

Propriety of a Respondent Challenging the Decision of the Lower Court in its Brief of Argument

In the Supreme Court of Nigeria
Holden at Abuja
On Friday, the 31st Day of January, 2025

Before Their Lordships
Uwani Musa Abba Aji
Ibrahim Mohammed Musa Saulawa
Chioma Egondur Nwosu-Iheme
Obande Festus Ogbuinya
Habib Adewale Olumuyiwa Abiru
Abubakar Sadiq Umar
Justices, Supreme Court

SC. 1112/2017

BETWEEN

OLALEKAN OLAKEHINDE

APPELLANT

AND

**ECONOMIC AND FINANCIAL CRIMES
COMMISSION (EFCC)**

RESPONDENT

(Lead judgement delivered by Honourable Ibrahim Mohammed Musa Saulawa, JSC)

Facts

The Appellant commenced the action at the High Court of the Federal Capital Territory, Abuja under the Fundamental Rights (Enforcement Procedure) Rules, alleging that the Respondent invaded the locations where he displayed cars for sale and impounded and carted away fifteen vehicles for no reason. The Appellant alleged that neither himself nor his company was under criminal investigation and that he was not at any time invited by the Respondent. He contended that the Respondent breached his right to own movable

property guaranteed under the provisions of Sections 43 and 44 of the Constitution of the Federal Republic of Nigeria, 1999. The Appellant claimed several declaratory and injunctive reliefs against the Respondent, as well as damages for the illegal seizure of his cars.

The Respondent replied with a counter affidavit containing very copious and detailed depositions, wherein it averred that the vehicles were seized and impounded in the course of an investigation into a case of money laundering of huge sum of money belonging to Niger State Government. The Respondent stated that investigations showed that the cars in question actually belonged to a main suspect involved in money laundering and that its officers were taken to the location of the cars by the right-hand man of the said main player. The said man was the person in charge of the cars and was said to have volunteered an extra-judicial statement. The Respondent averred further that the vehicles were taken with the consent of the persons in charge of same and that the Appellant was indeed invited in the course of the investigation, but he failed to honour the invitation. This was supported with several documents including - statements of account showing movement of funds to the Appellant, letters written to different Banks and extra judicial statements taken from witnesses in the course of the investigation.

The trial court delivered judgement in favour of the Respondent. The appeal by the Appellant to the Court of Appeal was also dismissed. The Appellant further appeals to the Supreme Court. In its brief of argument before the Supreme Court, the Respondent raised the issue of jurisdiction of the trial court and the court below to determine the reliefs before it, particularly the relief restraining it from forfeiting the cars seized, without due process of law.

Issues for Determination

The preliminary issue of jurisdiction raised by the Respondent was couched thus:

Whether looking at the reliefs by the Appellant before the trial court and the court below, the courts had the jurisdiction to grants the reliefs sought, particularly relief 3 therein.

Issues in the substantive appeal are:

- i. *Whether the lower court was right to have affirmed the judgement of the trial court by relying on extraneous inadmissible evidence culled out of the Respondent's brief of argument and counter affidavit to dismiss the Appellant's case.*

- ii. *Whether the action of the lower court was right when it failed to consider all the issues for determination and processes filed before it by the Appellant in the determination of the appeal which amounted to a breach of the appellant's right to fair hearing.*
- iii. *Whether having regard to the facts and circumstances of this case, the seizure and carting away of the Appellant's vehicles from his premises by the Respondent was not illegal and/or unconstitutional.*

Arguments

Arguing the preliminary issue, The Appellant posited that there is nothing in the reliefs sought by the Appellant which shows a violation of the rights and freedom contained in Chapter IV of the 1999 Constitution, as amended and that the court lacked jurisdiction to enforce non-existent right – **RAYMOND DONGTOE v CIVIL SERVICE COMMISSION, PLATEAU STATE (2002) 2 CHR 95 AT 116**. The Appellant challenged the competence of this issue in his Reply Brief on the ground that the issue was framed in contravention of the principle that where a Respondent has not filed a cross appeal, the issues for determination formulated by him must arise from the grounds of appeal filed by the Appellant. The Appellant therefore argued that jurisdiction was a fresh issue which the Respondent could only competently raise either by way of cross appeal or filing a Respondent's Notice – **OSHO v ADELEYE (2023) LPELR-59976 (SC)**.

Arguing the substantive appeal, the Appellant submitted on issue one that the lower court fell into grave error by relying on extraneous materials not borne out of the grounds of appeal, but from the Respondent's incompetent brief of argument as the brief was totally at variance with the issues agitating from the Appellant's Grounds of Appeal – Order 9 Rule 3 of the Court of Appeal Rules, 2016. And that the Respondent fundamentally premised its action against the Appellant on the term "reasonable suspicion" which does not amount to *prima facie* evidence – **ABACHA v THE STATE (2002) 7 SCNJ 35**. In response, the Respondent argued that even in the absence of the Respondent's brief and the Reply brief, the Appellant's appeal before the lower court was allegedly a non-starter and was deemed to fail.

On issue two, the Appellant argued that the lower court abdicated its duties, when it prevaricated from considering issues 1 and 3 of the Appellant's brief duly formulated (from) the grounds of appeal and the failure to consider all the issues amounted to a denial of fair hearing. In response, it was argued by the Respondent that the issues formulated by the Appellant before the lower court were intertwined, thus the adoption

and determination of the second issue by the court below was in order and rendered the other two issues superfluous.

On issue three, the Appellant argued that the seizure of the vehicles from his premises was done under the false premise that the vehicles belonged to a different individual who had earlier been arrested and that this had been debunked by the findings of the trial court who had resolved the ownership of the cars in favor of the Appellant. The Respondent rebutted this argument on the grounds that the seizure of the Appellant's cars was on temporary basis for investigation purposes, which is lawful based on Section 44(2)(K) of the 1999 Constitution. The court was urged to resolve this issue in favor of the Respondent.

Court's Judgement and Rationale

Resolving the issue of jurisdiction first, the Supreme Court agreed that the issue of jurisdiction can be raised at any material time in the course of the proceedings of appeal, however not as a matter of course as the issue of jurisdiction can only be raised on appeal, subject to veritable rules of procedure of the court duly designed to aid parties in the pursuit of justice in the Court of Law. *The primary role of a Respondent in an appeal is to simply defend the vexed decision or judgement of the court below, which supposedly was given in his favour.* As such, *where the Respondent in his wisdom decides to challenge the said decision or judgement of the Court below, he has an onerous duty to file a cross-appeal, thereby proving the grounds of his complaint against the decision – NSIRIM v AMADI (2016) LPELR-26053(SC).* Consequently, the apex court upheld the Appellant's argument that the Respondent's preliminary objection was incompetent and struck out same.

On the merits, resolving issue one, Their Lordships held that the findings of the lower court were not predicated on the incompetent Respondent Respondent's brief of argument which was filed out of time but upon the pleadings and affidavit evidence on record. The Supreme Court held further that *the Appellant's claim being declaratory in nature, the Appellant had the onerous duty to prove same on the strength of his case and not merely on the weakness of the Respondent's case. It is a well settled fundamental doctrine that a declaration of right is purely declaratory remedy; it is never granted as a matter of course. Indeed, the court must be satisfied of the desirability of granting same – EDOZIEN v EDOZIEN (1998) 13 NWLR (PT. 580) 147.* In the circumstances, the court adjudged that the Appellant had not fulfilled this condition. The court therefore resolved issue one in favour of the Respondent.

On issue two, the Supreme Court found that from the Record of Appeal, the three issues formulated by the Appellant in its brief were intertwined and the lower court could not be faulted in deeming it expedient to determine the appeal on the Appellant's issue two and that non consideration of the Appellant's issues 1 and 3 of the Appellant did not amount to a breach of the Appellant's right to fair hearing. The Apex Court held that *where a judge's discretion apparently has not been exercised recklessly, arbitrarily or capriciously but judicially, an appeal court lacks the competence to disturb same, merely: because it would have exercised the discretion differently.*

On issue three, the Supreme Court found that, contrary to the Appellant's vehement submissions, the facts and circumstances surrounding the case clearly showed that the discoveries made in the course of the investigation conducted by the Respondent implicated the Appellant thereby warranting the Respondent to extend its investigation.

Their Lordships quoted section 44(2)(K) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) which provides that *Nothing in subsection (1) of this section shall be construed as affecting any general law - relating to the temporary taking of possession of property for the purpose of any examination, investigation or enquiry* and held that the temporary seizure of the vehicles by the Respondent for investigation purposes was reasonable and valid. Therefore this issue was resolved against the Appellant.

Postscript, the Supreme Court condemned the attitudinal disposition of the Appellant's counsel for the use of the word *prevaricated* in his Appellant's brief. The court noted that the term meant "liar, an equivocator" or "someone who betrays another's trust, such an advocate who aids the opposing party by betraying the client" and was tantamount to scandalising the Court of Appeal. Furthermore, that legal practitioners have a duty to always treat the court with respect, dignity and honour.

In conclusion, the Supreme Court resolved the three issues on the merits against the Appellant and upheld the judgment of the lower court.

Appeal dismissed.

Representation

M.J.N. Numa, SAN with Dayo Ayoola-Johnson, and Solomon Tunyan, for the Appellant.

Aliyu Bokani Usman, Esq. for the Respondent.

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