

DR. AJEWUMI BILI RAJI

V.

- 1. UNIVERSITY OF ILORIN**
- 2. THE GOVERNING COUNCIL, UNIVERSITY OF ILORIN**
- 3. STAFF AND APPEALS COMMITTEE, UNIVERSITY OF ILORIN**
- 4. PROFESSOR SHUAIB OBA ABDULKAREEM (VICE-CHANCELLOR, UNIVERSITY OF ILORIN)**
- 5. MR. MURTALA TUNDE BALOGUN (REGISTRAR AND SECRETARY GOVERNING COUNCIL, UNIVERSITY OF ILORIN)**

SUPREME COURT OF NIGERIA

SC.155/2007

OLABODE RHODES-VIVOUR, J.S.C. (*Presided*)

MARY UKAEGO PETER-ODILI J.S.C. (*Read the leading judgment*)

JOHN INYANG OKORO, J.S.C.

AMIRU SANUSI, J.S.C

SIDI DAUDA BAGE, J.S.C.

FRIDAY, 1ST JUNE 2018

ACTION - Court process - How signed.

APPEAL - Appellate court - Invalid notice of appeal - Effect on jurisdiction thereof.

APPEAL - Notice of appeal - Fundamental nature of - Effect on jurisdiction of Court of Appeal.

APPEAL - *Notice of appeal - Nature of - Who can sign.*

APPEAL - *Notice of appeal - Signing of - Defect therein - Deposition in affidavit - Whether capable of correcting.*

APPEAL - *Notice of appeal – Signing of – Need for full disclosure of person signing – Need to be signed by a legal practitioner.*

APPEAL - *Notice of appeal – Where unsigned - Effect on proceedings thereon.*

COURT- *Court process- How signed.*

EVIDENCE- *Affidavit –Notice of appeal – Signing of – Defect therein – Disposition in affidavit – Whether capable of correcting.*

JURISDICTION - *Appeal - Invalid notice of appeal – Effect on jurisdiction thereof.*

LEGAL PRACTITIONER – *Court process- How signed.*

LEGAL PRACTITIONER – *Notice of appeal – Signing of – Need for full disclosure of person signing – Need to be signed by a legal practitioner.*

PRACTICE AND PROCEDURE – *Appeal – Appellate court – Invalid notice of appeal – Effect on jurisdiction thereof.*

PRACTICE AND PROCEDURE – *Appeal – Invalid notice of appeal – Effect on jurisdiction thereof.*

PRACTICE AND PROCEDURE – *Appeal – Notice of appeal – Fundamental nature of – Effect on jurisdiction of court of Appeal.*

PRACTICE AND PROCEDURE – *Appeal – Notice of appeal – Nature of – Who can sign.*

PRACTICE AND PROCEDURE – *Appeal – Notice of appeal – Signing of – Need for full disclosure of person signing – Need to be signed by a legal practitioner.*

PRACTICE AND PROCEDURE – *Appeal – Notice of appeal – Where unsigned – Effect on proceedings thereon.*

PRACTICE AND PROCEDURE - *Court process – How signed.*

PRACTICE AND PROCEDURE – *Notice of appeal – signing of – Defect therein – Deposition in affidavit – Whether capable of correcting.*

Issue:

Whether or not a notice of appeal can be signed by proxy for and/or on behalf of a legal practitioner Known to law to commence an appeal at an appellate court.

Facts:

The appellant commenced an action against the respondents at the High Court of Kwara State wherein he challenged termination of his employment.

The appellant had proceeded to Germany to utilize the external award given to him by the Alexander Von Humboldt Research Fellowship tenable in the Federal Republic of Germany. All administrative permissions sought by the appellant were unsuccessful, hence his decision to go to Germany pending the approval of the Vice-Chancellor whom the appellant relied upon to grant him an executive order. On the appellant's failure to return to work as directed in the letter written to him by the University, his appointment was terminated.

Dissatisfied with the decision of the respondent, the appellant

commenced an action at the High Court. The High Court dismissed the claim of the appellant. The appellant appealed to the Court of Appeal, which upheld the decision of the trial court.

Also dissatisfied, the appellant appealed to the Supreme Court.

At the Supreme Court, the respondents filed with their brief, a preliminary' objection challenging the competence of the notice of appeal having not been signed by a legal practitioner known to law. The Supreme Court took the preliminary objection first before looking at the substance of the appeal.

Held (*Unanimously striking out the appeal*):

1. *On Who can sign a notice of appeal -*

A notice of appeal must be signed by an appellant or his legal representative, and where such a representative is a legal practitioner he must be qualified to practice in Nigeria. A notice of appeal not signed by a person recognized to practice law in Nigeria would be deemed incompetent. In this case, the identity of the person who signed the notice of appeal for and on behalf of the counsel to the appellant was not discernible from the notice of the appeal. [N.N.B. Plc v. Denclag Ltd (2005) 4 NWLR (Pt.916) 549: Registered Trustees of the Apostolic Church, Lagos Area v. Akindele (1967) SCNLR 205 referred to.] (P 228. paras. F-G]

2. *On Fundamental nature of notice of appeal and effect on jurisdiction of Court of Appeal -*

A notice of appeal is the foundation of an appeal. If it is not signed by the appellant or the legal practitioner representing him, such a document remains void and a court would not have jurisdiction to hear an appeal on such a document. An unsigned notice of appeal is worthless and void, a complete nullity. Without a valid notice of appeal, the foundation is lacking and the appeal is automatically rendered

incompetent and with it flying out of the window is the jurisdiction of the court. The situation is beyond what can be termed a technicality being a scenario that has effectively ousted the jurisdiction of the Supreme Court to enter into the determination of an [2018] appeal. In this case, the notice of appeal having been signed by an unknown person, was a nullity and could not activate the appellate jurisdiction of the court. [*Odofin v. Agu* (1992) 3 NWLR (Pt. 229) 350, *S.B.N. v. N.E.T.* (1986) 3 NWLR (Pt. 31) 667; *Atuyeye v. Ashamu* (1987) 1 NWLR (Pt.49) 267; *Nwaeze v. Eze* (1999) 3 NWLR (Pt.595) 410; *N.N.B. Plc v. Denclag Ltd.* (2005) 4 NWLR (Pt.916) 549. *Onward Enterprises Ltd v. Olam International Ltd.* (2010) AH FWLR (Pt. 531) 1503. *Okafor v. Nweke* (2007) 10 NWLR (Pt. 1043) 521; *Registered Trustees of the Apostolic Church. Lagos Area v. Akindele* (1967) SCNLR 205 referred to] (Pp. 234-215. paras. H-A; 235-236, paras. H-A- C-D: 237. para. A)

3. *On Need for full disclosure of identity of person signing a notice of appeal -*

A process as the notice of appeal must be signed by a legal practitioner known to law. Thus, the identity of the person who signed the notice of appeal must be disclosed to assist the court to confirm that the person who signed the document is a legal practitioner indeed. What is meant by this policy is not to await the clarification by affidavit as to the identity of the owner of the signature on the particular process. What the appellant in this case was asking the court was to authenticate an absurdity, where the Supreme Court would have to suspend action and ascertain first of all that the person who signed the starting point of an appeal, when it had not been signed by the appellant himself but a person who claimed to be a legal practitioner, is indeed a legal practitioner. Such a surveying duty is not for the court and nothing has happened yet to show that it is likely to be

commenced now. [*Okafor v. Nweke* (2007) 10 NWLR (Pt. 1043) 521 referred to.] (P. 235, paras. A-C;)

4. *On What a fundamental defect does to a notice of appeal -*

A notice of appeal is a very important document. It is the very-foundation of an appeal against any appealable decision. If, therefore, a notice of appeal is defective, then the Court of Appeal would lack legal competence to entertain the appeal. It will strike out the appeal. When a notice of appeal is defective, the conditions precedent not having been satisfied or complied with, the purported notice of appeal filed is an exercise in futility. The notice of appeal will have no existence *de jure*. It is not by itself and in itself "a due process" to commence or initiate a valid appeal the Court of Appeal could entertain. The notice of appeal is a nullity, and *a fortiori*, (here is never ever appeal lodged or filed *ab initio*. [*Olowokere v. African Newspapers (Nig.) Ltd.* (1993) 5 NWLR (Pt.295) 583 referred to.) (P. 235, paras. D-G)

5. *On Effect of an unsigned notice of appeal on proceedings of court -*

Where a notice of appeal is not signed, and the court proceeds to hear the appeal, it would be as if the hearing never took place. This is so since one cannot put something on nothing and expect it to stand. Once it cannot be said who signed a process it is incurable bad, and rules of court that seem to provide a rented) are of no use as a rule cannot overrule the law (i.e. the Legal Practitioners Act). (P. 236. paras. D-E)

6. *On How court processes- signed -*

All processes Sled in court are to be signed as follows:

- (a) Firstly, the signature of counsel, which may be any contraption.**

- (b) Secondly, the name of counsel clearly written.
- (c) Thirdly, who counsel represents.
- (d) Fourthly, name and address of legal firm.

[SLB Consortium Ltd. v. SSPC (2011) 9 NWLR (ft. 1252) 317 referred to.] P. 256. Para. F)

7. *On Nature of a notice of appeal -*

A notice of appeal is an originating process as far as an appeal is concerned. Such a process must be properly signed for it to be legally binding. Where notice of appeal is signed by a legal practitioner, it must be signed by such legal practitioner whose name can be found in the roll of legal practitioners, It cannot be signed "for" any legal practitioner or by an unidentified person. *Okafor v. Nweke* (2007) 10 NWLR (Pt. 1043) 521; *Okwuosa v. Gomwalk* (2017) 9 NWLR (ft. 1570) 251; *Emeka v. Chuka-Ikpeazu* (2017) 15 NWLR (Pt. 1589; 345 referred to.) (P.237, para. B-C,)

8. *On Whether deposition in an affidavit can correct unsigned notice -*

Deposing to an affidavit to explain irredeemable flaws in the signing of a notice of appeal is a worthless exercise, since a process must be seen to have been properly signed, just by looking at it and not by examining affidavit evidence. In the instant case, the notice of appeal was signed by "someone" on behalf of Dayo Akinlaja Esq. That "someone" deposed to an affidavit explaining the blunder. On looking at the notice of appeal it was impossible to say who signed it for Dayo Akinlaja Esq. On this fact alone the notice of appeal is a nullity . (P. 236 paras. G-H)

Nigerian Cases Referred to in the Judgment:

Atuyeye v. Ashamu (1987) 1 NWLR (Pt.49) 267

Emeka v. Chuba-Ikpeazu (2017) 15 NWLR (Pt. 1589) 345

N.B.N. v. N.E.T (1986) 3 NWLR (Pt. 31) 667

N.N.B. Plc v. Denclag Ltd. (2005) 4 NWLR (Pt. 916) 549
Nwaeze v.Eze (1999) 3 NWLR (Pt. 595) 410
Odofin v. Agu (1992) 3 NWLR (ft. 229) 350
Oduwole v. West (2010) 10 NWLR (Pt. 1203) 598
Okafor v. Nweke (2007) 10 NWLR (Pt 1043) 521
Okwuosa v. Gomwalk (2017) 9 NWLR (Pt. 5570)251
Olowokere v. African Newspapers (Nig.) Ltd. (1993) 5 NWLR
(Pt.295) 583
Onward Enterprises Ltd v. Olam international Ltd. (2010) All
FWLR (Pt. 531)1503
R.T.A.C., Lagos Area v. Akindele (1967) SCNLR 205
SLB Consortium Ltd. v. NNPC (2011) 9 NWLR (Pt. 1252) 317

Foreign Case Referred to in the Judgment:

UAC v. Macfoy (1962) AC 152

Nigerian Statutes Referred to in the Judgment:

Constitution of the Federal Republic of Nigeria. 1999 (as amended)
Evidence Act. 2011, S. 101
Legal Practitioners Act
University of Ilorin Act. S. 15(1)(b)(c)

Appeal:

This was an appeal against the decision of the Court of Appeal which affirmed the judgment of the High Court dismissing the appellant's claim. The Supreme Court, in a unanimous decision, struck out the appeal for being incompetent as the notice of appeal was not shown to have been signed by a legal practitioner.

History of the Case:

Supreme Court:

Names of justices that sat on the appeal: Olabode Rhodes-Vivour

– J.S.C. (Presided): Mary Ukaege Peter-Odili, J.S.C. (Read the leading Judgment), John Inyang Okoro, J.S.C.; Amiru Sanusi, J.S.C.; Sidi Dauda Bage, J.S.C. Appeal No. SC. 155/2007
Date of Judgment. Friday, 1st June 2018
Names of Counsel: Dayo Akinlaja (SAN) (with him, Benjamin Alabi, Esq. and Arit Okon. Esq.) - for the Appellant
Yakub Dauda, Esq. (with him. A. 3. Eleburuike, Esq., - for the Respondent

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: Aboyi John Ikongbeh. J.C.A. (presided): Tijjani Abdullahi, J.C.A.; Helen Moronkeji Ogunwumiju, J.C. A. (Read the heading Judgment)
Appeal No.: CA/IL/53/2008
Date of Judgment: Tuesday, 30th May 2006
Name of Counsel- Dayo Akinlaja with him, Temitope Adedele) - for the Appellant
K. K Eleja (with him Nnenna Uregbalam) - for the Respondent

High Court:

Same of the High Court: Federal High Court, Ilorin
Name of the Judge: Olayiwola, J.
Suit No.: FHC/IL/CS/34/2001
Date of Judgment: Friday, 18th March 2005
Names: of Counsel: Dayo Akinlaja, Esq. - for the Plaintiff
K. K. Eleja. Esq. - for the Defendant

Counsel:

Dayo Akinlaja (SAN) (with him, Benjamin Alabi, Esq. and Arit Okon Esq.) - for the Appellant
Yakub Dauda Esq. (with him, A.B Eleburuike, Esq.) - for the Respondent

PETER-ODILI, J.S.C. (Delivering the Leading Judgment): This appeal is against the decision of the Court of Appeal, doing at Ilorin, Coram: Aboyi John Ikongbeh Abdullahi and Helen Moronkeji, Ogunwumiju JJCA on 31st May, 2006.

In the said judgment the Court of Appeal or lower court or court below upheld the decision of the trial court and dismissed the appeal to the effect that the employment of the appellant was rightly terminated by the respondents.

Background Facts:

The appellant joined the service of the 1st respondent University on 7th January, 1961 and by the year 2000 he had become a Senior Lecturer in English in the department of Modern European Languages, Faculty of Arts of the University.

In February, 2000, the appellant was awarded the Alexander Von Humboldt Research Fellowship tenable in the Federal Republic of Germany. The appellant thereupon applied for leave to utilize the external award from the Administration of the University. His application in this regard was expressly supported by his Head of Department and the Dean of the faculty of Arts.

When, by 13th March, 2000, it dawned on the appellant that the Appointments and Promotions Committee of the University, which is the body invested with such power, would not be convened before March 29th 2000, the scheduled date for his departure for the award, the appellant forwarded an application directly to the Vice-Chancellor, the 4th respondent, for executive approval of his application for leave to utilize the scholarship award.

The appellant left for the federal republic of Germany on the 29th March, 2000 to utilize the award at which time the 4th respondent had not made any response to the application of the appellant, despite the urgency.

Immediately after the appellant had left the country, the 4th respondent ordered the bursary Department to stop the salary of the appellant. The appellant was eventually accused of absconding from

university. At the end of some disciplinary proceedings on this allegation, the appellant was directed by the 2nd respondent to return to the university on December 21, 2000. The letter conveying this directive was received by the appellant in Germany on December 19, 2000, id est, two days before the expiry of the ultimatum.

The employment of the appellant with the University was terminated on the promise of his failure to return to the university on the December 21, 2000 without the benefit of any hearing as to why he could not comply with the directive.

It was sequel to this that the appellant filed this action at the trial court, claiming the reliefs contained in the originating summons, which spans pages 1 and 2 of the record in this appeal. As indicated above, the learned trial judge dismissed the case of the appellant. The appellant appealed to the court below, which dismissed his appeal and further aggrieved has appealed to the Supreme Court.

On the 5th day of March, 2018, the learned counsel for the appellant, Dayo Akinlaja SAN adopted: the brief of argument filed on 25/6/2007 and a reply brief titled consequently Further amended reply brief filed on 12/8/13 and deemed filed on 22/1/14. In the appellant's brief of argument was crafted a sole issue for determination which is thus:-

Whether the lower court was not wrong in dismissing the appeal of the appellant herein having regard to the relevant provisions of the University of Ilorin Act and the constitutional provision on fair hearing.

Learning counsel for the respondent, Yakubu Dauda Esq. adopted the amended respondents' brief of argument settled by K. K. Ekeja and filed on 13/5/2011. They raised and argued a notice of preliminary objection was not upheld by the court, a single issue was identified for the determination of the appeal as follows:-

Whether the Court of Appeal was not right in dismissing the appellant's appeal having regard to the materials at her disposal and the provisions of 1999 Constitution and the University of Ilorin Act applicable to the case.

It is stating the obvious that the preliminary objection should be handled and determined first before the court can venture into the appeal as the court has to be sure it has the *vires* to go beyond that objection.

Notice of Preliminary Objection:

The respondents filed a notice of preliminary objection by which they challenged the competence of the appellant's appeal on the ground that the notice of appeal was not signed by a legal practitioner known to law i.e. the Legal Practitioners Act. For purposes of clarity the notice of preliminary objection is reproduced hereunder:

"TAKE NOTICE that at the hearing of this appeal the respondents shall by way of preliminary objection pray or move this honourable court to strike out this appeal for being incompetent on the following grounds: -

1. The notice of appeal filed by the appellant in this case and as appearing on the record is not signed by any person or legal practitioner known to law:
2. The appeal is fundamentally defective and grossly incompetent, and
3. This honourable court has no jurisdiction to entertain same."

Learned counsel for the respondents contended that the notice of appeal was not signed by a person recognized to practice law in Nigeria as competent to do so. That the defect is fundamental and invalidated the appeal thereby ousting the jurisdiction of this court. He cited *N.N.B. Plc v. Denclag Ltd.* (2005)4 NWLR (Pt. 9 16) 549; *Registered Trustee of the Apostolic Church Lagos Area v. Rahman Akindele* (1967) All NLR 110; (1967) SCNLR 205; *Onward Enterprises Ltd. v. Olam International Ltd* (2010) All FWLR (Pt. 531) 1505 at 15 13; *Odofin v. Agu* (1992) 3 NWLR (Pt. 229) 350 etc.

That in the circumstance this court lacks legal competence to entertain the appeal and the appeal should be struck out.

In response, learned counsel for the appellant contended that the appellant had filed an affidavit wherein he deposed that the notice of appeal was signed by a legal practitioner. Miss Temitope Odedele in her capacity as one of the counsel to the appellant-applicant herein on behalf of the counsel expressive named on the notice of appeal. That there was

nothing to prove that the notice of appeal was not signed by a qualified legal practitioner and so the objection based upon the assertion of the objector should be discountenanced. He cited Biodun v. Professor Tan David West (2010) All FWLR (Pt 532) 1643 at 1633; (2010) 10 NWLR (Pt. 1203) 598: section 101 of the Evidence Act. 2011 (as amended).

The case law on ground right now is that a notice of appeal must be signed by the appellant or his legal representative, and where such a representative is legal practitioner he must be qualified to practice in Nigeria. A notice of appeal not signed by a person recognised to practice law in Nigeria would be deemed incompetent. In this I seek solace in N.N.B. Plc v. Denclag Ltd (2005) 4 NWLR (Pt.916) 549: Registered Trustee of the Apostolic Church, Lagos Area v. Rahman Akindele (1967) All NLR 110; (1967) SCNLR 205.

The notice of appeal in issue here shall be recast hereunder, viz: -

"IN THE SUPREME COURT OF NIGERIA HOLDEN AT ABUJA

SUIT NO: FHC/IL/CS/34/2001

SC. NO: CA/IL/53/2005.

Between:

Dr. Ajewumi Bill Raji - *Appellant*

And

1. University of Ilorin
2. The Governing Council University, of Ilorin
3. Staff Disciplinary and Appeal Committee University of Ilorin
4. Professor Shuaib Oba Abdulraheem Vice-Chancellor University of Ilorin
5. Mr. Muritala Tunde Balogun (Registrar and Secretary Governing Council, University of Ilorin

Notice of Appeal

Take Notice that the plaintiff/appellant being dissatisfied with the judgment of the Court of Appeal, Ilorin Division, delivered on 31st May, 2006 more particularly stated in paragraph 2 hereof doth hereby appeal

with leave granted by the Court of Appeal on the 13th day of July, 2006 to the Supreme Court on the grounds set out in paragraph 3 hereof and will at the hearing of the appeal see the relief set out in paragraph 4.

AND the appellant further states that the name and addresses of the persons directly affected by the said appeal are those set out in paragraph 5.

2. Part of the decision of the lower court complained against:
Whole decision.

3. Grounds of appeal.

Ground One:

The lower court erred in law in dismissing the appeal of the appellant herein after having held that the only way to terminate the contract of service of an academic staff of which the appellant is with statutory flavour is to adhere strictly to the procedure laid down in the statute in the statute.

When:

- i. It is patent from the evidence on record that the respondents did not comply with the procedure prescribed under the University of Ilorin Act for termination of employment of staff.
- ii. Council did not give the statutory notice of misconduct to the appellant and the alleged notice of misconduct to the appellant is invalid in law.
- iii. Council did not afford him an opportunity of making representations in person on the matter to the council.
- iv. Failure of the council to give the requisite notice to the appellant denied the latter the opportunity of requesting for the investigation of the matter by a joint committee of the council and the Senate as provided by the statute.
- v. The default of the respondents in complying with the statutory procedures is tantamount to a denial of fair hearing to the appellant.

Ground Two:

The lower court misdirected itself on the facts of this case in holding thus: -

"Exhibit Bili 4 was written by the Registrar - as Chief Administrative officer and Secretary to Council. Exhibit Bili 6 and Bili 7 show clearly that the council delegated its powers to investigate the allegation of misconduct on the S.D.A.C" and in proceeding on the footing thereof, *inter alia*, to dismiss the appeal of the appellant herein.

WHEN:

- i. Exhibit Bili 4 was written by one T. A. Adeyemi for the Registrar.
- ii. It is not indicated on the letter (Exhibit Bili 4) that the Registrar wrote or had the letter written on his behalf as Secretary to Council.
- iii. The person holding the office of the Registrar is by virtue of that office Secretary to the Senate. Congregation and Convocation of the University as well under paragraph 6(2) of the 1st Schedule to the University of Ilorin Act.
- iv. There is nothing on exhibits Bili 6 and Bili 7 to conclusively show that the Council authorised the writing of the letters.
- v. The two Setters are of title or no worth in law being products of multi-layered sub-delegation.

Ground Three:

The lower court misdirected itself on the facts of this case in holding as follows:

"Thus, I am of the firm view that the initiation of disciplinary proceedings was done by the Registrar through whom the University acted. By Exhibit Bali 6 dated 7/4/2000 the Registrar's office wrote to the appellant its decision to refer the matter to the S.D.A.C. It only stands to reason, that where an allegation of misconduct has been made against an employee, the employer is entitled to set up a panel to investigate the allegation or in this case to refer the allegation to a committee established for such purpose",

thereby implicitly approving of the disciplinary proceedings of the respondents.

WHEN:

- i. It was the case of the respondents at the trial court that it was the Appointments and Promotion Committee of the 1st respondent that directed that the case of the appellant be referred to the Staff Disciplinary and Appeal Committee.
- ii. The University is not synonymous with the Council whose prerogative under the law it is to initiate disciplinary proceedings.
- iii. The initiation of disciplinary proceedings could not have been validly delegated to the registrar by either the University or the Council.
- iv. The panel allegedly set up in this case is unknown to the University of Ilorin Act and its setting up is not in consonance with the procedures laid down under the Act.

Ground Four:

The lower court misdirected itself on the facts of this case in holding as follows:-

“I am of the view that appellant’s counsel’s argument on this issue is completely misconceived. The appellant had made all representations to the S.D.A.C. who investigated the allegation against him. He had the opportunity to request for a joint committee of the Council and the senate to decide his matter. The whole disciplinary process starting with the issuing to him of exhibit Bili 4 the query commenced on 5th May 2000 and ended with Exhibit bili 10 dated 14th December 2000. He had a period of about 6 months to make the request which he failed and neglected to do.

He cannot now complain of lack of opportunity to do so.

Section 15(1)(b) and (c) of the Unilorin Act talk of the appellant’s right to make personal representation to the council and the right to make personal representation to the council and the right to make arrangement for a joint committee of the council and senate. I think the legal maxim *volenti non fit injuria* is applicable to restrain the appellant from complaining in the circumstances that he was not given adequate opportunity to present his case by virtue of section 15(1)(b) and (c).”

WHEN:

- i. Council did not give the statutory notice of misconduct to the appellant.
- ii. The appellant could only request the Council for a Joint Committee of the Council and Senate to decide his matter if he had been given notice by Council alleged misconduct.
- iii. The appellant was railroaded into appearing before the S.D.A.C. without any opportunity of requesting for the statutory joint committee to investigate his matter.
- iv. His Lordship had earlier in the judgment held that statutory provisions cannot be waived.
- v. The maxim of "*volenti non fit injuria*" is inapplicable in the circumstances of this case.

Ground Five:

The lower court misdirected itself on the facts of this case in holding thus:-

“A careful perusal of exhibit Bili 3 to my mind does not show any bias. The Report of the Committee exhibit Bill 3 showed clearly the attempts of the Committee to investigate his matter and their conclusions and recommendation to Senate. Where is the bias when the appellant failed to utilize three opportunities given to him by the Committee of the university to appear in person more so when the allegation of misconduct was his absence from his duty post which he had admitted in Exhibit Bili 5 and Bili 8. To my mind, I am of the view that the appellant was given every opportunity to be heard.”

WHEN:

- i. Exhibit Bili 3 is excerpts from S.D.A.C. report of September /October 2000 and the appellant was therein recommended for reprimand for gross misconduct.
- ii. By Exhibit Bili 7 dated 5th October, 2000, the appellant was invited to appear before the S.D.A.C. to face disciplinary proceedings on 14th November, 2000 in respect of an alleged misconduct for which he had been indicated in exhibit Bili 3.
- iii. Exhibit Bili 8 shows that the appellant had indicated that he only received one letter of invitation (Exhibit Bili 7) and the

- fact that the appellant did not receive two earlier letters is confirmed by exhibit Bili 3 in paragraph 3(v).
- iv. The appellant was to be heard on why disciplinary action should not be taken against him for leaving his post in the way and manner it did and not on whether or not he left his duty post.
 - v. Why the appellant admitted leaving the University to enjoy the award he won, he did not admit that he deserved penal sanction for so doing.
 - vi. There was evidence that the disciplinary Committee did not sit on the 14th November, 2000 that the appellant was invited to appear before the committee.
 - vii. The appellant was not informed of any other scheduled meeting to enable him decide whether or not he would want to appear to make oral representation.
 - viii. Exhibit Bili 8 was a direct response to exhibit Bili 7 which specifically directed the appellant to appear on 14th November, 2000.
 - ix. The appellant indicated that he would not be able to physically appear due to logistic reasons.

Ground Six:

The learned justice of the lower court erred in law in holding as follows:

"From the affidavit evidence it is clear that the appellant's appointment was deemed terminated by him on his failure to report back to his duty post, The University Council gave him an opportunity to retrace his steps which he did not avail himself of. There is absolutely no need for the University to issue a query on the appellant for his failure to obey a direct order of the Council to return to duty post he was plainly made to understand that the consequence of his failure to return to his duty would result in automatic termination of his appointment." WHEN:

- i. There is no dispute that the copy of exhibit Bill 10 sent to the appellant was received by him on December 19, 2000, *id est*, two days before the deadline of December 21, 2000 given to him to return to the country.
- ii. The respondents did not deny the claim of the appellant that

- it was practically impossible for him to meet up with the deadline given from the time of the receipt of the letter to come back to Nigeria from Germany.
- iii. The University Council in the circumstances, did not give the appellant a fair opportunity to avail himself of the directive to report back to his duty post within the period given.
 - iv. Failure to obey a direct order of the Council, alluded to by the lower court, would be a misconduct (for it to precipitate termination of employment) in respect of which the appellant should have been giving hearing as laid down by the enabling statute.
 - v. It is not open to the University Council under the University Act to deem the appointment of a staff terminated by such staff on ground of failure to obey Council's directive without giving opportunity for such staff to be heard in respect of the matter.
 - vi. Failure to given hearing to the appellant on his failure to return to his duty post within the period given negates the principle of *audi alteran partem* and is tantamount to a breach of the appellant's constitutional right to fair hearing.

Ground Seven:

The decision is against the weight of evidence.

*** Additional grounds may be fled upon the receipt of me record of proceedings.

4. *Relief Sought from the Court of Appeal*
An order of the court allowing the appeal and entering judgment for the appellant on his claims in the court of first instance.
5. Parties affected by the appeal and their addresses:
 1. Dr. Ajewumi Bili Raji C/o his counsel Dayo Akinlaja & Co., Suit 89, Stadium Shopping Complex Ibrahim Taiwo Road, Ilorin.
 2. University of Ilorin
 3. The Governing Council, University of Ilorin.
 4. Staff Disciplinary and Appeal Committee, University of Ilorin.
 5. Professor Shuaib Oba Abdulraheem (vice Chancellor,

University Of Ilorin)
6. Mr. Muritala Tunde balogun (Registrar And Secretary
Governing Council, University of Ilorin). – All of the
University of Ilorin

Dated this 14th day of July 2006

“Dayo Akinlaja, Esq.
Dayo Akinlaja & Co.
Appellant’s Counsel,
Suit 89, Stadium Shopping
complex, Ibrahim Taiwo Road Ilorin.”

A cursory look at the end part of the notice of appeal above showcased in full shows that the identity of the person who signed the said notice is not discernible in for Dayo Akinlaja purportedly signing. That is to say that the identity of the signatory or an indication that the person who signed it is an enrolled legal practitioner in Nigeria, the signature appended for Dayo Akinlaja being a scribble. This goes against what is now the laid down procedure for the appending of signatures of a legal practitioner on an originating process such as a notice of appeal. In this I cite the case of *Onward Enterprises Ltd v. Olam International Ltd (2010) All FWLR (Pt. 531) 1503 at 1503 per Muktar JCA thus:-*

“*The person* signing is required to write his name on long hand and in a legible and reachable manner in order to satisfy the requirement of signature, which mere scribbling fall short of. I am not saying that the signature must be readable, but the name of the signatory must be clearly stated on the notice of appeal which must be that of a legal practitioner.”

Learned counsel for the appellant in a curative attempt on this defect anchored on the affidavit deposed to by Miss Temitope Odedele, identifying herself as practitioner in the chambers of the firm representing the appellant and that she signed the said notice of appeal. Appellants seeks anchor on section 101 of the Evidence Act, 2011 (as amended). For clarity I shall quote the said Section 101 thus:-

In order to ascertain whether a signature...is that of the

person by whom it purports to have been written or made, any signature...admitted or proved to the satisfaction of the court to have been written or made by that person may be compared with tile one which is to be proved."

As posited by learned counsel for the respondent, the defect alluded to is fundamental and a notice of appeal is an originating process which is what activates the jurisdiction of this court and so since the appellant himself did not sign the document and appellant's counsel has put out himself to sign on behalf of his client, then it behoves on him in bounden duty to do so properly. This is because, without a valid notice of appeal, the foundation is lacking and the appeal is automatically rendered incompetent and with it living out of the window is the jurisdiction of the court. See *Odojin v. Agu* (1992) 3 NWLR (Pt. 229) 350; *N.B.N. v. N.E.T.* (1986) 3 NWLR (Pt. 31) 667; *Atuyeye v. Ashamu* (1987) 1 NWLR (Pt. 49) 267; *Nwaeze v. Eze* (1999) 3 NWLR (Pt. 595) 410 at 418; *N.N.B. Plc v. Denclag Ltd.* (2005)4 NWLR (Pt. 916) 549 at 574.

The position stated above is reiterated for emphasis by this court in the case of *Okafor v. Nweke* (2007) All FWLR (Pt. 368) 1016 at 1026-1027; (2007) 10 NWLR (Pt. 1043) 521 to the effect that a process as the notice of appeal must be signed by a legal practitioner known to law, thus the identity of the person who sign the notice of appeal must be disclosed to assist the court to confirm that the person who signed the document is a legal practitioner indeed. What is meant by this policy is not to await the clarification by affidavit as to the identity of the owner of the signature on the particular process. What the appellant is asking from the court is to authenticate the absurdity, where the supreme court ask to suspends action ascertain first of all that the person who signed the starting point of an appeal when it has not been signed by the appellant himself but a person who claimed to be a legal practitioner, that he is indeed a legal practitioner. Such a surveying duty is not for the court and nothing has happened yet to show that it is likely to be commenced now.

I cannot resist what Nsofor, JCA stated in *Olowokere v. African Newspapers (Nig) Ltd* (1993) 5 NWLR (Pt. 295) 583 at 599-601, paras.

H-B as it captures what a fundamental defect does to a notice of appeal. He stated as follows:

“The question firstly requiring to be asked to be firstly answered becomes this:- How is an appeal, *id est* a valid appeal initiated so as to be by “due process of law”. . . But there is no doubt that a notice of appeal is a very important document. It is the very foundation of an appeal. It is a condition precedent to effectively appeal against any appealable decision. If therefore a notice of appeal is defective, then the court of Appeal shall lack the legal competence to entertain the appeal. It will strike out the appeal..... The notice of appeal (see exhibit P1 at pages 57 and 58) was defective in one of the necessary to constitute it a valid notice of appeal. It became, *ipso facto*, defective in all the condition wholly and entirely. The conditions precedent not having been satisfied or complied with, the purported notice of appeal purportedly filed was, in my respectful opinion an exercise in futility the notice of appeal had no existence *de jure*. *It was not by itself and in itself* “A due process” to commence or initiate a valid appeal the Court of Appeal could entertain. What then was the legal consequence? It is clearly obvious. The notice of appeal was a nullity. And was an *a fortiori*, there never ever was appeal lodged or filed, *ab initio*. ”

It follows from what is on ground including the flimsy attempt by the appellant to sway the court to its side of reasoning as the reality is that the instant notice of appeal is incurably bad or fundamentally defective as it has produced a failure to properly initiate an appeal. The situation is beyond what can be termed a technicality being a scenario that has effectively ousted the jurisdiction of this court to enter into determination of the appeal. See *onward Enterprises Ltd v. Olam International Ltd (supra)* 1513-1514

In the end therefore this notice of appeal is invalid and I have no option than to uphold the preliminary objection. The appeal is consequently struck out.

I made no order as to focus

RHODES_VIVOUR, J.S.C: I have had the opportunity of reading in advance the leading judgment delivered by my learned brother, Peter- Odili JSC. I agree entirely with his reasoning and conclusions. This court has said in innumerable decisions how processes in court are to be signed and the serious flaw if for instances originating processes are not properly signed.

The preliminary objection filed by learned counsel for the respondents' Yakub Dauda Esq contends that the notice of appeal is incompetent since it was not signed by the appellant or the legal practitioner acting for him.

A notice of appeal is the foundation of an appeal. If it is not signed by the appellant or the legal practitioner representing him, such a document remains void and a court would not have jurisdiction to hear an appeal on such document. An unsigned notice of appeal is worthless and void. A complete nullity. See *okafor & 2 Ors (2007) 3 SC (Pt. II) p. 55; (2007) 10 NWLR (pt. 1043) 521; (1967) SCNLR 205; Registered Trustees of the Apostolic Church v. R. Akindele (1967) NMLR p.263*. Where a notice of appeal is not signed, and the court proceeds to hear the appeal, it would be as if the hearing never took place. This is so since one cannot put something on nothing and expect it to stand. See *UAC v. Macfoy (1962) AC 152*

In SLB Consortium Ltd. V. NNPC (2011) 4SC (Pt. i) p.86; (2011) 9 NWLR (Pt.1252) 317 at pg. 337-338, paras. G-A.

I said that:

“Once it cannot be said who signed a process it is incurably bad, and rules of court that seem to provide a remedy are of no use as rule cannot overrule the law (i.e the Legal Practitioners Act). All processes filed in court are to be signed as follows:

Firstly, the signature of counsel, which may be any contraption.

Secondly, the name of counsel clearly written.

Thirdly, who counsel represents.

Fourthly, name and address of Legal Firm. ”

The notice of appeal was signed by “someone” on behalf of Dayo Akinlaja Esq. that “someone” deposed to an affidavit explaining the blunder.

On looking at the notice of appeal it is impossible to sat who signed it for Dayo Akinlaja Esq.

On this fact alone the notice of appeal is a nullity. Depositing to an affidavit to explain irredeemable flaws in the signing of the notice of appeal is a worthless exercise since processes must be seen to have been properly signed, just by looking at it and not by examining affidavit evidence.

The preliminary objection at the instance of learned counsel for the respondent’ is upheld.

The appeal is struck out.

OKORO, J.S.C: My learned brother, Mary Ukaego Peter- Odili, JSC obliged me in advance a copy of the lead judgment just delivered. I agree entirety with the said judgment as it accords with the views and conclusion in the matter that the notice of appeal having been signed by an unknown person, is a nullity and cannot activate the appellate jurisdiction of this court.

It is trite that a notice of appeal is an originating process as far as an appeal is concerned. Such a process must be properly signed for it to be legally binding. Where notice of appeal is signed by a legal practitioner whose name can be found in the roll of legal practitioners. It cannot be signed “for” any legal practitioner or by an unidentified person. *See Okafor v. Nweke (2007) All FWLR (pt.*

368) 1016, (2007) 10 NWLR (pt. 1043) 521; *Okwuosa v. Gomwalk & Ors.* (2017) LPELR-41920 (SC); (2017) 15 NWLR (Pt. 1589) 345.

I agree that the notice of appeal upon which this appeal is predicted is invalid and is hereby struck out. The preliminary objection is accordingly upheld. I also make no order as to costs.

SANUSI, JSC: I had the advantage of reading in draft form before now, the judgment just delivered by my noble Lord Mary Peter- Odili, JSC. My learned brother had adequately treated all the issues canvassed by parties' learned counsel before she arrived at the conclusion that the preliminary objection was well taken.

A notice of appeal is the originating process of any appeal. In the instant case the notice of appeal which was meant by the appellant to institute the appeal was not signed at all on top of the name of the purported author of same one "DAYO AKINLAJA Esq." it was therefore unsigned or unauthenticated by anybody. I agree with the objector that the notice of appeal is defective and incompetent in law. The incompetence of the notice of appeal has therefore invalidated the appeal in its entirety. As a corollary this court lacks jurisdiction to entertain and determine the appeal for reason of non-existence of a valid and competent notice of appeal or because of a defective notice of appeal.

On the whole, I am at one with my Lord Mary Peter- Odili JSC that the preliminary objection has substance. It is therefore well taken and is accordingly allowed.

Appeal is struck out.

BAGE, JSC: I have had the benefit of reading in draft the lead judgment of my learned brother, Mary Ukaego Peter-Odili, JSC, just delivered. I agree entirely with the reasoning and conclusion

reached. The notice of appeal is defective, the preliminary objection is hereby sustained, and appeal is consequently struck out.

Appeal struck out