GITTO CONSTRUCZIONI GENERALI (NIG) LTD

V. ESSIEN

(2019) LPELR-47098(CA)

GITTO CONSTRUCZIONI GENERALI

NIGERIA LIMITED v. MRS. DORA

ESSIEN

(2019) LPELR-47098(CA)

In the Court of Appeal

(CALABAR JUDICIAL DIVISION)

On Thursday, the 17th day of January, 20 19

Suit No: CA/C/253/2014

Before Their Lordship

MOJEED ADEKUNLE OWOADE	**Justice of the Court of Appeal**
YARGATA BYENCHIT NIMPAR	**Justice of the Court of Appeal**
MUHAMMED LAWAL SHUAIBU	**Justice of the Court of Appeal**

Between

GITTO CONSTRUCZIONI GENERALI NIGERIA LTD	APPELANT(S)
And	
M RS. DORA ESSIEN	RESPONDENT(S)

SUMMARY OF JUDGMENT

INTRODUCTION:

This appeal borders on Civil Procedure.

FACTS:

This is an appeal against the decision of the High Court of Uyo, Akwa Ibom State.

The brief facts of the case are that the Respondent initiated a writ of summons wherein she sought the following:

i. Compensation/special damages of Five Million (N5m) only for all the Plaintiff's properties destroyed though the default of the Defendant.
ii. General damages of Ten Million (10m) for discomfort, nuisance and hardship caused the Plaintiff by the Defendant.
iii. Eight Hundred Thousand Naira (N800,000.00) as cost of this action.

The Appellant was served on the 2nd day of March, 2010 with the initiating processes and it proceeded to file a motion on the 7th day of June, 2010 challenging the jurisdiction of the trial Court, the motion was accompanied by a written address in support. Meanwhile, when the Appellant did not file a defence, the Respondent filed a motion for summary judgment in the absence of defence and that was before the challenge to jurisdiction was determined. On the 21st day of July, 2010 when the matter came up counsel to the Respondent was absent and on the application of counsel for the Appellant, the matter was struck out. From the date the matter was struck out the Appellant was not served with any hearing notice or process in the matter.

Without a motion seeking to relist the suit and without serving the Appellant with hearing notice the matter came up again on the 6th day of July, 2011, where Counsel for the Respondent applied that his motion for summary judgment be granted. However, the Court adjourned the suit for the motion challenging jurisdiction to 18th day of July, 2011 for ruling and deemed the written addresses filed as adopted. Ruling was delivered on the 18th day of July, 2011 dismissing the challenge to jurisdiction and the matter adjourned to the 25th day of May, 2010 for the motion for summary judgment.

On the 18th day of October, 2011 the Respondent moved the motion for summary judgment and it was adjourned to 17th day of November, 2011 for reply by the Appellant's counsel and by that date, the Appellant's counsel was absent, the matter was further adjourned to the 25th day of January, 2012 for judgment. On the said date, a counsel appeared for the Appellant and informed the Court that they filed a memorandum of conditional appearance along with a motion seeking to strike out the suit. The Respondent opposed the motion and asked for judgment.

The trial Court dismissed the motion and proceeded to deliver its judgment wherein it granted N5 million Naira compensation and N1million Naira as general damages to the Respondent with cost assessed at N50,000.00 in favour of the Respondent.

Dissatisfied, the Appellant appealed to the Court of Appeal.

ISSUES:

The Court determined the appeal on the issues formulated by the Appellant, as follows:

(i) Whether the Appellant's right to fair hearing was breached when the learned trial judge heard and determined a matter that was struck out without first notifying the Appellant through a hearing Notice or an order of Court that the matter had been relisted and was being heard.

(ii) Whether there was substantial irregularity resulting in a miscarriage of justice when learned trial Judge heard and determined the Respondent's motion for judgment without giving the Appellant the opportunity to Respond to the motion.

(iii) Whether from the facts and circumstances of the case the learned trial Judge was right in entering a judgment in default of pleadings for the Respondent without the Respondent calling any evidence in support of his claim.

DECISION/HELD:

In conclusion, the appeal succeeded and the proceedings from June, 2010 when the claim was struck out and leading up to the judgment of the trial Court were set aside.

RATIO DECIDENDI

PRACTICE AND PROCEDURE – ISSUE OF JURISDICTION - Importance of the issue of jurisdiction

"Jurisdiction is a threshold issue and that has been restated in a plethora of case, one of such is ***NURTW & ORS. VS. RTEAN & ORS. (2012) LPELR-7840 (SC)*** which held thus: "Jurisdiction is a threshold matter. Where a Court has no jurisdiction to hear a case and it proceeds to hear the case, whatever decision arrived at is a nullity. The issue of jurisdiction is so fundamental to any proceeding, and so it can be raised at any stage of the proceedings, on appeal, and even for the first time in the Supreme Court. See *USMAN DAN FODIO UNIVERSITY VS. KRAUS THOMPSON ORGANISATION LTD.* ***2001 15 NWLR PT.*** **736 P. 305."** It is because of the paramount importance therefore that an objection challenging the jurisdiction of a Court when raised at any stage, the Court before which it was raised must mandatorily look at it at the earliest stage or opportunity and determine whether it has jurisdiction or not. This is moreso because any proceeding conducted without jurisdiction, no matter how well or admirably conducted, is a nullity. See ***ELUABE VS. OMOKRI*** **(2004) 11—12 SC 60** and ***OSI VS. ACCORD PARTY & ORS. (2016) LPELR—41388 (SC)***." Per **YARGATA BYENCHIT NIMPAR, JCA** *(Pp. 8-9, para. C-C)*

READ IN CONTEXT

VIEW ANALYTICS

APPEAL - RECORD OF APPEAL - Whether a record of appeal is presumed to be correct and accurate unless an affidavit proves otherwise

"The ground of the challenge is fundamentally on the record of appeal which the Respondent contended was not proper before the Court and also incomplete. I have carefully viewed the record

of appeal before the Court and the record indicates that the record of appeal was deemed duly compiled and transmitted on the 28th day of September, 2015. The Court having decided the issue of irregular record by the deeming order, it cannot be revisited at this stage. To deem has been judicially pronounced upon in the case of **AKEREDOLU & ORS. VS. AKINREMI & ORS. (1986) LPELR- 329 (SC)** which held thus: WORDS AND PHRASES - "DEEMED" - Meaning of "deemed" "Generally speaking when you talk of a thing being "deemed" to be something, you do not mean to say that it is that which it is deemed to be. It is rather an admission that it is not what it is to be "deemed" to be, and that, notwithstanding, it is not that particular thing, nevertheless it is stiff "deemed" to be that thing. The word "deemed" is used a great deaf in modern legislation. There is no reason why it should not be used in the interpretation of statutes in circumstances like this to avoid unnecessary duplication, delay or even absurdity. Sometimes the word "deemed" is used to impose for the purposes of a statute, an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible." Per OPUTA, J.S.C. Furthermore, on the incomplete record, the Appellant hit the nail on the head when he submitted that record can only be challenged by way of affidavit evidence as held in the case of **ADEGBUYI VS. APC (2014) LPELR—24214 (SC)** which h end: "... the act of recording proceedings in Court is a judicial act which enjoys presumption of regularity under the law to use the language of Mallam Yusuf Ali, SAN for the 2nd Respondent. The Appellant who wants to impugn the integrity of the learned trial judge has a binding duty to prove the contrary. See SHITTA BEY VS. ATTORNEY GENERAL FEDERATION & ORS. **(1998) 10 NWLR (PT. 570) 392** at 426; SOMM ER VS. F.H.A. **(1986) 1 NWLR (PT. 219) 548**. It is incumbent on the Appellant to realize that the Court and the parties are bound by the record of appeal as certified and it is presumed correct unless the contrary is proved. A party who challenges the correctness of the record of proceedings must swear to an affidavit setting out the facts or part of the proceedings omitted or wrongly stated in the record. Such affidavit must be served on the judge or registrar of the Court concerned." Failure to file an affidavit challenging record defeats that aspect of the preliminary objection. With the record unchallenged and the record deemed as properly compiled and transmitted, the objection is not made out, it must be dismissed." Per **YARGATA BYENCHIT NIMPAR, JCA (Pp. 9-11, paras. C-F)**

READ IN CONTEXT

VIEW ANALYTICS

CONSTITUTIONAL LAW - BREACH OF RIGHT TO FAIR HEARING - Importance of fair hearing; effect of absence of fair hearing on Court proceedings

"The main grouse here is the alleged breach of fair hearing and the consequences of it. Fair hearing and its features have received judicial attention in a plethora of cases. Fair hearing, in essence, means giving equal opportunity to the parties to be heard in the litigation before the Court. It was defined in MOHAMMED VS. KANO N. A. **(1968) All NLR 411 at 413** (Reprint) Ademola C.J.N. considering the meaning of fair hearing said: "It has been suggested that a fair hearing does not mean a fair trial. We think that a fair hearing must involve a fair trial, and a fair trial of a case consists of the whole hearing. We therefore see no difference between the two. The true test of fair hearing, it was suggested by counsel, is the impression of a reasonable person who was present at the trial whether from his observation; justice has been done in the case." Also, the case of ARIORI & ORS. VS. ELEMO & ORS. **(1983) LPELR-552 (SC**) described it thus: "Fair hearing, therefore, must mean a trial conducted according to all the legal rules formulated to ensure that justice is done to the parties to the cause." The right to fair hearing is sacrosanct and cannot therefore be lightly disregarded or discarded by the Court. It is one of the pillars on which the concept of justice and fairness is built. It is what enjoins a Court or Tribunal to hear both sides. The right to fair hearing is encapsulated in the Latin Maxim: "Audi Alteram Partem". The principle is sacrosanct to any determination of the rights and obligations of the citizens in the Courts or before administrative Tribunals. The right to fair hearing is constitutionally guaranteed under Section 36(1) of the Constitution of Nigeria 1999 (as amended). Thus, whenever there is breach, there are consequences. A breach of the right to fair hearing renders the proceedings in which it was committed, as well as all subsequent and any resultant decision therein a nullity, notwithstanding how meticulous the proceeding would have been or how sound the resultant decision would have been on the merit. They are all a nullity. See *EKPENETU VS. OFEGOBI* (**2012) 15 NWLR (PT. 1323) 2T6;** *AMADI VS. INEC* **(2013) 4 NWLR (PT. 1345) 595;** *OVUNWO & ANOR. VS. WOKO & ORS* **(2011) 17 NWLR (PT. 12T7) 522;** *PAN AFRICAN INCORPORATION & ORS. VS.*

SHORELINE LIFE BOAT LTD. & A NOR. **(2010) ALL FWLR (PT. 524) 56;** *ACTION CONGRESS OF NIGERIA VS. SULE LAMIDO & ORS* **(2012) 8 NWLR (PT. 1303) 560 @ P. 593;** *JUDICIAL SERVICE COMMISSION F CROSS RIVER STATE & ANOR. VS. DR. (M RS.) ASARI YOUNG* **(2013) 11 NWLR (PT. 1364) 1.** However, it is the law that an allegation of denial of the right to fair hearing, as grave as it could be and the dire consequences it could have on the proceedings and judgment of a Court if proved, is dependent on the

facts and circumstances of each given case. In other words, whether the right to fair hearing was breached or not is a question of facts to be determined squarely on the facts and circumstances placed before the Court. This is so because fair hearing is primarily a matter of fact. It is only when the facts are ascertained that the law would be applied to the facts so established to see whether or not such established facts constituted a breach of the party's right to fair h earing. See NEWSWATCH COMMUNICATIONS LIMITED VS. ALHAJI IBRAHIM ATTA (2006) **12 NWLR (PT. 993) 144.** The right to fair hearing of any citizen in the determination of their civil rights and obligations by Courts and Tribunals and even quasi-judicial bodies is to ensure that decisions are not reached without hearing a party and that is fundamental. See *CEEKAY TRADERS LTD. VS. GENERAL MOTORS LTD.* **(1993) 2 NWLR (PT. 222) 132.** See also *MACFOY VS. UAC LTD*. (Supra). I find a clear case of breach of the right to fair hearing here. See *TUNBI VS. OPAWOLE* **(2000) 2 NWLR (PT. 644)** 275 @ P. 288 and also OGUNYADE VS. OSH UNKEYE **(2007) 15 NWLR (PT. 105T) 218;** GTB PLC. VS. SOLOMON (2016) LPELR-40342 (CA). In law, the principles of fair hearing are not only fundamental to adjudication but are also constitutional requirements which cannot be legally wished away. See AGBAPUONWU VS. AGBAPUONWU **(1991) 1 NWLR (PT. 165) 33 @ P. 40.** See also AG BOGU VS. ADICHE (SUPRA) @ P. 531; J.O.E. CO. LTD VS. SKYE BANK PLC **(2009) 6 NWLR (PT. 1138)** @ P. 518; ROBERT C. OKAFOR & 0 RS. VS. AG AN D CO MM IS SION ER FO R JUSTICE A NAM BRA STATE (1991) **6 NWLR (PT. 200) 659.** There can be no doubt that fair hearing is in most cases synonymous with fair trial and natural justice and once a denial of fair hearing as guaranteed under Section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 as amended is established, the whole proceedings automatically becomes vitiated. A denial of fair hearing can arise from the conduct of the Court or Tribunal in the hearing of a case. The true test of fair hearing therefore is the impression of a reasonable person who was present at the trial

whether from the observation justice has been done in the case. See OTAPO VS. SUN MON U (**1987) 2 NWLR (PT.58) 58T;** WI LSON VS. AG OF BENDEL STATE **(1985) 1 NWLR (PT. 4) 572.** See also A. U. A MAD I VS. THOMAS APLIN & CO. LTD. (19T2) ALL NLR 413; MOHAMMED OLADAPO OJ ENGBEDE VS. M.O. ESAN & ANOR**. (2001) 18 NWLR (PT. 746) 771.** The right to fair hearing is not a cosmetic right but a fundamental one. The facts in contention here are straight forward and the answer cannot be difficult to find. The point made clearly by the Appellant is that after the suit was struck out on his application, how then did it get back to the cause list? There is no record of any application to relist it, so none was served on the Appellant. Subsequent upon relisting no hearing notice was served on the Appellant and the trial Court just continued as if it was an automated machine. There is a fundamental breach of fair hearing and indeed a travesty of justice. A Court of law should not function in that manner. The resultant effect of it is that the entire proceedings must be vitiated because they are null and void for breaching Appellants right to fair hearing." Per **YARGATA BYENCHIT NIMPAR, JCA (Pp. 16—22, paras. F-A)**

READ IN CONTEXT

VIEW ANALYTICS

PRACTICE AND PROCEDURE - APPLICATION FOR RELISTING - Whether an application for relisting must be on notice: duty or Court to ensure service of same

"The Respondent's arguments are pedestrian; he could not show from the record wherein his application to relist can be found nor the hearing notice served on the Appellant. The submission that once there is an initial proof of service on a party there is no need to serve again is not the position of the law. The suit was struck out and any step to revive it must be a formal process and on Notice. The trial judge has a duty to ensure parties are duly served and record same before taking any step in a matter, this is to underscore the importance of fair hearing in any adjudication, see ESSIEN VS. EDET **(2004) 5 NWLR (PT. 867) 445** and NPA VS. EYAM BA Per **YARGATA BYENCHIT NIMPAR, JCA (Pp. 22-2T, paras. A-C)**

READ IN CONTEXT

VIEW ANALYTICS

DAMAGEs - AWARD OF DAMAGES - Whether the award of damages made by a trial court should be based on evidence

"The Appellant under issue three argued that the trial Court could not have granted the reliefs sought without hearing the Claimant. The claim was reproduced earlier in this judgment. The judgment was entered in default of a defence, and there was an award in general and special damages. The apex Court in the case of MAJA VS. SAMOURIS **(2002) LPELR-1824 (SC)** held: "It cannot be over- emphasized that a Court is not entitled to enter summary or default judgment on a claim based on a relief for payment of unliquidated pecuniary damages without taking evidence for the assessment of the amount of damages that may be proved as such, a claim must be established by credible evidence. This is because it is not enough for the Court to simply award damages in an unliquidated pecuniary damage claim without giving any reason as to how it arrived at what in its opinion amounted to reasonable damages. See UMUNNA VS. OKWURAIWE (1976) 6-7 SC 1; VICTOR OLUROTI MI VS. FELICIA IGE **(1993) 8 NWLR (Part 311) 257** at 268 etc."

On the need to call evidence, the apex Court again Reemphasized it in the case of IWUEKE VS. IMO BROADCASTING CORPORATION (2005) LPELR—1567 (SC) thus: "... there is the specific principle of law that in a claim for unliquidated damages as in this case the plaintiff must lead evidence as to the damages and the quantum suffered by him. See ODUM E VS. N NACH I (1964) 1 AII N LR 329; OKE VS. AIYEDUN **(1986) 2 NWLR (Pt. 23) 54B.** In OKE VS. AIYEDUN (supra) at 565 the position of the law on the issue is stated by this Court as follows:— 'It is a principle of pleading that that which is not denied is deemed to have been admitted and if a plaintiff filed a statement of claim and the defendant failed or refused to file a statement of defence in answer thereto he, clearly, will be deemed to have admitted the statement of claim, leaving the trial Court with the authority to peremptorily enter judgment for the plaintiff without hearing evidence. An exception to that would obviously be in respect of a claim for damages, for damages are always said to be in issue requiring the plaintiff to prove them." Per ONNOGH EN,

J.S.C (as he then was). The position of the Supreme Court is supported by the Akwa lbom High Court (Civil Procedure) Rules which makes it mandatory for the Court to hear evidence before it can award damages and the trial Court did not apply the said rule before awarding damages in the judgment appealed against. The trial judge jettisoned legal principles and the rules by which he adjudicates, there is therefore no basis for the judgment to stand." Per **YARGATA BYENCHIT NIMPAR, JCA (Pp. 27-29, paras. D- E)**

READ IN CONTEXT

VIEW ANALYTICS

CONSTITUTIONAL LAW - BREACH OF RIGHT TO FAIR HEARING - Effect of proceedings conducted in breach of right to fair hearing

"The rule of fair hearing is not a technical doctrine. It is one of substance. Thus, the question is not whether injustice has been done because of lack of fair hearing. It is whether a party entitled to be heard before deciding had in fact been given opportunity of a hearing. See KOTOYE V C.B.N. **(2018) NWLR (pt 98) 419** OYEYEMI V OWOEYE **(2017) 12 NWLR (pt 1580) 364** and WAGBATSOMA V F. R. N. **(1978) 8 NWLR (pt 1621) 199**. It is glaringly clear that the appellant in the instant case was not on notice when the suit was relisted. I therefore agree with my learned brother, Nimpar, JCA that the process of relisting the suit was flawed and where any judgment is obtained against the principle of fair hearing, no matter how well conducted, written and delivered with eloquence, is a nullity." Per **MUHAMMED LAWAL SHUAIBU, JCA** (Pp. 30-31, paras. E-C)

READ IN CONTEXT

VIEW ANALYTICS

(Delivering the Leading Judgment): This is an appeal against the judgment of the High Court of Akwa Ibom sitting at Uyo and delivered on the 25th day of January of 2012 by Hon. Justice

Andrew E. Okon wherein summary judgment was entered for the Respondent. Dissatisfied with the said decision the Appellant filed a Notice of appeal dated 23rd day of March, 2012 setting out 4 grounds of appeal. Brief facts leading to this appeal are that the Respondent (substituted the original Respondent by order of Court granted on the 7th November, 2018) initiated a writ of summons wherein she sought the following:

i. Compensation/special damages of Five Million (N5m) only for all the Plaintiffs properties destroyed though the default of the Defendant.

ii. General damages of Ten Million (10m) for discomfort, nuisance and hardship caused the Plaintiff by the Defendant.

iii. Eight Hundred Thousand Naira (N8OO, OOO.OO) as cost of this action.

The Appellant was served on the 2nd day of March, 2010 with the initiating processes and it proceeded to file a motion on the 7th day of June, 2010 challenging the jurisdiction of the trial Court, the motion was accompanied by a written address in support. Meanwhile, when the Appellant did not file a defence, the Respondent filed a motion for summary judgment in the absence of defence and that was before the challenge to jurisdiction was determined. On the 21st day of July, 2010 when the matter came up counsel to the Respondent was absent and on the application of counsel for the Appellant, the matter was struck out. From the date the matter was struck out the Appellant was not served with any hearing notice or process in the matter.

Without a motion seeking to relist the suit and without serving the Appellant with hearing notice the matter came up again on the 6th day of July, 2011, where Counsel for the Respondent applied that his motion for summary judgment be granted. However, the Court adjourned the suit for the motion challenging jurisdiction to 18th day of July, 2011 for ruling and deemed the written addresses filed as adopted. Ruling was delivered on the 18th day of July, 2011 dismissing the challenge to jurisdiction and the matter adjourned to the 25th day of May, 2010 for the motion for summary judgment.

On the 18th day of October, 2011 the Respondent moved the motion for summary judgment and it was adjourned to 17th day of November, 2011 for reply by the Appellants counsel and by that

date, the Appellants counsel was absent, the matter was further adjourned to the 25th day of January, 2012 for judgment. On the said date, a counsel appeared for the Appellant and informed the Court that they filed a memorandum of conditional appearance along with a motion seeking to strike out the suit. The Respondent opposed the motion and asked for judgment. The trial Court dismissed the motion and proceeded to deliver its judgment wherein it granted N5million Naira compensation and N1million Naira as general damages to the Respondent with cost assessed at N50,000.00 in favour of the Respondent. Dissatisfied, the Appellant filed a notice of appeal.

The Appellants brief dated the 8th day of November, 2015 and filed on the 12th day of November, 2015 was settled by lain K. Agabi Esq., it distilled 3 (three) issues for determination as follows:

i. Whether the Appellants right to fair hearing was breached when the learned trial judge heard and determined a matter that was struck out without first notifying the Appellant through a hearing Notice or an order of Court that the matter had been relisted and was being heard.
ii. Whether there was substantial irregularity resulting in a miscarriage of justice when learned trial Judge heard and determined the Respondents motion for judgment without giving the Appellant the opportunity to Respondent to the motion.
iii. Whether from the facts and circumstances of the case the learned trial Judge was right in entering a judgment in default of pleadings for the Respondent without the Respondent calling any evidence in support of his claim.

The Respondent in response filed her Respondents Brief dated 19th day of October, 2018 on the same day and it was deemed on the 7th day of November, 2018. It is settled by Nsikak Ikpeme Esq., and the Respondent adopted issues distilled by the

Appellant but incorporated a preliminary objection in the Respondents brief.

The Appellant responded to the Preliminary objection in its Reply Brief dated 6th day of November 2018 and filed on the same day.

As required by the rules of Court, the preliminary objection shall be treated before any step if necessary.

The preliminary objection challenged the jurisdiction of the Court on the ground that conditions precedent to the appeal were not fulfilled, he stated that **Order 8 Rule of the Court of Appeal Rules 2016** which requires that the record of appeal be compiled and transmitted by the Registrar within 60 days of the filing of the Notice of Appeal and upon the failure of the Registrar to do so, the Appellant shall do so within 30 days. He contended that the Appellant failed to do so because the appeal was entered on 25th day of June 2015 long after the Notice of Appeal was filed and that the Court has no power to grant any extension of time to bring in a record compiled outside the stipulated time. He submitted that Rules of Court are meant to be obeyed and the use of the word mandatory makes it an obligation, relying on ***CCCTCS LTD. VS. EKPO*** **(2OO8) LPELR - 825 SC** which held that a Court cannot ignore mandatory provisions of a statute.

Furthermore, the Respondent submitted that the Appellants brief was also filed fate and relied on ***GOLDMARK NIGERIA LIMITED VS IBAFON COMPANY LTD.*** **(2012) LPELR 9349 SC** to support his arguments that when a statute prescribes the mode of doing anything, it is that mode and none else that must be followed.

That on the basis of the above the appeal will collapse because you cannot put anything on nothing as held in **MACFOY VS. MAC (1961) WLR 1405**. The Respondent submitted that the record of appeal was incomplete because page 57 shows that there was a proceeding on the 9th day of May, 2011 without details but only Relisted was recorded, he relied on **DAN OSUNG VS. STATE (2012) NSCQR 36** which held that failure to avail this Court of details of what transpired on that date will leave the Court at a toss as to what transpired on that date. He urged the Court to uphold the preliminary Objection and strike out the appeal.

The Appellant in response raised the following issues for determination thus:

a. Whether this Honourable Court can sit on appeal over its decision?
b. Whether the Respondent can be allowed to benefit from her indolence?
c. Whether the Respondent has shown that she has suffered any miscarriage of justice?

The Appellant argued the issues together.

He submitted that by order of the Court the Record of appeal was deemed on the 28th day of September, 2015 and the objection is asking the Court to sit on appeal on its decision where in the

record was deemed as properly compiled and transmitted. He asked if the Court can now say the record was not complete on the mere word of mouth of the Respondent. He submitted that the condition when a Court can set aside its decision are not established here. He argued further that the motion to deem the record was duly served on the Respondent before it was deemed and he cannot benefit from his indolence. Furthermore, that assuming the record was not complete, he asked what miscarriage of justice did the Respondent suffer? That when a proceeding is irregular it can be set aside only when the aggrieved party shows how he was affected.

Appellant argued further that the Respondent is merely trying to justify the fact that his motion to relist was taken without service on the Appellant and the record of appeal brings the absurdity out. He relied on ***ADMINISTRATOR GENERAL CROSS RIVER STATB VS. CHUKWUOGOR (*2007) 6 NWLR (PT. 1030) 398** and ***SOMMBER VS. FHA*** **(1992) 1 NWLR (PT. 719) 548** to submit that the proper procedure to challenge record of appeal is by affidavit evidence and failure to so challenge the record, the Court is bound by the record because it is presumed correct. Furthermore, he argued that failure to prove that the record is incomplete, the Respondents preliminary objection is untenable, he urged the Court to dismiss the objection.

RESOLUTION OF PRELIMINARY OBJECTION

Jurisdiction is a threshold issue and that has been restated in a plethora of case, one of such **NURTW & ORS. VS. RTEAN & ORS. (2012) LPELR-7840 (SC)** which held thus:" Jurisdiction is a threshold matter. Where a Court has no jurisdiction to hear a case and it proceeds to hear the case, whatever decision arrived at is a nullity. The issue of jurisdiction is so fundamental to any proceeding, and so it can be raised at any stage of the proceedings, on appeal, and even for the first time in the Supreme Court. See ***USMAN DAN FODlO UNIVERSITY VS. KRAUS THOMPSON ORGANISATION LTD***. **2001 15 NWLR PT. 736 P. 305.**

It is because of the paramount importance therefore that an objection challenging the jurisdiction of a Court when raised at any stage, the Court before which it was raised must mandatorily look at it at the earliest stage or opportunity and determine whether it has jurisdiction or not. This is moreso because any proceeding conducted without jurisdiction, no matter how welt or admirably

conducted, is a nullity. See **ELUABE VS. OMOKRI (2004) 11-12 SC 60** and **OSI VS. ACCORD PARTY ORs. (2016) LPELR-41388(SC).**

The ground of the challenge is fundamentally on the record of appeal which the Respondent contended was not proper before the Court and also incomplete. I have carefully viewed the record of appeal before the Court and the record indicates that the record of appeal was deemed duty compiled and transmitted on the 28th day of September, 2015. The Court having decided the issue of irregular record by the deeming order, it cannot be revisited at this stage. To deem has been judicially pronounced upon in the case of **AKEREDOLU & ORS. VS. AKINREMI & ORS. (1986) LPELR-329 (SC)** which held thus:

WORDS AND PHRASES - "DEEMED"- Meaning of "deemed" "Generally speaking when you talk of a thing being "deemed" to be something, you do not mean to say that it is that which it is deemed to be. It is rather an admission that it is not what it is to be "deemed" to be, and that, notwithstanding, it is not that particular thing, nevertheless it is still "deemed" to be that thing. The word "deemed" is used a great deal in modern legislation. There is no reason why it should not be used in the interpretation of statutes in circumstances like this to avoid unnecessary duplication, delay or even absurdity. Sometimes the word "deemed" is used to impose for the purposes of a statute, an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible." Per **OPUTA, J.S.C.**

Furthermore, on the incomplete record, the Appellant hit the nail on the head when he submitted that record can only be challenged by way of affidavit evidence as held in the case of **ADEGBUYI VS. APC (2014) LPELR-24214 (SC)** which held:

"... the act of recording proceedings in Court is a judicial act which enjoys presumption of regularity under the law to use the language of Mallam Yusuf Ali, SAN for the 2nd Respondent. The Appellant who wants to impugn the integrity of the learned trial judge has a binding duty to prove the contrary. See **SHITTA BEY VS. ATTORNEY GENERAL FEDERATION & ORS. (1998) 10 NWLR (PT. 570) 392 at: 426, SOMMER VS. F.H, A. (1992) 1 NWLR (PT. 219) 548.** It is incumbent on the Appellant to realize that the Court and the parties are bound by the

record of appeal as certified and it is presumed correct unless the contrary is proved. A party who challenges the correctness of the record of proceedings must swear to an affidavit setting out the facts or part of the proceedings omitted or wrongly stated in the record. Such affidavit must be served on the judge or registrar of the Court concerned."

Failure to file an affidavit challenging record defeats that aspect of the preliminary objection. With the record unchallenged and the record deemed as property compiled and transmitted, the objection is not made out, it must be dismissed. The appeal shall be determined.

The Court shall determine the appeal on the issues distilled by the Appellant. They shall be considered seamlessly.

The Appellant argued issues one and two together, he submitted that the right of the Appellant to fair hearing was breached and it has occasioned a miscarriage of justice and a breach of their Constitution at right. Fair hearing, he contended is a principle of fair trial and they must be heard and be given an opportunity to state their side of the story, relied on **FBN PLC VS. OBANDE (1998) 2 NWLR (PT. 538) 410.**

He submitted that the suit was struck out on 21st day of June, 2010 on the oral application of counsel to the Appellant and there is nowhere on the record when the suit was relisted, no application for relisting in the record, no order relisting the matter and the only evidence that the matter was relisted is found in page 57 of the record where it merely stated Relisted 9th May, 2011 without record of how it was relisted. Was it done Suo mote by the Court or by a mere letter to Court? He contended that there is no record that the Appellant was notified before the matter was relisted and that is a clear breach and an infraction of the principles of fair hearing and breach of the rules of the trial Court particularly **Order 30 Rules 1 - 4 of the 2009 Rules**. He argued that the absence of the application and service of same is a breach, relied on ***RECTOR KANO STATE POLYTHECNIC VS. DANAGUNDI*** **(2002) FWLR (PT. 127} 1058** which held that such application must be served personally on the party and not on counsel. He further argued that such an application cannot be made ex-parte but must be on notice and the service of a hearing Notice to notify the party of the date fixed for hearing. He submitted that the service of the application is an imperative because the matter was relisted after one year from when it was struck out and that the rules requires that the application should be made within 6 days as stipulated by **Order 30**

Rule 4(3) and there is no evidence that time was extended for the Respondent to make the application outside the 6 days window.

Furthermore, counsel for the Appellant submitted that Appellants motion challenging jurisdiction was moved by the Court suo motu and adopted the written address in the absence of the Appellant and dismissed the challenge to jurisdiction all without evidence that hearing Notice was served on the Appellant and the trial Court went further to hear the suit without ensuring that the Defendant was served with a hearing Notice. He argued that the only option opened was for the Court to strike out the motion challenging jurisdiction, but not for the trial Court to go on to adopt same when no provision of the Rules allowed the trial Court to do so. That it is a fundamental error for the trial judge to refuse to order that hearing Notice be served on the Appellant. He relied on **JOHN ANDY SONS & O. LTD. Vs. MFOM (2006) 12 NWLR (PT. 995) 461** on the purpose of serving a hearing Notice. He continued to submit that failure to serve hearing Notice vitiates the proceedings as held in **OMABUWA VS. OWHOFATSHO (2006) 5 NWLR (PT. 970) 40 CA.**

Continuing the Appellant relied on **SKIN CONSULT NlG. LTD. VS. UKEY (1981) 1 SC 6** on service of hearing notice and referred to pages 56-72 of the record of appeal.

Furthermore, he cited **ESSIEN VS EDET (2004) 5 NWLR (PT. 867)** to say service of a hearing notice is a precondition to jurisdiction and in the absence of jurisdiction, the proceedings should be nullified.

On issue three, Appellant argued that before a default judgment in a monetary claim can be made, it was necessary to prove such damages. That the application for default judgment must still involve the claimant proving the claim particularly where general and special damages are alleged or arise from negligent acts. He relied on **U.P.S. LTD. VS. UFOT (2006) 2 NWLR (PT. 963) 1** on whether the Court should enter summary judgment for unliquidated damages. And that **order 27 Rule 4 of the Akwa lbom High Court Rules 1987** requires the Court to hear evidence and generally a Court should not award unliquidated damages without taking evidence for the assessment of amount to award and therefore the judgment cannot stand. He finally urged the Court to allow the appeal and set aside the judgment of the trial Court.

The Respondent in reaction submitted that the right to fair hearing was not breached because the Appellant had abundant opportunity to attend Court but he failed and that the Appellant was served

with a hearing Notice but neglected to appear. He submitted that when an opportunity is given, fair hearing cannot be said to be breached and relied on **AKINLOLU VS. STATE (2018) 1 WRN 1 and S & D CONSTRUCTION CO. LTD. VS. AYOKU (2011)** which held that as long as counsel is aware of a hearing date, it is his responsibility to keep abreast of the progress of the case in the Court. He contended that the Appellant waited in the wings to throw a spanner on the wheels, and retied on **EZECHUKWU VS. ONWUKA (2O16) 44 WRN 1** to argue that once a hearing notice is served there is no need to serve it for subsequent adjournments.

On issue three, the Respondent submitted that the rules of the High Court 2009 do not require proof by way of evidence for a judgment in default of defence and that there is a distinction between **Order 20** and **Order 30 of the 2009 Rules**. That the authority of **UPS VS. UFOT** (supra) is no longer the taw in view of frontloading procedure and therefore not applicable.

Respondent observed that Ground 4 was abandoned and urged the Court to strike it out.

Finally, he urged the Court to dismiss the appeal and uphold the judgment of the trial Court.

RESOLUTION

The main grouse here is the alleged breach of fair hearing and the consequences of it.

Fair hearing and its features have received judicial attention in a plethora of cases. Fair hearing, in essence, means giving equal opportunity to the parties to be heard in the mitigation before the Court. It was defined in **MOHAMMAD VS. KANO N. A. (1968) All NLR 411 at 413** (Reprint) Ademola C.J.N. considering the meaning of fair hearing said: It has been suggested that a fair hearing does not mean a fair trial. We think that a fair hearing must involve a fair trial, and a fair trial of a case consists of the whole hearing. We therefore see no difference between the two. The true test of fair hearing, it was suggested by counsel, is the impression of a reasonable person who was present at the trial whether from his observation; justice has been done in the case."

Also, the case of **ARIORI & ORS. VS. ELEMO & ORS**. **(1983) LPELR-552 (DC)** described it thus:

" Fair hearing, therefore, must mean a trial conducted according to all the legal rules formulated to ensure that justice is done to the parties to the cause."

The right to fair hearing is sacrosanct and cannot therefore be lightly disregarded or discarded by the Court. It is one of the pillars on which the concept of justice and fairness is built. It is what enjoins a Court or Tribunal to hear both sides. The right to fair hearing is encapsulated in the Latin Maxim: "Audi Alteram Partem". The principle is sacrosanct to any determination of the rights and obligations of the citizens in the Courts or before administrative Tribunals. The right to fair hearing is constitutionally guaranteed under **Section 36(1) of the Constitution of Nigeria 1999 (as amended)**. Thus, whenever there is breach, there are consequences. A breach of the right to fair hearing renders the proceedings in which it was committed, as well as all subsequent and any resultant decision therein a nullity, notwithstanding how meticulous the proceeding would have been or how sound the resultant decision would have been on the merit. They are all a nullity. See **KPENETU VS. OFEGOBI (2012) 15 NWLR (PT. 1323) 276; AMADI VS. INEC (2O13) 4 NWLR (PY. 1345) 595 OVUNWO & ANOR. VS. WOKO & ORS (2O11) 17 NWLR (PT. 1277 522, PAN AFRICAN INCORPORATION & ORS. VS. SHORELINE LIFEBOAT LTD. & ANOR. (2010) ALL FWLR (PT. 524) 56; ACTION CONGRESS OF NIGERIA VS. SULE LAMIDO & ORS (2012) 8 NWLR (PT. 1303) 560 @ P. 593; JUDICIAL SERVICE COMMISSION OF CROSS RIVER STATE & ANOR. VS. DR. (MRS) ASABI YOUNG (2013) 11 NWLR (PT. 1364) 1.**

However, it is the law that an allegation of denial of the right to fair hearing, as grave as it could be and the dire consequences it could have on the proceedings and judgment of a Court if proved, is dependent on the facts and circumstances of each given case. In other words, whether the right to fair hearing was breached or not is a question of facts to be determined squarely on the facts and circumstances placed before the Court. This is so because fair hearing is primarily a matter of fact. It is only when the facts are ascertained that the law would be applied to the facts so established to see whether or not such established facts constituted a breach of the party's right to fair hearing. See **NEWSWATCH COMMUNICATIONS LIMITED VS. ALHAJI IBRAHIM ATTA (2006) 12 NWLR (PT. 993) 144.** The right to fair hearing of any Citizen in the determination of their civil rights and obligations by Courts and Tribunals and even quasi judicial bodies is to ensure that decisions are not reached without hearing a party and that is fundamental.

See **CEEKAY TRADERS LTD. VG. GENERAL MOTORS LTD. (1892) 2 NWLR (PT. 332) 132.** See also **MACFOY VS. UAC LTD.** (supra). I find a clear case of breach of the right to fair hearing here. See **TUNBI VS. OPAWOLE (2000) 2 NWLR (PT. 644) 275 @ P. 288** and also **OGUNYADE VS. OSHUNKEYE (2007 15 NWLR (PT. 1057) 218, GTB PLC. VS. SOLOMON (2O16) LPELR-40342 (CA)**. In law, the principles of fair hearing are not only fundamental to adjudication but are also constitutional requirements which cannot be legally wished away. See **AGBAPMONWU VS. AGBAPMONWU (1991) 1 NWLR (PT. 165) 33 @ P. 40.** See also **AGBOGU VS. ADICHE (SUPRA) @ P. 531; J.O.E CO. LTD VS. SKYE BANK PLC (2009) 6 NWLR (PT. 1138) @ P. 518 ROBERT C. OKAFOR & ORS. VS. AG AND COMMISSIONER FOR JUSTICE ANAMBRA STATE (1991) 6 MWLR (PT. 200) 659.**

There can be no doubt that fair hearing is in most cases synonymous with fair trial and natural justice and once a denial of fair hearing as guaranteed under **Section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 as amended** is established, the whole proceedings automatically becomes vitiated. A denial of fair hearing can arise from the conduct of case. The true test of fair hearing therefore is the impression of a reasonable person who was present at the trial whether from the observation justice has been done in the case. See **OTAPO VS. SUNMONU (1987) 2 NWLR (PT.58) 587, WILSON VS. AG OF BENDLE STATE (1985) 1 NWLR (PT. 4) 572** see also **A. U. AMADI VS. THOMAS APLIN & CO. LTD. (1972) ALL NLR 413; MOHAMMED OLADAPO OJENGBEDE VS. M.O. ESAN & ANOR. (2001) 18 NWLR (PT. 746) 771**. The right to fair hearing is not a cosmetic right but a fundamental one. The facts in contention here are straight forward and the answer cannot be difficult to find. The point made clearly by the Appellant is that after the suit was struck out on his application, how then did it get back to the cause fist? There is no record of any application to relist it, so none was served on the AppE»tlan1. Subsequent upon relisting no hearing notice was served on the Appellant and the trial Court just continued as if it was an automated machine. There is a fundamental breach of fair hearing and indeed a travesty of justice. A Court of law should not function in that manner. The resultant effect of it is that the entire proceedings must be vitiated because they are null and void for breaching Appellants right to fair hearing.

The Respondents arguments are pedestrian; he could not show from the record wherein his application to relist can be found nor the hearing notice served on the Appellant. The submission that once there is an initial proof of service on a party there is no need to serve again is not the position of the law. The suit was struck out and any step to revive it must be a format process and on Notice. The trial judge has a duty to ensure parties are duty served and record same before taking any step in a matter, this is to underscore the importance of fair hearing in any adjudication, see **ESSIEN VS. EDET (2004) 5 NWLR (PT. 867) 445** and **NPA VS. EYAMBA & ORS. (2014) LPELR-22726 (CA)** which held:

" On 2/11/2006, the matter was for mention before the trial Cou1 See page 47 of the Record of Appeal. The Appellant was absent and unrepresented by Counsel. The trial Court then ordered Hearing Notice to issue. A Court does not make futile or vain orders. But, without confirming or ascertaining that the Hearing notice as ordered had indeed been served, the trial Court proceeded with the matter. Having ordered hearing notice to be issued, the trial Court had a duty to make certain that its order had been carried out. The purpose of ordering the hearing Notice was to ensure that the Appellant and the other parties were put on notice of the fact that the motion filed by the Appellant was now fixed for hearing. Therefore, in my respectful view, to proceed with the matter without ascertaining whether or not the hearing Notice ordered by the Court had been served, is tantamount to depriving the affected party of an opportunity to be heard, in breach of the Rules governing fair hearing. This being because if the Appellant is not put on notice of the fact that the matter was coming upon a particular date, their right to fair hearing has been breached. In **SPDC VS. ESOWE (2007) LPELR-8670 (CA)**, this Court per Gumel JCA said:" The service of a hearing notice is more than just a procedural step in the adjudication of a matter. It is more serious than that. It is a substantive issue as it goes to the jurisdiction and competence of the Court to go ahead with the matter."

The trial Court had every right to seek to be addressed on the issue of jurisdiction but it ought to have satisfied itself that there had been service of the hearing notice it ordered." Per **OTlSl, J.C.A** The trial Court erred in failing to verify that all parties and particularly the Appellant were served before proceeding to hear the matter.

It is further made out by the rules of the trial Court**, Order 30 Rules 1-4 of the Akwa lbom Hidh Court (Civil Procedure) Rules** particularly **Rule 3** , it provides that when a cause on the list is

called and the Defendant appear while the Claimant is absent, the Court is entitled to enter judgment dismissing the action **Rule 4(1)** and by Sub **Rule (3)** any party can apply to relist a suit so dismissed within 6 days. The record does not show that an application was made within 6 days and the order relisting the suit was made almost a year after the order striking same out. Again, there was no motion which sought for extension of time to apply to relist the suit that was struck out. It is not the law that an application to relist is made ex parte, in fact Salami, JCA (as he then was) in the case of **RECTOR KANO STATE POLYTECHNIC Vs. DANAGUNDI (2002) FWLR (PT. 127) 1058 at 1067-1068** likened an application to relist to an originating summons and went on to opine that it is in the genre of initiating processes which must be served on the party personally. My view is that the suit struck out is merely put to sleep and not dead so it can be woken up by a motion as prescribed by the rules. The important point is that, it cannot be made ex-parte and the other side must be put on Notice. Proof of service must be before the Court and verified by the Court. The process of relisting this suit was flawed. The Respondent condemned the Appellant for not being vigilant in following up the suit since they were initially served, it is preposterous to suggest that, the claim was struck and how else could the Appellant have known it was relisted when even the Respondent did not file a motion seeking to relist. The argument of the Respondent is untenable.

Another point made by the Appellant was that his motion challenging the jurisdiction of the Court was moved by the Court and his written address adopted by the Court who then went on to dismiss the motion.

It is indeed curious that the trial Court on its own volition would move the motion filed by a party, who was not served with a hearing notice and who did not know that the suit was relisted and proceed to dismiss same. The Court is guided by the rules made specifically, to aid proceedings in the Court for uniformity and to ensure the integrity of the system. There is no provision in the rules of the High Court of Akwa Ibom giving such powers to the trial judge. Hear the judge:

The Defendants motion is seeking the Courts order to strike out the suit for lack of jurisdiction. The Plaintiff joined issues by filing counter affidavit and his counsels written address. Therefore, by their processes both sides have joined issues on whether or not the Court has jurisdiction in the matter. Since the issue of jurisdiction is crucial and fundamental, the Court will have to first decide

on the issue of jurisdiction before taking further steps in the case. The case is adjourned to 18/7/2011 for ruling on jurisdiction because I have taken the written addresses as adopted."

It was not backed by law or rules of the trial Court and therefore null and void. I agree with the Appellant when he said that the only option opened to the trial Court is to strike out the motion that is if Appellant was served with a hearing Notice and he failed to appear to move his motion. The Court cannot move a motion filed by the party and adopt their written addresses because there is no taw granting the trial Court such powers. There is nothing like deemed adopted in the rules. Only the appellate Courts have such powers because the rules provide for it specifically, and before doing so, there must be proof of service on the party and the case must have been fixed for hearing that day.

The Appellant under issue three argued that the trial Court could not have granted the reliefs sought without hearing the Claimant. The claim was reproduced earlier in this judgment. The judgment was entered in default of a defence, and there was an award in general and special damages. The apex Court in the case of **MAJA VS. SAMOURIS (2002) LPELR-1824 (SC)** heId:

"It cannot be over-emphasized that a Court is not entitled to enter summary or default judgment on a claim based on a relief for payment of unliquidated pecuniary damages without taking evidence for the assessment of the amount of damages that may be proved as such, a claim must be established by credible evidence. This is because it is not enough for the Court to simply award damages in an unliquidated pecuniary damage claim without giving any reason as to how it arrived at what in its opinion amounted to reasonable damages. See **UMUNNA vs. OKWURAIWE (1978) 6 -7 SC 1, VICTOR OLUROTIMI VG. FELICIA IGE (1993) 8 NWLR (Part 311) 257 at 268** etc."

On the need to call evidence, the apex Court again reemphasized it in the case of **IWUEKE VS. IMO BROADCASTING CORPORATION (2005) LPELR-1567 (SC)** thus:

" ... there is the specific principle of law that in a claim for unliquidated damages as in this case the plaintiff must lead evidence as to the damages and the quantum suffered by him. See **ODUME VG. NNACHI (1964) 1 All NLR 329, OKE VS. AIYEDUN (1986) 2 NWLR (Pt. 23) 548** In **OKE VS. AIYEDUN (supra) at 565** the position of the law on the issue is stated by this Court as follows: - 'It is a principle of pleading that that which is not denied is deemed to have been admitted

and if a plaintiff filed a statement of claim and the defendant failed or refused to file a statement of defence in answer thereto he, clearly, will be deemed to have ad mitted the statement of claim, leaving the trial Court with the authority to peremptorily enter judgment for the plaintiff without hearing evidence. An exception to that would obviously be in respect of a claim for damages, for damages are always said to be in issue requiring the plaintiff to prove them.' Per ONNOGHEN, J.S.C (as he then was).

The position of the Supreme Court is supported by the Akwa Ibom High Court (Civil Procedure) Rules which makes it mandatory for the Court to hear evidence before it can award damages and the trial Court did not apply the said rule before awarding damages in the judgment appealed against. The trial judge jettisoned legal principles and the rules by which he adjudicates, there is therefore no basis for the judgment to stand.

Flowing from above, even if the Appellant was on notice before the default judgment was entered, the judgment is flawed and cannot stand. It must be set aside. The proceedings from the date the claim was struck out to judgment is nothing but travesty of justice, it is vitiated and is null and void.

Having resolved all the issues against the Respondent, the appeal succeeds and the proceedings from June, 2010 when the claim was struck out and leading up to the judgment of the trial Court are hereby set aside. The claim remains struck out.

I make no order as to cost.

MOJEED ADEKUNLE OWOADE J.C.A.: I had the privilege of reading in draft the judgment delivered by my learned brother, Yargata Byenchit Nimpar, JCA. I agree with the reasoning and conclusion. I also overrule the preliminary objection by the Respondent and agree with the leading judgment that the appeal succeeds. I abide with the consequential order and the order as to costs.

MUHAMMED LAW AL SHMAIBU J.C.A.: I read in draft the judgment of my learned brother, Yargata B. Nimpar JCA. I entirely agree that this appeal is meritorious and should be allowed.

The rule of fair hearing is not a technical doctrine. It is one of substance. Thus, the question is not whether injustice has been done because of lack of fair hearing. It is whether a party entitled to be

heard before deciding had in fact been given opportunity of a hearing. See **KOTOYE V C.B.N. (1989) NWLR (pt 98) 419 OYEYEMI V OWOEYE (2017)12 NWLR (pt 1580) 364** and **WAGBATSOMA V F. R. N. (2018)8 NWLR (pt 1621) 199.**

It is glaringly clear that the appellant in the instant case was not on notice when the suit was relisted. I therefore agree with my learned brother, Nimpar, JCA that the process of relisting the suit was flawed and where any judgment is obtained against the principle of fair hearing, no matter how well conducted, written and delivered with eloquence, is a nullity.

The appeal succeeds and I join my learned brother in setting aside the judgment of the trial Court.

Appearances:

Dr. lkani Agabi, Esq. with him, Chris Ekong, Esq. and Maureen Ikpeme, Esq. For Appellant(s)

Nsikak Ikpeme, Esq. For Respondent(s)