

Power of Court to Reduce/Reformulate Issues for Determination

In the Supreme Court of Nigeria
Holden At Abuja
On Friday, the 7th Day of June, 2024

Before Their Lordships

Uwani Musa Abba Aji
Chidiebere Nwaoma Uwa
Stephen Jonah Adah
Abubakar Sadiq Umar
Mohammed Baba Idris
Justices, Supreme Court

SC/47/2015

Between

1. MR. ALLEN EGBE
2. VERALLEN (NIG) LTD

APPELLANTS/CROSS RESPONDENTS

AND

1. AYODEJI ODU

RESPONDENT/ CROSS APPELLANT

(Lead judgement delivered by Honourable Chidiebere Nwaoma Uwa, JSC)

Facts

The Respondent as Plaintiff before the High Court of the Federal Capital Territory, Abuja (“the trial court”) took out a Writ of Summons filed on 15th February, 2010 against the Appellants as Defendants wherein he claimed *inter alia*, “The sum of ₦25,000,000.00 (twenty-five million Naira) being professional fee payable to the Plaintiff for professional services connected to/or rendered to the Defendants from 1998 – 2000 in respect of Suit No. FHC/C/CS/18/98 and Appeal No: CA/K/32/04 respectively.”

The Respondent’s case before the trial court was that he rendered legal services to the Appellants as itemized in his bill of charges “Exhibit H” in Suit No.

FHC/C/CS/18/98 and Appeal No. CA/K/32/04 but was not paid for the said services. As such, he claimed the sum of ₦25,000,000.00 (twenty-five million Naira only) as professional fees. The Appellants, in their defence, stated that the Respondent's participation was limited to (a) filing of the Writ of Summons in Suit No. FHC/C/CS/ 18/98 (b) letter by the Respondent on behalf of the Appellants to the Military Administrator Sokoto State dated 1/7/98. That another Counsel took over the prosecution of Suit No: FHC/C/CS/18/98 from the Respondent until judgement at the trial court as well as the Appeal in Appeal No. CA/K/31/04 for which settlement was reached. They asserted that the Respondent had then been debriefed by the Appellants vide Exhibit "J" as shown in the printed records of appeal.

The Appellants' case was that although the Respondent was remunerated at various intervals, he was entitled to some payment but not the amount claimed by the Respondent. They stated that there was need for parties to agree on the professional fees payable to the Respondent rather than have the Respondent impose a fee on them especially as there was no evidence before the trial court that the Respondent carried out the enumerated items in his bill of charges - Exhibit "H." At the end of the trial, the trial court found for the Respondent as Plaintiff in the sum of ₦12,000,000.00 (twelve million Naira) including 10% annual interest on same from 1st August 2008 till 21st day of May, 2012 when the Judgement was given and a further 10% annual interest on the judgement sum till liquidation of same.

Dissatisfied, the Appellants appealed to the Court of Appeal and formulated two issues for determination. The lower court reformulated both issues into a single issue "in order to avoid repetition." In its judgement, the Court of Appeal reduced the award made in favour of the Respondent from ₦12,000,000.00 to ₦5,000,000.00. The Appellants still felt aggrieved by the decision of the appellate court, particularly the omission by the court to make a finding on the said Appellants' issue two before it was subsumed into the reformulated sole issue in the determination of the Appeal; hence, the further appeal to the Supreme Court. The Respondent equally filed a Cross-appeal against the decision of the Court of Appeal reducing the amount awarded to him by the trial court.

Issues for Determination

The apex court adopted a sole issue for determination of the main appeal, to wit:

Whether there was an omission by the Court of Appeal to make a finding on the Appellants' issue two which was subsumed into the lone issue raised for determination of the Appeal by the court.

The issue for determination in the Cross-appeal was:

Whether the learned Justices of the Court of Appeal were not wrong when they reduced the sum of ₦12,000,000.00 award in favour of the Cross Appellant for professional services rendered to the Applicants in Suit No. FHC/C/CV/18/98 to ₦5,000,000.00.

Arguments

Counsel for the Appellant argued that the lower court failed in its duty with respect to the Appellants' issue two which it subsumed into a new issue, thereby defeating the end of justice despite having earlier agreed with the Appellants' submissions that Exhibit "K" (the Petition by the Respondent to the Inspector-General of Police alleging that the terms of settlement at the Court of Appeal in Appeal No. CA/K/31/04 was obtained by fraud) is an admission against the interest of the Respondent in respect of its finding on Exhibit "A3" - the terms of settlement at the Court of Appeal where J.C. Shaka Esq. signed as representing the 3rd Respondent therein and not the Respondent in this appeal. It was argued that having allowed the appeal, the lower court ought to have dismissed the Respondent's claim, failure of which caused the injustice complained of by the Appellants. They concluded that no award should have been made in favour of the Respondent.

In response, the Respondent, representing himself, submitted that the sole issue reformulated and determined by the lower court took care of all the issues raised by the parties in the appeal based on which the lower court reduced the award made in favour of the Respondent from ₦12,000 000.00 to ₦5,000,000.00 (five million Naira). He submitted that the trial court did not award any professional fee to the Respondent for professional services rendered to the Appellants at the Court of Appeal despite its finding that the Respondent rendered professional services to the Appellants in the said Appeal, and the award made in his favour was for professional services in respect of Suit No. FHC/CS/18/98. Finally, the Respondent concluded that it was wrong for the Appellants to have argued that the lower court did not pronounce on Exhibit "K" as there were definite findings on Exhibit "K" to which there was no appeal.

With respect to the Cross-appeal, counsel for the Cross Respondent filed a preliminary objection argued in the Cross Respondents' brief of argument. He challenged the competence of the Cross-appeal on the following grounds: (1) That Ground 1 and Ground 4 of the Notice and Grounds of Cross-Appeal are incompetent as same did not arise from the judgement of the Court of Appeal; (2) that leave of the Supreme Court was not sought and obtained by the Cross-Appellant to raise Ground 1 of the Notice and Grounds of Cross-Appeal as a fresh point of law; (3) that the sole issue formulated by the Cross-Appellant was distilled from Grounds 1 2 3 4 and 5 of the Notice and Grounds of Appeal; and (4) that the sole issue formulated and argued by the Cross Appellant is incompetent same having been derived from the competent and incompetent Grounds of Appeal.

Responding, the Cross Appellant submitted that the finding of the lower court on Exhibit "K" was the major reason for reduction of the award made in favour of the Cross Appellant. Also, that ground 4 of the Cross-appeal is also a challenge on the same reduction of the award made by the trial court in favour of the Cross Appellant. The lower court relying on same found that Exhibit K was a "solemn declaration and admission against interest which the Cross Appellant did not give any evidence to water down." Finally, counsel submitted that ground 4 of the cross appeal arose from the judgement of the lower court and was not a fresh issue and grounds 1 and 4 were live issues that should be determined.

Court's Judgement and Rationale

Determining the issue in the main appeal, the Supreme Court held that *a court of law is permitted to formulate issues different from those formulated by the parties as long as it covers the issues at stake between the parties covered by the grounds of appeal. It is done to narrow down the issue or issues in controversy, also to make the issues precise, clear and in some cases to avoid proliferation.* The apex court held that this was what the lower court did in resolution of the two issues formulated by the Appellants and the Respondent after his issue two was struck out not having arisen from the Appellants' ground of appeal.

Their Lordships found that the Appellants' issue two questioned the Respondent's entitlement to make a claim for his professional fees in respect of Appeal No. CA/K/31/04 which would entitle him to the award of ₦12,000 000.00 awarded by the trial court. The lower court examined the circumstances of the case at the

trial court and in its wisdom intervened with the award and reduced same to ₦5,000,000.00 (five million Naira). It was clear that neither the trial court nor the lower court made any award in favour of the Respondent in respect of Appeal No. CA/K/31/04. The lower court reduced the award in favour of the Respondent having held that the Respondent failed to show in the proceedings the one hundred and fifty appearances he made as claimed in Exhibit "H" in respect of Suit No. FHC/CS/S/ 18/98. In all, the Supreme Court held that the appeal was without merit and same was dismissed.

Determination of the Cross Appeal

The Supreme Court, in determining the preliminary objection first, held that the reduction of the award by the lower court was in the course of its resolution of the reformulated sole issue in which the Cross Respondents' issues one and two were subsumed into a sole issue, likewise the two surviving issues of the Cross Appellant at the lower court. It was the reduction of the award that gave rise to the Cross Appellant's Grounds 1 and 4 of the Cross appeal to challenge the decision of the lower court. It was clear that the Cross Appellant's Grounds 1 and 4 arose from the decision of the lower court, they were not fresh issues raised on appeal without prior leave of court as erroneously argued by the learned counsel for the Cross Respondents. Furthermore, Exhibit "K" was a live issue in controversy between the parties in which the Court of Appeal made its findings and arrived at the decision leading to the Cross Appeal. As a consequence, their Lordships found the preliminary objection without merit and dismissed it.

On the merits of the Cross appeal, the Supreme Court held that the trial court that heard and saw the witnesses and documents tendered in the matter rightly held that Exhibit "K" had nothing to do with the validity of the claim of the Cross Appellant for his professional fee. The trial court did not attach any probative value to Exhibit "K"; therefore, the Court of Appeal erred when it ascribed probative value to the said Exhibit "K".

The apex court held further that there were concurrent findings of facts that the Cross Appellant rendered professional services to the Cross Respondents in Suit No. FHC/CS/S/18/98 and as found by the trial court and the lower court, there was enough evidence to support the findings that the Cross Appellant rendered solicitor's services and the other duties outlined by the trial court.

Their Lordships acknowledge that no perversity had been shown in the case before them; nonetheless, the court arrived at the conclusion that the Court of Appeal was wrong to have reduced the award made in favour of the Cross Appellant and set same aside. As such, it restored the ₦12,000,000.00 award made by the trial court to the Cross Appellant and granted cost of ₦500,000.00 to him.

Appeal dismissed; Cross-appeal succeeds.

Representation:

Ad Zubairu Esq. with D.D. Killi Esq. and Victor Orih Esq. for the Appellants/Cross Respondents.

Respondent/Cross Appellant appeared in person.

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