

**SUPREME COURT OF NIGERIA**

FRIDAY 26TH FEBRUARY, 2016. SC. 223/2010

**CORAM:- W. S. N. ONNOGHEN, N. S. NGWUTA, M. U.  
PETER-ODILI, O. ARIWOOLA, M. D. MUHAMMAD, JJSC**

EMMANUEL EGHAREVBA ..... APPELLANT

V.

1. FEDERAL REPUBLIC OF NIGERIA

2. PROFESSOR AUSTIN OBASOHAN

3. SUNDAY IDUBOR

4. IFEYINWA NNEKA OKOLUE ..... RESPONDENTS

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APPEALS - Issues - Determination - No miscarriage of justice was done to appellant - As his case was considered before CA concluded that - Trial court in its ruling went into the merits of the case (H1)

SUPREME COURT - Powers - SC Act s. 22 - The provision cannot be applied - As main issue in appeal of appellant was determined by CA - Which issue is substantial enough to dispose of the appeals (H2)

EVIDENCE - Evaluation - And ascription of weight to evidence is the duty of trial Court - Which heard and observed the demeanor of witnesses - Hence SC and CA do not perform such task (H3)

**FACTS**

Accused/appellant along with three others was arraigned before the High Court of Edo State Benin City for the offences of furnishing false statement, abetment and conspiracy to commit offence contrary to the applicable sections of the Corrupt Practices and Other Related Offences Act 2001. The case as presented by prosecution/1<sup>st</sup> respondent is that the sum of N2 million was approved and disbursed for the visit of the then Minister of Health Prof. A.B.C. Nwosu and his entourage to Benin City to attend a wedding ceremony. However, only the sum of N34,050.00 was given to the supervisor of the University of Benin Teaching Hospital (UBTH) Guest House where the Minister and his entourage lodged for the night. Thereafter, Chairman and Secretary of the Senior Staff Association, Medical

**1544** Egharevba v. FRN (2016) 2 KLR (pt. 382) 1543; (2016) 10  
and Health Workers Union of Nigeria in UBTH brought a petition to Independent Corrupt Practices and Other Related Offences Commission (ICPC) against appellant and the others for financial misappropriation in respect of the money approved and disbursed for the aforementioned visit of the Minister.

Consequently, a team of investigators were dispatched by ICPC to UBTH to investigate the allegations in the petition. The result of the investigation confirmed the financial misappropriation. Hence, appellants and the others were arrested in connection with the crime. At the trial, 1<sup>st</sup> respondent called ten witnesses in support of its case. At the conclusion of 1<sup>st</sup> respondent's case, appellant and the others made a no-case submission. The learned trial Judge in his ruling overruled the submission and even went into the merits of the case without calling for appellant's defence. Aggrieved, appellant appealed to the Court of Appeal Benin City. The Court allowed the appeal and held that appellant's right to fair hearing was breached by the trial Court. The Court therefore ordered that the case be tried de novo by another Judge of the trial Court. Aggrieved further, appellant appealed to the Supreme Court, contending that the Court of Appeal did not consider issues he raised.

### **ISSUE FOR DETERMINATION**

*"Whether the non consideration of the appeal of the 2nd accused/appellant by the Court below did not amount to denial of fair hearing guaranteed under Section 36 of the Constitution of the Federal Republic of Nigeria 1999, thereby rendering the judgment of the Court of Appeal a complete nullity"*

**HELD** (Unanimously dismissing the appeal per  
**ONNOGHEN JSC**)

*APPEALS - Issues - Determination*

**1. Clearly, the above issue is one of those considered by the lower Court before coming to the conclusion that the trial Court, in an attempt at ruling on the no-case submission went into the merits of the case without first of all hearing the appellant on their defence and as such declared the said ruling a nullity and set same aside. In the circumstance, I do not agree with counsel for the appellant that the case of appellant was**

**not considered by the lower Court before reaching the decision in question. Secondly, learned Counsel for appellant has not demonstrated how the decision of the lower Court in the judgment on appeal has resulted in a miscarriage of justice as alleged by him. On the contrary, whereas the trial Judge had, in a ruling on a no-case submission virtually concluded that appellants were culpable without even hearing their defence which the lower Court held constitutes a breach of appellants' right to fair hearing, the lower Court gave appellants the opportunity to be heard before another judge in a de novo trial of the charge. How does that constitute a miscarriage of justice? (p. 1555 D)**

*SUPREME COURT - Powers*

**2, Learned Counsel for the appellant has invited this Court to invoke its powers under the provisions of Section 22 of the Supreme Court Act to hear and determine the appeal of the 2nd appellant before the lower Court. I had in effect, held that having regard to the fact that the main issue in the appeal of appellant and which was also common to the other appeals, was determined by the lower Court which issue is substantial enough to dispose and did dispose of the appeals, the invitation of the learned Counsel for appellant is in the circumstance misconceived and is accordingly declined.**

**Still on the invocation of the provision of Section 22 of the Supreme Court Act, I have to point out, that learned Counsel has not argued before us the three issues he presented to the lower Court for determination and which he alleged were not considered or resolved resulting in the alleged breach of the right of appellant to fair hearing. Having not done that, one wonders how Counsel wants the Court to decide the issues without argument of both Counsels thereon. Does Counsel want the Court to argue and decide the issue for him? If so, will that satisfy the rules of fair hearing? (p. 1556 B)**

*EVIDENCE - Evaluation*

**3. In any event, it is settled law that evaluation of evidence and ascription of weight thereto remains the province of the trial**

***Court which heard and observed the demeanor of the witnesses and is consequently in a better position to form an opinion as to the credibility of the said witnesses. This Court like the lower Court is not the trial Court and is consequently very much unsuitable for the task which learned Counsel for appellant seeks it to perform.*** (p. 1556 H)

**REPRESENTATION**

There was a letter for adjournment dated 5/12/15 from Counsel for the Appellant

C P.A. BASSI, ESQ. (C.L.O. ICPC), for the 1st Respondent  
H.G. ERHABOR, ESQ, for the 2nd Respondent  
L.F ANGA, ESQ. with him, RAYMOND OFAGBOR, ESQ, for the 3rd Respondent

D OGAGA OVRAWAH, ESQ. for the 4th Respondent

**CASES REFERRED TO**

State v. Onagoruwa (1926) (9-10) S.C. 329  
Amadi v. Thomas Aplin & Co. Ltd (1982) 4 S.C. 228

E Ugbodume v. Abiegbe (1991) 8 NWLR (pt. 209) 274  
Deduwa v. Okorodudu (1976) 9 -10 SC 329  
Elmskip Ltd v. Exquisite Ind. Ltd (2003) 4 NWLR (pt. 809) 88  
Ukalta v. Ndinaeze (1997) 4 NWLR (pt. 499) 251  
Ojoh v. Kamalu (2006) All FWLR (pt. 297) 978

F Wilson v. Oshin (2000) 9 NWLR (pt. 673) 442  
Cookey v. Fombo (2005) 5 SC (pt. 11) 102  
Balogun v. Labiran (1998) 3 NWLR (pt. 80) 66  
Ojoh v. Kamalu (2006) All FWLR (pt. 297) 978

G **STATUTES REFERRED TO**

Corrupt Practices & other Related Offences Act 2000, ss. 16, 26(1)(c)  
Constitution of the Federal Republic of Nigeria 1999, s. 36  
Supreme Court Act, s. 22

H

**LEAD JUDGMENT BY ONNOGHEN JSC**

This is an appeal against the judgment of the Court of Appeal Holden at Benin City in appeal No.CA/B/117/2006 delivered on the 4th day of March, 2010 dismissing the appeal of the Appellant/2nd

accused on a no case submission.

The facts of the case are the following;

Appellant with three others were charged to the Edo state High Court Benin City for a 9 count charge to wit-

*“Statement of Offence 1st Count*

*Furnishing false statement contrary to Section 16 of the Cor- B  
rupt Practices and other Related Offences Act 2000.*

*Particulars of offence*

*Prof. Austin Ohasohan on or about 15th November, 2001 at Benin City being an officer charged with the use of property belong- C  
ing to the University of Benin Teaching Hospital, knowingly furnished false statement in respect of the sum of N1,150,000. 00 purportedly expended for the purpose of media coverage of the Minister of Health’s official visit.*

*Statement of Offence 2nd Count*

*Abetment contrary to Section 26(1) (c) of the Corrupt Prac- D  
tices and other Related Offences Act, 2000.*

*Particulars of Offence*

*Emmanuel Egharevba around November, 2001 at Benin city did abet the furnishing of false statement by issuing a letter and re- E  
ceipt to Prof. Austine Obasohan in respect of the sum of N1,150,000. 00 purportedly expended for media coverage of Minister of Health’s official visit..*

*Statement of Offence 3rd Count*

*Furnishing false statement contrary to Section 16... F  
Particulars of Offence*

*Sunday Idubor on or about 30th May, 2002 at Benin City being an officer charged with the use of the University of Benin Teach- G  
ing Hospital funds did knowingly furnished a false statement in a precious Palm Royal Hotel Ltd. Receipt for the sum of N321,790. 00 as amount purportedly spent on Hotel accommodation for the entourage of the minister of Health who was on a visit to Benin City..*

*Statement of Offence 4th Count*

*Furnishing false statement contrary to Section 16... H*

*Particulars of Offence*

*Professor Austine Obasohan and Sunday Idubor sometime in November, 2001 at Benin City being officers charged with the use of the University of Benin Teaching Hospital funds knowingly furnished*

*false return in respect of the sum of N28, 210. 00 (Twenty eight thousand two hundred and ten Naira) purportedly spent by Prof. Obasohan as out-of-pocket expenses and other expenses during the visit of the Minister of Health to Benin City on 16th November, 2001.*

*Statement of Offence 5th Count*

B *Furnishing of false statement contrary to Section 16...*

*Particulars of Offence*

*Professor Austine Obasohan sometime in November, 2001 at Benin City being an officer charged with the management of the University of Benin Teaching Hospital funds knowingly made false statement in an application for the sum of One million as additional expenses purportedly meant for the visit of the Minister of Health to Benin City...*

*Statement of Offence 6th Count*

D *Conspiracy to commit an offence contrary to Section 26(1) (c) and punishable under Section 16 of the Corrupt Practices and Other Related Offences Act, 2001.*

*Particulars of Offence*

*Professor Austine Obasohan, Emmanuel Egharevba, Sunday Idubor, Ifeyinwa Nneka Okolue, on or about May 2002 at Benin City being officers charged with the use of funds of the University of Benin Teaching Hospital conspired among themselves to furnish a false statement in respect of the sum of N1,966,950. 00 advanced to them to cover the visit of the Minister of Health to Benin City..*

F *Statement of Offence 7<sup>th</sup> Count*

*Furnishing false statement contrary to and punishable under Section 16 of the Corrupt Practices and Other Related Offences Act 2000*

G *Particulars of Offence*

*Professor Austin Obasohan, Emmanuel Egharevba, Sunday Idubor and Ifeyinwa Okolue on or about May, 2002 at Benin City being officers charged with the use of the funds of the University of Benin Teaching Hospital knowingly furnished a false statement retiring the sum of N1, 965, 950. 00 purportedly spent by them to cover the visit...*

*Statement of Offence 8th Count*

*Conspiracy to commit an offence contrary to Section 26 (1) (c) and punishable under Section 16 Corrupt Practices Act, 2000*

*Particulars of Offence*

*Prof. Austin Obasohan and Ifeyinwa Nneka Okolue on or about April, 2002 at Benin City being officers charged with the use of University of Benin Teaching Hospital funds knowingly conspired with each other to furnish false statement in respect of the sum of N300,000. 00 purportedly spent by them for the purpose of gift B items during the visit of the Minister of Health to Benin City on 16th November, 2001.*

*Statement of Offence 9th Count*

*Furnishing false statement contrary to and punishable under C Section 16*

*Particulars of Offence*

*Ifeyinwa Nneka Okolue on or about April, 2002 at Benin City being an officer charged with the use of University of Benin Teaching Hospital funds knowingly furnished false statement in respect of the sum D of N300, 000. 00 purportedly spent by her for the purchase of gift items during the visit of the Minister of Health to Benin City on 16th November, 2001”.*

The 1st appellant was the Chief Medical Director of the University of Benin Teaching Hospital (UBTH) at the time of the Visit of E the Minister of Health Prof. A.B.C Nwosu to Benin City to attend the wedding ceremony of the daughter of Chief Tony Anenih on the 16th day of November, 2001. The sum of two million naira was approved, disbursed and retired as expenditure during the visit though F only the sum of N34,050. 00 was given to the supervisor of the UBTH Guest House where the Minister and his entourage spent the night.

Subsequently, a petition dated 2nd April 2002 and titled “*Carnival of Frauds in University of Benin Teaching Hospital Benin City*” G was addressed to the Chairman of Independent Corrupt Practices and Other Related Offences Commission (ICPC) by the Chairman, Senior Staff Association, Chairman and Secretary of Medical and Health Workers Union of Nigeria in UBTH. As a result of the above, a team of investigators were dispatched by ICPC to UBTH to investigate H the allegations in the petition. The result of the investigation confirmed that the claims in the retirement paper dated 30th may, 2002 relating to the approved amount in respect of the said visit were false resulting in the arrest and prosecution of the 2nd appellant

who is a medical practitioner, 3rd respondent, the then Director of Administration of UBTH and 4th appellant, the Senior Public Relations Officer of UBTH along with 1st appellant under the nine count charge earlier reproduced in this judgment.

B The prosecution called ten witnesses including the then Minister of Health Prof. Nwosu who testified as PW6. At the conclusion of the case for prosecution, appellants made a no-case submission which was overruled by the trial judge in a ruling delivered on the 27th day of January, 2006.

C The said learned trial Judge held:

1. That 1st accused had a case to answer in each of counts 1, 4, 5, 6, 7 and 8 as charged and was accordingly invited to enter his defence thereto.

D 2. That 2nd accused had a case to answer in each of the counts 2 and 6 but not in count 7, and was invited to enter his defence in respect of the counts 2 and 6. The 2nd accused was then discharged in respect of counts 7 under Section 286 of the Criminal Procedure Act and the count dismissed.

E 3. That 3rd accused had a case to answer in respect of each of counts 3, 4, 6 and 7 as charged and was invited to enter his defence thereto

4. That the 4th accused had a case to answer in respect of each counts 6, 7, 8 and 9 as charged and was invited to enter his defence thereto.

F All the four accused persons were dissatisfied with the said ruling and consequently appealed against same individually.

The issues submitted by the learned Senior Counsel for 1st appellant, J.O. AGHIMIEN, SAN are as follows:

G *“(a) whether the essential ingredients of the offences charged in counts 1, 4, 5, 6, 7 and 8 of the charge have been proved by the prosecution warranting the accused/appellant to be called upon to enter his defence on any of the counts.*

H *(b) whether the evidence led by the Prosecution in support of counts 1, 6 and 7 are not at variance with the offences charged in the said counts and to that extent not proved.*

*(c) Whether the learned Judge properly directed himself in law when he held that “he is eminently entitled to take judicial notice on the fact that the duties and responsibilities of the 1st accused/*



*appellant include the keeping or management of the Hospital funds”, on the ground that the bulk of the duties of his subordinates from various departments of the hospital rest at his desk.*

*(d) Whether the essential ingredients of the offence in count 4 have been established or proved requiring the 1st accused/appellant to enter a defence when there is no evidence on the printed record to show the falsity of the returns statement of out of pocket expenses of the sum of N28, 000.00.*

*(e) Whether the learned trial Judge in delivering a Ruling on no-case submission can, properly go into the merits of the main case (with particular reference to the proposed defence of the 1st accused person).*

*(f) Whether the petition (Exhibit P1 and P33) which constituted the bases of the charge against the 1st accused person are legally admissible evidence on which the Court could act when none of the signatories to the said petition was called to testify on the contents.*

*(g) Whether the entire Ruling by the learned trial Judge delivered on the 27th day of January, 2006 at the High Court, Benin City without warrant from the Chief Judge to continue the case after his posting to the High Court, Ubiaja, is not a nullity”.*

The issues submitted by the N.P. OSIFO, ESQ, of Counsel for 2nd accused/appellant are three and they are:

*“1. Whether there was complaint against the 2nd accused/appellant in the first place to warrant his being arraigned before the lower Court on the information filed by the 1st respondent?*

*2. If the answer to 1 above is in the positive, whether having regards to the evidence presented in Court by the prosecution, the learned trial Judge rightly overruled the No-case submission made on behalf of the 2nd accused/appellant*

*3. Whether the learned trial Judge was right in approbating and reprobating at the same time.”*

For the 3rd accused/appellant, the issues submitted for determination by his Counsel T.E. OGBEIDEOIHAMA ESQ are as follows:

*“1. Whether the essential ingredients of the offence charged in counts 3, 4, 6 and 7 of the charge were proved by the prosecution warranting the 3rd accused/appellant to be called upon to enter his*

defence.

2. *Whether the learned trial Judge did not misdirect himself in law when he allowed the prosecution to allege without proof and whether the trial Judge did not go beyond the scope of his mandate in the Ruling on No-case submission by delving into the merit of the entire case.*

3. *Whether the learned trial Judge did not misdirect himself when he overruled the NO-case submission made on behalf of the 3rd accused appellant when he called on the 3rd accused/appellant to present his case especially on the circumstance surrounding the issuance of Exhibit P3 and how it was spent”.*

Finally on behalf of the 4th accused/appellant IDEMUDIA ILUEMINOSEN ESQ submitted the following issues for determination:

“1. *Whether there was complaint against the 4th accused/appellant in the first instance to warrant her being arraigned before the lower Court on the information filed by the 1st respondent.*

2. *Whether the essential ingredients of the offences charged in counts 6, 7, 8 and 9 of the charge were proved by the prosecution to warrant the 4th accused/appellant being called upon to enter her defence.*

3. *Whether the learned trial Judge did not misdirect himself when he went beyond the scope of his mandate in his ruling on the No-case submission by delving into the merits of the entire case.*

4. *Whether the entire ruling by the learned trial Judge delivered on the 27th day of January, 2006 at the High Court Benin City without warrant from the Chief Judge to continue with the case having been transferred to High Court Ubiaja, is a nullity”*

I have had to go through all these issues submitted for determination before the lower Court so as to appreciate the complaint of appellant who was 2nd appellant in the lower Court and is complaining of lack of fair hearing by the lower Court in respect of his appeal.

The instant appeal is against the decision of the lower Court in the appeal of the accused/appellants including 2nd accused/appellant. Learned Counsel for appellant N.P. OSIFO ESQ submitted a single issue for the determination of the appeal in the appellant brief of argument filed on 27/7/2010 to wit:

*“Whether the non consideration of the appeal of the 2nd ac-*

*cused/appellant by the Court below did not amount to denial of fair hearing guaranteed under Section 36 of the Constitution of the Federal Republic of Nigeria 1999, thereby rendering the judgment of the Court of Appeal a complete nullity”*

On the other hand, learned Counsel for the 1st respondent submitted the following issue for determination to wit:- *“Whether B or not the appellant was denied fair hearing by the Court of Appeal in light of the circumstances of the case (gleaned from the single ground of appeal)”*

In arguing the sole issue supra learned Counsel for the appellant stated that the lower Court failed to consider any of the three issues submitted to it by appellant thereby breaching the right to fair hearing of appellant under the provision of Section 36 of the Constitution of the Federal Republic of Nigeria 1999, as amended, relying on the State v. Onagoruwa (1926) (9-10) S.C 329; Amadi v. Thomas Aplin & Co. Ltd (1982) 4 S.C 228 that the non-consideration of the substance of appellant appeal before the lower Court resulted in a miscarriage of justice, relying on Ugbodume v. Abiegbe (1991) 8 NWLR (pt. 209) 274. Learned Counsel then urged the Court to invoke its powers under Section 22 of the Supreme Court Act to E determine the issues as raised before the lower Court and urged the Court to resolve the issue in favour of appellant and allow the appeal.

It is the submission of Learned Counsel for 1st respondent that the lower Court gave equal opportunity to all the parties who were heard on the merit of the case, that what was on appeal was the ruling of the trial Court which overruled the no-case submission made by appellants and that the lower Court rightly found that the said ruling went beyond issues of law and delved into facts and merits of the case and consequently declared same a nullity. G

It is in the further submission of Counsel that having set aside the ruling of the Court, the proper order was that of trial de novo before another Judge as was ordered by the lower Court that having ruled that the ruling of the trial Judge was a nullity the Court could H not have gone any further to consider any other issue which might lead to the Court contradicting itself.

Finally, the learned Counsel urged the Court to resolve the issue against appellant and dismiss the appeal.

It should be noted that though the appellants before the lower Court appealed individually and raised separate issues, the appeal and issues arising there from, as earlier reproduced in this judgment, arose from the ruling of the trial Court on a no-case submission made by Counsel for the appellants before that Court. There is no individual ruling in respect of each and every accused person. Secondly, it has to be pointed out that from the issues raised before the lower Court for determination in the judgment now on appeal before us, the main complaint is that the trial Court went beyond the normal ruling on a no-case submission to consider the merits of the substantive case which appellants were yet to offer their defence. At page 331-353 of the record, the lower Court had the following to say, *inter alia*

*"...I have no doubt that a reasonable man reading the language used, and the analysis of the law and facts therein, will come away with the distinct impression that the lower Court believed the Appellants were truly guilty of the offences charged which should not be so. At that stage where a no case submission is made what is to be considered by the Court is not whether the evidence produced by the prosecution against the accused is sufficient to justify conviction but whether the prosecution has made out a prima facie (case) requiring at least some explanation from the accused person as regards his conduct or otherwise- see Tongo v. C.O.P (2007) 12 NWLR (pt. 1049) 525 at 544 SC*

*In other words, at the stage of a No-case submission when the trial of the case is not concluded, the Court is not expected to be concerned with credibility of witnesses or weight of evidence... No doubt, the lower Court was most unfair to their appellants, and the appeal will have to be resolved in their favour...*

*The appellant cannot be discharged and acquitted because the matter had not been decided on its merit, they had not been heard...*

*The only option open to this Court, which is sanctioned by the Supreme Court, is to remit the matter back (SIC) to the lower Court for trial before another Judge- see Kim v. State (1992) 4 NWLR (pt. 233) 17 S.C."*

Finally at page 333 of the record, the Court concluded thus:  
*"The appeal succeeds and is allowed. The ruling of the lower Court delivered on the 27th of January, 2006 is set aside, and I hereby*

*order a new trial of the appellants before another Judge.”*

It should be noted that there is no appeal or cross appeal against the judgment reproduced, inter alia supra. It therefore remains subsisting and binding. The judgment in issue allowed the appeals of the appellant but ordered a trial de novo before another Judge. Yet appellant herein is complaining of breach of his right to fair hearing in that the three issues he brought to the lower Court were not allegedly considered by that Court in judgment on appeal. B

I am of the firm view that appellant is not correct in his assertion having regard to the judgment of the lower Court in relation to his issue 2 which postulates thus:- C

*“2. If the answer to issue 1 above is in the positive, whether having regards to the evidence presented in Court by the prosecution, the learned trial judge rightly overruled the no-case submission made on behalf of the 2nd Accused/Appellant”* D

***Clearly, the above issue is one of those considered by the lower Court before coming to the conclusion that the trial Court, in an attempt at ruling on the no-case submission went into the merits of the case without first of all hearing the appellant on their defence and as such declared the said ruling a nullity and set same aside. In the circumstance, I do not agree with counsel for the appellant that the case of appellant was not considered by the lower Court before reaching the decision in question. Secondly, learned Counsel for appellant has not demonstrated how the decision of the lower Court in the judgment on appeal has resulted in a miscarriage of justice as alleged by him. On the contrary, whereas the trial Judge had, in a ruling on a no-case submission virtually concluded that appellants were culpable without even hearing their defence which the lower Court held constitutes a breach of appellants’ right to fair hearing, the lower Court gave appellants the opportunity to be heard before another judge in a de novo trial of the charge. How does that constitute a miscarriage of justice?*** E F G H

Section 36 (1) of the Constitution of the Federal Republic of Nigeria 1999 as amended allegedly breached by the lower Court provides:

*“In the determination of his civil rights and obligations includ-*

*ing any questions or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a Court or other Tribunal established by law and constituted in such manner as to secure its independence and impartiality.”*

In the present case since all the appeals of the appellants before the lower Court had the same substratum, appellant was duly heard by the Court as earlier demonstrated in this judgment.

***Learned Counsel for the appellant has invited this Court to invoke its powers under the provisions of Section 22 of the Supreme Court Act to hear and determine the appeal of the 2nd appellant before the lower Court. I had in effect, held that having regard to the fact that the main issue in the appeal of appellant and which was also common to the other appeals, was determined by the lower Court which issue is substantial enough to dispose and did dispose of the appeals, the invitation of the learned Counsel for appellant is in the circumstance misconceived and is accordingly declined.***

***Still on the invocation of the provision of Section 22 of the Supreme Court Act, I have to point out, that learned Counsel has not argued before us the three issues he presented to the lower Court for determination and which he alleged were not considered or resolved resulting in the alleged breach of the right of appellant to fair hearing. Having not done that, one wonders how Counsel wants the Court to decide the issues without argument of both Counsels thereon. Does Counsel want the Court to argue and decide the issue for him? If so, will that satisfy the rules of fair hearing?***

I had earlier found that there is no appeal against the decision of the lower Court setting aside the ruling of the trial Judge on the no-case submission which means there is no subsisting ruling to ground the grounds of appeal from which the three issues of appellant were formulated. This means clearly that the issues in question dies with the ruling attacked in that appeal.

***In any event, it is settled law that evaluation of evidence and ascription of weight thereto remains the province of the trial Court which heard and observed the demeanor of the witnesses and is consequently in a better position to form an opinion as to the credibility of the said witnesses. This Court***

***like the lower Court is not the trial Court and is consequently very much unsuitable for the task which learned Counsel for appellant seeks it to perform.***

In the circumstance, I hold that this is the most worthless appeal I had ever been called upon to consider as same is time wasting and frivolous. It has no benefit whatsoever to appellant. It is accordingly dismissed by me

Appeal dismissed.

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### **NGWUTA JSC**

I read in draft the lead judgment delivered by my learned brother Onnoghen JSC, and I entirely agree with the reasoning and conclusion that the appeal is devoid of merit and ought to be dismissed.

The denial of fair hearing resulting in a miscarriage of justice complained of before us occurred in the trial Court when it went beyond the no-case submission to delve into the facts, and ipso facto, the merit of the case. In dealing with a no case submission, the issue of the Court believing or disbelieving the evidence or the credibility of the witness could not arise and so the facts that will lead to the merit vel non of the case are not in issue. See *R v. Coker* 20 NLR 62; *Ajiboye v. The State* (1995) B NWLR (Pt.414) 408 at 444 .

In its judgment, the Court below rightly in my view, nullified the trial by another Judge to give the appellant the opportunity of being heard before a decision is taken in his case, thus correcting the error of the trial Court.

For the above and the comprehensive reasoning in the lead judgment, I also dismiss the appeal for want of merit.

Appeal dismissed

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### **PETER-ODILI JSC**

I agree with the Judgment just delivered by my learned brother W. S. N. Onnoghen, JSC and in support of the reasoning, I shall make some remarks.

This is an appeal by the 2nd Accused/Appellant against the judgment of the Court of Appeal, Benin Division which dismissed the

Appeal of the Appellant on his no-case submission. The Appellant was dissatisfied with decision of the High Court for which he appealed to the Court of Appeal or Court below for short which in turn sent back to the Court of first instance for trial before another Judge. The Appellant aggrieved has come before this Court on ground of a  
B denial of fair hearing by the Court below.

The background facts of this appeal are well set out in the lead judgment and I shall not go into them.

On the 10th of December 2015 date of hearing, there was a  
C letter from learned counsel for the Appellant, N.P. Osifo for an adjournment. The Court proceeded by adopting his Brief of argument filed on 27 /7 /2005 as argued. Therein was raised a sole issue for determination being:-

*“Whether the none consideration of the appeal of the 2nd  
D accused/appellant by Court below did not amount to denial of hearing guaranteed under Section 36 of the Constitution of the Federal Republic of Nigeria, 1999, thereby rendering thee Judgment of the Court of Appeal a complete nullity?”*

Paul Ahmed Bassi Esq., learned counsel for the 1st Respondent adopted his Brief of Argument filed on the 26/11/2012 and deemed filed on the 29/11/12. He also identified a single issue for determination thus:-

*“Whether or not the Appellant was denied fair hearing by the  
F Court of Appeal in light of the circumstances of the case”.*

Learned counsel for the 2nd Respondent, Mr. Erhabor, Mr. Anga for the 3rd Respondent and Mr. Ovrawah for the 4th Respondent each withdrew their respective briefs of argument and the Court accordingly struck them out.

G The respective issue couched on either side posed the same question and so finding that of the 1st Respondent simpler, I shall utilise it in the determination of the appeal.

#### SOLE ISSUE:

Whether or not the Appellant was denied fair hearing by the  
H Court of Appeal in light of the circumstances of the case.

Mr. Osifo of counsel for the Appellant contended that the entire judgment of the Court below did not consider the appeal of the appellant and so a breach of fair hearing ensued and so the decision of the Lower Court was a nullity. He referred to Section 36 of the



1999 Constitution; *State v. Onagoruwa* (1992) 2 NWLR (Pt.221) page 33 at 56 & 58; *Deduwa v. Okorodudu* (1976) 9 -10 SC 329; *Amadi v Thomas Aplin & Co. Ltd* (1992) 4 SC 228.

That the Court below was wrong in not considering the substance of the appeal as it was duty bound to pronounce on the issues raised in the appeal of the appellant. He cited *Ugbodume v. Abieobe* (1992) 8 NWLR (Pt. 209) 274; *Ukalta v. Ndinaeze* (1997) 4 NWLR (Pt. 499) 251 at 268. B

Learned counsel further stated that the Supreme Court has jurisdiction under Section 22 of the Supreme Court Act to deal with an issue raised but not dealt with in the Court of Appeal. He relied on *Elmskip Ltd v Exquisite Ind. Ltd* (2003) 4 NWLR (Pt.809) 88 at 121. C

Mr. Bassi of counsel for the 1st Respondent contended that what the Court of Appeal did was right having found that the trial judge went beyond his scope in overturning the no case submission raised before him by the accused/appellant. That even though the general principle of law is that a Court has a duty to consider and make a pronouncement on the issues that arise or were raised and submitted by parties but the principle is not inflexible in all situations as in this instance since the issue of the validity of the of the ruling of the trial High Court subsumes all other issues, the Court below could do nothing else and the issue of denial of fair hearing did not arise. He cited *Ojoh v. Kamalu* (2006) All FWLR (Pt. 297) 978; *Wilson v. Oshin* (2000) 9 NWLR (Pt.673) 442; *Cookey v. Fombo* (2005) 5 SC (Pt.11) 102 at 111; *Balogun v. Labiran* (1998) 3 NWLR (Pt.80) 66 at 80. D  
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In brief the grouse of the Appellant is captured by the submission of the Appellant that the Court of Appeal had failed to consider the issues before it which thereby occasioned a denial of fair hearing to the appellant in contravention of the Constitution of the Federal Republic of Nigeria 1999, Section 36 precisely. The Respondent countered saying the circumstances being a ruling over whether or not the no case submission of the Appellant at the trial Court was rightly overruled and so all the Court of Appeal and even the trial Court on seeing that the no case submission of the appellant failed was just to state that failure and say no more so as not to run the risk of prejudging the merits of the case which full hearing was yet to be undertaken a situation that would have been prejudicial. G  
H

The main thrust of this appeal resting at page 332, part of the judgment of the Court below where Augie JCA stated:-

*“In this case, the Lower Court’s Ruling of 32 pages on No-Case Submissions, which he over-ruled, was much too lengthy, and thus, as you might expect made it easy right cross the line between the law which the Court had every right to look into, and discussing facts to match the law, which it had no right at all to do”.*

The Court of Appeal thereafter ordered the case remitted to the High Court for trial on the merits before another Judge and did not go further than that hence the disagreement of the Appellant that the issues he had raised had been left unattended by that Court and so his right to be heard had been infringed upon. On that note, I would state straight away that it is a general principle of law that a Court has a duty to consider and make a pronouncement on the issues that arise, were raised and canvassed upon by parties for determination. That general position is not an untouchable one or a principle without exception as the Court would desist in tackling all issues where the effect would negate the adjudicatory process or prejudice it or the justice of the matter. In this, exception would rest an unsuccessful no-case submission which still has a long way to go as the defence has not commenced and making further comments beyond stating as briefly as possible that the No Case submission was over-ruled and the accused to enter into his defence. The Court says no more until the defence with or without witnesses have had their say and concluded and the role of the Court to make further comments would be at its judgment. See *Ojoh v. Kamalu* (2006) All FWLR (pt.297) 978; *Wilson v. Oshin* (2000) 9 NWLR (673) 442; *Cookey v. Fombo* (2005) SC (Pt.II) 102 at 111; *Balogun v. Labiran* (1998) 3 NWLR (Pt. 80) 66 at 80.

In this case at hand where the trial Court finding against the no-case submission having gone into the marathon Ruling in saying so, thereby entering effectively into and even deciding the merits of a case, which full course was yet to run, the only right and fair path for the Court of Appeal to do was to do exactly as the Court below did by sending the matter back to the High Court of Edo State for hearing before another judge. In doing that, the Court of Appeal was fair on all parties and took into consideration the interest of justice.

In conclusion therefore, there being nothing upon which the

Court of Appeal's decision could be faulted and in the light of the better reasoning of the lead judgment, I too dismiss the appeal as I abide by the consequential orders made.

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**ARIWOOLA JSC**

B

I had the privilege of reading in draft the lead judgment of my learned brother, Onnoghen, JSC just delivered. I entirely agree with the reasoning and conclusion of the said lead judgment which I adopt as mine. I too will dismiss the appeal.

C

Appeal is dismissed.

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**MUHAMMAD JSC**

I read in draft the lead judgment of my learned brother Onnoghen, JSC, Just delivered. I agree with the reasoning and conclusion that the appeal lacks merit. I dismiss same and abide by the consequential orders made in the lead judgment.

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