

PROFESSOR E.A. ABE

V.

- 1. UNIVERSITY OF ILORIN**
- 2. THE REGISTRAR, UNIVERSITY OF ILORIN**

SUPREME COURT OF NIGERIA

SC.85/2003

MUHAMMAD SAIFULLAH1 MUNTAKA-COOMASSIE, J .S.C. (*Presided*)
NWALI SYLVESTER NGWLJTA, J.S.C.
OLUKAYODE ARIWOOLA, J.S.C.
MUSA DATTIJO MUHAMMAD, J.S.C. (*Read the Leading Judgment*)
CLARA BATA OGUNBIYI, J S.C.

FRIDAY, 24TH MAY 2013

APPEAL - Appeal that is academic - Where appellant will not gain thereby - How appeal treated.

APPEAL - Ground of appeal - Particulars of - When will be struck out - Determination of Principles governing.

APPEAL - Grounds of appeal - Formulation of - Rules governing, Order 8 rule 2(3) and (4) of Supreme Court Rules.

APPEAL - Grounds of appeal - Lack of or defective particulars -Whether will necessarily render ground incompetent.

APPEAL - Grounds of appeal - Need for ground of appeal to relate to decision appealed against.

APPEAL - Grounds of appeal - Vague grounds of appeal Determination of - What constitute - Order 8 rule 2(3) of Supreme Court Rules – Non-compliance therewith - Effect of

APPEAL - Grounds of appeal - When appeal can be sustained thereby.

APPEAL - Issues for determination - Formulation of - Whether can be wider than grounds of appeal.

APPEAL - Preliminary objection to appeal - Where raised - How treated.

APPEAL - Right of appeal - Right of appellant to appeal in respect of appeal or cross-appeal.

PRACTICE AND PROCEDURE - Appeal - Appeal that is academic - Where appellant will not gain thereby - How appeal treated.

PRACTICE AND PROCEDURE - Appeal - Ground of appeal Particulars of - When will be struck out – Determination - Principles governing.

PRACTICE AND PROCEDURE - Appeal - Grounds of appeal -Ground of appeal- Formulation of- Rules governing - Order 8 rule 2(3) and (4) of Supreme Court Rules

PRACTICE AND PROCEDURE - Appeal - Ground of appeal- Lack of or defective particulars - Whether will necessarily render ground incompetent.

PRACTICE AND PROCEDURE - Appeal - Grounds of appeal - Need for ground of appeal to relate to decision appealed against.

PRACTICE AND PROCEDURE - Appeal - Grounds of appeal - Vague grounds of appeal - Determination of - What constitute - Order 8 rule 2(3) of Supreme Court Rules - Non-compliance therewith -- Effect off.

PRACTICE AND PROCEDURE - Appeal - Grounds of appeal - When appeal can be sustained thereby.

PRACTICE AND PROCEDURE - Appeal - Issues for determination - Formulation of - Whether can be wider than grounds of appeal.

PRACTICE AND PROCEDURE - Appeal - Preliminary objection to appeal - Where raised - How treated.

PRACTICE AND PROCEDURE - Appeal - Right of appellant to appeal in respect of an appeal or cross-appeal.

PRACTICE AND PROCEDURE - Preliminary objection - Meaning of

WORDS AND PHRASES - Preliminary objection - Meaning of.

Issue:

Whether the preliminary objection to the appeal ought to be upheld.

Facts:

The appellant, a professor, was appointed the Director of the 1st respondent's Institute of Education for an initial period of three years. The appointment was extended for a further three-year term. However, the appellant was subsequently, first suspended and then relieved of his appointment.

Consequently, the appellant instituted the action at the Federal High Court claiming damages for libel and other declaratory and injunctive reliefs.

At the conclusion of hearing, the trial court nullified the disciplinary proceedings initiated by the respondents and ordered that the appellant be reinstated.

The respondents and the appellant were dissatisfied with the judgment of the trial court and they respectively appealed and cross-appealed to the Court of Appeal. The Court of Appeal allowed the appeal and dismissed the cross-appeal.

Dissatisfied, the appellant appealed to the Supreme Court. At the Supreme Court, the respondents raised a preliminary objection to the appeal on grounds that the grounds of appeal were vague and unarguable; that the particulars in support of three of the ground did

not support the grounds; and that by the reliefs the appellant sought at the Supreme Court, the appeal was hypothetical and academic.

From the record of appeal, the appellant had retired on attaining the retirement age and had left the 1st respondent's service with full benefits.

In determining the appeal, the Supreme Court considered the provisions of Order 8 rule 2(3) and (4) of the Supreme Court Rule which state thus:

- “(3) The notice of appeal shall set forth concisely and under distinct heads the grounds upon which the appellant intends to rely at the hearing of the appeal without any arguments or narrative and shall be numbered consecutively.
- (4) No ground which is vague or general in terms which discloses no reasonable ground of appeal shall be permitted, save the general ground that the judgment is against the weight of evidence, and any ground of appeal or any part thereof which is not permitted under this rule may be struck out by the court of its own motion or on application by the respondent.”

Held (*Unanimously upholding the preliminary objection and striking out the appeal*):

1. *On Treatment of preliminary objection to appeal when raised –*
It is incumbent on the court to outrightly consider a preliminary objection raised by the respondent in an appeal and, on determining it one way or the other, to proceed to either strike out the appeal or consider the appeal on its merit. [*Utuks v. N.PA (2005) 13 NWLR (Pt. 943) 623; Uwazurike v. A.-Gf Federation (2007) 8 NWLR (Pt. 1035) 1 referred to.*] (*P. 196, paras. F-G*)
2. *On Meaning of “preliminary objection” –*
By definition, the concept of preliminary objection is an objection that, if upheld, would render further proceedings before a tribunal impossible or unnecessary. (*P. 205, para. D*)
3. *On Principles governing determination of vague grounds of appeal –*

By Order 8 rule 2(3) and (4) of the Supreme Court Rules, vague grounds of appeal are grounds which are imprecise, inaccurate, large, verbose and of inexact meaning. However, the fact that Order 8 rule 2(3) of the Supreme Court Rules requires grounds of appeal to be precise and accurate does not entitle the court to adjudge an appellant's slightest infraction in that regard as rendering a particular ground incompetent. The rules of court only require the appellant to give the respondent and the court sufficient notice and information of the complaints the grounds convey. Therefore, the rules are primarily designed to ensure fairness to both sides in the appeal and never meant to facilitate reliance on them by the court to shut out an intending appellant. Thus, once a ground of appeal contains the reasons on the basis of which the appellant wants the appellate court to decide that the judgment appealed against is wrong, the ground cannot be discountenanced. Such a ground that has isolated and accentuated, for attack, the basis of the reasoning being challenged is competent. [*Minister of Petroleum and Mineral Resources v. Expo Shipping Line (Nig.) Ltd.* (2010) 12 NWLR (Pt. 1208) 261; *Mil. Adm., Benue State v. Ulegede* (2001) 17 NWLR (Pt. 741) 194 referred to.] (Pp. 198-199, paras. G-E)

4. *On Rules governing formulation of grounds of appeal –*
By virtue of Order 8 rule 2(3) and (4) of the Supreme Court Rules, a notice of appeal shall set forth concisely and under distinct heads the grounds upon which the appellant intends to rely at the hearing of the appeal without any arguments or narrative and shall be numbered consecutively, No ground which is vague or general in terms which discloses no reasonable ground of appeal shall be permitted, save the general ground that the judgment is against the weight of evidence. Any ground of appeal or any part thereof which is not permitted under the rule may be struck out by the court of its own motion or on application by the respondent. (Pp. 205-206, paras. H-C)

5. *On Principles governing formulation of ground of appeal*

—
A proper ground of appeal should be framed to show clearly the alleged misunderstanding or wrong application of law by the lower court or tribunal to the findings of fact made by the court or tribunal, or to the facts admitted during the proceedings in which case it will be an error in law and the ground of appeal will be a ground of law. [*Amuda v. Adelodun* (1994) 8 NWLR (Pt. 360) 23 referred to.] (P. 205, paras. D-E)

6. *On Whether lack of or defective particulars in ground of appeal will necessarily render ground incompetent* —

Grounds of appeal may stand on their own once they represent an appellant's complaint against the decision he is not satisfied with and in respect of which grouse he seeks the appellate court's intervention. Lack of or defective particulars in a ground of appeal would not necessarily render the ground itself incompetent. [*Onafowokan v. Wema-Bank Plc* (2011) 12 NWLR (Pt. 1260) 24; *Best (Nig.)' Ltd. v. Blackwood Hodge (Nig.) Ltd.* (2011) 5 NWLR (Pt. 1239) 95 referred to.] (P. 199, paras. F-H)

7. *On When particulars of ground of appeal will be struck out* —

Where a ground of appeal is defective or the, particulars do not flow therefrom or related thereto, such a ground or particular or particulars are liable to striking out. Once the ground or one or more of its particulars are liable to striking out the remaining particular or particulars as well as the ground itself are rendered otiose, because it is not the duty of the court to extend hands of fellowship to one of the parties by assisting him to carry out a surgical operation of that party's ground of appeal by excising the defective part from it. [*Honika Sawmill Nigeria Limited v. Hoff* (1994) 2 NWLR (Pt. 326) 252; *Nwadike v. Ibekwe* (1987) 4 NWLR (Pt. 67) 718 referred to.] (P. 205, paras. F-H)

8. *On Need for grounds of appeal to relate to decision appealed against –*
Grounds of appeal against a decision must relate to the decision and should be a challenge to the validity of the ratio of the said decision. [Egbe v. Alhaji (1990) 1 NWLR (Pt. 128) 546 referred to.] (P. 206, para. D)
9. *On When an appeal can be sustained by ground of appeal –*
For an appeal to be sustained, at least one of the grounds of appeal must be competent. (P. 206, para. E)
10. *On Whether issues for determination can be wider than grounds of appeal –*
Formulation of issues for determination in an appeal must be consistent and fall within the scope of the grounds of appeal filed. The issues cannot be formulated to be wider than the grounds of appeal from which it derives its existence. (P. 206, paras. C-D)
11. *On Right of appeal of appellant against decision of appellate court in respect of appeal or cross-appeal-*
Where a decision appealed against relates both to an appeal of the respondent and the appellant's cross appeal, being parties to both, the appellant has the right to appeal against any aspect of the lower court's decision in respect of either the appeal or cross-appeal the court determined. (P. 203, paras' C-D)
12. *On Treatment of appeal that is academic –*
It is not part of the court's function to act in vain and practice does not facilitate such act. Therefore • the court will refuse to engage in a fruitless exercise of proceeding to determine an appeal where the appellant does not stand to gain by the determination of the appeal. In the instant case, the appellant, having been retired with full benefits, had nothing to gain from the appeal. Therefore, the appeal had become hypothetical and academic and was therefore struck out. (Pp. 203-204, paras. G-A; 204, para. E; 204, para. G)

Nigerian Cases Referred to in the Judgment:

Aderounmu v. Olowu (2000) 4 NWLR (Pt. 652) 253
Amuda v. Adelodun (1994) 8 NWLR (Pt. 360) 23
AS. Co. (Nig.) Ltd. v. O.O. Biosah & Co. Ltd. (1997) 11 NWLR (Pt. 527) 145
Bakare v.A.C.B. Ltd. (1986) 3 NWLR (Pt. 26) 47
Best (Nig.) Ltd. v. Black-Wood Hodge (Nig.) Ltd. (2011) 5 NWLR (Pt. 1239) 95
Egbe v. Alhaji (1990) 1 NWLR (Pt. 128) 546
Fawehinmi v. Akilu (1987) 4 NWLR (Pt. 67) 797
Global Transport Oceanico S.A.v. Free Ent. (Nig.) Ltd. (2001) 5 NWLR (Pt. 706) 426
Hambe v. Hueze (2001) 4 NWLR (Pt. 703) 372
Honika Sawmill (Nig.) Ltd. v. Hoff (1994) 2 NWLR (Pt. 326) 252
Ibrahim v. Habit (1993) 5 NWLR (Pt. 295) 570
Lagga v. Sarhuna (2008) 16 NWLR (Pt. 1114) 427
Lana v. University of Ibadan; (1987) 4 NWLR (Pt. 64) 245
Mil. Adm., Benue State v. Ulegede (2001) 17 NWLR (Pt. 741) 194
Minister of Petroleum and Mineral Resources v. Expo Shippin Line (Nig.) Ltd. (2010) 12 NWLR (Pt. 1208) 261
Nwadike v. Ibekwe (1987) 4 NWLR (Pt. 67) 718
Oge v. Ede (1995) 3 NWLR (Pt. 385) 564
Onajowokan v. Wema Bank Pic (2011) 12 NWLR (Pt. 1260) 24
Oyenev v. Odugbesan (1972) 4 SC 244
Skenconsull (Nig.) Ltd. v. Ukey (1981) 1 SC 6
Uhvwvnglw v. Okojie (1989) 5 NWLR (Pt. 122) 471
Utuks v. N.P.A. (2005) 13 NWLR (Pt. 943) 623
Uwazunke v. A.-C, Fed. (2007) 8 NWLR (Pt. 1035) 1

Nigerian Statute Referred to in the Judgment:

University of Ilorin Act, S. 15(1) & (4)

Nigerian Rules of Court Referred to in the Judgment:

Supreme Court Rules, 1999 (as amended), O. 8 r. 2(3) and (4)

Book Referred to in the Judgment:

Black's Law Dictionary, 9th Edition, p. 1299

Appeal:

This was an appeal against the decision of the Court of Appeal allowing the respondents' appeal and dismissing the appellant's cross-appeal against the judgment of the Federal High Court given in favour of the appellant. The Supreme Court, in a unanimous decision, struck out the appeal.

History of the Case:

Supreme Court:

Names of Justices that sat on the appeal: Muhammad Saifullahi Muntaka-Coomassie, J.S.C. (*Presided*); Nwali Sylvester Ngwuta, J.S.C; Olukayode Ariwoola, J.S.C; Musa Dattijo Muhammad, J.S.C. (*Read the Leading Judgment*); Clara Bata Ogunbiyi, J.S.C.

Appeal No.: SC.85/2003

Date of Judgment: Friday, 24th May 2013

Names of Counsel: Chief P.A.O. Olorunnisola, SAN (*with him*, J.S. Bamigboye and Salman Jawondo) – *for the Appellant*

Yusuf O. Ali, SAN (*with him*, Prof. Wahab Egbewole, Etukwu Ona, S.E. Oke, P.I. Ikpegbu, K.O. Lawal, H.T. Oloyede, K.F. Oso and M.G. Duke) -*for the Respondents*

Court of Appeal:

Division of the Court of Appeal from which the appeal was brought: Court of Appeal, Ilorin *Names of Justices that sat on the appeal:* Muritala Aremu Okunola, J.C.A. (*Presided*); Patrick Ibe Amaizu, J.C.A; Walter Samuel Nkanu Onnoghen, J.C.A.

Date of Judgment: Wednesday, 22nd January 2003

Names of Counsel: Yusuf Ali, SAN (*with him* Ajanaku) - *for the Appellants*

Chief P.A.O. Olorunnisola, SAN (*with him*, Chief Ayanda Fajenyo) - *for the Respondent*

High Court:

Name of the High Court: Federal High Court, Ilorin

Name of the Judge: Tsoho, J.

Suit No.: FHC/IL/CS/4/99

Date of Judgment: Thursday, 17th May 2001

Names of Counsel: Chief P.A.O. Olorunnisola, SAN (*with him*, Chief Ayanda Fajenyo) - *for the Plaintiff*

Yusuf Ali, SAN {with him, K.K. Eleja, Esq. and S.A. Oke, Esq.) - for the Defendants

Counsel:

Chief P.A.O. Olorunnisola, SAN (with him. J.S. Bamigboye and Salman Jawondo) - for the Appellant

Yusuf O. Ali, SAN (with him, Prof. Wahab Egbewole, Etukwu Ona, S.E. Oke. P.I. Ikpegbu, K.O. Lawal, H.T. Oloyede, K.F. Oso and M.G. Duke) - for the Respondents

M .D. MUHAMMAD, J.S .C. (Delivering the Leading Judgment):

This is an appeal against the judgment of the Court of Appeal, Ilorin Division, delivered on the 22nd January 2003, allowing the appeal of the respondents and dismissing the cross-appeal of the appellant. The facts of the case that brought the appeal are summarized below.

The appellant, a professor, was on the 17th August 1994, appointed the Director of the Institute of Education of University of Ilorin, the 1st respondent, for an initial period of three years. The appointment was extended on 5th August 1997 for a further three year term. By exhibit 3, 1st respondent's acting Registrar notified the appellant partly as follows:

“Senate at its special meeting of Wednesday, 10th December 1997 decided to set-up a committee to investigate all the results of the 1995/96 graduating students of the Institute of Education. In order to give the committee a free hand to do its work, the Vice Chancellor has directed that you be suspended forthwith as Director of the Institute of Education. You are therefore requested to handover the activities of the Institute to the Dean of Education immediately ...”

Exhibit 5, a letter also addressed to the appellant by the 1st respondent *inter-alia* reads:

“In view of the current re-organization in the administrative structure of the Institute, it has become necessary to relieve you of your appointment as Director of the Institute of Education with effect 10th December 1997 ...”

Arising from the content of the two letters, the appellant as plaintiff took out a writ at the Federal High Court Holden at Ilorin, hereinafter referred to as the trial court, claiming, apart from the

Ten million naira damages for libel, the declaratory and injunctive reliefs against the respondents as defendants thus:

- “(i) A declaration that the reasonable and inferable conclusion based on the evidence before the Staff Disciplinary and Appeals Committee (SDAC) is that the plaintiff’s conduct does not amount to misconduct as envisaged by the University Act and Regulations warranting a procedure for removal.
- (ii) A declaration that the trial of the plaintiff on the allegations made against the plaintiff are criminal in nature and cannot be tried by the defendants as doing so is a usurpation of the functions of the courts and is contrary to the 1979 Constitution of Nigeria.
- (iii) A declaration that the various panels that investigated or tried the plaintiff are incompetent as their composition is not free from bias.
- (iv) A declaration that vicarious liability have (sic) no place where criminal act is the subject matter, more so when in this case the plaintiff is not the employer of the other staff under him.
- (v) A declaration that the decision of the 1st defendant not having been based on the report and recommendation of the Staff Disciplinary and Appeals Committee (SDAC) is a denial of fair hearing to the plaintiff and therefore unconstitutional, null & void,
- (vi) A declaration that the compulsory retirement of the plaintiff as conveyed by the defendants, letter of 9/2/ Ref: UI/SSE/PF/1838 is predicated upon bias, malice, and hatred to get the plaintiff away at all cost to make way for a favoured candidate.
- (vii) A declaration that the trial of the plaintiff without informing him that he was facing a process of removal from office is illegal, wrongful & negates the provision of the University of Ilorin Act and therefore null void.
- (viii) A declaration that the trial of the plaintiff and his conviction on allegations which do not disclose the rules and regulations or law breached is illegal, void’ and unconstitutional.
- (ix) A declaration that the procedure by which the plaintiff was tried and convicted or found culpable is void as the decision was statute barred.

- (x) An order for the defendants to refund to the plaintiff the sum of N100,550. 00 extorted from him.
- (xi) An order that the plaintiff is still in the service of the defendants.
- (xii) A permanent order of injunction restraining the defendants from stopping the plaintiff, from continuing his work in the University of Ilorin.”

At the end of pleadings and eventual trial including address of counsel, the trial court in its considered judgment delivered on 17th of May 2001 concluded its findings as follows:

“...The overall effect of this judgment is that **the** disciplinary proceedings initiated by the defendants and the decision based on it having been nullified by this court, the plaintiff shall be reinstated in the service of the U’ defendant from the date of his purported compulsory retirement. I proceed to make specific orders as follows:

1. That the disciplinary procedure adopted by the defendants herein against the plaintiff is declared null & void.
2. That following from No. 1, the plaintiff is hereby declared as being still in the service of the defendants.
3. The defendants and their agents, servants and/or privies are restrained from stopping the plaintiff, or in any way howsoever disturbing the plaintiff from continuing his work in the University of Ilorin until he attains 35 years of service. These shall stand as the orders of this court regarding this case.”

Dissatisfied with the judgment of the trial court, the defendants now the appellant appealed to the Ilorin Division of the Court of Appeal, hereinafter referred to as the court below, on an amended notice dated 8th July 2002 containing five grounds. The respondent also cross appealed. The court concluded its judgment delivered on 22nd January 2003, by allowing the respondents’ appeal and dismissing the appellant’s cross-appeal.

Aggrieved, the plaintiff at the trial court, respondent at the court below, has appealed to this court on an amended

notice of appeal containing ten grounds of appeal. In keeping with the rules of this court, parties have filed and exchanged briefs of argument. The appellant has, in his amended brief, distilled seven issues from the grounds in his amended notice as arising for the determination of his appeal. The issues read:

- “3.01. Issue No. 1 - Whether the Court of Appeal is right in holding that the trial court granted wider relief than asked for by the appellant in prayer (vii) of his claim -Grounds 1,2,3.
- 3.02. Issue No. 2 - Whether the words ‘as the decision was statute barred’ should make a void procedure legal as stated by the Court of Appeal. Ground 4.
- 3.03. Issue No. 3 - Are exhibits 6 and 19 valid notice of the University Council - Grounds 5 and 8.
- 3.04. Issue No. 4 - Considering the evidence before the court did the trial court give more than asked for as held by the Court of Appeal - Ground 6.
- 3.05. Issue No. 5 - Whether the appellant should be held personally responsible for the good or bad performance of the staff under him to the extent of portraying him as ‘not being without blemish’ Ground 7.
- 3.06. Issue No. 6 - Whether the Court of Appeal is correct to hold that the allegations contained in exhibit 6 are not accusation of Criminal Act? - Relates to ground 9.
- 3.07. Issue No. 7 Whether the Court of Appeal is right to have refused to order the refund of N 100,550 to the appellant? - Relates to ground 10.

The respondents have raised and argued a notice of preliminary objection at pages 5-8 of their brief of argument and *ex abundante cautela*, in the event of this court overruling the objection, identified four issues as being germane for the determination of the appeal;

The four issues read:

1. Whether the court of appeal was not right to have come to the conclusion that the trial court granted to the appellant reliefs which he did not claim at the trial.
2. Whether considering the totality of oral and documentary evidence before the trial court the court of appeal was not right to have held there was no infraction of the provisions of section 15 of the University of Ilorin Act by the 1st respondent in retiring the appellant as it did.

3. Whether the Court of Appeal was not correct in holding that the allegations against the appellant were not of commission of crime?
4. Whether the Court of Appeal was not right in law not to have ordered a refund of the sum of N 100,550.00 to the appellant?"

It is however incumbent to outrightly consider the preliminary objection raised by the respondent and on determining it one way or the other to proceed to either strike out the appeal or consider the appeal on its merit. See *S.O. Utuks & Others* (For and on behalf of NPA retrenched Staff, June 1999) v. *Nigerian Ports Authority* (2005) 6 SC (Pt. 11) 69 at 74, (2005) 13 NWLR (Pt. 943) 623 and *Ralph Uwazurike & Others v. Attorney-General of the Federation* NSCQLR Vol. 29 (2007) 489, (2007) 8 NWLR (Pt. 1035) 1.

Learned respondent counsel submits that all the grounds of appeal in appellant's amended notice be struck out for their being in breach of the rules of court. He contends that grounds 1, 4 and 8 of the grounds of appeal are vague, unarguable or general in terms. The defect the grounds manifest, submits learned counsel, constitute a breach of Order 8 rule 2(3) and (4) of the Supreme Court Rules.

Secondly, the particulars in support of grounds 3, 5 and 7 being unrelated to the allegations in the grounds, cannot support the grounds. The error in the said grounds, submits learned counsel, makes the ground also incompetent. He relies on the cases: *Amuda v. Adelodun* (1994) 8 NWLR (Pt. 360) 23 at 31 and *AS. Co. (Nig.) Ltd. v. O.O. Biosah & Company Ltd.* (1997) 11 NWLR (Pt. 527) 145 at 156 to support his contention. Ground 2 of appellant's appeal does not challenge the decision of the court below. Instead, learned counsel contends, being a complaint against the decision of the trial court, this court lacks the jurisdiction of entertaining such a complaint. The appellant, it is insisted, does not have a direct right of appeal to this court from the decision of the trial court. The decision in *Egbe v. Alhaji* (1990) 1 NWLR (Pt. 128) 546 was cited in aid.

Further objecting to the competence of the appeal, learned counsel submits that appellant's 6th ground of appeal violates Order 8 rule 2(3) of the Supreme Court Rules as the ground is argumentative. The ground, learned senior counsel submits, is also incompetent.

Regarding the 10th ground of appeal, it argued that the issue the ground raises is a fresh issue and in respect of which neither the

leave of the court below nor that of this court was sought and obtained. The ground, learned counsel submits, is premised on the trial court's refusal to award the refund of the sum of N 100,550.00 the appellant paid to the respondents following the disciplinary procedure instituted against him which exercise informs appellant's action at the two courts and the instant appeal. Though learned respondent's counsel concedes that appellant's 10th ground of appeal was filed following the leave the respondent acquired to file additional grounds, counsel insists that since the ground raises a fresh issue, the appellant requires the leave of court to raise the fresh issue the ground encapsulates. Failure to acquire the leave is fatal and renders the ground incompetent. Appellant's 7th issue that is purportedly distilled from the incompetent ground being also incompetent, it is urged, be equally discountenanced. Learned counsel commends the decisions in *Uhunmwangho v. Okojie* (1989) 5 NWLR (Pt. 122) 471 at 491; *Global Transport Oceanian S.A. v. Free Ent. (Nig.) Ltd.* (2001) 5 NWLR (Pt. 706) 426 at 438; *Ibrahim v. Habu* (1993) 5 NWLR (Pt. 295) 570 at 577 and 578 and *Oge v. Ede* (1995) 3 NWLR (Pt. 385) 564 at 577 in support of his submissions.

Finally, learned counsel contends that the issues the appellants distilled for the determination of the appeal are hypothetical and academic. This court, it is argued, has no business considering such issues which will in no way resolve the dispute between the parties. In particular, learned respondent's counsel draws attention to appellant's 2nd 3rd and 5th issues and submits that same be discountenanced.

On being served with the respondents' brief, the appellant filed and served his reply to same which in part is a response to the arguments advanced in the former's brief in support of the objection as to the competence of the appeal. The reply brief was adopted and relied upon by the appellant at the hearing of the appeal.

It is argued in the reply brief that grounds 1, 4 and 8 of the notice of appeal cannot be said to be vague or at large. The grounds quoted passages from the lower court's judgment which passages occasioned miscarriage of justice. Except the respondents are saying the passages complained of are vague or at large, the grounds based on the two passages cannot seriously be said to be defective. The 8th ground, particularly learned counsel argues, complains on the lower court's wrong decision regarding the onus of proof the trial-court places on the appellant to establish that exhibits 6 and 19 were not authorized by the University's council. These grounds of appeal

which seek to exploit the erroneous decision of the lower court, errors held to be fatal in so many cases, learned appellant's counsel submits, cannot be said to be at large or vague. Counsel relies on the decisions in *Skenconsult (Nig.) Ltd. v. Ukey* (1981) 1 SC 6 and *Lam v. University of Ibadan* (1987) 4 NWLR (Pt. 64) 245 in support of his submission.

Concluding his brief response, learned appellant's counsel submits that the appeal is not hypothetical since the right of the appellant to be determined is as at the time of the original action and notwithstanding whether his retirement period has passed. The date of his retirement, after all, submits counsel, will have effect on what; the appellant is entitled to on his retirement. Learned counsel urges that the objection be overruled and the appeal be considered on its merit.

It is instructive to note that respondents' preliminary objection rests largely on Order 8 rule 2 (3) and (4) of the rules of this court the effect of non-compliance with which the court restated *inter-alia* in *Iliya Akwai Lagga v. Audu Yusuf Sarhuna* (2008) 6-7 SC (PL 11) 123; NSCQLR vol. 36 (2008) 82, (2008) 16 NWLR (Pt. 1114); 427. By these rules, vague grounds of appeal which respondents herein submit appellant's grounds 1, 4 and 8 are, this court has repeatedly held, grounds which are imprecise, inaccurate, large, verbose and of inexact meaning. The fact that Order 8 rule 2 (3) and (4) of the rules of this court requires grounds of appeal to be precise and accurate, the court has further held, does not entitle it to adjudge an appellant's slightest infraction in that regard as rendering the particular grounds incompetent. The rules of court, the court insists, only requires the appellant to give the respondent and indeed the court sufficient notice and information of the complaints the grounds convey. The rules, therefore, see *Aderounmu v. Olowu* (2000) 4 NWLR (Pt. 652) 253 and *Hambe v. Hueze* (2001) 4 NWLR (Pt. 703) 372, are primarily designed to ensure fairness to both sides in the appeal and never meant to facilitate reliance on them by the court to shut out an intending appellant. Once, therefore, a ground of appeal contains the reasons on the basis of which the appellant wants the appellate court to decide that the judgment appealed against is wrong, the ground cannot be discountenanced. Such a ground that has isolated and accentuated, for attack, the basis of the reasoning being challenged is competent. See *The Minister of Petroleum and Mineral Resources & Anor v. Expo Shipping Line (Nig.) Ltd.* NSCQLR volume 42 (2010) 1020, (2010) 12 NWLR (Pt. 1208)

261 and *The Military Administrator of Benue State and 7 Others v. O.P. Ulegede Esq. & Anor.* NSCQLR volume 8 (2001) 110, (2001) 17 NWLR (Pt.741) 194.

Learned respondent's counsel has urged the discountenance of the other grounds either because same are argumentative or that they do not challenge the judgment being appealed against. The particulars of grounds 3, 5 and 7, learned counsel asserts, are not related to the grounds.

Learned counsel must be reminded that grounds of appeal may stand on their own once they represent an appellant's complaint against the decision he is not satisfied with and in respect of which grouse he seeks the appellate court's intervention. Lack of or defective particulars in a ground of appeal would not necessarily render the ground itself incompetent. See *Prince (Dr) B.A. Onafowokan & 2 Others v. We ma Bank Pic & 2 Others* NSCQLR volume 46 (2011) 181 SC, (2011) 12 NWLR (Pt. 1260) 24 and *Best (Nigeria) Ltd. v. Blackwood Hodge (Nigeria) Ltd. & 2 Others* NSCQLR volume 45 (2011) 849, (2011)5 NWLR (Pt. 1239) 95.

Grounds 1, 4 and 8 of the grounds of the instant appeal are hereunder reproduced for ease of reference:

"1. The Court of Appeal erred when it held that:

"It is my considered view therefore that relief one granted by the lower court to wit - "That the disciplinary procedure adopted by the defendants herein against the plaintiff is declared null and void" is too general and consequently wider than what the respondents asked for in his relief (vii)". This has caused miscarriage of justice.

Particulars

- (i) The first step in the impeachment process under section 15(i) is that the council gives notice of the perceived misconduct to the affected staff. But this was not done.
- (ii) Exhibit 6 initiating the first step declares that it was taken by the Vice Chancellor.
- (iii) The trial court found that, the initial step, (foundation step) was not taken by the council.
- (iv) Issue of presumption can apply only if the letter initiating die step had stated that it was, authorized by council, which is not the case here.
- (v) Exhibit 19 was also at the instance of the Vice Chancellor.

4. The Court of Appeal erred when it stated that the relief granted in relief (ix) would have been covered by the relief granted by the lower court had it not been for the following concluding words “as the decision was statute barred”, and this has occasioned miscarriage of justice:

Particulars

- (i) If the action is bad within time, it cannot become good because it is statute barred.
 - (ii) The Court of Appeal restricted the complaint of the appellant to section 15(4) of the University of Ilorin Act.
 - (iii) The Court of Appeal ignored the argument of the plaintiff that if impeachment was intended then the proceedings is confined to 6 months stipulated under section 15 (4) but since it was not done within the time coupled with the fact that no notice was given of intention to impeach the procedure embarked upon by the defendant was not one contemplated under section 15(1) of the Act.
8. The Court of Appeal misdirected itself when it held that the *onus* of proof lies on the plaintiff that exhibits 6 and 19 are not authorized by the University Council.

Particulars

- (I) The application of presumption of regularity was misapplied by the Court of Appeal to exhibits 6 and 19.
- (II) Exhibits 6 and 19 expressly stated who wrote them and who directed them.
- (III) The exhibits 6 and 19 did not say that the University Council authorized them and therefore presumption of regularity cannot be imported into the issue.”

I remain unconvinced that the respondents have been left in any doubt as to appellants’ complaints in the foregoing grounds. The grounds speak for themselves.

Again, on the authorities, learned counsel for the respondents cannot be indulged given his arguments in respect of grounds 3, 5 and 7 which grounds are hereunder reproduced for ease of reference.

- “3. The Court of Appeal misconceived the provisions of section 15 of the University of Ilorin Act and this misconception has occasioned miscarriage of justice when the Court of Appeal held:

“In any case, under section 15 of the University of Ilorin Act, what is required of the appellants is to give the respondent notice of those reasons for which he is being removed from the office. The section is silent on giving notice of rules or regulations or law breached by the respondent.”

Particulars

- (i) The University of Ilorin Act as well as the conditions of Senior Staff of University of Ilorin creates appointment with statutory flavor.
 - (ii) A senior staff on pensionable appointment holds a secure appointment and can only lose his job if he commits an act of misconduct.
 - (iii) Conduct cannot be condemnable to the extent ‘ of getting the appointment terminated unless the conduct is against a regulated norms. This is the basic principle of rule of law.
 - (iv) The holding of the Court of Appeal is an admission that the appellant was not informed of the rules and regulations allegedly breached.
5. The Court of Appeal erred when it held:

“For the avoidance of doubt, I am not saying that the judgment of the lower court that the purported notice to the respondent - exhibit 6 is invalid, is right or wrong. What I am saying is that a declaration as to the validity of the notice purportedly conveyed in exhibits 6 and 19 is never part of the claim of the respondent. That being the case, the lower court has no business making the declaration”. The error has occasioned miscarriage of justice.

Particulars

- (i) A complaint about notice of impeachment is the first step in an action under section 15 of University of Ilorin Act.
- (ii) Section 15 requires the notice to be given by the University Council.

- (iii) A notice not given by the University Council is bad and invalid.
 - (iv) Exhibits 6 and 19 were given by the officers not authorized by the University Council.
 - (v) An invalid notice conveys nothing that have legal effect.
 - (vi) The Court of Appeal failed to say whether the trial court is right or wrong when the trial court held that the purported notice is invalid.
7. The Court of Appeal misconceived the cross-appeal before it by holding that the appellant has to take credit and blame for the good or the bad performance of the institute because the staff of the institute were under him. This has occasioned great miscarriage of justice.

Particulars

- (i) The appellant did take responsibility for the deficient performance of his subordinate staff, hence his apology at the Senate meeting.
- (ii) The appellant's contention is that the said, apology is being misused by the respondents' counsel to say that the appellant admitted wrong doing which the court of trial wrongly took as admission and regarded as blemish.
- (iii) The appellant was not personally involved in the misdeeds of his subordinates who deliberately flouted instruction of the appellant.
- (iv) The blemish being apportioned to the appellant is as to his personal conduct, not just 'that of collective responsibility.
- (v) The wrongful conclusion is a tarnish to the image of the appellant."

I hold also that my examination of grounds 2 and 10 does not reveal the lapses learned respondents' counsel say they manifest. He trust be reminded that the decision being appealed against instantly relates both to the appeal of the respondent and the appellant's cross appeal at the court below. Being parties to both, the appellant before us has the right to appeal against any aspect of the lower court's decision in respect of either the appeal or cross appeal the court determined. Learned counsel is wrong in his submission that since the appellant herein did not canvass the issue contained in his ground 10 in his cross appeal at the court below the issue is afresh

one and appellant's failure to seek leave before filing the ground renders it incompetent. Ground 10 certainly pertains to the lower court's decision in respect of the substantive appeal it found meritorious. This point in the preliminary objection raised by the respondents must accordingly fail. I so hold.

The final point learned respondents counsel contended by the preliminary objection is that by the reliefs the appellant seeks of this court, the appeal is hypothetical and academic. It ceases to be relevant. Appellant's quarrel with the judgment of the court below, it is argued, is with the court's finding that the trial court had granted him reliefs he did not ask for. From the record of this appeal, the appellant has since retired on attaining the retirement age. Learned respondents' counsel is right in his submission that events have overtaken the issues the appeal raises and no court wastes its precious time on causes the determination of which bear no consequence on the dispute between the parties. Acting in vain never forms part of this court's function and practice certainly does not facilitate that. Since the appellant herein has already retired with full benefits, he does not stand to gain further by the determination of his appeal.

The court will, therefore refuse to engage in the fruitless exercise of proceeding to determine the appeal. This explains my sustaining the respondents' preliminary objection and disallowing the appeal. See *Oyeneye v. Odugbesan* (1972) 4 SC 244; *Bakare v. A.C.B. Lt* (1986) 3 NWLR (Pt. 26) 47 and *Fawehinmi v. Alain* (1987) 12 S 136 at 213. (1987) 4 NWLR (Pt. 67) 797. Parties are to bear that respective costs.

MUNTAKA-COOMASSIE, J.S.C.: I was privileged to have read draft the beautiful judgment tendered by my learned brother Musa Dattijo, JSC. I entirely agree with the detailed reasons and conclusion set out in the lead judgment which I hereby adopted. I too feel that the appeal be struck out having sustained the preliminary objection. I agree with the order as to costs as contained in the lead judgment.

NGWUTA, J.S.C.: I read in draft the lead judgment just delivered by my Lord, Muhammad, JSC and I entirely agree with the reasoning and conclusion.

This is one appeal that should not have been filed before this-court. The appellant, having been retired with full benefits, has' nothing to gain from this appeal.

Based on the reason advanced in the lead judgment, I also strike out the appeal as an academic exercise.

ARIWOOLA, J.S.C.: I was privileged to have read in draft the lead judgment of my learned brother, Dattijo Muhammad, JSC just delivered. I am in agreement with the reasoning therein and the conclusion arrived thereat. Indeed, the appellant having left service with full benefits, his appeal has become hypothetical and mere academic. It therefore deserves being struck out. Accordingly, same is struck out by me.

I abide by the consequential order in the said lead judgment.

OGUNBIYI, J.S.C.: I read in draft the lead judgment just delivered by my learned brother, Dattijo Muhammad, JSC and I agree that the purported appeal should be struck out on the totality of the preliminary objection raised.

The 1st reason for the preliminary objection relates to grounds 4 and 8 of the grounds of appeal which the learned respondent's counsel argued are vague and unarguable and therefore contrary to Order 8 rule 2(3) and (4) of the Rules of this court.

The 2nd leg of preliminary objection however questions the propriety of the particulars in support of grounds 3, 5 and 7 which learned counsel submitted do not support the grounds and did not also relate to the allegations in the grounds of appeal.

The next preliminary objection further relate to grounds 2 and 10 of the grounds of appeal which counsel argued are challenges against the decision by the trial court and in respect of which the appellants do not therefore have a direct right of appeal to this court. Ground 6 was the last reason for the objection which learned counsel submitted as incompetent for being argumentative and like the first objection, it also contravenes Order 8 rule 2(3) of the Rules of this court.

By definition, the concept of preliminary objection is "an objection that, if upheld, would render further proceedings before a tribunal impossible or unnecessary." (Black's Law Dictionary, Ninth Edition page 1299).

The law is also trite and well settled that a proper ground of appeal should be framed to show clearly the alleged misunderstanding or wrong application of law by the lower court or tribunal to the findings of fact made by the court or tribunal or to the facts admitted during the proceedings in which case it will be an error in law and the ground of appeal will be a ground of law. See *Amuda v. Adelodun* (1994) 8 NWLR (Pt. 360) 23.

It is also settled that where the ground of appeal is defective or the particulars do not flow there from or related thereto such a ground or particular or particulars are liable to striking out. See *Honika Sawmill Nigeria Limited v. Mary Okejie Hoff* (1994) 2 NWLR (Pt. 326) 252 at 262.

Once the ground or one or more of its particulars liable to striking out the remaining particular or particulars as well as the ground itself are rendered otiose because it is not the duty of the court to extend hands of fellowship to one of the parties by assisting him to carry out a surgical operation of that party's ground of appeal by excising the defective part from it. See *Nwadike v. Ibekwe* (1987) 4 NWLR (Pt. 67) 718 at 747 per Nnaemeka-Agu, JSC.

Order 8 rule 2(3) and (4) of the rules of this court i.e. Supreme Court Rules, 1999, as amended on the competence and form of grounds of appeal are also very instructive and to the point as follows:

“2.(1) ...

(2) ...

(3) The notice of appeal shall set forth concisely and under distinct heads the grounds upon which the appellant-intends to rely at the hearing of the appeal without any arguments or narrative and shall be numbered consecutively.

(4) No ground which is vague or general in terms which discloses no reasonable ground of appeal shall be permitted, save the general ground that the judgment is against the weight of evidence, and any ground of appeal or any part thereof which is not permitted under this rule may be struck out by the court of its own motion or on application by the respondent.”

The law is further settled that formulation of issues for, determination in an appeal must be consistent and fall within the scope of the grounds of appeal filed. The issues cannot be formulated to be wider than the grounds of appeal from which it derives its existence. The grounds of appeal against a decision in other words, must relate to the decision and should be a

challenge to the validity of the ratio of the said decision. See *Egbe v. Alhaji* (1990J 1 NWR (Pt. 128) p. 546.

For an appeal to sustain at least one of the grounds of appeal must be competent.

On a community reading of the grounds of appeal and relating same to the authorities under reference supra, can it be rightly said that the grounds are inflicted by the vices which would render them as incompetent? I would not, with all respect agree with the contention held by the learned respondent's counsel. This is because all that the respondent needed to know was for the appellant's grounds of appeal to give a clear and specified understanding of the complaint sought to lodge. This the appellant has substantially done in accordance with Order 8 rule 2(3) of the rules of this court.

On the merit of the appeal, I align with the reasoning and conclusion arrived thereat by my learned brother's lead judgment that the nature being academic, it is hereby also disallowed by me.

Appeal struck out
Preliminary objection upheld