

SUPREME COURT OF NIGERIA
FRIDAY 16TH DECEMBER, 2016. SC. 134/2005
CORAM:- O. RHODES-VIVOUR, M. U. PETER-ODILI,
C. B. OGUNBIYI, K. M. O. KEKERE-EKUN, C. C. NWEZE,
JJSC

K. R. K. HOLDINGS NIGERIA LTD. APPELLANT
AND
1. FIRST BANK OF NIGERIA LTD
2. SCOA NIGERIA LTD RESPONDENTS

APPEALS - Unchallenged decision - Effect - Appellant having failed to challenge the finding of the Court of Appeal - Cannot now be allowed to contest same (H1)

APPEALS - Academic issues - Weight - Academic issues do not engage the attention of Courts - Since Courts are not the proper fora for such ventilation (H2)

APPEALS - Grounds - Basis - Grounds must relate to ratio decidendi of judgment - Or decision appealed against - And not against an obiter dictum (H3)

FACTS

Plaintiffs/appellants commenced this action at the High Court of Lagos State, claiming against defendant/1st respondent, the sum of N50 million. Appellant alleged that 1st respondent as drawer of three bank certified cheques totaling N4.5 million drawn upon 1st respondent bank at its Moloney Street Branch Lagos and payable to appellant had dishonoured the said cheques upon presentation for payment sometime in the year 1989 by appellant. In reaction to appellant's claim, 1st respondent brought application to make 2nd respondent a party to the suit. The application was granted and 2nd respondent was joined to the action as a third party.

1st respondent maintained that it dishonoured the four cheques on the instruction of 2nd respondent who stopped the drafts because of the absence of consideration from appellant. After the

exchange of pleadings, the case proceeded to trial. At the end of trial, the Court dismissed appellant's case. Aggrieved, appellant appealed to the Court of Appeal Lagos Division, while 1st respondent cross-appealed and also filed a respondent's notice. The Court heard the appeal and dismissed same. Aggrieved further, appellant appealed to the Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the lower Court was right in upholding the finding of no consideration made by the trial Court in a business transaction, the nature of which he could not decipher, which justified the first respondent (not being a party to the transaction) to refuse to honour its bank certified cheques in spite of the trial Court's finding that the cheques were not misplaced?

2. Is the Court of Appeal bound by its previous decisions?

HELD (Unanimously dismissing the appeal per **NWEZE**

JSC)

APPEALS - Unchallenged decision - Effect

1. In the brief of Argument at the lower Court, the appellant concreted the four issues, (pages 214 -215 of the record). In this case, as shown above, the lower Court found that the said issues were purely academic and did not go to the substance of the appeal. For the umpteenth time, hear Ogebe, JCA's weighty findings.

As indicated above, the appellant did not challenge this finding through his grounds of appeal, Organ v. N. L. N. G. Ltd (supra). Having failed to do so, it is now too late to contest it. (p. 4461 C)

APPEALS - Academic issues - Weight

2. What is more, as it is well-known, academic issues which are, almost always, hypothetical, do not engage the attention of Courts since they are not the proper fora for their ventilation, and above all, they are of no utilitarian value. (p. 4461 G)

APPEALS - Grounds - Basis

3. True indeed, His Lordship's views, sequel to this categorical finding that the appellant's issue went outside the compass of the appeal, were tantamount to obiter dicta.

That is the main snag in this appeal. As every Faculty of Law sophomore is, (or ought to be), aware of, grounds of appeal must relate to the ratio decidendi of the judgment or decision appealed against. In other words, an appeal is usually against the ratio decidendi and generally, not against an obiter dictum.

In consequence of all I have said above, I hold that this appeal, which is not only woven around issues which orbit beyond the compass of "the substance of the appeal," before the lower Court [see, per Ogebe, JCA (as he then was) at page 263 of the record], but is actually, a complaint against the obiter dicta of the lower Court, (page 265 of the record), must fail. I so hold. (pp. 4462 A/D)

REPRESENTATION

Otunba T. Seriki, for the Appellant

K. C. Ahia with L. K. Onyemkpa for 1st respondent

J. D. Oloyede for 2nd respondent, for the Respondents

CASES REFERRED TO

Ogunlade v. Adeleye (1992) 8 NWLR (pt. 260) 408

Global Trans Oceanico S. A. v. Free Ent. Nig Ltd (2001) 5 NWLR (pt. 706) 426

Goodwill and Trust Inv. Ltd v. Witt and Bush Ltd. (2011) All FWLR (pt. 576) 517

Harka Air Services (Nig) Ltd v. Keazor (2011) All FWLR (pt. 591) 1402

Dogo v. State (2013) 10 NWLR (pt. 1361) 160

Nidocco Ltd v. Gbajabiamila (2013) 14 NWLR (pt. 1374) 350

Okwaranonobi v. Mbadugha (2013) 17 NWLR (pt. 1383) 255

Nwaogu v. Atuna (2013) 11 NWLR (pt. 1364) 117

Atanda v. Iliasu (2013) 6 NWLR (pt. 1351) 529

Uwazurike v. Nwachukwu (2013) 3 NWLR (pt. 1342) 503

Adeyeye v. State (2013) 11 NWLR (pt. 1364) 47

Imegwu v. Okolocha [2013] 9 NWLR (pt. 1359) 347

Abe v. UNILORIN (2013) 16 NWLR (pt. 1379) 183

Omisore v. Aregbesola (2015) 15 NWLR (pt. 1482) 205

Okponipere v. State (2013) 10 NWLR (pt. 1362) 209

B

LEAD JUDGMENT BY NWEZE JSC

At the High Court of Lagos State, the appellants in this appeal (as plaintiffs) claimed against the first respondent herein (as defendant) the following relief as per the Statement of Claim before that Court (hereinafter, simply, referred to as “the trial Court”):

“Whereof the plaintiff’s claim against the defendant is for the sum of Fifty Million Naira (N50,000,000). The defendant as drawer of Bank certified cheques totaling N4,500,000.00 drawn upon the defendant bank at its Moloney Street Branch, Lagos, payable to the plaintiff and delivered by S. C. O. A. to the plaintiff which said cheques were duly presented for payment on the 12th day of June, 1989, which were dishonoured and although the defendant had due notice thereof by letters dated 8th June, 1989 and 12th June, 1989, respectively, the defendant still refused and or neglected to pay the said cheques.” (pages 261 -262 of the record)

At the instance of the first respondent herein, the second respondent was joined as a third party in the action. Upon the joinder of issues on the settled pleadings which were, duly, exchanged, the matter went to trial.

From the records, the appellant made the case that, at the instance of the second respondent in this appeal, the first respondent caused to be drawn four bank drafts worth N4. 5 million in its (appellant’s) favour. Sequel to its dishonour of the said drafts, the appellant took out an action against the first respondent claiming not only the value of the cheque, but also interests, charges and general damages.

While the first respondent claimed to have dishonoured the cheques on the instruction of the second respondent, the latter’s ground for stopping the drafts was because of the absence of consideration from the appellant. Following the trial Court’s dismissal of the claim, the appellant approached the Court of Appeal, Lagos Division

(hereinafter, simply, referred to as “the lower Court”) which also dismissed the appeal to it.

Aggrieved by the lower Court’s concurrent verdict, the appellant repaired to this Court. It framed two issues for the determination of the appeal, namely:

1. Whether the lower Court was right in upholding the finding of no consideration made by the trial Court in a business transaction, the nature of which he could not decipher, which justified the first respondent (not being a party to the transaction) to refuse to honour its bank certified cheques in spite of the trial Court’s finding that the cheques were not misplaced?

2. Is the Court of Appeal bound by its previous decisions?

In the brief of argument filed on October 11, 2005, the first respondent concreted a sole issue which was phrased thus:

Whether payment of the first respondent bank cheques (exhibits P2 - P5) can be properly dishonoured and countermanded by and on the instruction of the second respondent for lack of consideration in a questionable contract/transaction lacking in consensus ad idem?

For the second respondent, the following two terse issues were put forward, viz,

a. Whether the drafts were countermandable?

b. Whether the Court of Appeal had indeed, ignored its own previous decisions?

My Lords, for their bearing on the fate of this appeal, I am constrained to set out the most crucial views of the lower Court on the substance of the appeal before it. At page 3 of His Lordship’s five page leading judgment, (page 263 of the record), Ogebe, JCA (as he then was) found (a finding which the appellant did not appeal against) thus: *“the issues formulated by the appellant are purely academic and do not go to the substance of the appeal...”* (italics supplied for emphasis).

Notwithstanding this circumscription of the substance of the appeal before the lower Court, Ogebe, JCA (as he then was) nevertheless, still endeavoured *“to follow the arguments and come to a decision,”* (page 263 of the record; page 3 of the 5-page judgment). Upon His Lordship’s summation of the arguments of counsel, he

devoted the last three paragraphs of the last page of the five-page judgment, (page 265 of the record), to his views on other matters which, by virtue of the earlier finding that the issues before the Court were purely academic and did not go to the substance of the appeal, went to no issue.

B Being very terse, I take liberty to set out His Lordship's views. Listen to this:

C *"It can be seen from Section 75 of the Bill of Exchange Act, Cap 35 of the Laws of the Federation of Nigeria) that any cheque drawn on the bank can be countermanded by the person who issued it. In such a case the bank has authority to dishonour the cheque. The appellant has not be (sic) able to cite any Nigerian case in support of his proposition that bank certified cheque is not countermandable.*

D *The trial Court specifically found that the cheques were dishonored on the instruction of the second respondent for failure of consideration. That finding cannot be faulted.*

In the result, I find no merit in this appeal and I hereby dismiss it, and affirm the judgment of the lower Court..." (page 265 of the record)

F At the hearing of this appeal on October 11, 2016, counsel for the appellant, Tunde Seriki, adopted the brief of argument filed on August 23, 2005. In the said brief, paragraphs 3.1 - 3.14, (pages 3-6), of the brief were devoted to the arguments on the first issue on the finding relative to the absence of consideration and the first respondent's refusal to honour its bank certified cheques.

G On the second issue, namely, whether the lower Court is bound by its previous decisions, counsel devoted paragraphs 4.1 - 4.13, (pages 6 -9), of the brief. The remaining parts of the brief, paragraphs 5.1 - 6.1, (pages 9 -12), were dissertations on the Bills of Exchange Act, 1990.

H J. D. Oloyede, Counsel for the second respondent, adopted the brief filed on January 5, 2006, although deemed properly filed and served on November 29, 2006.

While arguments on issue one were crafted on paragraphs 4.1, (pages 3-5); paragraphs 4.5, (pages 5-8) of the brief were devoted to the second issue.

On his part, K. C. Ahia, who appeared with L. K. Onyemkpa, for the first respondent, devoted paragraphs 3.1, pages 4 - 8 of the brief to the sole issue set out on page 4. More cogently, however, counsel drew attention to the above finding of Ogebe, JCA (as he then was). At the risk of repetition, I shall reproduce His Lordship's findings here: B

"The only relevant issue is the first issue. It reads thus 'whether drafts are countermandable, whatever the circumstances.' These issues formulated by the appellants are purely academic and do not go to the substance of the appeal" (page 263 of the record; italics C supplied for emphasis)

Counsel submitted that, sequel to the above finding, any pronouncement thereafter amounted to an academic exercise. He canvassed the view that no competent issues were canvassed in support of the grounds of the appeal filed at the lower Court and, hence, they were deemed abandoned, citing *Ogunlade v. Adeleye* (1992) 8 NWLR (pt. 260) 408, 419. D

He contended that, since the singular issue determined at the lower Court was purely academic in nature, no grounds of appeal, and ipso facto, no issues could arise therefrom. He submitted that it would amount to another voyage in academic exercise if this Court should entertain any issues as formulated from the grounds of appeal. E

The two grounds for this submission were that (1) what the lower Court decided was an academic issue which did not relate to the ground of appeal filed at the lower Court and (2) no competent ground of appeal or issues could eventuate from the abandoned grounds of appeal and the issue decided at the lower Court. He invited the Court to hold that this appeal cannot stand as no Court would entertain an issue which may end up as an academic exercise, citing *Global Trans Oceanico S. A. v. Free Ent. Nig Ltd* (2001) 5 NWLR (pt. 706) 426, 494. F

APPEAL, A SUBSISTING ACADEMIC ISSUE

My Lords, it is quite intriguing that notwithstanding the weight of these submissions, counsel for the appellants chose not to file any reply brief just as he did not deem it necessary to appeal against the lower Court's finding that the issues before it were purely academic H

and, as such, did not go to the substance of the appeal.

In the first place, grave situations, such as is evident in the present appeal, where a reply brief is warranted, has long been settled, *Goodwill and Trust Inv. Ltd v. Witt and Bush Ltd.* (2011) All FWLR (pt. 576) 517; *Harka Air Services (Nig) Ltd v. Keazor* (2011) All FWLR (pt. 591) 1402; *Dogo v. State* (2013) 10 NWLR (PT. 1361) 160; *Nidocco Ltd v. Gbajabiamila* (2013) 14 NWLR (pt. 1374) 350.

Even then, it is an elementary proposition that findings that are not appealed against remain binding for all times, since they sub-
C sist, *Okwaranonobi v. Mbadugha* (2013) 17 NWLR (PT. 1383) 255; *Nwaogu v. Atuna* (2013) 11 NWLR (pt. 1364) 117; *Atanda V. Iliasu* (2013) 6 NWLR (PT. 1351) 529; *Uwazurike v. Nwachukwu* (2013) 3 NWLR (pt. 1342) 503, until set aside on appeal, *Adeyeye v. State* (2013) 11 NWLR (pt. 1364) 47.

D For good measure, the only option open to the appellant, if he wanted this Court to set aside the said finding, was to file a ground of appeal challenging it, *Organ v. N. L. N. G Ltd* [2013] 16 NWLR (pt 1381) 506. Having failed to do so, it is now too late to contest it, *Atanda v. Iliasu* (supra).

E At the lower Court, the Notice and Grounds of Appeal were couched in the following terms:

“GROUNDS OF APPEAL

GROUND ONE

F The learned trial judge erred in law when he held that bank certified cheques are countermandable under S. 75 of the Bill of Exchange Act 35, Laws of the Federation, 1990.

PARTICULARS OF ERROR

G (a) The learned trial Judge had held in his judgment that the bank certified cheques Exhibits P2- P5 are not Bills of Exchange under Section 3(1) of the Bills of Exchange Act.

(b) The learned trial Judge having also held in his judgment that bank certified cheques was not defined in the Bills of Exchange Act misdirected himself when he did not follow the decision in the
H Canadian case of *Commercial Automation Ltd v. Banque Provinciale Du Canada* 1963 DLR Vol 39 (2D) 316 moreso when he held that Section 167 of the Canadian Bills of Exchange Act is in pari materia with S. 75 of the Nigerian Bills of Exchange Act.

(c) The learned trial Judge also erred and misdirected himself when he refused to be persuaded by the decision in the American case of *Daniel Sutter v. Security Trust Company*, American Law Reports Annotated Vol. 35, 938.

(d) The learned trial Judge relied on Black's Law Dictionary for the definition of a Bank Certified Cheques but clearly erred by failing to rely on or adhere to the definition so given; B

(e) In the American case of *Daniel Sutter v. Security Trust Company*, (supra) the Learned trial Judge misdirected himself and held that the case recognizes the right of a drawer of certified cheque to countermand same if the holder is not a bona fide holder for value but has obtained the cheque by 'fraud' when he did not find as a fact that the appellant obtained the certified cheques by fraud. The learned trial Judge also omitted to advert his mind to the words 'before delivery' in the judgment. The bank certified cheques in this appeal Exhibits P2 - P5 have been delivered to the appellant which has paid it into its account before the countermand and consequent dishonor; C D

(f) The learned trial Judge failed to avert his mind to the practice and usage in this country that it is only the drawer of a cheque that can get it certified by the issuing bank. Also the banking practice in this country is that bank certified cheques are not countermandable once they have been delivered to the holder or drawee because they are as good as cash. E

GROUND TWO

The learned trial Judge erred and misdirected himself when he held that the reasons for the countermand and dishonor of the bank certified cheques are valid and existed in law. F

PARTICULARS OF ERROR

(a) The four bank certified cheques which were dishonoured by the first respondent bank were each marked "Cheque Declared Misplaced". The learned trial judge however found in his judgment that the cheques were not misplaced; G

(b) No other reason was written on the faces of the bank certified cheques by the defendant bank for the notice or attention of the appellant as answer for dishonouring the cheques. The cheques were in fact not marked 'No Consideration;'

(c) Exhibits D1, D2 and D3 which were the countermand

notices issued by the 2nd respondent to the first respondent were not made known to the appellant until when they were tendered as exhibits at the Court.

GROUND THREE

The learned trial Judge erred in law when he held that the B defendant/first respondent bank could raise the issue of lack of consideration as a defense to this action.

PARTICULARS OF ERROR

(a) The first respondent averred in its first amended statement of defense paragraphs 3 and 9 thereof that it was not a party to the business transaction between the appellant and the second respondent. Therefore the 1st respondent would not know conclusively whether or not there was consideration.

(b) Exhibit D1, D2 and D3 which are the countermand notices upon which the respondent solely relied for dishonoring the bank certified cheques could not and did not constitute proof of their contents viz - Cheques Misplaced and No Consideration. The learned trial Judge himself found as a fact that one of the reasons given in the countermand notices i.e. 'Cheques declared Misplaced' was false.

(c) The learned trial Judge held that in third party proceedings, the rights of the plaintiff and the defendant are determined without reference to the defendant's claim against the 3rd party.

Therefore, the learned trial judge misdirected himself when he availed the defendant of the defence of lack of consideration which F was neither pleaded nor canvassed by the defendant/first respondent.

(d) The only witness for the defendant bank did not give evidence in prove of the defense of lack of consideration which the G learned trial Judge heavily relied on.

(e) The appellants only witness testified that the appellant gave consideration for the cheques and the defendant/first respondent did not cross-examine the witness. Therefore this statement on oath remained uncontroverted by the defendant. The learned trial H judge therefore erred in law by not accepting the uncontroverted evidence that there was consideration.

(f) Not even the 3rd party/2nd respondent gave conclusive evidence in proof of the assertion of lack of consideration.

GROUND FOUR

The learned trial Judge misdirected himself when he failed to hold that the defendant bank was reckless and negligent in dishonouring the four bank certified cheques presented for clearing by the Plaintiff.

PARTICULARS OF ERROR

(a) The defendant bank was under a duty to the plaintiff to pay the cheques notwithstanding the fact that the plaintiff was not its customer in line with the decision in *Patrick Abusomwan v. Mercantile Bank of Nigeria Ltd.* (1987) 3 NWLR (pt. 60) 196, 208-209.

(b) The defendant bank did not make any independent enquiry about the inscription 'Cheques Declared Misplaced' or any other reason contained in Exhibits D1, D2 and D3 despite the fact that the plaintiff/appellant's solicitors wrote Exhibit P6 to the bank to the contrary.

(c) The bank certified cheques were presented to the defendant bank for clearing twice and the words 'Cheques declared Misplaced' written by the bank twice.

(d) The first respondent/defendant bank knew that dishonouring the bank certified cheques was wrong in law and practice which was why it sought and obtained indemnity Exhibit D4 from the 3rd party/2nd respondent.

GROUND FIVE

The learned trial Judge erred and misdirected himself in law when he held that the appellant did not give consideration for the bank certified cheques, Exhibits P2-P5.

PARTICULARS OF ERROR

(a) The learned trial Judge went on a frolic by considering the case of the plaintiff/appellant against the 3rd party/2nd respondent and vice versa since he had held that "the general principle in an action, involving a Third Party Notice is that in the main action, the rights of the plaintiff and the defendant are determined without reference to the defendant's claim against the third party.

(b) The learned trial Judge should have restricted himself to the case of the plaintiff/appellant against the defendant/first respondent in the main action and thereafter consider all relevant disputes between the defendant and the 3rd party.

(c) Since the learned trial Judge held that he did not believe both the plaintiff and the 3rd party as to the nature of the transaction between them, then he could not find as a fact whether or not there was consideration.

B (d) The issuance and voluntary delivery of the bank certified cheques by Mr. Dominic Roche to the plaintiff's Financial Director in the latter's house is prima facie evidence that the plaintiff gave consideration for the cheques.

C (e) Since it is the first and second respondents who assert that the plaintiff did not give consideration for the bank certified cheques, the onus is on them to prove what they assert.

GROUND SIX

D The learned trial judge misdirected himself by holding that the nature of the transaction between the plaintiff and the 3rd party is not the supply of motor spare parts by the plaintiff to the 3rd party.

PARTICULARS OF ERROR

(a) The plaintiff/appellant through exhibit P1 was able to show that the subject matter of the transaction between it and the 3rd party was the supply of motor spare parts.

E (b) The testimony of plaintiff's witness stood uncontroverted by the defendant.

F (c) The learned trial judge wrongly allowed his decision to be influenced by fact not pleaded in disbelieving the plaintiff's claim as to the true nature of the transaction. The learned trial Judge also wrongly relied on evidence he had expunged from the records.

(d) The learned trial Judge failed to make a definite finding as to the true nature of the transaction between the plaintiff and the third party.

G GROUND SEVEN

The learned trial Judge misdirected himself by holding that the 3rd party did not need to prove their allegation of forgery beyond reasonable doubt.

PARTICULARS OF ERROR

H (a) The 3rd party through their witnesses denied knowledge of the contents of Exhibits P1.

(b) It was also the evidence of the 3rd party that the signature on Exhibit P1 was forged.

(c) The learned trial Judge found as a fact that the 3rd party relied on the defense of forgery by implication.

(d) It is trite law that an allegation of crime made in civil matter has to be proved beyond reasonable doubt as provided for in Section 137 of the Evidence Act and *Adamu v. Kharo* (1988) 4 NWLR (Pt. 89) 474, 478. B

(e) Having so found that the 3rd party relied on a defense of forgery by implication, the learned trial judge was clearly in error for not rejecting the defense since the 3rd party did not prove their allegation beyond reasonable doubt. C

GROUND EIGHT

The judgment is against the weight of evidence.” (pages 188 - 195 of the record)

In the brief of Argument at the lower Court, the appellant concreted the four issues, (pages 214 -215 of the record). In this case, as shown above, the lower Court found that the said issues were purely academic and did not go to the substance of the appeal. For the umpteenth time, hear Ogebe, JCA’s weighty findings: D

“The only relevant issue is the first issue. It reads thus ‘whether drafts are countermandable, whatever the circumstances.’ These issues formulated by the appellants are purely academic and do not go to the substance of the appeal...” (page 263 of the record; italics supplied for emphasis) E

As indicated above, the appellant did not challenge this finding through his grounds of appeal, Organ v. N. L. N. G. Ltd (supra). Having failed to do so, it is now too late to contest it, Atanda v. Iliasu (supra); hence, it subsists. Okwaranonobi v. Mbadugha (supra); Nwaogu v. Atuma (supra); Atanda v. Iliasu (supra); Uwazurike v. Nwachukwu (supra). F

What is more, as it is well-known, academic issues which are, almost always, hypothetical, do not engage the attention of Courts since they are not the proper fora for their ventilation, Imegwu v. Okolocha [2013] 9 NWLR (pt. 1359) 347; and above all, they are of no utilitarian value. Abe v. UNILORIN (2013) 16 NWLR (pt. 1379) 183. In effect, this appeal as presently constituted, should not have nudged an inch beyond Ogebe, JCA’s H

finding that the issue does “*not go to the substance of the appeal.*”

True indeed, His Lordship’s views, sequel to this categorical finding that the appellant’s issue went outside the compass of the appeal, were tantamount to obiter dicta. (As this Court (per Nweze, JSC) explained in *Omisore and Anor v. Aregbesola* and *Ors* (2015) 15 NWLR (pt 1482) 205:

“*In Legal Theory, an obiter dictum, in contradistinction to the ratio decidendi of a case, is a Judge’s passing remarks which do not reflect the reasoning of the Court or ground upon which a case is decided, Paton and Sawyer, “Ratio Decidendi and Obiter Dictum in Appellate Courts” (1947) 63 LQR 461, 481; Rupert Cross, “The Ratio” in 20 MLR 124-126, A. G. Karibi-Whyte, “The Tyranny of Judicial Precedents”, in (1990) Vol. 3 No.1 Cal. LJ; P. U. Umoh, Precedent in Nigerian Courts (Enugu Fourth Dimension Publishers Ltd, 1984) 208; Nwanna v. FCDA and Ors (2004) LPELR 2102 (SC) 12, F-G; Yusuf v. Egbe (1987) 2 NWLR (pt. 56) 341, Amobi v. Nzegwu [2013] 12 SCNJ 91.*”

That is the main snag in this appeal. As every Faculty of Law sophomore is, (or ought to be), aware of, grounds of appeal must relate to the ratio decidendi of the judgment or decision appealed against. *Okponipere v. State* (2013) 10 NWLR (pt. 1362) 209. **In other words, an appeal is usually against the ratio decidendi and generally, not against an obiter dictum.** *U. T. C. Nigeria Limited v. Pamotei* (1989) 2 NWLR (pt. 103) 244; *Saude v. Abdullahi* (1989) 4 NWLR (pt. 116) 387; *Ede v. Omeke* (1992) 5 NWLR (pt. 242) 428; *Dakar v. Dapal* (1998) 10 NWLR (Pt 577) 573.

In consequence of all I have said above, I hold that this appeal, which is not only woven around issues which orbit beyond the compass of “the substance of the appeal,” before the lower Court [see, per Ogebe, JCA (as he then was) at page 263 of the record], but is actually, a complaint against the obiter dicta of the lower Court, (page 265 of the record), must fail. *Okponipere v. State* (supra); *U. T. C Nigeria Limited v. Panotei* (supra); *Saude v. Abdullahi* (supra); *Ede v. Omeke* (supra); *Dakar v. Dapal* (supra). **I so hold.**

I therefore, enter an order disposing it off. Appeal is hereby,

dismissed. I affirm the judgment of the lower Court. Parties are to bear their respective costs.

RHODES-VIVOUR JSC

I read in advance the judgment of my learned brother Nweze, B JSC. I am in agreement with it that the appeal should be dismissed. The circumstances of the appeal are such that the merits of the appeal cannot be considered since the appellants arguments are on the obiter dicta of the Court of Appeal, which this Court never considers. C Accordingly, I too dismiss this appeal.

PETER-ODILI JSC

I agree with the judgment just delivered by Chima Centus D Nweze and to show my support for the reasoning I shall make some remarks.

The appellant as the plaintiff had sued the 1st respondent as the defendant at the trial Court for the sum of N50 million on the allegation that the defendant as drawer of three bank certified cheques E totaling N4.5 million drawn upon the defendant bank at its Moloney Street Branch Lagos, and payable to the plaintiff had dishonoured the said cheques upon presentation for payment on 12th June 1989 by the plaintiff.

In answer to the plaintiffs claim, the defendant sought to make F the 2nd respondent/third party answerable to this action by filing its defence and applying to the trial Court for leave to issue and serve a Third Party Notice on SCOA Nigeria Limited, which application was granted, whereby the 2nd respondent was joined to this suit as a G Third Party at the trial Court. See pages 27 and 32 to 37 of the Record of appeal.

The 2nd respondent as the Third Party at the trial Court joined issues with the plaintiff by filing statement of defence to the action. Its defence is contained in pages 93 - 97 of the Record of Appeal. H

The relevant pleadings at the trial Court are:

(i) The plaintiff's Amended Writ of Summons dated 10th April 1990 contained in pages 69 - 71 of the Record of Appeal.

(ii) The plaintiff's Amended Statement of Claim dated 10th April, 1990 contained on pages 72 - 76 of the Record of Appeal.

(iii) The third party's 1st Amended Statement of Defence dated 19th June, 1990 contained in pages 93 - 97 of the Record of Appeal.

B (iv) The defendant's 1st Amended Statement of Defence dated 1st November 1990 contained in pages 103 - 105 of the Record of Appeal.

C After the exchange of pleadings, the case proceeded to trial and judgment was delivered on 8th November 1991 dismissing the plaintiffs case against the defendant. Aggrieved the plaintiff appealed to the Court of Appeal or Court below while the 1st respondent/defendant cross-appealed and also filed a Respondent's Notice.

D The Court below heard the appeal and dismissed the appellant's case hence the approach to the Supreme Court.

The background facts are captured in the lead judgment and so I shall refrain from repeating same save for necessary references as the occasion demands.

E On the 11th day of October 2016 date of hearing, learned counsel for the appellant, Otunba Tunde Seriki adopted its Brief of Argument filed on 23/8/2005 and in it formulated two issues for determination which are, viz:

F - Whether the lower Court was right in upholding the finding of no consideration made by the trial Court in a business transaction, the nature of which he could not decipher, which justified the 1st respondent (not being a party to the transaction) to refuse to honour its bank certified cheques in spite of the trial Court's finding that the cheques were not misplaced?

G - Is the Court of Appeal bound by its previous decisions?

Kenneth C. Ahia of counsel for the 1st respondent adopted and relied on the Brief of Argument settled by Adebola Yaya Esq. and filed on the 11/10/05 and in the Brief was drafted a single issue which is as follows:

H Whether payment of the 1st respondent bank cheques (Exhibits P2 to P5) can be properly dishonoured and countermanded by and on the instruction of the 2nd respondent for lack of consideration in a questionable contract/transaction lacking in consensus ad

idem.

J. O. Oloyede Esq. learned counsel for the 2nd respondent adopted the Brief of Argument settled by Thompson Yonwuren, filed on the 5/1/06 and deemed filed on the 29/11/06. In the Brief was drafted very simply, two issues which are thus:

A. Whether the drafts were counter mandable. B

B. Whether the Court of Appeal had indeed, ignored its own previous decisions.

The relevant issue is whether the drafts are countermandable, whatever the circumstance Ogebe JCA (as he then was) had dismissed the same issue at the Court below on the ground that the arguments in respect thereof were purely academic and did not go to the substance of the appeal. This finding was not contested on appeal to this Court by the appellant and so it subsists. That being so there is really nothing on which the appeal before this Court can hang on. The question that arises and which answer is that such an academic, hypothetical journey cannot be embarked upon by this forum and so whatever that grievance which the appellant had hoped to be articulated and considered in this Court will remain unattended to for all time as it is now too late. See *Imegwu v. Okolocha* (2013) 9 NWLR (Pt. 1359) 347; *Abe v. Unilorin* (2013) 16 NWLR (1379) 183. C

From the foregoing and the well stated lead judgment of my Lord, Nweze JSC, this appeal lacks merit and it is dismissed. D

F

OGUNBIYI JSC

My learned brother Nweze, JSC has obliged me with the draft copy of his lead judgment. I agree that the appeal is devoid of any merit and should be dismissed. The judgment appealed against is concurrent and from all indications I subscribe to the submission by the 1st respondent's counsel that the lower Court was right when it endorsed the trial Court's findings that the plaintiff/appellant gave no consideration for the 4 bank cheques. G

The complaint lodged before us and against the judgment of the lower Court does not appear to be clear cut as it is neither here nor there. H

The law is trite and well settled that grounds of appeal must spell out in clear terms the aspect of the judgment appealed and also lay the Particulars of complaint. In the absence of a focused ground of appeal, the appellate Court would be engaged in an exercise of futility.

B My brother has resolved these issues raised exhaustively and I wish to adopt his judgment as mine. In the same vein as the lead judgment, I also dismiss the appeal as lacking in merit and I abide by all the orders made therein.

C _____

KEKERE-EKUN JSC

I have read before now in draft the judgment of my learned brother CHIMA CENTUS NWEZE, JSC just delivered. I agree entirely with the reasoning and conclusion that the appeal lacks merit and should be dismissed.

E I agree with my learned brother, that the Court below having found at page 263 of the record that the issues formulated by the appellant did not go to the substance of the appeal and were therefore academic, had nothing to determine, as it is trite law that Courts do not expend valuable judicial time and energy on academic issues. I observe that even though this issue was raised and argued as a preliminary issue in paragraphs 2.1.0 to 2.1.7 of the 1st respondent's brief, learned counsel for the appellant did not deem it necessary to file a Reply brief in response thereto. I agree that the findings of the Court below at pages 263 - 265 of the record, which followed its observation on the academic nature of the appeal, amounted to obiter dicta, which cannot form the basis of an appeal. See: U.T.C. Nig. Ltd. V. Pamotei (1989) 2 NWLR (pt.103) 244; Saude V. Abdullahi (1989) 4 NWLR (Pt.116) 387 @ 431 B; Olufeagba V. Abdul-Raheem (2009) 18 NWLR (pt.1173) 384 @ 426 E.

H For these and the more detailed reasons advanced in the lead judgment I also dismiss this appeal as lacking in merit. I affirm the judgment of the lower Court and abide by the order for costs. Appeal dismissed.