

SUPREME COURT  
52/1983  
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IN THE SUPREME COURT OF NIGERIA  
HOLDEN AT LAGOS  
ON FRIDAY, 2ND FEBRUARY, 1990  
BEFORE THEIR LORDSHIPS

MUHAMMADU LAWAL UWAI

JUSTICE, SUPREME COURT

SALIHU MODIBBO ALFA BELGORE

JUSTICE, SUPREME COURT

ABDUL GANIYU OLATUNJI AGBAJE

JUSTICE, SUPREME COURT

PHILIP NNAEMEKA-AGU

JUSTICE, SUPREME COURT

ABUBAKAR BASHIR WALI

JUSTICE, SUPREME COURT

SC.52/1983

BETWEEN:

LOUIS B. EZEKIEL HART

.....

.....

.....

APPELLANT

AND

CHIEF GEORGE I. EZEKIEL HART

.....

LOUIS B. EZEKIEL HART  
APPELLANT

RESPONDENT

J U D G M E N T

(Delivered by Uwais, J.S.C.)

I have had the opportunity of reading in draft the judgment read by my learned brother Wali, J.S.C. I entirely agree that the appeal has no merit whatsoever and that it should be dismissed. Accordingly, the appeal is hereby dismissed with ₦500.00 costs to the respondent.

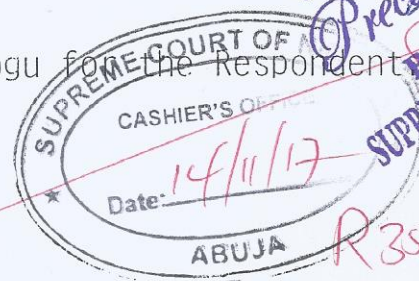
M. L. Uwais,  
JUSTICE, SUPREME COURT

Chief I. T. Nwozu for the Appellant.

C. Ofodile, SAN with him C. O. Okwusogu for the Respondent

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SC.52/1983

BETWEEN

LOUIS B. EZEKIEL HART

DEFENDANT/APPELLANT

AND

CHIEF GEORGE I. EZEKIEL HART

PLAINTIFF/RESPONDENT

J U D G M E N T

(Delivered by BELGORE, J.S.C.)

I had the privilege of reading in draft the judgment of my learned brother, Wali, J.S.C. with which I am in complete agreement. For the reasons ably advanced in that lead judgment, and to which I have nothing more useful to add, I also dismiss this appeal with ₦500.00 costs to the respondent.

S. M. A. BELGORE,  
JUSTICE, SUPREME COURT.

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IN THE SUPREME COURT OF NIGERIA

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<u>MUHAMMADU LAWAL UWAIS</u>	<u>JUSTICE, SUPREME COURT</u>
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<u>ABUBAKAR BASHIR WALI</u>	<u>JUSTICE, SUPREME COURT</u>
	<u>SC.52/1983</u>

BETWEEN:

LOUIS B. EZEKIEL HART .. APPELLANT

AND

CHIEF GEORGE I. EZEKIEL  
HART .. .. RESPONDENT

J U D G M E N T

(Delivered by AGBAJE, J.S.C.)

The appellant was the defendant to <sup>an</sup> action instituted by the respondent as plaintiff in Suit No. PHC/240/77 in a Port Harcourt High Court claiming as follows:-

- (1) A declaration that he is entitled to the possession or custody and control of all property real and personal of the said Chief Ezekiel Hart (deceased)
- (2) An order of the court that the defendant to deliver to the plaintiff:
  - (a) The keys of the Residence at Bonny and of 41 Creek Road, Port Harcourt, together with the family properties in the Residence and 41 Creek Road, Port Harcourt contained, including the properties removed by him from the Residence on or about 20th January, 1975.

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- (b) The box or leather case containing Deeds, Indentures or Instruments in respect of 41 Creek Road, Port Harcourt and the family lands at Obigbo, Komkom, Azuama and B. Dere.
- (3) ₦2,000.00 general damages for the detention of the said keys, properties and the box or leather case and the Deeds, Indentures or Instruments contained therein."

For the purposes of the present appeal, the relevant portion of the judgment of Pepple J, as he then was, in the case given on 24/9/81 is as follows:-

- " 1. I grant the plaintiff the declaration he seeks that as Chief or Head of the Ezekiel Hart House he is entitled to the custody and control of all property real and personal of the said Chief Ezekiel Hart (Deceased).
2. I give judgment for plaintiff for the delivery up to him by the 1st Defendant, of the keys of the family Houses at Bonny and the family house known as No. 41 Creek Road, Port Harcourt, together with the family Property in both houses contained.
3. I am unable to make an order in respect of the Deed Box, as the claim for its return is based on Exhibit 'H' knowledge of which 1st Defendant denies, and which in fairness to him, I find he did not sign.

Plaintiff has also claimed ₦2,000.00 general damages for detention of the said keys, property and deed box, etc.

" I think the mention of property and deed box is superfluous, for only the keys were given to 1st Defendant. The other items were supposed to be in the House. An action in detiune will lie at the instance of a plaintiff from whom the

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Defendant has received a chattel but fails to return it when demand is made. From the evidence I believe that the keys were not handed to 1st Defendant by plaintiff alone. I believe they were handed to him collectively by the members of the House present at the time. If they all had demanded the keys back from him and he had refused to surrender them, he would have been liable in detinue. In the present case as the demand was made by plaintiff alone. I do not find 1st Defendant liable in detinue."

Both the plaintiff and the defendant appealed to the Court of Appeal, Enugu Division against the decision, the latter against decisions (1) & (2) above and the former against that part of the decision finding the latter not liable in detinue. The Court of Appeal in its judgment of 29/1/84 allowed the appeal of the plaintiff but dismissed that of the defendant.

The defendant has appealed against the whole of that decision of the Court of Appeal confirming decisions (1) & (2) above of the trial court and reversing its decision on the claim in detinue.

There is no indication in the record of proceedings in this court that a stay of <sup>execution of</sup> the judgment of the Court of Appeal was sought, let alone obtained.

Notwithstanding the defendant's appeal to this court, committal proceedings for contempt of court of the orders of Pepple J, as he then was, <sup>were</sup> commenced by the plaintiff against him before Okara J sitting in a Port Harcourt High Court. In his ruling of 12/6/1986 in the proceedings, he held as follows:-

" On the whole therefore I find that both defendant, in defiance of the courts, have refused or avoided to carry out the order of the courts (High Court, 24 September, 1981; Court of Appeal 29 October, 1984) and have further, attempted to undermine or frustrate

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their effectiveness. If a person who is required to obey a court order deliberately sets to do an act to frustrate the effectiveness of the order he is holding the courts in contempt.

In the circumstance I shall make orders toward ~~satisfying the order of the High Court~~ dated 24 September, 1984 and confirmed by the Court of Appeal on 29th November 1984.

I therefore make an interim order that the 1st Defendant within 7 days from today, do hand over to the plaintiff all items of property he removed from the Opuwari of Ezekiel Hart House, Bonny; and the 2nd Defendant do move out of 41 Creek Road, Port Harcourt, within 7 days from today, failing which, appropriate orders would be made to compel them to carry out these orders made to satisfy the order of this court of 24 September, 1981 and confirmed by the Court of Appeal.

Adjourned 25 June, 1986 for report."

It would appear that on 25th June, 1986 the report was that the defendant had not complied with the order of Pepple J. as he then was of 24/9/81. So on that day Okara J. ordered that they be committed to prison till they have purged themselves of their contempt. An application for stay of execution of the committal order of 25/6/86 was refused by him on 7/7/86. An appeal by the defendants to the Court of Appeal Enugu against the committal order of Okara J was lost. The appeal was dismissed in that court on 16/9/87.

This is a further appeal by the 2nd defendant, Louis B. Ezekiel Hart, against the committal order of Okara J of 25/6/86 which was confirmed by the Court of Appeal in its judgment of 16/9/87, on the following grounds with their particulars:-

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"1. That the learned trial Judges of the Court of Appeal, Enugu erred in law when they held that the Defendant/Appellant had committed contempt of Court.

2. That the procedure used by the plaintiff/Respondent in initiating the contempt proceedings, was incorrect.

PARTICULARS OF ERROR:-

- (1) That the plaintiff served the Defendant Forms 48 and 49 of the Sherriffs and Civil Processes Rules, 1963 made under the Sherriffs and Civil Processes Law, 1963 of Eastern Nigeria applicable to River's State.
- (2) That thereafter the plaintiff brought a Motion on Notice to commit the Defendant to prison for contempt of Court.
- (3) That this procedure contemplates a situation in which an order of Injunction had been made in suit.
- (4) That the hearing of an application for committal of a person disobeying a Court order is in the nature of Criminal Proceeding and the necessary requirements for such committal, including the appropriate procedure must be strictly followed."

Briefs of arguments have been filed on both sides. According to the appellant the issue for determination is as follows:-

" Given the facts of this case, did the Defendant/Appellant commit contempt of Court?"

According to the respondent the issues for determination are:-

- "3.1 Was the Defendant/Appellant in contempt of the order of Court made on the 12th of June, 1986?
- 3.2 Can the Appellant properly raise in this Court the issue of the procedure adopted in initiating

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the contempt proceedings when the said issue was never canvassed at the Lower Court?

3.3 Did the Plaintiff/Respondent employ the correct procedure in bringing the Defendant/Appellant to Court for committal?"

I do not think the respondent, or rather counsel for the respondent, <sup>is correct</sup> when he says in the respondent's brief that an issue for determination is whether the defendant/appellant was in contempt of the orders of 12/6/86 made by Okara J. The status of the order of 12/6/86 was made clear in his ruling of 7/7/86 dismissing an application by the present defendant/appellant to him for a stay of execution of his order of 12/6/86. This is what Okara J said in this regard:-

"I must here point out that the order I made on 12 June, 1986 was towards the satisfaction of the order of the trial court dated 24 September, 1981 and confirmed by the court of Appeal on 29 November, 1984. If anything different at all, my order of 12 June, 1986 merely prescribed the manner the original order was to be satisfied in the light of later developments in the matter which I dealt with in my ruling of that date."

I am satisfied Okara J was right in his view on his order of 12/6/86.

The position is therefore that the issue arising in this appeal for determination is essentially whether the defendant/appellant was guilty of contempt of the orders of a Port Harcourt High Court of 24/9/81 as varied by the judgment of the Court of Appeal Enugu of 29/11/84. Issues 2 & 3 identified in the respondent's brief as arising for consideration in this appeal are only peripheral to the central issue I have just spoken about.

1984, 11/11

12 June, 1986

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2. Development

3. 12/6/86

4. Satisfied Okara



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I shall take the peripheral issues first and they boil<sup>down</sup> to the question of whether the correct procedure had been employed by the plaintiff/respondent in the initiation of the committal proceedings against the defendant/appellant. The point was raised by the latter in the lower court but it was rejected there.

The point now at issue involves the examination or construction of (1) Sec.71 of the Sheriffs and Civil Process Law, Cap 118 Laws of Old Eastern Nigeria, now applicable in Rivers State which says:-

" If any person refuses or neglects to comply with an order made against him, other than for payment of money, the court, instead of dealing with him as a judgment debtor guilty of the misconduct defined in paragraph (f) of section 65, may order that he be committed to prison and detained in custody until he has obeyed the order in all things that are to be immediately performed and given such security as the court thinks fit to obey the other parts of the order, if any, at the future times thereby appointed, or in case of his no longer having the power to obey the order then until he has been imprisoned for such time or until he has paid such fine as the court directs."

(II) Order IX rules 13(1) of Judgment(Enforcement)Rules of Old Eastern Nigeria also applicable in Rivers State says:-

" When an order enforceable by committal under section 71 of the Law has been made the registrar shall, if the order was made in the absence of the judgment debtor and is for the delivery of goods without the option of paying their value or is in the nature of any injunction, at the time when the order is drawn up, and in any other case, on the application of the judgment creditor, issue a copy of the order indorsed with a notice

in Form 48, and the copy so indorsed shall be served on the judgment debtor in like manner as a judgment summons.

(2) If the judgment debtor fails to obey the order the registrar on the application of the judgment creditor shall issue a notice in Form 49 not less than two clear days after service of the indorsed copy of the order, and the notice shall be served on the judgment debtor in like manner as a judgment summons.

(3) On the day named in the notice the court, on being satisfied that the judgment debtor has failed to obey the order and, if the judgment debtor does not appear -

(a) that the notice has been served on him, and

(b) if the order was made in his absence, that the indorsed copy thereof has also been served on him, may order that he be committed to prison and that a warrant of commitment may issue."

It appears clear to me that the provisions of Section 71 of the Sheriffs and Civil Process Laws relate to any order of court other than one for the payment of money. The orders of Pepple J. of 24/9/81 as modified by the Court of Appeal's judgment of 29/1/84 sought to be enforced by the committal proceedings are not for the payment of money. So in my judgment they are within the purview of Section 71 of the Law. Section 2 of the same Law defines "judgment" as including an order and "order" as including an injunction. The definition of "Order" as including an injunction is only an inclusive definition. It is therefore not correct to say that only an order for an injunction can be enforced under S.71 of the Law.

In the instant case a copy of the orders of Pepple J as modified by the Court of Appeal endorsed with a notice in Form 48



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of the Judgment (Enforcement) Rules was served on the defendant/appellant under Order 9 rule 13(1) of the Rules. Later, when it appeared to the plaintiff/respondent that the defendant/appellant failed to obey the orders in question, the former caused a notice in Form 49 of the Rules to be issued and served on the latter.

In the circumstances I have just set down I am satisfied that the correct procedure had been adopted by the plaintiff/respondent in the initiation of committal proceedings against the defendant/appellant under Sec. 71 of the Law. See Omopena v. Adelaja 19 N.L.R.17.

Before I deal with the central issue whether or not, the defendant/appellant was guilty of the orders in question, there is the suggestion in the defendant's brief of arguments to the effect that the orders in question are not binding on him because, according to him, (1) he was not sued originally by the plaintiff/respondent and that he, the defendant/appellant gratuitously intervened in the case by joining as a co-defendant and (2) at all times prior to the orders in question he was in lawful possession of the premises concerned. The short answer to these points is that the defendant was a party to the action at the time the orders were made. And the orders were directed rightly or wrongly at all the defendants in the action, including the defendant/appellant. The point that he was at all material times in lawful possession of the premises in question might be a ground for him to say that the order was wrongly made against him. But that does not arise in a proceeding of this nature. Until the orders are overturned on appeal or stayed by a court of competent jurisdiction the defendant/appellant is liable under the orders. So Section 2 of the Law which defines "judgment debtor" as "a person liable under a judgment" applies to the defendant/appellant.

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On the affidavits and counter-affidavits in the proceedings now before us on appeal there is no doubt that the defendant/appellant at the time Okara J. committed him to prison for contempt of the order of Pepple J as modified by the Court of Appeal was in possession of the premises in question in defiance, as found by Okara J., of the order concerned. This point is beyond controversy having regard to following paragraphs in a further affidavit of the defendant/appellant sworn on 24/10/86:-

- "1. That on the 21st day of August, 1986 I filed my motion in this Honourable Court.
2. That the said motion was fixed for hearing in this Honourable Court on Monday, 27th day of October, 1986.
3. That on 8th day of September, 1986, when the matter came up in Port Harcourt High Court two, Port Harcourt before Chief the Hon. Mr. Justice R.P.G. OKARA for the Court to know whether I had complied with the order that I vacate the premises in dispute, my counsel informed the said Judge that I had brought this motion in this Honourable Court and applied that the matter be adjourned until this motion was heard.
4. That the learned trial Judge had address on the matter and adjourned his ruling to 12/9/86. (sic)
5. That on 12/9/86, the learned trial Judge refused my application and ordered:-
  - (a) That I be remanded in prison custody until I vacate the premises.
  - (b) That my surety should show cause why the ₦2,000.00 (Two thousand Naira) bond he entered into should not be forfeited.

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- (c) That I was given seven (7) days within which to comply with the said order.
- (d) The case was further adjourned to 22/9/86.
6. That I had to vacate the premises as ordered so as not to remain in prison indefinitely and to enable me prosecute my matters in this Honourable Court.
7. That I am still interested in fighting my cause to the bitter end in this matter."

No doubt he decided to obey the orders of the court because of what Eso J.S.C. said in Governor of Lagos State v. Ojukwu part 18 (1986) 1 N.W.L.R. 621 at 637:-

"I think it is a very serious matter for anyone to flout a positive order of a court and proceed to taunt the court further by seeking a remedy in a higher court while still in contempt of the lower court."

The defendant/appellant, having <sup>now</sup> purged himself of his contempt of the court Orders the subject-matter of the proceedings on appeal before us now, I cannot conceive of any other impediment in the way of this court taking the appellant's appeal on its merits.

I am satisfied that on the material before Okaro J., <sup>that</sup> the defendant/appellant was in contempt of the order of Pepple J as modified by the Court of Appeal. In fact the defendant/appellant is a self confessed contemnor under the illusions that orders in question did not apply to him. In sum I find no merit in this appeal.

For the above reasons and the fuller reasons given in the lead judgment of my learned brother Wali, J.S.C. which I have

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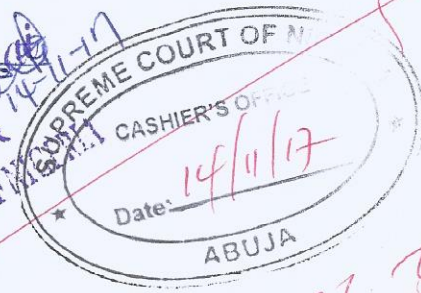
had the benefit of reading in draft, I too dismiss the appellant's appeal with ₦500.00 costs to the respondent.

*Justice A. G. O. Agbaje*

A. G. O. AGBAJE  
JUSTICE, SUPREME COURT.

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JUSTICE, SUPREME COURT

SC.52/1983

BETWEEN:

LOUIS B. EZEKIEL HART ..... Appellant

A N D

CHIEF GEORGE I. EZEKIEL HART ..... Respondent

JUDGMENT

(Delivered by P. NNAEMEKA-AGU, JSC.)

This is an appeal that should never have been filed or entertained. This is because, in effect, the appellant is in disobedience of an order of court made by Pepple, J. (as he then was) on the 24th of September, 1981, which has been confirmed at least by three courts ever since.

The facts of the case which led to the contempt proceedings have been set out in the lead judgment of my learned brother, Wali, J.S.C. In a nutshell the plaintiff Chief George I. Ezekeil Hart in 1977 as the Chief and Head of Ezekeil Hart's House of Bonny commenced an action in a Port Harcourt High Court for, inter alia, a declaration that he is entitled to the possession and custody of, among others, family properties at Bonny and Residential house at No. 41 Creek Road, Port Harcourt, and an order for the delivery up of the keys and a box containing deeds, indentures, and instruments in respect of the said houses. After full hearing, the learned trial Judge on the 24th of September, 1981. ordered inter alia as follows:



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- "1. I grant the plaintiff the declaration he seeks that as Chief or Head of the Ezekiel Hart House he is entitled to the custody and control of all property real and personal of the said Chief Ezekiel Hart (Deceased).
  2. I give Judgment for plaintiff for the delivery up to him by the 1st Defendant, of the keys of the family Houses at Bonny and the family house known as No. 41 Creek Road, Port Harcourt, together with the family Property in both houses contained.
  3. I am unable to make an order in respect of the Deed Box, as the claim for its return is based on Exhibit 'H' knowledge of which 1st Defendant denies, and which in fairness to him, I find he did not sign."

His appeal to the (Federal) Court of Appeal, Enugu Division, was dismissed, coram: Phil-Ebosie, Aseme and Aikawa, JJ. C.A. on the 29th of November, 1984. The successful respondent wanted to execute the judgment of court. When called upon to show cause why he should not be convicted for contempt of (appellant) court, he/ tried to put in a spanner unto the wheel of justice by trying to justify his continued stay at No. 41 Creek Road Port Harcourt. The application went before Okara J. On the 12th of June, 1986, he found that the appellant was in contempt. However, out of sympathy the learned Judge ordered as follows:

"In the circumstance I shall make orders toward satisfying the order of the High Court dated 24 September, 1984 and confirmed by the Court of Appeal on 29 November, 1984.

I therefore make an interim order that the 1st Defendant within 7 days from today, do hand over to the plaintiff all items of property he removed from the Opuwari of Ezekiel Hart House, Bonny; and the 2nd Defendant do move out of 41 Creek Road, Port Harcourt, within 7 days from today, failing which, appropriate orders would be made to compel them to carry out these orders made to satisfy the order of this court of 24 September, 1981 and confirmed by the Court of Appeal."

A report to the learned Judge on the 25th of June, 1986 showed that the appellant had not complied with the order



of court. He still continued in his contempt. He also put in another spanner by applying for extension of time within which to apply for a stay of execution and for an interim order of stay. Again on 7th July, 1986, Okara, J., ruled:

"The application is dismissed. The matter shall, however, be called again on 11 July, 1986, for a report on whether or not the contemnors are still continuing with their contempt."

Still determined to clog the wheel of justice to the extreme, while other contemnors withdrew from the contest, the appellant alone applied for and obtained an interim stay from the Court of Appeal. To help him in his inglorious attempt to subvert justice, he changed his counsel at almost every new stage of his well kitted expedition against the machinery of justice. But this did not appear to have helped him much. For his appeal against the ruling of Okara, J., was dismissed by the Court of Appeal, coram: Olatawura, Abdulahi, and Macaulay, JJ. C.A. on the 24th of June, 1987. I do not know what has happened to the main appeal notice of which was dated 11th day of January, 1985, save that the record of proceedings is before us. It does not appear as if any brief of the appellant has been filed in this Court. However, conveniently perhaps, what is before us is an appeal dated the 16th day of October, 1987, against the dismissal on 24th June, 1987, of the appeal against the contempt order.

It is sad to observe that there is nothing on record to show that the appellant has obeyed any of the above orders of court. I would like to state that obedience to orders of court is fundamental to the good order, peace and stability of the Nigerian nation. The ugly alternative is a painful recrudescence of triumph of brute force or anarchy - a resort to our old system of settlement by means of bows and arrows, matchets and guns or, now, even more sophisticated weapons



1/2 of war. Disobedience to an order of court should, therefore, be seen as an offence directed not against the personality of the Judge who made the order, but as a calculated act of subversion of peace, law, and order in the Nigerian society. Obedience to every order of court is therefore a duty which every citizen who believes in peace and stability of the Nigerian State owes to the nation. This Court has made it abundantly clear that it will not lend its machinery in aid of a person who is, and continues, to be in contempt of an order of court by ordering a stay while the person is still in contempt. My learned brother, Eso, J.S.C., epitomized the attitude of this Court in such matters when he stated in the Governor of Lagos State v Ojukwu (1986) 1 N.W.L.R. at p. 621 thus;

"I think it is a very serious matter for any one to flout a positive order of a court and proceed to taunt the court further by seeking a remedy in a higher court while still in contempt of the lower court."

Worse, in the instant case, the appellant's appeal is completely unmeritorious. The order of Pepple, J., (as he then was) for the appellant to yield up possession of No. 41 Creek Road, Port Harcourt is clear and unambiguous. It must stand until it is set aside on appeal, if it will: and it is clear from what I have said that the appellant has been quite tardy in pursuing any appeal against it. As far as the contempt proceedings go, I must state that the attack of the learned counsel for the appellant against the nature of the order of Pepple, J. (as he then was) about the possession of No. 1 Creek Road, Port Harcourt, is unjustified. Nothing can be clearer than that. Whether or not it was rightly made does not yet arise until the hearing of the appeal against the judgment. In any event, it has been reinforced by the order made by Okara, J. The order of



Okara, J., that possession thereof must be yielded up within 7 days of the 12th of June, 1986, is also very clear. The Court of Appeal, by its dismissal of the appeal against the contempt order on the 16th of September, 1987, and ordering the appellant to vacate the premises within 48 hours, left him in no doubt about his position. In my opinion, the appellant's conduct in the circumstances I have outlined above cannot be anything but one calculated to bring the authority and administration of the law into disrespect.

It has been conceded in the appellant's reply brief that he is no longer pressing his point about the procedure for the committal. I must say that this being in the nature of a mandatory order, I could not see how any valid objection could have been raised against it, even on the principle adumbrated in Doherty v Doherty (1964) LL.R. 226. That case sought to draw a distinction between orders of mandatory injunction, which could be enforced under our Sheriffs and Civil Process laws, and negative or restrictive injunctions, which could only be enforced under English procedure, by implication. Fortunately that decision which ruled the legal waves of this country for a quarter of a century has now been overruled in the recent case of SC.159/1987 Osayande Uhunwagho v F.I. Okojie & Anor. of the 8th day of December, 1989 (unreported), as not being justifiable under the definition of "judgment or order" in the Act.

For the above reasons, the appeal fails, and is dismissed by me with ₦500.00 costs against the appellant.

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*Precious Anaghi*  
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P. NNAEMEKA-AGU,  
JUSTICE OF SUPREME COURT.



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SC.52/1983

BETWEEN:

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AND

CHIEF GEORGE I. EZEKIEL HART ... PLAINTIFF/RESPONDENT

JUDGMENT

(Delivered by WALI, J.S.C.), 1990.

The present Respondent Chief G. I. Ezekiel Hart who was the plaintiff in the trial court sued James E. P. Hart in the High Court of Rivers State of Nigeria in the Port Harcourt Judicial Division claiming as follows -

"PARTICULARS OF CLAIM

1. A declaration that he is entitled to the possession or custody and control of all property real and personal of the said Chief Ezekiel Hart (deceased).
2. Delivery up to the plaintiff by the defendant of :-
  - (a) the keys of the family house at Bonny and of the family <sup>house at</sup> 41 Creek Road, Port Harcourt, together with the family property in the said houses contained, which keys and property together with inventory were handed over by the plaintiff to the defendant for safe custody on or about 5th January, 1975, following the death of Chief Benoni Ezekiel Hart.

...../2.



115 (b). Deed Box containing deeds, indentures or instruments in respect of 41 Creek Road, Port Harcourt aforesaid, and of the family lands situate at Obigbo, Komkom, Azuama and B. Dere, all in the Bori Local Government Authority Area, which box, together with the deeds, indentures or instruments, was also handed over by the plaintiff to the defendant on or about the date aforesaid.

3. N2,000.00 general damages for the detention of the said keys, property and deed box, deeds indentures or instruments despite demands."

Later, on the application of other persons, namely, Louis Benoni Ezekiel Hart and Estella Benoni Ezekiel Hart [for themselves and other children of Ezekiel Hart and Benoni Ezekiel Hart] were joined as second set of Defendants.

Pleadings were ordered, filed and exchanged and issues joined. At the end of the proceedings, judgment was given in the plaintiff/ Respondent's favour with the following orders by the learned trial judge -

- "1. I grant the plaintiff the declaration he seeks that as Chief or Head of the Ezekiel Hart House he is entitled to the custody and control of all property real and personal of the said Chief Ezekiel Hart (Deceased).
2. I give judgment for plaintiff for the delivery up to him by the 1st Defendant, of the keys of the family Houses at Bonny and the family house known as No.41 Creek Road, Port Harcourt, together with the family property in both houses contained.
3. I am unable to make an order in respect of the Deed Box, as the claim for its return is based on Exhibit 'H' knowledge of which 1st Defendant denies, and which in fairness to him, I find he did not sign.

Plaintiff has also claimed N2,000.00 general damages for detention of the said keys, property and deed box etc.

...../3.

I think the mention of property and deed box is superfluous, for only the keys were given to 1st Defendant. The other items were supposed to be in the House. An action in detinue will lie at the instance of a plaintiff from whom the defendant has received a chattel but fails to return it when demand is made. From the evidence I believe that the keys were not handed to 1st Defendant by plaintiff alone. I believe they were handed to him collectively by the members of the House present at the time. If they all had demanded the keys back from him and he had refused to surrender them, he would have been liable in detinue. In the present case as the demand was made by plaintiff alone, I do not find 1st Defendant liable in detinue."

Aggrieved by the judgment of the trial court, the Defendants appealed to the Court of Appeal. They also applied in the High Court for a stay of execution of its judgment pending the determination of the appeal which was refused on 29th April 1982. As a result they applied to the Court of Appeal, Enugu Division for the same relief which was granted on 13th October 1982.

The plaintiff also cross appealed against the refusal of the trial court to grant him relief of ₦2,000.00 general damages for detinue as contained in his Statement of Claim.

On 3rd September 1984 both the main appeal and the cross appeal were heard by the Court of Appeal and judgment delivered on 29th November 1984. In the lead judgment <sup>delivered</sup> by Phil-Ebosie, J.C.A., [with which both Aseme and Aikawa JJ.C.A. agreed], <sup>the</sup> main appeal by the Defendants was dismissed while the plaintiff's cross appeal was allowed.

Still dissatisfied with the judgment of the Court of Appeal, the Defendants filed Notice of Appeal to this Court dated 11th January 1985. Following the judgment of the Court of Appeal supra, the plaintiff, in 1986, started committal proceedings against the Defendants in the Port Harcourt Division of the Rivers State High Court for contempt of court in that notwithstanding the judgment of the Court of Appeal in the matter, the 1st Defendant refused to hand over to the plaintiff the



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vacant possession of the two houses in dispute and their respective keys.

The learned trial judge who dealt with the application for committal, found in his Ruling dated 12th June 1986 as follows -

"On the whole therefore I find that both defendants, in defiance of the courts, have refused or avoided to carry out the order of the courts (High Court, 24th September, 1981; Court of Appeal 29th October 1984) and have further, attempted to undermine or frustrate their effectiveness. If a person who is required to obey a court order deliberately sets to do an act to frustrate the effectiveness of the order he is holding the courts in contempt."

He then issued out the following interim orders -

".....that the 1st Defendant within 7 days from today, do hand over to the plaintiff all items of property he removed from the Opuwari of Ezekiel Hart House, Bonny; and the 2nd Defendant do move out of 41 Creek Road, Port Harcourt, within 7 days from today, failing which, appropriate orders would be made to compel them to carry out these orders made to satisfy the order of this court of 24th September, 1981 and confirmed by the Court of Appeal.",

and adjourned further proceedings to 25th June 1986. And when the matter came up on 25th June 1986, the report was that both the 1st and the 2nd Defendants had failed to comply with court's orders given on 12th June 1986. They were then committed to prison until they obeyed the order of the court.

On 2nd July 1986, the learned trial judge heard an application by the 1st and the 2nd Defendants for an order -

"(1) allowing a stay or suspension of the order made by this Honourable court on 25th June 1986 committing the applicants for contempt of court for an indefinite period in that the 1st defendant failed to deliver to the plaintiff a deed box within 7 days as ordered by the court, and that 2nd defendant refused to vacate 3 rooms he occupies at No. 41 Creek Road, Port Harcourt as ordered by the court on 12th June, 1986;

...../5.

(II) Granting the applicants bail, pending the determination of their appeal to the Court of Appeal against the order of committal....."

After considering the application, the learned judge dismissed it on 7th July 1986 but adjourned the matter to 11th July 1986 to afford the contemnors further opportunity of purging themselves of the contempt.

From what appeared in the Record of Proceedings, defendant, James E. P. Hart complied with the order of the court and abandoned his appeal against the order of the learned trial judge that dealt with the contempt proceedings and as such his appeal was struck out by the Court of Appeal on 27th October 1986 when an application by the 2nd Defendant, Louis Ezekiel Hart for -

- (1) an extension of time within which to appeal for a stay of execution of the Ruling of Okara J. dated 12th June 1986, and
- (2) An interim order staying all further proceedings relating to the said Ruling pending the hearing of the substantive motion for a stay of execution

was considered and granted. He also, as shown in paragraph 3 of his further affidavit sworn to on 24th October 1986, had complied with order of the court by "vacating the premises in dispute", that is by vacating and handing possession of the three rooms at No. 41 Creek Road, Port Harcourt. The substantive application was however taken and granted by the Court of Appeal same having not been opposed by learned counsel for the Respondent/plaintiff.

The appeal against the order of committal bearing identification No. FCA/E/54/82 was heard by the Court of Appeal, Enugu on 24th June, 1987 and judgment reserved.

In a well considered judgment of the Court of Appeal written by Abdullahi, J.C.A. [as he then was], with which both Olatawura and Macaulay JJ.C.A. agreed, he dismissed the appeal as unmeritorious and awarded ₦300.00 costs against the 2nd Defendant, who was the only appellant.



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The 2nd Defendant has now further appealed to this Court. Briefs were filed and exchanged by learned Counsel on both sides.

Henceforth, the 2nd Defendant will be referred to as the Appellant while the Plaintiff will also be referred to as the Respondent.

On 13th November 1989 the appeal was taken by this Court.

Learned Counsel on both sides adopted their respective briefs and made oral submissions in elaboration.

In the brief filed by the appellant, he formulated only one issue for determination, to wit -

"Given the facts of this case, did the Defendant/Appellant commit contempt of court?"

For his part, learned Counsel for the Respondent, Mr. Chike Ofodile, S.A.N., formulated the following three issues for determination -

"3.1 Was the Defendant/Appellant in contempt of the order of Court made on the 12th of June, 1986?

3.2 Can the Appellant properly raise in this Court the issue of the procedure adopted in initiating the contempt proceedings when the said issue was never canvassed at the Lower Court?

3.3 Did the Plaintiff/Respondent employ the correct procedure in bringing the Defendant/Appellant to Court for committal?"

Before I go into the arguments of Counsel in their briefs and which I consider relevant to the determination of this appeal, I shall first deal with Counsel for the Respondent's preliminary objection that -

"The appellant's Ground 2 is being raised for the first time in this court. The procedure used by the Respondent in initiating the contempt proceedings was never questioned at the Court of Appeal".

The objection was conceded to by learned Counsel for the appellant and to that extent any argument relating to the procedure in initiating the contempt proceedings contained in the appellant's brief is hereby declared irrelevant and of no effect. Ground 2 of the appellant is accordingly declared irrelevant and therefore struck out. See Order 8 Rule 2(5) of the Supreme Court Rules, 1985. See also IDIKA & ORS. v. ERIRI & ORS. [1988] 5 S.C.N.J. 28 and UOR & ORS. v. LOKO [1988] 5 S.C.N.J. 16.

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So the only issue left to be dealt with is whether the appellant was in contempt of the trial court's order when he refused to vacate the three rooms he was occupying after that court's judgment and its subsequent affirmation on appeal by the Court of Appeal, though the record showed that after the committal order the appellant vacated and gave up possession of the three rooms in No.41 Creek Road, Port Harcourt as ordered by the court.

It was the contention of the learned Counsel for the appellant that the appellant was not in contempt of the trial court's judgment when he remained in the rooms he was occupying at No.41 Creek Road Port Harcourt as it was a family house and was in occupation of the rooms long before the judgment of the trial court. It was also his contention that in the body of the trial court's judgment, there is no specific order against him that he should vacate the premises. He further complained that the learned trial judge that dealt with the contempt proceeding - Okara, J. misinterpreted the judgment of the trial court's order that the present respondent, as Chief or Head of Ezekiel Hart House 'is entitled to the custody and control of all the property, real and personal of the said Chief Ezekiel Hart (Deceased)' to wit -

"The delivery up to him by the 1st defendant of the keys of the family house at Bonny and the family house known as No.41 Creek Road, Port Harcourt together with family property in both houses contained"

to mean handing vacant possession of the houses over to the Respondent by the 1st defendant to affect the Appellant against whom the said order was not directed, but the learned judge was also wrongly influenced by coming to the conclusion that the appellant committed contempt by a letter dated 19th January 1985 referred to by the 1st defendant in his affidavit the contents of which the appellant said he denied. He finally submitted that "faced with two conflicting documentary accounts of how the defendant/appellant came into possession of the said rooms, the judge ought to have resolved that conflict through the taking of



12 | evidence. The Court of Appeal merely took the point as established that defendant/appellant was a trespassor and even "a trespasser" ab-initio without any proof of that fact". Learned Counsel referred to the following decided cases to support his submissions -

AKINSOTE v. AKINDUTIRE [1966]1 ALL N.L.R. 147 at 148; OLUIBUKUN & ORS. v. OLUIBUKUN [1974]2 SC. 41 at 48; UKU & ORS. v. OKUMAGBA & ORS. [1974]1 ALL N.L.R. (PT.1)475 and EBOH & ORS. v. OBI & ORS. [1974]1 SC.179 at 189. SHERIFF & CIVIL PROCESS LAW CAP.118 LAWS OF EASTERN NIGERIA, 1963 [Applicable to Rivers State] and ORDER 9 RULE 13(1) OF SHERIFF & CIVIL PROCESS JUDGMENT [Enforcement] RULES OF THE HIGH COURT OF EASTERN NIGERIA (Applicable to Rivers State).

to buttress his argument that no order was made against the appellant in the trial court's judgment much-less to comply with it.

Mr.  
On his part, learned Counsel for the Respondent, Mr. Chike Ofodile, S.A.N., submitted that in view of the judgment of Pepple J. [as he then was] that the Respondent was entitled to the custody and control of all the property, real and personal of late Chief Ezekiel Hart and his order that such possession and control be given to the Respondent by the delivery of the keys of the family house at Bonny and the family house known as No.41 Creek Road Port Harcourt, the legal position is that the Appellant, as from that time ceased to have right to be there without the permission and consent of the Respondent. He therefore became a trespasser. In support of this submission learned Counsel cited and relied on the case of IKWUNNE OKAGBUE v. ROMAINÉ [1982]5 SC.133 at 148.

He also submitted that the learned judge, Okara J. was perfectly right on 25th June 1986 to have ordered that the appellant be committed to prison until he purged himself of the contempt by complying with the court's order. He referred to Section 71 of the Sheriff and Civil Process Law and further submitted that having regard to the wording of that section it matters not whether or not, the order contained in the judgment is in the nature of an injunction, disobedience to it would attract the committal of the contemnor if contempt proceedings are

initiated. He relied on Paragraph 52<sup>at</sup> page 33 of HALSBURY'S LAWS OF ENGLAND, VOL.9, 4TH EDITION.

Contempt of court is either criminal or civil. It is criminal when it consists of interference with administration of law thus impeding and perverting the course of justice; it is civil when it consists of disobedience to the judgments, orders, or other processes of the court resulting or involving private injury.

The contempt committed by the appellant is civil contempt. It is very clear from the facts before the lower courts subsequent to the judgment of the trial court, the appellant, not only refused to comply with the judgment of the trial court but resorted to delaying tactics by worthless applications and baseless appeals.

Immediately after the judgment of the trial court, he and others lodged an appeal to the (Federal) Court of Appeal which was unanimously dismissed. Based on the dismissal of the appeal by the Court of Appeal on 29th November 1984, the present appellant and 2 others filed an appeal dated 11th January 1985 against the Court of Appeal judgment.

When the appellants failed to comply with the directives in the judgment of the Court of Appeal, the respondent, sometime in January 1985, started the proceedings for the committal of both the present appellant and the 1st defendant [who was the 1st appellant until he abandoned his appeal] by filing a Notice as prescribed in Form 48 of the Sheriff and Civil Process Rules. In the Ruling delivered by Okara J. on 12th June 1986 he found both the 1st defendant and the appellant guilty of contempt of court as complained of by the Respondent and gave each one of them seven days within which to comply with the trial court's orders, instead of committing them to prison. He adjourned the case to 25th June 1986.

When the case came up on 25th June 1986 it was reported to the court that the 1st defendant and the appellant did not comply with the court's order of 7th June 1986, he therefore committed them to prison.



123 On that same 25th June 1986, the contemnors moved and argued an application that they had earlier filed for -

- (1) leave to appeal against the Ruling of 12th June 1986 and
- (2) stay of execution of the order contained in (1) above, pending the determination of the appeal.

Prayer (2) of the Motion was abandoned and struck out for its incompetence while prayer (1) was granted. At the request of learned Counsel for the contemnors, the case was again adjourned to 1st July 1986 for him to file fresh application for an interim stay of the court's order of 25th June 1986 committing the contemnors to prison. This was granted. The application was argued on 2nd July, 1986 and same was dismissed on 7th July 1986. The matter was further adjourned to 11th July 1986.

Following a Motion on Notice dated 14th August 1986, the Court of Appeal on 27th October 1986, made the following observation and order -

"As we cannot deal with the application this morning and having been informed that committal proceedings in the High Court have been adjourned to 30/10/86 it is desirable to make an interim order of stay. Interim Order is hereby made pending the determination of the applications before this court. The motion is adjourned to 19th January, 1987."

The Motion was then adjourned to 19th January 1987. By an application dated 17th February 1987, the respondent prayed for the Court of Appeal to discharge the interim order of stay of execution made on 27th October 1986 as from the record before this Court, there was nothing positive done by the Court of Appeal since its adjournment of the application for a stay to 19th January 1987 for substantive hearing. The parties then agreed to the hearing of the substantive appeal against the order of committal for contempt of court on 24th June 1987.

Before this date and as I have mentioned earlier in this judgment both contemnors have complied with the court's order and that the 1st defendant had expressed his desire not to continue with the appeal as a result of which it was struck out.

...../11.

In a well considered judgment by the Court of Appeal delivered on 24th June 1987, it reviewed the whole events that happened in the case and dismissed the appeal as unmeritorious.

Myself, having gone through the record of proceedings, I find no alternative other than coming to the same conclusion as arrived at by the two lower courts.

Apart from the evidence led by the appellant none of his witnesses supported his contention that No. 41 Creek Road being a family house left by the deceased, and he the appellant, being one of the deceased's sons, was entitled to occupy the rooms he was occupying. This being an issue of fact which needed to be proved, was considered by the trial judge [Pepple J.] as against the other evidence adduced and he preferred the latter to the former; hence his order that vacant possession of 41 Creek Road be given to the Respondent.

It is to be noted that the appellant was joined in the suit as 2nd defendant on his own application and he fully participated in the proceedings up to the delivery of the judgment. And from the date the judgment was given he was fully bound by it. When he refused to comply with it, he became a trespasser in No.41 Creek Road, as regards the three rooms he continued to unlawfully occupy. He is neither an invitee nor a licensee in respect of the three rooms. The case cited by Mr. Chike Ofodile, S.A.N., of IKWUNNE OKAGBUE v. ROMAINÉ [1982] 5 SC.133, particularly pages 144 - 148 is apposite.

Learned Counsel for the appellant tried, though woefully, to argue that as the judgment of the trial court did not specifically direct that the appellant vacate and give up possession of the three rooms at No.41 Creek Road, there is no court order that the appellant has failed to comply with.

Section 71 of the Sheriff and Civil Process Law, Cap.118, Laws of Eastern Nigeria 1963 (applicable to Rivers State) provides that -

"71. If any person refuses or neglects to comply with the order made against him.....the court....may order that he be committed to prison and detained in custody until he has obeyed the order....."



The question to ask here is: did the judgment of the trial court contain an order affecting the appellant? The answer is certainly in the affirmative as the learned trial judge ordered that -

- "(1) The plaintiff was entitled to the control and possession of all property real and personal, of Chief Ezekiel Hart (deceased) as the Chief or Head of the Ezekiel Hart House.
- (2) The first defendant should deliver up to the plaintiff the keys of the Opuwari at Bonny and the house known as 41 Creek Road."

In the judgment of the Court of Appeal and elaborating on the order supra, that Court said -

"....the plaintiff is the recognised head of the house, it is, as accepted by the learned trial judge, his entitlement to take possession of the family property. He cannot do it without the case."

In the Ruling of Okara J. dated 12th June 1986, he commented thus on the trial court orders, as affecting the appellant -

"The court found otherwise and declared that the plaintiff had the right to the possession of the property of the late Chief Ezekiel Hart including 41 Creek Road, Port Harcourt, and ordered that the keys thereof as well be handed to him (plaintiff)."

This amounts to handing vacant possession of the house over to the plaintiff barring those lawfully living there before the death of Chief Ezekiel Hart. The effect of this is that the 2nd defendant had no right to be in occupation."

This was affirmed by the Court of Appeal in its judgment of 16th December 1987.

The principle enunciated in DOHERTY v. DOHERTY [1964] L.L.R. 226 as regards the interpretation of Section 71 of the Sheriff and Civil Process Law (supra) restricting its application to the enforcement of mandatory orders only is no longer the law. See the lead Reasons for Judgment of this Court in SC.159/1987 : OSAYANDE UHUNMWAGHO v. F.I. OKOJIE & ANOR. delivered on 8th December, 1989 [unreported] by Nnamani, J.S.C. in which he reviewed the said principle and concluded -

...../13.

"From all I have said, it follows that I do not endorse the restriction to mandatory orders which Doherty and Adebutu decided. I have not so far seen any judgments in other High Courts in Nigeria arriving at the same conclusion as the Lagos High Court appears to have done in Doherty and Adebutu. The relevant law in the Sheriffs and Civil Process Law, Laws of Eastern Nigeria, 1963 Cap.118 is Section 71. The Rules are Order 9 Rule 13 of the Judgment (Enforcement) Rules made thereunder. Significantly, Forms 48 and 49 are the same as the Bendel State forms."

It is contempt to disobey a judgment or order for the giving up of possession of land and such order can be enforced by means of committal. Where an individual is enjoined by an order of the court to do or to refrain from doing a particular act he has a duty to carry out that order. The court has a duty to commit that individual for contempt of its orders where he deliberately fails to carry out such orders.

As O'Leary J. (a Canadian Judge) put it in CANADIAN METAL CO. LTD. v. CANADIAN BROADCASTING CORP. (NO. 2) [1975] 48 DLR (3d) 641 at 669 -

"To allow Court orders to be disobeyed would be to tread the road toward anarchy. If orders of the Court can be treated with disrespect, the whole administration of justice is brought into scorn.....If the remedies that the Courts grant to correct.....wrongs can be ignored, then there will be nothing left for each person but to take the law into his own hands. Loss of respect for the Courts will quickly result into the destruction of our society."

The appeal totally fails and it is dismissed. The decisions and orders of the lower courts are affirmed. ₦500.00 costs is awarded to the Respondent against the Appellant.

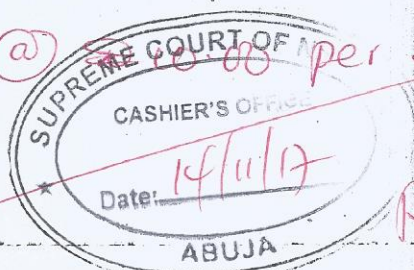
A. B. WALI,  
JUSTICE, SUPREME COURT.

Chief T. Tagbo Nwogu, for the Appellant.

Chike Ofodile Esq., S.A.N. (with him C. O. Okwusogu), for the Respondent.

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PRECEDING JUDGE  
REGISTRAR  
SUPREME COURT OF NIGERIA



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