

Effect of Argument(s) in Discordant with the Issue for Determination

In the Supreme Court of Nigeria
Holden at Abuja
On Friday, the 3rd Day of March 2023

Before Their Lordships

Kudirat Motonmori Olatokunbo Kekere-Ekun
Mohammed Lawal Garba
Helen Moronkeji Ogunwumiju
Ibrahim Mohammed Musa Saulawa
Adamu Jauro
Justices, Supreme Court

SC/686/2014

Between

C.G.C. NIGERIA LIMITED

APPELLANT

And

ALH. MUSTAPHA ISA

RESPONDENT

(Lead judgement delivered by Honourable Adamu Jauro, JSC)

Facts

The Respondent was awarded a contract by the Appellant to build residential houses for its staff who were undertaking a project at Katsina State. The Appellant gave the Respondent a building plan (Exhibit 3) containing the specifications for the said residential quarters and the parties executed the agreement (Exhibit 2) setting out the terms of the contract.

Subsequently and prior to the commencement of the project by the Respondent, the Appellant introduced another building plan (Exhibit 7) with different specifications and the parties agreed that the buildings should conform with Exhibit 7 and not Exhibit 3. The Appellant paid the contract sum to the Respondent in instalments as the

construction progressed. After the completion of the project, the Appellant refused to pay the Respondent the amount due to him as cost incurred for the variation in the contract through the use of the specifications in Exhibit 7. Consequently, the Respondent instituted an action against the Appellant at the High Court of Katsina State, seeking the amount purportedly due to him as well as general damages.

In its judgement, the trial court held that the parties had abandoned their initial contract - Exhibit 2 and had by agreement made the Respondent incur additional expenses; hence, the Respondent was entitled to claim on *quantum meruit* basis having expended his personal money on the project. The trial court, however, held that the Respondent failed to prove the amount claimed and on this basis dismissed his claim. Aggrieved, the Respondent appealed to the Court of Appeal. The Court of Appeal set aside the judgement of the trial court and ordered the Appellant to pay the sum of ₦7,622,955.98 to the Respondent, as the reasonable sum due to him on *quantum meruit* basis. The lower court also awarded general damages in favour of the Respondent. Displeased, the Appellant filed an appeal to the Supreme Court.

Issues for Determination

The Supreme Court considered the following issues in its resolution of the appeal.

1. Whether the Respondent was the proper party before the trial court and whether the Court of Appeal had the jurisdiction to entertain the matter as constituted.
2. Whether the Court of Appeal was right when it held that the Appellant and the Respondent had abandoned their contractual obligations under Exhibit 2, and that the Respondent was entitled to relief based on *quantum meruit*.
3. Whether the Court of Appeal rightly awarded the sums it awarded to the Respondent on *quantum meruit* basis and as damages.

Arguments

On the first issue, counsel for the Appellant argued that the Respondent was not a party to the contract and had merely signed the contract as director on behalf of "M.I. Inwala K/Kaura kt". He contended that the Respondent did not sign the said documents in his personal capacity, but as an agent duly authorized to sign for and on behalf of M.I. Inwala K/Kaura kt and his acts in this regard were those of a disclosed principal in

respect of which only the principal can sue. He submitted that it was M.I. Inwala K/Kaura kt that ought to have sued and the suit before the trial court had not been properly constituted; therefore, the Court of Appeal could not validly exercise jurisdiction to entertain the appeal. In response, counsel for the Respondent submitted that when the Respondent gave evidence at the trial court, he stated that his name was “Muhammad Isa of Kofar Kaura Inwala Katsina. He stated that the M.I. in “M.I. Inwala K/Kaura kt” refers to “Mustapha Isa”, while K/Kaura refers to “Kofan Kaura” where he resides and that “kt” refers to Katsina. He argued that the Respondent had signed the contract and undertaken the construction project in his personal capacity; hence, he was the proper party before the trial court and for this reason, the suit before the trial court was properly constituted. Also, the Court of Appeal rightly exercised jurisdiction over the appeal that emanated from the same.

On the second issue, counsel for the Appellant argued that there was no basis for the court below to have held that the parties abandoned their contractual obligations under Exhibit 2 and to have granted any relief to the Respondent on the ground that he was entitled to relief on the basis of *quantum meruit*. In reaction, counsel for the Respondent submitted that the findings challenged by the Appellant in the issue were made by the trial court and having failed to challenge them before the court below, the Appellant could not validly challenge them at the Supreme Court.

Arguing the third issue, it was submitted for the Appellant that the lower court erred in holding that the Appellant is estopped from denying Exhibit 22 relied upon by the Respondent at trial, despite unchallenged evidence showing that it was not the Appellant’s duly designated official who signed it. There was no argument before the court by the Respondent on the issue.

Court’s Judgement and Rationale

Deciding the first issue, the Supreme Court restated the settled principle in **MADUKOLU v NKEMDILIM (1962) 2 SCNLR 341** that *a court is competent to adjudicate over a matter if: a) It is properly constituted as regards numbers and qualification of the members of the bench and no member is disqualified for one reason or another; b) The subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the Court from exercising its jurisdiction; and c) The case comes before the Court initiated by due process of law and upon fulfilment of any condition precedent to the exercise of jurisdiction*. The court held that *from the evidence led at trial by both the Appellant and the Respondent, it was not in doubt that the Respondent had dealings concerning the construction contract with the Appellant in his personal capacity and there was no indication, in*

the evidence or in the pleadings that the Respondent acted on behalf of any person or as an officer of a company. There was thus no feature in the case that would have prevented the trial court from exercising jurisdiction to hear and determine the same. Given the above, Their Lordships held that the Respondent had the *locus standi* to institute the suit at the trial court in his personal capacity; and the Court of Appeal in turn, had the requisite jurisdiction to adjudicate on the appeal that emanated from the suit.

On the second issue, the court held that *where a finding or order or holding is made by a court in its judgement, it behoves the party negatively affected by the said finding or order to appeal against it. If the party against whom the decision was rendered files an appeal, the Respondent who was negatively affected by certain finding(s), holding(s) or order(s) made in the decision ought to file a Cross-appeal in order to get the part(s) of the decision which is/are adverse to his interest set aside. The duty to appeal against a finding or order or holding stems from the fact that once such an order or holding is not appealed against, it becomes binding and subsisting.* The court placed reliance on its decision in **NNPC v KLIFCO (NIG.) LTD (2011) 10 NWLR (PT. 1255) 2019**. The court held that the Appellant (as Respondent at the Court of Appeal), having obviously been displeased by the unfavourable finding of the trial court that the parties abandoned their obligations under Exhibit 2, that the Respondent incurred additional expenses and was entitled to be paid on a *quantum meruit* basis, ought to have filed a Cross-appeal at the Court of Appeal against these findings. It follows therefore that the Appellant's failure to appeal to the lower court against the findings of the trial court enumerated earlier are indicative of its satisfaction with those findings. They thus remain binding, conclusive and unalterable. The court held further that in light of the fact that the findings were made by the trial court and the Appellant did not challenge them at the Court of Appeal, the Supreme Court could not entertain any appeal in respect of the said finding. In other words, the Supreme Court lacks the jurisdiction to entertain an appeal directly from the trial court. Reliance was placed on **JAIYESIMI & ANOR. v DARLINGTON (2022) LPELR-57344 (SC)**.

In its consideration of the third issue, the court held that *it is an important rule of brief writing that not only must issues for determination be based on ground(s) of appeal, arguments canvassed therein must be based on the issue for determination. Arguments on an issue must not sing a discordant tune with that sung by the issue itself.* The court held that it was apparent that the issue was questioning whether the lower court rightly awarded the sums it awarded on *quantum meruit* basis and as damages to the Respondent; whereas the Appellant's argument focused entirely on whether the lower

court ought to have placed reliance on an Exhibit that had in fact been tendered by the Respondent without any objection by the Appellant. *The court held that the failure of the Appellant to canvass an argument as to the propriety or otherwise of the amount awarded to the Respondent thus rendered the issue lifeless.*

Appeal Dismissed

Representation

Kachi Chima Ochu, Esq. for the Appellant.

Hussaini Sani, Esq. for the Respondent.

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