IN THE COURT OF APPEAL
ENUGU JUDICIAL DIVISION
HOLDEN AT ENUGU

ON THE 29TH DAY OF NOVEMBER, 2018

BEFORE THEIR LORDSHIPS:

IGNATIUS IGWE AGUBE — **JUSTICE, COURT OF APPEAL**
MISITURA OMODERE BOLAJI-YUSUFF — **JUSTICE, COURT OF APPEAL**
ABUBAKAR SADIQ UMAR — **JUSTICE, COURT OF APPEAL**

APPEAL NO. CA/E/124/2015

BETWEEN:

RICHMOND OPEN UNIVERSITY LTD ..... APPELLANT

AND

1. **NATIONAL UNIVERSITIES COMMISSION**
2. **INDEPENDENT CORRUPT PRACTICES AND OTHER RELATED OFFENCES COMMISSION**
3. **COMMISSIONER OF POLICE, ENUGU STATE**
4. **INSPECTOR GENERAL OF POLICE**
5. **ATTORNEY GENERAL OF THE FEDERATION**

RESPONDENTS

JUDGMENT

DELIVERED BY MISITURA OMODERE BOLAJI-YUSUFF, JCA

The appellant instituted fundamental right enforcement proceeding at the Federal High Court, Enugu State Judicial Division by a motion on notice filed on 13/6/2013 and sought the following reliefs:

(a) A declaration that the invasion, harassment, embarrassment intimidation, threat, molestation and illegal sealing of the

premises of RICHMOND OPEN UNIVERSITY LTD, NO. 31 ZIK AVENUE UWANI, by the respondents the agents of the Federal Government of Nigeria (the 3rd defendant in a final judgment of the Federal High Court of Nigeria between: the applicant and Prof. Peter Okebukola and 3 others in Suit No. FHC/EN/CS/76/2006 dated 14/7/2006) is an affront to rule of law and constitutional democracy and the violation of the rights of the applicant secured and guaranteed in Sections 33, 34 and 35 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) as approved by a judgment of court – Exhibit '2'. Therefore, the respondents act is unlawful, unconstitutional and a breach of the applicant's fundamental right secured as well by the African Charter on Human and Peoples Right (Ratification and enforcement) Act, ("The African Charter")

(b) A declaration that the invasion, sealing off and closure of the applicant (Richmond Open University Ltd) by the 1st, 2nd, 3rd and 4th respondents, agents of the Federal Government of Nigeria in the face of a subsisting judgment of the Federal High Court, Exhibit '2' attached, is a flagrant breach of the applicants right guaranteed in Section 39(1) and (2) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

(c) A declaration that the purported seizure of the applicant's property as listed in the Exhibits 8 – 8VI in the affidavit in support of motion (Richmond Open university Ltd) at No. 31 Zik's Avenue, Enugu, is unconstitutional, unlawful, illegal, null

and void being a violation of the applicant's right to own property as guaranteed by Section 37 of the Constitution and Article 14 of the African Charter.

(d) An order directing forthwith, the de – sealing/reopening of the offices of Richmond Open University Ltd and releasing all the assets and properties of Richmond Open University Ltd, unlawfully seized and confiscated by the respondents, more particularly contained in the Exhibits 8 – 8VI in the affidavit in support of the motion.

(e) An order of injunction restraining the respondents whether by themselves, servants, agents, workmen, cronies, lackeys, privies, attorneys and any person acting in the name of and on behalf of the respondents however described or called, from further continuing with the infringement or violation of the applicant's right to human dignity, right to express opinion or impart knowledge, ideas, or opinion and disseminate same, and right to own property including interfering in any manner with the running, operation or closing down and sealing of Richmond Open University Ltd.

(f) #200,000,00 (Two Hundred Million Naira) damages against the respondents jointly or severally for the infringement or violation of the applicant's fundamental rights.

(g) And any Order or Orders the Honourable Court may deem fit to make in the circumstances of this case."

The appellant's case is that the appellant was incorporated under the Companies and Allied Matters Act for dissemination of information, ideas and opinions. When the 1st respondent intimidated, harassed and threatened the appellant, Mr. Ifeanyi Okonkwo for himself and on behalf of the appellant instituted suit no FHC/EN/CS/76/2006 at the Federal High Court by originating summons wherein the following question was presented to the court for determination:

> *"Whether in the interpretation of section 39(1) & (2) of the 1999 Constitution, and the National Universities Commission Act, Sections 4 & 5 Cap No.1 LFN 2004 the Richmond Open University, Arochukwu – Abia State is an illegal private University justifying the acts/declarations by the 1st, 2nd and 3rd defendants, through the National Press particularly Wednesday, April 26, 2006 "Daily Independent" "that Richmond Open University Arochukwu, Abia State is illegal and to close down the illegal operation of the institution."*

In its judgment delivered on 14/7/06 the court answered the question in favour of the appellant and granted the following reliefs sought by the appellant:

> (a)"*An order of declaration that in purview of section 39(1) and (2) of the 1999 Constitution; Richmond Open University established for the dissemination of information, knowledge, ideas and opinions is not an illegal private university.*

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own and operate under the constitution and the defendants have no power to abolish or close down except as provided for under the statute."

The 1st respondent herein filed an appeal against the judgment and the appeal is still pending. According to the appellant, the officers of the 2nd, 3rd and 4th respondents as agents of the Federal Government heavily armed invaded the appellant's premises on 16/5/2013 at the behest, control, direction and instruction of the 1st respondent. They humiliated, disgraced, embarrassed and tortured the promoter, chairman and staff of the appellant on the ground that the appellant is an illegal private university. They sealed off and illegally closed down the appellant, posted a notice to that effect on the front door of the appellant's premises at No. 31, Zik's Avenue, Uwani, Enugu and took away valuable properties of the appellant.

The respondents filed a preliminary objection to the suit on 31/7/2013 and sought an order to strike out or dismiss the suit on the grounds that:

1. "Applicant's suit is incompetent in that the supporting affidavit is inadmissible in law;

2. The grounds and basis for applicant's claim is enforcement of a purported declaratory judgment of the Federal High Court Enugu which is pending on appeal;

3. The multiplicity of claims by applicant and/or its agents/privies in respect of the same alleged facts is frivolous, vexatious and an abuse of court process."

Ground (a) of the objection was withdrawn at the hearing of the suit.

By a separate notice of preliminary objection dated 29/8/2013 and filed on 18/9/13, the 5th respondent raised objection to its joinder to the suit on the grounds that:

1. *"The 5th respondent is not a necessary party to the applicant's suit.*
2. *That the applicant has not disclosed any cause of action against the 5th respondent.*
3. *The 1st and 2nd respondents are bodies corporate.*
4. *There is no cause of action against the 5th respondent.*
5. *That this action can be properly determined without the 5th respondent being made a party."*

The preliminary objections were heard together with the substantive suit. Parties filed and exchanged affidavits, counter affidavits and written addresses which they relied on and adopted at the hearing of the suit. In the judgment delivered by Hon. Justice D. V. AGISHI on 22/10/14 the court upheld the objection of the 5th respondent and struck out his name from the suit. The appellant's application was dismissed. In dismissing the application, the court held the appellant did not satisfactorily establish that

its fundamental right to personal liberty has been infringed or threatened as alleged.

Dissatisfied with the judgment, the appellant filed a notice of appeal against the judgment on 25/4/2014. The two grounds of appeal contained in the notice of appeal without their particulars are:

A. ERROR IN LAW:

"Learned trial Judge erred in law and occasioned a gross miscarriage of justice, when without any cogent evidence by the 5th respondent, satisfying the court that it was wrongly sued, which would not leave the court in doubt that the applicant/appellant has brought a wrong person to court. And the court upon the submission of counsel for the 5th respondent, erroneously struck out the name of the 5th respondent from the case.

B. ERROR IN LAW:

The learned trial Judge erred in law when she gave a decision out of a misconception of the applicant's case, and proceeded 'suo muto' by speculating or making a case for the 2nd respondent, and formulated the weakness (sic) in the case to wit: the question is does the 2nd respondent (ICPC) have the power/right to search and arrest the applicant for interrogation or investigation."

Appellant's brief of argument was filed on 4/5/2015. 1st and 2nd respondents' brief was filed on 18/1/2018 and deemed as properly filed and served on 17/10/18. The 5th respondent's brief was filed on

12/10/2015. The appellant's counsel and 1st and 2nd respondents' counsel adopted their respective briefs. The 3rd and 4th respondents did not file any brief and were not represented by counsel inspite service of court processes on them. The 5th respondent's counsel was absent inspite of service of hearing notice on him. The 5th respondent's brief was deemed adopted pursuant to Order 19 Rule 9(4) of the Court of Appeal Rules, 2016.

The 5th respondent filed a separate notice of objection dated 12/10/2015 and filed on the same day. The objection is that the appeal is incompetent and not maintainable on the following grounds:

1. *"That grounds A & B of the appellant's appeal are of fact or at least of mixed law and fact and therefore require the leave of this court or the trial court.*
2. *That the appellant failed to obtain the leave of court before bringing this appeal.*
3. *That the appellant lumped up so many complaints in the grounds of appeal as well as the particulars making the grounds vague and difficult to understand.*
4. *That the grounds do not specifically attack the decision of the court appealed against.*
5. *The appellant's issues do not flow from the grounds of appeal and the issues themselves were couched as grounds of appeal.*
6. *That the appellant's appeal is incompetent."*

Counsel submitted that the two grounds of appeal stated earlier in this judgment are of facts or at least of mixed law and fact which require the leave of court before the appeal can be filed. He referred to ***KASHADADI V. NOMA (2007) 13 NWLR (PT. 1052) 510 AT 522 – 523 (H-B). AKINYEMI V. ODU'A INV. CO. LTD (2012) 17 NWLR (PT. 1329) AT 130. AMAH V. NWANKWO (2007) 12 NWLR (PT. 1049) 552 AT 570 – 571 (G-B).*** He further submitted that where a ground of appeal requires leave of court and leave is not sought and obtained, the appeal or ground of appeal is incompetent and will be struck out. It is also submitted that the two grounds of appeal are vague and lack precision as the appellant lumped so many complaints into the grounds and the issues distilled there from. It is further submitted that the issues formulated for determination do not flow from the grounds of appeal and ought to be struck out because the law is settled that any issue not predicated on a ground of appeal is incompetent and any argument in support of such issue will be discountenanced. He referred to ***CHAMI V. UBA PLC (2010) 6 NWLR (PT. 1191) 474 AT 493 (F-G). EZENWA V. OKO (2008) 3 NWLR (PT. 1075) 610 AT 624 (C-D). EKE V. OGBONDA (2006) 18 NWLR (PT. 1012) 506 AT 514.*** He urged the court to strike out the grounds of appeal and the issues distilled there from.

In response to the objection, it is the contention of the appellant's counsel that the notice of preliminary objection is incompetent and ought to be struck out because the law requires an attack on grounds of appeal to be by motion rather than notice of preliminary objection. He referred to

DADA V. DOSUNMU (2006) 9 SC 1 AT 6 – 7. NSIRIM V. NSIRIM (1990) 3 NWLR (PT. 138) 285, AT 287 (1). AGWARAMGBO V. UBN (2001) 4 NWLR (PT. 702) 1 AT 5 (1).

On the substance of the objection, the appellant's counsel submitted that this appeal emanated from a final judgment of the Federal High Court, therefore the appellant did not need the leave of court to appeal on grounds of mixed law and facts. He referred to ***NUC V. ALLI (2014) 3 NWLR (PT. 1393) 33 AT 35 and 55 (22). UBA PLC V. ADIKWU (2015) 1 NWLR (PT. 1439) 27 AT 30 (1). AYOADE V. SPRING BANK PLC. (2014) 4 NWLR (PT. 1396) 93 AT 103 (16).*** He urged the court to strike out the notice of preliminary objection.

RESOLUTION:

A careful consideration and reading of the entire grounds of the 5th respondent's objection and the submissions in support leaves no one in doubt that the objection is against the entire appeal not one of the grounds of appeal. When an objection is raised against the entire grounds of appeal with a prayer urging the court to strike out the entire grounds of appeal and all the issues distilled there from, the objection is in essence against the appeal. Order 10 Rule 1 of the Court of Appeal Rules provides that:

1. *"A Respondent intending to rely upon a preliminary objection to the hearing of the appeal, shall give the Appellant three clear days notice thereof before the hearing, setting out the grounds of objection, and shall file such notice together with twenty copies thereof with the registry within the same time".*

The settled position of the law is that an objection to some of the grounds of appeal must be raised by a motion on notice which must be separately filed while an objection to the hearing of an appeal must be raised by a notice of preliminary objection. The notice of preliminary objection can be filed separately or be incorporated in the brief of argument. A party who intends to raise objection to the hearing of an appeal is at liberty to adopt any of the two modes. See ***MMADUAGWU & ANOR V. IFEANYI & ORS (2016) LPELR – 41012 (CA) AT 13 (A-D).*** The objection raised by the appellant's counsel that the 5th respondent's notice of preliminary objection is incompetent is misconceived. It is hereby dismissed.

Section 241 (1) (a) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides that an appeal shall lie from final decisions of the Federal High Court or a High Court to the Court of Appeal as of right in any civil or criminal proceedings before the Federal High Court or a High Court sitting at first instance. The fact that the decision of the Federal High Court from which this appeal emanated is a final decision of the Court sitting at first instance is not in controversy. The settled position of this Court and the Supreme Court is that an appeal from a final decision of the Federal High Court or a High Court of a State to this Court in all the matters listed under Section 241 (1) (a-f) of the Constitution lies as of right irrespective of whether the grounds of appeal are of pure law, mixed law and fact or facts only. See ***BELOXXI & COY. LTD & ANOR V. SOUTH TRUST BANK & ORS . (2012) LPELR – 8021 (CA). OANDO***

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PLC & ORS V. ADEWUYI & ORS (2013) LPELR – 22037 (CA) AT 19 – 20 (D-C). F.H.A. V. KALEJAIYE (2010) 19 NWLR (PT. 1226) 147 SC AT 12 (D-F). The 5th respondent's objection that the appeal is incompetent because the grounds of appeal which are of mixed law and fact were filed without the leave of court is misconceived. It is hereby dismissed.

It is the contention of the 5th respondent's counsel that the grounds of appeal are vague and lack precision. It is settled that a ground of appeal must not be vague or verbose. Order 7 Rules 2 (1), (2), (3) and 3 of the Court of Appeal Rules, 2016 provides that:

2.- *"(1)All appeals shall be by way of rehearing and shall be brought by notice (hereinafter called "the notice of appeal") to be filed in the registry of the court below which shall set forth the grounds of appeal, stating whether the whole or part only of the decision of the court below is complained of (in the latter case specifying such part) and shall state also the exact nature of the relief sought and the names and addresses of all parties directly affected by the appeal, which shall be accompanied by a sufficient number of copies for service on such parties.*

(2) *Where a ground of appeal alleges misdirection or error in Law, the particulars and the nature of the misdirection or error shall be clearly stated.*

(3) *The notice of appeal shall set forth concisely and under distinct heads the grounds upon which the Appellant intends to rely at*

the hearing of the appeal without any argument or narrative and shall be numbered consecutively.

Vague Grounds.

3 *.Any ground which is vague or general in terms or which discloses no reasonable ground of appeal shall not be permitted, save the general ground that the judgment is against the weight of the evidence, and ground of appeal or any part thereof which is not permitted under this Rule may be struck out by the Court of its own motion or on application by the Respondent."*

In ***C.B.N V. OKOJIE (2002) LPELR – 836 (SC) AT 11 – 12 (F-A), (2002) 8 NWLR (PT. 768) 48.*** The Supreme Court per Uwaifor JSC held that:

"Vagueness of a ground of appeal may arise where it is couched in a manner which does not provide any explicit standard for its being understood, or when what is stated is so uncertain that it is not susceptible of being understood. It may also be considered vague when the complaint is not defined in relation to the subject or it is not particularized, or the particulars are clearly irrelevant. See Atuyeye v. Ashamu (1987) 1 NWLR (Pt.49) 267; (1987) NSCC (Vol. 18 pt. 1) 117"

See also ***OLORUNTOBA – OJU & ORS V. ABDUL – RAHEEM & ORS (2009) LPELR – 2596 (SC) AT 16-17 (E-F)*** where the Supreme Court per ADEKEYE JSC stated that:

> *"Vagueness of a ground of appeal may arise where it is couched in a manner which does not give allowance for its being understood, or where what is stated there is so uncertain and robs it of any form of intelligibility. It may also be vague when the complaint is not defined in relation to the subject-matter or the particulars are clearly irrelevant to the grounds."*

Ground 1 of the appeal clearly relates to the decision of the court below to strike out the name of the 5th respondent from the case. Ground 2 of the appeal relates to the finding of the court below at page 182 of the record of appeal that:

> *"The 2nd respondent sought and obtained a search warrant from the Federal High Court Abuja division wherein they were authorized to carry out a search on the applicant based on the information they received concerning her. In the circumstance the arrest and search was not unconstitutional neither can it be said to be an infringement on the fundamental right of the applicant.*
>
> *The applicant has filed a further affidavit to the application. In paragraph 2 of the said further affidavit he expressed the shock that the respondents have filed an application to prefer a charge against her in court 1 of Federal High Court. Several Exhibits have been attached to the said further affidavit including the purported charge.*

I do believe that this step taken by the respondent stems from the result of the investigation carried out on the applicant. Indeed this process filed by the applicant is an admission of the fact that the act of the respondent (i.e search) was justified."

The grounds of appeal and the particulars are couched inelegantly but they do not suffer any of the described shortcomings. They are not unintelligible or incapable of being understood. It is settled law that a ground of appeal must be read together with its particulars to get the real gist of the complaint of the appellant against the decision of the court below. See ***ORIEBOSI V. ANDY SAM INESTMENT CO. LTD (2014) LPELR – 23607 (CA) AT 15 (C-D). MANSOUR V. CARNCO FOODS (NIGERIA) LTD (2014) LPELR – 22443 (CA) AT 28 (B-D).*** It is clear from ground 2 of the appeal read together with its particulars that the complaint of the appellant is that the court below based its decision on an issue not raised by the parties and made a case for the 2nd respondent.

For the above reasons, the 5th respondent's objection fails and it is hereby dismissed.

The 1st and 2nd respondents incorporated a notice of preliminary objection in their respondents brief. The objection is in respect of ground 1 of the appeal which is a complaint against the decision of the court below upholding the 5th respondent's objection and striking out its name from the suit. It is the contention of the 1st and 2nd respondents that the decision of the lower court on the 5th respondent's objection was an interlocutory decision in respect of which an appeal should have been filed within 14

days. He submitted that the mere fact that the decision of the court on the preliminary objection was rendered along with the decision on the substantive case does not change the character of the decision from an interlocutory decision. He referred to ***IGUNBOR V. AFOLABI (2001) 11 NWLR (PT. 723) AT 16 (D-F).*** He further submitted that even though it is permissible for an appellant to combine his appeal against an interlocutory decision with his appeal against a final decision, the appeal must be filed within 14 days and where it is filed out of time, he must obtain the leave of court. He referred to ***KAKIH V. PDP (2014) 15 NWLR (PT. 1430) 374 AT 407 (B-F). UBN PLC V. SOGUNRO (2006) 16 NWLR (PT. 1006) 504. NIGERIA DEV. LTD V. A.S.W.B (2008) 9 NWLR (PT. 1093) 498.*** He urged the court to strike out ground 1 of the appeal and issue 1 distilled there from.

In response to the above submissions, the appellant's counsel contended that the notice of preliminary objection incorporated into the 1st and 2nd respondents' brief is incompetent because the objection is in respect of grounds of appeal and it ought to be brought by way of motion on notice filed separately. He referred to ***NSIRIM V. NSIRIM (1990) 3 NWLR (PT. 138) 285 AT 287 (1) OSHO V. A.G. EKITI STATE (2002) 2 NWLR (PT. 732) 628 AT 637 (9). AGWARAMBOV V. U.B.N (2001) 4 NWLR (PT. 702) 1 AT 5 (1). PDP V. SHERIFF (2017) 15 NWLR (PT. 1588) 219 (18). KENTE V. ISHAKU (2017) 15 NWLR (PT. 1587) 94 (8).***

On the contention that the appeal on the decision of the lower court in respect of the 5th respondent's preliminary objection should have been filed within 14 days, counsel submitted that failure to file the appeal within 14 days of the decision is not fatal to ground 1 of the appeal.

RESOLUTION:

As stated earlier in this judgment, it is settled that when a party intends to raise an objection to the competence of a ground of appeal, the objection should be by a motion on notice and must be filed separately. See ***NSIRIM V. NSIRIM (SUPRA). OKPORI V. OKPORI (2000) 3 NWLR (PT. 649) 461 AT 471.*** However, I am of the view that since the aim of filing a motion or notice of preliminary objection is to give the other party adequate notice of an objection to some grounds of appeal or an appeal, once there is a formal notice which gives the other party adequate notice and opportunity to react to same, the fact that the objection is raised by a wrong procedure should not in my view rob the court of the jurisdiction to consider and determine the objection. In my view it is a procedural irregularity which can be waived by the court. The court has the option to discountenance a preliminary objection which ought to be raised by a motion on notice but has been raised by a notice of preliminary objection but to do so will amount to strict adherence to technicality at the expense of substantial justice.

The law is settled that an appeal against an interlocutory decision can be included or subsumed into an appeal against a final judgment. This is a procedure now being encouraged by the appellate courts to avoid

unnecessary delays in the administration of justice. The time prescribed for filing an appeal against an interlocutory decision by Section 24(2) of the Court of Appeal Act is 14 days from the date of the decision appealed against while the time to appeal against a final decision in civil matters is three months. Where the interlocutory decision is delivered before the date of final judgment and 14 days has lapsed before the appeal is filed, an order for extension of time to file and merge the two appeals must be sought and obtained. See ***R.E.A.N. PIC V. ANUMNU (2003) 6 NWLR (PT. 815) 52, (2002) LPELR – 6071 (CA) AT 27 – 28 (B-E). AGBITI V. NIGERIAN NAVY (2011) LPELR – 2944 (SC) AT 34 – 35 (E –A).***

However where a court decides to render its decision in respect of an interlocutory application along with its final decision and a single decision is rendered, the period within which to appeal against the judgment is three months as stipulated by Section 24(2) of the Court of Appeal Act. The distinction between an interlocutory decision and a final decision becomes inoperative. The time stipulated for appeal against the final decision would apply. An attempt to separate or severe part of final judgment for purposes of filing an appeal within 14 days will result in an absurdity. The objection to ground 1 of the appeal on the ground that it is against an interlocutory decision and ought to have been filed within 14 days is hereby dismissed.

I shall now proceed with the appeal. The appellant's counsel formulated the following issues for determination:

(1) *"Whether the learned trial Judge was right in striking out the name of the 5th respondent from the suit without any cogent*

evidence, which would not leave the court in doubt, therefore misplaced the burden of proof on the appellant.

(2) *Whether the misconstruing of the appellant's case by the learned trial court did not occasion a miscarriage of justice, when the facts stated to be undisputed, and the issues joined formed the kernel (sic) rather the trial court speculated on issue not before it and denied the appellant judgment."*

The 1st and 2nd respondents adopted the issues formulated for determination by the appellant. The 5th respondent formulated the following issues for determination:

1. *Whether the lower court (trial court) was not right to strike out the name of the 5th respondent where no cause of action was disclosed against it.*
2. *Whether the judgment of the learned judge of the lower court properly evaluated the applicant's (appellant) case viz-a viz that of the respondents and came to the right decision.*

I have considered the issues formulated by counsel and the grounds of appeal. The issues thrown up for determination in this appeal are:

(1) Whether the court below was right in striking out the 5th respondent's name on the ground that no cause of action was disclosed against the 5th respondent.

(2) Whether the court below misconceived the appellant's case and thereby made a case for the 2nd respondent.

On issue 1, the appellant's counsel submitted that the onus was on the 5th respondent to satisfy the court that he has been wrongly sued and the onus is not discharged by a written address of counsel or a mere passing remark in counsel's address as the law is settled that an address is not a substitute for evidence on which the court can rely. He referred to ***SCHMIDT V. UMANAH (1997) 1 NWLR (PT. 479) 75 AT 84 (G-H).*** Counsel referred to the finding of the court on page 181 of the record of appeal that the filing of an application at the Federal High Court to prefer a charge against the appellant as a result of the investigation by the respondents is a confirmation that the act of the respondents was justified. He submitted that the reasoning and finding of the court is grossly misconceived.

In his response, the 1st and 2nd respondents' counsel adopted his submissions in respect of their preliminary objection. He submitted that the lower court was right is striking out the name of the 5th respondent from the suit.

The 5th respondent's counsel submitted that the law is trite that in determining whether a cause of action exists against a party, the court will consider the reliefs or the claim of the plaintiff as contained in the writ of summons, statement of claim or any other originating process in the case. He referred to ***OSIGWE V. PSPLS MGT. CONSORTIUM LTD (2009) 3 NWLR (PT. 1128) 378 AT 399 (D-E). UWAZURUONYE V. GOVERNOR OF IMO STATE (2013) 8 NWLR (PT. 1355) 28 AT 56 – 57 (H-C).*** He further submitted that the court below rightly struck out the 5th respondent's name because the reliefs sought and the affidavits in

support of the application for the enforcement of fundamental rights show that the appellant's case is that the 2nd respondent accompanied by armed officers of the 3rd and 4th respondents arrested and detained the appellant's staff and sealed off its premises at the instigation of the 1st respondent. It is submitted that no cause of action was disclosed against the 5th respondent as it is not enough to join him merely because he is the Chief Law Officer of the Federation when the other parties are statutory creations or agents of statutory bodies with financial autonomy and powers to sue and be sued. He referred to ***A.G. KANO V. A. G. FEDERATION (2007) 6 NWLR (PT. 1029) 164 AT 192.***

In his reply, the appellant's counsel submitted that the 2nd respondent works or operates under the supervision of the 5th respondent and the appellant need not have a dispute with the 5th respondent before he can be joined in this type of case. He referred to **Section 150(1) of the Constitution.** ***ELELU – HABEEB V. N.J.C (2010) ALL FWLR (PT. 536) 494 AT 507 (8). ONYEWU V. K.S.M (2003) 10 NWLR (PT. 827) 40 AT 54 (15). BAMAIYI V. A.G. FEDERATION (2000) 6 NWLR (PT. 661) 421.***

The appellant's counsel finally submitted that the 5th respondent's objection at the court below ought to have been raised by way of motion on notice not by a notice of preliminary objection which is unknown to the Federal High Court Rules. He further submitted the notice of preliminary objection being unknown to the Federal High Court Rules is null and void and the judgment or order which resulted from it is also null and void abinitio. He referred to ***MOBIL PROD. (NIG) UNLTD. V. MONOKPO***

(2003) 18 NWLR (PT. 852) 346 AT 368 (18). MOBIL PROD. (NIG) UNLTD. V. UWEMEDIMO (2006) ALL FWLR (PT. 313) 116.

RESOLUTION:

The appellant's contention that the judgment of the court below is void for being predicated on an invalid or void process was not raised at the court below nor in the notice of appeal. It is being raised in this court for the first time in the appellant's reply brief. The law is trite that where a party intends to raise or canvass a fresh issue not canvassed at the court below, leave of the court must be sought and obtained except an issue of jurisdiction which does not require further evidence or other substantial points of law, substantive or procedural which need to be allowed in order to prevent an obvious miscarriage of justice. See ***SALISU & ANOR V. MOBOLAJI & ANOR (2013) LPELR – 22019 (SC) AT 19 – 20 (B-A). MAKANJUOLA & ANOR V. BALOGUN (1989) LPELR – 1827 (SC) AT 20 (C-E). EZUKWU V. CHUKWU & ANOR (2004) LPELR – 1217 (SC) AT 17 – 18 (G). ELF OIL NIG. LTD V. NIGERIA OIL MILLS LTD. (2010) LPELR – 4100 (CA) AT 9 – 10 (F-G).*** The issue of the mode of raising objection to a suit at the Federal High Court being raised for the first time in this court is incompetent. The issue being one of procedural law is an irregularity consented to by the appellant. The settled position of the law is that where a party consented to a wrong procedure at the trial court, he cannot be heard to complain on appeal unless he can show that the wrong procedure occasioned substantial injustice to him. That has not been done by the appellant in this case. See ***AZUBUIKE V. HASSAN***

(2014) LPELR – 23442 (CA) AT 13 (E-G). IBATOR & ORS V. BABAKURO & ORS (2007) LPELR-1384 AT 20 (A-D). The complaint of the appellant's counsel on the mode adopted by the 5th respondent in raising his objection at the court below is belated. It is hereby discountenanced.

On the 5th respondent's objection that he is not a necessary party to the case and no cause of action is disclosed against him, the court below considered the submissions of both parties and held as follows at pages 182 of the record of appeal:

> *"On whether any cause of action is disclosed against the 5th respondent to make him a party to this application. Here the 5th respondent's submission is in the negative. Mr. Okoh in his address and submission told this court that 5th respondent is not a necessary party to the suit and should not be bound by the final decision of this court. That without the 5th respondent being made a party in this action it can be effectively and completely determined.*
>
> *Lastly it is submitted that the applicant has not shown any circumstance or consummation of facts in its affidavit to entitle it to a positive decision against the 5th respondent. The applicant of course has no reply to this submission, 5th respondent's submission is deemed admitted by the applicant and in such circumstance no further proof is needed again. It is my view that no cause of action is disclosed against the 5th respondent to make him a party to this suit.*

The name of the 5th respondent is accordingly struck out from this case."

It has long been settled by a plethora of authorities that a person is a necessary party to a suit if the issue in controversy cannot be effectively, effectually and completely determined. A necessary party is also a person whose interest will be affected by the final judgment and in whose absence the matter cannot be determined and justice delivered with finality. See ***USMAN & ORS V. LAWAL & ORS (2009) LPELR – 8273 (CA) AT 25 – 28. A.P.C. V. P.D.P & ORS (2015) LPELR – 24349 (CA) AT 79 – 80 (B-A). UNUIGBOKHAI & ORS V. AIGBEVBOISA & ORS (2016) LPELR – 40288 (CA) AT 28 (A-B). MALITAFFI V. MODOMAWA & ORS (2016) LPELR – 40775 (CA) AT 25 – 26 (D-B).*** In the instant case, the issue before the court below was whether the 1st – 4th respondents had a right to invade the premises of the appellant, seal it, arrest and detain the staff of the appellant when there is a subsisting judgment of the Federal High Court which has declared that the appellant is not an illegal institution.

By virtue of Section 1 of the National Universities Commission Act and Section 3(1) and (2) of the Corrupt Practices And Other Related Offences Act, the 1st and 2nd respondents are corporate bodies with perpetual succession and may sue and be sued in their corporate names. They are both empowered to perform certain statutory functions. By law, both corporations are separate legal entities and distinct from the Federal Government of Nigeria. They are answerable for any mistake or omission

that may occur in the performance of their statutory duties.

The 3rd and 4th respondents are also creations of statutes and the Constitution under Sections 3- 10 of the Police Act and Sections 214 – 216 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). That is why the Supreme Court ***Per KALGO ,J.S.C*** held in ***A.G KANO V. A.G FEDERATION (2007) LPELR- 618 AT 28 (B-G)*** that:

> *"It is not in dispute that the Attorney-General of the Federation can be sued as a defendant in all civil matters in which a claim can properly be made against the Federal Government or any of its authorized agencies, arising from any act or omission complained of. See Ezomo v. A.G Bendel State (1986) 4 NWLR (Pt. 36) 448."*
>
> *The Inspector- General of Police, who is involved in this case, is the head of the Nigeria Police Force in Nigeria. It is a force recognized by the State and Federal Governments of Nigeria and it's a separate body created by the Constitution with special powers and responsibilities and can properly be sued. (See Sections 214 - 216 of 1999 Constitution and Police Act, Cap. 359 of Laws of Federation, 1990). As stated earlier .Attorney-General of a State or the Federation can be sued in any civil claim or complaint against the Government of a State or the Federation as the case may be, but this can only properly happen where the claim or complaint is directly against the State or Federal Government concerned."*

In the instant case, the 2nd respondent has the power to investigate an allegation that an offence has been committed under the Corrupt Practices And Other Related Offences Act and if an offence under any law is disclosed by investigation, the investigating officer shall notify the Director of Public Prosecutions of the result of the investigation. Section 5 of the Act provides that:

> ***5.*** *" (1) Subject to the provisions of this Act, an officer of the Commission when investigating or prosecuting a case of corruption, shall have all the powers and immunities of a police officer under the Police Act and any other laws conferring power on the police, or empowering and protecting law enforcement agents. [Cap. P19.]*
>
> *(2) If, in the course of any investigations or proceedings in court in respect of the Commission of an offence under this Act by any person there is disclosed an offence under any other written law, not being an offence under this Act, irrespective of whether the offence was committed by the same person or any other person, the officer of the Commission responsible for the investigation or proceedings, as the case may be, shall notify the Director of Public Prosecutions or any other officer charged with responsibility for the prosecution of criminal cases, who may issue such directions as shall meet the justice of the case."*

Though section 3(14) provides that:

"The Commission shall, in the discharge of its functions under the Act, not be subject to the direction or control of any other person or authority.

Section 26(2) provides that:

(2) Prosecution for an offence under this Act shall be initiated by the Attorney-General of the Federation, or any person or authority to whom he shall delegate his authority, in any superior court of record so designated by the Chief Judge of a State or the Chief Judge of the Federal Capital Territory, Abuja under section 60 (3) of this Act; and every prosecution for an offence under this Act or any other law prohibiting bribery, corruption, fraud or any other related offence shall be deemed to be initiated by the Attorney-General of the Federation.

Section 61(1) also provides that:

61. (1) Every prosecution for an offence under this Act or any other law prohibiting bribery, corruption and other related offences shall be deemed to be done with the consent of the Attorney-General.

Pursuant to the above provisions of the Act, an application to prefer a charge against the appellant was filed at the Federal High Court of Nigeria, Enugu Judicial Division on 9/3/2015. The complainant/applicant is the Federal Republic of Nigeria. It is therefore clear that notwithstanding that

the 1st – 4th respondents are statutory bodies answerable for their own actions and in the investigation of a report of commission of any crime under the Act, the 2nd respondent is not subject to the control or direction of any other person or authority, the prosecution of anybody for any offence under the Act is under the authority of the Attorney – General. He institutes the proceedings under the Act for and on behalf of the Federal Republic of Nigeria. In ***ELELU – HABEEB V. N.J.C (2012) LPELR-15515 (SC),*** the Supreme Court considered the propriety of joining the Attorney – General of the Federation as a party to the suit against the National Judicial Council which is also a creation of the Constitution. The Court **Per ADEKEYE ,J.S.C (Pp. 104-105, paras. B-A) held as follows:**

> *"Section 150(1) stipulates that there shall be an Attorney-General of the Federation who shall be the Chief Law Officer of the Federation and a Minister of the government of the federation. It has been firmly decided in many decided cases of this Court that the Federal Attorney-General is the Chief Law Officer of the Federation; he is the custodian and protector of the Constitution. He is competent to be sued in any suit against the Federal Government or any of its agencies. Any case involving the (1) interpretation of the Constitution as it affects our democratic system of governance. (2) The doctrine of separation of powers entrenched in our Constitution, or any suit which poses a threat to the independence of any arm of*

government, the Attorney-General of the Federation must be an inevitable party. AG Kano State v. AG Federation (2007) 6 NWLR (pt.1029) pg.164; AG Rivers state v. AG Akwa Ibom State (2011) 8 NWLR (pt.1248)."

Since the Attorney – General has the power to prosecute an alleged offender under the Corrupt Practices And Other Related Offences Act, any action challenging the power of the Commission to investigate and prosecute for an offence is a challenge to the power of the Attorney General. The extent of the powers of the Commission under the Act and the right of the appellant under the Constitution are under consideration. Since the Attorney – General is the Chief Law Officer of the Federation, obedience to the Constitution and all other laws of the land is of paramount interest to him. The declaration being sought call for the consideration of the Provisions of Chapter IV of the Constitution and its effect on the powers of the Commission. I do not agree that a claim for declaration of a party's constitutional right discloses no cause of action against the 5th respondent. In addition, the processes before the court disclosed a dispute between the appellant and the 2nd respondent and the 5th respondent has manifested his intention to prosecute the appellant pursuant to the investigation of the appellant's activities conducted by the 2nd respondent. For the issues to be effectively, effectually and completely determined and for the Attorney – General as the Chief Law Officer of the Federation to be bound by judgment of the court, he is a necessary party to the suit. See ***UWAZURUIKE & ORS V. THE ATTORNEY – GENERAL***

OF THE FEDERATION (2013) LPELR – 20392 (SC) AT 24 (F-G). The lower court was wrong in striking out the name of the 5th respondent on the ground that no cause of action was disclosed against him. For the above reasons, issue 1 is resolved in favour of the appellant. The 5th respondent's name is restored to the suit.

On issues 2, the appellant's counsel submitted that the lower court is bound to confine itself to the issues raised and joined by the parties but the court failed or neglected to treat the issues joined by the parties. He further submitted that the lower court erred in deciding the issue of whether the 2nd respondent have the power or right to search and arrest the staff of the appellant for interrogation which was not raised by any of the parties. He referred to ***BAMGBOYE V. OLAREWAJU (1991) 4 NWLR (PT. 184) 132. IHEANACHO V. GHIGERE (2004) 17 NWLR (PT. 901) 30. ISHOLA V. UBN LTD. (2005) 6 NWLR (PT. 922) 422.*** He argued that since none of the parties made the power of the Commission an issue before the lower court, the lower court arrived at its decision by speculation and misconception and the decision ought to be set aside. He referred to ***OYEWALE V. OYESORO (1998) 2 NWLR (PT. 539) 663. ISHOLA V. UBN LTD (2005) 6 NWLR (PT. 922) 422. OMIDIORA V. FCSC (2007) 14 NWLR (PT. 1053) 17 AT 35 (D-E). ADEJUGBE V. OLOGUNJA (2004) ALL FWLR (PT. 201) 1652 AT 1672 (B-D).***

It is submitted that the appellant is entitled to the protection of the court pursuant to the order of injunction granted by the Federal High Court

in its judgment delivered in suit no. FHC/E/CS/76/2006 on 14/7/2006 which is still subsisting. He referred to ***COBHAM V. DUKE (2005) ALL FWLR (PT. 250) 106.***

In response to the above submissions, the 1st and 2nd respondent's counsel submitted that it is settled law that a court has the power to adopt, modify or reframe the issues formulated for determination by the parties for a proper determination of the dispute between the parties. He referred to ***SHA V. KWAM (2000) 8 NWLR (PT. 670) 685 FABIYI V. ADENIYI (2000) 4 NWLR (PT. 1055) 551.*** He further submitted that the learned trial judge was right to conclude that the real dispute between the parties was not whether or not the appellant had a legal right to own and operate a university as was determined by the Federal High Court in suit no. FHC/CS/76/2006 but whether or not the respondents had the power or right to do any of the alleged acts which the appellants claimed to be in breach of its fundamental rights. He argued that the parties having submitted divergent issues for determination which in view of the court are better encapsulated in the lone issue identified and determined by the court based on the evidence before the court, the submission of the appellant's counsel that the lower court misconceived the appellant's case is erroneous.

The 5th respondent's counsel submitted that the judgment of the Federal High Court held that the appellant is a legal entity but the judgment did not in any way place the appellant beyond investigation for an allegation of operating an institution without compliance with minimum

standards set by law.

In his reply to the 1st and 2nd respondents' submissions, the appellant's counsel submitted that where the court formulate an issue as it is entitled to do suo motu, parties must be given an opportunity to address the court on the issue which the court failed to do in this case.

RESOLUTION:

The major complaint of the appellant is that the lower court misconceived its case. An allegation that a court misconceived the case of a party means that the court misunderstood either the facts of the case as presented by the party or what it is called upon to decide or that the court had a wrong idea of the law or misunderstood the law. See ***NNADOZIE V. MBAGWU (2008) 3 NWLR (PT. 1074) 363 (2008) LPELR – 2055 (SC) AT 23 – 24 (C-A). LADEJOBI V. OGUNTAYO (2004) 18 NWLR (PT. 904) 149 (2004), LPELR – 1734 (SC) AT 18 (C-D). ABASI V. EKWEALOR (1993) 7 SCNJ 193 AT 209. UKAOBASI V. EZIMORA & ORS (2016) LPELR – 40174 (CA) AT 35 (A).***

The lower court summarized the facts of the case at pages 178 – 179 as follows:

> *"The applicant desires this court to enforce its fundamental right by inter alia re – opening/unsealing the Richmond Open University which according to them has been unlawfully closed down. The applicant placed heavy reliance on "Exhibit 2", the judgment of Federal High Court delivered in 2006 in their*

favour which declared the applicant "a legal institution/University. The applicant has also alleged that their assets have been confiscated and or seized and they were tortured and embarrassed a result of all these acts.

The 1st & 2nd respondents on their part submitted that what they did was legal, that they are investigating a report bordering on corrupt practices in the operation of the applicant's university.

That the applicant was identified as one of the 67 institutions operating without compliance with minimum standards set by law, and awarding academic degree without meeting the minimum standards. That based on the above facts the Federal High Court Abuja was approached and a warrant obtained for the purpose of carrying out investigation activities into the said report."

It is clear from the above summary of the facts of the case presented by each party that the lower court fully understood the fact that the contention of the appellant that the act of the respondents is unlawful is based on the judgment of the Federal High Court wherein the court made a declaration that the appellant is not an illegal institution. It is also very clear that the court also understood the fact that the action of the respondents is based on the fact that the appellant was alleged to be operating without compliance with minimum standards set by the law. It is not the contention of the appellant that the summary of the facts by the

lower court is wrong or in adequate. The issue which was clearly thrown up for determination on the facts and the evidence before the court was whether the declaration of the Federal High Court that the appellant is not an illegal institution precludes the 2nd respondent from exercising its power and performing its statutory duty of investigating an allegation that the institution was operating without compliance with the minimum standard set by the law. The contention of the appellant's counsel that the lower court misconceived the case of the appellant or that it made a case for the 2nd respondent is frivolous .

On page 179 – 180, the court considered the facts of the case and held as follows:

> *"This will obviously take us to constitutional provisions relating to the right to personal liberty and to the relevant provision in the corrupt practices and other Related Offences Act 2000.*
>
> *Section 35(1) (c) of the 1999 constitution of the Federal republic of Nigeria (as amended) provides thus:*
>
> *"35(1) – Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law."*
>
> *1 (c) – for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence or to such extent as*

may be reasonably necessary to prevent his committing a criminal offence (underlining mine).

Then by section 6(1) of Corrupt Practices And Other Related Offences Act 2000, the Commission has power to receive, investigate and prosecute offenders.

A combined reading of the above sections of the law is that even though a person is guaranteed the right to his personal liberty, that right can be curtailed for the purpose of compelling that person to appear before either the police or any other law enforcement agent including the 2nd respondent for the purpose of investigation into an alleged commission of a criminal offence upon reasonable suspicion of it by virtue of the powers conferred on ICPC as stated under section 6 (1) of ICPC Act. In other words constitutional right is not absolute."

A court has the liberty and indeed a duty to have recourse to any law that is relevant to the just determination of the matter brought before it for adjudication whether or not the parties refer to it. See **NIGERCARE DEVELOPMENT COMPANY LTD. V. ADAMAWA STATE WATER BOARD & ORS. (2008) LPELR- 1997 AT 30 (A-B), (2008) 9 NWLR (PT. 1093) 498**. In order to do justice to the matter in controversy between the parties, the lower court was duty bound to examine the law which created the 2nd respondent and stipulated its functions and powers before it can reach a decision on whether or not 2nd respondent acted within its statutory power. The court stated the correct position of the law

that the 2nd respondent has the power to receive and investigate any report of conspiracy to commit, attempt to commit or the commission of an offence under the Corrupt Practice And Other Related Offences ACT or any other law prohibiting corruption by virtue of Section 6(a) of the Act and the investigative powers of the Commission is not rendered inoperative by the provisions of Section 35 of the Act. Though the Federal High Court made a declaration that the appellant is not an illegal institution as section 39(1) and (2) of the Constitution guarantees the right of any citizen in this country to establish an institution for dissemination of information, ideas and opinions such as a university, it is not in dispute that the 1st respondent's functions include the regulation of standard of education in all universities in Nigeria. See ***UKAEGBU V. A.G IMO STATE (1983) LPELR – 3339 (SC) AT 28 -29 (C-B). By Section 10 of the EDUCATION (NATIONAL MINIMUM STANDARDS AND ESTABLISHMENT OF INSTITUTIONS) ACT,*** the National Universities Commission is vested with the power to lay down minimum standards for all universities and other institutions of higher learning in the Nigeria

whether public or privately owned. Those sections of the law provide:

> *"10. (1)The power to lay down minimum standards for all universities and other institutions of higher learning in the Federation and the accreditation of their degrees and other academic awards is hereby vested in the National Universities Commission in formal consultation with the universities for that purpose, after obtaining prior approval therefore through the Minister, from the President.*

(2) *In the exercise of the powers conferred under and pursuant to subsection (1) of this section. The Commission shall have regard to the matters mentioned in section 11 of this Act.*

(3) *Nothing in this section shall be construed as preventing or restricting the National Board for Technical Education from carrying out its functions under section 8 of this Act."*

The 2nd respondent in its counter affidavit to the appellant's motion sworn to by Stephen obi, deposed as follows in paragraphs 5 – 10:

5. *"That 2nd respondent carried out an independent university system study and review which revealed inter alia that several unscrupulous individuals were awarding academic degrees without meeting the minimum standards set by law.*

6. *That an Inter – Agency task team was thereafter set up to investigate such individuals and institutions.*

7. *That the applicant was identified as one of the 67 institutions operating without compliance with minimum standards set by law.*

8. *That the purported sealing of the premises of the applicant, arrest and detention of its officers and staff was in execution*

On a warrant issued by the Federal High Court, Abuja Division dated 2nd May, 2013 which said warrant was duly served on the applicant on 16th May, 2013 but which applicant has failed to disclose to this Honourable Court.

9. *That the respondents are investigating a report bordering on alleged corrupt practices in the operation of the applicant as a private university.*

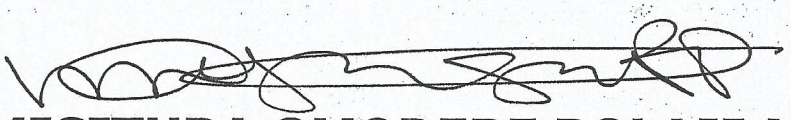
10. *That the investigation is not to determine the ownership or infringe upon the rights of any person claiming to be the owner of the applicant."*

There was no reply to the above depositions. The law is settled that where a party fails to file a reply or further affidavit to rebut an allegation or facts in a counter affidavit, he is deemed to have accepted those facts as true. The facts and the evidence before the lower court show that the 1st – 4th respondents acted within their statutory powers. The decision of the lower court that the appellant failed to establish a breach of its fundamental right is correct both in fact and law.

In conclusion, this appeal succeeds in part. The decision of the lower court striking out the name of the 5th respondent is hereby set aside. The 5th respondent's name is hereby restored to

the suit. The decision of the court that the appellant failed to establish a breach of its fundamental right is affirmed.

Parties shall bear their own costs.



MISITURA OMODERE BOLAJI-YUSUFF
JUSTICE, COURT OF APPEAL

APPEARANCES:

Mazi Prof. Okoro, Proprietor/ Director represents the Appellant.

R.C. Madu with K.I Onwusi for the Appellant.

D.N Okoro for the 1st and 2nd Respondents, Senior Legal Officer, I.C.P.C.

CA/E/124/2015
IGNATIUS IGWE AGUBE, JCA

I agree

IGNATIUS IGWE AGUBE
JUSTICE, COURT OF APPEAL.