLR (Pt. 905) 472 and NDIC v. CBN (2002) (Pt. 766) 272 on the inherent powers of Court to protect its authority and dignity even when application challenging its jurisdiction was pending.*

D 4. *Whether the Court of Appeal was right in holding that, by the fourteen (14) day life span rule under Order 26 Rules 11 and 12 of the Federal High Court (Civil Procedure) Rules 2009, the ex parte order of injunction made on 13th December 2013 pending the determination of the motion on notice for interlocutory injunction automatically expired even when no valid application for discharge by 1st respondent was filed or argued.*

E 5. *Whether the Court of Appeal was right in refusing to uphold the appellant's/respondents' notices seeking the validation of the decision of the trial Court keeping alive its extant ex parte order of interim injunction.*

F **HELD** (Unanimously dismissing the appeal per NGWUTA JSC)
APPEALS - Reply brief

G 1. **Also it is the law that an appellant who fails to respond to new points raised in the respondent's brief is deemed to concede the new points. However, the "new point" must be "new" in the sense that it is not an answer to an issue or issues expressly or impliedly raised in the appellant's brief, or an issue that naturally and logically flows from same.**

H I have carefully considered the appellant's reply to the so-called fresh issues in the 2nd and 4th and 3rd and 5th respondents' brief. Learned Senior Counsel for the

appellant made copious submissions on each issue in the two briefs and made a summary of his argument in respect of each issue. This, in my humble view, is not a response to new issues in the respondents' brief. For instance, the power of the Court to preserve the res in an appeal is not a new issue and the same goes for the effect of amended process. The above and more are contained in the appellant's amended reply to the 1st respondent's brief. B

In my view, it is a new set of briefs or supplementary briefs. As the name implies, a reply brief responds to the respondent's brief but if the respondents have joined issues with the appellant's brief as is the case in this appeal, the appellant need not repeat the issues joined either by emphasis or expatiation. A reply brief is not one for the repetition of arguments in the appellant's brief; it is not a forum for emphasising the argument in the appellant's brief. (pp. 825 E/826 G) D

APPEALS - Fresh issue - Additional authority E

2. In my view, it is a mere technicality which of the two methods is used to challenge the ground of appeal. In order to do substantial justice, the mode of challenge to the ground of appeal should not be a bar to the determination of the competence vel non of ground 19 of the appellant's ground of appeal. From the argument of both parties, it is not in dispute that the appellant did not raise the issue of abuse of process of Court in the Court below. F G

The issue was raised for the first time in the Learned Senior Counsel's letter of 17/4/2014. I am of the view that learned Senior Counsel for the appellant went beyond the submission of additional authority by incorporating fresh argument in the list, he submitted after the appeal had been adjourned for judgment. H

The Court of Appeal in its judgment found that it

was wrong for Counsel to reopen argument behind the other party when the matter had been adjourned for judgment. The appellant did not appeal against this finding of fact and is deemed to have conceded the point. It was wrong for the appellant to advance further argument after the appeal had been adjourned for judgment in the guise of providing additional authorities. The Court below was right to have considered the additional authorities without consideration of the fresh issue raised in the letter submitting the additional authorities.

In the circumstance, I sustain the preliminary objection to appellant's ground 19 and issue 2 derived therefrom. The said ground of appeal and issue are hereby struck out as incompetent. (p. 828 C)

APPEALS - Grounds - Challenge

3. Learned Counsel for the 3rd and 5th respondents rightly argued that the fact that the appellant described the grounds of appeal as grounds of law does not automatically and necessarily render it so. The reverse is also true. The fact that a respondent describes a ground of appeal as of mixed law and fact does not necessarily make it so. The respondent ought to have stated each ground complained of, interpret it to ascertain its core question before urging the Court to accept that it is a ground of mixed law and fact.

It does not avail the 3rd and 5th respondents to label the grounds of appeal; grounds of mixed law and fact or to urge the Court that grounds 1, 2, 3, 4, 5, 6, 8, 10, 11 and 19 and all other grounds of the appellant's grounds of appeal are of mixed law and facts. It is not enough for learned Counsel to assign the duty of reading each ground and its particulars to determine that it is a ground of mixed law and fact. It is the duty of the respondent who challenges the classification of a ground of appeal as one of mixed law and fact to satisfy the

Court that the ground belongs to a classification different from the one the appellant assigned to it.

In my humble view, the preliminary objection as argued in the 3rd and 5th respondents' briefs cannot be sustained and is over-ruled. (p. 829 F)

B

APPEALS - Record - Transmission of

4. Under Order 8 Rule 1 reproduced above, it is the sole responsibility of the Registrar of the Court below to compile and transmit its record to the Court of Appeal within 60 days after the filing of the notice of appeal. In discharging his duty in compliance with Rule 2 of the Order the Registrar shall invite the parties to settle the records and fix the amount appellant is to pay for making up and forwarding the record. See Order 8 Rule 2 (a) and (b).

D

The duty of the appellant to compile and transmit the record arises only at the failure or neglect of the Registrar to compile and transmit the record within the 60 day period prescribed in Order 8 Rule 1. This time the appellant will compile or transmit the record within 30 days of the default of the Registrar. See Order 8 Rule 4. This is the general rule. (p. 832 H)

E

APPEALS - Interlocutory - Record - Transmission of

F

5. Rule 6(b) of the Practice Direction of the Court of Appeal is a special rule applicable in interlocutory appeal wherein time is abridged for the compilation and transmission of the record. In Order 8 Rule 2, the appellant and the respondent have a joint duty to settle the record and fix the estimated cost of the compilation and transmission of the record. Under Rule 6 (b) of the Practice Direction, the appellant has an added duty to aid the Registrar in the compilation and transmission of the record.

G

H

In my view, the duty of the appellant under Rule 6 (b) of the Practice Direction is not very much different

from the one under Order 8 except that the appellant is bound to be present, whether or not the respondent honours the Registrar's invitation to settle the record. Time is abridged and he has to be there to identify what he needs for his appeal and pay the estimated cost of production and transmission of the record. (p. 833 D)

APPEALS - Record - Challenge - Procedure

6. Let me now deal with the record alleged to be incomprehensible by the appellant. Appellant ought to have been present at the compilation of the record - Order 8. He was not present and did not take part in the settlement of the record, nor did it present additional record to take care of omission, if any, in the compiled record. As for the incomprehensiveness of the record, it is my view that if the record was incomprehensible as alleged, the Court below would have demanded a better record. It did not complain but determined the appeal on the record before it.

A record of appeal is produced by a human being. It may not be perfect but the absence of flaw in beauty is a flaw in itself. By characterizing the record as incomprehensible, the appellant has challenged the record, but he has not done so by the right procedure. The appropriate manner to impeach the contents of the record of appeal is by affidavit evidence. (p. 834 C)

APPEALS - Record - Binding nature of

7. There is no evidence that the 1st respondent as the appellant in the Court below failed in his duty to help the Registrar in the compilation and transmission of the record and the contents of the record have not been impeached. In any case, the parties and the Court are bound by the record of appeal which is presumed correct unless the contrary is proved. (p. 834 G)

COURTS - Case law - Application of

8. There is a world of difference considering a particular case law and application of the same authority correctly or otherwise. A Court is not bound to apply any authority it has considered in its judgment. It has a duty to consider all authorities relied on by the parties but it has a right and indeed a duty not to apply particular authorities if the issue decided therein is inapplicable to the facts and law before it. (p. 835 B)

COURTS - Case law - Failure to apply

9. The concept of abuse of Court process or judicial process is in the sense of improper use of judicial process to the annoyance and irritation and harassment of a party's opponent. Wide as it is the concept cannot, in my view, be stretched to encompass the facts and circumstances of the appeal at hand.

It is immaterial that the Court below did not, as alleged by the appellant, make any pronouncement on the issue of abuse of Court process. In the circumstances of this appeal, the rejection or non-application of the two cases means that the Court below did not accept the appellant's case based on abuse of process of Court. The Court below, having considered the two cases relied on by the appellant, had two options - to accept and apply the two cases and declare that there had been abuse of Court process by the 1st Respondent as appellant or to reject the authorities as inapplicable to the facts as establishing abuse of Court process. The cases were either applied or not applied, the issue of incorrect application will not arise simply because the Court rejected them. I resolve issue 2 against the appellant. (p. 836 B)

CONTEMPT OF COURT - Concept

10. As in issue 2 appellant assumes as a fact, that the 1st Respondent was in contempt of the Court below, Con-

tempt of Court is an affront to the authority and dignity of the Court. It can be either contempt ex facie curiae or contempt in facie curiae. The Court has a different procedure for dealing with each type of contempt.

B The learned Silk is an officer of the Court, as which learned Counsel is not. That notwithstanding, it is not the duty of any one, Counsel or no Counsel, to determine for the Court when a party is in contempt of the Court, ex facie curiae or in facie curiae. The Court below considered the cases cited by the appellant and was of the view that the facts and decisions therein are inapplicable to the facts before it, after all, a case is an authority for another case based on what it actually decided on, the fact and circumstances in issue.

D The Court below could not have applied the cases cited by the appellant when there was no need for it to protect its authority or dignity. I resolve the issue against the appellant. (p. 837 C)

E JURISDICTION - Challenge

F 11. When its jurisdiction to hear and determine any case before it is in issue, it is a threshold matter which the Court must determine before taking any further step in the case for proceeding conducted without jurisdiction remains a nullity.

G At a challenge to its jurisdiction, the only jurisdiction the Court can exercise is to determine whether or not it has jurisdiction in the matter. The order made on 27/1/2014 to extend the life span of a spent order, in the face of a challenge to its jurisdiction not yet decided, is a nullity. There was no threat to the dignity of the Court and the 5th Respondent was not in contempt. The issue H is resolved against the appellant. (p. 841 B)

NOTABLE POINTS OF INTEREST
NGWUTA JSC

1. Briefs – Consideration in the interest of justice

He argued that by the rule reproduced above the 3rd and 5th respondents' brief ought to have been filed on or about 31st December 2014, adding that the word "shall" in the rule makes its compliance compulsory. With respect to Learned Counsel for the 3rd and 5th respondent, it would appear to me that he is not familiar with the rules of this Court in relation to the filing of briefs of argument.

Not only did he file his brief out of time, he also volunteered the information that he filed out of time. If he knew the rules he would have filed an application to regularise the filing. In the alternative, he could have moved the Court at the hearing to regularise his brief, but did neither. Now the brief is before the Court and the learned Counsel for the appellant, without raising objection to it, reacted appropriately by filing his reply to it.

He knew the process was filed out of time without leave of Court. In the circumstances, the breach of the rules relating to time of filing brief should be treated as a mere irregularity which the appellant waived by filing a reply to the brief. To strike out the brief on the peculiar facts herein will tantamount to doing technical as distinct from substantial justice.

In the case of *Nwankwo v. Kanu* (2010) 6 NWLR (Pt. 1189) 62 a brief filed out of time was considered in the interest of justice. In view of the above, I will consider the brief in the interest of doing substantial justice. (p. 830 G)

2. Brief of argument to deal with issues at stake in appeal

I want to record my immense appreciation for the industry shown by learned Counsel for the parties in their respective briefs, with particular reference to the learned Silk for the appellant. One would prefer, however, to have a brief live up to its name - brief. In my view, the success of an appeal is not a function of the amount of erudite argument presented with its plethora of authorities.

A brief of argument should not only justify its name and function but must deal directly and explicitly with the issues at stake in

800 Brittania-U Nig. Ltd. v. Seplat Pet. Dev. Co. Ltd. (2016) 1 KLR
the appeal. (p. 842 B)

REPRESENTATION

- B Ricky Tarfa, SAN with him, A. J. Owonikoro, SAN; J. O. Odubela, A. Malgwi, M. Bamidele, O. Keshinro (Ms) and O. U. Asuquo for the Appellant
- C D. D. Dodo, SAN with him, Etigwe Uwa, SAN; Nasir A. Dangiri, Audu Anuga, Paulyn Abhulimen, A. F. Jumbo, Kauna Pemzim, A. A. Dodo, L. I. Atagher, S. A. Eigege, Gimka Ezeoke, Nancy Chika Obi, Munachiso Michal, Adewale Adegboyega, Oluwaseyi Okupe, Afoma Chiegboka) for 1st Respondent.
- Uche Nwokedi, SAN with him, Asimuyi Ayodeji for 2nd and 4th Respondent.
- D A. Z. Enwewe with him, K. A. Achaba for 3rd and 5th Respondents.

CASES REFERRED TO

- E Olorunleyimi v. Akhagbe (2010) 8 NWLR (pt. 1195) 48 SC
- E Lewis v. UBA Plc (2006) 1 NWLR (pt. 961) 546
- UBN v. Tropic Foods Ltd (1992) 3 NWLR (pt. 228) 231
- N.A.A. v. Okoro (1995) 6 NWLR (Pt. 403) 510
- A-G Ondo v. Ekiti State (2001) 17 NWLR (pt. 743) 706
- ACB Plc. v. Nwaigwe (2011) 7 NWLR (pt. 1246) 380
- F Okoya v. Santilli (1990) 2 NWLR (Pt. 131) 172
- Adeogun v. Fashogbon (2008) 17 NWLR (Pt. 1115) 149
- Dairo v. UBN Plc (2007) 16 NWLR (pt. 1059) 99
- Ebhodaghe v. Okoye (2004) 18 NWLR (pt. 905) 472
- G NDIC v. CBN (2009) 7 NWLR (Pt. 766) 272
- Nossek v. ACB Ltd (1993) 10 SCNJ 20
- Essien v. Diamond Bank (Nig.) Plc. (2009) 17 NWLR (pt. 1171) 466
- Bob-Manuel v. Briggs (2003) 5 NWLR (pt. 813) 323
- H

STATUTES & RULES REFERRED TO

Supreme Court Act 2004, s. 22

Constitution of the Federal Republic of Nigeria 1999, s. 318

Court of Appeal Rules, O. 8 r. 1

Court of Appeal Practice Direction, O. 8 r. 2

Federal High Court (Civil procedure) Rules 2009, O. 26 rr. 11, 12

LEAD JUDGMENT BY NGWUTA JSC

The appellant herein commenced an action by way of Writ of Summons issued at the Registry of the Federal High Court, Lagos Judicial Division on 12/12/2013 claiming declaratory and other reliefs against the respondents, then defendants. B

In view of the time element in the interim injunction, the subject of this appeal, I will set out the processes filed with reference to dates of filing. C

On 12/12/2013, the appellant as plaintiff commenced the action by Writ of Summons. On the same day, he filed other processes including a motion ex parte for interim injunction pending the hearing of the motion on notice for an interlocutory injunction. D

On 13/12/2013 the trial Court heard, and granted, the motion ex parte for interim injunction. The motion on notice for an interlocutory injunction was fixed for hearing on 27/1/2014. On 18/12/2013, the appellant filed another motion ex parte for an order to correct errors on the face of the order granted on 13/12/2013 and the motion on notice was fixed for hearing on 22/1/2014. E

On 23/12/2013 the motion ex parte to amend the order of interim injunction was granted. On 27/12/2013 the 1st respondent as 5th defendant filed a motion on notice for an order to vary, discharge or set aside the motion for interim injunction as granted on 13/12/2013 and amended on 18/12/2013. F

Appellant objected to the application on the ground that the same was not filed within the period allowed by the appropriate rules of Court. The motion to discharge the order of interim injunction was fixed for hearing on 10/1/2014. On 21/1/2014, 2nd and 3rd respondents filed a motion on notice to strike out the suit and the order made for want of jurisdiction or in the alternative an order to stay proceedings pending referral to arbitration. G

On 24/1/2014, 5th respondent filed a motion to challenge H

the competence of the suit. On 27/1/2014 the trial Court ruled, inter alia, that:

“... the interim order made by the Court stands extended as the condition precedent that will warrant its discharge is not yet fulfilled.”

B The matter was adjourned to 10/2/2014 for pending applications. On 31/1/2014, the 5th respondent now appellant, appealed to the Court of Appeal against the order of the trial Court made on 27/1/2014 extending the life span of the interim order of
C 13/12/2013 as amended.

The Court of Appeal in its judgment allowed the appeal on the ground that the order of interim injunction made on 13/12/2013 as amended had expired and that there was nothing to preserve. On 4/7/2014, appellant appealed to this Court against the
D judgment of the Court below.

Learned Counsel for the parties filed their respective briefs as follows:

E Appellant’s brief was filed on 31/3/2014. Upon service of the appellant’s brief on them, the respondents, with the exception of the 1st respondent, filed notices of preliminary objection as follows:

F 2nd and 4th respondents filed a notice of preliminary objection to ground 19 of the appellant’s notice and ground of appeal, and against issue 2 in the appellant’s brief as well as “fresh argument” in the appellant’s brief. 3rd and 5th respondents filed their notice of preliminary objection to the appeal for failure of the appellant to obtain leave of the Court of Appeal or this Court to appeal on grounds of mixed law and fact.
G

First respondent’s amended brief of argument was deemed filed on 23/3/2015; 2nd and 4th respondents’ brief was filed on 31/12/2014. Their preliminary objection was argued in their brief. 3rd and 5th respondents’ brief was deemed filed on 23/3/2015
H with their argument on the preliminary objection, incorporated in the brief.

At the hearing of the appeal on 5/11/2015 the learned Silk for the appellant applied to withdraw paragraph 1.03 of his brief

and there being no objection, the paragraph was accordingly struck out. Learned Senior Counsel then adopted his briefs (Appellant and Reply Briefs) and relied on them and the list of additional authorities in urging the Court to allow the appeal.

He urged the Court to ignore the notices of preliminary objection and argument on same as they were not taken up before the adoption of briefs. Learned Counsel for the three sets of respondents adopted their briefs and relied on same to urge the Court to dismiss the appeal. Learned Counsel for the 2nd and 4th and 3rd and 5th respondents had urged the Court to sustain their respective preliminary objection argued in their respective briefs.

In his brief of argument, learned senior counsel for the appellant formulated the following five issues for the Court to resolve:

“1. Whether the failure of the 1st respondent to assist the Registrar to compile comprehensive record of appeal as appellant in the lower Court did not lead to jurisdictional incompetence of its appeal? (Grounds 1, 2, 3 and 4 of the notice of appeal)

2. Whether the Court of Appeal correctly applied the case of A-G Ondo State v. Ekiti State (2001) 17 NWLR (Pt. 243) 706 and ACB Plc v. Nwaigwe (2011) 7 NWLR at 1246 page 380 at 395 paras E-H by not dismissing the appeal of the 1st respondent as an abuse of Court processes. (Ground 19 of the notice of appeal)

3. Whether the learned Justices of the lower Court rightly construed the binding decisions of the Supreme Court in Ebhogaghe v. Okoye (2004) 18 NWLR (Pt. 905) 472 and NDIC v. CBN (2002) (Pt. 766) 272 on the inherent powers of Court to protect its authority and dignity even when application challenging its jurisdiction was pending. (Grounds 5, 6 and 7 of the notice of appeal)

4. Whether the Court of Appeal was right in holding that, by the fourteen (14) day life span rule under Order 26 Rules 11 and 12 of the Federal High Court (Civil Procedure) Rules 2009, the ex parte order of injunction made on 13th December 2013 pending the determination of the motion on notice for interlocutory injunction automatically expired even when no valid application for discharge by 1st respondent was filed or argued. (Grounds 8, 9, 10, 11, 12, 13 and 14 of the notice of appeal)

5. *Whether the Court of Appeal was right in refusing to uphold the appellant's respondents' notices seeking the validation of the decision of the trial Court keeping alive its extant ex parte order of interim injunction. (Grounds 15, 16 17 and 18 of the notice of appeal)"*

B The learned Silk for the 1st respondent formulated the following five issues for determination by the Court:

C "A. *Whether the lower Court was right to dismiss the appellant's notice of preliminary objection. (Distilled from grounds 1, 2, 3, 4, 9, 12, 13, 14 and 18)*

D B. *Whether the lower Court was right in holding that the Federal High Court ought not to take further steps or made further orders affecting the rights of parties while several applications challenging the jurisdiction of the Court were pending. (Distilled from grounds 5, 6 and 7 of the notice of appeal).*

E C. *Whether the Court of Appeal rightly held that the interim order of injunction of the trial Court granted ex parte on the 13th of December 2013 and amended on the 23rd of December 2013, had expired by the provisions of Order 26 Rule 12 of the Federal High Court (Civil Procedure Rules 2009 and could not be validly extended. (Distilled from grounds 8, 10 and 11 of the notice of appeal).*

F D. *Whether the lower Court was right in discountenancing the appellant's further arguments which were furnished in Court by way of a letter dated 17th April, 2014.*

G E. *Whether the lower Court was right in dismissing/striking out both notices to vary and affirm the judgment on other grounds filed by the appellant. (Distilled from grounds 15, 16 and 17 of the notice of appeal)."*

Learned Senior Counsel for the 2nd and 4th respondents isolated the three issues reproduced hereunder for resolution:

H "(i) *Whether the Court of Appeal was right to dismiss the appellant's notice of preliminary objection and notices to vary or affirm the decision of the trial Court on other grounds. (Formulated from grounds 1, 2, 3, 4, 9, 12, 13, 14, 15, 16, 17 and 18 of the notice of appeal).*

(ii) Whether the Court of Appeal was right to hold that while applications challenging the jurisdiction of the trial Court were still pending the trial Court ought not to have taken further steps or made further orders capable of affecting the rights of the parties until the issue of its jurisdiction was determined. (Formulated from grounds 5, 6, 7 of the notice of appeal). B

(iii) Whether the Court of Appeal was right to hold that the interim order of the trial Court made ex parte on 13th December 2013 and amended ex parte on 23rd December 2013 had expired by operation of the law and could not have been extended. (Formulated from grounds 8, 10 and 11 of the notice of appeal). ” C

In his own brief of argument, learned Counsel for the 3rd and 5th respondents formulated the following three issues for the Court to resolve:

(1) Whether the Court of Appeal (the lower Court) was right when it dismissed the appellant’s (i.e. 1st Respondent) preliminary objection to the competence of the record of appeal at the lower Court. D

(2) Whether the lower Court was right in dismissing the appellant’s two respondent’s notices to vary or affirm the decision of the trial Court made on 27th January, 2014 on other grounds. E

(3) Whether the Court of Appeal was right in allowing the 1st Respondent’s (Appellant at the lower Court) appeal and setting aside the order made by the trial Court on the 27th January 2014 extending the life of the interim order made on the 13th day of December 2013 but amended on the 23rd day of December 2014. ” F

Arguing issue 1 in his brief, learned Senior Counsel for the appellant referred to paragraph 6 (b) of the of the Court of Appeal Practice Direction, 2013 which he said imposes a duty on appellant in certain interlocutory appeals to provide assistance to the Registrar of the trial Court to compile record of appeal. He contended that the failure to provide the assistance resulted to the compilation and transmission of an incompetent record of appeal which did not contain all relevant processes for the proper determination of the issues in contention between the parties. H

He relied on *Olorunleyimi v. Akhagbe* (2010) 8 NWLR (Pt.

1195) 48 SC at 61-62 paras G-B. He reproduced “a few offending pages” of the record to demonstrate that the record of proceedings transmitted to the lower Court was unintelligible and argued that the language of the Court is English “and not the esoteric excerpts...” which he described as “some ancient pre-historic expressions.”
 B He relied on *Lewis v. UBA Plc* (2006) 1 NWLR (Pt. 961) 546 at 565 paras H-B and *UBN v. Tropic Foods Ltd* (1992) 3 NWLR (Pt. 228) 231 at 237 for the need for the appellant to compile in legible and intelligent form the records upon which the appeal will be heard
 C and determined.

Learned Senior Counsel referred to *N.A.A. v. Okoro* (1995) 6 NWLR (Pt. 403) 510 at 533 para G in support of his contention that the Practice Directions concern and regulate the manner in which a particular rule of Court should be complied with or adhere to. He argued that the failure to abide by the Practice Direction is a defect that went to the jurisdiction of the Court and that the Court erred by treating it as technical irregularity. He urged the Court to resolve issue one in favour of the appellant.

E In issue 2, the learned Senior Counsel referred to the relief in the 1st respondent’s appeal in its notice of appeal at the lower Court and said the relief is the same as the one contained in the motion to discharge the *ex parte* injunction. He said that there being no difference between the reliefs in the two processes, it was
 F abuse of process of Court, adding that the lower Court ought to have followed the decision of the Supreme Court in *A-G Ondo v. Ekiti State* (2001) 17 NWLR (Pt. 743) 706 at 771 paras C-D and *ACB Plc v. Nwaigwe* (2011) 7 NWLR (Pt. 1246) p.380 at 395,
 G paras F-H which he sent to the Court by way of additional authorities.

He contended that the lower Court made no pronouncement on the issue of abuse of Court processes upon which it was addressed by the appellant/1st respondent in its brief and urged
 H the Court to invoke its power under S.22 of the Supreme Court Act 2004 to resolve the issue left unresolved by the Court below. He relied on *Okoya v. Suntilli* (1990) 2 NWLR (Pt. 131) 172 at 209. He urged the Court to hold that the 1st respondent’s appeal at the

lower Court is an abuse of Court's process.

Arguing issue 3, learned Senior Counsel posed the question whether the mere filing of preliminary objection to a suit or a proceeding which objection has not been argued and sustained operates retrospectively to obliterate the extant order of Court made prior to the objection. He argued that on the face of binding judicial authorities, the lower court erred when it answered the question in the negative. B

He relied on *Adeogun v. Fashogbon* (2008) 17 NWLR (Pt. 1115) 149 at 174 in his argument that a Court cannot surrender and subject its jurisdiction to the dictation and manipulation of the defendant; and *Dairo v. UBN Plc* (2007) 16 NWLR (Pt. 1059) 99 at 159 on the doctrine of stare decisis. He relied on *Ebhodaghe v. Okoye* (2004) 18 NWLR (Pt. 905) 472 on powers of the Federal High Court to protect its dignity and authority; an authority which he said that the lower Court chose to ignore. He relied on the same case for his contention that a challenge to the jurisdiction of the Court is not a magic wand that will always stall proceedings. D

Learned Counsel submitted that a Court faced with a threat to its dignity and authority can invoke its inherent power to reverse or forestall "*a wanton disregard for same by a disingenuous litigant even before deciding objection bordering on lack of jurisdiction by the party taking the objection.*" He impugned the reasoning of the Court below that the circumstances in *Ebhodaghe's* case and the present case are dissimilar. E F

While conceding that no two cases are the same, he argued that for a precedent to apply, it is enough the principle in the earlier case substantially meets the circumstances of the latter case and that the issue for resolution was treated in the earlier case. He submitted that the dignity and authority of the trial Court was threatened when the respondent taunted the Court to "self-declare" that its extant coercive order had expired or ceased to be of any effect by reason only of a pending motion to discharge same. G H

He argued that the motion challenging the jurisdiction of the Court, which was not ripe for hearing and which was filed after the order had been made, could not deprive the Court of jurisdic-

tion to clarify the status of the order remaining in force and that the Court could not have ignored the order as non-existent, as contended by the respondents merely because of the expiration of 14 days which was not due to the fault of the appellant.

B He relied on Ebhodaghe's case (supra) in his case that the facts of this case fall within the recognized exception to the general rule that a Court must take a preliminary objection first even before asserting its dignity and authority to take full control over the proceedings before it.

C For learned Senior Counsel, the proper procedure for terminating an interim order of injunction by an aggrieved party is to move the Court to discharge the order formally. He cited NDIC v. CBN (2009) 7 NWLR (Pt. 766) 272 and argued that the Court below wrongly applied same to the effect that any step taken while
D any application challenging jurisdiction is pending is wrong. He argued that the Court did not decide that the trial Court in the circumstances of this case could not make a preservative order when challenge to its jurisdiction is pending.

E He argued further that even if it is conceded that the Court below was right that the order of extension of the interim order made while the issue of jurisdiction had not been decided was wrong and therefore a nullity, it is beyond dispute that the original
F ex parte order made on 13th December 2013 and amended on the 23rd December 2013 still remains valid and in force pending the determination of the motion on notice since that order was made before the jurisdiction of the Court was challenged.

G The learned Silk quoted a portion of the record in vol. 2 page 976 where the Court below said: "... the Court cannot validly make an order affecting the parties. What if at the end the Court finds that it has no jurisdiction? Can the Court reverse any damage done to any of the parties without jurisdiction? It is safer to err on the side of caution by determining jurisdiction before proceeding;" and contended that the lower Court resorted to speculation on an issue not canvassed by the 1st respondent. He urged the Court to hold that the Court below wrongly construed the binding
H decisions of the Supreme Court in Ebhodaghe v. Okoye (supra);

NDIC v. CBN (supra) on the inherent power of Court to protect its authority and dignity even when applications challenging its jurisdiction were pending. He urged the Court to resolve issue 3 in favour of the appellant.

In issue 4, learned Senior Counsel referred to Order 26 Rules 11 and 12 of the Federal High Court (Civil procedure) Rules, 2009 for conditions for grant of an ex parte order of injunction and for circumstances under which it may be discharged. B

He said that the Court below erred when in determining whether or not the trial Court could make the preservative order while its jurisdiction had been challenged. It went on to interpret the above cited order of the Federal High Court (Civil Procedure) Rules 2009. He argued that the Court below in resolving issue 1 in the appeal prejudged the second issue when it held at page 978-979 Vol. 2 of the record that: “ D

In any case, the life of the interim injunction had expired so there was nothing to preserve. That makes the authority of the Court on the interim order also spent.”

He identified the first issue before the Court below as the question whether or not the trial Court had jurisdiction to entertain an oral application to extend the life of the ex parte order of injunction without first determining the challenge to its jurisdiction and the second issue as the challenge to the competence of the trial Judge to extend the life span of the order of interim injunction granted on 13th December 2013 and amended on a motion dated 18th December 2013 in spite of Order 26 Rule 12 of the Federal High Court (Civil Procedure) Rules (supra), adding that the Court below in considering the arguments of the parties on the second issue had determined issue 1. E F G

He argued that the Court below could find no argument in appellant’s brief when deciding issue 2 since the Court had made up its mind under issue 1 that the order had lapsed. He urged the Court to hold that this breached the right of the appellant to fair trial and resulted in a miscarriage of justice. He submitted that the Court below was in error when it held that the ex parte order of 13th December 2013 was subsumed into the amended order of H

23rd December 2013, adding that by the principle of relating back the amended order relates to 13th December 2013 when the original order was made.

B He argued that the 1st respondent did not seek to discharge the Order made on 23rd December 2013 but only sought to discharge the one made on 13th December 2013. Furthermore, he argued that the order made on 13th December 2013 is distinct and separate from the order made on 23rd December 2013 as each order constitutes a decision within the meaning of s.318 of C the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

D Learned Senior Counsel argued that the Federal High Court derives its power to grant injunction not from the Rule of Court but from S.13 of the Federal High Court Act and added that in the case of conflict between the rules and the law the later will prevail to the extent of the inconsistency. He referred to *Mv Arabella v. NAIC* (2008) 11 NWLR (Pt. 1097) 182 at 205 para C.

E He contended, in view of the above, that the order made on 13th December 2013, being decision within s.318 of the Constitution 1999 as amended, remained binding and effective until it is set aside notwithstanding the rules of Court. He said that the Court below was in error when it refused to follow the decision in *Nossek v. ACB Ltd* (1993) 10 SCNJ 20 to the effect that the order made on F 13th December 2013 is valid until it is set aside.

G Learned Senior Counsel urged the Court to hold, inter alia, that the Court below erred in its decision that the 14 day life span of the ex parte order under Order 6 Rules 11 and 12 of the Federal High Court Rules (supra) automatically expired even when no valid application for discharge by 1st respondent was filed or argued. He urged the Court to resolve issue 4 in favour of the appellant.

H In issue 5, Learned Senior Counsel impugned the decision of the Court below when it discountenanced appellant's respondents, notices on the ground that the record of proceedings does not bear out the appellant's contentions. He contended that a respondent who wishes that the decision of the lower Court be affirmed on other grounds by virtue of the Court of Appeal rules is

only expected to meet two conditions:

(a) he must state the grounds upon which he predicates his prayer for the variation of the decision appealed against, and

(b) state the precise form of the proposed order which he prays the Court to make.

He relied on *Essien v. Diamond Bank (Nig) Plc* (2009) 17 B NWLR (Pt. 1171) 466 at 482-483 paras B-C. He cited *Bob-Manuel v. Briggs* (2003) 5 NWLR (Pt. 813) 323 in his submission that the appellant complied with the rules of the Court below.

He contended that the Court below misguided itself in the C interpretation of the rules dealing with the life span of ex parte orders of injunction and how such orders could be discharged. He adopted his argument in issue 4 in relation to S.13 of the Federal High Court Act as the source of the power of the Federal High D Court to grant injunctions.

After a lengthy narration that mostly constituted a recast of the argument already advanced, learned Senior Counsel summarised each of the five issues at length at the end of which he urged the Court to allow the appeal and restore the order of the E trial Court on such terms as would serve the interest of justice.

In his argument on issue 1 in his brief, learned Silk for the 1st respondent recalled that the appellant in the lower Court made the unfounded assertion that the 1st respondent (then appellant) “goaded the Registrar” of the Court to compile the record of ap- F peal but argued before this Court that he who he said had goaded the Registrar to compile the record failed to assist the Registrar of the Court in the compilation of the record of appeal.

Learned Senior Counsel relied on *Ibrahim (Alhaji) Sheka v. G Alhaji Umaru Bashasi* (2013) LPELR-21403; *Subero v. State; Njaba Local Government Council v. Chigozie* (2010) 16 NWLR (Pt. 1218) 166 among others for the need for a party to be consistent in his address, his case canvassed in the statement of claim, the case he presents in Court and his pleadings. H

He said that the approach employed by the appellant is different from proffering an alternative argument in support of his case. He referred to the appellant’s grounds of objection in para-

graph 4.13 of its brief and argued that the contention that the record of proceeding is unintelligible and incomprehensible is not the main plank of the appellant's objection but the failure to assist the Registrar to compile the record. He contended that lack of assistance by the 1st respondent cannot vitiate record of appeal.

B He argued that appellant's complaint of lack of assistance by the 1st Respondent is not a basis for considering the competency of the record of appeal. Learned Senior Counsel reproduced Rule 6 (b) of the Court of Appeal Practice Directions and contended that the rule is specific in its terms and does not accord to
C the interpretation advanced by the appellant.

He relied on *Buhari v. Obasanjo* (2005) 12 NWLR (Pt. 941) 1; *Akuneziri v. Okenwa* (2000) 15 NWLR (Pt. 991) 526; *Okotie-Eboh v. Munasor* (2004) 18 NWLR (Pt. 905) 242 and submitted
D that clear and unambiguous words in a statute should be given their ordinary grammatical meaning. He referred to Webster's Comprehensive Dictionary, Encyclopedic Edition for the definitions of the words "Assistance", "compile" and submitted that Rule
E 6 (b) means no more than that the appellant will "support or aid the Registrar in putting the document together and sending the compiled documents to the Court of Appeal."

Learned Senior Counsel argued that the intent of Rule 6 (b) of the Practice Directions does not require the appellant to assist
F the Registrar to typeset the record of proceeding or compose same from the record book of the trial Court. Under the rule, the Silk argued, an appellant will ensure that the Registrar puts together all the documents and sends the compiled record to the Court of Appeal.
G

He argued that other than citing a plethora of cases on the necessity to have a complete and legible record of appeal the appellant did not say what constitutes "assistance" to the Registrar as provided in Rule 6 (b) of the Practice Direction. He submitted
H that the practice Direction is concerned with expeditious hearing of interlocutory appeals by reducing the time frame within which such appeals can be brought and record compiled. The learned Silk argued that unintelligible or incomprehensible parts of the

record as compiled and transmitted to the Court below cannot be blamed on the 1st Respondent adding that parties are bound by the record of appeal and it is open to any party who complains that the record is incomplete to formally impeach the record.

He relied on *Ogu Oko Memorial Farmers Ltd v. Nigerian Agricultural and Co-Operative Bank Ltd* (2008) 12 NWLR (Pt. 1098) 412 at 427 para F-G. He relied on *Peremolize Nigeria Ltd v. Globe Motors Holdings Ltd* (2007) LPER-4840 for procedure to challenge a record of proceedings. He relied on *Ukwuyuk v. Ogbulu* (1010) 5 NWLR (Pt. 1186) 65 p.340 para D on the presumption of regularity of record of proceedings. He relied also on Section 132 of the Evidence Act Cap E14 LFN 2004 (now s.318 of the Evidence Act, 2011).

Learned Senior Counsel submitted that even if the record was unintelligible and incomprehensible that fact could not on its own vitiate the proceeding nor could the lower Court have made a different finding if the record was intelligible and comprehensible. It was urged on the Court to resolve the issue in favour of the 1st Respondent.

In issue 2, learned Senior Counsel referred to jurisdiction as sacrosanct and fundamental to the adjudicatory powers of a Court. He relied on, among others, *Okonka v. Samuel* (2013) 7 NWLR (Pt. 1352) 19 and *Olufegba v. Abdul-Raheem* (2010) AFWLR (Pt. 512) 1033 and argued that a Court that acts without jurisdiction acts in vain and when jurisdiction is challenged a Court must first determine the question as a threshold issue.

With reference to the hearing conducted by the trial Court on 27th January 2014, it was urged on the Court to hold that the trial Court was in grave error when it conducted the proceeding notwithstanding the pending challenge to its jurisdiction. Learned Senior Counsel argued that the facts of this appeal are different from the facts *Egbodaghe's* case as the 1st respondent was not guilty of contempt of Court and that the fact that objection on jurisdiction filed by the 1st and the other respondents were not ripe for hearing cannot constitute a valid ground for proceeding without resolving the issue of jurisdiction first.

B He contended that the lower Court was right to conclude that “There was no challenge to the majesty of the Court to warrant that step.” Learned Senior Counsel reproduced part of the proceeding wherein the Court below dealt with Ebhodaghe’s case and distinguished the circumstances of the two cases and argued it was wrong for the appellant to argue that the Court below declined to follow the said case without a consideration of the facts therein. He urged the Court to resolve the issue against the appellant.

C In issue 3, the learned Silk referred to the ex-parte order of 13th December, 2013 which was amended on 23rd December 2013 and was served on the 1st respondent on 24th December 2014 and stated that the 1st respondent in a motion filed on 27th December 2013 sought an order to amend, set aside or vary the order. Learned Counsel referred to the record for the oral application made by the appellant to extend the amended order to abide the hearing of the applications and objection. He said that the trial Court granted the oral application extending the order of interim D injunction on the ground that a condition precedent for its termination had not been fulfilled. E

F He recalled that the Order of 13th December 2013 as amended on 23rd December 2013 was served on the 1st respondent on 24th December 2013 and submitted that the 7 day period within which to apply to set aside the Order began to run on 25th December 2013. Learned Senior Counsel construed Order 26 Rules 11 and 12 and therefrom deciphered the following four scenarios:

G 1. Once an interim order of injunction is made under the rules, a party affected may apply immediately to vary or discharge the order within seven days of service of the order or other time as extended by the Court.

H 2. No order made on motion ex-parte shall last for more than fourteen days upon the application of the affected party to vary or set it aside.

3. No order shall last for more than fourteen days after arguments have been taken on the application to vary or discharge the ex-parte order.

4. Where a motion to vary or discharge an ex-parte order is not taken within fourteen days of its being filed, the ex-parte order shall lapse.

He relied on *J. C. Limited v. Ezenwa* (1996) 4 NWLR (Pt. 443) p.416 paras D-F; *Rotimi v. McGregor* (1974) 11 SC 133 and *Amamambu v. Okafor* (1996) 1 All NLR 205 to buttress his argument that once an order of a Court has been amended, what stood before the amendment, no longer material before the Court and no longer defines the issues in controversy between the parties. B

On the principle of relation back relied on by the appellant C to say that the seven day period in the rule is determined from the date of the order 13/12/2013. Learned Senior Counsel said the 1st respondent could not have been expected to apply to set aside the order amended order of 23rd December 2013 within seven days of the original order made on the 13th December 2013. He added D that the order of 13th December 2013 was subsumed in the amended order of 23rd December 2013, adding that the doctrine of relation back does not extinguish the right of a party to react to an amended process. E

The learned Silk contended that the lower Court's finding that the extant order is the one made on 23/12/2013 is correct and that the 1st respondent's application to discharge or vary the order as amended on 23/12/2013 was brought within the time set by Order 26 Rule 12 (11) of the Rules. He relied on *Oliver v. Dangote Ind. Ltd* (2009) 10 NWLR (Pt. 150) 489-490 in his submission that interim order made ex-parte pursuant to Order 26 of the Federal High Court Rules (supra) expires by effluxion of time if the application to vary or discharge it is not taken within 14 days of the filing of the application. F G

He characterized the trial Court's distinction between an interim and ex-parte orders and interim as a distinction without a difference. As regards the argument that the lower Court resolved the second issue while dealing with issue one before it, learned H Senior Counsel submitted that the Court cannot be said to have prejudged an issue in a judgment that is expected to deal with entire issues in the appeal. He urged the Court to resolve the issue

against the appellant.

In issue 4, learned Senior Counsel referred to the appellant's letter of 17th April 2014 as intended by the appellant to introduce fresh issues in the guise of additional authorities after the appeal had been fixed for judgment and that the Court below was right to have rejected the new issue. On the complain that the 1st respondent's relief in the notice of appeal is the same as in the application to discharge the interim order, he said that the issues before the lower Court were different from the 1st respondent's relief in the trial Court, adding that the trial Court had yet to hear the application to discharge the order before it went ahead to make an order extending same. He urged the Court to strike out ground 19 of the appellant's notice of appeal and issue 2 distilled therefrom as the ground is incompetent.

He relied on *Chiami v. UBA Plc* (2010) 17 NWLR (Pt. 1191) 474 SC and *Okonoba v. DE & S Trans Co Ltd* (2010) 17 NWLR (Pt. 1221) 181 SC. He urged the Court to resolve the issue against the appellant.

In issue 5 on the decision of the Court below on the two notices filed by the appellant, learned Senior Counsel argued that since the lower Court found that the extension of the order by the trial Court was wrong, the said decision cannot be valid. He added that the appellant introduced fresh issue in the respondent's notice. He said that the respondent's notice filed on 7th February, 2014 is incompetent. In conclusion, Learned Senior Counsel urged the Court to dismiss the appeal and affirm the decision of the Court below.

Arguing issue one of his three issues in his brief, learned Senior Counsel for the 2nd and 4th respondents referred to appellant's issue one and contended that the issue and argument based on it are inconsistent with the appellant's argument at the lower Court. He relied on *Ajide v. Kelani* (1985) 3 NWLR (Pt. 12) 248 and submitted that a party is required to be consistent in stating his case and consistent in proving it. He said that the appellant's issue at the Court below was "whether the appellant has compiled and transmitted competent and valid record of appeal" but in this

appeal, appellant's issue is that the 1st respondent failed to assist the Registrar of the Court below to compile a comprehensive record.

In reaction to the appellant's argument at the lower Court that the record was incomplete and unintelligible, Learned Senior Counsel submitted that the record of proceeding bears with it a presumption of regularity until the contrary is proved. He relied on *Audu v. A-G Federation* (2013) 8 NWLR (Pt. 1355) 175. He urged the Court to strike out issue one in the appellant's brief for inconsistency with the issue raised in the Court below. B

He referred to the judgment of the Court below to the effect C that "... where a party declines to attend the settlement of records meeting, he should not turn round to challenge the compilation of the record" and submitted that the appellant did not appeal the said finding and is deemed to have accepted the judgment. He D relied on *Umana v. Attah* (2006) 17 NWLR (Pt. 1009) 503. He reproduced Rule 6 of the Court of Appeal Practice Direction 2013 submitted that the appellant/s argument that the Registrar of the trial Court is to rely on the assistance of the party appealing to compile and transmit a proper record is a misconstruction of the E Rule. He stated that the record was compiled and submitted within seven days by the Registrar and that there is nothing on the record to show that the Registrar required assistance and it was withheld. He added that the appellant did not suggest or show that the record F said to be unintelligent or incomprehensible is not reflective of the handwritten notes of the trial Judge.

On the appellant's argument relating to Order 8 of the Court of Appeal Rules 2011, learned Senior Counsel referred to paragraph 3.07 of the appellant's brief in the Court below wherein the G appellant argued that Order 8 of the Court of Appeal Rules 2011 is similar to Rule 6(h) of the Court of Appeal Practice Directions. He contended that the appellant cannot be heard to argue that the lower Court based its decision wrongly on Order 8 of the Court of Appeal Rules 2011, adding that the lower Court's decision cannot H be faulted merely because the Court made reference to Order 8 Rule 1 of the Court of Appeal Rules 2011.

He referred to the case of *Peremolize Nig Ltd v. Globe Mo-*

tors Holding Ltd (2007) LPELR-4800 and argued that the appellant failed to challenge the record in line with laid down procedure as failure to set out in affidavit the facts or part of the proceeding omitted or wrongly stated in the records. He argued further that the lower Court's reference to Order 8 of the Court of Appeal Rules 2011 cannot invalidate the decision as the parties filed their briefs based on the record without any dispute as to the content thereof.

Putting reliance on *APGA v. Umeh* (2011) 8 NWLR (Pt. 1250) 544, Learned Senior Counsel emphasized that a correct decision of a Court cannot be set aside because the Court relied on a wrong law. He said that the cases of *Lewis v. UBA* (2006) 1 NWLR (Pt. 961) 546 and *UBN v. Tropic Foods Ltd* (1992) 3 NWLR (Pt. 228) 231 heavily relied on by the appellant are cases of defective records compiled by the appellant and not the Registry of the trial Court.

He reproduced a portion of the decision of the Court below: "We have gone through the record of appeal. This is an Appellate Court and the record of proceeding does not bear out the contention of the 1st respondent", and argued that the appellant did not appeal against the finding of fact made by the Court below. On the appellant's argument that Order 26 Rule 12 of the Federal High Court (Civil procedure) Rules 2009 is not consistent with Sections 294 (1) and 318 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) he said that s.318 is the general definition Section and one of the words defined is "decision" on which Order 26 Rule 12 does not attempt to define and contended that Order 26 Rule 12 is not in conflict with s.318 of the Constitution.

He relied on the case of *Damgama v. Usman* (2013) 6 NWLR (Pt. 1349) 50 on the need to give the words in a statute their plain ordinary meaning and added that s.318 (1) of the constitution does not deal with interim orders made *ex-parte* and is therefore not applicable to this case. He referred to the expression in s.318 (1) of the Constitution: "after the conclusion of evidence or final addresses" and contended that what is contemplated is a final decision of the Court after recording evidence and addresses of Counsel. He argued that the expression "not later than ninety days" in

S.294(1) relates to trial judgment and that the ninety days with in which a Court must deliver its judgment cannot apply to a ruling on ex-parte application.

He urged the Court to ignore the argument relating to the constitutionality of Order 26 Rule 12. He urged the Court to resolve issue one against the appellant. B

Dealing with issue 2 on the propriety vel non of the Court taking step in a matter before it during the pendency of a challenge to its jurisdiction, Learned Senior Counsel submitted that once the issue of jurisdiction is raised the Court cannot make an order affecting the parties to the suit without first resolving the challenge to its jurisdiction. He relied on NDIC v. CBN (2002) 7 NWLR (Pt. 766) 272. Also relying on Oriario v. Osain (2012) 16 NWLR (Pt. 1327) 560 he argued that a Court has no power to make an order in respect of a matter in which its jurisdiction is in issue. C
D

The learned Silk argued that appellant's reliance on the case of Adeogun v. Fashogbon (2008) 17 NWLR (Pt. 1115) 949 was misplaced as the appellants in the said electoral case did not challenge the jurisdiction of the Federal High Court to hear and determine the 1st respondent's suit. In the case of Ebhodaghe v. Okoye (supra) heavily relied on by the appellant, he said that the Court found that: E

"the only substantive issue to be determined in this appeal is this: when a Court is faced with contempt ex facia curia and a challenge to its jurisdiction, which of them is the Court bound to deal with first" and contended that the case is not applicable to this appeal. In appellant's issue 3, alleging that the Court below resorted to speculation, Learned Senior Counsel said that the issue did not arise from the appellant's ground of appeal or from the issue formulated and relying on NNCP v. Clito NOGO 8 (2011) 10 NWLR (Pt. 1255) 209 he urged the Court to reject the argument not predicated on or relevant to, the issue for determination as of no legal consequence. F
G
H

He argued further that the fact that the Court below posed a question when dealing with issue before it does not amount to speculation. On the authority of Adebayo v. A-G Ogun State (2008)

7 NWLR (Pt. 1085) 201 at 221, he argued that the appellant cannot fault the judgment of the Court below by reliance on a single sentence by the Court. With reference to the case of *Onafowokan v. Wema Bank* (2011) 12 NWLR (Pt. 1260) 24, learned Senior Counsel argued that it is not every observation, comment or statement made by a Court in the course of writing its judgment or decision that can properly form the ground for a sustainable complaint against the judgment on appeal. He urged the Court to resolve the issue against the appellant.

In issue 3, questioning the decision of the Court below that the interim order made *ex-parte* on 13th December 2013 and amended *ex parte* on 23rd December 2013 had expired by operation of law and could not have been extended, learned senior counsel referred to the appellant's argument in its issue 4 to the effect that the Court below was wrong when, in determining the 1st issue on whether a Court could make a preservative order while a challenge to its jurisdiction is pending delved into issue 2 before it on the interpretation of Order 26 Rules 11 and 12.

He contended that once the Court had accorded the parties opportunity to present their respective cases the Court is not bound to follow the issues raised by the parties but may formulate appropriate issues or combine issues or subsumes one issue into another. He argued that it is not enough to allege a breach of a right to a fair hearing but that the appellant is bound to show from the record that its right was breached in the course of proceeding.

He relied on *Labiya v. Anretiola* (1992) 8 NWLR (Pt. 258) 139 on the inherent power of the Court to formulate issues in certain cases to do justice to the case before it. He cited *Adebayo v. A-G Ogun State* (supra) *Ekunola v. CBN* (2013) 15 NWLR (Pt. 1377) 224 for the attitude of this Court to the raising of issue of a breach of fair hearing at any trivial circumstance. He referred to the case of the appellant that the application to discharge the *ex-parte* order filed by the 1st respondent is incompetent because it was belated and in breach of Order 26 Rule 11 of the Rules for the fact that the first respondent filed the application on 27th December 2013 against the order of 13th December 2013.

He said that the appellant ignored the fact that the order was amended ex-parte on the 23rd December 2013. He relied on *J.C. Ltd v. Ezenwa* (1995) 4 NWLR (Pt. 443) 391 in support of his argument that once an order of a Court has been amended what stood before the amendment ceases to be relevant but no longer defines the issues in controversy between the parties. He argued that an order of a Court is not the same as pleading which when amended date back to the date of filing. He referred to *Olaniran v. Adebayo* (2008) 19 WRN p.95 and *Jatau v. Ahmed* (2003) 4 NWLR (Pt. 498) 511 which he said do not apply to this case.

He submitted that the 1st respondent's application to discharge the order brought on the 27th December 2013 was valid having been filed within seven days of the amended order. Learned Senior Counsel summarised his submission and urged the Court to dismiss the appeal for want of merit.

Dealing with the first of the three issues, he formulated in his brief of argument, Learned Counsel for the 3rd and 5th respondents said that the appellant as the 1st respondent in the Court below relied on Rule 6 (b) of the Court of Appeal practice Directions 2013 for alleged failure by the 1st respondent to aid or assist the Registrar on the compiling of a comprehensive, intelligent and readable record of appeal. He said that the objection was brought pursuant to Order 10 Rule 1 and Order 3 Rule 4 of the Court of Appeal Rules, 2011. He submitted that the lower Court was right when it dismissed the preliminary objection to the competence of the Record of Appeal.

He noted that the record was compiled and transmitted by the Registrar of the Court within the time stipulated by the Court of Appeal Practice Directions 2013. He added that the Registrar invited both parties to settle the record but only the 1st respondent who was the appellant in the Court below showed up and that the appellant, then the 1st respondent in the Court below, was absent. He contended that there is no evidence either before the Court below or this Court that the 1st respondent failed to assist the Registrar of the trial Court in the compilation and transmission of the Record of Appeal from the trial Court to the Court below.

Learned Counsel emphasised that by Rule 6 (b) of the Prac-

tice Directions 2013 the appellant's duty is to assist the Registrar to ensure the compilation and transmission of the record within the specified period and that appellant has no duty to proofread the record. He submitted that if pages of the record so compiled and transmitted do not meet the required standard, it is the Registrar and not the appellant who should take the blame for doing a shoddy job.

He relied on the case of *Akande v. State* (1996) 8 NWLR (Pt. 468) 522 at pages 530-531 paras H-A. He contended that without any showing to the contrary by the appellant the alleged illegible portion of the record did not in any way affect the competence of the record. He argued further that it is the duty of anyone who impugns the competence of the record to seek to file additional record to take care of any omission or error in the original record.

He relied on *Orok v. Orok* (2013) LPELR 20377 at p.19 paras D-E. He relied on the cases *Peremolize Nigeria Ltd v. Globe Motors Ltd* (supra) at p.967 and *Ogli Oko Memorial Farms Ltd v. NACB Ltd* (2008) 12 NWLR (Pt. 1098) p. 421 at 427 and relying on the case of *SPDC v. Amadi* (2011) 14 NWLR (Pt. 1266) pages 195-196 paras C-E he maintained that the record compiled and transmitted by the Registrar of the trial Court was a complete record as found by the Court below. He referred to, and adopted the reasoning of the Court of Appeal in dismissing the preliminary objection at pages 267-969 in Vol. II of the records and urged the Court to agree with same and resolve the issue against the appellant.

In issue 2 on the lower Court's dismissal of the appellant's two respondent's notices to vary or affirm the decision of the trial Court on grounds other than those stated by the trial Judge, learned Counsel adopted the argument of the learned Silk for the 2nd and 4th respondents on the issue. He added that the essence of a respondent's notice by a respondent who agrees with the judgment appealed against is for the Court to vary the judgment or affirm the same on grounds other than those stated in the judgment and not for the respondent to introduce fresh issues, re-argue or reopen its case before the trial Court or lower Court as the case

may be.

He relied on *Bob Manuel v. Briggs* (2003) 5 NWLR (Pt. 813) 323, 339-340 and contended that the appellant cannot, at the Appellate Court, make a case different from its case at the trial Court. He submitted that by its two respondent's notices it agreed with the respondents that the trial Court was in error to have extended the life-span of its order made on 13/12/2013 and amended on 23/12/2013. He urged the Court to resolve the issue against the appellant in favour of the 3rd and 5th respondents. B

In issue 3, learned Counsel for the 3rd and 5th respondents adopted the argument of Learned Senior Counsel for the 2nd and 4th respondents on the propriety of the Court below setting aside the order of the trial Court extending the life-span of its order of 13/12/2013 as amended on 23/12/2013. C

On the argument of the appellant that the 1st respondent who had a pending motion to discharge the interim order and had the same relief on appeal to the Court below committed abuse of process of Court and that his appeal ought to have been dismissed, he urged that the 1st respondent as appellant in the lower Court exercised its constitutional right of appeal pursuant to s. 241 of the Constitution (*supra*). He said that the appeal was against the extension of the life span of the interim order in the face of the 1st respondent's challenge to the jurisdiction of the Court. He contended that at the date of the 1st respondent's appeal to the lower Court the application to discharge the interim order filed by the 1st respondent on 27/12/2013 was no longer in issue. D E F

Learned Counsel argued that the two processes are not related in that the appeal is against the order of the trial Court made on 27/12/2013 extending the lifespan of its order of 13/12/2013 as amended on 23/12/2013, the motion to discharge was predicated upon the order made on 13/12/2013 as amended on 23/12/2013. He argued further that the 1st respondent's appeal at the lower Court is not an alternative remedy to the 1st respondent's motion to discharge the *ex parte* interim order. G H

He relied on *R-Benkay Nigeria Ltd v. Cardbury Nigeria Ltd* (2012) 9 NWLR (Pt. 1306) 596 at 624 paras E-H and argued that

the appellant cannot complain of the manner the 1st respondent exercises his option or discretion to exercise his legal right nor can such option to exercise the right constitute abuse of process of Court. Learned Counsel impugned the argument of the appellant that Order 26 Rules 11 and 12 (supra) conflict with Sections 294 and 318 of the Constitution. He noted that the trial Court made the order of interim injunction ex-parte on 13/12/2013 and amended same ex-parte on 23/12/2013 and submitted that it was immoral and depreciable for the appellant who had benefited from Order 26 Rules (7) and (8) to claim that the said order were unconstitutional.

Learned Counsel argued that the appellant equated the ex-parte order he obtained on 13/12/2013 with what is envisaged and contemplated by s. 294 (1) of the Constitution (supra). He argued that S.294 of the Constitution is inapplicable to the order of interim injunction made by the trial Court on 13/12/2013 and amended on 23/12/2013. In reaction to the argument that the order of interim injunction cannot lapse by the Rules of the Federal High Court but needed to be set aside by a Court of competent jurisdiction, he submitted that Order 26 Rules 11 and 12 (supra) did not interfere with the power of the Court to grant interim injunction and that the Rules of Court complement the law.

In response to the argument that the extant order was the one made on 13/12/2013 and that the amendment made on 23/12/2013 affected only errors and dates back to the date of the original order 13/12/2013, he submitted that the case relied upon by the appellant dealt with amendment to pleadings. He relied on J.C. Ltd v. Ezenwa (supra) in his argument that after the amendment of 23/12/2013 the original order yielded place to the amended order. After his lengthy submission, repeating argument already in the briefs, Learned Counsel urged the Court to resolve the issue against the appellant. He then summarised his arguments and urged the Court to dismiss the appeal.

Subsequent to the respondents briefs the learned Silk for the appellant filed the following processes in response: Appellant's amended reply brief of argument to the 1st respondent's amended

brief of argument dated and filed on 5th March, 2015. It is a “reply to fresh issues raised by the 1st respondent in its brief of argument”. Learned Senior Counsel then presented copious submissions as response to “new points raised” under each of the five issues argued in the 1st respondent’s brief. He made a summary under each of the five issues before urging the Court to discountenance the 1st respondent’s argument in its brief. B

In the case of the 2nd and 4th respondents’ brief, Learned Senior Counsel for the appellant presented a “Response to the preliminary Objection” and then followed this with a 14-page “Arguments in Replicando”. C

In his response to the 3rd and 5th respondents’ brief, Learned Senior Counsel dealt with “incompetence of the 3rd and 5th respondents’ brief of argument”. He responded to the 3rd and 5th respondents’ preliminary objection. He then proceeded to “Respond to new points” argued the 3rd and 5th respondents under each of the three issues argued therein. Then again, he made a summary of his argument on the “new” issues. D

Now, Learned Senior Counsel for the appellant is within the limits of his legal and procedural rights to respond to the preliminary objection argued by the 2nd and 4th and 3rd and 5th respondents in their respective briefs. E

Also it is the law that an appellant who fails to respond to new points raised in the respondent’s brief is deemed to concede the new points. See Joseph Iro & Ors v. Christopher Echenwendu & Ors (1996) 8 NWLR (Pt. 468) 629 at 636 paras B-C. ***However, the “new point” must be “new” in the sense that it is not an answer to an issue or issues expressly or impliedly raised in the appellant’s brief, or an issue that naturally and logically flows from same.*** F G

I have carefully considered the appellant’s reply to the so-called fresh issues in the 2nd and 4th and 3rd and 5th respondents’ brief. Learned Senior Counsel for the appellant made copious submissions on each issue in the two briefs and made a summary of his argument in respect of each issue. This, in my humble view, is not a H

response to new issues in the respondents' brief. For instance, the power of the Court to preserve the res in an appeal is not a new issue and the same goes for the effect of amended process. The above and more are contained in the appellant's amended reply to the 1st respondent's brief.

Under the heading "Arguments in Replicando", Learned Senior Counsel for the appellant dealt once more with "transmission of unintelligent records of appeal, dismissal of respondents' notices, constitutionality of Order 26 Rule 2 of the Federal High Court Rules and power of the Court to preserve the res as well as "pre-determining issues formulated" and effect of amended process.

In his reply to the 3rd and 5th respondents' brief under the caption "Reply to fresh issues raised by the 3rd and 5th respondents in their brief of argument", the Silk for the appellant launched a fresh attack on all issues argued in the 3rd and 5th respondents' brief. Not done with respondents' brief, he expanded its scope by his submission on "very important cases not commented on by the respondents". He also dealt with lifespan of interim order, effect of amended Court process and power of the Court to preserve the res.

As I have stated earlier in the judgment, at the end of his argument, learned Senior Counsel for the appellant made a summary of his argument on each issue. With profound respect to the respected Silk, this is not a reply to new issues in the respondents' briefs. It is a re-argument of issues in his brief to which the respondents replied in their respondents' brief.

In my view, it is a new set of briefs or supplementary briefs. As the name implies, a reply brief responds to the respondent's brief but if the respondents have joined issues with the appellant's brief as is the case in this appeal, the appellant need not repeat the issues joined either by emphasis or expatiation. A reply brief is not one for the repetition of arguments in the appellant's brief; it is not a forum for emphasising the argument in

the appellant's brief. See *Ochemaje v. State* (2008) 6-7 SC (Pt. 11) 1.

That Order 6 Rule 5 (3) of the Supreme Court Rules 1985 as amended provides: "Ord. 6 R. 5(3) that "the appellant may also file in the Court and serve on the respondent a reply brief..." does not empower the appellant to file another or supplementary brief. In practice, the right of reply is limited to new issues in the respondents' brief but the new issues are immaterial and ought to be ignored if they fall outside the issues properly arising from the grounds of appeal.

In the resolution of the issues in this appeal, I will ignore the appellant's second briefs of argument disguised as replies to fresh issues in the respondents' brief.

Preliminary Objections:

The 2nd and 4th and 3rd and 5th respondents filed preliminary objections. The preliminary objections, notices of which were filed and served on the appellant, were argued in the briefs. The appellant responded to same in his reply briefs. On the sole ground that the respondents did not mention or rely on their arguments in respect of their preliminary objection before the appellant adopted its briefs, Learned Senior Counsel for the appellant urged the Court to deem the preliminary objection abandoned.

Learned Senior Counsel for the appellant's position may be technically correct but today emphasis has shifted from technical to substantial justice. See *Ukpanah v. Ayaya* (2011) (Pt. 1227) 61. The Court cannot abandon substance to chase shadow. I will therefore determine the preliminary objections on their merits.

In the preliminary objection argued in the 2nd and 4th respondents' brief, it was urged on the Court to strike out ground 19 and issue 2 of the appellant's brief, on the ground that the issue of abuse of process of Court was not placed before the Court below and the appellant did not seek leave to raise fresh issues. In reply appellant relied on *NNPC v. Famfa Oil Ltd* (2012) 17 NWLR (Pt. 1328) 148 at 185 to argue that since there are grounds other than the one objected to, the respondents ought to have filed a motion on notice and not a notice of preliminary objection. In the alterna-

tive, Learned Senior Counsel said he did his duty by furnishing the Court with additional authorities after the appeal had been adjourned for judgment.

B The preliminary objection is to the competence of ground 19 of the appellant's grounds of appeal. It is not a challenge to the competence, and ipso facto, the hearing of, the appeal. I appreciate the point made in the case cited by the appellant. Be that as it may, whether a preliminary objection is raised to the ground of appeal or a motion to strike it out is filed, the effect is the same - to get rid of the ground of appeal complained of.

C ***In my view, it is a mere technicality which of the two methods is used to challenge the ground of appeal. In order to do substantial justice, the mode of challenge to the ground of appeal should not be a bar to the determination of the competence vel non of ground 19 of the appellant's ground of appeal. From the argument of both parties, it is not in dispute that the appellant did not raise the issue of abuse of process of Court in the Court below.***

E ***The issue was raised for the first time in the Learned Senior Counsel's letter of 17/4/2014. I am of the view that learned Senior Counsel for the appellant went beyond the submission of additional authority by incorporating fresh argument in the list, he submitted after the appeal had been adjourned for judgment.***

G ***The Court of Appeal in its judgment found that it was wrong for Counsel to reopen argument behind the other party when the matter had been adjourned for judgment. The appellant did not appeal against this finding of fact and is deemed to have conceded the point. See Koye v. UBA Ltd (1997) 1 NWLR (Pt. 481) 251 Ratio 2. It was wrong for the appellant to advance further argument after the appeal had been adjourned for judgment in the guise of providing additional authorities. The Court below was right to have considered the additional authorities without consideration of the fresh issue raised in the***

letter submitting the additional authorities.

In the circumstance, I sustain the preliminary objection to appellant's ground 19 and issue 2 derived therefrom. The said ground of appeal and issue are hereby struck out as incompetent.

In their own preliminary objection argued in their brief of argument, the 3rd and 5th respondents urged the Court to strike out the appellant's appeal for failure of the appellant to obtain leave before filing the appeal on grounds of mixed law and fact. In the alternative, they asked for an order striking out grounds 1, 2, 3, 4, 5, 6, 8, 10, 11 and 19 and all other grounds of the appellant's grounds of appeal contained in the notice of appeal.

In real terms, the obliquely crafted alternative ground of objection does not differ from the first ground of objection. The 3rd and 5th respondents have only duplicated their ground of objection.

The expression "grounds of mixed law and facts" is not a team of art. It is not a magic wand that can convert a ground of appeal from one classification to another one. 3rd and 5th respondents relied on BSAF Nigeria Ltd v. Faith Enterprises Ltd (2010) 4 NWLR (Pt. 1183) p.104 at 132-133 para F-B and Ekunola v. CBN (2013) 15 NWLR (Pt. 1377) 224 at 260-261 paras H-F on how to classify a ground of appeal into grounds of law alone and of mixed law and fact and ground of fact without any attempt at employing the authorities to show that any or all the grounds complained of is/are grounds of mixed law and fact.

Learned Counsel for the 3rd and 5th respondents rightly argued that the fact that the appellant described the grounds of appeal as grounds of law does not automatically and necessarily render it so. The reverse is also true. The fact that a respondent describes a ground of appeal as of mixed law and fact does not necessarily make it so. The respondent ought to have stated each ground complained of, interpret it to ascertain its core question before urging the Court to accept that it is a ground of mixed law and fact.

It does not avail the 3rd and 5th respondents to label the grounds of appeal; grounds of mixed law and fact or to urge the Court that grounds 1, 2, 3, 4, 5, 6, 8, 10, 11 and 19 and all other grounds of the appellant's grounds of appeal are of mixed law and facts. It is not enough for learned Counsel to assign the duty of reading each ground and its particulars to determine that it is a ground of mixed law and fact. It is the duty of the respondent who challenges the classification of a ground of appeal as one of mixed law and fact to satisfy the Court that the ground belongs to a classification different from the one the appellant assigned to it.

In my humble view, the preliminary objection as argued in the 3rd and 5th respondents' briefs cannot be sustained and is over-ruled.

In his reply to the 3rd and 5th respondents' brief, learned Senior Counsel for the appellant challenged the competence of the 3rd and 5th respondents' brief on the ground that it was filed in breach of Order 6 Rule 5 (2) of the Supreme Court Rules 1999 as amended, which he reproduced thus:

"The Respondent shall file in the Court and serve on the appellant his own brief within eight weeks after service on him of the brief of the appellant."

He reproduced a portion of the 3rd and 5th respondents' brief:

"This brief of argument is filed by the 3rd and 5th respondents in response to the Appellant's brief of argument dated and filed on 31st October 2014 but served on us on 5th November, 2014."

He argued that by the rule reproduced above the 3rd and 5th respondents' brief ought to have been filed on or about 31st December 2014, adding that the word "shall" in the rule makes its compliance compulsory. With respect to Learned Counsel for the 3rd and 5th respondent, it would appear to me that he is not familiar with the rules of this Court in relation to the filing of briefs of argument.

Not only did he file his brief out of time, he also volunteered the information that he filed out of time. If he knew the rules he would have filed an application to regularise the filing. In the alternative, he could have moved the Court at the hearing to regularise his brief, but did neither. Now the brief is before the Court and the learned Counsel for the appellant, without raising objection to it, reacted appropriately by filing his reply to it. B

He knew the process was filed out of time without leave of Court. In the circumstances, the breach of the rules relating to time of filing brief should be treated as a mere irregularity which the appellant waived by filing a reply to the brief. To strike out the brief on the peculiar facts herein will tantamount to doing technical as distinct from substantial justice. C

In the case of *Nwankwo v. Kanu* (2010) 6 NWLR (Pt. 1189) 62 a brief filed out of time was considered in the interest of justice. D
In view of the above, I will consider the brief in the interest of doing substantial justice.

Now, having disposed of all preliminary/peripheral matters in the appeal I will determine it on the merit. E

Appellant and 1st respondent each argued five issues in their respective briefs. 2nd and 4th and 3rd and 5th respondents each formulated three issues. The four set of issues appear divergent. It is the appellant's case and the battle of the gods is better fought by the gods themselves, as it were, I will determine the appeal on its five issues, based on the submissions I have summarised above. F

"Issue 1:

Whether the failure of the 1st respondent to assist the Registrar of Court to compile a comprehensive record of appeal as appellant in the lower Court did not lead to jurisdictional incompetence of its record." (Grounds 1, 2, 3 and 4 of the Notice of Appeal). G

This issue calls for interpretation of Order 8 Rules 1 and 4 of the Court of Appeal Rules 2011 and Rule 6 (b) of the Court of Appeal Practice Direction, 2013. Both are hereunder reproduced:

"Order 8 Rule 1:

The Registrar of the Court below shall within sixty days after

the filing of a notice of appeal compile and transmit the record of appeal to the Court”.

“Rule 4:

Where at the expiration of 60 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.”

“Rule 6 (b):

In any appeal contained in 3 (a) (ii) above, the Registrar of the Court below shall, no later than seven days after the filing of a notice of appeal, with the assistance of the appellant compile and transmit the record of appeal to the Court.”

In construing the provisions reproduced above, there is no need to resort to external sources. The words used in them ought to be given their grammatical and ordinary meanings. In the *Levy*, ex parte, *Wultin* (1881) 17 Ch.D 746 at 751 *Jessel M.R* opined:

“The grammatical and ordinary sense of the Words is to be adhered to unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical or ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further.”

Any modification of the grammatical and ordinary sense of the words provisions reproduced above may lead to absurdity and inconsistency with the intention of the provisions.

Now “Direction” in the context of practice direction connotes command or precept emanating from an authority. See *Buhari v. INEC* (2009) All FWLR (Pt. 459) 419 SC at 513 para F. Rules of Court include practice directions. So Rule 6 (b) of Court of Appeal Practice Direction, 2013 in so far as it is not inconsistent with, is part of the Court of Appeal Rules including Order 8 of the Court of Appeal Rules 2011.

Under Order 8 Rule 1 reproduced above, it is the

sole responsibility of the Registrar of the Court below to compile and transmit its record to the Court of Appeal within 60 days after the filing of the notice of appeal. In discharging his duty in compliance with Rule 2 of the Order the Registrar shall invite the parties to settle the records and fix the amount appellant is to pay for making up and forwarding the record. See Order 8 Rule 2 (a) and (b). B

The duty of the appellant to compile and transmit the record arises only at the failure or neglect of the Registrar to compile and transmit the record within the 60 day period prescribed in Order 8 Rule 1. This time the appellant will compile or transmit the record within 30 days of the default of the Registrar. See Order 8 Rule 4. This is the general rule. C D

Rule 6(b) of the Practice Direction of the Court of Appeal is a special rule applicable in interlocutory appeal wherein time is abridged for the compilation and transmission of the record. In Order 8 Rule 2, the appellant and the respondent have a joint duty to settle the record and fix the estimated cost of the compilation and transmission of the record. Under Rule 6 (b) of the Practice Direction, the appellant has an added duty to aid the Registrar in the compilation and transmission of the record. E F

In my view, the duty of the appellant under Rule 6 (b) of the Practice Direction is not very much different from the one under Order 8 except that the appellant is bound to be present, whether or not the respondent honours the Registrar's invitation to settle the record. Time is abridged and he has to be there to identify what he needs for his appeal and pay the estimated cost of production and transmission of the record. G H

Primarily the duty of compilation and transmission of the record remains that of the Registrar and the help required of the appellant does not translate to the appellant taking over the actual

production of the record from the Court's record book. He has to help to settle the record, pay the estimated fees and transmission of the prepared record. It is the Registrar, and not the appellant as the respondent in the Court below, who can complain if the appellant fails to help in the compilation and transmission of the record.

B In this case there was no such complaint. There is no fact or set of facts upon which it can be said that the 1st respondent failed to assist the Registrar in the compilation and transmission of the record, and the record was compiled and transmitted within the
C time prescribed by the rules.

***Let me now deal with the record alleged to be incomprehensible by the appellant. Appellant ought to have been present at the compilation of the record - Order 8. He was not present and did not take part in the
D settlement of the record, nor did it present additional record to take care of omission, if any, in the compiled record. As for the incomprehensiveness of the record, it is my view that if the record was incomprehensible as
E alleged, the Court below would have demanded a better record. It did not complain but determined the appeal on the record before it.***

***A record of appeal is produced by a human being. It may not be perfect but the absence of flaw in beauty is a
F flaw in itself. By characterizing the record as incomprehensible, the appellant has challenged the record, but he has not done so by the right procedure. The appropriate manner to impeach the contents of the record
G of appeal is by affidavit evidence.*** See *Adm-General CRS v. Chukwuogor Nig Ltd* (2007) 6 NWLR (Pt. 1030) 398.

***There is no evidence that the 1st respondent as the appellant in the Court below failed in his duty to help the Registrar in the compilation and transmission of the
H record and the contents of the record have not been impeached. In any case, the parties and the Court are bound by the record of appeal which is presumed correct unless the contrary is proved.*** See *Texaco Panama v. Shell Pet. Dev.*

Co. Ltd (2002) 94 LRCN 152 at 168-169; Summer v. FHA (1992) 1 NWLR (Pt. 719) 548. I resolve issue 1 against the Appellant.

“Issue 2:

Whether the Court of Appeal correctly applied the case of A-G Ondo v. Ekiti State (2001) 17 NWLR (Pt. 743) 706 and ACB Plc v. Nwaigwe (2011) 7 NWLR (Pt. 1246) pg 380 at 395 paras F-H by not dismissing the appeal of the 1st Respondent as an abuse of Court process.”

There is a world of difference considering a particular case law and application of the same authority correctly or otherwise. A Court is not bound to apply any authority it has considered in its judgment. It has a duty to consider all authorities relied on by the parties but it has a right and indeed a duty not to apply particular authorities if the issue decided therein is inapplicable to the facts and law before it.

Issue 2 as framed by the appellant implies that the Court below applied the authorities cited by and relied on by the appellant but the appellant’s case is that the Court below did not apply the case law properly or correctly because it did not, based on the authorities, dismiss the 1st Respondent’s appeal as abuse of Court process.

Now what are the facts of the case cited by the appellant? In the case of A-G Ondo v. Ekiti (supra), there was an appeal pending in the Court below while the original jurisdiction of the Supreme Court was invoked by the appellant over the subject matter of the appeal and in respect of the same parties. The appeal and the invocation of the original jurisdiction of the Supreme Court were pending in different Courts - the Court of Appeal and the Supreme Court. ACB Plc v. Nwaigwe (supra) involved alternative remedies. In the first of the two cases, it is clear that the later of the appeal in the Court below and a resort to the original jurisdiction of the Supreme Court over the same subject matter and between the same parties is an abuse of process of Court. In the earlier of the two cases, a party cannot be awarded the two alternative remedies. The grant of a relief makes its alternative irrel-

evant. See *Xtoudos Services Nig. Ltd v. Taisei (WA) Ltd* (2006) 6 SC 200.

In the case before us, the motion on notice to discharge the ex parte order was filed during its lifespan and when it was spent the 1st Respondent urged the Court to so declare it. Both were pending in the same Court and once one is granted the other would cease to be a life issue between the parties.

The concept of abuse of Court process or judicial process is in the sense of improper use of judicial process to the annoyance and irritation and harassment of a party's opponent. See *Saraki v. N. A. B. Kotoyo* (1992) 1 NWLR (Pt. 216) 124, *Akindipe v. C.O.P. & Ors.* (2000) 78 LRCN 1692 at 1699 - is wide. ***Wide as it is the concept cannot, in my view, be stretched to encompass the facts and circumstances of the appeal at hand.***

It is immaterial that the Court below did not, as alleged by the appellant, make any pronouncement on the issue of abuse of Court process. In the circumstances of this appeal, the rejection or non-application of the two cases means that the Court below did not accept the appellant's case based on abuse of process of Court. The Court below, having considered the two cases relied on by the appellant, had two options - to accept and apply the two cases and declare that there had been abuse of Court process by the 1st Respondent as appellant or to reject the authorities as inapplicable to the facts as establishing abuse of Court process. The cases were either applied or not applied, the issue of incorrect application will not arise simply because the Court rejected them. I resolve issue 2 against the appellant.

"Issue 3:

Whether the learned Justices of the Lower Court rightly construed the binding decision of the Supreme Court in *Ebhodaghe v. Okoye* (2004) 18 NWLR (Pt. 905) 472 and *NDIC v. CBN* (2002) 7 NWLR (Pt. 766), 272 on the inherent powers of Court to protect its authority and dignity even when applications challenging its

jurisdiction was pending.”

In each of the two cases relied on by the appellant, and the construction by the Court below of which he impugned, this Court dealt with inherent powers of a Court to protect its authority and dignity even in the face of pending application challenging its jurisdiction. May be, it is the appellant who misconstrued the decisions in the two cases. Issue 3 is similar to issue 2 and both should have been argued together. Issue 2 relates to abuse of process of Court while issue 3 is hinged on contempt of Court.

As in issue 2 appellant assumes as a fact, that the 1st Respondent was in contempt of the Court below, Contempt of Court is an affront to the authority and dignity of the Court. It can be either contempt ex facie curiae or contempt in facie curiae. See Awoscenva v. Board of Customs & Excise (1973) 3 SC 47. The Court has a different procedure for dealing with each type of contempt.

The learned Silk is an officer of the Court, as which learned Counsel is not. That notwithstanding, it is not the duty of any one, Counsel or no Counsel, to determine for the Court when a party is in contempt of the Court, ex facie curiae or in facie curiae. The Court below considered the cases cited by the appellant and was of the view that the facts and decisions therein are inapplicable to the facts before it, after all, a case is an authority for another case based on what it actually decided on, the fact and circumstances in issue.

The Court below could not have applied the cases cited by the appellant when there was no need for it to protect its authority or dignity. I resolve the issue against the appellant.

“Issue 4:

Whether the Court of Appeal was right in holding that by the fourteen (14) day life span Rule under 26 Rules 11 & 12 of the Federal High Court Civil procedure Rules 2009 the ex-parte order of injunction made on 13th December 2013 pending the determination of the motion on notice for interlocutory injunction auto-

atically expired even when no valid application for discharge by 1st Respondent was filed or argued.”

Let me tabulate the facts and dates of the occurrence which I consider relevant to the determination of the issue:

	DATES	EVENTS THAT TOOK PLACE
B	13/12/2013	Motion ex parte for interlocutory injunction pending motion on notice
	23/12/2013	Motion for correction granted
	27/12/2013	Vary or discharge the order of 13/12/2013

C It follows from the table above that the ex parte order of injunction, the lifespan of which is the crux of issue 4 was made on 13/12/2013. The order was amended, on the application of the appellant, then plaintiff in the trial Court, on 23/12/2013. Fifth Respondent, not 1st Respondent, filed a motion on notice to vary
D the order or discharge same on 27/12/2013. The parties do not dispute the facts stated above.

Now to the rules applicable to the facts stated.

“Order 26 Rule 11:

E *Where an order is made on a motion ex parte, any person affected by it may, within seven days after service of it, or within further time as the Court shall allow, apply to the Court by motion to vary or discharge it, and the Court may, on notice to the party obtaining the order, either refuse to vary or discharge it, or may*
F *vary or discharge it with or without imposing terms as to cost or security or otherwise as seem just.”*

“Rule 12 (1):

No order made on motion ex parte shall last for more than
G *fourteen days after the party or person affected by the order has applied for the order to be varied or discharged or last for another fourteen days after application to vary or discharge it has been argued.”*

“Order 20 Rule 12 (2):

H *If a motion to vary or discharge an ex parte order is not taken within fourteen days of its being filed, the ex parte order shall lapse.”*

What is the effect on the order made on 13/12/2013 of the

amendment made on 27/12/2013? Generally an amendment duly made takes effect from the date of the document sought to be amended. See *Adewunmi v. A-G Ekiti State* (2002) 9 WRN 51 at 71-72; *UBA Plc v. Abdullahi* (2003) 3 NWLR (Pt. 807) 859 at 378 paras. C-F.

Following the above cases and in line with the argument of the Silk for the appellant the amendment granted on 23/12/2014 relates back to 13/12/2013, the date of the original order. In my view, this line of reasoning, on the facts of this case, will lead to absurdity. It would mean that the 1st Respondent had seven days from 13/12/2013 to apply to vary or discharge the order. See Order 26 Rule 11 (*supra*).

Now if the 1st Respondent had, in compliance with the above order, applied within seven days of 13/12/2013 to vary or discharge the order, the application would have been of no avail after the order was amended on 23/12/2013. This is because the content of the original order made on 13/12/2014 cannot be the same as the content of the said order as amended on 23/12/2013.

As at 23/12/2013, the extant order was the amended order of 23/12/2013 and the original order of 13/12/2013 had ceased to exist. This is the effect of the amendment. When the 5th Respondent filed a motion to vary or discharge the order on 27/12/2013 the only extant order to which it could have been directed is the amended order of 23/12/2013 and in my view the motion to discharge or vary the order made on 13/12/2013 and displaced by the amended order of 23/12/2013 which motion was filed on 27/12/2013 was within seven days of the extant order resulting from the amendment made on 23/12/2013.

On the facts before us, the application of the principle of relating back so heavily relied on by the appellant is inapplicable. Fifth Respondent could not be expected by any rule of Court, to apply to vary or discharge an order within seven days from 13/12/2013, the contents of which did not come into being before 23/12/2013.

Based on the above, the motion filed by the 5th Respondent on 27/12/2013 and vehemently opposed by the appellant on the

ground that it was filed out of time was filed within time. The opposition was predicated on the erroneous belief that the order made on 13/12/2013 was still extant and that the application was directed at it.

B On 27/1/2014 and 24/1/2014, the 2nd and 4th, and the 5th respondents, respectively, challenged by way of motion on notice, the jurisdiction of the trial Court to hear the suit on 27/1/2014 purportedly extending the life span of the interim order, holding, inter alia, that “the interim order made by the Court stand extended as the condition precedent that will warrant its challenge is yet to be fulfilled.

C My noble Lords, I am now faced with three questions:

D (1) As at 27/1/2014, what order of interim injunction did the trial Court extend - the order originally made on 13/12/2013 or its amended version which came into being on 23/1/2013?

(2) As at 27/1/2014, had the life span of the order of 13/12/2013 and that of the order as amended on 23/12/2013 not expired?

E (3) Assuming but not conceding that any order of interim injunction granted by the trial Court was still in force as at 21/1/2014, could the trial Court validly extend its life span in the face of challenges to its jurisdiction filed on 21/1/2014 and 24/1/2014 by the 2nd and 4th and 5th respondents, respectively?

F Let me take the question serially.

G 1. In its order of 27/1/2014 the trial Court failed to indicate which of its orders it was extending - the original order of 13/12/2013 or the amended order of 23/12/2013. I have already decided that as at 23/12/2013 the original order made on 13/12/2013 ceased to exist, having been displaced by its amended version of 23/12/2013. The amended order of 23/1/2013 was as at 27/1/2014 the only extant order to which the order for extension could have been directed.

H 2. As of 27/1/2014 the interim order of 13/12/2013, even if it was still extant and its amended version made on 23/12/2013 had both expired by effluxion of time pursuant to Order 26 Rule 12 (1) and (2) (supra).

3. The third and last of the three questions I raised involves the jurisdiction of the trial Court. The trial Court was fully aware of the challenges to its jurisdiction when it purported to extend the life span of its interim injunction. Broadly speaking, jurisdiction is the dignity which a Court has by power to do justice in a cause or complaint brought before it. See the case of Jacob Nwanwata v. Joseph Esemei (1998) 8 NWLR (Pt. 563) 650 at 673. B

When its jurisdiction to hear and determine any case before it is in issue, it is a threshold matter which the Court must determine before taking any further step in the case for proceeding conducted without jurisdiction remains a nullity. See Penok Ltd v. Hotel Presidential Ltd (1982) 12 SC 1; National Bank v. Soyoye (1977) 5 SC 181. C

At a challenge to its jurisdiction, the only jurisdiction the Court can exercise is to determine whether or not it has jurisdiction in the matter. The order made on 27/1/2014 to extend the life span of a spent order, in the face of a challenge to its jurisdiction not yet decided, is a nullity. There was no threat to the dignity of the Court and the 5th Respondent was not in contempt. The issue is resolved against the appellant. D

“Issue 5:

Whether the Court of Appeal was right in refusing to uphold the Appellant’s two respondents’ notices seeking the validation of the decision of the trial Court keeping alive its extant ex parte order of interim injunction?” E

In framing issue 5, the learned Silk appeared to have worked from the answer to the problem. He assumed that the ex-parte order was extant, a view he was yet to persuade the Court to accept. In view of my determination of issue 4, issue 5 is dead on arrival. G

Issue 5 is akin to a medical doctor managing to declare, upon his learning, that a man whose head was severed from the body was still alive. A second opinion by a more realistic doctor declares the man dead. A man comes along and prays the second doctor to endorse the findings of the first doctor on other grounds. H

A man whose head is cut off is necessarily and for all time dead and there is no ground upon which the decision of the first doctor that he is alive can even be affirmed.

B Even if the order was extant as the appellant claimed the trial Court could not have validly made the order when its jurisdiction to hear the case was challenged before it. The issue is resolved against the appellant.

C I want to record my immense appreciation for the industry shown by learned Counsel for the parties in their respective briefs, with particular reference to the learned Silk for the appellant. One would prefer, however, to have a brief live up to its name - brief. In my view, the success of an appeal is not a function of the amount of erudite argument presented with its plethora of authorities.

D A brief of argument should not only justify its name and function but must deal directly and explicitly with the issues at stake in the appeal.

E I have given due consideration to the argument of the parties in their respective briefs. I prefer the arguments of the Respondents and resolve each of the five issues I adopted against the appellant. Consequently I dismiss the appeal for want of merit and affirm the decision of the Court below.

F Appellants shall pay costs assessed and fixed at N100,000 to each of the 1st, 2nd and 4th and 3rd and 5th respondents.
Appeal dismissed.

PETER-ODILI JSC

G I agree totally with the judgment delivered by my learned brother, Nwali Sylvester Ngwuta, J.S.C.

H In support of the reason I shall make some comments. This appeal is against the judgment of the Court of Appeal, Lagos Division by which that Court allowed the appeal of the 1st respondent herein and set aside the ruling of Federal High Court per M. N. Yunusa J. delivered on the 27th day of January, 2014 in which the life of the interim order of injunction granted ex-parte was extended.

The 1st respondent in this appeal was sued as the 5th defen-

dant at the Federal High Court, Lagos Division in an originating process of a writ of summons, statement of claim etc. The appellant as plaintiff had claimed that having participated in the bid process for the sale of OMLS 52, 53 and otherwise known as Assets being sold by the 2nd respondent presented a bid which it alleged was the highest bid for the Assets presented on irrevocable letter of credit to the 2nd respondent as part of the bid requirements and following meetings with representatives of the 2nd-5th respondents, the 2nd respondent was bound to accept the appellant for the winner or preferred bidder for the purposes of acquiring the 40% participating interest of the 2nd respondent in the Assets. B C

Simultaneously with the filing of the originating processes, the appellant sought, though ex-parte motion, interim reliefs against all the respondents (defendants at the trial Court) and a motion on notice for interlocutory orders. The interim order was made on the 13th December, 2013 and the suit adjourned to 27th January 2014. Appellant applied through another ex-parte motion for an amendment to the order of 13th December, 2013 in effect extending the life of the interim order, this amendment was granted. The 1st respondent upon receipt of the amended order applied for a discharge thereof. After arguments, the learned trial Judge extended the interim order of injunction holding that an interim order is distinct from an ex parte order and that the condition precedent for the discharge of the order had not been fulfilled. D E F

Not happy with that decision the 1st respondent appealed to the Court of Appeal which allowed the appeal holding that the trial Court was wrong to extend the life of the ex parte order while deferring the motion challenging the jurisdiction of the trial Court. Also that by virtue of the Federal High Court (Civil Procedure) Rules 2008, the interim order by the trial High Court had expired before the purported extension. G

Aggrieved by the judgment the appellant has come to this Court to ventilate its grievance. H

On the 5th day of November, 2015 date of hearing, learned counsel for the appellant, Rickey Tarfa, SAN adopted the Briefs of

Argument filed on the 31/10/14. Reply Briefs in response to 1st respondent, 2nd and 4th respondents and 3rd and 5th respondents respectively filed. The appellant distilled five issues for determination which are as follows:

B 1. Whether the failure of the 1st respondent to assist the registrar of Court to compile a comprehensive record of appeal as appellant in the lower Court did not lead to jurisdictional incompetence of its appeal.

C 2. Whether the Court of Appeal correctly applied the case of A. G. Ondo v. Ekiti State (2001) 17 NWLR (pt. 743) 706 and ACB Plc v. Nwaigwe (2011) 7 NWLR Pt. 1246 pg. 380 at 395 paras F-H by not dismissing the appeal of the 1st respondent as an abuse of Court process.

D 3. Whether the learned justices of the lower Court rightly construed the binding decisions of the Supreme Court in Ebhodaghe v. Okoye (2004) 18 NWLR (Pt. 766) 272 on the inherent powers of Court to protect its authority and dignity even when application challenging its jurisdiction was pending.

E 4. Whether the Court of Appeal was right in holding that, by the fourteen (14) day life span rule under Order 26 Rules 11 and 12 of the Federal High Court (Civil Procedure) Rules, 2009, the ex parte order of injunction made on 13th December, 2013 pending the determination of the motion on notice for interlocutory injunction, automatically expired even when no valid application for discharge by 1st respondent was filed or argued.

G 5. Whether the Court of Appeal was right in refusing to uphold the appellant's two respondent's Notices seeking the validation of the decision of the trial Court keeping alive its extant ex parte order of interim injunction (Grounds 15, 16, 17 and 18 of the Notice of Appeal.

H For the 1st respondent, learned counsel, D. D. Dodo, SAN adopted its Brief of Argument filed on the 5/3/15 and deemed filed on the 23/3/15. He formulated five issues for determination which are thus:

A. Whether the lower Court was right to dismiss the appellant's Notice of Preliminary Objection (Distilled from grounds

1, 2, 3, 4, 9, 12, 13, 14, and 18 of the Notice of Appeal.

B. Whether the lower Court was right in holding that the Federal High Court ought not to take further steps or make further orders affecting the rights of parties while several applications challenging the jurisdiction of the Court were pending. (Distilled from grounds 5, 6, and 7 of the Notice of Appeal. B

C. Whether the Court of Appeal rightly held that the interim order of injunction of the trial Court granted ex-parte on the 13th of December, 2013 and amended on the 23rd of December, 2013 had expired by the provisions or Order 26 Rule 12 of the Federal High Court (Civil Procedure) Rules 2009, and could not be validly extended. (Distilled from Grounds 8, 10 and 11 of the Notice of Appeal. C

D. Whether the lower Court was right in discountenancing the appellant's further arguments which were furnished to the Court by way of a letter dated 17th April, 2014. D

E. Whether the lower Court was right in dismissing/striking out both Notices to vary and affirm the judgment on other grounds filed by the appellant. (Distilled from Grounds 15, 16 and 17 of the Notice of Appeal.) E

Uche Nwokedi SAN for the 2nd and 4th respondents adopted their Brief of Argument filed on the 31/12/14. He crafted three issues for determination which are, viz:

(i) Whether the Court of Appeal was right to dismiss the appellants Notice of Preliminary Objection and Notices to vary or affirm the decision of the trial Court on other grounds? (Formulated from Grounds 1, 2, 3, 4, 9, 12, 13, 14, 15, 16, 17 and 18 of the Notice of Appeal. F

(ii) Whether the Court of Appeal was right to hold that while applications challenging the jurisdiction of the trial Court were still pending the trial Court ought not to have taken further steps or made further orders capable of affecting the rights of the parties until the issue of its jurisdiction was determined? (Formulated from Grounds 5, 6, 7 of the Notice of Appeal. G

(iii) Whether the Court of Appeal was right to hold that the interim order of the trial Court made ex parte or 13th December, H

2013 and amended ex parte on 23rd December 2013 had expired by operation of the law and could not have been extended?

(Formulated from Grounds 8, 10 and 11 of the Notice of Appeal).

B Ama Etuwewe, Esq. of counsel for the 3rd and 5th respondents adopted their Brief of Arguments filed on the 23/2/15 and deemed filed on the 23/3/15. He drafted three issues for determination which are as follows:

1. Whether the Court of Appeal (the lower Court) was right C when it dismissed the appellant's (i.e. 1st respondent) Preliminary Objection to the competence of the record of appeal of the lower Court.

D 2. Whether the lower Court was right in dismissing the appellant's two respondent's notices to vary or affirm the decision of the trial Court made on 27th January 2014 on the other grounds.

E 3. Whether the Court of Appeal was right in allowing the 1st respondent's (appellant at the lower Court) appeal and setting aside the order made by the trial Court on the 27th January, 2014 extending the life of the interim order made on the 13th day of December, 2013 but amended on the 23rd day of December 2013.

F For ease of reference, I shall confine myself to the 2nd and 3rd issues as crafted by the 1st respondent in the determination of this appeal. They are thus

1. Whether the lower Court was right in holding that the Federal High Court ought not to take further steps or make further orders affecting the rights of parties while several applications challenging the jurisdiction of the Court were pending.

G 2. Whether the Court of Appeal rightly held that the interim order of injunction of the trial Court granted ex-parte on the 13th December 2013 and amended on the 23rd of December 2013 had expired by the provisions of Order 26 Rule 12 of the Federal High Court (Civil Procedure) Rules 2009, and could not be validly extended. H

Learned counsel for the appellant submitted that a preliminary objection not argued and sustained cannot operate to retrospectively obliterate all extant orders of Court that were made prior

to the objection being taken. As otherwise, the duty of Court would be frustrated. He cited *Adeogun v. Fashogbon* (2008) 17 NWLR (Pt. 1115) 149 at 174; *Dairo v. UBN Plc.* (2007) 16 NWLR (Pt. 1059) 99 at 159; *Ebjodaghe v. Okoye* (2004) 18 NWLR (Pt. 905) 472 etc.

It was also submitted for the appellant that the Court of Appeal was wrong to have decided and pre-determined the issue of whether the ex-parte orders made by the trial Court had expired or not at the time of resolution of the entirely different issue, a situation analogous to the Court determining a substantive issue in determination of an interlocutory application. He referred to; *Odutola Holdings Ltd v. Ladejobi* (2006) 12 NWLR (PT. 994) SC 321 at 371; *Akinrimisi v. Maersk (Nig.) Ltd* (2013) 10 NWLR (Pt. 1361) 73 etc.

That the record of appeal will bear out that enrolled order issues and already served on the parties to the suit, did not properly describe the appellant and the third of the three assets subject of the litigation hence the need for the application dated 18th December 2013 for the correction of the said order to writ the proper application and the subject of litigation. That the amended order related back to the 13th day of December 2013 when the original order was made.

Appellant further contended that the 1st respondent's application for discharge of the order was in violation of Order 26 Rule 11 of the Federal High Court (Civil Procedure) Rules 2009. That the trial Court was within its vires to keep alive the subsisting ex-parte order of interim injunction in the intervening circumstances pending the determination of the several motions and preliminary objections by the defendants/respondents. That the absent enablement to hear the motion on notice within fourteen days of a belated motion to discharge the order of interim injunction ought not to rob the Court the power to extend the lifespan of the order. He cited *Oliver v. Dangote Industry Limited* (2009) 10 NWLR (Pt. 1150) 467 at 489 - 490.

Mr. Dodo SAN, learned counsel for the 1st respondent submitted that the jurisdiction of any Court is sacrosanct and is fun-

damental to the adjudicatory powers of a Court as a Court that acts without jurisdiction acts in futility and its findings and orders liable to be set aside. It is for that reason that the Court faced with a challenge to its jurisdiction should first determine that question of jurisdiction before proceeding to adjudicate on the parties claims before it. He cited *Osakue v. Federal College of Education (Technical) Asaba* (2010) 10 NWLR (Pt. 1201) 1; *Okarika v. Samuel* (2013) 7 NWLR (PT. 1352) 19; *Zenith Bank Plc. v Omorodion & Ors.* (2013) LPELR 20755 etc.

On the other head of argument learned counsel for the 1st respondent stated that the 1st respondents application to discharge or vary the order as amended on the 23rd of December, 2013 was properly brought within the time set by Order 26 Rule 12(11) following the amendment granted to the appellant and so Order 26 Rule 12 (2) came into operation to the effect that the interim order will elapse after that application to vary or discharge was filed and not taken within 14 days of its being filed. He relied on *Oliver v. Dangote Industry Limited* (2009) 10 NWLR (pt. 1150) 467 at 489-490.

For the 2nd and 4th respondents, Uche Nwokedi SAN contended that the Court below was right to hold that the trial Court ought not to have taken steps to make an order extending the life of an interim order earlier made while applications challenging the jurisdiction of the Court were still pending. That by virtue of Order 26 Rule 12 of the Federal High Court (Civil Procedure) Rules 2009, the ex parte Order made by the trial Court on the 13th December 2013 and amended on the 23rd December 2013 expired by operation of law. Also that Order 26 Rule 12 of the Federal High Court is not inconsistent with the provision of the constitution. He cited *Dangana v. Usman* (2013) 6 NWLR (Pt. 1349) 50; *Nnabude v. GNG West Africa* (2010) 15 NWLR (Pt. 1216) 365 at 391; *Onochie v. Odogwu* (2006) 6 NWLR (Pt. 975) 65 at 99.

For the 3rd and 5th respondents, Ama Etuwewe, Esq. contended that the appellant introduced fresh issues and re-opened its case before the lower Court and even made a new case different from what was at the trial Court. He cited *Bob Manuel v. Briggs*

(2003) 5 NWLR (pt. 813) 323.

That the order made by the learned trial judge extending the life span of the interim order of injunction during the pendency of the applications challenging its jurisdiction amount to a nullity which was rightly set aside by the lower Court. That the appeal filed by the 1st respondent against that lifespan extension was on exercise of its constitutional right and as such not an abuse of the process of Court. B

On the question whether the Court of trial ought to stay its hand in doing anything further once the challenge to its jurisdiction to adjudicate on the matter before it was raised. C

In this regard the appellant took a stand while the respondents disagreeing said the challenge was such that the Court had no business going forth until it had resolved the issue of the challenge to its jurisdiction. It is a matter now trite that the jurisdiction of any Court is sacrosanct and fundamental to the adjudicatory powers of a Court and being a threshold issue can be raised at any point or stage of the proceedings even on appeal for the very first time. Therefore once brought up no other thing should be allowed within the focus of the Court than the resolution of that jurisdictional question. This critical position of the matter of jurisdiction being so since a Court merely wastes its precious time when it has embarked upon a trial when it has no jurisdiction since everything therein done including the decision and order come to naught, indeed a futile exercise. That is why it is a bounden duty of the Court to have that question settled first and foremost before it can go further into the matter before it. Stated differently, the Court must ask itself if it has the power to handle the case and so when it is brought to a Court's attention that it lacks jurisdiction, it has to pause a while, answer the question first and if positive go forth but if in the negative the Court says so before anything else. I place reliance on *Okarika v. Samuel* (2013) 7 NWLR (Pt. 1352) 19; *Osakue v. Federal College of Education (Technical) Asaba* (2010) 10 NWLR (Pt. 1201) 1; *Cadbury Nig. Plc v. F.B.I.R.* (2010) 2 NWLR (Pt. 1179). D E F G H

A Court is naked and exposed without jurisdiction. It is there-

fore the general rule to determine jurisdiction first whilst it is an exceptional rule to take steps in defending or protecting the authority of the Court first before jurisdiction.

B The case of Ebhodaghe v. Okoye supra relied upon by the 1st respondent is distinguishable with the case under consideration. That was the issue of contempt and contempt of Court is a serious challenge to the authority of the Court and not just the Court's competence to determine issues. This was an exceptional case because the majesty of the Court was impugned and the Court C would not sit and watch its authority brought to disrepute. This is not the case here. In vol. 2, page 977 of the record of appeal, the lower Court held further as follows:

D *"That was an exceptional case because the majesty of the Court was being impugned and the Court would not sit and watch its authority brought to disrepute. This is not the case here ...it would be wrong for any Court to defer the determination of challenge to jurisdiction while considering any other application on the excuse that the applications challenging jurisdiction of the Court E were not ripe for hearing. At that stage the Court should only adjourn the applications"*.

F The matter on jurisdiction had cropped up because when the matter came up for having on the 27th day of January, 2014 there were pending before the trial Court per Yunusa J, applications challenging jurisdiction of the Court to entertain the suit before it but the learned trial Judge however proceeded to consider the oral application of the appellant to extend the ex-parte order it had earlier granted in the suit.

G Considering what the Court of Appeal found and decided on the matter of jurisdiction, I cannot find fault with as the Court ought to have accorded the resolution of the question of jurisdiction a priority attention as the competence of the suit is dependent on that question since without that there would be no jurisdiction H in the Court. See *Monguno v. Bluewhales Co.* (2011) 2 NWLR (Pt. 1231) 287; *NDIC v. CBN* (2002) 7 NWLR; (Pt. 706) 285; *Bogban v. Diwwlue* (2005) 16 NWLR (Pt. 951) 294; *Madukolu v. Nkemdilim* (1962) 2 SCNLR 341 etc.

Therefore on Issue 2, the Court below was right when it held that the trial Court should have first considered and determined its vires before going into any other matter.

In respect to Issue 3 which hinges on the proper interpretation and application of Order 26 Rule 12 of the Federal High Court (Civil Procedure) Rules 2009. Casting the mind back, the appellant had filed an ex-parte application dated 12th December, 2013 pursuant to Order 3 Rule 19, Order 26 Rules 2 and 6; Order 26 Rule 1(2), Order 8 Rule 1 of the Federal High Court (Civil Procedure) Rules 2009; Section 97 of the Sheriff and Civil Processes Act. The learned trial Judge granted the interim orders on the 13th December, 2013 and adjourned the suit to the 27th January, 2014. The appellant brought another application dated 18th December 2013 for an amendment to the Order of the 13th citing some fundamental errors. The application was heard ex-parte and granted while the Court retained the return date of 27th January, 2014. The amended order dated 23rd December 2013 was served on the 1st respondent on the 24th December, 2013 and the 1st respondent applied by motion dated 27th December 2013 to have the order as amended, set aside or varied.

However, before the 27th January, 2014 date, the appellant through a letter dated 6th January, 2014 in which it sought an earlier date for reasons which included clarification of the purport of Order 26 Rule 12 (2) and its applicability to the present case in view of the 1st respondent's application to set aside the interim order of injunction. On the 10th January, in view of the fact that the defendant not having been notified of the hearing for that day still adjourned the suit to the 27th January, 2014 and on that date all the respondents were fully represented. Learned counsel for the respondents then called the attention of the Court to the various pending applications touching on the jurisdiction of the Court. In reaction, appellant informed the Court that it had only just received the said applications and needed time to respond and then orally applied for an extension of the interim order as amended on the 18th December, 2013 so as to abide the hearing of the applications and objections. Learned trial Judge after hearing arguments

on both sides ruled extending the order of interim injunction on the ground that a condition precedent that would have caused the demise of the order had not been fulfilled.

I shall recast the said Order 26 Rule 11 on which this extension was made and it is thus:

B *“The Court made an interim order of injunction first on 13th December, 2013 and by another ex-parte application dated on the 18th December, 2013 amended the order made on the 13th December, 2013 on 23rd December, 2013. By so doing the order of*
C *13th December, 2013 is no longer alive having been subsumed into the amended order of 23rd December, 2013. It was this order that attracted the application of the appellant to discharge same made on the 27th December, 2013.”*

D *“....It is clear that the order stands to be the one dated 23rd December, 2013 and therefore the application to discharge made on the 27th of December, 2013 is certainly within the time and valid to invoke the provisions of Order 27 Rule 12”*

E The provisions of Order 16 Rule 12(2) of the Federal High Court Rules are self explanatory and therefore after the application to vary or discharge the interim order was filed and not taken within fourteen days of the application to discharge being filed elapsed. This interpretation is well captured in the case of *Oliver v. Dangote Industry Limited* (2009) 10 NWLR (Pt. 1150) 467 at 489
F - 490 as follows:

G *“Order 9 Rule 12(1) and (2) of the Federal High Court (Civil Procedure) Rules, 2000 provide that order made on ex-parte application shall not last for more than 14 days after the affected party had applied for the order to be varied or discharged nor last longer than another 14 days after the application to discharge it is concluded. Order 9 Rule 12(1) and (2) read as follows-*

H *12(1) No order made on a motion ex parte shall last for more than 14 days after the party affected by the order has applied for the order to be varied or discharged it had been concluded.*

(2) If a motion to vary or discharge an ex-parte order is not taken within 14 days of its being filed, the ex parte order shall automatically lapse.”

In any case, as in the instant appeal, the *ex parte* order lapsed for failure, neglect or refusal of the learned trial Chief Judge to take the application to vary or discharge within 14 days of its being filed. The order purportedly extended on 22nd January, 2007 expired or ran out automatically within 14 days of filing of the motion for an order to vary or discharge the interim order. The motion to set aside or discharge or vary the order made *ex parte* dated 13th October, 2006 was filed on the same day. It follows that the interim order expired on or about 27th October, 2006. The learned Chief Judge should appreciate more than many that by effluxion of time the interim injunction was no longer valid at the time she purportedly ordered that it “remained in force. There was therefore, no injunction imposed on the first defendant which remains in force until the final determination of the suit”. It was a nullity since there was no order at the material time in existence to be extended. The order was a misuse of a judicial procedure intentionally to feather the respondent’s interest to the detriment of the appellant.” Paras H-F

It is to be noted that an interim injunction is not an open ended restriction order but one for a short period of time, preservatory in nature at the early stage in the proceedings. It is like first aid, an emergency intervention which is made before a patient gets into hospital and can be administered even by non medical personnel pending the patient’s getting to hospital. In like manner an *ex parte* order of injunction is not intended to be a temporary victory to be used against the adverse party indefinitely rather an interim order of injunction is to last for a short period pending the determination of motion on notice and not to hang on the opposing party or to overstay. See *Alhaji Aminu Ahmed & Co. Nig. Ltd v. ACB Ltd* (2001) 10 NWLR (pt.721) 391: *General Oil Ltd v Oduntan* (1990) 7 NWLR (pt. 163) 423 at 441.

Indeed the Court of Appeal was correct in its interpretation of Order 26 Rule 11 and 12 of the Federal High Court (Civil Procedure) Rules and that is that the life of the interim order had lapsed or expired by the time of the extension of the lifespan thereof. For the above and the better and well reasoned lead judgment I too

854 Brittania-U Ltd. v. Seplat Pet. Ltd. (2016) 1 KLR Peter-Odili JSC
dismiss this appeal as I abide by the consequential orders made.

ARIWOOLA JSC

B My learned brother Ngwuta, J.S.C., obliged me with the draft
of the lead judgment just delivered. I entirely agree with the rea-
soning that led to the unassailable conclusion that the appeal is
devoid of merit and liable to an order of dismissal. I adopt the said
reasoning as mine and will also dismiss the appeal for being
C unmeritorious and lacking in substance.

Appeal is dismissed by me. I abide by the consequential
Orders in the said lead judgment, including that on costs.

D

MUHAMMAD JSC

Having read in draft the lead judgment of my learned brother
Ngwuta, J.S.C. I agree with his lordships reasoning and conclu-
sion that the appeal being lacking in merit stands dismissed. I abide
E by the consequential orders made in the lead judgment including
the order on costs.

OKORO JSC

F I have had the privilege of reading in draft the judgment of
my learned brother Nwali Sylvester Ngwuta, J.S.C, just delivered
with which I am in total agreement with both the reasons mar-
shaled and the conclusion reached therein that this appeal is de-
void of merit and ought to be dismissed.
G

For want of better adumbration of the issues already resolved
in the lead judgment, I adopt the said judgment as mine. Accord-
ingly, I also dismiss this appeal and abide by all the consequential
orders made therein, including the order as to costs.

H